
44.87

START

FIRST

SIDE

4J149

PTE ROBBINS RL

SCHEDULE.

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

Accused: A105161 Pte Raymond Laverne ROBBINS. Perth

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		Not guilty	guilty	
2nd		Not guilty	Not guilty	
3rd				
4th				
5th				
6th				

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

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

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

Time in confinement awaiting present trial—a total of 41 days, of which nil days were spent in hospital.(1)

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

Sentence Awarded by the Court: To suffer FP for 15 days and to forfeit 10 days pay

(Sgd) WMD Shaw, Capt — Judge-Advocate, if any. 23 Nov 44 — Date awarded. (Sgd) [illegible] Lieut-Col — President. (RP 45, 50.)

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

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

Confirm the finding and sentence of the Court

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

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

(Sgd) [illegible] Brig

Date 26/XI/44 — Commanding Med Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
A105161 Pte RAYMOND LAVERNE ROBBINS	27 Nov 44	[illegible]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 2 JAN 1945 JAG BRANCH G.M.H.Q.

RECORDED AT G.M.H.Q. file No 150 45-149

CPA96 (To Dep of AFA37) AC.P.S.R./1608 (2804)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig I S Johnston DSO ED Comdg 11 Can Inf Bde dated 21 Nov 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A 105161	Pte	Raymond Laverne	ROBBINS	PERTH

PROCEEDINGS REVIEWED 45

Copy 3 Days

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

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy, on (date(s)) 23 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2F-7

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

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

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 1145 hours trial commences.

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

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

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

The interpreter is sworn.(1) Do you object to as shorthand writer? Ans

The shorthand writer is sworn.(1)

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans Nil Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

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

President	Major	N Hickling	RCE
Member	Capt	RE Simmonds	Fus
Member	Lt	L G R Smith	SSH
Judge-Advocate	Capt	WMD Shaw	HQ 5 Can Armd Div
Prosecutor	Lt	WLM Orr	Perth
Defending Offr	Capt	KS Cameron	"

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

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

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

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

President to accused : Do you wish to make a statement ? Ans ..... (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

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

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

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

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *It there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to that Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

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

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

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

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him, (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

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

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

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

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fn 2, 93.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure under RP 40 or 41 before evidence is followed.(1)

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

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

(1. *The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.*(2))

(1. *AA 54(2) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans .....

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)

(1. *AFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

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

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its powers, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1(B), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Convening Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

COUNTER NUMBER 569818

HOUR 10:45

OPERATOR'S INITIALS EJ

RELIEVING OPERATOR O.G.

CHARGE SHEET

The accused, A.105161 Private Raymond Laverne ROBBINS, The Perth Regiment C.A., a soldier of the Canadian Army (CMF), is charged with:

FIRST CHARGE
Section 9(2)
Army Act

WHILE ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

In the Field, at approximately 1230 hours 12 October 1944, did not clean out a latrine when ordered to do so by Sergeant Grant, but said to Sergeant Grant, 'I will not do it until 1.30 and you can tell the Sergeant-Major to kiss my ass'.

SECOND CHARGE
Section 8(2)
Army Act
(Alternative)

WHILE ON ACTIVE SERVICE, USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

in that he

In the Field, at approximately 1230 hours 12 October 1944, when ordered to clean out a latrine, by Sergeant Grant, said to Sergeant Grant, 'I will not do it until 1.30 and you can tell the Sergeant-Major to kiss my ass.'

In the Field
25 October 1944

(M W Andrew) Lt Col
Comd The Perth Regt.

To be tried by Field General Court Martial.

In the Field

21 Nov 44

(I S Johnston) Brig
Comd 11 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A.105161	Pte		Raymond Laverne	ROBBINS	Perth R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~XXXX~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 21 Nov 44 endorsed by me, (~~XXXXXXXXXXXXXXXXXXXX~~), "To be tried by Field General Court-Martial".

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

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

4. ~~[illegible]~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	N H Hickling	I R C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J F McKnight	Perth R
Capt	R L Simmonds	P L F

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	L G R Smith	C B H

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	W M W Shaw	HQ 5 Cdn Armd Div

On Active Service in the Fd

in Italy (Country.)

(I S Johnston) (Signed personally. RP 105 fn 2.)

Brig (Rank.)

Date 21 Nov 44

Commanding 11 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA95 (In lieu of AFA3) 40/P & S/1697 (4931)

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

I certify that I have this morning examined No. [illegible] Rank. [illegible] Name. [illegible] Unit. [illegible] and in my opinion he is Fit/~~Unfit~~ to undergo trial by court martial.

Station. [illegible]

Date. [illegible]

[illegible]
Medical Officer

Capt McKnight not being available due to sickness Lt Smith ~~Lord~~ waiting member takes his place as a member of the court

—n—

1st Wit Prosn] A11200 L/Sgt Grant, G.F., Perth, duly sworn, states:
I identify acsd, Pte Robbins
approx 12 30 hrs 12 Oct 44 I gave an order to acsd to clean out the latrine. He sd he would not do it until 1.30. I told him it was an order from the Sgt Maj & he sd "you can tell the Sgt Maj to kiss my ass". I repeated the order & he replied the same. "Pte Robbins you are to clean out that latrine right away"
XX m:- He replied "I will not do it" He refused to clean it out until 1 30
Re-exam: nil
Court:- Acsd was in billets, sitting on his bed when I gave him the order. I reported to CSM ~~then~~ in another room & then retd to acsd's room & placed him under close arrest. When I retd to room acsd still sitting on his bed & was talking to a bunch of fellows. Were 3 or 4 oRs around in the room when I gave order. Was away from room 3 or 4 mins. On my return no indication that acsd going to comply with the order
I was Pl comd & acsd was in my Pl.
I retd personally to room & placed him under arrest - sent him to gd rm with ord cpl
RP 73 (B) complied with
Prosn closed

1st Wit Def] The acsd, duly sworn, states:
Did not say "the CSM can kiss my ~~ass~~ ass"
When broke off in morning approx 1145 CSM told me I did not have to start to work until 1 30
Had been digging garbage hole until 1145
Told Sgt Grant would not start until 1 30 because that is what CSM had told us may have been angry.
Sgt Grant left room I sat for a sec or two deciding whether to do it or not, & 3 or 4 mins later ~~Cpl~~ Cpl Shenick came in with one gd & took me to gd rm.
After Sgt Grant left room I intended to do job was tired & feeling little anger so did not do it immediately. Was just getting up to go when gd arrived. I had 10 dys FP still to do. Had been working on FP for 18 dys. Always had time off at noon hr. Never started before 1 30 before

XX-m:- Sgt did make order quite clear -
He gave me order to have it done by 1.30
2 did say 2 will not do it until 1.30.
Re-exam:- nil
Court:- nil

R.P. 83 (c) complied with.
Defence closed.

Pros in closing:- none
Def-offr in closing:- Robbins on FP for 18 dys & working hard
on this day working until 1145 & told that did not have
to work until 1.30. Then at 1230 a Sgt comes along -
loses his temper & flies off - given only 3 mins to prepare
to start. Claim no refusal to obey order
J.A. sums up:- Functions of court, credibility of
witnesses, no required, presumption of
innocence, burden of proof, reasonable doubt
intent, disobeying lawful comd, insubordinate.

Def offr in mitigation:-
Point out, young - conduct sheet good.
Consider circumstances of the case, order & counter-
order by junior in rank - reasonable to get
angry

W.M.W. Shaw
Capt

Substitute for AFB 296
or MFB 356

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

No. A-105161 Rank Pte Name ROBBINS R.L. Unit Perth Regt

Age 20 Married or Single Single No of Dependents NIL

Date of Attestation 5 Nov 42

Number of days in Close arrest awaiting trial 41 ~~13~~ days

Civil NIL Military NIL Hospital NIL Total 41 ~~13~~ days

Dates of appointments, promotions, etc, (if any)

NIL

Decorations NIL

In the Field
23 ~~25~~ ~~Oct~~ 44
(date)

(officer i/c Regtl Books)

The Perth Regiment C.A.(CMF)

MFM 6
(AFB 122)
40/P&S/136 (3438)

Previous sheet destroyed 28 May 43 as of 5 May 43.

No A.105161 Name ROBINS R.L. Sqn, Battery, or Company D Corps C.I.C. Date of enlistment 5 Nov 42 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine N.A. Sheet No 1 Signature OC Company, etc F.A.Tilston A/Capt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7 Nov 43	Pte		AA Sec 40 Conduct to prejudice in that he consumed or lost his emergency ration.	Lieut. R. Cole	Forf 3 days pay FRI 149(2) Stoppages of 1s FRI 158(2)	12 Nov 43	Lt Col WS Rutherford	
Field	5 Sep 44	Pte		A.A. Sec 15(1) WOAS AWL from 2030 hrs 5 Sep 44 until 1715 hrs 8 Sep 44 (Total absence 2 days, 20 hrs, 45 mins).	Cpl Haskell M.E.	28 days F.P.	18 Sep 44	Lt-Col MW Andrew	Forf 3 days pay under FRI 149(1)(a)

I certify that this a true copy of the original document in my possession as offr i/c regimental documents.

(P.J. [illegible]) Capt

Capt
Adjutant, The North Bent

(PTO)

SUMMARY OF EVIDENCE

The Perth Regiment C.A.(CMF)

25 October 1944

R P 4 F

Summary of Evidence in the case of A.105161 Private Raymond Laverne ROBBINS, The Perth Regiment, C.A., a soldier of the Canadian Army (CMF), charged with:

1. While on Active Service, Disobeying a lawful command given by his superior officer.(A.A.Sec 9(2).

2. While on Active Service, using insubordinate language to his superior officer. (A.A.Sec 8(2).

The Commanding Officer directs that all evidence be taken on oath.

FIRST WITNESS: A.11200 L/Sgt Grant G.E., The Perth Regiment, C.A., having been duly sworn, states:

"I am A.11200 L/Sgt Grant G.E., No.16 Platoon, 'D' Company, The Perth Regiment, C.A.(CMF). At approximately 1230 hours on 12 October 1944 I ordered Pte Robins to clean out a latrine. He said he would not do it till 1.30. I told him that it was an order and he replied again that he would not do it till 1.30. I then told him that the order came from the C.S.M. Pte Robins did not clean out the latrine, and said, "you can tell the Sgt-Major to kiss my ass." I placed him under close arrest.

The accused declines to cross-examine the witness.

(A.11200 L/Sgt Grant G.E.)

Question by officer detailed to take this summary:-

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

SECOND WITNESS: A.105161 Pte Robins, R.L., The Perth Regiment, C.A.(CMF) having been duly sworn, states:

"I am A.105161 Pte Robins R.L., No.16 Platoon, 'D' Coy, The Perth Regiment, C.A.(CMF). At approximately 1230 hours on 12 October 1944 I was sitting in my room reading a newspaper when Sgt Grant came in and ordered me to clean out the latrine by one-thirty. I told him I would not start to do it till one-thirty. He told me it was an order from the C.S.M. and I told him it made no difference, I was still not doing it till one-thirty. Sgt Grant left the room and about five minutes later Cpl Shimmick told me I was under close arrest. I was taken to the guard room."

(A.105161 Pte Robbins R.L.)

The accused declines to call witnesses in his behalf.

Rules of Procedure 4 have been complied with.

Taken by me in the presence and hearing of the accused this twenty-fifth day of October 1944.

(Capt J.F. Fisher)
The Perth Regt.CA(CMP)

F G C M

A.105161 Pte Raymond Laverne ROBBINS
The Perth Regiment CA(CMF)

LIST OF WITNESSES FOR THE PROSECUTION

A.11200 L/Sgt Grant G.E. The Perth Regiment CA(CMF)

F G C M

A.105161 Pte Raymond Laverne ROBBINS
The Perth Regiment CA(CMF)

A.105161 Pte Robins R.L. The Perth Regiment CA(CMF)

F G C M

A.105161 Pte Raymond Laverne ROBBINS
The Perth Regiment CA(CMF)

LIST OF EXHIBITS

N I L

F G C M

A.105161 Pte Raymond Laverne ROBBINS
The Perth Regiment CA(CMF)

I do/do ~~not~~ desire the Convening Officer to appoint an officer to represent me at my forthcoming trial by FIELD GENERAL COURT-MARTIAL.

I desire the services of Capt Chamberlain

If he is available.

R L Robbins

(A.105161 Pte ROBBINS R.L.)

UUU-36

Pte. Robbins. T.H.

SCHEDULE.

A.D. C4656 PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: ~~C4656~~ Pte Lawrence Harrold Robbins.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd	Not Guilty	Guilty	
3rd			
4th			
5th			
6th			

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

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

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

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

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

Sentence Awarded by the Court: To forfeit all ordinary pay for a period of 28 days and to be put under stoppages of pay until he has made good the sum of £3.8.0. in respect of damage to Ban 40st. Veh. No. M.539.7823.

(Sgd) 21. Aug. 44 (Sgd) T B Donald Major

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

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

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

Date (Sgd) Commanding

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

(For duties and powers see AA 54, 57, RP 37(D) fn 0.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

I direct that the accused be ~~not committed to prison or detention barracks until further orders~~. (1) A.D.

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

Date 22 August 44. (Sgd) A.D. Ermain Brigadier Asst Comdr 5 Army.

Commanding Divnl Troops 5th H.Q. Confirming Officer.

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

Accused.	Date.	Signature of Offr.
C4656 Pte Robbins, L.H.	22 Aug 44	J. M. Bayly Maj D.A.A.G. 5th Div. Troops & Services 5th H.Q.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 5 DEC 1944 Base Records C.M.H.Q.

RECORDED AT CMHQ IN AB 160 4424-36

FIELD GENERAL COURT-MARTIAL

CP486 (To face of AP48) W.O. P.G. 81/1660 (12004)

Convened by Order of A.D. Ermain Brig Asst. Com Corps dated 19 Aug 44.

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
C4656. ~~A-2334~~.	Pte.	Lawrence Harrold	Robbins	4 H.Q. 1 Fd. Coy.

PROCEEDINGS REVIEWED JCFC REVIEWING OFFICER (AG ~~and~~ MGRO)

Tried by a Court assembled by me at Brecon Camp 28 Aug 44 PROCEEDINGS OF TRIAL.

Gps. Lower Normandy

Held in the Fifth (~~county~~) Tent on (date(s)) 21 Aug 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~d.t.~~ ~~deputy~~, ~~and a fire-eater~~, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROL. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to receive addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 22, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

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

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

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0900 hours trial commences.

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

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

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

The Interpreter is sworn.(1) Do you object to na as shorthand writer? Ans na

~~The shorthand writer is sworn.~~(1)

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

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

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

President	Major	T B Donald	First Cdn Army Armd Div HQ
Member	Capt.	G E Johnston	First Cdn Army Armd Div HQ
Member	Lt.	W R Yarmouth	First Cdn Army Armd Div HQ
Judge-Advocate			
Prosecutor	Lt	W J Nicholson	First Cdn Army Armd Div HQ
Defending Offr	Capt	G B Bent	4th Fd Coy RCE

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

President to accused : Do you wish to make a statement ? Ans .....(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 56 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

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

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

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

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

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

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

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

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

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans nil.....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter Charge~~(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

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

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Yes. Give evidence myself. Do you intend to call witnesses on your behalf ? Ans Yes. Are they witnesses as to character only ? Ans No.

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 4.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

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

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the two charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith.

~~and that the proceedings are accordingly terminated~~. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(7) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans No.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 3 and Ex 4 respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No.

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

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

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 39(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 89, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused C-4656, Pte. Robbins, Lawrence Harold, CIC, on strength GHQ and L of C Troops Service Increment, a soldier of the Canadian Army Overseas, is charged with -

FIRST CHARGE
A.A. Sec 40

WHILE ON ACTIVE SERVICE AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field on the 15th day of August 1944 did improperly and without authority use Canadian Government Vehicle No. M-5397823 for private purposes, thereby occasioning damage to the said vehicle in the amount of £3-8-0.

SECOND CHARGE
A.A. Sec 40

WHILE ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field on 15th day of August 1944 so negligently drove Canadian Government Vehicle No. M.5397823 that he caused an accident to vehicle CT 2717 Leyland Lorry.

(R.M. Campbell) Major,
A/Officer Commanding,
GHQ and L of C Troops Service Incr.

To be tried by Field General Court Martial.

(A.E.D. Tremain) Brigadier
Commander
First Cdn Army Service Incr Gp HQ

In the Field 19 Aug 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-4656	Pte.		Lawrence, Harrold	ROBBINS	GHQ & L of C Tps Service Increment

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 19 Aug 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

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

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

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

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

PRESIDENT.

Major (Rank.)	T.B. Donald (Must be named. RP 106.)	First Cdn Army Service Incr Gp HQ (Unit.)

MEMBERS.

Captain	G.F. Johnston	First Cdn Army Service Incr Gp HQ
Lieutenant (Rank.)	W.R. Learmonth (Named or detailed. RP 106.)	First Cdn Army Service Incr Gp HQ

WAITING MEMBER.

Lieutenant (Rank.)	R.M. Marshall (Named or detailed, if any. RP 106.)	First Cdn Army Service Incr Gp HQ (Unit.)

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in England (Country.)

[signature]
(A.E.D. Tremain) (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Date 19 Aug 44

Commanding First Cdn Army Service Incr Gp HQ
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

T B Donald Major

LBD.

This is to Certify that ~~B.83373~~ C 4656, Pte. Lawrence Harrold Robbins, of GHQ and L of C Troops Service Increment, is fit to undergo Field General Court Martial.

[illegible]

.....
Signature of Medical Officer

21 Aug 44.

LBD.

Tr Donald
Mary

Proceed. — no opening address.

1st Witness — Lt G Fawcett RCASC, FCA 31 GH. in the field, sworn states — I am S&T Offr. on this HQ. On the 15 Aug, I returned to car park at 1330 to detail a lorry to go out on job. While in car park I noticed the Austin was there, came back into bldg & went out on business, returning about 1500 hrs. On return the ordnly Cpl. told me that Austin M5397823 had been involved in accident. I proceeded to scene of accident between Ashtead & Epsom. On arrival, I found a Leyland lorry CT 2717, had gone off road, through a fence & was up against a tree. M5397823 was off the road, upon the sidewalk between a lamp post & fence, about 20 feet past the other lorry. P. Constable Bt Keeping of Ashtead Police was at the scene & had taken most of the info. PC Robins was also there & Sgt Macdonald. I got the log book AB4012 out of the glove compartment of the Austin, there was a work ticket in log book which I now identify as Ex. A. I did not authorize anyone to take this rubbish in the afternoon. The Austin had been detailed in the A.M. to draw petrol & this journey was finished about 1115 hrs. After 1200 hrs no trip was authorized.

Cross Exam — Cpl Muttal was the signature of the last driver on the work ticket. The log book & work ticket were returned to me before lunch by Hcpl Riddick. There was no guard on the car park from 1200 hrs on. This Austin could be driven without a key. It was quite possible for anyone to come in car park & take this car. I never saw a mk at the scene of accident.

Jus. by Court — In my opinion this was not an authorized trip.

RP 83B. Complied with.

F14323 Sm MacDonald T B RCA - FCA 51 614

being duly sworn ~~[illegible]~~ states

On 15 Aug I met Pte Robbins in the car park in company with Sm Douglas & another soldier. We went for a ride to Epsom, dropped off the other soldier at Epsom station, & on the return journey to L'Head at about Ashtead Common we were overtaking a coal lorry, & sideswiped its light front fender. Both lorries then left the road. Then Pte Robbins asked the civilian driver if he was hurt & he said no. I asked a civilian to notify the ~~[illegible]~~ police & I then called my M.A. & asked for an offr. I saw a Br. DR before & after the accident. At the time of the ~~accident~~ collision I ~~saw a~~ noticed a mxdist approaching well over on his side of the road. At the time we were about to pass the Pigeon, this lorry was proceeding with its right wheel on the white line.

Cross Exam

Ins. - Where was the mxc when you were level with the lorry?

Ans. - about 30 yds ahead.

I did not notice the civil lorry ~~[illegible]~~ swerve out. The driver had fairly good vision out of his left hand side window. We were travelling at about 30 m PH at the time of accident. In my opinion, the cause of the collision was the approach of the mxc.

RP. 83B. complied with.

Mr Donald Major (3)

F 919 4 Gm Inglis A.T. RCA FCA SIGN, having being sworn, states:

On 15 Aug. at approx 1330 hrs I left the car park accomp. by Pte Robins & Gm Macdonald & another bdn soldier. We proceeded to Epsom station, then turned & came back. Bet. Epsom & ashtead there was a coal lory ahead of us & we were about to over take it. ~~we~~ I noticed a mfr coming towards us. ~~as we were side by side the coal lory~~, our car seemed to be out of control, as our rear left wheel was even his front right wheel. The coal lory proceeded into the side of a fence & struck a tree. Our car struck a lamp post on its right front side.

Cross exam - The reason for taking the soldier to Epsom station was that he told us he had just enough fare to go from Epsom to Croydon. ~~By about~~ In my opinion it was the approach of the mfr that caused the accident.

The lories were side by side when I saw the mfr approaching. The Austin was travelling at about 30 MPH at the most.

AP 83 B. complied with.

PC 286 George William Keeping of Sing Joint (A Donald Major (S))

Police Force being sworn states:

at about 1430 hrs on 15 Aug 44 I attended the scene of road accident on the Lyon Rd ashtead. I saw two motor whiles, one a civilian lory, 8 ton England GT 2717 & a mil. veh. M 5397823 both vehs were on the near side of the road facing Ashtead, the mil veh in front. Both vehs were off the roadway. The lory had broken through a fence on the near side of the road & had come to rest with its radiator ag. a tree. The mil veh was on the near side pavement & had come to rest with offside of radiator ag. a lamp standard. I saw at the scene the following tire marks, 2 made by civilian lory, one being 6 feet long 2 feet out from near side curb made by near side rear wheel, the other 40 ft long 7 feet out from near side curb made by offside rear wheel. One mark made by mil. veh by offside front wheel was 62 ft long & 12' out from ~~side~~ near side curb. Width of road 21', width of pavement 5', scene of accident top of road gradient & left hand bend. I saw at the scene C 4656 Pte Robinson LH who informed me that he was driver of mil veh, & F 14323 Gnr MacDonald GB & F 9194 Gnr Hughes who told me that they were passengers in mil veh. I also saw Mr Frederick Laws of 1 Birch Cottage Putney Br. Rd Sandown SW18 who informed he he was dr. of civ. lory. I also saw 1886740 Sapper Greasley James of 241 Fld Co RE who told me he had witnessed accident. ~~as a result of unique~~ ~~I ascertained~~ On the offside front wing of civ lory I found khaki paint & dents. On near side rear wing of mil. veh, I also found dents. These marks would be consistent with mil veh having collided with civ. lory, or vice versa. Fire marks indicate that civ. lory was in its proper posit on road.

T.B. Donald Major (5)

Cross exam –

Do you know how far back the tire marks were from the top of the gradient? No.
There were no road signs. I have no idea of the gradient.
Would a motorist 50 x from top of gradient notice a cyclist coming round the bend & half way up the gradient? I don't know.
The marks I have referred to are tire marks, not skid marks. The 40' & the 62' tire marks finished on the near side pavement. I estimate the width of the lorry at 7'. There would be room for both cycles & the cyc to pass.

R.P. 83 B. complied with

Mr. Frederick Lars having been duly sworn states

At about 1450 I was proceeding along main road & came to a slight incline which necessitated my changing down into 3rd gear – speed about 16 MPH. Came to a slight bend to my right. I was about 2 to 3 feet from near curb. I saw a cyclist approaching at a normal speed, the next second a veh. struck my offside front wheel & knocked the steering completely out of my hand, causing me to mount the pavement, strike a fence, & hit a tree head on. I was shaken up, got out of cab on near side & walked round to rear of veh & saw a policeman who advised me to go to hosp. where I was treated for shock. The other soldier in the ambulance smelt of liquor – he had a cut on his head.

Cross exam

Lorry is ~~about~~ 7'6 wide & weighs 18 tons loaded. It was loaded at time. There was no warning given by mil lorry. He hit me first on offside front wheel.

R.P. 83 B. complied with

1 B Wood May 7 (6)

1866742 Sapper Greasly, being sworn states

I am a sapper mychest of 241 Fld for R.E. I was proceeding along the Leatherhead Epsom Road in the direction of Epsom. I was travelling at ~~[illegible]~~ no more than 30 MPH. I am [illegible] at about 1430 on approaching a bend in the road ~~at approx 30 MPH~~, I noticed 2 vehs approaching, one large, the other smaller. The large veh. was well on the near side of the road & the smaller veh. was alongside & close to it. The ~~small veh~~ vehs came into contact with each other, the small veh. coming into contact with the front offside wheel of the large veh. Both vehs swerved to left & went off road. The large veh. finished x eg a tree, & the smaller one a few yards ahead of it. I was about 60 x away when vehs collided. I am certain that I could have got off the road & left a clear passage for the 2 vehs.

Cross Exam

Both vehs were travelling at a normal rate of speed

By Court

There was suffic room for both vehs & my mk, all abreast.

R P 83B. complied with.

Pt AK Piering RCEME being duly sworn states

~~[illegible]~~

I assessed the cost to repair Austin Utility veh. M 5397823 at £3-8-0 after viewing damages on Exam

R P 83B. complied with

C4656 Pte Robbins L.H. C/C
having been duly sworn states

Statement under Oath.

I came to the car park about 1320 hrs. There was a Cdn soldier there that wanted a ride to Epsom station as he only had money enough to take him from there to his destination of train. So I said that I would take him to the station. This Austin car was the only one there that had a switch key. Pte MacDonald & Pte Inglis were in the car park & said they would go along for the ride so we went to Epsom station & on the return trip we came across this Leyland lory. It was on a sharp corner, so we followed it around till it came to a straight piece of road. Then I overtook it. As I got even with his right front wheel I noticed an army mtr coming up the grade toward us. I didn't know whether there would be room for him to get by or not so I slowed down & braked the Austin which pulled me to the left. My rear left fender came in contact with his right front fender. My veh. mounted the pavement, ~~on~~ run into a lamp standard & came to a stop about 20' ahead of the Leyland. I got out & asked the driver of the civil lory if he was hurt, he said just stuck up a bit. A civilian that lived nearby called a civilian constable. The const. looked over the accident & decided the driver of the civilian lory & Pte Inglis should go to the Hosp so he phoned for an ambulance. They were picked up & taken away. Capt Systen, going to London, stopped so he phoned Unit HQ, then Pte MacDonald phoned HQ. Mr Fawcett came out & took me back in the car. I was travelling at approx 30 MPH. - I had not driven that car before. The mtr list was 50 or 60 ahead of me when I first saw him.

T B Donald Major (8)

The Austin pulled to the left when I applied the brakes, & I found myself in contact with the Leyland. There was no guard in the car park when I left. There was a work ticket in the glove compartment of the car.

Cross examine

I did not attempt to pass the Leyland on the curve. I was quite sure there was plenty of room to pass, on the straight bit of the road.

By Court.

I had no authority to take this vehicle from my offr. on NCD. We stopped at a public house for a beer. I kept about ~~10~~ 1' from Leyland while attempting to pass. When I noticed sufc, I slackened off & put on the brakes. I never used the brakes hard before. I never gave any warning bec the lorries were making too much noise. I realize that it customary to give warning.

~~[illegible]~~ TBD

RP 83B complied with

Evid as to Character

Capt Bent. - Pte Robbins has been my driver for 3 mos. He has driven me thousands of miles & has always shown extremely good driving sense & during that time has not been involved in any accident. To my personal knowledge he has been driving for 3½ yrs in Engl & has had a clean record. His character as a soldier, whilst I have known him, has been all that could be desired from a member of H M Forces.

Prosec declines to Cross Examine.

RP 83B complied with. T B Donald Major
President

AFG 2518 (Revised 1943)
40-P&S-600(4022)

TRANSPORT WORK TICKET

MAKE OF VEHICLE: Austin | CLASS: 3 ton | UNIT: 1st Can Army Tank Tps Wksp. | SECTION: Sec. No. 2 | DRIVER'S NAME: Pte. Cpl. Lce Cpl. Julliard | W.D. No. M 539823 | MONTH & YEAR: Aug. 44

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Run (17)	SPEEDOMETER Day (18)
			Brought forward from Work Ticket No.														
AUG 1	B SERV INCR.	detail	Walton on Hill	as ordered		S Lawrence Lx							0730	1800	3863		55
2.	C SERV. INCR	detail	Walton Hill	as ordered		S Lawrence Lx				6			0730	1700	3970	1	07
3.	D SERV. INCR	detail	Walton Hill	as ordered		S Lawrence Lx							0730	1730	9030		60
4.	E SERV. INCR	detail	Walton Hill	as ordered		S Lawrence Lx				4			0800	1800	4060		50
5	F SERV INCR	detail	L'Head	as ordered		S Lawrence Lx							0600	1800	4150		70
7	G SERV INCR	detail	L'Head	Ref Pt	Headley	S Lawrence Lx				4			0800	1800	4223		53
8	H SERV INCR	detail	L'Head	Ref Pt	Headley	S Lawrence Lx							0800	1800	4277		54
9	I SERV INCR	detail	L'Head	Ref Pt	as ordered	S Lawrence Lx							0600	1700	4288		11
10	K SERV INCR	detail	L'Head	Ref Pt	as ordered	S Lawrence Lx							0600	1800	4359		71
11	L SERV INCR.	Retrieve detail	L'Head	Ref Pt	as ordered	S Lawrence Lx				4			0600	1800	4421		72
12	M SERV INCR	Ref Cans	L'Head	as detailed		S Lawrence Lx							1800		4435		14

MPG for week ____ or totals carried over.

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIMES Out (14)	TIMES In (15)	SPEEDOMETER In (16)	SPEEDOMETER Run (17)	SPEEDOMETER Day (18)
12	N SEAV. INC	PETROL CANS	L'head	Cast Grassland	REDHILL ORDNANCE	[illegible]				4			0800	1200		[illegible]	5.4
14	[illegible] Inc	Petrol	L'head	Redhill & return		[illegible]							0930	1130		4519	3.0
16	[illegible] Inc	Petrol	L'head	Area		[illegible]											
	Q																
	R																
	S																
	T																
	U																
	V																
	W																
	X																
	Y																

A
Thos B Donald
Major

MPG for week ____ or totals carried to Work Ticket No. ____

LINE	SPECIAL INSTRUCTIONS TO DRIVER	DATE	DRIVER'S REPORT OF BREAKDOWNS, ACCIDENTS AND DEFECTS	SIGNATURE OF DRIVER	COUNTERSIGNATURE
				P. Hutton Gap	Rank

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C-4656	Pte	ROBBINS, L.R.	C.R.C. & L of C Service Increment

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Absent without Leave 3 times.

For _____ times.

For _____ times.

For _____ times.

Date of first entry in Field Conduct Sheet 19 May 1943

Date of last entry in Field Conduct Sheet 16 Apr 1944

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. ~~The accused has not been convicted by a civil court of any crime or offence since the date of the last entry on the Field Conduct Sheet.~~

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for _____ days in military custody, *i.e.*, ~~days in civil custody~~; and for ~~nil~~ days in military custody, *i.e.*, _____ ~~days in open arrest~~, ~~nil~~ ~~days in close arrest~~; of which ~~nil~~ ~~days were spent in hospital~~.

5. The present age of the accused is 24

6. The date of his attestation is 25 Sep 39

7. The service which the accused is allowed to reckon is 4 years 10 mos 20 days

8. The accused is in possession of† Cdn Vol Serv Medal & Clasp 1939-45 Star

†State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date— *Date of Promotion.*

In the substantive rank of _____

In the war substantive rank of _____

In the acting rank of _____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) W.L.5670/666 100,000 4/42 A.& E.W.Ltd. Gp.698 Forms/B.296(War)/3
(22458) W1.39226/1875 60,000 9/42 "

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 18th day of August 1944

(W.W.Lang) Lieut. Staff Capt. "A"
G.H.Q. & L of C Service Increment

No. 4656 Name ROBBINS L.H. Sqn, Battery or Company Corps C.I.C. Date of enlistment Sept 40 OC Badges Nil Service or Proficiency Pay Nil

MFM 6 (AFB 122) 40/P&S/136 (3458)

Date of last entry in Company Conduct Sheet Nil No and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET - NO DOCUMENTS					
Field	19 May 43	Pte.		WOAS A.W.L. from 1130 hrs 19 May 43 until 2200 hrs 22 May 43. Total - 3 days 10 hrs 30 min.	Cpl. Renstrom, A.E. Pte. McMillan C.J. Cpl. Nicholson D.E.	Forfeits 10 days pay FR&I 149(2)	24 May 43	AB Noble Lt Col.	Forfeits four day's pay FR&I 149(1) (a)
Field	10 Feb 44	Pte.		WOAS AWL from 2200 hrs 10 Feb 44 until 0745 hrs 11 Feb 44 (Total absence 9 hours 45 min.) A.A. Sec 15 (1)	Cpl. Mason W.D.	Forfeits 5 day's pay FR&I 149 (2)	11 Feb 44	AB Noble Lt Col.	Forfeits one day's pay FR&I 149 (1) (a)
Field	16 Apr 44	Pte.		AA 15 (1) AWL from 0700 hrs 16 Apr 44 to 1100 hrs 18 Apr 44 (2 day's 4 hours)	Pte. Taylor J.S.	6 days CB 6 days forf. of pay.			Forf 3 days Auto. Forf 6 days 149 (1a) Total 9 days pay R.J.M.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	Certified to be a true copy of the document in my custody.								
	17 Aug 44			(W.W. Lang) Lieut., Staff Capt. "Q", G.H.Q. & L of C Tps Service Increment.					

SUMMARY OF EVIDENCE

Summary of evidence in the case of C-4656 Pte ROBBINS L.H. CIC, GHQ and L of C Troops Service Increment, a soldier of the Cdn Army Overseas.

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

FIRST WITNESS:

Lieut G. Fawcett R.C.A.S.C. First Cdn Army Service Increment Group H.Q. being duly sworn, states:-

I am S and T, First Cdn Army Service Increment Group H.Q. and as such responsible for all vehicles at this H.Q.. On the 15th of August at about 1330 hours I went to our vehicle park in back of the Crescent Building to detail a driver and lorry for duty. I noticed that Austin Utility vehicle, M5397823 was in the car park. At 1500 hours. I was informed by my clerk that a message had been received from Capt. Swystun, R.C.A.S.C. that vehicle No. M5397823 was involved in an accident on the Epsom Highway, MR 63857885. I could not understand this as I had not detailed vehicle for any trip in the afternoon. I drove out to the scene of the accident and inquired who was the driver. Pte. L.H. Robbins whom I now recognize said that he was. He also stated that he did not have any authority to be in possession of the vehicle. I found vehicle C.T. 2717 a Leyland Coal lorry off the pavement and jammed against a tree after obviously having destroyed a section of the wooden fence. The Austin M5397823 had jumped the curb and was jammed between a lamp post and fence abouttwenty feet beyond the coal truck and facing in the same direction. Police Constable B.C. Keeping of the Ashtead Police was in the process of making investigations. Also at this time F-14323 Gnr MacDonald J.B. was present at the scene of the accident. I obtained what information I needed for the accident report and detailed MacDonald to guard the vehicle until the wrecker came to tow the vehicle in. I took Pte Robbins back with me to Leatherhead and placed him in the custody of GHQ and L of C Increment. Lieut Piercy R.C.O.C. assessed the damage to the Austin at £3.8.0d A.B. 412 and work ticket A.F.G. 3518 Exhibit "A" were found by me in the glove compartment of the vehicle.

G. Fawcett Lt.
Signature of Witness.

The accused soldier declines to cross-examine this witness.

SECOND WITNESS:

F-14323 Gnr MacDonald J.B., R.C.A., First Cdn Army Service Increment Group H.Q., being duly sworn, states:

On the 15th day of August at 1330hours I went to Epsom in company with F-9194 Gnr Inglis, A.T., R.C.A. First Cdn Army Service Increment Group H.Q., in W.D. vehicle M5397823 driven by C-4656 Pte Robbins, L.H.. On the return journey while overtaking a vehicle * we side-swiped its right front fender. This vehicle was a Layland coal lorry driven by a civilian. Both lorries left the road ours hitting a lamp-post, theirs a tree. Approximately sixty feet of wooden fence was damaged and both vehicles were slightly damaged. There was another civilian in the vehicle besides the driver. Neither of the civilians seemed to be hurt and stated that they were not hurt. I did not know whether this trip was authorized or not. I went along for the ride.

J.B. MacDonald
Signature of Witness

The accused soldier declines to cross-examine the witness.

THIRD WITNESS:

F-9194 Gnr Inglis, A.T., R.C.A., First Cdn Army Service Increment Group H.Q. being duly sworn, states as follows:

At 1330 hours on the afternoon of 15th day of August in company with Gnr MacDonald and in a W.D. vehicle M5397823 driven by C-4656 Pte Robbins, L.H., I went to Epsom. On our way home while passing a coal lorry our vehicle seemed to go out of control and we collided with the coal lorry. We continued on into a lamp post. I was cut about the head and my memory of what took place is vague. I was taken to the Hospital. I went along on the trip for the ride as we were giving an old Canadian soldier a lift. I noticed a D.R. on a motorbike who was coming towards us at the time of the collision.

A.T. Inglis
Signature of Witness

The accused soldier declines to cross-examine the witness.

FOURTH WITNESS:

P.C. 286 George William Keeping of Surrey Joint Police Force, Ashtead, being duly sworn, states:

At approximately 1450 hours on the 15th of August 1944, I attended the scene of a Road Accident on the Epsom road Ashtead. I saw two vehicles, one a commercial lorry No. C.T. 2717 Layland, 8 tonner and a Military vehicle No M5397823 on the nearside of the road facing Ashtead. Both vehicles were off in the roadway facing Ashtead, the military vehicle being in front. The lorry had broken through a fence on nearside of road and had come to rest with its radiator against a tree. The military vehicle was on footpath and had come to rest with offside of radiator against a lamp standard. I saw the following tire marks which were clearly visible. Two tire marks made by lorry, one six feet long commencing two feet out from nearside curb; the other forty feet long commencing seven feet out from nearside of curb and finishing on pavement. One tire mark made by offside front wheel of military vehicle sixty two feet long commencing twelve feet out from curb and finishing on pavement. Width of road twenty-one feet, width of pavement four feet. About sixty feet of wooden fencing was damaged. Khaki paint and dents were found by me on the offside front wing of civilian lorry. On the nearside rear wing of military vehicle I also found dents. These markings would be consistent with the military vehicle having collided with the civilian lorry. I saw at the scene No. C4656 Pte Robbins, L.H. who informed me that he was the driver of the military vehicle and No. F-14323 Gnr MacDonald, J.B. and No. F-9194 Gnr Inglis, A.T. who said that they were passengers. I also saw Mr Frederick Laws of 1 Bush Cottages, Putney Bridge Road, London, S.W. 18 who told me that he was the driver of the civilian lorry. He appeared to be shocked so I despatched him to hospital. I also saw at the scene No 1886740 Spr Greasley, James of 241 Field Coy, R.E., Hertford, Hertfordshire who told me that he had witnessed the accident. I ascertained that the owner of the civilian lorry which was extensively damaged to be William Hampton LTD 394 York Road, Wandsworth, London, S.W. 18. The lamp standard which the military vehicle hit and damaged is the property of the Wandsworth Gas Company Fairfield Street, London S.W. 18. The owner of the fence is Mrs Beswick of North Lodge Epsom Road, Ashtead.

.....
Signature of Witness:

The accused soldier declines to cross-examine the witness.

FIFTH WITNESS:

Mr. Frederick Laws of No. 1 Bush Cottages Putney Bridge Road, Wandsworth, SW 18 being duly sworn states:-

I am Frederick Laws employed by William Hampton LTD 394 York Road, Wandsworth, London, S.W. 18. About 1450 hours on the afternoon of the 15th day of August I was driving Leyland Hippo Lorry No CT 2717 on the Epsom Leatherhead Road, approaching Ashtead. I was proceeding in third gear at about 16 miles per hour. I was approaching a small incline on a slight curve. I could see ahead of me for at least 50 yards. My vehicle was about two feet from the curb. I noticed a motorcycle with a soldier on it proceeding towards me at normal speed. As the motorcyclist drew level with me I was hit by an overtaking vehicle. The impact occurred on my offside front wheel, causing me to loose control of my vehicle. The steering wheel was completely knocked out of my hands. This caused me to mount the pavement and crash through a wooden fence. I collided head on into a tree. I was pretty well shaken up and my right arm was hurt. I noticed that an Army S.D. Vehicle was the car that collided with me. A police constable despatched me to the hospital, Leatherhead Emergency, where I was treated for shock. A soldier who was at the scene of the accident and who said he was a passenger in the vehicle which hit me, came to the hospital. This soldier was cut on the head and smelt of drink. I realize that my vehicle could not be moved and was seriously damaged.

F Laws

.....
Signature of Witness

The accused soldier declines to cross-examine the witness.

SIXTH WITNESS:

1886740 Sapper Greasley, James RE 241 Field Coy being duly sworn states:-

I am a sapper motorcyclist of 241 Field Coy, RE, and on the afternoon of the 15th day of August I was on duty. At about 1430 hours I was proceeding on my motorbike along the Epsom Leatherhead road, towards Epsom. My bike was new so that I am sure that I was not exceeding 30 mph. Upon approaching a bend in the road I noticed two vehicles approaching me. One was large and one was small. The larger vehicle was well over on the left hand side of the road which was his correct position. The smaller vehicle was alongside of him and appeared to be overtaking. I noticed that the two vehicles were rather close together. Then the vehicles came in contact with each other. The smaller vehicle seemed to come against the offside front wheel of the larger vehicle. Both vehicles immediately moved to the left and went off the road. The smaller vehicle ended up a few yards in front. It didn't seem to me that anything very serious had occured, only the civilian driver seemed a bit shaken.

J. Greasley
.....
Signature of Witness

The accused soldier declines to cross-examine the witness.

SEVENTH WITNESS:

Lieut. A.K. Piercy, RCEME, First Cdn Army Service Incr Group HQ, being duly sworn states:-

I, am Lieut. Piercy, A.K., EME Officer, at First Cdn Army Service Increment HQ. I assessed the cost to repair Austin Utility Vehicle W.D. No.M-5397823 at £3.8.0. after viewing damages on same.

A.K. Piercy
.....
Signature of Witness

The accused soldier declines to cross-examine the witness.

The accused, having been duly cautioned in accordance with Rules of Procedure 4 (e) elects to make a statement.

The accused, C-4656 Pte Robbins L.H., CIC states:

"I have nothing to say at this time".

L. H. Robbins
.....
Signature of Accused.

Certified that Rules of Procedure 4(c) (d) (e) and (f) have been complied with.

The foregoing summary of Evidence, consisting of 6 pages was taken down by me in the presence and hearing of the accused this seventeenth day of August, 1944, in the Field.

W.G. Nickerson
.....
(W.G. Nickerson) Lieut
Signature of Officer taking Summary of Evidence

145 T

Pte ROBBINS, WH

Correspondence to be PINNED here.

Ex 'A'

145 T

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Second day of DECEMBER, 1942.

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

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

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

*[~~Can not be to appoint~~]

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

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

~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~]

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

*Omit if not applicable

Proceedings Reviewed

[signature] Reviewing Officer (J.A.G.) C.M.H.Q. 15 Dec 42 (Branch)

78

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

President.

Rank.	Name.	Regiment.
Major	M. J. Griffin	Seaforth of C.

Members.

Rank.	Name.	Regiment.
Capt.	J.F.H. Clare	H.Q., 2 CIB.
Lieut.	J.F. O'Neill	Edmn Regt.
(w) Lieut.	I.M. Bell-Irving	Seaforth of C.

*Signed [signature] (C. Vokes) Brig

Commanding 2 Cdn Inf Bde.

Convening Officer.

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

2

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
H-16637 Private William Harold ROBBINS.	1st Charge A.A. Sec 15 (1) Absenting himself without leave.	NOT GUILTY	Guilty To undergo detention for a period of 120 days and to be put under stoppages of pay until he has made good the sum of $0:9:11 in respect of the the cost of return to unit.	~~Confirmed~~ &c. I confirm the finding of the court but remit sentence to 30 days det. and stoppages $0:9:11 &c.

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) (C. Vokes) Brig (Signed)
Commanding 2 Cdn Inf Bde. President.
Convening Officer (*e*)

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

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

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

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

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

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

3

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 4th day of December 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

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

were duly sworn.

* Omit if not applicable.

Signed this 4th day of December 1942.

President of the Court Martial.

C. Certificate in case of death sentences.

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

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

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

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

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

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

Signed this 5th day of DECEMBER 1942.

(C. Vokes) Brig
Commanding 2 Cdn Inf Bde.
Confirming Officer.

Promulgated and extracts taken in the case of H-16637 Pte ROBBINS W.H.

(*a*) (Dated) 8 DEC 42 (Signed) Commanding, P.P.C.L.I.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

W.S. 47247/1837 10 M. 3/41 K.H.,S.(S2053) Cp. 698,3

CHARGE SHEET

The accused, H16637 Private William Harold ROBBINS, Princess Patricia's Canadian Light Infantry, a soldier of the Canadian Army Active Force, is charged with, while on Active Service:

ABSENTING HIMSELF WITHOUT LEAVE

in that he

1st CHARGE
AA Sec 15 (1)

In the Field, at 1800 hrs 30 Aug 42, absented himself without leave from "A" Coy, P.P.C.L.I., until surrendering himself to the Civilian Police at London at 1115 hrs 11 Oct 42, (absent 41 days 17 hrs 15 mins) thereby incurring expenses of custody and return to Unit - £0-9-11.

E.B. Ware
(E.B. Ware), Major
Commanding, P.P.C.L.I.

In the Field
1 Dec 42

To be tried by F.G.C.M.

2 DEC 42

(C. Vokes) Brig
2 Cdn Inf Bde.

Ex "B"

MEDICAL OFFICER'S CERTIFICATE
K.R. (CAN) PARA 557

I certify that I have this morning examined No. H16637
Private ROBBINS W.H., P.P.C.L.I., and in my opinion he
is fit to undergo Trial by Court Martial.

In the Field
4 Dec 42

Proceedings at a F.G.C.M. in the case of H 16637 Private WILLIAM HAROLD ROBBINS PPCLI a soldier of the Canadian Army (Overseas) held in the Field on the 4th Day of December 1942

The Order convening the Court the charge sheet and Summary of Evidence were laid before the Court. The Court complies with R's P 22 and 23

At 1410 hours the Court opened
The accused and all persons including witness were brought in.
Prosecutor Lieut E. Carter PPCLI
Defending Officer Capt T C B Vance Seaforth of C
The Medical Certificate was laid before the court and marked exhibit "B"
The Convening Order was read by the President + marked Exhibit "A". WJS
Q1 Do you object to me as president or to either of the members of the court?
A1 No Sir.

The Court was duly sworn in.
The following officers under instruction were sworn in Capt W. Seamark Lieut J. M. Bell-Irving Capt G. M. Gaskin

The charge sheet is signed by the President and annexed to the proceeding.

The charge was read to the accused

The accused pleaded not guilty

Rule of Procedure 39 (a) were complied with.

The Prosecutor does not make an opening address but proceed to call his witnesses

1st Witness H16003 R/Cpl F. J. Grey 1st Coy PPCLI having been duly sworn states

Q2 Do you recognize this man H16637 Pte Robbins

A2 I do Sir

Q3 What were you on Aug 30, 1942

A2. I was Coy Orderly Sgt. At 1800 hrs I called the role and one man was absent Pte Robbins. To my knowledge he had no pass.

(The defence did not cross examine this witness and R.P. 83(b) was complied with)

2nd Witness P22174 CQMS W. Sanderman PPCLI having been duly sworn state.

I identify the accused as H16637 Pte Robbins I inspected his kit on 31 Aug 1942. He was short some kit which have now been made up. His kit was forwarded

about 4 Oct to Witley

The Defence cross examined the witness

Q 4 You made the statement you returned the accused kit to Witley when he was struck off strength?

A 4 I did sir

Q 5 How do you know when he was struck off strength?

A 5 I don't sir.

Question from the court?

Q 6 On what authority did you send the kit to Witley

A 6 I must have received authority from some where but I do not remember where.

R. P. 83 (b) was complied with

The court adjourns for consultation at 1451 hours

The court reopened at 1457 hours

Lieut E. Carter PPCLI was duly sworn and produced ~~to Maj~~ Record of Declaration of Court of Inquiry assembled 21 Sep 1942 in the Field and marked Exhibit "C" and

was read to the accused.

Lieut E Carter also produced certificate of surrender AF 01617 recording the surrender of Pte Robbie on 11 Oct 1942 marked as Exhibit "D"

Lieut E Carter also produced expence voucher CMHQ 1000.55 dated 11 Oct 42 and marked exhibit "E"

The witness identified the accused as the person referred to in exhibit "C" "D" and "E"

RP 83(b) was complied with

The prosecutor rested the case

The Defence officer made no defence

RP 40(A) was complied with

The accused declined to bring evidence or make a statement

The addresses by the Defending Officer and the Prosecution were made.

The argument of the Defending officer was directed to show that continuous absence of the accused was not strictly proved

The court closed for consideration of finding

The court is re opened and the accused was brought in

The Prosecutor then produces AFB 296 marked exhibit "G" and MFM 6 marked exhibit "H" and identified the accused as the person referred to in ~~"F"~~ exhibits "G" and "H"

The accused made a statement

I came over in May 1940 and for 18 months I soldier then things seemed to go wrong. I finally saw what I was doing and gave myself up. I intend to soldier from now on.

The court closed for consideration of sentence.

Ex "C"

RECORD of the DECLARATION of a COURT of INQUIRY assembled at:

In the Field on the 21st day of September 1942

for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or clothing of No. H16637 Pte Robbins.W.H.,P.P.C.L.I.

DECLARATION

The Court declare,

That No. H16637 Pte Robbins W.H. "A" Coy

Princess Patricia's Canadian Light Infantry, illegally absented himself without leave at 1200 hrs on 30 Aug 42

that he is still absent and that on 20 Sep 42 he was deficient, and [illegible] of the following articles.

ARTICLES	VALUE	ARTICLES	VALUE
Socks, prs (1)	1/8		
Shorts,P.T.(1)	1/11		
Laces, boot (2)	3d		
Braces, prs (1)	1/5½		
Brasses,button(1)	8d		
Brushes, tooth(1)	4½		
Comb, hair (1)	2d		
Dressings,1st Fd(1)	1/1d		
Housewife (1)	2/3d		
Knife,clasp (1)	5/2½		
Total	£0-14-10½		

Names of President and Members:

President - Capt.R.C.M.Cammell,P.P.C.L.I.
Members - A/Capt.J.G.Clarke,P.P.C.L.I.
Members - Lieut.W.L.Smith,P.P.C.L.I.

Signature of Commanding Officer - (signed)R.A.Lindsay(Lieut-Col)

Certified true copy - W.H.Watson Lieut
Signature of Officer having custody of original record.

M.F.B. 375
ZM-10-39 (2498)
H.Q. 1772-39-257

Ex D

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

(15038) Wt.27429/757 25,000 9/40 A.& E.W.Ltd. Gp.698
(17085) Wt.41200/1441 20,000 2/41 " " Forms/O.1617/14

I CERTIFY that the man whose personal description is given below surrendered himself to* PC 489 Bisley at Chapel Market N1 at (hour) 11-15 a.m. on the 11th day of October as being No. H16637 (Rank and Name) William Harold Robins a deserter (or absentee without leave) from 99 C.K.I. (F.H.) and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 23 Height 5 Feet 7½ Inches

Complexion sallow Hair brown Eyes blue

Marks nil

In uniform or plain clothes plain clothes

Probable Date and Place of Attestation	5/1/40 Winnipeg
Probable Date of Desertion or beginning of absence, and from what place	December 1941 Eastbourne

Signature of Officer of Police in charge of Kings Cross Rd Station.

11th October 1943 Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of No. .....

who surrendered to the Police at ..... on .....

Payable to .....

CERTIFIED that this statement of expenses is correct.

..... Superintendent or Officer in charge of Police Station at .....

..... Date of Signature.

Ex "E"

Expense Voucher Re—: Ref: K.R. & O. (Can) 538

Reg. No H.16637 Rank Pte Name Robbins, W.H. Unit PPCLI

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit~~ From Hospital from London

Date	Particulars	Amount		
11 Oct. 42	Escorts return fare from LONDON To Huslemere		6	7
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Huslemere		3	4
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		9	11

I certify that the above statement of Expenses is Correct. and that the amounts are fair and just.

H. W. Cowling Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/P & S/483

Ex "H"

M.F.M. 6

No. HI6637 Name Robbins W. H. Sqn., Battery, or Company "A" Coy. Corps P.P.C.L.I. Date of enlistment II + I-40 Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. I. Signature of Company Copt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Goodstone	24/12/40	Pte.		W.O.A.S. Absentwithout leave from 0600 hrs.24 Dec. 40. until apprehended at I930 hrs 24 Dec 40. Absent I3 hrs 20 mins.	Documentry	5 Days C.B.	28 Dec 40.	Major C.B. Ware.	
O.A.S.	23 Jan. 42.	Pte.		W.O.A.S. A.W.L. from 2359 hrs 23 Dec 4I.until apprehended by theMilitary Police in London road at about I555 hrs. II Jan 42. Absent I8 days I5 hrs. 55 mins.) A.A. I5 Sec. I. (2) Failing to carry his MBM1 Part 1 &2. A.A. Sec. 11.	L/Cpl Meredith C.M. Police Documentry	14 Days F.P. 19 days pay by FR&I.149(1)a 14 days pay by FR&I.149(1)b stoppages to the amount of£2:1:11 to make good return cost from custody.	16 Jan.42	Major J.A. Early.	

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				(3)Conduct ~~xx~~to the predjudice of good order & Military discipline in that he stated a falsehood to an N.C.O. A.A. Sec. 40.					
O.A.S.	12/4/42	Pte.	--	W.O.A.S. A.W.L. from 0200 hrs 12/4/42 until reporting in at 1800 hrs 12 Apr. 42. Absent 16 hrs.)	L/Cpl. Charney.P.	120 hrs. Detn.	18/4/42.	Lieut-Col. R.A. Lindsay.	Forfeits 1 days pay F.R.&.I.

CERTIFIED TRUE COPY.

for W. McM. Watson Lieut CAPT.
Comdg.
A. COY. P.P.C.L.I.

Ex "G"

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank	Name.	Regiment (or as the case may be).
H16637	Pte	William Harold ROBBINS	P.P.C.L.I.

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

Note.—If a trial by field general court martial this summary must be compiled from the full sentence sheet.

The conduct sheet to be produced in court with this statement will not be referred to by the prosecutor.

† See Para. 677, K.R., 1940.

* Insert words "Within last 12 months" and "Since Enlistment" over the proper columns, and in the case of leave, specify whether ordinary, special, to be struck off strength, or by an undistinguished method.

Instruction.—If the charge is for desertion, the entries for drunkenness need not be totted separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	Absent without leave.	2 times	3	times.
For	Miscellaneous	2 times	2	times.
For		times		times. (B.W.
For		times		times. (B.W.
For		time		times. (B.W.

~~Number of previous ordinary or distinguished service~~ (B.W.
~~x~~ (B.W.
~~It is and no entries in the conduct sheet of the accused~~ (B.W.

2. The accused has not been previously convicted, ~~as~~ (B.W.

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the~~ (B.W.
~~Army Act, and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed hereto and marked~~ (B.W.

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence~~ (B.W.
~~imprisonment for a period of~~ ~~beginning on the~~ ~~day of~~ (B.W.

4. The accused has been in confinement, awaiting trial on the present charges, for (2½ hrs) ~~xxxx~~ (B.W.
in civil custody, and 51 days in military custody, making a total of 51 days,
of which 44 days were spent in hospital.

5. The present age of the accused according to his ~~xxxxxxxx~~ attestation paper (B.W. is 23 years and 253 days

6. The date of his ~~xxxxxxx~~ attestation specified in his ~~xxxxxxxxx~~ attestation paper (B.W. is 5 Jan 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 years 330 days.

8. The accused is entitled to deferred pay or gratuity in respect of 2 years 193 days service.

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

10. The accused is in possession of, or entitled to, no military decoration or military award ~~for which a bonus of £ (B.W.~~
~~is payable, and is entitled to (forfeit) (defer) payment of the same.~~ (B.W.

~~11. (If the accused is a soldier) The accused before he was made a warrant officer held the regimental~~ (B.W.
~~rank of~~ (B.W.

~~12. (If the accused is an officer.) The accused holds in the army the rank of~~ (B.W.
~~and in the regiment (or corps or department) the rank of~~ (B.W.

(*1939) W1.13882/164 125,000 6/41 A.& E.W.Ltd. Gp.698

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

No. H16637 Rank Private Name ROBBINS W.H. of P.P.C.L.I. ~~Regiment~~ (or as the case may be).

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

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

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

Signed this 1st day of December 1942

(S.H. Ware) Major
Commanding, P.P.C.L.I.

[illegible]

[illegible]

[illegible]

[illegible]

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

Summary of Evidence in the Case of
No. H16637 Pte. Robbins W.H.
Princess Patricias Canadian Light Infantry

The accused does not require the evidence to be taken on oath.

First Witness for Prosecution

#16003 S/Sgt. Gray H. "A" Coy. P.P.C.L.I. states:

Sir, on the 30th Aug. 42 I was acting as "A" Coy. Orderly Sgt. I called the roll at 1800 hrs. The accused, Pte. Robbins, was absent.

The accused declines to cross-examine this witness R.P. 4 (D)

H. Gray S/Sgt.
"A" Coy. P.P.C.L.I.

Second Witness for Prosecution

Lieut. W.H.R. Watson Adjutant P.P.C.L.I. states:

I produce the following documents:

1. Army Form C.1617 which is marked "A" and is attached to the Summary.
2. C.M.H.Q. 1000-55 which is marked "B" and is attached to the Summary
3. H.F.B. 575 which is marked "C" and is attached to the Summary

The accused declines to cross-examine this witness R.P. 4(D)

W. deM. Watson Lieut.

Third Witness for Prosecution

P 22177 C.Q.M.S. Sanderman W. H. L.
"A" Coy. P.P.C.L.I.

states:

On the 30th Nov. 42. I inspected the kit of the accused. Any deficiencies were made up by repayment at his own request. His kit was complete in every detail.

I have been with "A" Coy. P.P.C.L.I. all during the absence of the accused. To the best of my knowledge, Pte. Robbins did not return to his billett or Coy area during that time.

The accused declines to cross-examine the witness. R.P. 4(D)

W.H. Sanderman C.Q.M.S.
"A" Coy. P.P.C.L.I.

The accused was cautioned as follows:

Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence. R.P. 4 (E)

After the above caution, the accused declined to make any statement or give evidence.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence, consisting of three pages, was taken down by me in the presence of the accused and that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with.

C.D. Mc Phail Lieut.
P.P.C.L.I.

Field
30 Nov. 42

REVIEW SHEET

F.G.C.M. - Trial: H.16637 Pte. Robbins, W.H. PPCLI

Date of Trial: 4 Dec 42

President of Court: Major M.J. Griffin Seaforth of C

1. For the information of the officers asked to sign below, the following irregularities are noted:

(a) Question at foot of page 2 of AFA 3 (R.P.39(A)) not completed.

(b) AFB 296 not brought down to date of trial.

(c) Summary of evidence not signed by President.

2. May these remarks and the authorities quoted be read by the following officers, signed and returned to this Headquarters.

C.O. PPCLI

Adjt: PPCLI

President

A.D.J.A. 1 Cdn Div

Staff Offr for Convening Offr

Staff Offr for Confirming Offr

(G. [illegible] Graham) Capt
A.D.J.A.
for AA & QMG 1 Cdn Div

28a.
E4849 Pte Roberge C. H.
R 22c R.

10/R/28B

Correspondence to be PINNED here.

Army Form A.3.

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

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this Third day of February, 1944.

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

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

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

G.B.P.

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

* Omit if not applicable.

*~~I am unable to appoint~~ :—

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

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

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

G.B.P.

~~for the following reasons, namely:—~~

PROCEEDINGS CHECKED AND FOUND TO BE IN ORDER.

(A. W. EMBURY) MAJOR, J.A.G.3., C.M.H.Q.

President.

Rank.	Name.	Regiment.
Major	E. M. Styles	C.I.R.

Members.

Rank.	Name.	Regiment.
Captain	C. E. Miller	W.N.S.R.
Lieut.	D. R. M. Heish	3rd Recce Sqn
Wartime Lieut.	P. M. Clarke	C.I.R.

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

*Signed G. B. Price Brigadier,
Commanding 3rd Infantry Brigade.
C.A.S.F.

Commanding Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E-4049 Pte Roberge, Philippe R. 22e R.	See charge sheet attached. First charge (sec 64(1) A.A.)	NOT GUILTY.	TRIED UNDER SEC. 18(4) A.A. AND FOUND GUILTY UNDER SEC. 64(1) A.A. - FRAUDULENT MISAPPLICATION	
			98 DAYS IMPRISONMENT	Confirmed. G.B. Price

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

(Signed) G.B. Price Brigadier, Commanding 3rd Infantry Brigade, C.A.S.F. — *Convening Officer (a)*

(Signed) E.M. Loftus Major C.Y.R. — *President.*

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

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

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 15th day of Feb. 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

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

* Omit if not applicable.

were duly sworn.

Signed this 15th day of Feb 1941.

E.M. Loftus Major C.Y.R.
President of the Court Martial.

C. Certificate in case of death sentences.

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

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

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

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

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

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

Signed this 19th day of February 1941.

G.B. Price Brigadier, Commanding 3rd Infantry Brigade, C.A.S.F. — *Confirming Officer.*

Promulgated and extracts taken in the case of E-4049 Pte Roberge, P., R. 22e R.

(a) (Dated) 19 Feb. 41 (Signed) D.P. Parent, Lieut. A/Adjt. 3rd Inf. Bde. C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

(41729) 81. 6/43 —851 300 to 1140 P. St. G. 610

STATEMENT BY THE ACCUSED TO HAVE
AN OFFICER ASSIGNED TO REPRESENT
HIM AT HIS TRIAL.

I, the accused, desire to have an officer assigned to represent me at my trial.

I desire the services of ~~Lieut. J. H. Chicoine~~ ~~To be chosen later~~ Capt. E. A. Doiron

if he is available.

[signature]

In the Field,
31 Jan 41.

LIST OF WITNESSES FOR PROSECUTION.

P. 48745	C.Q.M.S.	Pa rent G.O.	R.22e.R.
E. 4679	Cpl.	Sigouin A.	R.22e.R.

LIST OF WITNESSES FOR DEFENCE.

NIL.

CHARGE SHEET.

Accused, Number E-4049, Private Roberge, Philippe, "A" company, Royal Pte.Regiment, a soldier of the Canadian Army (Overseas) is charged with:-

Section 18 (4) Army Act

WHEN ON ACTIVE SERVICE, [illegible] PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

In that he,

In the Field, on the 31 Jan 41, in the Orderly Room of "A" company, Royal Sfe.Regiment, stole a parcel containing 50 cigarettes valued at $1.00, a canadian currency, which was the property of Pte. Guillemot, a soldier of the Royal Sfe.Regiment.

P.E. Poirier
(P.E. POIRIER), Major,
Commanding Royal Sfe.Regiment,
Canadian Army (Overseas).

In the Field,
31 Jan 41.

C. B. Price

PROCEEDINGS OF A FIELD GENERAL
COURT MARTIAL HELD IN THE FIELD
ON THE 15 DAY OF February, 1941.

Trial of No. E 4849 Pte. Roberge, P. Royal 22e Regiment.

Prosecutor Lieut. Parent, S., Royal 22e Regiment

Defending Officer. Capt. Dorion, E. A., Royal 22e Regiment.

Interpreter. P48855 Sjt. Marchaud, J. Royal 22e Regiment.

President Major E. M. Styles, C. Y. R.

Members Capt. C. E. Miller, W. N. S R.
Lieut. D. R. M. Heisn, 3rd Recce Sqn.

The Order convening the Court was read in the presence of the accused.
The accused was asked the following question:-
Do you object to be tried by the President or any members of the Court, whose names you have heard read over.
Answer - No.
The President, Members and Interpreter were then duly sworn.
The charge was then read to the accused.
The accused pleads not guilty.
The accused was then asked the question at the end of page 2 of A.F.A. 3, and his answer is recorded beneath the question.
The prosecutor makes no opening address.

Fst Witness. P48745 C.Q.M.S. Parent, G. O. having been duly sworn states:-

Prosecution. Tell the Court what happened on 21 Jan 41.
Witness - I am in charge of "A" Coy mail, every day I go to the regimental Post Office for mail for "A" Coy, R22e Regiment. I came over to Regtl.P. O. for mail at 1700 hrs. on 21 Jan 41. When I reach "A" Coy Orderly Room I register all the parcels in the special book used for that purpose. Then the Orderly Room Clerk took over charge of the parcels and anyone calling for a parcel must sign in the book.
I came back from town at 2200 hours. I heard a rumor that a parcel, the property of Pte. Guillemet had been stolen from "A Coy Orderly Room.
On 22 Jan 41, I reported the incident to Major Trudeau, my Company Commander, he detailed me to make an enquiry. First of all I was told by Cpl. Sigouin that the name of Roberge was appearing in the book in which we keep record of the parcels. I went to the Orderly Room to see the book. I noticed Roberges name as entered by himself, because I recognized his signature, checking it with Roberges signature entered in my books at the Q. M. Stores. After comparing the signatures, I went to the Regimental P. O. to see if Roberge had a parcel addressed to him on 21 Jan 41. I found out that there was none addressed to him on that date.
I detailed an escort to take Roberge to his billet. I also went myself and asked Roberge for the parcel containing 300 cigarettes that he had stolen from "A" Coy Orderly Room on the 21 Jan 41. Then Roberge handed me over 2 pkgs of cigarettes of 25 each, he said it was all he had left. I had him sent to the Regtl. Det. Room.
Prosecutor. You mention the name of Roberge, who is he?
Witness He points to the accused. He is here.
Prosecutor No further questions.

President. Does the defence wish to cross examine the witness?
Defence. I have one question.
Defence. Where exactly in the book did Roberge sign his name?
Witness. There was an entry made to the list, made in such a way as to intimate that Roberge was to receive a parcel himself.
Defence. How do you know that Roberge made that entry himself?
Witness. I know pretty well Roberges signature, he is a very good writer, good hand, and when I look over in the list I said in front of the Orderly Room Cpl. to be sure of that. I took my book from the Stores to the Company Office and I made a comparison of his signatures. If you had put carbon paper under them would be the same.
Defence. Do you know of anyone being in the office when Pte. Roberge was supposed to have made that entry?
Witness. No.
Defence. Thats all Sir.
President. All right Mr. Durant.
Prosecutor. No further questions Sir.
After the evidence was read over the Witness makes further statement.
Witness. The book, on one side when we receive the parcels we enter the Rank No., rank and name of the soldiers, on the other side the soldiers have to sign when he gets the parcel from the C. P.
Defence. I would like to see that book.
Witness. We change the system, I keep now all the parcels in the stores the old book must be at "A" Coy Office.
Defence. Will you get it for us.
Witness. I call over at "A" Coy Office.
The book was produced to the Court.
2nd Witness. E 4679 Cpl. Sigouin, J. Royal 22nd Regiment having been duly sworn states:-
Prosecutor. Will you tell the Court what happened on 21 Jan'41?
Witness. I was coming down the stairs of my billet when Pte. Roberge was coming up with a parcel. I saw him if it was cigarette parcel. He answer me yes. Then I ask him if he have any to sell. He answer me it was all promised. The next morning I hear about the parcel was gone [redacted] and I look at the book where we sign when we receive a parcel and I see Roberges' name and I ask the clerk of the office if he made Roberge sign the book for a parcel. He told me no and I ask three runners and they all say no.
Prosecutor. Tell what you actually saw and did.
Witness. I went to the C. O. M. S. with the book and the C. O. M. S. see the signature in the book and he put it against his own signature, Roberges signature, and they both were the same. Pte. Roberge was over there in the C. Q. Stores. I ask him who gave him the parcel, he answer me the Orderly Sjt. I went to the Orderly Sjt.
Defence. Who was the Orderly Sjt.
Witness. I/Cpl. Boudreau.
Witness. I/Cpl. Boudreau answer me "No". Pte Roberge went up to the room. Me and the C. O. M. S. went up to him, to Roberge, and ask him for the balance of cigarettes that was left from the parcel the night before. Pte. Roberge give the two packages that was left to C. O. M. S. Parent. I ask Roberge what he done with the envelopes of the parcel. He answer me I burn it up. Then we put him under close arrest.
Prosecutor. Who is Pte. Roberge?
Witness. Turns around and points to accused.
Prosecutor. How many cigarettes in the parcel you saw him with on the stairs?
Witness. The package was the size of 300 cigarettes.
President. Any questions by the defence?
Defence. Who else besides the clerk could get to them?
Witness. They were not under lock and key.
Defence. Who could get to the inside of the boundry made by that table
Witness. Only Officers and N. C. O's and the runners.
Defence. Thats all Sir.
President to Prosecutor. Have you any other witnesses to call?
Prosecutor. No Sir.

President to Defence. Have you any witnesses to call?
Defence. Yes Sir one.

Evidence for the Defence

1st Witness. B-9188 Pte. Bernatchez, H. R.R.R. Regt. having been duly sworn states:-

Defence. Do you know this man?
Witness. Yes Sir.
Defence. Do you know the circumstances of the case?
Witness. I heard of it.
Defence. What do you know about it?
Witness. I saw L/Col. Boudreau with Buckingham cigarettes, thats all I know about that case.
Defence. Thats all Sir.
Prosecutor. No questions.
President. Does the accused wish to make a statement?
Defence. He wishes to make a statement.
Accused. I was in my room when L/Cpl. Boudreau came to me and say you have a parcel. I answered O. K. About five minutes after I go get my parcel. L/Cpl. Boudreau was there. He say, heres the book sign your name. I did and after I got out of the Office he came back and told me the parcel was not mine. L/Cpl. Boudreau was explaining to me that the parcel was not mine when someone came along and told me to go to my room and L/Cpl. Boudreau came to my room and say open the parcel and says everything is all-right. Pte. Godbout, R.R.R. was there when I gave him half the cigarettes. All evening I smoke with my friends, Next morning the C. O. M. S. came to me and ask me how many I have left. He put me under close arrest. When I go to the Coy Office with L/Cpl. Boudreau the Orderly Sjt. he told the two runners to walk out of the room. He sent one runner to No 7 Plt. and the other one to see if the C.S. men were on Parade. Thats all.
President. Does the accused wish to call witnesses as to character?
Defence. No Sir.
President. Does the defence wish to call any more witnesses?
Defence. No Sir.
Defence. A charge of stealing in my opinion, is not applicable as the accused had been led to believe the parcel was his and only found later that they were the property of someone else and the fact that the Orderly Sjt. told him everything would be all-right should have some influence on the case.
Thats all.
President. I declare the Court closed.

[signature] Major, C. Y. R.
President.

SUMMARY OF EVIDENCE

in the case of

E 4849 Pte Roberge P., Royal 22e Regiment,

1st Witness
for Prosecution.

P 48745 C.Q.M.S. Parent G.O. having duly warned states:-

"I am in charge of the mail in the company. On the 21st of January 1941 at about 1715 hrs, I brought the mail to the coy O.R. The O.R. clerk registered the parcels in the mail register. The next morning, I was notified that a parcel addressed to Pte Guillemet containing 300 cigarettes was missing.

I checked the register and found that no one had signed it for Guillemet's parcel but noticed that Roberge had entered his name in such a manner as to lead to beleive he himself had received a parcel.

I went to the unit P.O. and checked the list of parcels and found out that Roberge had not received any parcel on that date.

Having reasons to beleive that the accused had got that parcel I detailed two escorts, brought him to his billet and asked him to give back the cigarettes he had taken in the Coy O.R. the previous day. Roberge handed me two packages of 25 cigarettes saying that it was all he had left."

Geo. O. Parent C.Q.M.S.

(G.O. PARENT) C.Q.M.S.
"A" Company, R. 22 R. (CASF)

The accused declined to cross-examine the witness.

2nd Witness
for Prosecution.

E 4679 Cpl Sigouin A. having duly been cautioned states:-

"On the 21st of January 1941 at about 1815 hrs I met the accused and he had in his possession a parcel of 300 cigarettes. I asked him to let me have some and he answered that he could not as he had promised them all. I heard of the theft. I made inquiries and found out that Roberge had drawn a parcel. I reported the matter I reported the matter to the C.Q.M.S. and examined and compared the signature of Roberge in the book and found it to be his. I asked Roberge what he had done with the wrapping of the parcel and he told me he had burned it."

A. Sigouin

(A. SIGOUIN) Cpl
"A" Company, R. 22 R.(CASF)

The accused declines to cross-examine the witness.

3rd

The accused having duly warned in accordance with R.P. 4 E states:-

"On the 21st of January, in the evening, Cpl Boudreau came to see me and told me I had a parcel. I came to the O.R. and signed and received a parcel of 300

(over)

cigarettes. I went out with the parcel and he followed me. He came to me and told me that the cigarettes were not mine to destroy the wrappings and give him half the cigarettes. I agreed with him and let him have six packages. The cigarettes were addressed to Pte Guillemet.

Philip. Roberge

(PHILIPPE ROBERGE) Pte
"A" Company, R. 22 R.(CASF)

Certified that R.P. 4, c, d, e and f have been complied with.

Taken in the presence and hearing of the accused this 26th day of January 1941.

J.H.C. Chicoine

(J.H. CHICOINE) Lieut.
"A" Company, R. 22 R.(CASF)

15 February XXXI 1941.

M.4849 Pte. Roberge, P. Royal 22e Regiment

Lieut. Parent, S.^ Royal 22e Regiment

Capt. Dorion, E. A., Royal 22e Regiment.

Interpreter. P48855 Sjt. Marchand, J. Royal 22e Regiment.

No.

After finding

Lieut. Parent, S. Royal Fus Regiment.

is sworn and states:-

I produce a certified true copy of A.F.R.122 relating to the accused. (The said copy is marked , signed by the President, and attached to the Proceedings).

Question to the accused:

Do you wish to address the Court, or to call evidence as to character ?

Answer. Makes statement.

The XXXXXXXXX (Defending Offi) makes the following plea in mitigation of sentence:-

makes plea.

K.R. 681 (a)

Re Imprisonment

If imprisonment is awarded for an offence under (111) sub. para M it should normally be accompanied by a sentence of "discharge etc."

(d) should be reserved for offences of the gravest nature which in opinion of Court, rendered their "discharge with ignominy" advisable.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	11-8-40	Pte		W.O.A.S. - Absent from Church Parade	P.S.M. Mintle Sgt Boucher Sgt Moreland	2 Days C.B.	12-8-40	Capt. A. Wallace	G.C.
In the Field	3-9-40	Pte		W.O.A.S. - A.W.L. from 2230 hrs. 3-9-40 until 1255 hrs. 6-9-40 total 3 days 14 hrs 25 mins	Cpl. B Condon Sgt. B Condon	168 hrs Detention	7-9-40	Major Power	Forfeits 3 days' Pay
In the Field	14-9-40	Pte		W.O.A.S. - A.W.L. from 2230 hrs 14-9-40 until 1600 hrs. 21-9-40. total 6 days 17 hrs 30 min	Sgt. Bourdon Sgt. Erections	14 days' Detention 2 days' C.B.	24-9-40 18-10-40	Lt. Col. P. Flynn Major F. Tomkinson	Forfeits 7 days' Pay Forfeits 2 days' Pay
Caterham	16-10-40	Pte		W.C.A.S. - A.W.L. from 1330 hrs. 16-10-40 until 1345 hrs. 17-10-40, total 1 day 15 mins.	Cpl. Lejeune Pte Sofia. A				
Caterham	10-11-40	Pte		W.O.A.S. - A.W.L. from 2230 hrs. 16-11-40 until 0800 hrs. 18-11-40, Total 1 day, 9 hrs. 30 mins.	1/Cpl. Carrier Sgt. Blondin	3 days' C.B.	19-11-40	Lieut. Jolbert	Forfeits 3 days' Pay.
Caterham	19-11-40	Pte		W.O.A.S. - Breaking out of quarters when on C.B. - A.W.L. from 1245 hrs. 19-11-40 till 1545 hrs. 20-11-40 Total 1 day's Pay 3 hrs	Cpl. Blondin Capt. Chamberlain	72 hrs. F.P.	23-11-40	Lt Col. F Flynn	Forfeits 3 days' Pay under F.R. & I.

True Copy: [signature] Lieut. Adjutant,

ROYAL 22e. REGIMENT, C.A.S.F.

M.F.M. 6
(A.F.B. 133)
500M — 8-39 (1703)
H.Q. 1772-43-15

No. E-4849 Name ROBERGE, P. Sqn., Battery, or Company Corps R. 22e R Date of enlistment 8-1-40 G.C. Badges Service or Proficiency Pay

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Guillemont	2-5-40	Pte		While on Active Service, A.W.L. from 2300 hrs the 29-4-40 until 2240 hrs the 1-5-40 Total: 45 hrs. 40 min.	Cpl. J. G. Fortin Sgt. P. Miville	4 Days C.B.	2-5-40	Maj. Trudeau	Forfeits 2 days Pay CB.
"	15-6-40	"		I) While on active service: A.W.L. from 2200 hrs the 15-6-40 until 1030 hrs the 16-6-40 Total 12 hrs 30 min.	S/Sgt. Dumais S/Sgt. Marchand S/Cpl. Gosselin Sgt. McMahon	168 hrs. Detention	21-6-40	Lt. Col. P. Flynn	Forfeits 4 days Pay G.C. F.R. 21.
In the Field	29-6-40	Pte		II A.W.L. from 2200 hrs the 1[illegible]-6-40 until 2015 the 30-6-40 total: 2 days 22 hrs. 15 min. W.O.A.S. – Breaking out of quarters, absent from duty. A.W.L. from 2000 hrs the 29-6-40 until 0200 hrs. the 1-7-40 Total 1 day 6 hrs	S/Cpl. Gosselin S/Cpl. Simon	(?)	3-7-40	Lt. Colonel Flynn	Forfeits 2 days Pay F.T. F.R. 21

(F.T.O.)

HHH-96

PTE ROBERGE SL.

SCHEDULE.

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

Accused: H-17529 Private Sidney Lucian ROBERGE

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec.15(1)AA	Guilty	Guilty	
2nd	Sec.24(2)AA	Not Guilty	Not Guilty	
3rd				
4th				
5th				
6th				

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

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

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

Time in confinement awaiting present trial—a total of 5 days, of which Nil days were spent in hospital.(1)

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

Sentence Awarded by the Court:

To undergo detention for a period of 120 days, and to be put under stoppages of pay, until he has made good the sum of £1-11-8. in respect of cost of apprehension.

5 April 1944 (Sgd) H.H.Campbell Maj. President. (RP 45, 50.)

(Sgd) ..... Judge-Advocate, if any. Date awarded.

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

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

Date ..... (Sgd) ..... Commanding

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

Confirmed

I direct that the accused be not committed to prison or detention barracks until fifty-six days (1)

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

6 Apr 44 (Sgd) C.M.Steele Brigadier

Date ..... Commanding ..... Confirming Officer.

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

Accused.	Date.	Signature of Offr.
H-17529 Pte Sidney Lucian Roberge	6 Apr 44	E.H.Barrette Capt Adjt 6 C.I.R.U

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF C.M. HHH/6

FIELD GENERAL COURT-MARTIAL

(PAGE (in lieu of AFA3) W. P.G. 8/1608 (2804))

Convened by Order of Brig. G.S.M.Costling Comd "A" Gp CRU dated 4 April 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H-17529	Private	Sidney Lucian	ROBERGE	Westmr Regt & CIRU

PROCEEDINGS REVIEWED
for C. Steele Brig
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.
7 Apr 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 5 April 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

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

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

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

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 0800 hours trial commences.

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

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

A5. President to accused: ~~Do you object to~~ ..... ~~no interpreter?~~ Ans .....

~~Do you object to~~ ..... ~~no shorthand writer?~~ Ans .....

~~The Interpreter is sworn~~(1) Do you object to

~~The shorthand writer is sworn~~.(1)

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

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

Ans NO.(2)

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

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

President	Major	H.H.R.Campbell	LDR 6 CIRU
Member	Capt	E.B. Hutcheson	RWR, 6 CIRU
Member	Capt	R.M. Raigne	6 CIRU
Judge-Advocate	J.		
Prosecutor	Lt.	J.G. Lalonde	6 C.I.R.U
Defending Offr	Lt.	P. Pinkerton	6 C I R U

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

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

A8. The accused H17529 Pte Roberge S.L. before arraignment make(s) (no) ~~(es)~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

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

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

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.G.R.F.6

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

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

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

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

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

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans I will give evidence under oath. Do you intend to call witnesses on your behalf? Ans N.O. ~~Are they witnesses as to character only?~~ Ans
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

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

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

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court are (is) Sentence charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or: The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans N.O.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copy~~ (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *AFB 353 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No H-17529, Private Sidney Lucian ROBERGE, of the Canadian Infantry Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SECTION 15 (1)
ARMY ACT

WHILST ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

at HINDHEAD, SURREY, did absent himself without leave from 2359 hours on the 20th day of February, 1944, until he surrendered to the military police at 1615 hours on the 27th day of March, 1944, thereby incurring expenses for his return to his unit to the amount of one pound, eleven shillings and eight pence. (Total absence: 35 days, 16 hours, 16 minutes.)

SECOND CHARGE
SECTION 24 (2)
ARMY ACT

WHILST ON ACTIVE SERVICE, LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING AND REGIMENTAL NECESSARIES,

in that he,

at JASPER CAMP, WITLEY, SURREY, on the 1st day of April, 1944, was deficient of the following articles to the amount of fifty nine dollars and seventy-four cents ($59.74), appraised value:

ARTICLES	QUANTITY	LIST PRICE	APPRAISED VALUE
Anklets, web, pr	1	$00.99	$00.74
Badges, cap	1	00.09	00.06
Bags, Kit	1	01.02	00.77
Battle Dress, Blouses	1	05.25	03.94
Battle Dress, Trousers	1	05.39	04.04
Boots, ankle, pr	1	05.46	04.09
Braces, pr	1	00.28	00.21
Brasses, button	1	00.04	00.03
Brushes, boot, polishing	1	00.28	00.21
Brushes, button	1	00.26	00.20
Brushes, cloth	1	00.48	00.36
Brushes, shaving	1	00.37	00.28
Brushes, tooth	1	00.11	00.08
Cap, comforter	1	00.34	00.26
Cap, field service	1	00.56	00.42
Cloak or Greatcoat, drab	1	11.31	08.48
Comb, hair	1	00.04	00.03
Drawers, woollen, prs	2	02.40	01.80
Forks	1	00.07	00.05
Gloves, woollen, khaki, pr	1	00.47	00.35
Holdalls	1	00.19	00.14
Housewife	1	00.17	00.13
Jacket, sweater	1	01.79	01.34
Knife, clasp, and lanyard	1	00.88	00.66
Knife, table	1	00.15	00.11
Overalls, Blouses, denim	1	02.64	01.98
Overalls, Trousers, denim, pr	1	02.51	01.88
Shirst, flannel, khaki	2	04.06	03.05
Shirst, woollen	2	02.40	01.80
Shoes,, canvas, pr	1	00.65	00.49
Socks, prs	3	01.11	00.83
Spoon, table	1	00.07	00.05
Towels, hand	2	00.64	00.48
Brush, hair	1	00.34	00.26
Drawers, Cello	2	00.88	00.65
Vest, PT	2	00.66	00.49
Shorts, PT	2	00.72	00.54
Belts, waist	1	00.86	00.65
Bootle, water	1	00.67	00.50
Braces, B & L	2	00.82	00.71
Carriers, waterbootle	1	00.60	00.45
Covers, Mosstim	1	00.37	00.28
Frogs, bayonet	1	00.04	00.03
Haversacks	1	00.19	00.14
Helmet, steel	1	01.79	01.34
	1	01.50	01.13

ARTICLES	QUANTITY	LIST PRICE	APPRAISED VALUE
Packs	1	$01.84	$01.38
Pouches, basic	2	01.34	01.01.
Straps, shoulder	2	00.64	00.48
Straps, web, supporting	2	00.26	00.19
Sling, rifle	1	00.24	00.18
Tins, mess	1	00.35	00.26
Cape, A/G	1	02.76	02.07
Respirator complete	1	04.66	03.49
Ointment A/G	2	00.30	00.23
Blankets	1	03.87	02.30
Sheets, ground	1	02.94	02.21
Outfit A/D	1	00.03	00.02
		$79.66	$59.74

.....
(W.E. MORGAN), Col.
Commander
6 Cdn Inf Rft Unit.

Witley, Surrey,
4th day of Apr'44.

To be tried by Field General Court Martial

(G.S.N.Gostling) Brig.
Comd
"A"Gp Cdn Rft Units,
C.A.(O)

4th April 1944

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAS/1697 (2803)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-17529	Private		Sidney Lucian	ROBERGE	Westmr Regt 6 CIRU

CONVENING ORDER.

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

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

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

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	H.H.R.Campbell	6 CIRU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	to be detailed by OC	6 CIRU
Capt	to be detailed by OC	2 CIRU
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Lieut	to be detailed by OC	2 CIRU
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in ..... (Country.) ..... (Signed personally. RP 105 (n 2.)) ..... (Rank.)

Date 4 Apr 44 Commanding [signature] Convening Officer.

Brig.G.S.N.Gostling, E.D.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No: H77529 Pte Roberge S.L. (Rank) (Name) of 6 C.I.R.U. M.S. and in my opinion he is fit to undergo trial by Court Martial.

Station

Date April-5-1944

Sgd. Pte La Rose Capt.
(Medical Officer)

W.H. Campbell maj
President.

FIRST WITNESS - FOR THE PROSECUTION

B.76129 SGT. SHANK, V.R., on the strength of 2 C.I.R.U., having been duly sworn, states:-

C.1. "Did you inspect the kit of H.17529 PTE. ROBERGE, S.L.?"
A.1. "I did on 1 Apr 44 approx 1030 hrs."

Q.2. "Tell the Court what you found Pte. Roberge deficient at that time".
A.2.

Anklets, web,	1 pr
Badge, cap	1
Kit bag	1
Battle dress, blouse serge	1
Battle dress, trousers "	1 pr
Boots, ankle	1 pr
Braces	1
Brasses, button	1
Brushes, boot polishing	1
Brushes, button	1
Brushes, cloth	1
Brushes, shaving	1
Brushes, tooth	1
Cap, comforter	1
Cap, field service	1
Greatcoat, drab	2
Comb, hair	1
Drawers, woollen, prs	1
Forks,	1
Gloves, woollen, prs	1
Holdalls	1
Housewives,	1
Jacket, sweaters	1
Knife, clasp, & lanyard	1
Knife, table	1
Overalls, blouses, denim	2
Overalls, trousers, denim	1
Shirts, flannel, khaki	3
Shirts, woollen,	1
Shoes, canvas, prs	2
Socks, prs	1
Spoons, table	2
Towels, hand	2
Brush, hair	1
Drawers, cellular	1
Vests, P.T.	2
Belts, waist	1
Bottle, water	1
Braces, R. & L.	1
Carriers, water bottle	1
Covers, mess tin	1
Frogs, bayonet	1
Haversacks	2
Helmets, steel	2
Packs	2
Pouches, basic	1
Straps, shoulder	1
Straps, web supporting	1
Sling, rifle	1
Tins, mess	2
Capes, A.G.	1
Respirator, complete	1
Ointment, A.G.	1
Blankets,	1
Sheets, ground	1
Outfit, A/D	

Appraised value $59.74

The defending officer declines to cross-examine.

W.H. Campbell Maj
President

FIRST WITNESS - FOR THE PROSECUTION

B.76129 SGT. SHANK. V.R., on the strength of 2 C.I.R.U., having been duly sworn, states:-

Q.1. "Did you inspect the kit of H.17529 PTE. ROBERGE. S.L.?"
A.1. "I did on 1 Apr 44 approx 1030 hrs."

Q.21. "Tell the Court what you found Pte. Roberge deficient at that time".
A.2.

Anklets, web,	1 pr	
Badge, cap	1	
Bit bag	1	
Battle dress, blouse serge	1	
Battle dress, trousers "	1	
Boots, ankle	1 pr	
Braces	1 pr	
Brasses, button	1	
Brushes, boot polishing	1	
Brushes, button	1	
Brushes, cloth	1	
Brushes, shaving	1	
Brushes, tooth	1	
Cap, comforter	1	
Cap, field service	1	
Greatcoat, drab	1	
Comb, hair	1	
Drawers, woollen, prs	2	
Forks,	1	
Gloves, woollen, prs	1	
Holdalls	1	
Housewives,	1	
Jacket, sweaters	1	
Knife, clasp, & lanyard	1	
Knife, table	1	
Overalls, blouses, denim	1	
Overalls, trousers, denim	1	
Shirts, flannel, khaki	2	
Shirts, woollen,	2	
Shoes, canvas, prs	1	
Socks, prs	3	
Spoons, table	1	
Towels, hand	2	
Brush, hair	1	
Drawers, cellular	2	
Vests, P.T.	2	
Belts, waist	1	
Bottle, water	1	
Braces, R. &. L.	2	
Carriers, water bottle	1	
Covers, mess tin	1	
Frogs, bayonet	1	
Haversacks	1	
Helmets, steel	1	
Packs	1	
Pouches, basic	2	
Straps, shoulder	2	
Straps, web supporting	2	
Sling, rifle	1	
Tins, mess	1	
Capes, A.G.	1	
Respirator, complete	1	
Ointment, A.G.	2	
Blankets,	1	
Sheets, ground	1	
Outfit, A/D	1	Appraised value $59.74

The defending officer declines to cross-examine.

FIRST WITNESS - FOR THE PROSECUTION (CONT'D)

BY THE COURT

Q.3. "Have you any documentary record to show the articles charged to the accused?"
A.3. "I have no record of the accused ever being charged with any of the articles. I just took it for granted he should have had them as they were what every soldier is supposed to have."

Case for the prosecution closed.

FIRST WITNESS - FOR THE DEFENSE

H.17529 PTE. ROBERGE, S.L., on the strength of 6 C.I.R.U., THE ACCUSED having been duly sworn, states:-

Q.1. "Tell the Court before you went A.W.L. where were you?"
A.1. "On the 5 Nov 43 I was admitted to hospital and my equipment never did come up to hospital when I was admitted. Three days later my Regiment left for Italy so when I was discharged from the hospital, I had no equipment with me. At the time I went A.W.L. I had not been issued with a new kit, and when I came back to No 6 CIRU, I had a kit inspection and was charged with loss of the stated kit."

Q.2. "What were you sent to hospital for?"
A.2. "I was sent first for an X-ray, and found my wrist broken so I never returned to the unit."

Q.3. "When you left for the hospital where was your kit?"
A.3. "My kit was loaded on the truck ready for the train, and my personal kit was in the barrack room."

Q.4. "Did you have any kit when you went A.W.L.?"
A.4. "No, sir."

CROSS-EXAMINED BY THE PROSECUTING OFFICER

Q.5. "You were in the hospital for a few days. When you came out, did you immediately go A.W.L.?"
A.5. "No."

Q.6. "Did you try to find out where your kit was?"
A.6. "Yes, but I could find no trace of it. I had to buy towels and shaving kit to use while convalescing. I reported the loss to Major McGinn, in charge of convalescent hospital."

Q.7. "Are you absolutely sure that you tried to find your kit?"
A.7. "Yes, sir, I was over one and a half weeks trying to find kit before going A.W.L."

Case for the defense closed.

No closing address by prosecuting officer.

Closing address by defending officer:-

"The accused is not guilty of the charge. He went to the hospital and his kit was not forwarded to him there, which was a unit responsibility. The kit was lost before the accused went A.W.L. and not due to it. The prosecution only proved that the accused did not have certain articles, but never proved as they must that those articles were on his charge at some previous specified date or that they were lost through the accused neglect."

Plea of mitigation of defending officer by written submission.

Defending Officers plea of mitigation.

Gentlemen;

I have only few words to say, but I would like to bring to your attention certain facts which I am sure you'd give a great consideration. The accused is a very young soldier. — He enlisted in the army in 1940 and has been over since two years. He was as many others very anxious to go into action, but unfortunately, three days before his regiment went to Italy he had an accident which brought him to hospital. — Then he stayed alone behind without friends and was separated from his brother who went with the same draft. He was very anxious go to Italy for another reason which he already had another brother fighting in Italy. Then feeling alone he get discourage and went A.W.L.

I would like too to bring to your attention that the accused is at his first court martial and secondly, he is fit and willing to go into action. He certainly be more useful for the army in action than in detention cells. Then I am positive, if we give him a chance, he will become a very good soldier and will always make his duties very well in action or anywere else in the army.

For these reasons, I ask a minimum of sentence

H.H.L. Campbell Maj.
President.

Signed
Lieut. Paul Feenhart
Def. Off.

E & B

CERTIFICATE OF SURRENDER UNDER SECTION 163 (I) (J) A.A.

I, Captain. L. Thomson, certify that No. H.17529

Rank Pte. Name Roberts, S.L. Company, ~~No 2 Can Depot~~ I.C.I.R.U.

Regt. ~~Battalion~~ Westminsters. surrendered himself to No. 2124067.

Rank L/Cpl. Name W. Barber. Corps of Military Police,

on the 27th day of March, 1944 at 1515 are

as a ~~Absentee~~ (or absentee without leave).

Place Sheffield. Signature Lionel Thomson DAFT.

Date 27th Mar:44. GARRISON ADJUTANT

Ex: "C" [illegible]

Expense Voucher Re—:

Ref: K.R. & O. (Can) 539

Reg. No. 417529 Rank Pte. Name Loberge, S.L. Unit 2 Convalescent Depot I.C.I.R.U.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Sheffield

Date	Particulars (1/3 Portion)	Amount		
29 Mar 44	Escorts return fare from LONDON To Sheffield		16	4
	Prisoners single fare to LONDON From Sheffield		12	3
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares (1/3 Portion)		3	1
	Total £	1	11	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

R. J. Stinson LIEUT

Officer Issuing Railway Warrant and Expense monies

No. 6 Provost Company, Canadian Provost Corps, London.

R. J. STINSON
ADMN. OFFICER - D.P.M's
A.M.H.Q.

E.2:4

RECORD of the Declaration of a Court of Inquiry assembled at Hindhead, Surrey on the 18th day of March 1944 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No.H-17529 Pte. ROBERGE, Sidney Lucien

DECLARATION

The Court declare that H-17529 Pte. ROBERGE, S.L. a soldier of No. 6 C.I.R.U. admitted to No. 2 Convalescent Depot, R.C.A.M.C. illegally absented himself without leave from No. 2 Convalescent Depot, R.C.A.M.C. at 2359 hrs. on the 20th day of February 1944 and is still so absent, and that on the 27th day of March 1944 he was deficient and is still deficient of the following articles:-

Article	Quantity	Vocabulary	75% Unexpired Wear
Anklets, web, prs	1	$ .99	$ .74
Blouses, Battle-dress	2	10.50	7.85
Boots, ankle, prs	2	10.92	8.19
Cap, Field Service	1	.56	.42
Drawers, Cellular short, prs.	2	.86	.65
Drawers, Woollen, prs.	2	2.40	1.80
Gloves, knitted, drab, prs.	1	.47	.35
Greatcoat, drab 41 Patt.	1	11.55	8.66
Jersey pullover	1	1.79	1.34
Overalls, combination	1	2.72	2.04
Shirts, Angola, drab	2	4.06	3.05
Shoes, canvas, prs	1	.65	.49
Socks, prs	4	1.48	1.11
Trousers, battle-dress, prs	2	10.78	8.09
Vests, woollen	2	2.40	1.80
Badges, cap	1	.09	.07
Bags, kit, universal	1	1.02	.77
Braces	1	.28	.21
Brass, cleaning	1	.04	.03
Brush, button brass	1	.26	.20
Brush, clothes	1	.48	.36
Brush, hair	1	.34	.26
Brush, shaving	1	.37	.28
Brush, shoe, polishing	1	.28	.21
Brush, tooth	1	.11	.08
Cap, comforter	1	.34	.26
Combs, Hair	1	.04	.03
Discs, identity, sets, with cord	1	.03	.02
Fork, NS table	2	.14	.11

To page 2

Names of President and Members:

President: Major, W.J. Murphy, RCAMC
No. 2 Convalescent Depot, RCAMC

Members: Major P.P.M. McGinn, CIC
No. 2 Convalescent Depot, RCAMC

Lieut. S. Harris, RCAMC
No. 2 Convalescent Depot, RCAMC

(Sgd.) H.B. Bustin
Signature of Commanding Officer

(H.B. Bustin) Lt.Col.
Sig ned at Hindhead, Surrey
this 27th day of March 1944. O.C. No. 2 Convalescent Depot, RCAMC

Certified true copy ..... Capt, Adj.
Signature of Officer having custody of original record.
No. 2 Convalescent Depot, RCAMC

Article	Quantity	Vocabulary	75% Unexpired Wear
Holdall	1	$ .19	$ .14
Housewife, complete	1	.17	.13
Knife, clasp	1	.06	.05
Knife, table	2	.30	.23
Lanyard, knife	1	.02	.02
Razor, safety, with blade	1	.06	.05
Shorts, gymnasium	2	.86	.65
Spoon, MS dessert	2	.14	.11
Vest, cotton, gym	2	.72	.56
Towels, hand	2	.64	.48
Belts, waist	1	.74	.56
Bottles, water	1	.82	.62
Braces, suspender right	1	.30	.23
left	1	.30	.23
Carriers, waterbottle	1	.37	.28
Frogs, web, bayonet	1	.19	.14
Haversack	1	1.79	1.34
Helmet, steel	1	2.39	1.79
Packs	1	1.84	1.38
Pouches, basic	2	2.38	1.72
Slings, rifle, web	1	.24	.18
Straps, shoulder, haversack	2	.64	.48
Straps, web, supporting	2	.26	.20
Tins, mess, TF	1	.35	.27
Capes, A/G	1	2.76	2.07
Respirators, A/G Com. with haversack	1	4.68	3.51
Ointment, A/G	2	.30	.23
Eyeshields, A/G pk. of six	1	.45	.34
Detectors, individual, prs.	2	.12	.09
Sheets, M.P.	2	3.00	2.25
Mug, drinking	2	.26	.20
Sheet, ground	1	2.94	2.21
Totals		$ 97.03	$ 71.88

SUMMARY OF EVIDENCE

In the case of No H-17529, Private Sidney Lucien ROBERGE, of the Canadian Infantry Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit a soldier of the Canadian Army Overseas.

By direction of the Commanding officer, this summary of evidence is taken on oath.

First witness for the Prosecution

Lt. J.C. Lalonde, of the Cdn Inf Corps, on the strength of 6 CIRU., having been duly sworn, states as follows:

I hereby produced the following documents relating to the accused No H-17529 Pte Roberge S.L.

(a) Record of the Declaration of the Court of Inquiry assembled at Hindhead, Surrey, on the 18th day of March, 1944. This documents purporting to be signed by the Adjutant of No 2 Convalescent Depot, RCAMC, is attached to the summary of Evidence and marked "Exhibit 'A'".

(b) Certificate of Surrender under section 163 (1) (j) of the Army Act, purporting to be signed by Capt. L. Thomson, Garrison adjutant and dated 27 Mar 44. This documentis attached to the summary of evidence and marked "Exhibit 'B'".

(c) Expenses Voucher Ref:- K.R. & O. (Can) 539 purporting to be signed by the officer issuing railway warrant and Expense monies, No 6 Provost Coy, Cdn Pro Corps, London. This document is marked "Exhibit 'C'" and attached to the summary of evidence.

The accused declines to cross-examine this witness.

J.C. Lalonde Lt.

Second witness for the Prosecution

B-76129, Sgt Shank V.R., CIC., on the strength of No 6 CIRU., having been duly sworn, states as follows:

On 1 Apr 44, at Jasper Camp, Witley, Surrey, I inspected the kit of the accused whom I now recognise, and found him dificient of the following articles to the value of $59.74, appraise value:

ARTICLES	QUANTITY	LIST PRICE	APPRAISE VALUE
Anklets, web, pr	1	$00.99	$00.74
Badges, cap	1	00.09	00.06
Bags, Kit	1	01.02	00.77
Battle Dress, Blouses	1	05.25	03.94
Battle Dress, Trousers	1	05.39	04.04
~~Boticces pr~~	1		
Boots, ankle, pr	1	05.46	04.09
Braces, pr	1	00.28	00.21
Brusses, button	1	00.04	00.03
~~Brushes, boot, khaki~~	1		
Brushes, boot, polishing	1	00.28	00.21
Brushes, button	1	00.26	00.20
Brushes, cloth	1	00.48	00.36
Brushes, shaving	1	00.37	00.28
Brushes, tooth	1	00.11	00.08
Cap, comforter	1	00.34	00.26
Cap, field service	1	00.56	00.42
Cloak or Greatcoat, drab	1	11.31	08.48
Comb, hair	1	00.04	00.03
Drawers, woollen, prs	2	02.40	01.80
Forks	1	00.07	00.05
Gloves, woollen, khaki, pr	1	00.47	00.35
Holdalls	1	00.19	00.14
Housewives	1	00.17	00.13
Jacket, sweater	1	01.79	01.34
Knife, clasp, and lanyard	1	00.88	00.66
Knife table	1	00.15	00.11
Overalls, Blouses, denim	1	02.64	01.98
Overalls, Trousers, dnim, pr	1	02.51	01.88

V.R. Shank, Sgt.

SUMMARY OF EVIDENCE

In the case of No H-17529, Private Sidney Lucian ROBERGE, of the Canadian Infantry Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit a soldier of the Canadian Army Overseas.

	ARTICLES	QUANTITY	LIST PRICE	APPRAISE VALUE
Second Witness for the Prosecution	Shirst, flannel, khaki	2	$04.06	$03.05
	Shirst, woollen	2	03.40	01.80
	Shoes, canvas, pr	1	00.65	00.49
	Socks, prs	3	01.11	00.83
	Spoon, table	1	00.07	00.05
	Towels, hand	2	00.64	00.48
	Brush , hair	1	00.34	00.26
	Drawers, Cellb	2	00.86	00.65
	Vest, PT	2	00.72	00.54
	Shorts, PT	2	00.86	00.65
	Belts, waist	1	00.69	00.50
	Bottles, water	1	00.82	00.61
	Braces, R & L	2	00.60	00.45
	Carriers, waterbottle	1	00.37	00.28
	Covers, mosstin	1	00.04	00.03
	Frogs, bayonet	1	00.19	00.14
	Haversacks	1	01.79	01.34
	Helmets, steels	1	01.50	01.13
	Packs	1	01.84	01.38
	Pouches, basic	2	01.34	01.01
	Straps: shoulder	2	00.64	00.48
	Straps: web, supporting	2	00.26	00.19
	Slings, rifle	1	00.24	00.18
	Tins, mess	1	00.35	00.26
	Cape, A/G	1	02.76	02.07
	Respirator Complete	1	04.66	03.49
	Ointment A/G	2	00.30	00.23
	Blankets	1	03.87	02.30
	Sheets, ground	1	02.94	02.21
	Outfit A/D	1	00.03	00.02
			$79.66	$59.74

The accused declines to cross-examine this witness.

.....Sgt.

The accused is then cautioned as follows: "Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you may say or any evidence you may give will be taken down in writing and may be used in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C), (D), (E), (F) and (G) have been duly complied with.

.....Lt.
Officer detailed to take
the Summary of Evidence

Witley, Surrey,
3rd day of Apr'44.

Ex C

No B-17529 Name Sidney Lician ROBERGE | Sqn, Battery, or Company | Corps Cdn Inf Corps | Date of enlistment 2 jul 40 | GC Badges n/a | Service or Proficiency Pay n/a | MFM 6 (APB 122) 40/P&S/126 (3438)

Date of last entry in Company Conduct Sheet n/a | No and date of last drunk n/a | Period not reckoning towards freedom from extra fine n/a | Sheet No 1 | Signature OC Company, etc H.J. Gillas Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Canada 9 feb 41		Pte		AA.15(1)AWL fr church parade at 0845 hrs	Cpl.Cowstock	7 days C.B.	10 feb 41	Capt.Leighton	
Canada 10 feb 41		Pte		AA.15(1)AWL Fr defaulters parade at 1800 hrs 2030 hrs & 2145 hrs	Documentary	7 days C.B.	11 feb 41	Capt.Leighton	
Canada 14 feb 41		Pte		AA.40 Conduct to the prejudice of good order and military discipline(failed to return on parade until sent for)	Documentary	168 hrs Detn	15 feb 41	Lt/Col.Graham	
Canada		Pte		1.AA.40 Conduct to the prejudice of good order and military discipline(Inattention on parade) 2.AA.40 Conduct to the prejudice of good order and military discipline(Failing to comply with an order)	Sgt.Mulligan Cpl.Bauman	168 hrs Detn	15 feb 41	Lt/Col.Graham	
Canada 24 mar 41		Pte		AA.15(1)AWL fr 0600 hrs till 1410 hrs on 24 mar 41'(8 hrs, 10 mi)	Sgt.Webb	7 days C.B.	25 mar 41	Capt.Leighton	Forf 1 day pay for AWL

Certified true copy dated: 5 apr. 44 J W McKenna Lt officer having custody of original documents. (PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (Relating with this)	By whom awarded	Remarks
Canada	6 Apr 41	Pte		AA.15(1)AWL Fr 0630 hrs 6 apr 41 till 0020 hrs 7 apr 41(17 hrs, 50 mi)	Sgt. Webb	7 days C.B.	7 apr 41	Capt.Leighton	Forf 1 day pay for AWL
Canada	7 may 41	Pte		Civil offence (assault)	Documentary	30 days Imprt		Civil court	Forf 3 days pay for time in arrest
Canada	7 Jul 41	Pte		1.AA.9(1)Desobeying a lawful command showing wilful defiance of authority 2.AA.8(2)Striking a superior officer	Sgt.Fare Cpl.Clement Cpl.Lippett	168 hrs detn	9 Jul 41	Maj.Bond	
Canada	10 Jul 41	Pte		AA.9(1)Refusing to obey a lawful command	C&M.Beaton	3 days Detn	11 Jul 41	Maj.Jones	
Canada	30 Aug 41	A/L/Cpl		AA.15(1) AWL 7 dys, 10 hrs, 30 mi	Documentary	Rep imand	10 sep 41	Maj.Bond	Forf 6 days pay for AWL
Canada	15 sep 41	A/L/Cpl		1.AA.40 Conduct to the prejudice of good order and military discipline(Used violence to a superior officer) 2.AA.40 Conduct to the prejudice of good order and military discipline(desorderly conduct in public place)	L/Cpl.Wright	Deprived of L/Cpl stripes	16 sep 41	Lt/Cpl.Retland	
Canada	3 dec 41	Pte		AA.15(1)AWL(4 dys, 8 hrs, 30 mi)	Documentary	168 hrs detn	8 dec 41	Maj.Wolased	Forf 5 days pay for AWL

Certified true copy dated: 5 apr 44 — Officer having custody of original documents

Ex "C"

MFM 6 (AFB 122) 40/PAS/136 (3468)

No. H-17529 Name Sidney Lucian ROBERGE | Sqn, Battery, or Company | Corps Cdn Inf Corpse | Date of enlistment 2 jul 40 | GC Badges n/a | Service or Proficiency Pay n/a

Date of last entry in Company Conduct Sheet n a | No and date of last drunk n/. | Period not reckoning towards freedom from extra fine n/a | Sheet No 2 | Signature OC Company, etc H.J. Gillas Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Canada	15 jan 42	Pte		1.AA.40 Conduct to the prejudice of good order and military discipline(Breaking out of camp 2.AA.15(1)AWL For 10 dys, 16 hrs, 10 mi)	Cpl.Anderson Cpl.Twinkins	14 days C.B.	25 feb 42	Maj.Long	Forf 11 days pay for AWL
Field	3 sep 42	Pte		AA.15(1)AWL fr 0900 hrs 3 sep 42 till 0700 hrs 4 sep 42(7 hrs)	Sgt.Van Horn	3 days pay. 3 days C.B.	4 sep 42	Maj.Abbott	Forf 1 day pay for AWL
Field	28 oct 42	Pte		AA.40 Neglect to the prejudice of good order and military discipline	Cpl.Oldale	4 days C.B.	28 oct 42	Cpl.Grenslued	
Field	5 may 43	Pte		AA.40 Neglect to the prejudice of good order and military discipline	Sgt.Van Horn	7 days C.B.	5 may 43	Maj.Brosseau	
Field	21 dec 43	Pte		AA.15(1)AWL fr 0900 hrs 21 dec 43 till 1203 hrs 3 jan 44(13 dys,3 hrs,3 mi) Cost of appr £2.9.4.	Documentary	28 days pay Stop:£2.9.4.	4 jan 44	D.O. 9/44	Forf 14 days pay for AWL

Certified true copy consisting of one sheet dated: 5 apr 44

J W Hackleman Lieut officer having custody of original documents.

(PTO)

"B"

ARMY FORM B 2195.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
H-17529	Private	Sidney Lucian ROBERGE	Canadian Infantry Corps.

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

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

The conduct sheets mentioned should be produced in court with this statement but not annexed to the proceedings.

† See note 607 K.R., 1940.

* The sections listed should correspond with the number of entries in the conduct sheets, the periods being given in the third column, and in any recorded special acts of gallantry or distinguished conduct.

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

	* Within last 12 months.	Since Enlistment.
For A.A. 15 (1)	1 times	9 times.
For A.A. 40	1 times	8 times.
For A.A. 9 (1)	Nil times	2 times.
For A.A. 8 (2)	Nil times	1 times.
For	times	times.

Number of instances of gallantry or distinguished conduct, Nil

~~or~~

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

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

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

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

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 5 days in military custody, making a total of 5 days, of which nil days were spent in hospital.

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

6. The date of ~~his commission~~ his attestation specified in ~~his record of service~~ his attestation paper is 2 July 1940

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 years, 97 dys.

8. The accused is entitled to deferred pay or gratuity in respect of 3 years, 97 dys. service.

9. The accused is entitled to reckon 3 years, 97 dys service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award~~s~~ ~~in pursuance of~~ ~~entitled to this and military decorations or rewards~~

~~11. (If he served as a warrant officer.) The accused before he was made a warrant officer had held the reco~~

rank of ~~.....~~

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

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

(P1639) W.T.14802/144 125,000 6-41 A.S.E.W.1.(1) Gp.698

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

Date of Promotion.

In the rank of , years,

In the rank of , years

~~In the rank of~~ , years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

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

No. E-17529 Rank Private Name Sidney Lucian ROBERGE of Cdn Inf Corps Regiment (or as the case may be).

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

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
Civil Court	Canada 7 may 41	Civil offence (assault)	30 days Imprt	nil

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

Signed this 4th day of [illegible]

Ravenhurst Capt

officer having custody of original documents.

VVV-18 Case #2.

Pte. Roberge S.L.

See HHH-96 for 1st case.

RECORDED AT CMHQ IN AD 160a

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Brig G S N Gostling, MD Comd "A" Gp CRU dated 22 AUG 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptnt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H17529	Pte	Sidney Lucien	ROBERGE	6 CIRU CIC

PROCEEDINGS REVIEWED 7 Sep 44

Jack B. C. Proctor Capt
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 23 Aug 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

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

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (not) amenable to military law, and each charge discloses an offence.(3)

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

A3. The Court is opened. The accused is (not) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (not) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

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

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

~~The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

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

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

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 72, MML p 742.)

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

President	A/MAJOR	S W HUDSON	6 CIRU
Member	Capt	J. DUCHAINE	6 C.I.R.U.
Member	Lt	J.G. WARE	6 C.I.R.U.
Judge-Advocate			
Prosecutor	LT.	D.A.J. PARÉ	6 C.I.R.U
Defending Offr	LT.	W.E. DELANEY	6 C.I.R.U.

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

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

A8. The accused H17529 Pte ROBERGE, S L before arraignment make(s) (no) plea (1)

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused: H17529 Pte Sidney Lucien ROBERGE - 6 CIRU - CIC

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

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

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

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

Time in confinement awaiting present trial—a total of 8 days, of which NIL days were spent in hospital.(1)

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

Sentence Awarded by the Court: To undergo detention for a period of one (1) year.

(Sgd) 23 Aug 1944 (Sgd) E W Hudson
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.) A/Major

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

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

~~Date (Sgd) Commanding~~

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.(1)~~
(1. AA 57A. Delete if not used.)

(Sgd) [signature]
Date 26 Aug 44 Commanding (G S N Gostling) Brig "A" Gp Can Rft Units C A(O)
Confirming Officer.

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

Accused.	Date.	Signature of Offr.
H-17529 Pte Roberge Sidney Lucien 6 C.I.R.U - C.I.C	29 Aug 44	[signature] CAPT. ADJT. 6 CDN. INF. RFT. UNIT

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

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

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

D2. The Prosecutor makes (an) (no) opening address.(1)
(I. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).)

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

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(I. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D5.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 116.)

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

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

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

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

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(I. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans YES. NIL EXCEPT OF NIGERIAN EX. WT
(I. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex W and Ex V respectively.(3)
(I. MFB 353 or AFB 296. 2. MAM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans NO (2)
(I. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(I. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 504. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No H-17529, Private Sidney Lucien ROHERGE, of the Cdn Inf Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SECTION 15 (1)
ARMY ACT

WHILST ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the Field, did absent himself without leave from 0630 hours on the 2nd day of August, 1944, until he was arrested at 0100 hours on the 15th day of August, 1944.

(Total absence: 12 days, 18 hours, 30 minutes).

(W.E. MORGAN), Col.
Commander
6 Cdn Inf Rft Unit

In the Field
18th Aug 44.

To be tried by Field General Court Martial.

Field
22 Aug 44

(G S N Postling) Lt-Col
Comd
"A" GP Cdn Rft Units
C A (O)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 103(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H17529	Fte		Sidney Lucien	ROBERGE	6 CIRU CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 Aug 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial",

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

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

4. ~~PAR. 4 HEARD ON APPOINTMENT OF THREE OFFS TO COMPOSE THE COURT, ONE OF WHOM TO BE PRESIDENT, OR THE NAMES OF FIVE OFFS ATTACHED HEREIN.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~PARA 5 HEARD ON APPOINTMENT OF JUDGE ADVOCATE OR THE NAME OF AN OFFR MENTIONED THEREIN.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	E.W. HUDSON	6 CIRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 6 CIRU	
Lt	to be detailed by OC 6 CIRU	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	to be detailed by OC 6 CIRU	

~~JUDGE ADVOCATE~~

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

On Active Service in the Fd

in England (Country.)

Date 22 Aug 44

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(G S H Gostling)

Commanding "A" Gp Cdn Rft Units C A (O)

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A(CFA95 (In lieu of AFA3) 40-P & S/1007 [4021])

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

22 Aug 44

Medical Offr's Certificate
K R (Can) para 557

I certify that I have this morning examined No. H17529 Pte
(Rank)
Roberge S. L. of 6 C I R. U. and in my opinion he is
(Name)
fit to undergo trial by Court Martial.
~~unfit~~ NSD

Station

Date August 23 1944 SGD C. S. Brown
(Medical Offr)

23 Aug 44

Plea of Mitigation in the Case of H-17529 Pte Roberge, J.L.

This Case is one of those unfortunate cases in which further further punishment would lead only to the discouragement and possible ruination of a potentially good soldier.

This man has been in England about three years. He came over with his Regiment in the hope of going into action with them. Unfortunately he met with an accident and was in hospital when his Regiment went into the theatre of Operations, and he, being a shoemaker, was retained in that capacity at this Unit. As a shoemaker he was accorded trades pay.

Despite the fact that he was here on trades pay he requested to be sent into action, one of the reasons being, that his two brothers are in action, and he naturally wished to be with them. He was ready and willing to give up his trades pay in order to leave for action. It may also be stated here that Pte. Roberge is a Category "A" man medically, and is certainly of more use to the Canadian Army in action than in a detention camp. Further, I think the court will agree that the man appears very intellegent and clean-cut and capable of becoming an efficient soldier if given a sufficient chance at this time.

Finally, it is pointed out that the discouragement resulting from his failure to be sent into action was the sole reason for his misconduct, and that further punishment would only tend to discourage him all the more, thus depriving the forces of a potentially good man.

For the above reasons I respectfully would ask the Court to deal mercifully with the case of Pte Roberge.

W.E. Delaney, Lieut.
Regiment De La Chaudiere, 8 C.I.B.H.
Defending Officer.

23-8-44

Ex. I.

SUMMARY OF EVIDENCE

In the case of No H-17529, Private Sidney Lucien ROBERGE, Cdn Inf Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on Oath.

First Witness for the Prosecution — Lt M.P. MENARD, Cdn Inf Corps, on the strength of No 6 CIRU., having been duly sworn, states as follows:

I hereby produce the following documents relating to the accused, No H-17529, Pte Roberge S.L.:

(i/ Certified true copy of daily part II Orders (6 CIRU) No 191 d/10 aug 44 purporting to be signed by the adjutant of 6 CIRU. This document is marked Exhibit "A" and is attached to the Summary of Evidence.

(ii/ Certificate in accordance with the Army Act 163 (1)(ii) purporting to be signed by the officer in charge of No 164 HQ Provost Coy, Military police at Blackpool. This document is marked exhibit "B" and is attached to the Summary of Evidence.

The accused declines to cross-examine this Witness

.....Lt.

The accused was then cautioned in French as follows: "Do you wish to make a statement or to give evidence on Oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but whatever you may say or any evidence you may give will be taken down in writing and may be used in evidence".

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in presence and hearing of the accused and that Rules of Procedure 4 (C),(D),(E),(F) and (G) have been duly complied with.

.....Lt.
Officer detailed to take the Summary of Evidence.

In the Field
18th Aug 44.

/MPM

Ex 11

LAST ORDER NO 190 9 aug 44 — 6 CANADIAN INFANTRY REINFORCEMENT UNIT DAILY ORDERS PART II issued by COLONEL W.W.MORGAN,,O.B.E.,M.C.,COMMANDING OFFICER — THIS ORDER NO 191 10 aug 44

SECTION "B" OTHER RANKS

15. ABSENT WITHOUT LEAVE

15.A A.W.L. fr 0630 hrs 2 aug 44. Still absent at 0630 hrs 10 aug 44 (8th day)

H-17529 Pte Roberge S.L.

Sgd E. Lamoureux Lieut
"(R.Laverdure)" A/Capt
for Adjutant
6 Cdn Inf Rft Unit

Certified true copy dated:
AUG 19 1944

Adjutant, No 6 C.I.R.U.
Officer having custody
of original documents.

Certificate in accordance with the Army Act 163 (I) (ii).

I certify that No. H. 17529.....Rank....Pte.....Name...Roberge.S.L.....

Unit Westminster Regt. No.6.C.R.U..... was arrested at....Blackpool.....

at...0100.....hours, on.15th August 44.....

Signature of Provost Marshal, A.P.M. or other officer into whose custody the above named person was taken on arrest. ..... Capt.

MILITARY POLICE

164 H.Q. PROVOST COM

BLACKPOOL

Ex - III

Ex. [illegible]

No H-17529 Name Roberge L.S. Sqn, Battery, or Company Corps Cdn Inf Corps Date of enlistment 2 jul 40 GC Badges n/a Service or Proficiency Pay n/a 3/17 MFM 6 (AFB 122) 40/PAS/130 [illegible]

Date of last entry in Company Conduct Sheet no record of previous entry and date of drunk n/a Period not reckoning towards freedom from extra fine n/a Sheet No 1 Signature OC Company, etc C.Leighton Character Capt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Canada 9	feb 41	Pte		AA.15(1)AWL fr parade	Cpl.Comstock	7 days C.B.	10 feb 41	Capt.Leighton	
Canada 10	feb 41	Pte		AA.15(1)AWL fr defaulter parade	documentary	7 days C.B.	11 feb 41	Capt.Leighton	
Canada 14	feb 41	Pte		AA.15(1)AWL fr parade AA.40 Conduct to the prejudice etc AA.9(2) Refusing to obey an order	Lt.Lynch Sgt.Mulligan	7 days Detn	15 feb 41	L/Col.Graham	
Canada 24	mar 41	Pte		AA.15(1)AWL 8 hrs 10 mi	Sgt.Webb	7 days C.B.	25 mar 41	Capt.Leighton	Forf 1 day pay for AWL
Canada 6	apr 41	Pte		AA.15(1)AWL 17 hrs 15 mi	Sgt.Webb	7 days C.B.	7 apr 41	Capt.Leighton	Forf 1 day pay for AWL
Canada 7	may 41	Pte		Civil offence (assault)	documentary	30 days Impt	11 may 41	Civil court	Forf 3 dyspay for arrest
Canada 7	jul 41	Pte		AA.9(1) Desobeying in such a manner a lawful command given by superior offr aa.8-1 striking his superior offr	Sgt.Parr cpl.Tippett	7 days detn	9 jul 41	Maj.Bond	

[illegible] Menard Lt

officer having custody of original documents.

(PTO)

certified true copy dated; 23 August [illegible]

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Canada 10	jul 41	Pte		AA.9(2) Refusing to obey a lawful command given by his superior officer	CSM.Beaton	3 days detn 1 day diet	11 jul 41	Maj.Jones	
Canada 30	aug 41	Pte		AA.15(1)AWL 7 days 10 hrs 30 mi	documentary	Reprimand	10 sep 41	Maj.Bond	Forf 8 dys pay for AWL
Canada 15	sep 41	A/L/Cpl		AA.40 Conduct to the prejudice etc AA.40 Conduct to the prejudice etc	Sgt.Allen	Reduced to Pte	16 sep 41	L/Col.Ackland	
Canada 3	dec 41	Pte		AA.15(1)AWL 4 days 8 hrs 30 mi	Cpl.Wilkinson	7 days detn	8 dec 41	Maj.Theobald	Forf 5 dys pay for AWL
Canada 15	jan 42	Pte		AA.15(1)AWL 10 days 16 hrs 10 mi	Cpl.Baker	14 days C.B.	25 feb 42	Maj.Cary	Forf 11 dys pay for AWL
Field 3	sep 42	Pte		AA.15(1)AWL 7 hrs	Sgt.VanHorne	3 days C.B.	4 sep 42	Maj.Ibbott	Forf 1 dy pay for AWL
Field 28	nov 42	Pte		AA.40 Neglect to the prejudice etc	Cpl.Oldale	4 days C.B.	28 nov 42	Capt.Crinted	
Field 5	may 43	Pte		AA.40 Conduct to the prejudice etc	Sgt.VanHorne	7 days C.B.	5 may 43	Maj.Groombridge	
Field 21	dec 43	Pte		AA.15(1)AWL 13 dys 3 hrs 15 mi & cost of return £2.9.4.	documentary	28 days pay. Stop: £2.9.4.	4jan 44	DO- 9/44	Forf 14 days pay for AWL

certified true copy dated; 27 Aug 44

officer having custody of original documents

Ex IV

No. H-17529 Name Roberge L.S. Sqn, Battery, or Company Corps Cdn Inf Corps Date of enlistment 2 jul 40 GC Badges n/a Service or Proficiency Pay n/a 3/17 MFM 6 (AFB 122) 40/P&S/126 (5443)

Date of last entry in Company Conduct Sheet n/a No. and date of last drunk n/a Period not reckoning towards freedom from extra fine n/a Sheet No 2 Signature OC Company, etc C.Leighton Capt. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 20	feb 44	Pte		AA.15(1)AWL 35 days,15 hrs,16 mi & cost of return: £1.11.8	documentary	120 days detn Stop: £1.11.8. Rel: 24 jun 44 Rem: 39 days	5 apr 44	FGCM	Forf 36 dys pay for AWL & 9 dys for arrest
Field 2	jul 44	Pte		AA.15(1)AWL 3 days,23 hrs	documentary	21 days pay. 14 days C.B.	7 jul 44	L/Col.Clingan	Forf 4 dys pay for AWL
Field 7	jul 44	Pte		AA.24(2) Losing by neglect his kit to the value of $2.20	COMS.Buckley	Admonished Stop: $2.20	8 jul 44	Capt.Hudson	
Field 22	jul 44	Pte		AA.15(1)AWL 16 hrs 45 mi	documentary	10 days C.B. 6 days pay.	24 jul 44	L/Col.Clingan	Forf 1 dy pay for AWL
Field 3	Jul 44	Pte		Voluntary Blood donor	Capt LaRue				
Field 30	jul 44	Pte		AA.15(1)AWL 11 hrs 15 mi	documentary	3 days pay.	31 jul 44	Col.Morgan	Forf 1 day pay for AWL

certified true copy consisting of two pages dated; 23 Aug 44

[signature] Lt

officer having custody of original documents

Ex. V Gott 23 Aug 44

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H-17529	Private	Sidney Lucien ROBERGE	Cdn Inf Corps

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA.15(1) AWL	13	times.
For AA.40	5	times.
For AA.9(1) & AA.9(2)	1 & 2	times.
For AA.8(1) & AA.24(2)	1 & 1	times.

Date of first entry in Field Conduct Sheet 10 feb 41

Date of last entry in Field Conduct Sheet 31 jul 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~3. The accused at the present time is under sentence for~~

~~beginning on the day of~~

4. The accused has been awaiting trial on the present charges for N/A days in civil custody; and for 8 days in military custody, *i.e.*, ____ days in open arrest, 8 days in close arrest; of which N/A days were spent in hospital.

5. The present age of the accused is 23 years old

6. The date of his attestation ~~[illegible] up for military service~~ is 2 jul 40

7. The service which the accused is allowed to reckon is 3 years 107 days

8. The accused is in possession of‡ Cdn Vol Med & Claps

‡State the military decorations (if any) held by accused.

~~9. (If the accused is a warrant officer or N.C.O.). The accused has served continuously~~ without reduction, to the present date—

Date of Promotion.

In the substantive rank of

In the war substantive rank of

~~In the acting rank of~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) Wt.8670/668 100,000 4/42 A.& E.W.Ltd. Gp.888
(22459) Wt.29256/1872 90,000 9/42 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
Civil Court	Field 11 may 41	Civil offence (assault)	30 days Impt	
F.G.C.M.	Field 5 apr 44	AA.15(1)AWL 35 dys,15 hrs,16 mi	120 days detn Stop: £2.9.4.	39 days remission

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this _____ day of _____

officer having custody of original documents.
assistant-adj

LIST OF WITNESSES

In the case of No H-17529, Private Sidney Lucien ROBERGE, Cdn Inf Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

Prosecution

Lt D A J Parè, Cdn Inf Corps, on the strength of No 6 CIRU.

Defence

Nil

In the Field
18th Aug 44.

LIST OF EXHIBITS

In the case of No H-17529, Private Sidney Lucien ROBERGE, Cdn Inf Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

Exhibit "A": Certified true copy of Daily Part II Orders (6 CIRU)

Exhibit "B": Certificate in accordance with A.A. 163 (1) (jj)

In the Field
18th Aug 44.

1. I acknowledge that I have been served with a copy of the Summary of Evidence taken prior to my trial by Court-Martial. I further acknowledge that I have been served with a true copy of the charge (s) upon which I am being brought to trial by CM.

2. I desire the services of an officer to represent me at my trial by CM. I request the services of:

.....Lt. Delaney (Rde 6).....

if he is available.

In the Field
19 day of Aug 1945
0900 hrs.

S L Roberts .....

[illegible] 23 Aug 45

23 aug 1944

waiting member

Lt. Forbes. Barr

officer under instruction.

Lt. Forbes Barr

S. C. M. - A - 41

Lieut Robert, F. de L.

Kent A-41 1

A Army Form A 9.

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

Proceedings of a General Court-Martial held at Aldershot, Hants.
on the Fifth day of January 1944 by order of

Maj-Gen JH Roberts, DSO MC

Commanding Cdn Rft Units, Cdn Army Overseas

dated the 3rd day of January 1944

President.

Col D. MacKenzie-Waters, MC VD 2 CARU

Members.

Lt-col A.S. Rutherford, RCE 1 CERU
Major R.J. Burgess, RCCS 1 CSRU
Major R. Thompson, CIC 2 CIRU
Capt R.R. Macgillvery, CIC 2 CIRU

WAITING MEMBERS.

Major N.M. Swaffield, CIC 2 CIRU
Capt L.H. Armstrong, RCASC 1 CASCRU

Capt G.M. Graham, Barrister-at-Law HQ CRU, Judge Advocate.

Trial of* Lieut Francois de Sales ROBERT, R de Mais, No 1(OCTU) Wing, Cdn Training School, an officer of the Cdn Army Overseas

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

~~The Court retires, the accused withdrawing.~~

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

The accused is brought before the Court.

Prosecutor,† Maj D.A. MacKay, Gen List, Cdn Training School.

~~Counsel for~~ defending officer† Lt-col H.P. Bell-Irving, DSO, Cdn Training School.

At 1000 o'clock the Trial commences.

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

Prosecutor produces Med Cert. which is attached.

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

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir.

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

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

(2706) Wt.41256/P111 40,000 pds. 12/43 K. & B., Ltd. (4621). Forms A 9-A.

PROSECUTION REVIEWED
J. Rudyard Law Capt
24 Feb 44
REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

B

The President, members and judge-advocate are duly sworn

Ques.by the Pres:"Do you object to Sjt Thomas acting as shorthand writer?"
Ans."No sir". U1681 Sjt EJ Thomas,HQ CRU, duly sworn as shorthand writer.

The following officers under instruction are duly sworn.

A/Major F.L. Peters, Regina Rif, 2 CIRU

Charge-Sheet.

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

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

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

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

Not Guilty, sir. *Answer.*

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

Answer.

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

Answer.

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

Answer.

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

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

"B2"

CHARGE SHEET

The accused, Lieutenant F. de S. Robert, Regiment de Maisonneuve, posted to the Canadian Training School as Instructor in #1 (OCTU) Wing of the Canadian Training School, an officer of the Canadian Army Overseas, is charged with, when on Active Service:-

First Charge
Section 15 (1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE

IN THAT, HE

at Havannah Barracks, Bordon, Hants, absented himself without leave from 1015 hours Friday, 24 Dec 43, until he returned at 0820 hrs, Tuesday, 28 Dec 43.

(E.L. Snow) Colonel, R.C.A.M.C.,
Commandant,
Canadian Training School.

Havannah Barracks,
Bordon, Hants,
30 Dec 43.

To be tried by General Court-Martial

(J.H. Roberts) Maj-Gen
GOC
Cdn Mft Units

In the Field
3 Jan 44

CTS/113

MEDICAL CERTIFICATE

I hereby declare that I have to-day examined:

No. _____, Lt F. deS. ROBERT

R de Mais

Regiment, xxxxxxxxxx reported to Canadian Training School and certify that I found him Medically Unfit xxxxxxx to undergo trial by Court-Martial.

5 Jan , 1944

E.G. MacLoghlin Capt

(E.G. MacLoghlin) Capt

Medical Officer,
Canadian Training School.

(To be signed in duplicate)

"X" Army Form A 47

4

COURTS-MARTIAL

Gm Graham. Capt JA

Form of Order for the assembly of a General or District Court Martial.

ORDERS BY Maj-Gen J.H. Roberts, DSO, MC.

Commanding the Cdn Rft Units, Cdn Army Overseas

(Place and Date) Farnborough, Hants. 3 Jan 44

The Legion Reading Room, 3 CIRU, Salamanca Bks, Aldershot

The detail of officers as mentioned below will assemble at on the 5th day of January 1943 at 1000 hrs for the purpose of trying by a General court-martial the accused person ~~[illegible]~~ named in the margin [and such other person or persons as may be brought before them].*

Lieut Francois de Sales ROBERT, R de Mais, 1(OCTU) Wg, CTS.

PRESIDENT.

Col D. MacKenzie-Waters, MC, VD. 2 CARU is appointed president.†

MEMBERS.

~~Lieut Sales~~
~~ADDERSON, RCA,~~
~~2 CARU~~

Lt-col A.S. Rutherford, RCE 1 CERU

Major R.J. Burgess, RCCS 1 CSRU

Major R. Thompson, CIC 2 CIRU

Capt R.R. Macgillvery, CIC 2 CIRU

NOTE—The president must be named. The members and the waiting members may be mentioned by name, or the number and ranks and the units to which they belong may alone be named.

Mackenzie Waters Col

WAITING MEMBERS.

Major N.M. Swaffield, CIC 2 CIRU

Capt L.H. Armstrong, RCASC 1 CASCRU

JUDGE-ADVOCATE.

Capt G.M. Graham, Barrister-at-Law, HQ CRU ~~has been [or where the convening officer has the appointment of a judge advocate~~, is hereby] appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to AA & QMG, HQ CRU

Signed this Third day of January 19 44

(J.H. Roberts) Maj-Gen
GOC, Cdn Rft Units

* *Any opinion of the convening officer with respect to the composition of the Court (see Army Act, s. 48 (10) and Rules of Procedure 20 and 21) should be added here; thus, where a Court-Martial is ordered to assemble, composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry, the following should be added:—*

"In the opinion of the convening officer, other officers are not, having due regard to the public service, available," *(or as the case may be).*

† *Add here, in the case of either a General or District Court-Martial where a captain is appointed president and the officer convening the court is not under the rank of field officer,* "In the opinion of the convening officer a field officer is not, having due regard to the public service, available." *Where it is necessary for an officer under the rank of captain to be appointed president of a District Court-Martial, add,* "In the opinion of the convening officer a field officer or captain is not, having due regard to the public service, available." *(See Army Act, s. 48 (9).)*

‡ *The "unit," in the case of Royal Artillery, is a Brigade, where such organization exists.*

(12409) Wt.35984/1601 10,000 11/39 A.& R.W.Ltd. Gp.698
(12380) Wt.44357/128 40,000 1/40 " " Forms/A47/42

List of Witnesses.

TRIAL OF Lieut F. de S. Robert, R de Mais, CTS.

PROSECUTION

Lt S.A. Singer, 1 OCTU Wg, CTS
Capt A.P. Boswell, "
Maj G.R. Corkett, "
Capt A.E. Burkholder, Adjt, CTS

DEFENCE

NIL

TRIAL OF Lieut J. Anderson, RCA, 2 CARU

PROSECUTION

L55226 L/Cpl Smith AJ, 9 Pro Coy
G60631 L/Cpl Essensa FG, "
Lt K.W. MacKinnon, RCA - 2 CARU

DEFENCE

NIL

C

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

Proceedings on Plea of Not Guilty.

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

Answer. No sir.

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

~~The prosecutor proceeds to call witnesses.~~ GmG

~~[illegible]~~ GmG ~~[illegible]~~

OPENING ADDRESS BY THE PROSECUTOR:

~~[illegible] is examined by the prosecutor.~~ GmG

In the case of Lt Robert I feel that a great deal of explanation is not required as it is simply a straight forward case of AWL; but I would like to explain to the court first a system which is now at the CTS in connexion with offrs applying for leave of any nature. I understand it is an unusual system not carried out in other units and it would clarify the situation considerably if I explain it. An officer requiring absence of leave, either overnight, 48 hrs or privilege leave, must fill out a pro forma - which is supplied by the school - and a supply is kept on hand in the Wings. He fills in the particulars requesting absence of leave for a period stated on the form. This form is signed by his Wg Comd or 2 IC, from there it is passed on to HQ, entered in the Leave Book and the Comd of the School or his 2 IC then approves his application. It is the responsibility of the offr concerned to see that the particulars of his request for leave are entered in this Leave Book and have been approved before he actually proceeds on leave of any nature. Now, that in a few words is the outline of the procedure in vogue at Cdn Trg School. I cannot give the reason for this, but there are orders issued explaining this procedure and every officer who comes to the School can read the instructions concerning the procedure for a request for absence of leave in the school at any time for any period. Now I hope to establish from evidence and from witnesses just what occurred and, in the case of Lt Robert, the time he left Bks to the time he returned to Bks and also the fact that this procedure was not followed through.

1st Witness for Prosecution) Lt SA Singer, RCA, 1(OCTU) Wg, CTS, having been duly sworn, is examined by the Prosecutor:

Q.1 Will you identify yourself to the court?
A.1 I am Lt SA Singer, RCA, attached CTS, Admin Offr No 1(OCTU)Wg.
Q.2 As Admin Offr for 1(OCTU)Wg, CTS, are you familiar with the procedure in connection with requests in connection with leave?
A.2 Yes sir.
Q.3 I understand Lt Robert approached you....

J.A.- That may or may not be a question of proof. Let us have him identify Mr Robert and ask him whether he did approach him. We are not going to understand that he did anything - we want to prove it.

Q.4 Do you identify Lt Robert - you have heard the Charge read?
A.4 I haven't heard the charge read sir.
Q.5 Can you identify him?
A.5 Yes, sir, this officer sitting on my right (witness indicates the accused).
Q.6 Lt Robert is charged with being AWL, will you explain to the court what took place when Lt Robert approached you in connection with permission to travel by rail?
A.6 Mr Robert asked me for a pass with permission to travel by rail.
Q.7 You issued his pass?
A.7 I gave him a pass and signed it.
Q.8 Was this the usual pass for absence of leave from CTS?
A.8 It is a normal pass AB 925.
Q.9 Is it recognised as authority for absence of leave for an officer at the CTS?
A.9 It would be recognised as authority for leave - it is a normal Army pass which is recognised as leave pass.
Q.10 You stated that you were familiar with the procedure at the CTS for requesting absence of leave?
A.10 I did.
Q.11 Then the type of pass which you issued, is that the usual type of pass an officer has when he goes on leave?
A.11 An officer doesn't usually have a pass because it is not generally required to be used.
Q.12 As I explained to the court, the CTS has an unusual procedure, but there are instructions issued as to what procedure is to be carried out in requesting absence of leave and you admit that you know of this procedure. Now I want you to tell the court whether the pass you issued is recognised as authority for absence of leave....

J.A.- I think in fairness to all concerned and to the witness, who is displaying rather peculiar diffidence about it, why not ask him what the procedure is.

Q.13 Will you explain the procedure for officers applications for leave?
A.13 So far as officers go they normally make out a request on Form CTS 3 and that is approved by the Wg CO or, in his absence, myself as Admin Offr, or the 2 IC of the Wg. This is sent to School HQ for approval by the Comd or the 2 IC of the School.
Q.14 Was this procedure followed out in the case of Lt Robert?
A.14 I do not know whether it was or not, sir.

Permission to travel by rail

Ex #3

CANADIAN ARMY OVERSEAS

LEAVE PASS

Pass No. Date 24 Dec 43.

No. Rank Trist Name F. de S. Robert

has permission to be absent from his unit from 1700 hrs. 24 Dec 43.

to 2359 hrs. 26 Dec 43. for the purpose of proceeding to

London

Allan Sunger Lt.

Allan Sunger Lt.
CO do ADM
I WING (D.C.T.U.) C.T.E.

(Unit Signature Stamp)

Orderly Room Stamp

Q.15 Well then in connexion with the pass that you issued to Mr Robert, you know full well that that was not authority for absence of leave at CTS? Is that true? In other words, it did not conform with the instructions laid down at the CTS for the requesting of absence of leave?

A.15 The pass in itself may not have conformed with regulations - the pass as such was issued as authority to travel by rail.

Q.16 Only? That is all it was issued for, just go give permission to travel by rail and not as leave of absence, is that correct?

A.16 Perhaps I could explain that to the court if I gave a little preamble to my answer. Some two wks before Xmas before the issuing of Passes, the Wg Comd expressed his wish to me and left it to me to execute that all personnel in the Wg who could possibly do so would be sent on leave. The personnel of our Wg included 50 Other Ranks, 60 Cadets and abour 15 Officers. I put a notice on the Board asking for applications for leave from Cadets and Other Ranks or all personnel of the Wg. Many of these were turned in and I made out passes, all of which I crossed in red ink and signed on behalf of the Wg Comd, and the only officer's pass that I had occasion to sign was Mr Robert's, when he asked me for a pass to travel.

Q.17 He asked you for a pass to travel only?

A.17 No, he didn't ask for that specifically.

Q.18 Did you explain to him that it was only permission to travel and not authority to be away from Bks and that he would have to put in the usual application for leave?

A.18 No I didn't.

JA to Prosecutor: Have you got this pass?
Prosecutor: No, we haven't got it - it was just a normal Other Ranks pass.

Q.19 Lt Robert we will assume applied for permission to travel by rail. He received this permission and it stated on this pass the time he was required to be away. You gave Lt Robert this pass which granted.....

President: But there isn't such a thing as an officer's pass?
Prosecutor: At the CTS you have to submit an application for leave.
President: That's a different thing.
Prosecutor: In this case Mr Robert asked for permission to travel and the permission was made out on a normal pass.
President: It doesn't matter what it was made out on.

Prosecutor continues to examine the witness:-
(Pass marked Ex 3, initialled by President, attd to Proceed'gs)

Q.20 This pass that you issued for permission to travel by rail, is it considered authority for leave of absence at the CTS.

A.20 So far as officers are concerned it probably isn't, but it was the most convenient form.

Q.21 Mr Robert doesn't have the normal form for permission to be absent?

A.21 It is the most convenient form of signifying that he had permission to travel by rail.

Copy * C #1 new
GMG

Memo No 14

PRIVILEGE, 48 HOUR, WEEK-END AND OVERNIGHT LEAVES

Officers proceeding on leave of any nature or duration will submit the appropriate C.T.S. form, properly completed, including telephone number when available, to the O.C. Wing. These forms will then be forwarded to the adjutant's office where they will be entered in the Officers' Leave Book, for submission to the Commandant or 2 i/c. It is the PERSONAL RESPONSIBILITY of the individual officer to ascertain BEFORE proceeding on leave that details of address, phone, etc, are correctly entered in the Leave Book and that the leave is APPROVED by the Commandant or 2 i/c.

This memo supersedes Memo No 12

CERTIFIED TRUE COPY

J. S. Corhlin Lieut. Gen. List.
Asst/Adjt. C.T.S.

A.E. Burkholder
(A.E. Burkholder) Capt, Gen List,
Adjutant,
Canadian Training School.

Q.22 But he didn't submit application to be absent from Bks in the usual manner according to the instructions at CTS, which is shewn on Exhibit.....

J.A. - But this Exhibit hasn't been submitted yet.

(The Prosecutor shows the witness Memo No 14 re privilege leaves)

Q.23 Will you explain to the court what that is?
A.23 That is a memo to the Officers' Memorandum Book in connexion with leave. It is the instructions regarding the filling out of leave applications. The procedure that officers have to follow in applying for leave.

(Memo marked Exhibit No 1, signed by the President, and attached to the Proceedings)

Q.24 In accordance with these Instructions, known as Ex.1, did Mr Robert submit the usual application?
A.24 He did not submit it to me.
Q.25 To the best of your knowledge had he in the past submitted an application for absence with leave in the proper manner?
A.25 So far as I know Mr Robert was never out of Bks on weekend leave or any other leave. I have only known him a matter of 5 or 6 weeks and during that time he was present in camp practically continually.
Q.26 So it is quite possible to the best of your knowledge that Mr Robert was not familiar with the procedure?
A.26 Yes sir.
Q.27 Do all applications pass through your hands?
A.27 No sir.
Q.28 Do you recognise this?
A.28 Yes sir.
Q.29 Will you explain to the court just what it is?
A.29 The Officers' Leave Book, which is kept by the School Adjt.
Q.30 How does this fit into the picture?
A.30 In view of the fact that this is not my Book and the only time I have seen it, is since Mr Robert's incident arose, I think it is the School Adjt's responsibility to produce this, is that so, sir?
President: Quite right.

Prosecutor to the Court: What I want to bring out to the court is that Mr Robert has quite recently applied for leave in the normal manner.

J.A. - You undoubtedly have a purpose in mind, but we are concerned now with prima facie proof as to whether or not Lt Robert was away from the CTS and whether that was with permission or not, and whether or not he overstayed any permission he had. Now, procedure doesn't enter into the picture. I think what you're doing is attempting to anticipate a possible defence, but I suggest you wait until that defence is disclosed. I would think you have got a witness who can prove certain points of your charge, but so far he hasn't proved a thing. He has given evidence as to procedure. Now then, if this witness can tell you if this man left the CTS and if so for how long....

President: I think the whole court is clear on the procedure.

Prosecutor continues to examine the witness:-

Q.31 On this pass that you made out for Lt Robert what was the period of time?

A.31 The period of time I think was from 1700 hrs 24 Dec 43 to 2359 hrs 26 Dec 43, which was the period the Wg Comd suggested we allow all personnel out of the Wg to be away. I might add that he acted on a letter from School HQ that we turn in the number of Officers, Other Ranks and Cadets who would be likely to be in camp over Xmas and I took it for granted that School HQ were planning to allow as many as possible to be away from the School.

CROSS-EXAMINED BY THE DEFENCE:

Q.32 Did the permission to travel by rail which you issued to Mr Robert state Lt Robert as having permission to be absent from his unit from 1700 hrs 24 Dec 43 until 2359 hrs 26 Dec 43 for the purpose of proceeding to London?

A.32 Yes sir.

Q.33 Did you sign it?

A.33 Yes sir.

Q.34 Did you specifically warn Robert that the pass did not constitute leave?

A.34 No sir.

Q.35 Did you specifically warn Robert to go and get leave in the proper manner?

A.35 No sir.

Q.36 Did Robert leave his address with you?

A.36 Yes sir.

Q.37 Do officers usually do that?

A.37 I will answer that indirectly. This is the first occasion that I have had to obtain addresses from officers on leave. The Wg Comd and others left theirs and because of that Mr Robert left me his.

Q.38 But it isn't essential?

A.38 No sir. Perhaps I could explain to the court why these addresses were left with me....

Defending Officer: No we have enough.

Q.39 Are you authorised to deputise for your CO when he is away.

A.39 For the Wg Comd, yes sir.

Q.40 Is it the custom at CTS for officers returning on time from leave to report back?

A.40 No, sir, they merely return at any time within the period of their leave, up to the termination of it, and they subsequently appear on duty.

By the J.A. -

Q.41 Am I correct in assuming that permission for an officer to have leave at this period had to come from School not from Wg?

A.41 Generally it is the School matter, and it is laid down that it is a School matter, but in this case the Wg Comd expressed his wish.....

Q.42 I know, but has Wg got authority to let an officer go on leave at the dates that you have in this period?

A.42 Yes, I believe Wg can grant leave taking the responsibility.

Q.43 Here is a man who is on the staff of a Wg, is that correct?

A.43 Yes sir.

Q.44 If School said this man is going to stay on duty over Xmas could Wg give him permission to go?

A.44 No, I do not think so, sir.

Q.45 In other words the over-riding authority was School?

A.45 Yes sir, that's correct.

Q.46 Was that known by Mr Robert?

A.46 I don't know sir.

Q.47 Was it a matter of information to all officers?
A.47 Yes, that is the purpose of the Officers' Memo Bk.
Q.48 And is it part of the duty of every officer to read it?
A.48 It should be.
Q.49 What have Standing Orders to say about it?
A.49 I don't think there is anything in Standing Orders about it, sir - anything about officers going on leave.

Prosecutor to Court:- We have an Officers Memo Bk in which orders affecting subjects only are published. That is notified in Part I Orders.

J.A. - But you haven't given us any evidence of that or that this Memo Book has been read by all concerned.

Prosecutor - It is not considered a Standing Order but this is something separate for officers only.

J.A. continues to examine witness:-

Q.50 This piece of paper which you signed on Xmas Eve, what authority did you have to permit Mr Robert or any officers going on leave for the period indicated?
A.50 I had my Wg Comd's authority for that.
Q.51 And that is all the authority that that man required to be permitted to go on leave?
A.51 Yes sir. Mr Robert asked for the pass and I obtained his address from him.
Q.52 And that permit allowed him to go on leave for the dates mentioned?
A.52 Yes I think he may have concluded that.
Q.53 But is that officially?
A.53 Yes.

Prosecutor: I object to his answer. I will raise the point that at no time has Instructions been issued.
J.A.: You will have to bring evidence to prove that.

J.A. continues to examine witness:-

Q.54 This piece of paper indicated to you that he was due back at 2359 hrs on 26th Dec?
A.54 Yes sir.
Q.55 If he didn't arrive back until 0900 hrs 27th Dec how would you know?
A.55 The only means I had of knowing if he had not come back would be if I was looking for him or required his presence for any purpose - which I didn't because he was unemployed.
Q.56 You say that an officer returning does not have to report?
A.56 No sir.
Q.57 So you have no idea when he returns?
A.57 No sir.

(In the opinion of the court and of the Judge-Advocate it is not necessary to comply with RP83(B))

2nd Witness for Prosecution) Capt A.P. Boswell, RH of C, No 1 (OCIU) Wg, Cdn Training School, having been duly sworn, is examined by the Prosecutor:

Q.58 Will you identify yourself to the court?

A.58 I am Capt Alan Paterson Boswell of the Black Watch, up until the 31st Dec 43 I was in comd B Coy OCTU Wg, CTS.
Q.59 Lt Robert is charged with being AWL - do you recognise the accused?
A.59 I do (witness indicates the accused).
Q.60 On 24th Dec you proceeded on leave, will you explain to the court what time you proceeded on leave?
A.60 At approx 1915 hrs 24th Dec - I was accompanied by Lt Robert, took a taxi from Havanna Bks to Farnham where we boarded the London train. I went as far as Walton-on-Thames, where I got out. Lt Robert remained in the train.

DEFENCE DECLINES TO CROSS-EXAMINE

(In the opinion of the court and of the Judge-Advocate it is not necessary to comply with RP 83(B))

3rd Witness for Prosecution) Major G.R. Corkett, PPCLI, 1(OCTU) Wg, Cdn Training School, having been duly sworn, is examined by the Prosecutor:

Q.61 Will you identify yourself to the court?
A.61 I am Maj G.R. Corkett, acting Chief Instr.1 (OCTU) Wg, CTS.
Q.62 Lt Robert is charged with being AWL - do you recognise the accused?
A.62 Yes. (witness indicates the accused).
Q.63 You reported certain information to the Adjt on 27th Dec, will you tell the court what this information was in connection with Lt Robert?
A.63 About 1500 hrs I reported Lt Robert as an absentee without leave on the 27th Dec.
Q.64 Did you take any steps to see if Lt Robert was in his bks?
A.64 Yes, I had the Bks searched by two Orderlies.
Q.65 What were the results?
A.65 The Orderlies failed to find Lt Robert.
Q.66 When did Lt Robert report to the Wg?
A.66 Lt Robert reported to me on the Parade Square at 0820 hrs 28th Dec.

CROSS-EXAMINED BY THE DEFENCE

Q.67 In looking for Mr Robert on the 27th did you ask Mr Singer if he knew where he was?
A.67 I am not sure.
Q.68 You made no search yourself?
A.68 No I didn't.
Q.69 So the only information is what somebody else told you.
A.69 Quite. They were Other Rank Orderlies.
Q.70 Did they walk through the Officers' quarters?
A.70 They enquired at the Officers' quarters.
Q.71 At 0820 hrs - was that a normal parade hour?
A.71 Yes sir.
Q.72 What did he say to you when he reported?
A.72 I am not altogether sure except that he came up, saluted, and said "Good morning."
Q.73 Did you enquire where he had been at that time?
A.73 I informed him that I had reported him as an absentee without leave the previous day and that instructions as to whether he would be placed under arrest or not would be given him.
Q.74 Did he make any comments?
A.74 No sir.

Q.75 Did you make any enquiry in between 1500 hrs 27th and 0820 hrs 28th Dec to find out whether the accused was in?
A.75 Yes, I asked officers at the Wg?
Q.76 But there was no thorough search?
A.76 No, I did not myself search the Bks.
Q.77 Did the School syllabus resume on the 27th or 28th officially?
A.77 The syllabus was in effect on the 27th.
Q.78 At what hour?
A.78 At 0825 hrs in the morning, sir.
Q.79 Is Mr Robert a student at the School?
A.79 Lt Robert is an instructor, sir.
Q.80 He was not being employed at the time?
A.80 He had nothing to do on the 27th or 28th.
Q.81 In those circumstances was it normal for him to report to you?
A.81 No, he was not required on that parade.
Q.82 And you do not know why he did report?
A.82 No.
Q.83 Then why did you take such an interest in him as to make a search?
A.83 Because he had been reported to me as an absentee by his Coy Comd.

(In the opinion of the court and of the Judge-Advocate it is not necessary to comply with RP 83(B))

4th Witness for Prosecution) Capt A.E. Burkholder, Gen List, Cdn Training School, Having been duly sworn, is examined by the Prosecutor:

Q.84 Will you identify yourself to the court?
A.84 I am Capt A.E. Burkholder, Adjt, CTS, Havannah Bks, Gordon.
Q.85 Lt Robert is charged with being AWL, do you recognise the accused?
A.85 Yes, sir, I do.
Q.86 On 27th Dec you received a phone call from Maj Corkett and will you explain it to the court?
A.86 Approx 1500 hrs on the 27th Dec I received a telephone call from Maj Corkett asking me if there was any notification in the Officers' Leave Book to the effect that Lt Robert had been granted a pass.

By the J.A.:

Q.87 Actually you do not know whether he was or was not?
A.87 At the time I didn't.
Q.88 Did you ever know?
A.88 I did afterwards.
Q.89 Are you in a position to state that this man was absent from the School at any time?
A.89 According to my records, yes sir.
Q.90 The ones you make yourself?
A.90 Yes sir.
Q.91 On what is your information based?
A.91 On the Officers' Leave Book and the procedure in the School, which is that any officers proceeding on short-pass will complete a Form CTS 3. In the absence of the procedure being followed out my records would, of course, show that he was present in the school.
Q.92 Can you state that he was not present?
A.92 No sir, not to my knowledge.

J.A. to Prosecutor: The best that he can shew is that the procedure was not followed by Mr Robert.

Ex #2 New

Lt. F. S. Robert # 1 Wg

Time and date from	Time and date to	ADDRESS	Phone Number	Slip App'd	C.O's App'l
1300 26 Oct	1300 28 Oct	Mt Royal Hotel London	—	[illegible]	[illegible]
A.D. 6 Nov	2359 7 Nov	— " —	—	[illegible]	[illegible]
Rev 8 Nov	Rev 15 Nov	— " —	—	[illegible]	[illegible]
A.D. 20 Nov	Rev 21 Nov	— " —	—	[illegible]	[illegible]
A.D. 27 Nov	2359 28 Nov	Aldershot	—	[illegible]	[illegible]
A.D. 4 Dec 43	2359 5 Dec 43	Mt. Royal Hotel - London		[illegible]	[illegible]

Prosecutor continues to examine witness:-

Q.93 On receiving this 'phone call from Maj Corkett you mentioned the Leave Book. Will you explain this to the court?

A.93 I receive this Form CTS 3 from each officer going on short-pass. I enter it in the Book and then send it into the Comd for approval. Until it is approved no officer is supposed to leave the School. It is up to each officer to see that his name is in the Book and that the Comd has approved it. Otherwise, so far as we are concerned, he is AWL.

(Page of Officers Leave Book marked Ex.2, signed by the President and attached to the proceedings)

J.A. to Prosecutor: What does this prove?
Prosecutor: To show that he had not been granted absence with leave - it is not entered in there.

Prosecutor continues to examine witness:-

Q.94 To the best of your knowledge are there Instructions laid down in connection with the procedure for applying for leave?

A.94 Yes sir, they are laid out in the Officers' Memo Book.

Q.95 Do you recognise this (Ex.1).

A.95 Yes sir. It is always kept in my office and so it is available for officers to review the memos and there are about 27 memos in the Book so we leave it out so that they may check up from time to time and if in doubt they can always come up and check up.

Q.96 You state that this Book is available in your Office so that all officers joining the School may make themselves familiar with procedure?

A.96 Yes sir.

Q.97 To the best of your knowledge did Lt Robert read this order?

A.97 Yes, sir, he did.

Q.98 Will you prove it to the court?

A.98 His initials FSR, or, sir, the procedure is that every officer arriving at the School is given copies of a Form for going to the QM, Dental, Medical etc and when the Form is completed he comes to the Adjt's office where the Asst Adjt will check up his identification card, his clothing coupons and whether he has seen the Officers' Memo Book and, at the same time, if he is being TOS, he is granted an interview with the Comd.

Q.99 Did Lt Robert pass through this procedure?

A.99 To the best of my knowledge, yes.

Q.100 Do you recognise this Form?

A.100 Yes sir, that is the Form used at CTS for all officers just joing the School.

Q.101 Did you see this man sign this memo book?

A.101 No sir.

(The Defence agrees to have it put into the proceedings as an Exhibit).

JA: I think I appreciate what you have in mind, but this is a GCM and the result of it may have a great effect on the career of the officer who is being tried and I think you should consider before you go so far as to admit anything. But I am not prepared to say what effect that

admission will have. It would go so far as to say that the accused knew that he did not carry out the procedure laid down, that he knew that he didn't have proper permission to leave and that he wilfully disregarded that Rule and went off for a period on his own.

Defending Offr: In view of the warning, with your permission, I would have it withdrawn.

JA.: The admission of a certain exhibit in the trial of an Other Rank makes the difference of one or two days' detention. But in the case of an officer it may mean the complete end of his Military career.

The Prosecutor continues to examine the witness:

Q.102 In connection with instructions issued for applying for a pass was there any amendments to that Order.
A.102 Not that I know of.
Q.103 In other words all officers proceeded on any type of leave if they had the approval of the Comd or 2 IC of the School.
A.103 Yes sir.
Q.104 As Adjt of the School have Wing Comds authority to grant such leave?
A.104 No sir.

EXAMINED BY THE COURT:

Q.105 You have made a definite statement as Adjt of the School that the Comd or his 2 IC are the only people empowered to grant such leaves. Have you ever known of an occasion when the Comd has told the Wg Comd that he might use his own judgment?
A.105 No sir, never.
Q.106 Is it laid down in writing?
A.106 Yes, sir, in the Officers Record Book. The only exception of that, sir, is of course the officers that come entirely under the Wg Comd - I am speaking now of PE staff.
Q.107 You have stated that, to the best of your knowledge, Lt Robert had read this Memorandum dealing with the method of obtaining approval, on what do you base this opinion?
A.107 He signed the Form and my practice was to point out the Officers' Memo Book to the officers.
Q.108 Could you ensure that he did read it through?
A.108 I would say that on the basis of my signature being there that he did.
Q.109 Do you normally ensure that they do read it or do you just give them an opportunity?
A.109 Oh yes.

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

PROSECUTION CLOSED

Judge-Advocate: The case for the Prosecution having been closed it is my duty to advise you as to your rights at this point. The Defence is now to be commenced and you are to decide yourself whether or not you are to be heard. There is more than one way in which it can be done. In the first place you may be sworn and give evidence yourself - in which case you will be subject

to cross-examination. If you don't wish to do that you may stand in your place and make an unsworn statement, in which case you will not be questioned by anyone; or you may make the same statement in writing - the same applies - you will not be questioned. But if you are to be heard the court is bound to give more heed to what you say if given under oath.

President: Are you absolutely au fait with the English tongue?
Accused: Yes sir.

D

~~The prosecution evidence~~ Con 6

Defence.

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

Answer. Yes sir.

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

Answer. Yes sir.

Question. Is he a witness as to character only? *Answer.* Both sir, character and fact.

INSTRUCTIONS TO THE COURT.

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

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

(*Where any evidence is given for the defence.*)

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

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

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

Answer. The accused in his defence says†

[hands in a written address which is read, marked

signed by the President and attached to the proceedings.]

Con 6

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

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they gave evidence.

OPENING ADDRESS BY THE DEFENDING OFFICER:

The accused is charged with an offence of being absent without leave from 1915 hrs Friday 24 Dec 43 until 0820 hrs Tuesday 28 Dec 43. The Defence intends to prove, firstly, that between 1915 hrs on Fri 24th and 2359 hrs Sunday 26th the accused was on leave; and, secondly, that the accused was absent between 2359 hrs 26th and 2030 hrs on the 27th, but that such absence was caused by Xmas rush traffic congestion beyond the control of the accused. That the accused has no duty to perform until Tuesday the 28th and that before the conclusion of his leave on the 27th he telephoned School Orderly Officer explaining that he had missed his transportation and would be back. Thirdly, that the accused between 2030 hrs on the 27th and 0820 hrs on the 28th, (the termination of the charge) was not absent.

1st Witness) The accused, Lt F. de S. Hubert, R de Mais, Cdn Training
for Defence) School, having been duly sworn, is examined by the Defence:

Q.110 Were you aware of the CTS procedure for obtaining leave?
A.110 Yes sir.
Q.111 Did you obtain Xmas leave in this way?
A.111 No sir.
Q.112 Why not?
A.112 Because I had not intended to go on leave until Xmas Eve when I felt rather "home sick" and knowing it was too late to apply for leave I saw the Adjt of No 1 Wg.
Q.113 Why did you consider that you might get it through him?
A.113 Because since it was too late to go through the usual channels, the Wg Comd wasn't there and the Adjt was the only one there at that time.
Q.114 You stated that you thought it was too late to get it through the usual channels at School?
A.114 Yes sir.
Q.115 What time in the afternoon?
A.115 Past syllabus time - at about 1645 hrs.
Q.116 Did you make any attempt to obtain permission?
A.116 I checked all over the Wg to find an authority there.
Q.116 Had you made out the normal application form in order that it could have been signed by Mr Singer and forwarded to HQ?
A.116 Yes, sir, I applied to Mr Singer for leave because it was too late to go through normal channels.
Q.117 Did he say so?
A.117 No sir.
Q.118 Is there anything written down in the instructions as to what time applications must be submitted?
A.118 Yes sir, I think so.
Q.119 Did you see this. (Witness showed Ex 1)?
A.119 Yes sir, some time ago.
Q.120 In those instructions it mentions no time at all, it simply states that you must obtain the approval of the Comd or the 2 IC before proceeding on leave?
A.120 I would have to re-read it to see that.

CROSS-EXAMINED BY THE PROSECUTION

Q.121 Can you remember a School Order stating that no leave applications would be entertained unless it was in within 3 dys?
A.121 It is in the Memo Book, but I do not know the number, and it states a special time for which one must apply for leave.

Ex #4

EXTRACT FROM C.M.H.Q. CIRCULAR LETTER No. 425
re.short pass and 48 hour.

SHORT PASS -48 HOUR

Short passes will NOT be granted, by rail, between 23-28 Dec 43, inclusive,unless the destination is not farther away than 20 miles.
Possession of a leave pass on which the station from which the rail journey will commence is endorsed in red ink, will be accepted at booking offices for travel by rail up to 20 miles at concession rates.
All officers who wish to travel will be given a similar certificate by their C.O.

Memo no 20

PRIVILEGE,48 HOUR, WEEKEND AND OVERNIGHT LEAVES

Offcrs proceeding on leave of any nature or duration will submit the appropriate CTS form, properly completed,incl phone number when available,to the OC Wing. These forms will then fwd to the Adjt's Office where they will be entered in the offrs leave book, for submission to the Comd or 2 IC. It is the PERSONAL RESPONSIBILITY of the individual offr to ascertain BEFORE proceeding on leave that details of address,phone etc, are correctly entered in theleave Book and that the leave is APPROVED by the Comd or 2 IC.

Memo no 22

PRIVILEGE, 48 HOUR, WEEKEND AND OVERNIGHT LEAVES

In furtherance to Memo 20 re the m/n.

The appropriate form duly completed will be submitted to this H.Q. by not later than the following times for the respective applications:

Priv Leave - 0900 hrs 3 days prior to the day priv leave commences.

48 hr or weekend pass - 0900 hrs on the day required.

Application forms for leave, reaching this HQ later than the above stated times, will not be entertained, except under special circumstances.

The above instrs are NOT being complied with, which is causing unnecessary trouble in preparing warrants and amending duty roster.

Application forms not reaching HQ by the times as stated above, will not be entertained.

Q.122 Do you recognise that as a correct Abstract from School Orders?
(Witness is shewn "Extract from CMHQ Circular Letter # 425 re short pass and 48 hour)
A.122 Yes sir.
Q.123 Will you read this?
A.123 "Application forms for leave, reaching this HQ LAter than the above states times, will not be entertained, except under special circumstances. The above instrs are NOT being complied with, which is causing unnecessary trouble in preparing warrants and amending duty roster. The time of 48 hr leave is 0900 hrs on the day required, and priv leave 0900 hrs 3 days prior to the day priv leave commences.
Q.124 Do you recognise that as a true extract of the Officers' Memo Book?
A.124 Yes sir.
(Extract marked Ex 4 and attached to proceedings)

EXAMINED BY THE COURT

Q.125 You said that on the 28th Dec you reported to the Adjt's Office - what time?
A.125 Just a few minutes prior to reporting to Maj Corkett - just before 0820 hrs.

(In the opinion of the court and of the Judge-Advocate it is not necessary to comply with RP 83(B))

2nd Witness for Defence) Lieut L.J. McQueen, CTS, having been duly sworn, is examined by the Defence:

Q.126 Will you identify yourself to the court - and the accused
A.126 I am Lt McQueen, R Wpg Rif, presently employed at 1(CCTU) Wg, CTS, as an instructor.
Q.127 Would you identify the accused?
A.127 The accused is Francois de Sales Robert, R de Mais.
Q.128 Did you perform any School duty at the CTS on 26 Dec?
A.128 Yes sir, I was Duty Offr.
Q.129 During your tour of duty did you have a communication from the accused?
A.129 Yes sir, by telephone. He phoned me about 2100 hrs 26 Dec. He informed me he was on leave in London and that he had missed his last bus and wouldn't be able to get the train that night but would return the next day. He also asked me to inform his Coy Comd and asked if there had been any change in duties regarding Orderly Officer as he was Orderly Officer on Tuesday.
Q.130 Did you pass on that information as requested?
A.130 Yes sir.

EXAMINED BY THE COURT

Q.131 How do you set the time 2100 hrs?
A.131 It was just after I left the guard-room, where I had checked.
PROSECUTION DECLINES TO CROSS-EXAMINE
(In the opinion of the Court and of the Judge-Advocate it is not necessary to comply with RP 83(B))

3rd Witness) D82743 Pte G. Brown, CTS, having been duly sworn, is examined
for Defence) by the Defence:

Q.132 Will you tell the court your name and the nature of your employment?
A.132 My name is Pte Brown, G. No D82743, the Black Watch, and I am a batman.
Q.133 Do you recognise Mr Robert in court?
A.133 Yes sir (witness indicates the accused).
Q.134 Did you see him on 27 Dec?
A.134 Yes sir.
Q.135 About what time?
A.135 About 2030 hrs, around that.
Q.136 Where did you see him and under what circumstances?
A.136 In his room.
Q.137 Did you speak to him?
A.137 Yes sir, and he wished me a "Merry Xmas" and gave me my pay and a little present.
Q.138 That was on Monday, 27th?
A.138 Yes sir.

PROSECUTION DECLINES TO CROSS-EXAMINE

(In the opinion of the court and of the Judge-Advocate it is not necessary to comply with RP 83(B))

4th Witness) Major H. Massue, R de Mais, ~~ETE~~, having been duly sworn,
for Defence) is examined by the Defence:

Q.139 Will you identify yourseld, your name and employment, to the court please?
A.139 I am Capt(A/Maj) H. Massue, B Coy, R de Mais.
Q.140 Do you recognise Lt Francois Robert in this court?
A.140 Yes sir, he is on your left.
Q.141 Under what circumstances have you known him in the past?
A.141 I have known him in 1932. Then I lost sight of him and I met him in Goodwood Park in Sep 1942. He was then Signals Officer. About June 1943 I know that he asked for transfer to my Coy.
Q.142 Will you tell us what you know of his character?
A.142 He is serious, a good worker. He will not drink after work, after parade hours, and he is known among the officers as a man who always stayed in the Mess and I often myself offered him drink, but he did not take it. He was in love with his wife in Canada and wrote home whenever time permitted. His physical fitness was a great asset to our Sports organization and he often trained the men after parade hours by giving them road walking or swimming when we were in Petworth.
Q.143 Did you ever know him to be absent without leave?
A.143 Never. Now I have a couple of letters from brother officers who could not come; one if from the Adjt and the other from Capt Bourcier.
(The two letters are attached to the Proceedings)

PROSECUTION DECLINES TO CROSS-EXAMINE

(In the opinion of the court and of the Judge-Advocate it is not necessary to comply with RP 83(B))

CLOSING ADDRESS BY THE DEFENCE:

To refer back to my opening Address. Firstly, the period on which we contend to have proved that Robert was on leave. He had made his mind up at the last minute to go on leave. It was Xmas and most of the officers were away and he

had no duties to perform. He thought that under those circumstances he might get leave from his Wg - which he did. He missed his transportation back - a rather difficult bus ride from the suburbs of London, and he followed the proper procedure by phoning the School and telling them he had been delayed and would be a day late. He knew that his first duty was on Tues 28th and took the trouble to find out if that had been changed or not. He found out that it wasn't and asked the Orderly Officer to tell the Coy Officer he would be in the next day. It isn't customary for an officer coming back,(and this was brought out by Mr Singer) to report in from leave; but he reported straight to his Comd on the 27th. He didn't realize that he was considered absent without leave.

THE PROSECUTION MAKES NO CLOSING ADDRESS.

SUMMING-UP BY THE JUDGE-ADVOCATE.

I want to make it clear that my function is separate and distinct from that of the court. Mine concerns the Law only and the court is concerned with the facts - and on those matters of facts they are the sole and only judges. The usual principles prevail. The accused is innocent until proven guilty. He must be proven guilty beyond a reasonable doubt, and if any reasonable doubt exists in the minds of the court then they must give the benefit of that doubt to the accused and grant an acquittal. On the facts as they have been brought out today, there is only one comment I have to make - that is that a certain specific procedure is laid down with which the accused is familiar according to his own statement. He did not follow that procedure. Therefore, he must have known when he left at 1915 hrs on 24 Dec that he did not have proper permission to be away and I think perhaps the crux of the whole matter is in the remark by the Defending Officer in his closing address when he said that the accused made his mind up to go on leave, and if you emphasise the words "his" and "go" you have the crux of the matter. He didn't make up his mind to apply for leave; but made up his mind to go. There is, however, on the other side of the slate the fact that the accused was present in his quarters at 2030 hrs on the 27th Dec, which is different from the Charge - which states his first appearance was 0820 hrs 28 Dec. Are there any points that either the Defending Officer or the Prosecutor wish to raise, otherwise.....

Defending Officer: From the Defence point of view your comment that he made his mind up to go on leave, we feel very definitely that if that impression has been given then it is a mistake.

Judge-Advocate: No, I think that that impression was not given. The man knows through the procedure that he must apply to his Sjt (that is the man in the Platoon) and undoubtedly he will get his pass. He knows that if he wants to go on leave he tries to get permission to go.

Defending Officer: May we contend that that is not a similar comparison. This officer decided not to go on leave at

first. We mentioned the fact that on the 24th Dec he had the first drink of his life. He had been "home sick" and had not decided to go on leave, but on that late date he made up his mind very definitely to try and get some leave.

Judge-Advocate: ~~But he did not get the permission that he~~ himself knew was required.

Defending Officer: We hope to have shown the court that it was too late to do that. He knew it was too late to do that, but he considered that he had no work to do and that he could get sufficient authority from his Wg and I feel, as his Wg Comd, that we should stand by that pass, admitting that the pass should not have been issued. But I feel in all sincerity that the fault is not Robert's.

President: I feel the court is in a position to make up its own mind. I think that is not a fact, but simply an opinion.

COURT CLOSED TO CONSIDER THE FINDING

E

Finding.*

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

The Court is closed for the consideration of the finding.

The Court find that the accused Lieutenant Francois de Sales ROBERT, Regiment de Maisonneuve, posted to No.1 (OCTU) Wing, Canadian Training School, an Officer of the Canadian Army Overseas, is NOT GUILTY of the Charge laid against him, and is accordingly acquitted.

(G.M. Graham) Capt
Judge-Advocate

(D.MacKenzie-Waters) Col
President

In the Field
5 Jan 44

Proceedings on Conviction *before Sentence.*

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

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

is duly sworn.

Question by the President.

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

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

Question by the President.

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

Question.

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

Question.

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

Cross-examined by the accused.

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

Question to the accused.

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

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused

Sentence.

To whom it may concern

Encl

Character Ref. Lieut. F. de S. Robert, R. de Mais.

I have known Lieut. Robert for well over two years. During that time I have lived and worked close to him both in Canada and Overseas for a year and a half.

In that time I have always known him to be a straightforward, hard-working and conscientious officer. To my knowledge he has never taken a drink of any alcoholic beverages of any description. His associations with the opposite sex in this country to my knowledge have been nil.

His general knowledge and his knowledge of infantry are very sound and of great value to the army at the moment.

It has come as a very great surprise and shock to me to hear that this officer is in trouble. Knowing him so well I find it most difficult to believe.

Cyril Cuddihy Capt

(C. Cuddihy), Capt.,
Adjutant,
Regiment de Maisonneuve CA(AF)

4 Jan 44

Ref: Character of Lieut F de S Robert.
Confidential Report.

1. I have known Lieut F de S Robert since the beginning of my military career, I was in the same training centre at the beginning of 41 at Valcartier. He always seem to be a very good and a reliable officer. Some months after my arrival in England at the field unit which I held the appointement of Adjutant in the Battalion Lieut F de S Robert was our signal officer, he was always devoted to his work. A year afterwards I was posted to B Company as 2 i/c and Lieut F de S Robert through his own request was also posted in B Company as a Pl Comdr which he proved to be a good officer in a rifle Company and liked by his men and the officers he worked with.

2. The last three years that I have known Lieut F de S Robert I have never known him to take a drink or do anything not becoming to the conduct of an officer.

3. For your information, please.

FDB/RS

(F.D. Bourcier) Capt.
2 i/c "B" Company
Regiment de Maisonneuve CA'AF'

ABSTRACT OF EVIDENCE

In the case of Lieutenant Francois de Sales ROBERT, Regiment de Maisoneuve, posted to No 1 (OCTU) Wing, Canadian Training School, Canadian Army Overseas.

FIRST WITNESS

Lt S.A. Singer, RCA, Administrative Offr No 1 (OCTU) Wing, Canadian Training School, having been duly sworn, states:

"I am Lt A. Singer, Administrative Offr of No 1 (OCTU) Wing, Canadian Training School".

"I issued a Pass Form endorsed in red, "Authorized to travel by rail". I issued this form to Lt F. de S. Robert. The face of the form was completed with the particulars of the leave requested, i.e., leave to commence at 1700 hrs 24 Dec 43 and to end at 2359 hrs 26 Dec 43. The destination entered on the pass form was London. The above pass form was not issued as an authority for leave but in accordance with instructions in Appendix to CMHQ Circular Letter 425 which instructs that officers requiring to travel by rail be furnished with anauthority to do so similar to that issued to a man".

"Lt Robert did not submit to me a request for leave on the proper CTS form for transmission to Commandant CTS for approval for the period covering his absence".

Allan Singer Lt, RCA,
(S.A. Singer)

The accused declines to cross-examine this witness.

F. de S. Robert Lt, R de Mais,
(F. de S. Robert)

SECOND WITNESS

Capt A.P. Boswell, Black Watch (RH of C), Coy Comd No 1 (OCTU) Wing, Canadian Training School, having been duly sworn, states:

"I am Capt A.P. Boswell, Coy Comd of "B" Coy, to which Lt Robert is attached for duty".

"On 24 Dec 43 I left Navannah Barracks at 1915 hrs in company with Lt Robert and proceeded to Farnham. We took the London train from Farnham. I left the train at Walton-on-Thames, leaving Lt Robert on the train. I did not see Lt Robert again until the morning of 28 Dec 43".

"In the morning of 27 Dec 43 Lt Robert did not appear on parade. I reported his absence to Major G.R. Corkett, A/OC of No 1 (OCTU) Wing, at approx 1350 hrs 27 Dec 43".

A.P. Boswell Capt, Black Watch (RH of C)
(A.P. Boswell)

The accused declines to cross-examine this witness.

F. de S. Robert Lt, R de Mais,
(F. de S. Robert)

THIRD WITNESS

Major G.R. Corkett, PPCLI, A/OC No 1 (OCTU) Wing, Canadian Training School, having been duly sworn, states:

"I am Major G.R. Corkett, A/OC No 1 (OCTU) Wing, Canadian Training School during the absence on leave of Lt-col Bell-Irving. At approx 1350 hrs 27 Dec 43 Capt Boswell, commanding "B" Coy of this Wing, reported to me that Lt Robert had not appeared on parade during the morning parades. After enquiries had failed to account for his absence, I reported at approx 1500 hrs 27 Dec 43 to the Adjt, CTS that Lt Robert was absent without leave."

J.R. Corkett
(G.R. Corkett) Major, PPCLI,

The accused declines to cross-examine this witness.

F. de S. Robert
(F. de S. Robert) Lt, R de Mais,

FOURTH WITNESS

Capt A.E. Burkholder, Gen List, Adjt Canadian Training School, having been duly sworn, states:

"I am Capt A.E. Burkholder, Adjt of Canadian Training School. On 27 Dec 43 at approx 1500 hrs, I was informed by Major Corkett, A/OC No 1 (OCTU) Wing, CTS, that Lt Robert was apparently absent without leave".

"I immediately brought out the leave book (Appx B) and noticed that there was no entry permitting Lt Robert to be absent from barracks".

"According to instructions contained in the Officers' Memo Book, which instructions were read and initialled by Lt Robert (Appx "C"), he was aware of the proper procedure for obtaining permission to be absent from barracks".

"The proper procedure as laid down is for the officer desiring leave to submit to his Wing Commander a request on the proper form (Appx "A"), which, if approved by the Wing Commander, is passed through the Adjutant CTS for approval by the Commandant CTS."

"On receipt of the application for leave I enter the details in the Officers' Leave Book and submit the request to the Commandant for approval".

"No such entry appears in the Leave Book".

"I informed Major Corkett that insofar as I was concerned Lt Robert was absent without leave".

A.E. Burkholder
(A.E. Burkholder) Capt, Gen List,

The accused declines to cross-examine this witness.

F. de S. Robert
(F. de S. Robert) Lt, R de Mais,

After being duly cautioned in accordance with R.P. 4 (e) the accused declines to make a statement or give evidence.

Lt, R de Mais,
(P. de S. Robert)

Appendices:

Appx "A" CTS Form CTS/3/OFF (request for leave to be filled out for approval by Comd CTS or 2IC.

Appx "B" Officers' Memo Book.

Appx "C" CMHQ Circular Letter No 425.

Appx "D" Officers' Leave Book.

(L.P.J. Marr) ------ Capt, L Cdn Div Sp Bn (SLI)

Appx A

CTS/3/Off

Absence with leave is recommended for

_____

from _____ hrs. on _____ to _____

hrs. on _____ His address while

on leave _____

_____ Phone No. _____

_____

Officer Commanding Wing C.T.S.

APP "C"

RECEIPT FOR SUMMARY OF EVIDENCE AND CHARGE SHEET

I, ~~XXX~~ Lieut , F. de S. , Robert,

Le Regiment de Maisonneuve Regiment ~~attached~~/posted to Canadian Training School, hereby admit receipt of a copy of the ~~Abstract~~ of Evidence in the forthcoming case against me, and state that my rights under Rules of Procedure 14(b) in the Manual of Military Law as to preparing my defence have been explained to me by Lieut J.G. Conklin, General List.

I also admit receipt of a copy of the Charge Sheet in the said case and state that said Charge Sheet has been explained to me in accordance with Rules of Procedure 15(b) by the above mentioned Officer. This Summary of Evidence and Charge Sheet have been handed to me and explained this

30th day of December, 1943

at 1200 hours.

F de S Robert

(To be signed in duplicate)

To/

Commandant,
Canadian Training School.

With reference to my pending trial by General Court-Martial,

~~(a) I propose to be assigned for the purpose of conducting my defence.~~

(b) I wish @ ~~do not wish~~ that an officer be assigned to act as defending officer.

(if (either) @

(or)@

is available, I wish that he may be assigned for this purpose)

30 Dec 1943
Borden, Hants.

F de S Robert

(to be signed in duplicate)

@ Delete where necessary

APPENDIX TO CMHQ Circular Letter No. 425

REGULATIONS GOVERNING TRAVEL BY RAIL DURING CHRISTMAS SEASON 1945

PRIVILEGE LEAVE - 7 days

PROCEDURE OF DEPARTURES & RETURNS BY RAIL

OUT	DEC 16, 17, 20, 21, 22, 29, 30, 31	
RETURN	DEC 25, 26, 29, 30, 31,	JAN 2, 6, 7

NOTES (a) Normal percentages and conditions apply

(b) No outward travel on any of the following days:- 23 - 28 Dec 43 incl.

(c) Personnel despatched on 17, 20 and 21 Dec will, as a special case, be given 9 days leave.

(d) Return journeys are permitted on 23 Dec 43, but not on 24 - 28 Dec 43 incl.

Compensatory Provisions

Subject to the exigencies of the service, and to compensate for the loss of 23, 24 and 27 Dec 43, personnel up to 1½% may be despatched on 7 days privilege leave as follows:-

	DEC	JAN
OUT	4 & 11	8
RETURN	11 & 18	15

This concession will not apply to leave from Northern Ireland and the Islands around Great Britain, other than the Isle of Wight.

PRIVILEGE LEAVE : 14 DAYS OR 7 DAYS PLUS 48 HOURS

Personnel will not be despatched on 14 days leave or on short leave added to 7 days privilege leave on such dates as will necessitate return during the restricted period 23 - 28 Dec 43 incl.

SHORT PASS - 48 HOURS

Short passes will NOT be granted, by rail, between 23 and 28 Dec 43, inclusive, unless the destination is not farther away than 20 miles.

Possession of a Leave pass on which the station from which the rail journey will commence is endorsed in red ink, will be accepted at booking offices for travel by rail up to 20 miles at concession rates.

All officers who wish to so travel will be given a similar certificate by their C.O.

COMPASSIONATE OR SICK LEAVE

(a) Regulations as laid down above do NOT apply.

(b) Passes will be endorsed in red ink "authorized to travel by rail."

(c) Officers will be supplied with a certificate signed by their C.O. to that effect.

APP "C"

RECEIPT FOR SUMMARY OF EVIDENCE AND CHARGE SHEET

I, ~~XXX~~ Lieut , F. de S. , Robert,

Le Regiment de Maisonneuve Regiment

~~attached~~/ posted to Canadian Training School, Hereby admit receipt of a copy of the ~~Summary~~ Abstract of Evidence in the forthcoming case against me, and state that my rights under Rules of Procedure 14(b) in the Manual of Military Law as to preparing my defence have been explained to me by Lieut J.G. Conklin, General List.

I also admit receipt of a copy of the Charge Sheet in the said case and state that said Charge Sheet has been explained to me in accordance with Rules of Procedure 15(b) by the above mentioned Officer. This Summary of Evidence and Charge Sheet have been handed to me and explained this

30th day of December, 1943

at 1200 hours.

F de S Robert

(To be signed in duplicate)

To/
Commandant,
Canadian Training School.

With reference to my pending trial by General Court-Martial.

~~(a) I propose to be a lea counsel for the purpose of conducting my defence.~~

(b) I wish @ ~~do not wish~~ that an officer be assigned to act as defending officer.

(if (either) @

(or)@

is available, I wish that he may be assigned for this purpose)

30 Dec 1943
Borden, Hants.

F de S Robert

(to be signed in duplicate)

@ Delete where necessary

CTS/4-3-GM.....

CANADIAN TRAINING SCHOOL
Canadian Army Overseas

3 Jan 44

DJA
CRU

GCM of Lt F. deS. Robert

1. In connection with the a/m Court-Martial we are here forwarding further evidence which the prosecution will bring out in connection with the termination of the AWL.

2. Under RP 76, at the GCM of Lt F. deS. Robert the prosecution intend to bring out further evidence which is not shown in the abstract of evidence.

3. Major G.R. Corkett, PPCLI, who is shown as third witness in the abstract of evidence will state that Lt F. deS. Robert did not report back for duty at Savannah Barracks until 0820 hrs 28 Dec 43.

4. We would ask that this further evidence be made part of the abstract which is already in your hands.

LIEUT. & ASST. ADJT.
CANADIAN TRAINING SCHOOL

(T.E. Snow) Colonel, RCR,
Commandant
Canadian Training School.

DRLS/POST
JGC/APW

4K 78.
4K-79.
Pte. Robert R.
Pte. Tremblay, J.M.

SCHEDULE.

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

Accused: D94082 Pte. ROGER ROBERT & E100828 Pte. JOHN MARIE TREMBLAY

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
For 1st Charge see	CFA 96 No	2 and 3.	
2nd Alternative Sec. 18 (4)	Not Guilty	Not Guilty	
3rd Alternative Sec. 40 (1)(a)	Not Guilty	Not Guilty	
4th Alternative Sec. 18 (4)	Not Guilty	Not Guilty	
5th Alternative Sec. 40 (1)(a)	Not Guilty	Not Guilty	
6th Alternative Sec. 18 (4)	Not Guilty	Not Guilty	
7th Alternative Sec. 40 (1)(a)	Not Guilty	Not Guilty	

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

DM At present under sentence for ~~beginning on (date)~~ (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial: Total of 46 days, of which 21 days were spent in hospital.(1)
D94082 PTE ROBERT R
E100828 PTE TREMBLAY J.M 46 DAYS OF WHICH NIL DAYS WERE
A/M (1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under EXPENTIN HOSPITAL

Sentence Awarded by the Court: D94082, PTE ROBERT, R - To undergo detention for ninety (90) days.
E100828 PTE TREMBLAY, J. M-to suffer field punishment for twenty-eight (28) days and forfeit all ordinary pay for a period of twenty eight (28) days.

(Sgd) D W Rose Capt 19 DEC 44 (Sgd) [illegible] President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders. (RPA 57A. Delete if not used.)

Date 20 Dec 44 (Sgd) [signature] Brig
COMMANDER
Commanding 1 CDN BASE RFT GROUP
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKED. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D-94082 Pte. Robert Roger. E-100828 Pte. Tremblay John Marie	22 Dec 44	[signature] Officer Commanding 1 Can Base Reinforcement Depot

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 8 JAN 1945 JAG BRANCH

RECORDED AT CMHQ IN AB 160, 4K-78, 4K-79

CFA96 (To item of APA31) 40-P-M-B/1698 (E2170)

FIELD GENERAL COURT-MARTIAL 4/38B

Convened by Order of BRIG. T. G. GIBSON Comd 1 CDN BASE RFT GP dated 16 DEC 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, 186, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D94082	PTE		ROGER	ROBERT	1 BN 1 C BRD
E100828	PTE		JOHN MARIE	TREMBLAY	1 BN 1 C BRD

Withdrawn Capt & Pte [illegible]

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 19 DEC 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 69/5, for notes and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused are (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused are (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused are (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: Do you object to D62773, Sgt THIBAULT, J.M. as interpreter? Ans NO
The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans. .....
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

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

President	MAJOR	W. G. F. HEPBURN	(CAC)	5 BN 2 C BRD
Member	CAPT	C. D. LOUGH	(CAC)	5 BN 2 C BRD
Member	LIEUT	M. LAFRENIERE	(CIC)	1 BN 1 C BRD
Judge-Advocate	CAPT	D. W. ROSE	(CIC)	HQ 1 C BRD GP.
Prosecutor	CAPT	W. B. SAWDON	(CAC)	1 BN 1 C BRD
Defending Offr	LIEUT	J. R. LAFLECHE	(CIC)	1 BN 1 C BRD

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea .....(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (G)), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused are (are) arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 72. RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 47(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO.(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

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

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

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 2nd 3rd 4th 5th 6th 7th charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission ~~is disallowed on the.....charge(s), and~~ allowed on the 2nd 3rd 4th 5th 6th 7th charge(s), ~~and trial, accordingly, the trial will proceed on the former, but~~ the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

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

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

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

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

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. See CFA 96 No 2 and 3.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

JOINT CHARGE SHEET (No. 1)

The accused, D. 94082, Pte. Roger ROBERT, 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot; and E. 100828, Pte. John Marie TREMBLAY, 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, soldiers of the Canadian Army Overseas, are charged with :-

SECOND CHARGE
Sec. 18 (4)
Army Act

WHEN ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that they,

In the Field, in Italy, on or about 3rd. Nov. 1944, stole 1 pair battle dress trousers; 1 blanket, the property of M. 104335, Cpl. Murphy, T.L., 2 Cdn Base Rft Bn, 1 C.B.R.D., a person subject to military law.

THIRD CHARGE
Sec. 40
Army Act
(Alternative)

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER & MILITARY DISCIPLINE,

in that they,

In the Field, in Italy, on or about 3rd. Nov. 1944, were improperly in possession of 1 pair battle dress trousers; 1 blanket, the property of M. 104335, Cpl, Murphy, T.L., 2 Cdn Base Rft Bn, 1 Cdn Base Rft Depot.

FOURTH CHARGE
Sec. 18 (4)
Army Act

WHEN ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that they,

In the Field, in Italy, on or about 3rd. Nov. 1944, stole 2 blankets, the property of K. 51350, Pte. Parmiter, H.J., 2 Cdn Base Rft Bn, 1 Cdn Base Rft Depot., a person subject to military law.

FIFTH CHARGE
Sec. 40
Army Act
(Alternative)

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER & MILITARY DISCIPLINE,

in that they,

In the Field, in Italy, on or about 3rd. Nov. 1944, were improperly in possession of 2 blankets, the property of K. 51350, Pte. Parmiter, H.J., 2 Cdn Base Rft Bn, 1 C.B.R.D.

SIXTH CHARGE
Sec. 18 (4)
Army Act

WHEN ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that they,

In the Field, in Italy, on or about 3rd. November 1944, stole -

JOINT CHARGE SHEET re:
D. 94082, Pte. Roger ROBERT, &
E. 100828, Pte. John Marie TREMBLAY,(Cont'd)

SIXTH CHARGE
Sec.18(4)
Army Act
(Continued)

2 haversack shoulder straps
2 straps
1 kit bag
2 cartons "Export" cigarettes
1 ground sheet
1 pair canvas shoes
1 pair K.D. longs
1 pair anklets, web
1 cap, field service
1 ration bag
1 pair K.D. shorts

the property of M. 105021, L/Cpl. Pawluk, F.G., 2 Cdn Base Rft Bn, 1 Cdn Base Rft Depot., a person subject to military law.

SEVENTH CHARGE
Sec.40
Army Act
(Alternative)

WHEN ON ACTIVE SERVICE,
CONDUCT TO THE PREJUDICE OF GOOD ORDER & MILITARY DISCIPLINE,

in that they,

In the Field, in Italy, on or about 3rd. Nov. 1944, were improperly in possession of -

2 haversack shoulder straps
2 straps
1 kit bag
2 cartons "Export" cigarettes
1 ground sheet
1 pair canvas shoes
1 pair K.D. longs
1 pair anklets, web
1 cap, field service
1 ration bag
1 pair K.D. shorts

the property of M. 105021, L/Cpl. Pawluk, F.G., 2 Cdn Base Rft Bn, 1 Cdn Base Rft Depot.

[signature] Lt-Col.
(VINCENT McKENNA,)
Officer Commanding,
1 Cdn Base Rft Bn, 1 C.B.R.D.

In the Field,
6 Dec.1944.

Approved for trial
under K.R.(Can) 540
D. D. Bate Capt
ADJA HQ 1 CBRGp.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

[signature]
(T.G. Gibson) Brig
Comd 1 Cdn Base Rft Gp
Cdn Army - CMF

In the Fd
In Italy
16 Dec 44

CHARGE SHEET (No. 2)

The accused, D. 94082, Pte. Roger ROBERT, 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged wity :-

FIRST CHARGE
Sec. 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, at about 0900 hrs. on 24 Oct. 1944, absented himself without leave until apprehended at about 1930 hrs. 3 Nov. 1944. (Total absence, 10 days, 10 hours, 30 minutes.)

Lt-Col.
(VINCENT McKENNA,)
Officer Commanding,
1 Cdn Base Rft Bn, 1 C.B.R.D.

In the Field,

2 December, 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(T.G. Gibson) Brig
Comd 1 Cdn Base Rft Gp
Cdn Army - CMF

In the Fi
In Italy
16 Dec 44

CHARGE SHEET (No 3)

The accused, E. 100828, Pte. John Marie TREMBLAY, 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with :-

FIRST CHARGE
Sec. 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, at about 0900 hrs. on 24 October 1944, absented himself without leave until apprehended at about 1930 hrs. 3 Nov. 1944. (Total absence, 10 days, 10 hours, 30 minutes.)

Vincent McKenna Lt-Col.
(VINCENT McKENNA,)
Officer Commanding,
1 Cdn Base Rft Bn, 1 C.B.R.D.

In the Field,

2 December, 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

T.G. Gibson

In the Fd
In Italy
16 Dec 44

(T.G. Gibson) Brig
Comd 1 Cdn Base Rft Gp
Cdn Army - CMF

The appointment of Capt D.W. Rose, an offr having Legal qualifications, as Judge Advocate is hereby approved by me on behalf of the JAG, pursuant to Overseas MO 4756.

DWR

W. B. Bate

(W.B. Bate) Capt
ADJA
HQ 1 CBRGp

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D.94082	Pte		Roger	ROBERT	1 Bn 1 CBRD
E.100828	Pte		John Marie	TREMBLAY	1 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, ~~has~~ (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 16 Dec 44 endorsed by me, ~~(or by an offr of my staff for me),~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

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

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) W.deC. Hepburn (CAC) (Must be named. RP 106.) 5 Bn 2 CBRD (Unit.)

MEMBERS.

Lieut M. Lafreniere (CIC) 1 Bn 1 CBRD

Capt or Lieut to be detailed by the OC 5 Bn 2 CBRD (Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

Capt or Lieut to be detailed by the OC 2 Bn 1 CBRD (Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.) D.W. Rose (CIC) (Must be named, if any. RP 106.) HQ 1 CBRGp (Unit.)

On Active Service in the Fd

in Italy (Country.)

(Signed personally. RP 105 fn 2.) (T.G. Gibson) Brigadier (Rank.)

Date 16 Dec 44

Commanding 1 Cdn Base Rft Gp, Cdn Army - CMF
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA95 (In lieu of AFA3) 40/P & S/1697 (4931)

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

Wd. del CH
NWR

MEDICAL OFFICER'S CERTIFICATE
(ER (Can) 757)

I certify that I have this morning examined No. D.94082 Rank PTE

Name ROBERT. R. of 1B. 1C BRD and in my opinion he is

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

[illegible] Field
[illegible] Dec. 19/44

[illegible]
(MEDICAL OFFICER)

10 dec 44
HML

MEDICAL OFFICER'S CERTIFICATE
(KR (Can) 557)

I certify that I have this morning examined No E.100828 Rank PTE.

Name TREMBLEY, J.M. of LB. ICARD: and in my opinion he is

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

JMT

In the Field
Date Dec. 19/44

[illegible] Capt
(Medical Officer)

DMC

A7. Lt. J. G. Bruce (OIC) 2 Bn 1 C BRD sworn in as an offr. under instruction.

D3.
1st Witness for the prosecution | M 105 176 Pte Dodd W. W. 1 S Coln
Spec. Employ. Coy duly sworn
is examined by the prosecutor.

On the night of 3 Nov 44 I was on guard duty on the East Wall of Canada Bks. At about 1930 hrs that night a kit bag and blankets came over the wall of Canada Bks. There were I believe 8 blankets, being issue of both Cdn. and American types. There were also a couple of pairs of trousers and a greatcoat. I didnt examine the articles. I dont know what the kit bag contained. I went and got Pte Durham and we waited about 10 yds from the blankets. About 5 min. later two men came along the path by the wall and started to gather up the blankets. The two men were the accused whom I recognized in Court. We arrested them and took them to the guard room. There Sgt McLatchy took charge of them. I watched the kit from the time it was thrown over the wall to the time it arrived at the guard room.

Cross-exam
I dont know who threw the bundle over the wall. The people who picked up the bundle came along the path.
The path was a common thoroughfare.
The people could use the path with honest intentions.
I'd pick up kit I saw on the ground and take it to the guard room if I were walking along the path and found it lying there.

Re-exam
As far as I know the path is not out of bounds.

By Court
I was on the outside of the wall.
You could see about 50 yds at the time.
The blankets and kit bag fell right beside me.

By J.A.
I was standing on the path.
The kit bag was on the path some of the blankets were on the path and some were off the path.
The B.D. was off the path.
The accused were gathering the kit up when arrested.
They were gathering up the blankets.
They never said anything when arrested.
They spoke some French between themselves on the way to the Guard Room.
The Guard Room is about 250 yds from the spot where the kit came over the wall.

R.P. 83 (B) Completed with.

DMR.

2nd Witness for the prosecution } B 138532. Pte Dirksen, U.H 18 Cdn Spec. Employ. Coy. duly sworn. is examined by the prosecutor.

On the night of 3 Nov 44, I was employed on the North wall of Canada Bks on guard duty. My duty was to keep stuff from coming over the wall and the Italians from going over it. At Pte Dodds request I went to help him on the East wall. Just as I arrived a kit bag came from the inside of the wall to the outside. There were some blankets, kit bag and B.D. trousers came over the wall. Dodds and I laid down and waited until the accused arrived. They are in court and I recognize them. They came from the south along the outside of the wall. They walked up to the kit and as they touched the first blanket I stopped them. I made them pick up the equipment and carry it to the guard room. The kit was turned over to Sgt McLatchy. At about 2100 hrs I accompanied Sgt McLatchy to the same place where we picked up a pair of B.D. trousers. The trousers were taken to the guard room where Sgt McLatchy took charge of them.

Cross-exam

I don't know who threw the kit over the wall.

The accused came along the path in a normal manner.

When the accused arrived at the point where the blankets were, they only touched a blanket - I didn't give them a chance to turn them in on their own.

No Re-exam

By Court

There is no gate in the East wall of Canada Bks.

To get out of the Bks you have to go through the South gate.

There is just a footpath along the east wall - it leads to an Italian house.

The wall is about 12 ft high.

By V.A.

I was on the outside of the wall.

The blankets were over the wall before I joined Pte Dodds and the kit bag came over just as I joined Pte Dodd.

I was at the corner of the North and east wall when Pte Dodd called me.

He didn't call very loudly - the kit bag hid him on the lead just as he called.

I didn't know exactly whether he was calling me or halting someone.

The noise of the bag hitting the ground was quite loud.

Both Pte Dodd and I were outside the wall.

Neither the accused said anything to me when I stopped them.

They said something to me between the place they were stopped and the guard room about a

DHR

quarter of a mile away.
They were talking in French.
The kit came over the wall at about 1930 hrs 3 Nov 44.

R.P. 83(B) Complied with.

3rd Witness for Prosecution { A 35205 Sjt. McLatchey, F. H., 18 Coln Spec. Employ Coy. duly sworn, is examined by the Prosecutor.

I was in charge of a guard which patrols the perimeter of the walls of Canada Bks from Sundown to Sunrise. At about 1930 hrs on 3 Nov 44 as the result of inform. I received, I returned to the Guard Room, Canada Bks. There I found two of my guards Pinkson and Dodds - they had the two accused in custody. I recognize the accused who are in Court. Also in the room was a strange pile of blankets, great coat, pair of B.D. pants and a kit bag. The name Pawluk was on the kit bag - The kit bag now shown to me is the same one - Marked Ex A. In the bag were 2 cartons of cigarettes with the name Pawluk on them - produced - marked Ex B. I recognize the running shoes as they have Pawluk's name on them. Marked Ex C. The garters are the same because they have the same no. on them as on the cigarettes - marked Ex D. The other stuff consisting of 1 pr. K.D. longs, 1 pr. K.D. Shorts, 1 ration bag and 1 ground sheet 1 Cap D.S are similar to what I found in the bag. Marked Ex E, F, G, H and I respectively. There were 2 blankets Army issue - some Eng type, some American type. The blankets I cant identify as the same - they are similar - marked Ex K. The B.D. trousers had name of Murphy on them - the B.D trousers marked Ex L are the same. The great coat produced is similar marked Ex M. The second pair of pants which I found later in the evening in company with Dickson are similar to the B.D pants marked Ex N. There were 2 haversack straps and 2 straps in the kit bag. The straps produced are similar - marked O and P respectively. There is a path about the walls of the Bks.

Cross ex'd am

I have no idea who stole the kit or who threw it over the wall.
The first time I saw the stuff was on the floor of the guard room.

no Re exam

no Quest by Court

By V.A.

I didnt speak to the accused and they didnt speak to me.

R.P. 83(B) Complied with.

4th Witness for Prosecution } M 104335 Cpl Murphy T.L. 2 Bn 1CBRD duly sworn. is examined by prosecutor.

On Nov 3, 44 I lost 3 American type blankets, 1 pr of BD trousers, a web belt and a pr. of puttees from the P.E. quarters in Valcartier Block Canada Bks. I last saw them at 1730 hrs on 3 Nov 44. I missed them at 2045 hrs the same night. The trousers I lost had the name Murphy on the inner waist band, there was also a small hole of three sharps Erasers in the left hand outside pocket. The BD trousers marked Ex L are my trousers. I had the initial L on the trade mark of one of the Blankets. I identify this blanket from Ex K as mine. I identify a blanket marked Ex K 1. That is the only one I can identify.

Cross-exam

I dont know who stole the stuff from me.

No Re-exam

No Quest by Court

By J.A. The blanket, Ex K 1, was issued to me.

R.P. 83(B) Complied with.

5th Witness for prosecution } M 105021 L/Cpl Pawluta. 7.C. 2 Bn 1CBRD duly sworn. is examined by the prosecutor.

At about 2130 hrs, 3 Nov 44, I returned to my billets in Valcartier Bldg Canada Bks. and discovered that 3 of my blankets, a great coat, a pr. of trousers and a kit bag containing army and personal effects were missing. In the kit bag were 2 cartons of Export cigarettes. The cigarettes marked Ex B are my cigarettes. The kit bag is white in colour with my no name and initials on it. Ex A is my kit bag. There was a pr. of P.T. shoes with my no and name on the side of the heels - Ex C are my shoes. One pr of gaiters with my no on them - Ex D are my gaiters. 1 pr K D shorts with gestetner ink stains on them also my no. on the inside of the waist band. Ex F are my K.D. shorts. A pr. of K.D trousers with ink stains on them and the cuffs peculiarly sewn by hand. Ex E are my K.D. trousers. One set of haversack straps, new and tied up in a peculiar manner by me - Ex G are my haversack straps. There was 2 straps tied in the same manner. Ex I are my straps. There was a ground sheet with a cigarette burn in it. Ex H is my ground sheet. My Cap P.S. had my initials on the inside. Ex J is my cap. One ration bag with with my no on it. Ex G is my bag.

Cross-exam

I dont know who stole my stuff.

No Re exam

By Court

I last saw the kit just mentioned at about

5 DMR

1730 hrs 3 Nov 44.

The stuff was taken from P.E. quarters
There are about 10 - 15 men in the room.

R.P. 83(B) Complied with.

Court adjourned at 1200 hrs.

Court reassembled at 1400 hrs. The same members being present.

The prosecutor informed the Court that K 51350 Pte Pamiter N.S. a witness on the 4th and 5th charges was not available.

D 4. Def. Offr. Submission.

The Def. Offr submitted that there is not a prima facie case established by the prosecution. No evidence which would tend to point to who stole the goods or as to who was in possession of them. The accused were not allowed to pick them up. The accused were given no chance to turn the articles in. No evidence of any statements being made by the accused - they were within their legal rights in not making statements. Not sufficient evidence submitted on charges 2 - 7 to place the accused on their defence.

Prosecutor's Reply.

The evidence submitted as to the actual taking is common tactics. While this evidence is not as good as that of eye witnesses it is sometimes better. The fact that they came along the path and the guard arrested them and that they made no vehement denial of the transaction. The first thing an innocent man would do when accosted by a guard would be to say "I have just found them". The time between the "bit coming over the wall and the arrival of the accused at the bit would take about the time suggested by the witnesses. This would indicate the guilt of the accused. If you should find that the accused threw the kit over the wall it is up to them to explain possession of the kit. No evidence can be offered on the ownership of the goods mentioned in the 4th & 5th charges due to the absence of a witness.

DMR

Def. Offr.s Reply

The case is supposed to be tried according to the evidence. No evidence directly or indirectly incriminates the accused. No evidence as to who stole the articles. They merely touched the a blanket. At the time of their arrest no one can state but that their actions were honest.

DMR

E 3. (CFA96-2)

Plea for mitigation of punishment

DWR.

D-94082 Pte. Roger Robert

As counsel for the defence I beg to submit to the court that; Pte. Robert, a soldier who landed in Sicily on D day, has been wounded once in action, has been in custody since 3 Nov 44, awaiting trial. I therefore move that a suspended sentence be awarded Pte. Robert, in view of the time he has already spent in custody.

M. R. LaNeile Lieut

counsel for the accused

E3-(CFA 96-3)

Plea for mitigation of punishment

in the case of E-100528 Pte. John Marie

Tremblay

Pte. Tremblay has been a good soldier. He has been wounded twice in action. He has been in custody since 2 Nov 44 awaiting trial. In view of the time that he has already spent in custody, I move that his sentence be suspended.

[illegible]

Counsel for accused

E & R.
5112

Summary of Evidence

in the case of

D - 94082 Pte. Robert Roger, 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken under oath.

First Witness for Prosecution — M - 105176 Pte. Dodd, W. W. 10th Special Employment Company having been duly sworn states:-

As I was on duty on 3 Nov. 1944 at Canada Barracks I saw a kit bag and 2 blankets come over the wall of Canada Barracks. When I saw them I went to get Pte. Dirkes. We both waited about 15 feet from blankets and kit bag and in about 5 minutes time two men came and started to gather up the stuff. We arrested them and brought them into the guard room. The time was around 1930 hrs. The prisoners carried the clothing and kit bag into the guardroom, one of the prisoners being Pte. Robert R. whom I recognize.

Ques. by the Court - What do you mean by "on duty"

Answer - I was on R.P. duty preventing equipment from going over the wall

NMC

My post was along the east wall of Canada Barracks outside.

W.W. Lloyd

The accused declines to cross-examine the witness.

Second Witness for Prosecution — B-138532 Pte. Dinkins V. H., 18th Special Employment Company having been duly sworn states:-

On the night of November 3rd, 1944 I was on guard, my post being the North Wall of Canada Barracks. On account of having a Thompson Sub-Machine Gun I helped out Pte. Dodds. I just came around the corner into his beat when the kit bag dropped. Pte. Dodds came over to me and asked if I would help him. About 5 minutes later the two men came to pick up their stuff. We arrested them and took them to the guardroom. The time was around 1930 hrs. We made the two men pick up all the clothing and take it to the guard room. I myself picked up a boots drill trousers and carried them in about 2130 hrs. The clothing was taken from the prisoners at the guard room by Sgt. McCarthy.

V.H. Dinkins

The accused declines to cross examine the witness.

DWR

Third Witness for Prosecution

A - 35205 Sgt. MacLatchy F.H., 18th Special Employment Coy. having been duly sworn states:

I am A - 35205 Sgt. MacLatchy F.H., 18th Special Employment Company. In the night of the 4 Nov. 1944 I was in charge of Regimental Police Piquet patrolling outside the walls of Canada Barracks. At approx. 1930 hrs. while on patrol, as a result of information I received I returned to the guard room and there found two men who had been arrested and brought to the guard room by Pte. Dodd and Pte. Dirksen. Pte. Dodd pointed out to me a pile of blankets and a large kit bag which I now recognize, the said blankets and kit bag were not touched except to remove them to the guardroom of 1 Bn. and were completely under my control and were never touched by anyone else until the time the Corporal of the Regt. Police of 1 Bn. and myself examined them and took a complete list which I now produce. I recognize Pte. Robert R. as being one of the men who was brought in by Dodds and Dickson.

J.H. McLatchy Sgt.

The accused declines to cross examine the witness.

The bundle of blankets and kit bag and complete list referred to by the witness produced, read over, shown to the accused, marked Exhibit "N" and attached to and forming part of the Summary.

W. Adding Lieut.
Officer Taking Summary

SML

Howick Witness for Prosecution

D-57497 Pte. Laporte G., Storeman for Royal 22nd Coy, 1 Bn., 1 C.B.R.D. having been duly sworn states:-

I am D-57497 Pte. Laporte G., Storeman for Royal 22nd Coy, 1 Bn., 1 C.B.R.D. On the 24th of October 1944 the kit belonging to D-94082 Pte. Robert R. was turned into Company stores.

Ques by Court - Was D-94082 Pte. Robert R. issued with any kit from Coy. stores between 24 Oct 44 and 3 Nov. 44.

Answer by Witness - No.

Ques. by Court - Would a soldier ever be issued with all the kit shown on Exhibit "1".

Answer - It is too much.

Lcpl. Laporte G.

The accused declines to cross-examine the witness.

DMR

Fifth Witness for Prosecution

E-6144 Chl. Dostie R., Orderly Room Clerk, 1 Bn., 1 C.B.R.D. having been duly sworn states:-

I am E-6144 Chl. Dostie R., Orderly Room Clerk, 1 Bn., 1 C.B.R.D. I present for evidence in the case of D-94082 Pte. Robert R. "X" List Royal 22nd Regiment Part II Order issued by Canadian Section, G.H.Q., 2nd Echelon A.A.I. No. 117 dated 4 Nov. 1944 which states that D-94082 Pte. Robert R. was absent from 0900 hrs. 24 Oct. 1944, still absent 0900 hrs 1 Nov. 1944.

R. Dostie

The accused declines to cross-examine the witness.

"X" List Royal 22e Regiment Part II Order No. 117 dated 4 Nov. 44 referred to by the witness produced read over, shown to the accused, marked Exhibit "B" and attached to the Summary.

Y. Jackinn Lieut
Signature of Officer taking Summary

DMC

Question to the Accused

Do you wish to make a statement or to give evidence under oath. You are not obliged to do so but any evidence you give or any statement you make will be taken down in writing and may be given in evidence.

Answer by the Accused

I reserve my defence.

I certify that the foregoing Summary of Evidence consisting of six (6) pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

W Hawkins Lieut
Officer taking Summary of Evidence

In the Field
28 Nov. 1944.

Summary of Evidence

Ex U.
JMR

in the case of

E-100828 Pte. Tremblay John Maurice, 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken under oath.

First Witness for Prosecution

M-105176 Pte. Dodd, W.W. 18th Special employment Company having been duly sworn states:-

As I was on duty on 3 Nov. 1944 at Canada Barracks I saw a kit bag and bundle of blankets come over the wall of Canada Barracks. When I saw them I went to get Pte. Dirksen. We both waited about 15 feet from blankets and kit bag and in about 5 minutes time two men came and started to gather up the stuff. We arrested them and brought them into the guard room. The time was around 1930 hrs. The prisoners carried the clothing with them to guard room on the prisoner being Pte. Tremblay whom I recognize.

Ques. by the Court - What do you mean by "on duty"

Answer - I was on R.P. duty preventing equipment from going over the wall. My post was along the east wall of Canada barracks outside. W.W. Dodd

Page 2 of the Summary of Evidence in the case of DWR
E-108828 Pte. Tremblay J. M.

The accused declines to cross-examine the witness

Second Witness for Prosecution. B-135532 Pte. Dirksen V. H., 18th Special Employment Company having been duly sworn states:—

On the night of 3 Nov 1944 I was on guard, my post being the north wall of Canada Barracks. On account of having a Thompson Sub Machine Gun I helped out Pte. Dodds. I just came around the corner onto his beat when the kit bag dropped. Pte. Dodds came over to me and asked if I would help him. About 5 minutes later the two men came to pick up their stuff. We arrested them and took them to the guardroom. The time was around 1930. We made the two men pick up all the clothing and take it to the guard room. I myself picked up a battle dress trousers and carried them in about 2130 hrs. The clothing was taken from the prisoners at the guard room by Sgt. MacLatchy. V H Dirksen

The accused declines to cross-examine the witness.

Page 3 of the Summary of Evidence in the case of F-100828 Pte Tremblay J.M.

Third Witness for Prosecution

A-35205, Sgt MacLatchy F.H., 18th Dvl Special Employment Coy. having been duly sworn states:

I am A-35205 Sgt. MacLatchy F.H. 18th Special Employment Company. On the night of the 3 Nov. 1944 I was in charge of Regimental Police Piquet patrolling outside the walls of Canada Barracks. At approx. 1930 hrs. while out on patrol as a result of information I received I returned to the guard room and there found two men who had been arrested and brought to the guardroom by Pte Dodd and Pte Dirksen. Pte Dodd pointed out to me a pile of blankets and a large kit bag which I now recognize; the said blankets and kit bag were not touched except to remove them to the guard room of 1 Bn. and were completely under my control and were never touched by anyone else until the time the Corporal of the Regt'l Police of 1 Bn and myself examined them and took a complete list which I now produce. I recognize Pte Tremblay as being one of the men who was brought in by Dodds and Dirksen.

[signature] Sgt

The accused declines to cross examine the witness

The bundle of blankets and kitbag and A The complete list referred to by the witness, produced, read over, shown to the accused, marked exhibit "N" and attached to the summary.

[signature] Washington Lieut
Officer taking summary.

Page 4 of the Summary of Evidence in the case of D-[illegible] Pte. Tremblay [illegible]

Fifth Witness D-57497 Pte Laporte G., Storeman for Royal 22nd Coy. 1 Bn., 1 C.B.R.D. having been duly sworn states:- DWR

for Prosecution

I am D. 57497 Pte. Laporte G. Storeman for Royal 22nd Coy. 1 Bn. 1 C.B.R.D. On the 24th of Oct. 1944 a rifle belonging to Pte. Tremblay was bought to Coy. stores, that is the only bit of kit and equipment I received after Pte. Tremblay went absent on the 24th Oct. 1944.

Ques by Court - Was Pte Tremblay issued with any kit from Coy. stores between 24th Oct 1944 and 3 Nov. 1944.

Answer - No.

Ques. by Court - Would a soldier ever be issued with all the kit shown on Exhibit "A"

Answer - ~~[illegible]~~ It is too much.

Gerard Laporte

The accused declines to cross-examine the witness.

Page 2 of the Summary of Evidence in the case of E-100828 Pte Tremblay J. M.

~~Sixth~~ Witness for Prosecution

E-6144 Cpl. Dostie R, Orderly Room Clerk, 1 Bn, 1 C.B.R.D. having been duly sworn states:-

JMR

I present for evidence in the case of E-100828 Pte. Tremblay J. M. Part II Order X List Royal 22nd Regt No. 117 dated 4 Nov. 1944 which states that E-100828 Pte. Tremblay J. M. ~~was~~ absent from 0900 hrs 24 Oct 1944, still absent 0900 hrs 1 Nov. 1944.

R. Dostie

The accused declines to cross-examine the witness.

Part II Order Royal 22nd Reg't. No. 117 dated 4 Nov 44 referred to by the witness, produced, read over, shown to the accused, marked Exhibit "O" and attached to the Summary.

[illegible] Lieut
Officer taking Summary

[illegible]

[illegible]

[illegible]

Page 6 of the Summary of Evidence in the case of F-108838 Pte Trembley J. M.

DRL

~~The complete list of clothing blankets and equipment referred to by the witness, produced, read over, shown to the accused, marked Exhibit "1" and attached to the Summary~~

~~Ex Jas Kinn Lieut~~
~~Officer taking Summary~~

Question to the Accused

Do you wish to make a statement or to give evidence under oath. You are not obliged to do so but any evidence you give or any statement you make will be taken down in writing and may be used in evidence.

Answer by the Accused

I reserve my defence.

I certify that the foregoing Summary of Evidence consisting of six (6) pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

Ex Jas Kinn Lieut
Officer taking Summary of Evidence.

In the Field
6 November 1944.

Additional

Conjoint Summary of Evidence

in the case of

D-97052 Pte. Robert, Roger, 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, and E-100828 Pte. Tremblay, John Mario, 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, soldiers of the Canadian Army Overseas

The Commanding Officer directs that all evidence be taken under oath.

Lieut. Wilson for Prosecution

~~I am~~ M 104 335 Cpl. T. L. Murphy, 2 Bn, 1 C.B.R.D. having been duly sworn states:-

I am M 104 335 Cpl. T. L. Murphy. 2 Bn, 1 C.B.R.D. having ~~identified~~ examined the exhibit "2" identify a pair of khaki dress trousers because my name appears on the waist band and there is a box containing envelopes in the outside left hand pocket. Produced as Exhibit "A"

I identify my blanket, initialled L. in ink on the trade mark of the blanket Produced as Exhibit "B"

DWC

Question by the Court - How did the articles you now identify leave your possession?

Answer by the Witness - I could not exactly say - they were taken from the P.E. barracks quarters in the Valcartier Building Canada Barracks on 3 Nov. 1944 in the evening. The articles were gone from my possession some time between 1730 hrs and 2045 hrs on the night of 3 Nov. 44

Question

G. L. Murphy

The accused both decline to cross-examine the witness.

The battle dress trousers and blanket referred to by the witness, produced, examined, shown to the accused, marked Exhibits "A" and "B" respectively and attached to and forming part of the Summary.

[illegible]
Officer taking Summary of Evidence.

Seventh Witness for Prosecution

M 105021 L/Cpl. Pawluk F.G. 2 Bn., 1 C.B.R.D. having been sworn states:

I am M 105 021 L/Cpl. Pawluk F. G.
2 Bn. R.C.R.D. having examined the
Exhibit "A" says I recognize my haversack
shoulder straps because they are new
and also the manner in which they are
bound. Produced as Exhibit "C"

I recognize two straps likewise
due to the fact that they are new and
by manner in which they are bound.
Produced as Exhibit "D".

I recognize this kit bag and
my own as it bears my number,
name and initials. (Having my kit bag and examining the contents)
I recognize these
two cartons of export cigarettes as
they bear my number, rank, name initials
and address of my unit. I recognize the
ground sheet by a hole in it caused
presumably by a cigarette. I recognize
one pair of [redacted] by my number,
and name printed on the heel at the side
of each shoe. I recognize 1 pr. of K.D.
shorts by my number, name and initials.
I recognize one ration bag by my number,
printed thereon. I recognize one pair
of K.D. bags by my name and initials

which are written on the inside on the DML waist-band.

~~I recognize one jar of brushless shave cream which is of the same brand as was sent me from Canada several months ago.~~ I recognize one pr. of ~~gaiters~~ anklets web by my regimental number which is written on the inside of each.

I recognize my cap field service by my initials F. G. printed inside

Articles identified placed in kit bag and kit bag and contents marked as Exhibit E.

Question by the Court - How did the articles you now identify ~~[illegible]~~ your possession.

Answer by the Witness - I am not aware of how they left my billets. At approx. 2100 hrs 3 Nov. 44 I discovered three blankets, greatcoat, a pair of battle dress trousers and a kit bag containing issued and personal articles missing from my bed in 2 Bn. P.E. Quarters Valcartier Building. The articles I identified today were the issued and personal within my kit bag on the 3rd Nov. 44.

F. G. [illegible]

The accused both decline to cross-examine the witness.

The shoulder straps, 2 straps and kit bag with contents referred to by the witness, produced examined shown to the accused marked Exhibits 'C', 'D' and 'E' respectively and attached to and forming part of summary.

[illegible]
Officer taking summary of Evidence

DmR

The accused ~~[illegible]~~

Eighth Witness for Prosecution — K-51350 Pte. Parmiter H. J. of 2 Bn. 1 C.B.R.D. having been duly sworn states:-

I am K-51350 Pte. Parmiter H. J. of 2 Bn. 1 C.B.R.D. Having examined the Exhibit "N" I recognize a blanket American issue by a tear in one corner which was there when the blanket was issued to me. Produced and marked Exhibit "F"

I also identify one gray blanket Canadian Army issue due or by two large patches which had been sewn on prior to its issue to me. The entire blanket appearing to have been two sections sewn together to make one blanket. Produced and marked Exhibit "G"

Question by the Court - How did the articles you now identify leave your possession.

Answer by the Witness - That I do not know as they disappeared during my absence from the quarters, situated in the P.E. Section, Valcartier ~~[illegible]~~

DMR

At approx. 1830 hrs. 3 Nov 44 I left the barracks for the Record office 2 Bn. where I remained until Cpl. Murphy notified me that my bed had been stripped and there was a possibility that more of my equipment and personal belongings may have been taken. I checked immediately and discovered that my loss was three blankets, two of which I have just identified.

W. J. Parmiter

The accused both decline to cross-examine the witness.

The two blankets referred to by the witness produced, examined, shown to the accused, marked exhibits "F" and "G" respectively and attached to and forming part of the summary.

W. Jas. Linn Lieut
Officer taking summary of evidence.

Question to the Accused.

Do you wish to make a statement or to give evidence under oath. You are not obliged to do so but any statement you make or evidence you may give

will be taken down in writing and may be given in evidence.

Answer by Pte. Robert R.

I reserve my defence.

Answer by Pte. Tremblay

I reserve my defence

I certify that the foregoing summary of evidence consisting of seven (7) pages was taken down by me in the presence of the accused and that Rules of Procedure 27 (d) (e) (f) and (g) have been complied with.

Signature of Officer taking summary

In the Field
28 Nov. 1944.

Exhibit "O" referred to in the summary of Evidence in the case of D-94032 Pte. Robert R. taken before me this 28th day of November 1944.

W. Jas Kinn Lieut

Signature of Officer taking Summary

This is Exhibit "O" referred to in the summary of Evidence in the case of E-100828 Pte. Tremblay J.M. taken before me this 6th day of November 1944.

W. Jas Kinn Lieut

Signature of Officer taking Summary

Last Order No. 116 1 Nov 44	"X" LIST ROYAL 22e REGIMENT Part II Orders issued by CANADIAN SECTION, GHQ., 2 ECHELON, AAI	This Order No. 117 4 Nov 44

"A" OFFICERS

1. INTERNAL POSTINGS
   (a) Posted from X-4 List (4Bn) to X-4 List (1Bn) 28 Oct 44
   Auth - Cdn 02E/ARS/3698 d/28 Oct 44
   Lieut F.L.J.P.R. Lafleche

   (b) Posted from X-4 List (4Bn) to X-4 List (1Bn) 20 Oct 44
   Auth - LO/T/1535 d/18 Oct 44
   Lieut(A/Capt) D. Dion
   Lieut R. Lachance

2. APPOINTMENTS, PROMOTIONS & REVERSIONS
   (a) Relinquishes the Acting Rank of Captain 31 Oct 44
   Auth - Cdn 56/9/Post/1/5/(MS) d/24 Oct 44
   Lieut(A/Capt) D. Dion X-4 List (1Bn)

"B" OTHER RANKS

3. STRENGTH INCREASE
   (a) T.O.S. X-3 List from Royal 22e Regiment 29 Oct 44
   D124731 Cpl(A/Sgt) Poulin, P.E.

   (b) T.O.S. X-4 List (1Bn) on app from des 1115hrs 28 Oct 44
   E5394 Pte Montreuil, J.

   (c) T.O.S. X-4 List (1Bn) on app from des 1100 hrs 27 Oct 44
   E5223 Pte Paquette, E.

   (d) T.O.S. X-4 List (1Bn) from HQ 12 CIB 13 Oct 44 on Trans from RCASC to CIC Auth - CECB/44/Trans Gen/15(A7) d/5 Oct 44
   D156530 Pte Deslandes, H.

   (e) T.O.S. X-3 List(1 Fd Hosp) on app from des 26 Oct 44
   D15629 Pte Dessureault, P.

   (f) T.O.S. X-3 List from Royal 22e Regiment 24 Oct 44
   C103180 Pte Tremblay, R.S.

   (g) T.O.S. X-4 List (4Bn) on app from des 1145 hrs 24 Oct 44
   D126685 Pte Grenon, H.

   (h) T.O.S. X-3 List from 18 Cdn Spec Emp Coy
   E109077 Pte Lavoie, P.A. 31 Oct 44
   E4808 Pte Labrasseur, J.P. 24 Oct 44

   (i) AMENDMENT: Part II Order No 115 para 4(a) of 1 Nov 44 insofar as it refers to the u/n is cancelled
   E6236 Pte Bilodeau, J.P.

4. INTERNAL POSTINGS
   (a) Posted from X-2 List to X-3 List 23 Oct 44
   G56767 Pte Collette, M.

4. ABSENT POSTINGS(CONT'D)

(a) Posted from X-2 List to X-4 List (4Bn) 28 Oct 44 Released from 1 Cdn Div F.P. Camp

E101303	Pte	Casista,	[illegible]
E100904	Pte	Desrosiers,	A.
D163091	Pte	Ellenberg,	D.
D[illegible]162	Pte	Legault,	[illegible]
[illegible]2433	Pte	Paulin,	L.

(b) Posted from X-5 List to X-4 List (1Bn) 28 Oct 44 Returned from Course at CMTC Benevento

D156511	Pte	Palmer,	L.
E4200	Pte	Zaknic,	G.

(d) Posted from X-3 List to X-4 List (1Bn) 30 Oct 44

D46226	Pte	Ouellette,	H.

(e) Posted from X-2 List to X-4 List (1Bn) 30 Oct 44 Released from 2 Cdn F.P. Camp

E100647	Pte	Sioui,	P.

(f) Posted from X-4 List (1Bn) to X-2 List 28 Oct 44 on comm to 2 Cdn F.P. Camp(awarded 50 days imp with H.L. 23 Oct 44)

M13174	Pte	Arsenault,	A.

(g) Posted from X-3 List to X-4 List (4Bn)

D61506	Pte	Joannette,	J.	28 Oct 44
D128541	Pte	Rousseau,	F.	28 Oct 44
E4576	Pte	Smith,	J.	29 Oct 44

(h) Posted from X-4 List (1Bn) to X-3 List

D142663	Pte	Fontaine,	J.F.	29 Oct 44
[illegible]	Pte	Lacroix,	L.	31 Oct 44
D[illegible]297	Pte	Lavertu,	F.	30 Oct 44
E20345	Pte	Poirier,	[illegible]	30 Oct 44

(i) Posted from X-4 List (4Bn) to X-3 List

D142662	Pte	Cloutier,	F.A.	29 Oct 44
D163091	Pte	Ellenberg,	D.	28 Oct 44
D126685	Pte	Grenon,	H.	28 Oct 44

(j) Posted from X-3 List to X-4 List (1Bn)

D137782	Pte	Boucher,	P.L.	31 Oct 44
D138629	Cpl	Gagnon,	J.[illegible]	31 Oct 44
E10484	Pte	Leblanc,	H.	31 Oct 44
C20991	Pte	Renaud,	J.R.	31 Oct 44

5. ABSENT WITHOUT LEAVE

(a) A.W.L. from 1800 hrs 27 Oct 44 Still absent 1800 hrs 28 Oct 44 (1st day)

D126685	Pte	Grenon,	[illegible]	X-3 List (15 COD)
D51068	Pte	Chaput,	[illegible]	X-3 List (15 COD)
E5597	Pte	Robitaille,	E.	X-3 List (15 COD)

(b) A.W.L. from 0830 hrs 28 Oct 44 Ret from AWL 2230 hrs 27 Oct 44

D5626	Pte	Deile,	O.	X-3 List (1 COD)

"X" LIST ROYAL 22e REGIMENT No. 117
Page -3- 4 Nov 44

F. ABSENT WITHOUT LEAVE(CONT'D)

(c) A.W.L. from 2230 hrs 25 Oct 44 Still absent 2230 hrs 26 Oct 44 (1st day)
D61312 Pte Brissette, A. X-3(1 OCD)

(d) A.W.L. from 2200 hrs 17 Oct 44 App 1105 hrs 28 Oct 44 by 510 Prov Coy C.M.Police
D138048 Pte Chauvette, J.A. X-4 List (1Bn)

(e) A.W.L. from 0800 hrs 18 Oct 44 Surrendered at 1035 hrs 23 Oct 44 to 507 Prov Coy C.M.Police
D136023 Pte Desormeaux, J.A.G. X-4 List (4Bn)

(f) A.W.L. from 0900 hrs 24 Oct 44 Still absent 0900 hrs 1 Nov 44 (8th day)
D94082 Pte Robert, H. X-4 List (1Bn)
E100828 Pte Tremblay, J.A. X-4 List (1Bn)

(g) AMENDMENT Part II Order No 116 para 7(g) of 1 Nov 44 insofar as it refers to the u/n is cancelled
D136023 Pte Desormeaux, J.A.G. X-4 List (4Bn)

G. PUNISHMENTS

(a) On 30 Oct 44 awarded a forf of 21 days pay for an off under AA 15(1) AWL from 0830 hrs 20 Oct 44 to 2230 hrs 27 Oct 44 (absent 7 days 14 hrs) Forfs 8 days pay under FR&I 149(1)(a) Forfs 21 days pay under FR&I 149(2) Total forf of 29 days pay
E5626 Pte Daigle, O. X-3 List

(b) On 30 Oct 44 admonished for an off under AA 15(1) AWL from 1330 hrs 27 Oct 44 to 2200 hrs 28 Oct 44 (absent 1 day 8 hrs 30 mins) Forfs 2 days pay under FR&I 149(1)(a)
D175690 Pte Trudel, J.A.J. X-3 List

(c) On 26 Oct 44 awarded 4 days C.B. for an off under AA 15(1) AWL from 2230 hrs 25 Oct 44 to 0800 hrs 26 Oct 44 (absent 9 hrs 30 mins) Forfs 1 days pay under FR&I 149(1)(a)
C21069 Pte Cote, P.E. X-3 List

(d) Released from 2 Cdn F.P. Camp 30 Oct 44 sentence having expired 4 days remission earned under Rules for Military Prisons and Detn Bks
E100647 Pte Sioui, P. X-4 List (1Bn)

(e) Sentence of 2 Yrs Imp with H.L. awarded 24 Mar 44 vide Royal 22e Regiment Part II Order No 15/44 SUSPENDED 30 Oct 44 509 days pay recredited Auth - Officer i/c Cdn Section GHQ 1 Echelon AAI
D56515 Pte Beaudoin, A.

(f) Sentence of 1 Yr Imp with H.L. awarded 16 Apr 44 vide Royal 22e Regiment Part II Order No 18/44 SUSPENDED 30 Oct 44 167 days pay recredited Auth - Officer i/c Cdn Section GHQ 1 Echelon AAI
D3156 Pte Poirier, J.P.

6. PUNISHMENTS (CONT'D)
(a) [illegible] : Part II Order No 90 para 10(j) of 30 Aug 44 insofar as it refers to the u/n is amended to read" 51 days remission earned"
D1 [illegible]174 Pte Ryan, J.

7. NEXT OF KIN
(a) Next of kin of the u/n is verified as shown:
D137250 Pte Audet, J.A. Mrs. Georgina Audet (Mother)
2576 Iberville, Cartier 24,
[illegible]treal, Quebec, Canada.

8. [illegible] DECREASE
(a) S.O.S. X-3 List to X-9 List [illegible] - Pending [illegible]
[illegible]299 Pte Beaufils, P.R.A. Dr Mech [illegible] "C" 3 Oct 44
D62558 Pte Coulombe, J. Carpenter "C" 30 Oct 44

(b) S.O.S. X-3 List to 16 Cdn Spec Emp Coy 28 Oct 44
E57753 Pte Tremblay, J.
E42588 Pte Poirier, P.E.

J.L. Hayes
(J.L. Hayes) Captain,
for Officer i/c
Canadian Section, GAQ 2 London AAI

Certified true Copy
Wm Sullivan Lieut.
Officer Having Custody of Regt'l Books.

E 4 S

Lord Jx

ARMY FORM B.213.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D.94082	Pte.	ROBERT, R.	1 C.B.R.Bn, 1 C.B.R.D.

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

Note.—As a trial by field general court martial may be exempted from the held conduct sheet.

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

† See para. 677, K.R., 1926.

* The numbers given under these headings should correspond with the numbers in the corresponding columns of the statement, the number being given in the most serious case in each line, and should not be accompanied by any explanation. Insert nil if applicable to any of the columns.

Instructions.—In the event of the accused having been the subject of more than one finding or sentence, the entries must be dealt with separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec. 15 (1)	~~nil~~ 69 times	9 times.
For A.A. Sec. 10 (4)	~~nil~~ 0 times	1 times.
For A.A. Sec. 24 (2)	1 times	1 times.
For A.A.Sec. 24 (1)	1 times	1 times.
For A.A. Sec. 11	1 times	1 times.

~~Sentences awarded by Summary Courts~~

~~Sentences awarded by Courts-martial~~

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

~~The accused has been convicted by a court-martial on ... nil ... and by a court of summary jurisdiction on ... nil ... of the following offences and punishments:—~~

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

4. The accused has been in confinement awaiting trial on the present charges, for ~~nil~~ in civil custody, and ~~31-46~~ 62 days in military custody, making a total of ~~31-46~~ 62 days, of which 21 days were spent in hospital.

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

6. The date of his ~~nil~~ attestation specified in his ~~nil~~ attestation paper is 9 Jan. 1942.

7. The service which the accused is allowed to reckon ~~nil~~ towards discharge or transfer to the reserve is

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

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

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*) ~~nil~~.

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

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

~~nil~~

(P.H.Q.) W1.10882/144 250,000 6/41 A.G.R.W.Ltd. (Gp.698)

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

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

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

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

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

Signed this 19th day of December 1944.

Signature of Officer taking summary

12. The ~~above-named~~ has served as a non-commissioned officer honourably, without reduction, to the present date.

Date of Promotion.

To the rank of _____ years.

In the rank of _____ years

Up the rank of _____ years.

[illegible] any matter in any of the above paragraphs entered or stated from the regimental books the particulars of [illegible] charge, except that in the case of a trial by field general court-martial [illegible] [illegible] [illegible]

No D94082 Name ROBERT, R. Sqn, Battery, or Company Corps CIC Date of enlistment 9 Jan 42 GC Badges Service or Proficiency Pay Ex T. Wd Cty MFM 6 (FH 122) (FAA/106 (3428))

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
UK		Pte		AWL (Absent 7 hrs)		Admonished Forfs 1 days pay under FR&I-149(1)(a)	14 Jun 43		
Field		Pte		(1) AWL (Absent 14 hours) (2) AA 10(4)		21 days pay Forfs 21 days pay under FR&I-149(2) Total 22 days forf of pay.	14 Jul 43		
Field		Pte		AA 15(1)		7 days F.P. 28 days forf pay Forfs 28 days pay under FR&I-149(2) Total 32 days forf of pay	19 Aug 43		
Field		Pte.		AA 15(1)		7 days pay Total 11 days forf of pay	14 Jan 44		
Field		Pte				7 days CB Total forf 3 days pay	4 Feb 44		

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		AA 15(1) (Absent 23 hrs 40 mins)		Admonished	23 Mar 44		
Field		Pte		AA 15(1) (Absent 14 hrs 15 mins)		Forfs 1 days pay 14 days pay Forfs 14 days pay under FR&I-149(2) Forfs 1 days pay under FR&I-149(1)(a) Total 15 days forf of pay.	25 Mar 44		
Field		Pte		AA 15(1)(Absent 6 days 14 hrs 15 mins)		7 days pay Forfs 7 days pay under FR&I-149(2) Forfs 7 days pay under FR&I-149(1)(a) Total 14 days forf of pay.	14 Jun 44		
Field		Pte		AA 15(1) (Absent 6 days 8 hrs 15 mins) AA 24(2)		14 days CB Stoppage of pay $15.41 Forfs 7 days pay under FR&I-149(1)(a) Stopp. of $15.41 under FR&I-158(2)	9 Sep 44		
Field		Pte		(1) AA 15(1) (Absent 6 days 9 hrs 30 mins) (2) AA 24(1)		28 days F.P. ~~28 days pay~~ Forfs 28 days pay under FR&I-149(2) Forfs 7 days pay under FR&I-149(1)(a) Total 35 days forf of pay.	23 Sep 44		

No D94002 Name ROBERT, R. Sqn, Battery, or Company Corps CIC Date of enlistment 9 Jan 42 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/P&S/136 (3438)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		AA 11		10 days pay Forfs 10 days pay under FR&I-149(2)	23 Oct 44		

CERTIFIED TRUE EXTRACTS FROM MFM 4 TO DATE (2 Dec 44).....(Sgd) (F.-- Knight,) Lieut.
(J.L. Hayes) Capt.
for Officer i/c.,
Cdn Sec GHQ 2 Ech AAI

CERTIFIED TRUE COPY FROM REGTL BOOKS IN MY CUSTODY W Jackson Lieut
(Officer in Custody of Regtl Books)

(PTO)

E4V
to delete.

ARMY FORM B 200.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
E. 100828	Pte.	TREMBLAY, J.M.	1 Cdn Base Rft Bn, 1 CBRD.

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

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

The conduct sheets mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 427, K.R., 1940.

* The accused should be confronted with the entry (or entries) in the conduct sheets, particulars being given to the civil prisoner (or his solicitor) as to any recognised system of marking special acts of public duty or distinguished conduct.

Interpretation.—If the charge is for drunkenness the entries for drunkenness need not be stated separately and specially.

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec. 15 (1)	0 times	/ times.
For A.A. Sec. 40	1 times	/ times.
For A.A. Sec. 19	1 times	/ times.
For	times	times.
For	times	times.

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

3. The accused is not under sentence at the present time, *or* the sentence under which he is undergoing punishment is ... days.

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and II 46 days in military custody, making a total of II 46 days, of which nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 21 yrs.

6. The date of his attestation specified in his attestation paper is 11 Jan. 1943.

7. The service which the accused is allowed to reckon for discharge or transfer to the Reserve is ...

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

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

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or award*)).

11. (*If the accused is a warrant officer.*) The accused informs me that he was made a warrant officer and held the regimental rank of ...

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

(Signature) ...

(Rank) ...

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

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

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

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

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

Signed this 19th day of December 1944.

Washington Lieut
Officer having Custody of Regt'l Books.

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

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

WR

E-100828 / Name TREMBLAY, J.M. Sqn, Battery, or Company — Corps CIC — Date of enlistment 11 Jan. 43. — GC Badges — Service or Proficiency Pay n/a — Signature OC Company, etc Maj.P.Simard — Character —

Date of last entry in Company Conduct Sheet n/a — No and date of last drunk n/a — Period not reckoning towards freedom from extra fine n/a — Sheet No 1

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				(a) Sheet dest. after 6 months service, Acc. to R.O. 319 & 2084					
Field	23 Aug.43.	Pte.		Sec.15(1)AA. AWL from 0800 hrs 23 Aug.43 to 1800 hrs.24 Aug.43. (1 day, 10 hours)	Sgt.Lacroix. Cpl.Lavoie	28 days detn. Forf. 30 days pay	31 Aug.43.	Col.F.E.Poirier	FR81.149(1) (a)(b)
Field	12/1/44.	Pte.		A.A.Sec.40-WOAS, was late on morning parade at 0830 hrs.	Sgt.Arbour	3 days C.B.	12/1/44.	Maj. Dugal.	
Field	11/5/44.	Pte.	1	A.A.19 - DRUNKENNESS	Cpl.Colas Drolet	Admonished.	12/5/44.	Maj.J.O.Garceau.	

CERTIFIED TRUE COPY FROM REG'TL BOOKS IN MY CUSTODY

(Officer in Custody of Regtl Books)

(PTO)

STATEMENT BY THE ACCUSED.

I certify having received free of charge, a copy of the Summary of Evidence, list of Witnesses, list of Exhibits and Charge Sheet, and Additional Conjoint Summary of Evidence.

I desire the services of an officer to represent me at the trial.

Date 4 Dec 1944 Robert R.

CHARGE SHEET

STATEMENT BY THE ACCUSED

I certify having received free of charge, a copy of the Summary of Evidence, list of witnesses, list of Exhibits and Charge Sheet, and Additional Conjoint Summary of Evidence.

I desire the services of an Officer to represent me at the trial.

Date 4 Dec 1944.

Timothy J M

CHARGE SHEET

SCHEDULE.

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

Accused: E 100828 Pte JOHN MARIE TREMBLAY

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

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

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

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

Time in confinement awaiting present trial: a total of ..... days, of which ..... days were spent in hospital.(1)

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

Sentence Awarded by the Court:

(Sgd) D W Rose, Capt (Sgd) [signature] (RP 45, 53)

Judge-Advocate, if any. Date awarded. President.

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

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

Confirmed

I direct that the accused be not committed to prison or detention barracks until further order. (1. As to HK. Delete if not used.)

(Sgd) [signature] Brig

Date 20 Dec 44 COMMANDER

Commanding 1 CDN BASE RFT GROUP

Commanding Officer

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

Accused.	Date.	Signature of Offr.
E-100828 Pte Tremblay John Marie	22 Dec 44	[signature] Officer Commanding [illegible] Depot

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFA95 (To Issue of AFA95) 40-P-30-8/1868 (45050) 4/38B

Convened by Order of BRIG. T. G. GIBSON Comd 1 C.B.R.Gp. dated 16 DEC. 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
E 100828	Pte.	JOHN MARIE	TREMBLAY	1 Bn. 1 C.B.R.D.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 19 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Columns do NOT include all relevant fms RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which matrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 108, 132.)

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

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

A3. The Court is opened. The accused is (~~his~~) brought before the Court. At 1315 hours trial commences.

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

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

A5. President to accused: Do you object to D/2773 Sgt RIBAULT AM as interpreter? Ans NO

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

The shorthand writer is sworn.(1)

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18; MML p 742.)

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

President	MAJOR	W. DEC. HEPBURN	(CA)	5 Bn. 2 C.B.R.D.
Member	CAPT.	C. D. LOUGH	(CA)	5 Bn. 2 C.B.R.D.
Member	LIEUT.	M. LAFRENIERE	(CIC)	1 Bn. 1 C.B.R.D.
Judge-Advocate	CAPT	D. W. ROSE	(CIC)	HQ 1 C.B.R.Gp.
Prosecutor	CAPT	W. B. SAWDON	(CIC)	1 Bn. 1 C.B.R.D.
Defending Offr	LIEUT	F. R. LAFLECHE	(CIC)	1 Bn. 1 C.B.R.D.

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

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 83.)

A8. The accused ..... before arraignment make(s) (no) (a) plea. (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

President to accused: Do you wish to make a statement? Ans NO.....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

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

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 535. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

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

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

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

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

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

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*d*). *RP* 45, 120(*A*). 2. *AA* 54(3). *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex V and Ex W respectively.(3)
(1. *MFB* 355 *or MB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas AO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1B), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused : D 94082 PTE ROGER ROBERT

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

(Note : As to Findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 48 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. 2. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial (see RP 46 fn 2) 46 days, of which 21 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

(Sgd) D McRae Capt 19 Dec 44 (Sgd) W de L Hepburn Lt Col
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

Date 20 Dec 44 (Sgd) H Kitchener Brig
Commanding COMMANDER
(Appointment of Offr) 1 CDN BASE REPT GROUP

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

Accused.	Date.	Signature of Offr.
D-94082 Pte Robert Roger	22 Dec 44	Vernon R Stevens Lt Col

Officer Commanding
1 Bn 1 Cdn Base Reinforcement Depot

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFA66 (To issue of APAM) 4/388

Convened by Order of BRIG. I.C.G. GIBSON Comd 1 CDN BASE REPT GP dated 16 DEC 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D 94082	PTE	ROGER	ROBERT	1 BN 1 CBRD

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 19 DEC 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RoPs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 750. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 185, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (A) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1505 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to D/C 2773 Sgt HUBAULT H.R. interpreter ? Ans NO

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

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

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

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

President	MAJOR	W de L HEPBURN	(CAC)	5 BN 2 CBRD
Member	CAPT	C.D. LOUGH	(CAC)	6 BN 2 CBRD
Member	LIEUT	M. LAFRENIERE	(CIC)	1 BN 1 CBRD
Judge-Advocate	CAPT	D.W. ROSE	(CIC)	HQ 1 CBRGP
Prosecutor	CAPT	W.B. SAWDON	(CIC)	1 BN 1 CBRD
Defending Offr	LIEUT	F.R. LAFLECHE	(CIC)	1 BN 1 CBRD

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 31.)

A8. The accused ..... before arraignment make(s) (no) (/) plea
..... (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A66 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

President to accused : Do you wish to make a statement ? Ans NO (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

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

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

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

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

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

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

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

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copies (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex S and Ex 1 respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM a. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182. RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

148. L.

Pte. ROBERTS, A.

O. H. M. S.

M. F. B. 270
725M-6-41 (789-91)
H.Q. 1772-86-67

148.2.

Correspondence to be PINNED here.

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 29th day of July, 1942.

Whereas it appears to me, the undersigned, an officer in Command of R.C.A.S.C. 1 Canadian Corps, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

* Omit if not applicable.

*[~~I am unable to appoint~~ :—

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

*(2. A Field Officer as President.)

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

for the following reasons, namely :—]

PROCEEDINGS REVIEWED

[signature] Capt

Reviewing Officer to [illegible]

31 Aug 42

President.

Rank.	Name.	Regiment.
Major	F.H. Chisholm	1 Cdn Corps Protective Coy

Members.

Rank.	Name.	Regiment.
Captain	L.H. Armstrong	82 Cdn A.A. Bde Coy
Lieutenant	R G Fraser	82 Cdn A.A. Bde Coy

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

**Signed* [signature]

(P.R.Shields) Colonel

Commanding R.C.A.S.C. 1 Cdn Corps

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-77223	1st Charge	Guilty	Guilty	
Private	Sec.15 (1) A.A.			
Roberts, A.	2nd Charge			
R.M.R. (M.G.)	Sec.24 (2) A.A.	Guilty	Guilty	Confirmed
			180 days detention and placed under stoppages of pay for Escort expenses 0/8/2 and to make good equipment loss of £3/6/1½	IRC

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

(Signed) P.R. Shields (P.R. Shields) Colonel
Commanding R.C.A.S.C. 1 Cdn Corps.
Convening Officer (e)

(Signed) [signature]
President.

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

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

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 31st day of July, 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

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

were duly sworn.

* Omit if not applicable.

Signed this 31st day of July 1942.

[signature]
President of the Court Martial.

C. Certificate in case of death sentences.

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

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

Signed this day of 19

President of the Court Martial.

D. Confirmation.

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

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

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

Signed this 3rd day of August 1942.

[signature]
P. R. SHIELDS, Colonel, D.D.S.T., Cdn. Corps.
Confirming Officer.

Promulgated and extracts taken in the case of D77223 Pte Roberts, A.

(a) (Dated) 13 Aug 42 (Signed) [signature] Lt Col. Comd Rmr (MG)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

(51756) Wt. 40115—893 200 m 3/41 P. St. G. 620

Appendix "h"

Application for Field General Court Martial
D77223, Pte. Roberts, A The Royal Montreal Regt. (MG)

CHARGE SHEET

D77223, Pte. Roberts, Arthur, a soldier of The Royal Montreal Regt. (MG) C.A. (A.F.) is charged with while on active service.

FIRST CHARGE Absenting himself without leave,
A.A. 15 (1)

in that he

at Petworth, Sussex absented himself without leave at approx. 1920 hrs, 18 Jun 42 until he was apprehended at Sutton, Surrey by Civil Police at approx 1915 hrs, 20 Jul 42, involving escort expenses of £-:8:2.

SECOND CHARGE Losing by neglect his equipment, clothing and regimental necessaries,
A.A. 24 (2)

in that he

on 27 Jul 42 was deficient of the following articles of clothing, valued at 75% of Ordnance vocabulary prices.

Badge Cap	1	£ 0: 0: 3½
Blouses B.D.	1	1: 2: 0
Boots Ankle prs	1	0:16: 0
Braces prs	1	0: 0:10½
Combs Hair	1	0: 0: 2
Vests P.T.	1	0: 1: 1½
Holdall	1	0: 0: 7
Toothbrush	1	0: 0: 3½
Housewife	1	0: 2: 0
Shirt Angola	1	0: 8: 1
Knife Clasp	1	0: 4: 7½
Ration Bag	1	0: 0: 1
Eye Shields	3	0: 1: 0
Ointment A/G	1	0: 0: 6½
Gas Cape	1	0: 8: 5½
		£ 3: 6: 1½

In the field, 27 Jul 42

(J.A. Calder) Lt. Col.
Commanding R.M.R. (MG)

To be tried by Court Martial.

Field
30 July 42.

(F.R. Shields), Colonel,
D.D.S.T.
1 Cdn. Corps.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL, held at Patworth Sussex on the 31st day of July 1942, by order of Colonel P.R. Shields, D.D.S.T. 1 Cdn Corps dated 30 Jul 42.

PRESIDENT

Major. F.H. Chisolm — 1 Cdn Corps Protective Coy

Members

Capt. L.H. Armstrong — 82 Cdn A.A. Bde Coy
Lieut R.G. Fraser — " "

At 1000 hrs the Court opens.
The order convening the court is read to all present.
The accused after having the names of the president and members of the court read to him stetes that he has no objections to being tried by them. The accused also states he has no objections to the shorthand writer.

Prosecuting Officer - Capt. R.W. Stevens - R.M.R. (MG)
Defending Officer - Lieut E.W. Waud - R.M.R.(MG)

The accused, D77223, Pte. Roberts, A. of The Royal Montreal Regiment (M.G.) C.A. (A.F.) is called and identified.

The charge sheet is read by the President and the accused pleads guilty on both charges. The charge sheet is signed by the President and attached to the Proceedings

The accused was asked if he fully understood the nature of a ples of "Guilty" and he answered "yes". (R.P. 35 (b) complied with)

The Summary of Evidence is read, signed by the President, and attached to the Proceedings.

The accused does not wish to call witnesses as to character.

Plea of mitigation by Defending Officer:-
"The accused was on his way back to rejoin his unit when picked up by Civil Police. They wouldn't believe his story and arrested him. He had already bought his railway ticket. I have no proof of this, but I believe it to be true."

The Prosecuting Officer presented a certified copy of the accused's conduct sheet also Statement as to Character of the Accused (A.F.B. 296) which were signed by the President and attached to the Proceedings.

The court is closed for consideration of sentence.

Appendix E

The Royal Montreal Regiment (MG)
"C" Coy.

Summary of Evidence
D.77253 Pte. Roberts A. R.M.R. (MG)

By direction of the Commanding Officer this Summary is taken on Oath.

First Witness:
P.76097 C.S.M. McIntosh A.B. R.M.R. (MG) having been duly sworn states:-

"I am C.S.M. of "C" Coy., of which the accused is a member. I present as evidence that the accused absented himself without leave at 1930 hrs. 18 Jun. 42. A.F.B. 115 (this is signed and attached as appendix "A"). I also present as evidence that the accused was arrested by the Civil Police in Sutton Surrey at 1915 hrs. 20 Jul. 42. A.F.C. 1618 together with C.M.H.Q. Form 1000:55 showing that escort expenses amounted to eight shillings 2 pence (these are attached and signed as apendices "B" & "C" respectively).

On 27 Jul. 42. I checked the equipment of the accused, and found him to be deficient of the articles as per attached list, which I have priced at 7½ of Ordnance Vocab. Prices. (this is signed and attached as appendix "D").

A. McIntosh C.S.M.
D.76097 C.S.M. McIntosh A.B.

The accused declines to cross-examine this witness.

The accused having been cautioned in accordance with R.F. 4 (c) (~~states~~ declines to make a statement).

~~D.77253 Pte. Roberts A.~~

Taken down by me in the prescence and hearing of the accused this 27th. day of Jul. 42.
Certified that R.F. 4 (c) (d) (e) (f) have been complied with.

W. Laing Major.

APPENDIX A
A Am Intel Bldg

Army Form B 115.

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

RECORD of the Declaration of a Court of Inquiry assembled at Petworth, Sx on the 11th day of July 1942, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D77223, Pte. Roberts, A.

DECLARATION.

The Court declare, that D77223, Pte. Roberts, A. while stationed at Petworth Camp absented himself without leave at 1920 hrs on 18 June 1942, that he is absent without leave 21 clear days on 10 July 42 and that he is still absent without leave and that he is deficient of the following items:

~~Anklets web prs~~	1	£ 0: 2; 7½	
Badge cap	1	0: 0: 3½	
Blouses B.D.	~~2~~ 1	2; 4; 0	1 - 2 - 0
Boots ankle prs	~~2~~ 1	1:12: 0	0 - 16 - 0
Braces prs	1	0: 0:10½	
~~Caps F.S.~~	1	0 : 2: 9	
Combs hair	1	0: 0: 2	
Vests P.T.	1	0: 1: 1½	
~~Respirators complete~~	1	0:19: 0½	
Holdall	1	0: 0: 7	
Tooth Brush	1	0: 0: 3½	
Housewife	1	0: 2: 0	
Shirt angola	1	0: 8: 1	
Knife clasp	1	0: 4: 7½	
Ration Bag	1	0: 0: 1	
Eyeshields prs	~~2~~ 3	0: 2: 0	0-1-0
Ointment A/G	1	0: 0: 6½	
Gas cape	1	0: 8: 5½	
		£ 6: 9: 6½	

Names of President and Members

Major P.H. Barre R.M.R.(MG)
Capt.B.W. Stevens R.M.R.(MG)
D76000, R.S.M. (W.O.1)J.A. Mitchell R.M.R.(MG)

Signature of Commanding Officer [signature] Lt. Col.

CERTIFIED TRUE COPY.

[signature] Capt. RMR(MG)

Signature of Officer having custody of the Original Record.

(12281) Wt.34318/1622 75,000 10/39 A.& E.W.Ltd. Gp.498 Forms/B/115/56

APPENDIX B.

A. McIntosh, Cdn.

Army Form O.1618.

IMMEDIATE.

PART I.

DESCRIPTIVE RETURN of a Deserter or Absentee without Leave.

INSTRUCTIONS FOR THE GUIDANCE OF MAGISTRATES.

(1) When a man is apprehended by the Civil Power as an absentee without leave, or as a deserter, if the information tendered leaves no doubt in the mind of the Magistrate that the prisoner is a soldier, this return should be completed and given to the Police to hand to the escort on arrival.

(2) To avoid delay in the arrival of the escort a telegram stating the Number, Rank, Name and Unit of the soldier should be sent by the Police, as soon as the man is committed, to the Officer Commanding the soldier's Unit. The place where the escort is required to attend should be stated, also whether the soldier *surrendered* or was *arrested*.

(3) Any recommendation for a reward should be made on Part II of this return.

(4) The Court fees chargeable for Descriptive Returns should be claimed periodically from the Command Paymaster of the Command in which the Court is situated.

(5) The stations of all Units are shown in the Monthly Army List, as are also the Depots of Corps.

In the case of doubt as to the location of a particular Unit reference should be made to the nearest O.C. Troops. Where the soldier's Unit is stationed overseas (outside Great Britain, Northern Ireland District, and the Channel Islands) the telegram for an escort should be despatched to the O.C. Depot, who will take all necessary action for its provision.

(*17938) Wt.11813/243 50,000 5/41 A.& E.W.Ltd. Gp.688 Forms/O.1618/55

DESCRIPTIVE RETURN OF Private Arthur Roberts D 77223 who was apprehended at Sutton (hour) 7-15 pm on the 20th day of July 1942 and was ~~committed to Confinement~~ remanded for Escort at Sutton Petty Sessions on the 21st day of July 1942 as a ~~Deserter (or~~ Absentee without leave) from the C Coy ~~Bn~~ of the Royal Montreal Regiment of Petworth

Age 22 Height 5 feet 11 inches

Complexion Pale Hair Brown Eyes Brown

Marks — In uniform or plain clothes uniform

Probable date and place of attestation	3rd March 1940 Westmount
Probable date of desertion or beginning of absence and from what place	18th June 1942, Petworth
Name, occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured	Fred Scrivener P.S. 87W Metropolitan Police
Particulars in the evidence on which the prisoner is committed, and showing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.	* P.S. saw Roberts in High St, Sutton and recognised as being an absentee, he stopped him and he said "Yes, I admit I am A.W.L." he was arrested and charged and made no reply.

I DO HEREBY CERTIFY that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he is an absentee from the before-mentioned Corps.

J J Goossens Signature of Committing Magistrate

Residence

Post Town

21/7/42 Date of Signature

A Roberts Signature of Prisoner

F. Scrivener 87W Signature of Informant

Or where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming

I HEREBY CERTIFY that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the ..... day of ..... for the purpose of obtaining such evidence.

Signature of Magistrate

Residence

Post Town

Date of Signature

‡ Care should be taken to insert Army No. and Rank.

‡ Insert "was apprehended" or "surrendered," as the case may be.

* It is important for the public Service, and for the interest of the Deserter or Absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.

† Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs," or "does not belong to," as the case may be.

Army Form O.1618.

PART II.

This portion of the Form, after the Magistrate has committed the soldier and completed the recommendations as to reward, will be handed by the Clerk of the Court to the Police, who will add overleaf a statement of any expenses incurred by them.

Apprehension of No. D 77223 Arthur Roberts of Royal Montreal Regiment at Petworth on 20/7/42 by P.S. 87 Fred Scrivener who was committed as a ~~Deserter (or~~ Absentee without leave) on the 21/7/42

RECOMMENDATION FOR REWARD.

I RECOMMEND* Fred Scrivener Police Sergeant 87, "W," Division Metropolitan Police

Address Police Station, Sutton, Surrey

for a reward of five shillings (5/-)

J J Goossens Signature of Committing Magistrate.

21st July 1942 Date.

*The Magistrate will insert the name and address (in full) of the person for whom the reward is recommended, and the amount (5/-, 10/-, 15/-, or 20/-) which in his opinion should be granted in this particular case, having regard to the following rules :—

1. When soldiers are apprehended in uniform near their quarters it is considered that as a general rule 5/- is a sufficient reward. Not more than 10/- will be allowed in any case where the soldiers were in uniform.

2. When soldiers are apprehended in plain clothes, at a distance from their units, and after having been absent for some time, the reward may be increased to 10/- or 15/- according to the nature of the cases and the trouble incurred in apprehension. A reward in excess of 15/- will seldom be granted.

3. The reward of 20/- should be strictly reserved for cases where superior intelligence has been displayed in apprehending men in plain clothes, or under difficult or exceptional circumstances.

Rewards and expenses attendant upon apprehensions will be paid by the Command Paymaster of the Command or District in which the soldier's Unit is stationed.

4. No reward can be authorised if the Deserter or Absentee voluntarily surrendered, or if it shall appear that he was in collusion with the person who apprehended him, or if the apprehended man was not a Deserter or Absentee.

The following Statement of expenses (if any) incurred by the Police and chargeable to Army Funds should be certified by a Superintendent or Officer in charge of a station.

No expenses incurred in conveying a Deserter or Absentee from the Court to prison should be charged to Army funds. Such expenses can be included in the claim made on the Prison Commissioners.

The total amount allowed on account of expenses before committal will not together with the reward exceed 40/-.

I CERTIFY that the following expenses were incurred by the_____

Police in connection with the apprehension of_____

_____and are

payable to_____

_____ (Superintendent or Officer i/c Police Station at

Date_____

AUTHORITY for the PAYMENT of a REWARD. (*For Army use only.*)

The Command Paymaster_____is hereby authorised to

pay to_____being the person recommended by the

Committing Magistrate, a reward of_____for the apprehension

of_____

Date_____ _____(O.C. Unit)
Officer Commanding.

Where no reward is authorised though one was recommended by the Magistrate, or where the reward authorised is less than that recommended, a brief explanation will be given below :—

APPENDIX C

Expense Voucher Re—: O. Int. Ethel: K.R. & O. (Can) 539

Reg. No. D-77223 Rank Pte. Name Roberts, A. Unit R.M.R.

The following expenses were incurred in apprehending and returning the M/N Soldier ~~to his Unit From~~ London from Sutton.

Date	21 July 42 Particulars	Amount		
	Escorts return fare from LONDON To Sutton		1	10
	Prisoners single fare to LONDON From Sutton			11
	Prisoners fare from To			~~11~~
	Escorts ~~& Prisoners~~ expenses for ~~Bus~~ Meals, Bus fares			
	Total £		2	9

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

H. J. Genuere Lieut.

Officer Issuing Railway Warrant ~~and Expense~~ monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:55
40/P & S/483

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. D-77223 Rank Pte Name Roberts A. Unit R M R.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London to Thier Bridges

Date	22 July 42 Particulars	Amount		
	Escorts return fare from LONDON To Thier Bridges 1/3 portion		3	1
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Thier Bridges		2	4
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		5	5

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

J. H. Germere Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:55
40/P & S/483

Appendix "D"
List of Deficiencies

of D.77283 Pte. Roberts A.

Hedge Cap	1	0-0-3½
Blouses S.D.	1	1-2-0
Boots Ankle Prs.	1	0-16-0
Braces Prs.	1	0-0-10½
Combs Hair	1	0-0-2
Ve ts P.T.	1	0-1-1½
Holdall	1	0-0-7
Toothbrush	1	0-0-3½
Housewife	1	0-2-0
Shirt Angola	1	0-8-1
Knife Clasp	1	0-4-7½
Ration Bag	1	0-0-1
Eye Shields	3	0-1-0-
Ointment A/G	1	0-0-6½
Cape/Cape	1	0-0-5½
		£ 2-8-1½

27 July. 42.

A. McIntosh Capt.

Appendix F

No. D77223 Name Roberts, A. Sqn., Battery, or Company C Corps RMR (MG) Date of enlistment 13 Mar 40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 137) 17534—7-41 (1219-20) H.Q. 1772-30-1652

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Coteau	16/4/40	Pte		AWL 5 days 6 hrs	CSM Harris	6 days pay 96 hrs Detention		Lt Col Forbes	
"	4/5/40	Pte		AWL 2215 hrs 16/5/40 to 1200 hrs 7/5/40	Pte O'Neill	3 days pay 72 hrs "		Lt Col Forbes	
"	8/5/40	Pte		Conduct etc AA40	Pte Hurst	144 hrs detention concurrent with 72 hrs	2/7/40	Lt Col Forbes	
Valcartier	2/7/40	Pte		AWL 16 hrs 30 min AA15(1)	Sgt. Izotte	1 days pay 7 days C B	5/7/40	Capt White	Forfeits 2 days pay
"	6/7/40	Pte		Conduct etc AA40	Cpl Douglas Sullivan	14 days detention	4/2/41	Lt Col Forbes	
Bordon	29/1/41	Pte		AWL 4 days 22 hrs 30 min AA15(1)	Sgt. Mushet	14 days detention	26/2/41	Lt Col Carpenter	Forfeits 5 days pay
"	22/2/41	Pte		AWL Failing appear place of parade AA15(1)	Cpl. Beaton	14 days C B		Maj C A Baker	
"	2/2/41	Pte		AWL 1 hr 30 min AA15(2)	Sgt. Mushet	14 days C B	~~[illegible]~~	Maj C A Baker	
Aldershot	12/9/41	Pte		AA Sec 11 Disobeying etc	Cpl Lacasse	168 hrs detention	13/9/41	Maj. McQuade	
"	19/9/41	Pte		AA Sec 11 Disobeying SO for soldiers detention	Sgt. Pickling	72 hrs detention	20/9/41	Maj. McQuade	
Farnborough	5/10/41	Pte		AA 15(1) AWL 5 hrs	Hpl Bigley	7 days pay	6/10/41	Lt Col Carpenter	Forfeits 1 days pay
Tr Chefield	2/1/42	Pte		AA 15(1) AWL 2 days 21 hrs 31 min	Cpl Pitcher	10 days F P			
					Cpl Tessier	10 days pay	5/2/42	Maj. MacRae	Forfeits 3 days pay
					Hpl Muchmore				

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the field	22/11/41	Pte		15 (1) AWL 1330, 22/11/41 - 2230 28/11/41 6 dys 9 hrs, While CR	Sgt French C M P	10 dys FP 10 dys loss pay	4 Dec 41	Lt Col Calder	Fnf 9 days pay AF 3 days pay det
" "	24/2/42	"		15 (1) AWL 1900 hrs 24/2/42 - 2130, 24/2/42 2 hrs, 30 min	Sgt French Csm Mr Intosh Sgt Darcy Sgt Montgomery	27 days detention	3/3/42	Maj R H Blaine RMB det	

At the end of two years service a new conduct sheet was made out. There were the above Regimental entries on the old Conduct Sheet.

(signed) J M LAING MAJOR O C C Coy RMR (Ret)

In the field	28/Jan/42	Pte		Neglecting to obey (AA 11) failed to report on sick parade	Sgt Lubnewicz	3 days CB	2 May 42	Maj J M Laing	
"	14/May/42	Pte		Conduct (AA 40) Was sitting on his truck during STAND TO	Csm Mr Intosh Sgt Lubnewicz Sgt Nagy Sgt White	Admonished	14/May/42	Maj J M Laing	AF 6 dys pay AF 2 [illegible]
"	15/Jan/42	Pte		15 (1) AWL 2230, 10 AM - 2300, 14 AM - 3 dys 23½ hrs		14 dys FP, 14 dys pay	18 Jan 42	Maj Pollard A/C	

Certified Copy
Bristow Capt
Ruck (Ret)

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

Bwt

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

Signed this 27th day of July 1942.

Wm Stevens Capt Adj.
Rmk Rcvd

Appendix "G"

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

D77223 Pte. Roberts, A. ..... of the Royal Montreal Regiment (MG)

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with the statement but are not to be annexed to the proceedings.

1See para. 661, K.R., 1940.

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

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

	*Within last 12 months.	*Since Enlistment.
For A.W.L. A.A.15 (1)	$5 Ord times	$11 Ord times.
For Conduct etc. A.A.40	-1 Ord times	3 Ord times.
For Disobeying etc. A.A.11	3 Ord times	3 Ord times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or,

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

2. The accused has not been previously convicted,

or,

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

708. Wt. 44487/2165. 10,000. 2/39. Wy.L.P. Gp. 656. Forms.B296.43.

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

or,

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

4. The accused has been in confinement, awaiting trial on the present charges for Nil days in Civil Custody,

and 7 days in Military Custody.

Total 7 days,

Of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 22 yrs. 14 days

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 13 Mar 40

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

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

9. The accused is entitled to reckon, , years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to

]

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

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

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

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

[INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*]

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

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

Army Number, Rank and Name of the

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

Description of Court by which tried, or status of Officer dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

[*Continued overleaf.*

NN. 70 (Case #2)
TPR ROBERTS A
See L-148 for 1st case

D.77223 Tor Roberts, A.
1 C.A.C.R.U.

NN-70

Correspondence to be PINNED here.

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 2nd day of August, 19 43.

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

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~] 2nd

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

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

*Omit if not applicable.

~~I am unable to appoint~~

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

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

~~for the following reasons, namely:~~ 2nd

Proceedings Returned to 24 Sep 43

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

President.

Rank.	Name.	Regiment.
Major	A.S. Pettapiece	HQ, CRU

Members.

Rank.	Name.	Regiment.
Captain		CSRU
Lieutenant		CERU

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

*Signed [signature]
Commanding [T.C. Rutherford, Brigadier
Commander "E" Group, C.R.U.
Convening Officer.

Arthur S. Pettapiece
Major

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D.77223 Tpr Roberts, A. 1 CACRU	First Charge AA Sec 15(1) Absenting Himself Without Leave	Guilty	Guilty	Finding and sentence confirmed 5 Aug 43 [signature]
	Second Charge AA Sec 15(1) Absenting Himself Without Leave	Guilty	Guilty	
	Third Charge AA Sec 15(1) Absenting Himself Without Leave	Guilty	Guilty	
	Fourth Charge AA Sec 40 Losing by neglect his clothing equipment and Regimental necessaries.	Guilty	Guilty	

Sentenced to undergo detention for a period of nine (9) months and to be put under stoppages of pay until he has made good the sum of $116.49 in respect of the loss of his kit.
3 Aug 43. [signature]

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

(Signed) ..... (Signed) Arthur S. Rettapiere, Major

Commanding [signature] President.
(T. J. Rutherford) Brigadier
Comd. 2nd Group, C.R.U.

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

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

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

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

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

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

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 3rd day of August 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~*(3. The Interpreter)~~ [initials]
~~*(4. The officers under instruction)~~ The officers under instruction [initials]

were duly sworn.

*Omit if not applicable.

Signed this 3rd day of August 1943.

Arthur S. Rettapiere, Major
President of the Court Martial.

C. Certificate in case of death sentences.

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

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

~~Signed this ..... day of ..... 19 .....~~ [initials]

~~*President of the Court Martial.~~ [initials]

D. Confirmation.

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

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

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

Signed this 5 day of Aug 1943

T. J. Rutherford Brig.
Confirming Officer.

Promulgated and extracts taken in the case of D 77223 Tpr. Roberts A 1 CACRU

(a) (Dated) 6 AUG 43 (Signed) Edward M Boothroyd Lt.

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

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

(23579) Wt.48179/850 50,000 2/43 A.& E.W.Ltd. Gp.498

C H A R G E S H E E T

The accused, No. D 77223 Tpr. Arthur, ROBERTS, 32nd Cdn. Recce Regt. (RMR), on the strength of No.1. C. A.C.R.U., a soldier of the Canadian Army Overseas, whilst on Active Service, is charged with,

1st Charge — "ABSENTING HIMSELF WITHOUT LEAVE"

Section 15(1)
Army Act

in that he,

in the Field on the 2nd June 1943, did absent himself without leave from 2200 hours until he surrendered himself to the Guard Room, No.1. C.A.C.R.U. at 2320 hours the 16th June 1943.
Total time absent: 14 days, 1 hour, 20 minutes.

2nd Charge — "ABSENTING HIMSELF WITHOUT LEAVE"

Section 15(1)
Army Act

in that he,

in the Field on the 19th June 1943, whilst under open arrest, did absent himself without leave from 2300 hrs. until he surrendered himself to the Guard Room, No.1. C.A.C.R.U. at 0700 hours the 20th June 1943.
Total time absent: 8 hours.

3rd Charge — "ABSENTING HIMSELF WITHOUT LEAVE"

Section 15(1)
Army Act

in that he,

in the Field on the 20th June 1943, whilst under open arrest, did absent himself without leave from 2300 hrs. until he surrendered himself to the Guard Room, No.1. C.A.C.R.U. at 1000 hours the 24th July 1943.
Total time absent: 33 days, 11 hours.

A.T. PATERSON, Lt. Col.,
Commanding Officer,
No.1. Cdn. Arm'd. Corps,
Reinforcement Unit.

In the Field,
28th July 1943.

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

In the Field
2 Aug 43

(E.L. Rutherford) Brigadier,
Commander "E" Group, C.R.U.

Arthur S. Bethune
Major
President

CHARGE SHEET

The accused, No. D 77223 Tpr. Arthur, ROBERTS, 32nd Cdn. Recce Regt. (RMR), on the strength of No.1. C. A.C.R.U., a soldier of the Canadian Army Overseas, whilst on Active Service, is charged with,

4th Charge

"LOSING BY NEGLECT HIS CLOTHING, EQUIPMENT AND REGIMENTAL NECESSARIES"

Section 24 (2)

Army Act

in that he,

in the Field, on the 27th July 1943, was deficient of the articles below listed having Vocabulary and Part worn values as shown:-

	Voc. Price	Unexp. Wear
Boots, ankle, 1 pr	$4.80	$3.60
Gloves, woollen drab, 1 pr	.59	.45
Shirts, angola drab, 1	2.05	1.54
Brasses, button, 1	.04	.03
Brushes, button, 1	.15	.12
Brushes, shaving, 1	.29	.22
Brushes, tooth, 1	.08	.06
Knives, table, 1	.18	.13
Spoons, table, 1	.08	.06
Forks, table, 1	.09	.06
Holdall, 1	.17	.13
Knives, clasp, 1	1.17	.88
Lanyard, Knife clasp, 1	.02	.02
Razors, safety, 1	.42	.32
Shorts, P.T., 2	.84	.64
Frogs, bayonet, 1	.33	.25
Respirator haversack, Mk VII	1.45	1.09
Outfits Anti-Dimming, Mk V	.05	.04
Ointment, A/G, tins, 2	.36	.30
Eyeshields A/G, Mk 11, 6	.48	.33
Detectors Individual, sleeve 2	.09	.06
Capes, A/G	5.26	3.95
Containers Type E Mk VI,1	.97	.73
Face Piece, Mk V	1.90	1.43
	$ 21.86	$ 16.47

The total Vocabulary value of the above deficiencies amounting to Twenty-one Dollars & Eighty-six Cents, ($21.86) and the total part worn value amounting to Sixteen Dollars & Forty-seven Cents ($16.47)

A.T. PATERSON, Lt. Col.,
Commanding Officer,
No.1. Cdn. Arm'd. Corps,
Reinforcement Unit.

In the Field,
28th July 1943.

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

In the Field
2 Aug 43

(T.J. Rutherford) Brigadier
Commander "E" Group, C.R.U.

Arthur S. Roberts
Major
President

No 1 Canadain Arm'd Corps
Reinforcement Unit

CERTIFICATE MEDICAL FITNESS FOR TRIAL BY FIELD GENERAL COURT MARTIAL

This is to certify thet I have this Morning examined No D- 77223 Tpr Roberts A. and find him fit to under go trial by Field General Court Martial.

In The Field
3 Aug 43

Medical Officer no 1 C.A.C.R.U

Arthur L. Pettypiece, Major

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Blenheim Barracks, Faversham, Kent.
ON THE 3rd DAY OF August 1943

The accused D77223 Fus. Roberts, A. ....Unit. 1 C.A.C.R.U. .....

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

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

The following constitute the Court:-

President Maj. A.G. Cattapan ...Unit. H.Q. C.A.C.R.U....

Members Capt. J.H. MacLean ...Unit. 1 C.A.C.R.U.....

2/Lt. J.B. Millican ....Unit. 1 C.A.C.R.U....

The officers under instruction are duly sworn:-

Lt. H.R. Burditt - 1 C.A.C.R.U.
2/Lt. R.W. Vicks - H.Q. 1st Corps Troops Unit
..... - 1 C.A.C.R.U. Unit
Prosecutor F/Lt. A. Scorgie .....Unit. 1 C.A.C.R.U....

Defending Officer F/Lt. W.F. White ....Unit. 1 C.A.C.R.U....

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, ~~AFB 296~~ and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

~~(a) Makes a statement in mitigation of punishment.~~
~~(b) Calls witnesses as to character.~~
~~(c) Calls witnesses in mitigation of punishment.~~
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

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

1st Witness D76042 A/Sgt. Charlotte, H.H.T. of 1 C.A.C.R.U. having first been duly sworn, states:- I recognise the accused. From records pursuant to R.P. 37 in my possession, the accused was limited in the latter part of Jan 43 to being absent at 2 hrs. I have not got the latter part but I consider it yesterday to refresh my memory.

Arthur H. Charlotte

Reg. Prontigation of punishment. 3 Aug 1[illegible]

Mr Roberts A

First of all I would like to run over briefly the service of this man. Prior to joining up to come to England to serve his country he was employed as an apprentice to a pavier maker. ~~[illegible]~~ He was young being 20 years old and he arrived here 3 years ago.

Now I would ask the court to be lenient with this man ~~as I believe that in stay~~ on compassionate grounds. In staying with his wife when she was in trouble he only did what any honorable man would do. As his previous record has not been any too good he figured that he would not get leave in order to fix things up. And as soon as things were more or less under control he returned to take his punishment. From his sworn statement I think that he has had plenty of trouble already. He and his wife and child are not wanted at home and the reason he moved his wife back after leaving home was that he could not afford to pay the £10.0 a week which he was being charged. In view of all this I have no hesitation in asking to the court to be lenient with Mr Roberts.

See next sheet

~~Reed [illegible]~~

~~Adjusting Officer~~

CAP

SUMMARY OF EVIDENCE (CONT'D)

FIRST WITNESS for the PROSECUTION (Cont'd)

Tpr. Roberts agreed at the Kit Inspection that he was deficient of the articles stated. I produce herewith a Certified True Copy of M.B.M. 1 Part III for D 77223 Tpr. Roberts, A. showing the state of his Kit at this date. [redacted] The Pt. III M.B.M. 1 is marked Exhibit "A" and attached to the Summary.

The accused declines to cross-examine this witness.

M 53306 Sgn. C.M.S. Scott, D.E.
32nd Cdn. Recce Regt. (RMR),
No.1. C.A.C.R.U.

SECOND WITNESS for the PROSECUTION

L 53519 L/Cpl. Rice, C.A., 8th Cdn. Recce Regt. (14H), on the strength of No.1. C.A.C.R.U., having been duly sworn states,

"I am employed with the Regt'l Police of No.1. C.A.C.R.U. At approximately 2330 hrs 16 Jun 43, I was on duty in Woking and on passing the Southern Railways Station. the accused whom I identify as Tpr. Roberts, 32nd Cdn. Recce Regt. (RMR) came up to me and told me that he was reporting in as he had been absent. I brought him into camp and placed him under close arrest."

The accused declines to cross-examine this witness.

L 53519 L/Cpl. Rice, C.A.,
8th Cdn. Recce Regt. (14H),
No.1. C.A.C.R.U.

THIRD WITNESS for the PROSECUTION

M 15632 L/Cpl. Abraham, H.B., 4th Cdn. Recce Regt. (PLDG), of the strength of No.1. C.A.C.R.U., having been duly sworn, states,

"I am one of the Regt'l Police of No.1. C.A.C.R.U. On 24 Jul 43 I was on duty at the Guard Room when Tpr. Roberts, 32nd Cdn. Recce Regt. (RMR), whom I identify as the accused report to me at 1000 hrs. I placed him under close arrest."

The accused declines to cross-examine this witness.

M 15632 L/Cpl. Abraham, H.B.,
4th Cdn. Recce Regt. (PLDG),
No.1. C.A.C.R.U.

FOURTH WITNESS for the PROSECUTION

D 77973 L/Cpl. Snutch, R., 32nd Cdn. Recce Regt. (RMR), on the strength of No.1. C.A.C.R.U.

I certify that in my opinion the attendance of this witness is, owing to the loss of time involved and the exigencies of the service, not readily procurable, and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Exhibit "C".

E.F.H. Boothroyd, Lieut.
32nd Cdn. Recce Regt. (RMR),
Officer detailed to take down Summary.

(continued)

The last AWOL for which he received 6 months was because he had the girl in trouble and asked for permission to marry he was refused by his boy. Ends on account of his husband. He then took the law in his own hands and went to his and tried to get married without permission. He failed and he stayed until the baby was born and then returned to camp and was sentenced to 6 months later he was free again he then obtained permission and married the girl.

Asst. Provost Marshal

SUMMARY OF EVIDENCE (CONT'D)

AT WITNESS for the DEFENCE

I stayed at home with her to see how she would be getting on, but her father came home one day on leave, and started picking on her right away, using foul language, which I told him to stop or there would be trouble. My wife told me to go out for a walk so I wouldn't cause any trouble in the house. I stayed out for a couple of hours and then on my return I went into the house and saw my wife. Her father had beat her up pretty bad in the face, I did not see the father, as he went back to camp that night. I then stayed around the house waiting for him to come on leave again. I stayed around for about 15 days, which made me absent about 32 days, so I told my wife that if he did not come back the following day that I would have to go back and report at camp which I did."

A. Roberts
D 77223 Tpr. Roberts, A.,
32nd Cdn. Recce Regt. (RMR),
No.1. C.A.C.R.U.

The accused does not call any witness for the defence.

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

Edward M Boothroyd
E.F.M. Boothroyd, Lieut.,
32nd Cdn. Recce Regt. (RMR),
Officer detailed to take down the Summary.

In the Field,
28th July 43.

28 Jul 43

O.C.
1 C.A.C.R.U.

M.B.M. 1 Part 111 PROPERTY OF D77223 Tpr Roberts A.

1. I have this date witnessed SQMS Scott D.E. compile a Certified True Copy of my MBM 1 Part 111 issued under date of 22 Feb 43.

A. Roberts
(A. Roberts) Tpr.

D. E. Scott
(D.E. Scott) SQMS

CERTIFIED COPY OF ORIGINAL

EXHIBIT "A"

MILITIA BOOK M. 1

PART III

40/P & S/279 (2687)

CANADIAN ARMY

Clothing and Equipment Statement

Regt. No. D77223

Rank Tpr

Name Roberts A

CLOTHING SIZES RECORD

ARTICLE	SIZES
Anklets	
Battle Dress, blouse	
Battle Dress, trousers	
Cap or bonnet	
Boots, ankle	
Socks	
Gloves	
Facepiece, respirator	
Greatcoat	
Overalls, combination	
Jersey, pullover	
Shirts, Aertex, drab	
Vest, woollen	
Drawers, cellular	
Drawers, woollen	

INSTRUCTIONS TO SOLDIER

1. You will always carry this book on your person and are responsible for its safe custody. (Officers need not carry this book on their person, but will be responsible for its safe custody.)

2. You will initial at the bottom of each page to signify that you understand its contents and have received the quantities entered.

3. Do not alter or make entries in this book. Disobedience of this order will be treated as a serious offence and disciplinary action will be taken.

4. You will at once report the loss of this book to your Commanding Officer.

GENERAL INSTRUCTIONS

1. This statement will be used to record the quantities of clothing and equipment to which the soldier is entitled and has been issued. Entries will be made in ink.

2. A new column will be used when the list of kit changes with the soldier's status. Old columns will be ruled out.

3. On transfer of the individual, the certificate at end of statement will be completed and signed.

4. This statement replaces Form M.F.C. 905 and adaptations thereof.

1

ARTICLE	QUANTITY					
Anklets, web, prs.	1					
Blouses, Battle-dress	2					
Bonnet, tam-o'shanter	1					
Boots, ankle, prs.	2					
Boots, lumbermans, rubber, prs.						
Boots, rubber, high, prs.						
Bonnet, drab, Irish						
Cap, field service	1					
Cap, mechanic	1					
Cap, tank battalion	2					
Drawers, Cellular short, prs.	2					
Drawers, Woollen, prs.	1					
Gloves, knitted, drab, prs.	1					
Greatcoat, drab	1					
Jackets, sweater						
Initials of Soldier	R.B.					

ARTICLE	QUANTITY
Jerkin, leather	1
Jersey, pullover	1
Overalls, combination	1
Overalls, blouse, denim	1
Overalls, trousers, denim	1
Shirts, angola, drab	2
Shoes, marcar, prs.	1
Socks, prs.	4
Trousers, battle-dress, prs.	2
Vests, woollen	2
Badges, arm, desk, crowns	1
Badges, arm, desk, crown in wreath	1
	1
	1
	1
Badge, cap	1
Initials of Soldier	GA

ARTICLE	QUANTITY
Badge, shoulder, "CANADA" prs.	1
Badges, arm Tank Bn.	1
Bag, fit, universal	1
Braces	1
Brim, cleaning	1
Brush, button, brass	1
Brush, clothes	1
Brush, hair	1
Brush, shaving	1
Brush, shoe, blacking	1
Brush, shoe, polishing	1
Brush, tooth	1
Cap, conductor	1
Cartons	1
Comb, hair	
Initials of Soldier	GA

ARTICLE	QUANTITY
Dice, identity, sets with cord	1
Dressing, field	1
Fork, M.S. Table	1
Holdall	1
Housewife, complete	1
Knife, clasp	1
Knife, table	1
Lanyard	1
Razor, safety, with blade	1
Patches, distinguishing, pr.	2
Shorts, gymnastic	1
Sponge	1
Spoon, M.S. Dessert	2
Vests, cotton, gym.	
Initials of Soldier	G.H.

ARTICLE	QUANTITY
Towels, hand	2
Unit fillies, prs.	3
Attachments, brace	1
Bag, ration	1
Belt, waist	1
Bottle, water	1
Braces, W.E.	2
Carriers, cartridges	2
Carrier, waterbottle	1
Case, pistol	1
Cover, breech, rifle	1
Cover, Mess tin, set	1
Frog, bayonet	1
Haversack	1
Initials of Soldier	G.H.

ARTICLE	QUANTITY
Helmet, steel	1
Net, helmet camouflage	1
Pack	1
Pouches, Ammunition, pistol	
Pouches, Basic	
Pouches, utility	
Sling, rifle	1
Straps, shoulder, haversack	2
Straps, supporting, web	2
Tool, intrenching	1
Yoke	
Respirator, Anti-gas complete with haversack	1
Outfit, anti-dimming	1
Initials of Soldier	G.H.

ARTICLE	QUANTITY
Ointment, Anti-gas, tins	2
Eyeshields, Anti-gas (Pk. of 6)	V
Detectors, individual prs.	1
Capes, Anti-gas	1
Wallet, Anti-gas	1
PHMP A/G	1
Bayonet	[illegible]
Bottle, oil	[illegible]
Pistol, revolver (S—)	[illegible]
Pull-through, single	[illegible]
Rods, cleaning, pistol	
Initials of Soldier	G.H.

ARTICLE	QUANTITY					
Rifle (No. 95043)	[illegible]					
Scabbard, bayonet	[illegible]					
Sheet, ground	1					
Mug, drinking	1					
Blanket	1					
Initials of Soldier	[illegible]					
Initials of Inspecting Officer	[illegible]					
Date	[illegible]					

CERTIFICATE TO BE SIGNED BY INSPECTING OFFICER AND SOLDIER ON TRANSFER OR ATTACHMENT OF SOLDIER

Certified that the record detailed in this statement has been checked with the articles in possession of the soldier and found correct.

SIGNATURE

Inspecting Officer	Soldier	Date
[illegible]	G. Roberts.	28 JUL 1943

Exhibit "B".

Army Form B 115.

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

RECORD of the Declaration of a Court of Inquiry assembled at The Field on the 15th day of July 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION.

The Court declare that D-77223 Tpr. Roberts, A. "B2" Sqn. No.1. CACRU illegally absented himself without leave at Inkerman Bks, Surrey on the 20th Day of Jun 43, that he is still so absent and that on the 15 day of Jun 43 he was deficient the undermentioned articles.

	Voc. Price	Unex. Wear
1 Badge, cap	$0.09	$0.09
1 Badges, shoul.	.08	.05
1 Blouse, B.D.	6.18	4.64
1 Trouser, B.D.	6.23	4.68
2 prs. Boots, Ank.	9.60	7.20
1 pr. Braces, Trous.	.29	.22
1 Brasses, button	.04	.04
1 Brush, button	.15	.12
1 Brush, shaving	.29	.22
1 cap, tank Bn.	.86	.65
1 comb, hair	.04	.03
1 fork, table	.09	.09
1 Holdall	.17	.13
1 Knife, clasp	1.17	.88
1 Knife, table	.18	.18
1 Razor, safety	.42	.32
2 shirts, drab	4.10	3.08
1 spoon, table	.08	.08

	Voc. Price	Unex. Wear
2 shorts, gym	$0.84	$0.64
(1 respirator) (1 container (E))	.97	.73
1 facepiece	1.90	1.43
1 haversack	1.45	1.09
2 boxes Oint. A/G	.36	.30
6 eyeshields	.48	.36
2 detect. sleeve	.10	.08
1 cape A/G	5.26	3.95
	$ 41.42	$ 31.28

Names of President and Members Capt. J.W. Duncan, President, No.1. C.A.C.R.U.
Lieut. G.E.J. Clacy, Member, No.1. C.A.C.R.U.
Lieut. R.S. Sealey, Member, No.1. C.A.C.R.U.

Signature of Commanding Officer (Sgd) A.T. PATERSON, Lt. Col. C.O., No.1. C.A.C.R.U.

CERTIFIED TRUE COPY.

[signature]

Signature of Officer having custody of the Original Record.

(12581) Wt.34318/1622 75,000 10/39 A.& E.W.Ltd. Gp.468
(13443) Wt.45725/760 225,000 1/40 " " Forms/B115/56

B-2 Squadron
29 Jun 43

EXHIBIT "C"

STATEMENT OF EVIDENCE
ON
D77223 Tpr Roberts A
BY
D77973 L/C Snutch R

SIR:

1st Witness

While acting as Sqn Ord Col on the 19th od June 1943 I called the Tattoo roll call at 2300 hrs and found Tpr Roberts A to be absent. I reported same in the usual manner. He reported in at 0700 hrs 20 Jun 43.

At 2300 hrs 20 Jun 43 I again called the Tattoo roll and found that Tpr Roberts A was absent,

R. Snutch
(R. Snutch) A/L/ Cpl
B-2 Squadron

FORM OF APPLICATION FOR A COURT-MARTIAL

32nd Cdn. Recce Regt. (RMR) 1 CACRU Regiment

Station In the Field Date 28th July 1943

Application for a Field General Court-Martial

SIR,

I have the honour to submit four charges against

No. D 77223 Tpr. Roberts, A.

of the unit under my command, and request you will obtain the sanction of higher authority that a Field General Court-Martial may be assembled for his trial at The Field

The case was investigated by (a) Major M.A. Willis, O.C. "B2" Sqn. No.1. CACRU
Lt.-Col. A.T. Paterson, D.S.O., C.O. 1 CACRU
Lieut. R.F.H. Boothroyd, 32nd Cdn. Recce Regt. (RMR)

A Court of Inquiry was held on (b) 15th July 43 (date)

at The Field (Station).

President Capt. J.W. Duncan, O.C. "B1" Sqn. 7th Cdn. Recce Regt. (17H) 1 C.A.C.R.U. Ranks,

Members Lieut. G.E.J. Clacy, No.1. C.A.C.R.U. Lieut. A.M. Mealey, No.1. C.A.C.R.U. names and corps.

The accused is now at The Field His general character is (c) Good

I enclose the following documents (d):—

1. copy Charge Sheet (in duplicate) (e).
2. Summary of Evidence, original (f) and one copy ~~copies~~.
3. Original Exhibits (g).
4. List of witnesses for the prosecution and defence (with their present stations or addresses) (g).
5. List of Exhibits (h).
6. ~~Correspondence (g)~~.
7. Statement as to character (M.F.B. 355) and regimental and company, etc., conduct sheets (or Field Conduct sheets) of accused (g).
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (R.P. 14 (B)) (h).

Prosecutor: Lieut. J.A. Brooks, No.1. C.A.C.R.U.

Your obedient servant,

Signature of Commanding Officer A.T. Paterson

A.T. PATERSON, Lt. Col.,
Commanding Officer,
No.1. Cdn. Arm'd. Corps,
Reinforcement Unit

To: Commanding Officer,
Headquarters,
"E" Group, C.R.U.

MEDICAL OFFICER'S CERTIFICATE

I certify that No. D 77223 Tpr. Roberts, A., 32nd Cdn. Recce Regiment is* fit to undergo trial by Court-Martial.

30 Jul 43

Signature of the Medical Officer

M.O., No.1. C.A.C.R.U.

* Insert "fit" or "unfit."

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

M.F.B. 331
(A.F.B. 118)
25M—5-41 (562)
H.Q. 1772-30-481

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No. D 77223 Tpr. ROBERTS, 32nd Cdn. Recce Regt. (RMR), on the strength of No.1. C.A.C.R.U., a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on Oath.

FIRST WITNESS for the PROSECUTION

M 53306 Sqn.Q.M.S. Scott, D.E., 32nd Cdn. Recce Regt. (RMR), on the strength of No.1. C.A.C.R.U., having been duly sworn, states,

"I am the Sqn.Q.M.S. of "B2" Sqn. No.1. C.A.C.R.U., and I identify the accused as Tpr. Roberts who was formerly on the strength of my Sqn. While Acting as Sqn.S.M. on the 19th & 20th Jun 43, the Orderly Cpl. reported to me that Tpr. Roberts had failed to answer Tattoo Roll call on the 19th and handed me a Tattoo Report on which Tpr. Roberts was shown as absent from 2300 hrs 18 Jun 43, I saw Tpr. Roberts on the morning of Sunday 20 Jun at approximately 0700 hrs and told him that he had been reported as absent from Tattoo Roll call the previous night and I placed him under open arrest and warned him to be prepared for Sqn. Comdr's Office on Monday. A/Sgt. Boyer reported to me at 2300 hrs 20 Jun 43 that Tpr. Roberts had just failed to answer his name at Tattoo and handed me a Tattoo report showing Tpr. Roberts as absent from 2300 hrs 20 Jun 43. Sgt. Boyer again reported to me at 0730 hrs 21st Jun 43 that Tpr. Roberts was absent from Reveille Roll Call. On 21 Jun 43 as Acting Sqn.S.M. I searched the whole of my Sqn. Area and the course of my duties led me to cover most of the remainder of the barracks, and I did not see Tpr. Roberts. The next time I saw Tpr. Roberts was at approximately 1100 hrs 24 Jul 43. I was on leave from 28 Jun to 7 Jul 43. During the remainder of the period 21 Jun - 24 Jul I attended most of the Sqn. parades in my capacity as Sqn.Q.M.S. and I did not see Tpr. Roberts on any parade. On the 21st or 22nd Jun, I think the 21st, I went to Tpr. Roberts sleeping quarters and gathered up all his identifiable Kit and equipment, and took it into the Sqn. Stores for storage. On the 14 Jul 43, I brought out the Kit in storage and checked all items off, in my possession and submitted a deficiencies report as per R.O. 2111. I again inspected Tpr. Roberts' Kit in his possession and in his presence on 27 Jul 43 at 1500 hrs, and found him to be deficient in the following articles having vocabulary and part worn prices as follows:-

	Voc. Price	Unex.W.	Unex.W
Boots, ankle, 1 pr	$ 4.80	20-16-1	$ 3.60
Gloves Wollen drab, 1 pr	.59	0- 2-0	.45
Shirts, angola drab, 1	2.05	0- 6-11	1.54
Brasses, button, 1	.04	0- 0-1½	.03
Brushes, button, 1	.15	0- 0-6½	.12
Brushes, shaving, 1	.29	0- 1-0	.22
Brushes, tooth, 1	.08	0- 0-3	.06
Knives, table, 1	.18	0- 0-7	.13
Forks, table, 1	.08	0- 0-3	.06
Spoons, table, 1	.09	0- 0-3½	.06
Holdall, 1	.17	0- 0-7	.13
Knives, clasp, 1	1.17	0- 3-11½	.88
Lanyard, knife clasp, 1	.02	0- 0-1	.02
Razors, safety, 1	.42	0- 1-5½	.32
Shorts, P.T. 2	.84	0- 2-11	.64
Frogs, bayonet, 1	.33	0- 1-1½	.25
Respirator, haversack (Mk7), 1	1.45	0- 4-11	1.09
Outfit Anti/Dim (mkv) 1,	.05	0- 0-2	.04
Ointment A/G tins, 2	.36	0- 1- 4	.30
Eyeshields, A/G, (Mk 11) 6	.48	0- 1-6	.33
Detectors, individual sleeve, 2	.09	0- 0-3½	.06
Capes, A/G, 1	5.26	0-17-8	3.95
Containers Type "E" Mk VI	.97	0- 3-3	.73
Face Piece, Mk V	1.90	0- 6-5	1.43
	$ 21.86	23-13-8	$16.47

FIRST WITNESS for the PROSECUTION (Cont'd)

Tpr. Roberts agreed at the Kit Inspection that he was deficient of the articles stated. I produce herewith a Certified True Copy of M.B.M. 1 Part III for D 77223 Tpr. Roberts, A. showing the state of his Kit at this date. ~~This M.B.M. I Kit. III was created by me today 24 Jul 43 as Tpr. Roberts was not in possession of his original Pt. III.~~ The Pt. III M.B.M. 1 is marked Exhibit "A" and attached to the Summary.

The accused declines to cross-examine this witness.

D E Scott

M 53306 Sqn.Q.M.S. Scott, D.E.
32nd Cdn. Recce Regt. (RMR),
No.1. C.A.C.R.U.

SECOND WITNESS for the PROSECUTION

L 53519 L/Cpl. Rice, O.A., 8th Cdn. Recce Regt. (14H), on the strength of No.1. C.A.C.R.U., having been duly sworn states,

"I am employed with the Regt'l Police of No.1. C.A.C.R.U. At approximately 2330 hrs 16 Jun 43, I was on duty in Woking and on passing the Southern Railways Station. the accused whom I identify as Tpr. Roberts, 32nd Cdn. Recce Regt. (RMR), came up to me and told me that he was reporting in as he had been absent. I brought him into camp and placed him under close arrest."

The accused declines to cross-examine this witness.

Lcpl O.A. Rice

L 53519 L/Cpl. Rice, O.A.,
8th Cdn. Recce Regt. (14H),
No.1. C.A.C.R.U.

THIRD WITNESS for the PROSECUTION

M 15632 L/Cpl. Abraham, H.B., 4th Cdn. Recce Regt. (PLDG), on the strength of No.1. C.A.C.R.U., having been duly sworn, states,

"I am one of the Regt'l Police of No.1. C.A.C.R.U. On 24 Jul 43 I was on duty at the Guard Room when Tpr. Roberts, 32nd Cdn. Recce Regt. (RMR), whom I identify as the accused reported to me at 1000 hrs. I placed him under close arrest."

The accused declines to cross-examine this witness.

L/Cpl H B Abraham

M 15632 L/Cpl. Abraham, H.B.,
4th Cdn. Recce Regt. (PLDG),
No.1. C.A.C.R.U.

FOURTH WITNESS for the PROSECUTION

D 77973 L/Cpl. Snutch, R., 32nd Cdn. Recce Regt. (RMR), on the strength of No.1. C.A.C.R.U.

I certify that in my opinion the attendance of this witness is, owing to the loss of time involved and the exigencies of the service, not readily procurable, and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Exhibit "C".

Edward M Boothroyd

E.F.H. Boothroyd, Lieut.
32nd Cdn. Recce Regt. (RMR),
Officer detailed to take down Summary.

(continued)

SUMMARY OF EVIDENCE (CONT'D)

FOURTH WITNESS for the PROSECUTION (Cont'd)

I do not require the attendance of this witness for the purpose of cross-examination.

A. Roberts
D 77223 Tpr. Roberts, A.,
32nd Cdn. Recce Regt. (RMR),
No.1. C.A.C.R.U.

FIFTH WITNESS for the PROSECUTION

Lieut. C.H. Davis, C.A.C. General List on the strength of No.1. C.A.C.R.U., having been duly sworn states,

"I am the A/Adjt. of No.1. C.A.C.R.U. and as such have custody of the Regt'l Books and documents. I produce herewith A.F.B. 115 being a certified true copy of the entry in A.B. 161 of the Declaration of a Court of Inquiry into the illegal absence of D 77223 Tpr. Roberts, A., and I identify the accused as the person referred to in the document I produce. A.F.B. 115 is marked Exhibit "B" and attached to the proceedings."

The accused declines to cross-examine this witness.

C.H. Davis Lieut.
C.H. Davis, Lieut & A/Adj.
C.A.C. General List,
No.1. C.A.C.R.U.

The accused was cautioned as follows:-

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

After the above caution the accused elected to give evidence as follows:-

FIRST WITNESS for the DEFENCE

The accused, D 77223 Tpr. Roberts, A., 32nd Cdn. Recce Regt. (RMR), on the strength of No.1. C.A.C.R.U., having been duly sworn, states,

"I went A.W.L. on 2 Jun 43 till 2329 hrs 16 Jun 43. I went down to my wife's place at 8 Hill dale Road, West Sutton, Surrey. I had no intention of staying A.W.L., but I found out from my wife that she was having a very bad time at home. Her father had threatened to put her out of the house which he did when I was A.W.L. We were turned out about 11 o'clock at night and had no place to go, but my wife thought of some friend's place where she might be able to stay a week or so, but before we went to this place, we had to stay in shelters, we had our baby daughter with us which was only 4 months old. We slept in shelters for about two days, then the baby took pretty sick, so we then had to go to her friend's place. We got there and the lady gave my wife a room. I did not want to come back till I found out that the baby was going to get better. She got better about the 15th of Jun and then I decided to go back on the 16th, which I did. On 19th Jun 43 I was put under open arrest not thinking about going out, I went down to Woking to a show. I got in just after 11 o'clock but I did not report in the Orderly Sgt., so he had me marked out for 8 hours. I then went A.W.L. again 20 Jun 43 till 1000 hrs 24 Jul 43. I went down to my wife's where she was staying at 88 Church Lane, Chessington Surrey. I learned from her that she was not getting along very well there and that she wanted to go back to her mother & father's place, but of course I did not want her to go because she does not get along with the family, but she insisted on going back, so I took her home.

SUMMARY OF EVIDENCE (CONT'D)

FIRST WITNESS for the DEFENCE

I stayed at home with her to see how she would be getting on, but her father came home one day on leave, and started picking on her right away, using foul language, which I told him to stop or there would be trouble. My wife told me to go out for a walk so I wouldn't cause any trouble in the house. I stayed out for a couple of hours and then on my return I went into the house and saw my wife. Her father had beat her up pretty bad in the face, I did not see the father, as he went back to camp that night. I then stayed around the house waiting for him to come on leave again. I stayed around for about 15 days, which made me absent about 32 days, so I told my wife that if he did not come back the following day that I would have to go back and report at camp which I did."

A. Roberts
D 77223 Tpr. Roberts, A.,
32nd Cdn. Recce Regt. (RMR),
No.1. C.A.C.R.U.

The accused does not call any witness for the defence.

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

Edward M Boothroyd
E.F.H. Boothroyd, Lieut.,
32nd Cdn. Recce Regt. (RMR),
Officer detailed to take down the Summary.

Arthur S. Pettapiece, Major

In the Field,
28th July 43.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No. D 77223 Tpr. ROBERTS, 32nd Cdn. Recce Regt. (R&R), on the strength of No.1. C.A.C.W.E.U., a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on Oath.

FIRST WITNESS for the PROSECUTION

M 53306 Sqn.S.M.S. Scott, D.E., 32nd Cdn. Recce Regt. (R&R), on the strength of No.1. C.A.C.W.E.U., having been duly sworn, states,

"I am the Sqn.S.M.S. of "B2" Sqn. No.1. C.A.C.W.E.U., and I identify the accused as Tpr. Roberts who was formerly on the strength of my Sqn. While Acting as Sqn.S.M. on the 19th & 20th Jun 43, the Orderly Cpl. reported to me that Tpr. Roberts had failed to answer Tattoo Roll call on the 19th and handed me a Tattoo Report on which Tpr. Roberts was shown as absent from 2300 hrs 18 Jun 43. I saw Tpr. Roberts on the morning of Sunday 20 Jun at approximately 0700 hrs and told him that he had been reported as absent from Tattoo Roll call the previous night and I placed him under open arrest and warned him to be prepared for Sqn. Comdr's Office on Monday. A/Sgt. Boyer reported to me at 2300 hrs 20 Jun 43 that Tpr. Roberts had just failed to answer his name at Tattoo and handed me a Tattoo report showing Tpr. Roberts as absent from 2300 hrs 20 Jun 43. Sgt. Boyer again reported to me at 0730 hrs 21st Jun 43 that Tpr. Roberts was absent from Reveille Roll Call. On 21 Jun 43 as Acting Sqn.S.M. I searched the whole of my Sqn. Area and the course of my duties led me to cover most of the remainder of the barracks, and I did not see Tpr. Roberts. The next time I saw Tpr. Roberts was at approximately 1100 hrs 24 Jul 43. I was on leave from 28 Jun to 7 Jul 43. During the remainder of the period 21 Jun - 24 Jul I attended most of the Sqn. parades in my capacity as Sqn.S.M.S. and I did not see Tpr. Roberts on any parade. On the 21st or 22nd Jun, I think the 21st, I went to Tpr. Roberts sleeping quarters and gathered up all his identifiable Kit and equipment, and took it into the Sqn. Stores for storage. On the 14 Jul 43, I brought out the Kit in storage and checked all items off, in my possession and submitted a deficiencies report as per R.O. 2111. I again inspected Tpr. Roberts' Kit in his possession and in his presence on 27 Jul 43 at 1500 hrs, and found him to be deficient in the following articles having vocabulary and part worn prices as follows:-

	Voc. Price	Unex.W.	Unex.W
	$ 4.80	£0-16-1	$ 3.60
Boots, ankle, 1 pr	.59	0- 2-0	.45
Gloves Woollen drab, 1 pr	2.05	0- 6-11	1.54
Shirts, angola drab, 1	.04	0- 0-1½	.03
Brasses, button, 1	.15	0- 0-6½	.12
Brushes, button, 1	.29	0- 1-0	.22
Brushes, shaving, 1	.08	0- 0-3	.06
Brushes, tooth, 1	.18	0- 0-7	.13
Knives, table, 1	.08	0- 0-3	.06
Forks, table, 1	.09	0- 0-3½	.06
Spoons, table, 1	.17	0- 0-7	.13
Holdall, 1	1.17	0- 3-11½	.88
Knives, clasp, 1	.02	0- 0-1	.02
Lanyard, Knife clasp, 1	.42	0- 1-5½	.32
Razors, safety, 1	.84	0- 2-11	.64
Shorts, P.T. 2	.33	0- 1-1½	.25
Frogs, bayonet, 1	1.45	0- 4-11	1.09
Respirator, haversack (Mk7), 1	.05	0- 0-2	.04
Outfit Anti/Dim (mkv) 1,	.36	0- 1- 4	.30
Ointment A/G tins, 2	.48	0- 1-6	.35
Eyeshields, A/G, (Mk 11) 6	.09	0- 0-3½	.06
Detectors, individual sleeve, 2	5.26	0-17-8	3.95
Capes, A/G, 1	.97	0- 3-3	.73
Containers Type "B" Mk VI	1.90	0- 6-3	1.43
Face Piece, Mk V			
	$ 21.86	£3-13-8	$16.47

SUMMARY OF EVIDENCE (CONT'D)

...NESS ...ON ...t'd)

Tpr. Roberts agreed at the Kit Inspection that he was deficient of the articles stated. I produce herewith a Certified True Copy of N.B.M. 1 Part III for D 77283 Tpr. Roberts, A. showing the state of his Kit at this date. [illegible] The Pt. III N.B.M. 1 is marked Exhibit "A" and attached to the Summary.

The accused declines to cross-examine this witness.

D.S. Scott

D 93306 Sgt. D.S. Scott, D.S.
32nd Cdn. Recce Regt. (SAR),
No.1. C.A.C.R.U.

SECOND WITNESS for the PROSECUTION

L 93619 L/Cpl. Rice, O.A., 8th Cdn. Recce Regt. (14R), on the strength of No.1. C.A.C.R.U., having been duly sworn states,

"I am employed with the Regt'l Police of No.1. C.A.C.R.U. At approximately 2330 hrs 16 Jun 45, I was on duty in Kelsing and on passing the Southern Railways Station, the accused whom I identify as Tpr. Roberts, 32nd Cdn. Recce Regt. (SAR), came up to me and told me that he was reporting in as he had been absent. I brought him into camp and placed him under close arrest."

The accused declines to cross-examine this witness.

L 93619 L/Cpl. Rice, O.A.,
8th Cdn. Recce Regt. (14R),
No.1. C.A.C.R.U.

THIRD WITNESS for the PROSECUTION

M 15638 L/Cpl. Abraham, H.B., 4th Cdn. Recce Regt. (PLDG), on the strength of No.1. C.A.C.R.U., having been duly sworn, states,

"I am one of the Regt'l Police of No.1. C.A.C.R.U. On 24 Jul 45 I was on duty at the Guard Room when Tpr. Roberts, 32nd Cdn. Recce Regt. (SAR), whom I identify as the accused reported to me at 1000 hrs. I placed him under close arrest."

The accused declines to cross-examine this witness.

M 15638 L/Cpl. Abraham, H.B.,
4th Cdn. Recce Regt. (PLDG),
No.1. C.A.C.R.U.

FOURTH WITNESS for the PROSECUTION

D 77275 L/Cpl. Snutch, R., 32nd Cdn. Recce Regt. (SAR), on the strength of No.1. C.A.C.R.U.

I certify that in my opinion the attendance of this witness is, owing to the loss of time involved and the exigencies of the service, not readily procurable, and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Exhibit "C".

Edward M Boothroyd Lt.

E.F.L. Boothroyd, Lieut.,
32nd Cdn. Recce Regt. (SAR),
Officer detailed to take
down Summary.

(continued)

SUMMARY OF EVIDENCE (CONT'D)

FOURTH WITNESS For the PROSECUTION (Cont'd)

I do not require the attendance of this witness for the purpose of cross-examination.

D 77283 Tpr. Roberts, A.,
53nd Cdn. Recce Regt. (RHA),
No.1. C.A.C.R.U.

FIFTH WITNESS For the PROSECUTION

Lieut. C.H. Davis, C.A.C. General List on the strength of No.1. C.A.C.R.U., having been duly sworn states,

"I am the A/Adjt. of No.1. C.A.C.R.U. and as such have custody of the Regt'l Books and documents. I produce herewith A.F.B. 115 being a certified true copy of the entry in A.B. 161 of the Declaration of a Court of Inquiry into the illegal absence of D 77283 Tpr. Roberts, A., and I identify the accused as the person referred to in the document I produce. A.F.B. 115 is marked Exhibit "B" and attached to the proceedings."

The accused declines to cross-examine this witness.

C.H. Davis, Lieut & A/Adj.
C.A.C. General List,
No.1. C.A.C.R.U.

The accused was cautioned as follows:-

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

After the above caution the accused elected to give evidence as follows:-

FIRST WITNESS for the DEFENCE

The accused, D 77283 Tpr. Roberts, A., 53nd Cdn. Recce Regt. (RHA), on the strength of No.1. C.A.C.R.U., having been duly sworn, states,

"I went A.W.L. on 2 Jun 43 till 2329 hrs 16 Jun 43. I went down to my wife's place at 8 Hill dale Road, West Sutton, Surrey. I had no intention of staying A.W.L., but I found out from my wife that she was having a very bad time at home. Her father had threatened to put her out of the house which he did when I was A.W.L. We were turned out about 11 o'clock at night and had no place to go, but my wife thought of some friend's place where she might be able to stay a week or so, but before we went to this place, we had to stay in shelters, we had our baby daughter with us which was only 4 months old. We slept in shelters for about two days, then the baby took pretty sick, so we then had to go to her friend's place. We got there and the lady gave my wife a room. I did not want to come back till I found out that the baby was going to get better. She got better about the 15th of Jun and then I decided to go back on the 16th, which I did. On 19th Jun 43 I was put under open arrest not thinking about going out, I went down to Woking to a show. I got in just after 11 o'clock but I did not report in the Orderly Sgt., so he had me marked out for 8 hours. I then went A.W.L. again 20 Jun 43 till 1000 hrs 24 Jul 43. I went down to my wife's where she was staying at 68 Church Lane, Chessington Surrey. I learned from her that she was not getting along very well there and that she wanted to go back to her mother & father's place, but of course I did not want her to go because she does not get along with the family, but she insisted on going back, so I took her back

SUMMARY OF EVIDENCE (CONT'D)

FIRST WITNESS for the DEFENCE

I stayed at home with her to see how she would be getting on, but her father came home one day on leave, and started picking on her right away, using foul language, which I told him to stop or there would be trouble. My wife told me to go out for a walk so I wouldn't cause any trouble in the house. I stayed out for a couple of hours and then on my return I went into the house and saw my wife. Her father had beat her up pretty bad in the face, I did not see the father, as he went back to camp that night. I then stayed around the house waiting for him to come on leave again. I stayed around for about 15 days, which made me absent about 32 days, so I told my wife that if he did not come back the following day that I would have to go back and report at camp which I did."

A. Roberts
D 77223 Tpr. Roberts, A.,
32nd Cdn. Recce Regt. (RMR),
No.1. C.A.C.R.U.

The accused does not call any witness for the defence.

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

Edward M Boothroyd
E.F.H. Boothroyd, Lieut.,
32nd Cdn. Recce Regt. (RMR),
Officer detailed to take down the Summary.

In the Field,
28th July 43.

CHARGE SHEET

The accused, No. D 77225 Tpr. Arthur, ROBERTS, 32nd Cdn. Recce Regt. (RHR), on the strength of No.1. C. A.C.R.U., a soldier of the Canadian Army Overseas, whilst on Active Service, is charged with,

8th Charge

Section 40

Army Act

"LOSING BY NEGLECT HIS CLOTHING, EQUIPMENT AND REGIMENTAL NECESSARIES"

in that he,

in the Field, on the 27th July 1943, was deficient of the articles below listed having Vocabulary and Part worn values as shown:-

	Voc. Price	Unexp. Mark
Boots, ankle, 1 pr	$4.50	$3.60
Gloves, woollen drab, 1 pr	.59	.45
Shirts, angola drab, 1	2.05	1.54
Brasses, button, 1	.04	.03
Brushes, button, 1	.15	.12
Brushes, shaving, 1	.29	.22
Brushes, tooth, 1	.08	.06
Knives, table, 1	.18	.13
Spoons, table, 1	.08	.06
Forks, table, 1	.09	.06
Holdall, 1	.17	.13
Knives, clasp, 1	1.17	.88
Lanyard, Knife clasp, 1	.02	.02
Razors, safety, 1	.48	.32
Shorts, P.T., 2	.84	.64
Frogs, bayonet, 1	.33	.25
Respirator Haversack, Mk VII	1.45	1.09
Outfits Anti-Dimming, Mk V	.05	.04
Ointment, A/G, tins, 2	.36	.30
Eyeshields A/G, Mk II, 6	.48	.33
Detectors Individual, sleeve 2	.09	.06
Capes, A/G	5.26	3.98
Containers Type S Mk VI,1	.97	.75
Face Piece, Mk V	1.90	1.43
	$ 21.86	$ 16.47

The total Vocabulary value of the above deficiencies amounting to Twenty-one Dollars & Eighty-six Cents, ($21.86) and the total part worn value amounting to Sixteen Dollars & Forty-seven Cents ($16.47)

A.T. PATERSON, Lt. Col.,
Commanding Officer,
No.1. Cdn. Arm'd. Corps,
Reinforcement Unit.

In the Field,
28th July 1943.

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

In the Field
2 Aug 43

(E.J. Rutherford) Brigadier
Commander "E" Group, C.R.U.

C H A R G E S H E E T

The accused, No. D 77325 Tpr. Arthur, ROBERTS, 52nd Cdn. Recce Regt. (RCR), on the strength of No.1. C. A.C.R.U., a soldier of the Canadian Army Overseas, whilst on Active Service, is charged with,

1st Charge — "ABSENTING HIMSELF WITHOUT LEAVE"

Section 15(1) Army Act

in that he,

in the Field on the 2nd June 1943, did absent himself without leave from 2200 hours until he surrendered himself to the Guard Room, No.1. C.A.C.R.U. at 2320 hours the 16th June 1943.
Total time absent: 14 days, 1 hour, 20 minutes.

2nd Charge — "ABSENTING HIMSELF WITHOUT LEAVE"

Section 15(1) Army Act

in that he,

in the Field on the 19th June 1943, whilst under open arrest, did absent himself without leave from 2300 hrs. until he surrendered himself to the Guard Room, No.1. C.A.C.R.U. at 0700 hours the 20th June 1943.
Total time absent: 8 hours.

3rd Charge — "ABSENTING HIMSELF WITHOUT LEAVE"

Section 15(1) Army Act

in that he,

in the Field on the 20th June 1943, whilst under open arrest, did absent himself without leave from 2300 hrs. until he surrendered himself to the Guard Room, No.1. C.A.C.R.U. at 1000 hours the 24th July 1943.
Total time absent: 33 days, 11 hours.

R. Paterson

R.V. PATERSON, Lt. Col.,
Commanding Officer,
No.1. Cdn. Armd. Corps,
Reinforcement Unit.

In the Field,
28th July 1943.

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

In the Field
2 Aug 43

W. Rutherford

(W.G. Rutherford) Brigadier,
Commander "E" Group, C.R.U.

No. D77223 Name ROBERTS, A. Sqn., Battery, or Company } Corps C.A.C. Date of enlistment } 13 Mar 40 Badges } Service or Proficiency Pay } M.F.M. 6

Date of last entry in Company Conduct Sheet } 6 Jul 40 No. and date of last drunk } Period not reckoning towards freedom from extra fine } Sheet No. 1 Signature O.C. Company, etc. } Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Sheet destroyed 13 Sep 40. Last entry 6 Jul 40. Nil cases of drunkenness									
Field	29 Jan 41	Pte		AA Sec 15(1) AWL from 0900 hrs 29 Jan 41 to 0730 hrs 3 Feb 41 Absent 4 days 22 hrs 30 mins	Sgt. Mushet	14 dys Det	4 Feb 41	Lieut.-Col AF 5 dys py CAMPAIGNS PRAI 149(1)(a)	
Field	25 Feb 41	Pte		AA Sec 15(2) AWL failing to at place of parade appointed by his commanding officer	Cpl. Beaton	14 dys C.B.	26 Feb 41	Major C.A. BAKER	
Field	2 Mar 41	Pte		AA Sec 15(1) AWL from 2200 hrs 2 Mar 41 to 2320 hrs 2 Mar 41 absent 1 hrs 20 mins	Sgt. Mushet	14 dys C.B.	3 Mar 41	Major C.A. BAKER	
Field	12 Sep 41	Pte		AA Sec 11 Disobeying lawful Com	Cpl Lacasse	168 hrs Detn	13 Sep 41	Maj McCUAIG	
Field	19 Sep 41	Pte		AA Sec 11 Disobeying SO for Soldiers undergoing	Sgt FICKLING	72 hrs Detn	20 Sep 41	Maj McCUAIG	

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of earlier dismissing with grace	By whom awarded	Remarks
Field	5 Oct 41	Pte		AA Sec 15(1) AWL from 2200hrs 22 Nov 41 to 0600 hrs 6 Oct 41 Abs:et 8 hrs	L/Cpl Bigley	7 dys Detn	6 Oct 41	Lt Col. Carpenter	AF 1 dys py fr&i 149(1)(a)
Field	22 Nov 41	Pte		AA Sec 15(1) AWL from 1330 hrs 22 Nov 41 to 2230 hrs 28 Nov 41 while CB absent 6 dys 9 hrs	Sgt. French	10 dys F.P. 10 dys loss of pay	4 Dec 41	Lt Col Calder	AF 7 yds py FR&I 149(1)(a)
Field	2 Jan 42	Pte		AA Sec 15(1) AWL from 2359 hrs 2 Jan 42 to 2130 hrs 5 Jan 42 absent 2 dys 21 hrs 31 mins	C Pitcher L/C Tessier L/C Muchmore	10 F.P. 10 dys loss py	5 Feb 42	Maj McNAE	AF 3 dys py FR&I 149(1)(a)
Field	24 Feb 42	Pte		AA Sec 15(1) AWL from 1900 hrs 24 Feb 42 to 2130 hrs 24 Feb 42 Absent 2 hrs 30 mins	E French CSM McIntosh S DeArcy L/C Montgomery	27 dys Detn	3 Mar 42	Maj P.H. HARE	
At the end of 2 years service a new conduct sheet was made out. there were the above Regt'l entries on old sheet fgd M.A. Willis, Major									
Field	28 Apr 42	Pte		AA Sec 11 Regl to boey failed to report on sick parade	A.B. Dubneiwicz	3 dys C.B.	2 May 42	Maj J.M. Laing	

No. D 7722 Name ROBERTS A. | Sqn., Battery, or Company | Corps C.A.C. | Date of enlistment 13 Mar 40 G.C. | Badges | Service or Proficiency Pay | M.F.M. 6

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10 Jun 42	Pte		AA Sec 15(1) AWL from 2230 hrs 10 Jun 42 to 1400 hrs 20 Jun 42 whilst Priv leave Absent 3 dys 23 mins	L/C Fagg L/C Wade	14 dys F.P. 14 Dys loss py	Major Barre	18 Jun 42	AF 4 dys py FRAI 149(1)(a) AF 2 dys pay
Field	18 Jun 42	Pte		AA Sec 15(1) AWL From 1920 hrs 18 Jun 42 to 1915 hrs 20 Jun 42 absnet 31 dys 23 hrs 55 mins escort 8 Shil 2 pence AA Sec 24(2) Losing equip £3-6-1d	summary of evidence	180 dys det stop py £3-6-1d £0-8-2	31 Jul 42 FGCM		Con Det 3 Aug 42 AF 43 dys py
Field	4 Aug 42	Pte		AA Sec 15(1) AWL whilst close arrest S White from 1430 hrs to 2340 hrs 21 Aug 42 Civil Absent 17 dys 9 hrs 17 mins Police Sutton		28 dys Det	1 Sep 42	Lt Cl. Calder	to run conc with FGCM of 31 Jul 43

Released from Det Barracks H Down on 3 Dec 42 sentence having expired, remission under rules for Det Bks & Mil prison 54 days Commandents initials N.E.B.

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	27 Dec 42	Pte		AA Sec 15(1) AWL from 1800 hrs 27 Dec 42 to 30 Dec 42 2200 hrs absnet 3 Days 4 hours	S Faubert Documentary	28 dys F.P. 28 dys Pay	4 Jan 43	Lt Col Christie	AF 4dys py 149(1)(e) Escort CO-7-1
Field	18 Jan 43	Pte		AA Sec 40 failed to answer Def calls at 0730 and 1230 hrs and between hrs 1730 & 2200 18 Jan 43 and at 0730 19 jan 43	Documentary	For 14 dys py	19 Jan 43	Lt Col Christie	
Field	24 Jan 43	Pte		AA Sec 15(1) AWL whilst serving FP from 0100 hrs 24 Jan 43 to 2340 hrs 5 Feb 43 Absent 12 dys 23 hrs 40 mins Escort CO-2-9	28 dys F.P. 28 dys py Cpl MILLER P.C Pickett Sutton Civil Police	15 Fen 43		Lt Col Paterson	AF 13 dys py 149(1)(a)
Field	7 Mar 43	Tpr		Lst Charge A.ASec 15(1) AWL from duty in sgts mess from 1815 hrs 7 mar 43 until found leaving a picture show in mens mess at 1945 hrs 7 mar 43, 1 hrs 30 mins	Fatigue Tpr Salcher Pringle R.P	28 DNS F.P. to run conc with prev sentence 28 dys loss py	8 Mar 43	Major R. Thomson A/OC 1 CANCHU	

M.F.M. 5
(A.F.B. 117)
17551—7-41 (1219-20)
H.Q. 1772-39-1652

No. D 7722 Name ROBERTS A | Sqn., Battery, or Company | Corps C.A.C. | Date of enlistment 13 Mar 40 | O.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4 Mar 43	Tpr		2nd Charge AA Sec 40 Stealing at sutton surrey cigarett case & Silk stockings value £9- property of Mrs Naylor 38 bushey Rd Sutton					
Field	18 Apr 43	Tpr.		AA Sec 40 Wearing a collar and tie at 1050 hrs 18 Apr 43	L/C Griffiths Whalley CMP	7 dys C.B.	24 Apr 43	Lt Col Paterson	

Y G Clacy Lieut
for Certified True Copy
H.D.M. McPHEE, Lieut., Records Officer No. 1 C.A.C.R.U.

Arthur S. Rettapaus Major
(P.T.O.)

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D77223	Tpr.	ROBERTS, Arthur	32 RecceRegt(RMR)

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

	Within last 12 months			Since enlistment or appointment		
For	AA15(1)	Four	times	AA15(1)	Eleven	times
For	AA 40	Three	times	AA40	three	times
For	AA15(2)	-	times	AA15(2)	one	times
For	AA11	-	times	AA 11	Three	times

Number of instances of gallantry or distinguished conduct

~~[illegible]~~

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

2. ~~[illegible]~~

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

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

~~[illegible]~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 10 days in ~~Air Force~~ military custody, making a total of 10 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 23 Years 15 Days

6. The date of his ~~[illegible]~~ attestation specified in his record of service is 13 March 40

7. The service which the accused is allowed to reckon towards discharge is 3 Years 4 Months 17Dys

8. The accused is entitled to reckon 3 Yrs 4 mos.17 Days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~[illegible]~~ military decoration, or ~~[illegible]~~ military reward ~~[illegible]~~

~~[illegible]~~

10. ~~[illegible]~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force

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

..... dated .....

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

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

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

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number D77223 Rank Trooper

Name ROBERTS, Arthur of No.1. C.A.C.H.U. Unit Regiment

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

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	United Kingdom	AASec15(1) AWL from 1920 hrs 18-6-42 to 1915 hrs 20-7-45 (31 Days 23 Hrs 55 Mins) AA Sec24(2) Losing Eqip. to Value of £3-6-1½	180 days detention Stop. of pay £3-6-1½ (Equipment) and £0-8-2 cost of apprehension	54 days detention

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

Signed this 3rd day of August 1943

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

[signature] Adjt.

No. 1 C.A.C.H.U.

SOLDIER'S FRIEND

I, D 77885 Tpr. Roberts, A., 32nd Cdn. Recce Regt. (RAM), on strength of No.1. C.A.C.R.U. desire to have an Officer appointed to defend me at my Trial by Field General Court Martial.

I desire the services of Lieut. E.C. Wooman, 32nd Cdn. Recce Regt. (RAM), if he is available.

D 77885 Tpr. Roberts, A.,
32nd Cdn. Recce Regt. (RAM),
No.1. C.A.C.R.U.

LIST OF EXHIBITS

Exhibit "A":- Certified True Copy of M.B.M. 1 Part III for D.77223 Tpr. Roberts, A.

Exhibit "B":- A.F.B. 115, being a certified true copy of the entry in A.B. 161 of the Declaration of a Court of Inquiry.

Exhibit "C":- Signed statement of D.77973 L/Cpl. Snutch, R., 32nd Cdn. Recce Regt. (RMR), on the strength of No.1. C.A.C.R.U.

KKK-130 (case #3)

TPR ROBERTS A

See L-148 for 1st case
" NN 90 " 2nd "

SCHEDULE.

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

Accused: D-77223 Tpr Arthur Roberts, 9 Bn, 2 CBRG p

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

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

EBP [illegible] (1)

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

Time in confinement awaiting present trial—a total of 9 EBP days, of which No days were spent in hospital.(1)

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

Sentence Awarded by the Court: To undergo detention for a period of 180 days and to be put under stoppages of pay until he has made good the sum of Three Shillings and Six Pence, in respect of cost of apprehension and returned to his unit

(Sgd) E.E. Pearlman, Capt — Judge-Advocate, if any. 16 May 44 — Date awarded. (Sgd) [illegible] — President. (RP 45, 50.)

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

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

Confirmed

EBP ~~direct that the accused be not committed to prison or detention barracks until further orders~~ (1) Cpt

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

(Sgd) G Francoeur

Date 17 May 44 — Commanding 2 CBRG — Confirming Officer.

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

Accused.	Date.	Signature of Offr.
D77223 Trooper Arthur ROBERTS	18 MAY 44	[illegible] Capt Adjt 9 Bn, 2 CBRG.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Vol. 1 p 3 2 copies RECORDED AT GMHQ IN AD 160 AAA/130 CP/306 (To Dep of AFAS) 40/P & S/1608 (100) Forms 4/388

FIELD GENERAL COURT-MARTIAL

RECEIVED 2 MAY 1944 AAG BRANCH G.H.Q. PROCEEDINGS REVIEWED DJA Sec GHQ 21 Army Gp Date 24 May 44

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 13 May 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-77223	Tpr	Arthur	ROBERTS	9 Bn, CBRG

PROCEEDINGS REVIEWED 23 May 44.

R. Beaurille Capt. REVIEWING OFFICER, AAG BRANCH G.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 16 MAY 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offr i/c records~~ in ~~Court~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout it on p 4. Citations do NOT include all relevant fns RPs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for acctn and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

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

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

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1045 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused is to be tried by ... charged jointly by name(s).~~(2)

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

EBP A5. President to accused: ~~Do you object to~~ ~~or interpreter~~

EBP ~~Interpreter sworn.~~(1) Do you object to Cpl Davie J W as shorthand writer? Ans No Sir.

The shorthand writer is sworn.(1)

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 26, 28, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offr i/c records, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E W THOMAS	RHC, 11 CBR Bn
Member	Capt	P LESSARD	R de Chaud, 9 CBR Bn
Member	Lieut	R M ALLAN	RCA, 9 CBR Bn
Judge-Advocate	Capt	E E PEARLMAN, ADJA,	HQ 2 CBRG
Prosecutor	Capt	J H CAMPBELL	B Recce, 9 CBR Bn
Defending Offr	Lieut	A H CLARKE	B Recce, 9 CBR Bn

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

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 85 (B) and fn 2 were not followed. See Q1 p 3.)

EBP A8. ~~The accused is informed by the Court of the substance of the charge(s) and asked whether he has any objection to make before arraignment makes~~ (1)

~~Quibits~~

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposit, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

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

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

A10. The Court ~~is cleared~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

(1. *RP 33 fn 3.* 2. *MML p 54 para 47.*)

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

President to accused : Do you wish to make a statement ? Ans No Sir. (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1) — The Court decides (not) to advise accused to change his plea(s) of Guilty to (a) plea(s) of~~ simple(s). ~~The accused is (not) to be informed accordingly.~~

~~Charge(s) to which plea(s) of (charge(s)) — Part I of the Schedule is amended accordingly.~~

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

~~B4. On the charge(s) to which the (plea) (s) of Guilty accord not changed the President records the findings of Guilty on (that) (those) charge(s).~~ (1) ~~in PART I of the Schedule.~~

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)

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

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

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

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

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114. KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

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

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans..... Do you intend to call witnesses on your behalf ? Ans..... Are they witnesses as to character only ? Ans.....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

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

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(2) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No Sir.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copies (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes, through my defending officer. See Notes (2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

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

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. *When several accused tried separately use RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas R(I) 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 58(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, D-77282, Trooper Arthur ROBERTS, 9 Bn, 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 15(1)
Army Act

GUILTY OF ACTIVE SERVICE, AGAINST THE CALF - THE-
OUT LEAVE

In that he

In the Field, on 1 May 44, absented himself without leave from 9 Bn, 2 C.B.R.G., from 0900 hours, 1 May 44, until surrendering himself at 0900 hrs, 5 May 44 (absent 4 days, 1 hour). Cost of Apprehension and return to unit, three shillings and six pence (3/6).

(H.W. Blok), Lt.-Col.
Commanding,
9 Bn, 2 C.B.R.Gp.

In the Field
12 May 44

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

(G Francoeur) Brig
Comd
2 Cdn Base Rft Gp

In the Field

13 May 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PA8/1697 (2863)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-77223	Tpr		Arthur	ROBERTS	9 Bn, 2 CBRGp

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 13 May 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

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

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	Major E W THOMAS	RHC, 11 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by OC 9 CBR Bn	9 CBR Bn
Lieut	To be detailed by OC 9 CBR Bn	9 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	To be detailed by OC 9 CBR Bn	9 CBR Bn

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)		(Unit.)
Capt	E E Pearlman,	ADJA	HQ 2 CBRG

On Active Service in the Fd

in ENGLAND (Country.)

G Francoeur (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(G Francoeur)

Date 13 May 44

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

9 CANADIAN BASE REINFORCEMENT BN

THIS IS TO CERTIFY THAT No D 77123 Rank TPR Name ROBERTS A.
of 9TH BN NO 2 C.B.R.G. is fit ~~unfit~~ to undergo trial by Court Martial

Date 16 May 44

H S Tarrell Capt
Medical Officer
9 Bn, 2 C.B.R.G.

E88

PLEA IN MITIGATION for

D-77223 Tpr Arthur ROBERTS, 9 Bn, 2 CBRG

Defending Officer

Sir as you have the NPM.6 of the accused in front of you I would like to explain that I have known this soldier both in the Army and in civilian life and I would like to explain the reason for the offences up to date in mitigation of the punishment. When he joined the Army he was a pretty good soldier and had very little if anything against him before coming Overseas. Shortly after he came overseas a women got ahold of him and knowing this soldier and knowing the woman I can well understand Roberts getting into trouble. She encouraged him to go AWL. It is unexcusable and I admit it is unexcusable. This girl has had a baby and they were married in Apr 43. After marriage she was turned out of home. The baby was born in Feb 43 prior to marriage. Owing to their financial condition the baby has been ill and unable to get proper care. On Apr 28,44 Roberts was posted to 9 CBR Bn and unfortunately he was unable to be granted 48 hrs leave to go and have his wife looked after. She had no place to stay and was living in air raid shelters, I know this to be a fact. Roberts got a letter to say that she was living in Cheam, Surrey and when his leave was refused he took it anyway. After looking around for a while he got a room for her in Hill Dale, Sutton.

Knowing the soldier as I do, if the cause of his trouble was away from this country I am quite sure the soldier would be a pretty good boy and I have made arrangements through the Padre to have her sent to Canada. She is willing to go and if she goes I am sure Roberts will settle down. I have known him at home and in the RWRs. We had some trouble with him but it was all through his wife. The Padre of the RWRs has taken this up with him before and assured me that if the wife went home to Canada he would settle down. She did not want to go at first but she has now agreed to it when passage can be arranged. Accordingly she should be on her way in a couple of months. I ask the Court to consider the circumstances of the case. The accused had this on his mind when he went AWL, his wife walking the streets and no money. It should award a light sentence rather than a heavy punishment. The woman is entirely at fault and he has been a victim of circumstances through out his time in the Army. Tpr Roberts is a bit easily lead and always has been and if the cause of grievance is done away with by sending her to Canada where his parents will look after her he should be able to settle down. Under the circumstances if the punishment for the crime is lenient so that Roberts can get back on his feet again he will be an asset to the Cdn Army.

Exhibit "A"

Army Form O.1617
R.A.F. Form 1617

IMMEDIATE.

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depots are shown in the Monthly Army List.

† NOTE.—Special instructions apply in war for the disposal of absentees and deserters from the Army, who surrender to the civil police; *i.e.*, such personnel will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops at the nearest military station. (A.C.I. 489/1940).

22748 W: 33509/131 25,000 10/42 A & E.W.Ltd Gp 698 Forms O.1617/12

I CERTIFY that the man whose personal description is given below surrendered himself to* PC 6334 Cook.

at Hillside Road, Cheam, Surrey (hour) 9 am on the 5th day of May 1944 as being No. D.Y7223

(Rank and Name) Trooper ROBERTS Arthur

a deserter (or absentee without leave) from 2CBRG Aldershot

and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 23 Height 5 Feet 11 Inches

Complexion dark Hair dark

Eyes brown

Marks

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	13. 3. 40.
Probable Date of Desertion or beginning of absence, and from what place	23.59 hrs on 28/4/44 from aldershot

Signature of Officer of Police in charge of R Griffiths Sutton Station

5th May 1944 Date of Signature

Army Form Q.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies *only* in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. H 77223 Rank Tpr. Name Roberts, A Unit 2 C BRG

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Boxhill

Date	Particulars (½ portion)	Amount		
6 May 44	Escorts return fare from LONDON To Boxhill		1	9
	Prisoners single fare to LONDON From Boxhill		1	9
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		3	6

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

R. J. Stinson Capt.

Officer Issuing Railway Warrant and Expense Money
No. 6 Area Provost Company, Canadian Provost Corps, London

LIEUT.
R. J. STINSON
ADMN. OFFICER - D.P.M's BR.
C. M. H. Q.

C.M.H.Q. 1000/55
40/P & S/483(3287)

Exhibit "A"

SUMMARY OF EVIDENCE

In the case of

D-77223, Trooper Arthur ROBERTS, 9 Bn, 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, charged with:-

(a) When on active service, absenting himself without leave. A.A. Sec 15(1).

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS For Prosecution

B-61136, Sgt. Marshall, J.A., 9 Bn, 2 C.B.R.Gp, having been duly sworn, states:-

"On 1 May 44, I was Orderly Sergeant in 45 Coy, 9 Bn, 2 C.B.R.Gp. At 0800 hours I called the roll and found the accused, whom I now recognize, Tpr. Roberts, absent. I reported the absence to the Duty Officer."

The accused declines to cross examine the witness.

J.A. Marshall

B-61136, Sgt. Marshall, J.A.

SECOND WITNESS For Prosecution

Documentary. Army Form C.1617. This form has been shown to the accused, marked by me as Exhibit "A", for the prosecution, and attached to the Summary of Evidence.

G.G. McKnight

(G.G. McKnight), Captain,
Officer detailed to take
the Summary of Evidence.

The accused was cautioned as follows:-

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

The accused declines to make a statement.

The accused does not call any witness for the defence.

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

G.G. McKnight

(G.G. McKnight), Captain,
Officer detailed to take
the Summary of Evidence.

In the field,
12 May 44

Ex C MFM 6 (AFB 122) 40/PA8/138 (3488)

No D77223 Name Roberts, A. Sqn, Battery, or Company Corps CAC Date of enlistment 13 Mar 40 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 6 Jul 40 No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No 1 Signature OC Company, etc M.A. Willis Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet Destroyed 13 Sep 40. Last Entry 6 Jul 40. Nil cases of Drunkeness.							M. A. Willis, Major		
Field	29 Jan 41	Pte		AA Sec 15(1) AWL from 0900 hrs 29 Jan 41 to 0730 hrs 3 Feb 41 Absent 4 Days 22 hrs 30 Mins	Sgt Mushet	14 dys Detn	4 Feb 41	Lt. Col Carpenter	AF 5 Dys pay FR&I 149(1)(a)
Field	25 Feb 41	Pte		AA Sec 15(2) AWL failing to appear at the place of parade appointed by his comd. Officer	Cpl Beaton	14 days C.B.	26 Feb 41	Maj G.A. Baker	
Field	2 Mar 41	Pte		AA Sec 15(1) AWL from 2200 hrs 2 Mar 41 to 2320 hrs 2 Mar 41 Absent 1 hr 20 Mins	Sgt Mushet	14 days C.B.	3 Mar 41	Maj G.A. Baker	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12 Sep 41	Pte		AA Sec 11 Disobeying a lawful Order	Cpl Lacasse F.A.J.M.	168 hrs Detn	13 Sep 41	Maj W.C. McQuade	
Field	19 Sep 41	Pte		AA Sec 11 Disobeying S.O. for soldiers under Detn	Sgt Fickling A.	72 hrs Detn	20 Sep 41	Maj W.C. McQuade	
Field	5 Oct 41	Pte		AA Sec 15(1) AWL from 2200 hrs 5 Oct 41 to 0600 hrs 6 Oct 41 Absent 8 hrs	L/C Bigley	7 Dys Pay	6 Oct 41	Lt.Col F Carpenter	AF 1 Dys Pay FR&I 149(1)(a)
Field	22 Nov 41	Pte		AA Sec 15(1) AWL from 1330 hrs 22 Nov 41 to 2230 hrs 28 Nov 41 While on C.B. Absent 6 Days 9 hrs	Sgt French C.M.P.	10 Dys F.P. 10 Dys Loss of Pay	4 Dec 41	Lt. Col Calder	AF 7 Dys Pay FR&I 149(1)(a)
Field	2 Jan 42	Pte		AA Sec 15(1) AWL from 2359 hrs 2 Jan 42 to 2130 hrs 5 Jan 42 Absent 2 Dys 21 hrs 31 Mins	Cpl Pitcher Cpl Tessier L/Cpl Muchmore	10 Dys F.P. 10 Dys Loss of Pay	5 Feb 42	Maj D. McRae	AF 3 Dys Pay FR&I 149(1)(a)

No D77223 Name Roberts, A. | Sqn, Battery, or Company | Corps CAC | Date of enlistment 13 Mar 40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3458)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc M.A. Willis Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24 FEb 42	Pte		AA Sec 15(1) AWL from 1900 hrs 24 Feb 42 to 2130 hrs 24 Feb 42 Absent 2 hrs 30 mins	Sgt French CSM McIntosh Sgt D'Arcy L/C Montgomery	27 days Detn	3 Mar 42	Maj P.H. Barre	
At the end of two years service a new conduct sheet was made out. There were the above Regimental Entries on the Old Conduct Sheet						M.A. Willis Major			
Field	28 Apr 42	Pte		AA Sec 11 Neglecting to obey- Failed to report on sick parade	D76391 A.B. Dubneiwicz	3 Dys C.B.	2 May 42	Maj J.M. Laing	
Field	10 Jun 42	Pte		AA Sec 15(1) AWL from 2230 hrs 10 June 42 to 14 Jun 42 WHILST PRIV LEAVE: Absent 3 dys 23½ hrs	L/C Fagg L/C Wade	14 Days F.P. 14 Dys Loss of Pay	18 Jun 42	Maj P.H. Barre A/CO	AF 4 Dys Pay FM&I 149(1)(a) AF 2 Dys Pay Close Arrest

No D77223 Name Roberts, A | Sqn, Battery, or Company | Corps CAC | Date of enlistment 13 Mar 40 | GC Badges | Service or Proficiency Pay M.A. Willis Major | MFM 6 (AFB 122) 40/PAS/136 (3458)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 Jan 43	Pte		AA Sec 40 Conduct to the-Failed to answer defaulters calls at 0730 and 1230 hrs and between the hours of 1730 & 2200, 18 Jan 43 & at 0730 19 Jan 43	Documentary	Forf 14 Dys Pay	19 Jan 43	Lt.Col J. H. Christie	
Field	24 Jan	Pte		AA Sec 15(1) AWL Whilst serving FP from 0100 hrs 24 Jan 43 to 2340 hrs 5 Feb 43. Absent 12 dys 23 hrs 40 mins. Escort expense £0-2-9	A/Cpl Miller #324 P.C. Pickett Sutton Civil Police	28 dys F.P. 28 Dys Pay	15 Feb 43	Lt.Col AT Paterson	AF 13 Dys Pay FM&I 149(1)(a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 Jun 42	Pte		AA Sec 15(1) AWL From 1920 hrs 18 Jun 42 to 1915 hrs 20 Jun 42 Absent 31 Dys 23 hrs 55 Mins Escort £0-8-2: AA Sec 24(2) Losing equipment £3-6-1½	Summary of Evidence	180 Dys Detn Placed under stoppage of Pay £ 3-6-1½ £ 0-8-2	31 Jul 42	F.G.C.M.	Confirmed 3 Aug 42 AF 43 Dys
Field	4 Aug 42	Pte		AA Sec 15(1) AWL WHILST CLOSE ARREST: from 1430 hrs 42 to 2340 hrs 21 Aug 42; Absent 17 Dys 9 hrs 17 Mins	Sgt White Civil Police Sutton	28 Dys Detn	1 Sep 42	Lt. Col Calder	To run concurrently with F.G.C.M. of 31 Jul 42
Released from the Detn Barracks and Military Prisons - 54 Days. Detn. Barracks R.Down on 3 Dec 42 Sentence having expired. Remission earned under Rules for Commandants initials: W.E.P.									
Field	27 Dec 42	Pte		AA Sec 15(1) AWL from 1800 hrs 27 Dec 42 to 30 Dec 42 2200 hrs Absent 3 days 4 hours	Sgt Faubert Documentary	28 Dys F.P. 4 Jan 43 28 Dys Pay		Lt.Col J.H.Christie	AF 4 Days Pay FRAI 149(1)(a) plus escort expense £0-7-1

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				1st Charge					
Field	7 Mar 43	Tpr		AA Sec 15(1) AWL from Fatigue Duty in Sgts Mess from 1815 hrs 7 Mar 43 until found leaving a picture show in Mens Mess at 1945 hrs 7 Mar 43 Time absent 1 hr 30 Mins	Tpr Salchert L) Tpr Pringle (R.P's)	28 dys F.P. to run concurrently with previous sentence 28 days loss of Pay	8 Mar 43	Maj R. Thomson A/OC 1 CACHU	
Field	4 Mar 43	Tpr		2nd Charge: AA Sec 40 Stealing at Sutton Surrey cigarette case and pr. of silk stockings, value £9 the property of Mrs Naylor, 38 Bushey Rd Sutton Surrey			8 Mar 43		
Field	18 Apr	Tpr		AA Sec 40 Conduct to the Prej. wearing tie and collar at 1050 hrs 18 Apr 44	L/Cpls Griffiths Whalley (CMP)	7 Days C.B.	24 Apr 43	Lt.Col A.T. Paterson	

No D77223 Name ROBERTS, A. | Sqn, Battery, or Company | Corps CAC | Date of enlistment 13 Mar 40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PA&S/136 (3488)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9 Apr 44	Tpr		AA 15(1) A.W.L. from 2300 hrs 9 Apr 44 until apprehended at 1330 hrs 21 Apr 44 thereby incurring cost of apprehension in the amount of £-/14/8 Time absent 11 days 14 hrs 30 mins	Documentary	14 days F.P. & forf of 14 days pay.	22 Apr 44	Lt.-Col F.C. Lewis C.O.	Forf 14 days pay under FR&I 149(2) Forf 12 days pay under FR&I 149(1)(a) Placed under stoppage of pay in the amount of £-14/8 under FR&I 172(8). Total forf of 26 days pay.

CERTIFIED TRUE COPY taken from Regimental Books in my possession.

(C.L. Nelson), Capt., Adjutant, 9 Bn, 2 C.B.H.G.

(PTO)

A. | Sqn, Battery, or Company | Corps CAC | Date of enlistment 13 Mar 40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PA&S/136 (3488)

No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 4 | Signature OC Company, etc | Character

Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	1st Charge: A.A.Sec 15(1) AWL From 2200 hours 2 June 43 to 2320 hrs 16 June 43 Absent 14 days 1 hr 20 mins. 2nd Charge: A.A.Sec 15(1) AWL from 2300 hrs 19 Jun 43 to 0700 hrs 20 Jun 43 Absent 8 hours. 3rd Charge: A.A.Sec 15(1) AWL from 2300 hrs 20 Jun 43 to 1000 hrs 24 Jul 43. Absent 33 days 11 hrs. 4th Charge: A.A.Sec 40	Documentary Evid	9 months detn stoppages of pay in sum of $16.47, value of kit lost. 274 days loss of pay	3 Aug 43	FGCM	Confirmed by Brig T.J. Rutherford ED on 5 Aug 43. AF 50 days pay FR&I 149(1)(a) AF 10 days pay FR&I 149(1)(c) TOTAL FORFEIT 334 days pay and sum of $16.47 loss of Kit.

RELEASED from the DETENTION BARRACK...W..Dowes.....on .....2.Feb...1944..SENTENCE HAVING EXPIRED. Remission earned under "Rules for Detention Barracks & Military Prisons" 90 days Commandants Initials ????

(PTO)

No D77223 Name ROBERTS, A. | Sqn, Battery, or Company | Corps CAC | Date of enlistment 13 Mar 40 | GC Badges | Service or Proficiency Pay | MFM 6. (AFB 122) 40/PAS/136 (3458)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9 Apr 44	Tpr		AA 15(1) A.W.L. from 2300 hrs 9 Apr 44 until apprehended at 1330 hrs 21 Apr 44 thereby incurring cost of apprehension in the amount of £-/14/8 Time absent 11 days 14 hrs 30 mins	Documentary	14 days F.P. & forf of 14 days pay.	22 Apr 44	Lt.-Col T.C. Lewis C.O.	Forf 14 days pay under FR&I 149(2) Forf 12 days pay under FR&I 149(1)(a) Placed under stoppage of pay in the amount of £-14/8 under FR&I 172(8). Total forf of 26 days pay.

CERTIFIED TRUE COPY taken from Regimental Books in my possession.

(C.L. Nelson), Capt., Adjutant, 9 Bn, 2 C.B.R.G.

(PTO)

T/ A. | Sqn, Battery, or Company | Corps CAC | Date of enlistment 13 Mar 40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3458)

No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 4 | Signature OC Company, etc | Character

Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	1st Charge: A.A.Sec 15(1) AWL From 2200 hours 2 June 43 to 2320 hrs 16 June 43 Absent 14 days 1 hr 20 mins. 2nd Charge: A.A.Sec 15(1) AWL from 2300 hrs 19 Jun 43 to 0700 hrs 20 Jun 43 Absent 8 hours. 3rd Charge: A.A.Sec 15(1) AWL from 2300 hrs 20 Jun 43 to 1000 hrs 24 Jul 43. Absent 33 days 11 hrs. 4th Charge: A.A.Sec 40	Documentary Evid	9 months detn stoppages of pay in sum of $16.47, value of kit lost. 274 days loss of pay RELEASED from the DETENTION BARRACK...D.Downs.....on .....2.Feb...1944..SENTENCE HAVING EXPIRED. Remission earned under "Rules for Detention Barracks & Military Prisons" 90 days Commandants Initials ????	3 Aug 43	FGCM	Confirmed by Brig T.J. Rutherford ED on 5 Aug 43. AF 50 days pay FR&I 149(1)(a) AF 10 days pay FR&I 149(1)(c) TOTAL FORFEIT 334 days pay and sum of $16.47 loss of Kit.

(PTO)

No D77223 Name ROBERTS, A. | Sqn, Battery, or Company | Corps CAC | Date of enlistment 13 Mar 40 | OC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/130 (3488)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3 Aug	Tpr		1st Charge: A.A.Sec 15(1) AWL From 2200 hours 2 June 43 to 2320 hrs 16 June 43 Absent 14 days 1 hr 20 mins.	Documentary Evid.	9 months detn	3 Aug 43	FGCM	Confirmed by Brig T.J. Rutherford ED on 5 Aug 43.
				2nd Charge: A.A.Sec 15(1) AWL from 2300 hrs 19 Jun 43 to 0700 hrs 20 Jun 43 Absent 8 hours.		stoppages of pay in sum of $16.47, value of kit lost.			AF 50 days pay FR&I 149(1)(a)
				3rd Charge: A.A.Sec 15(1) AWL from 2300 hrs 20 Jun 43 to 1000 hrs 24 Jul 43. Absent 33 days 11 hrs.		274 days loss of pay			AF 10 days pay FR&I 149(1)(c) TOTAL FORFEIT: 334 days pay and sum of $16.47 loss of Kit.
				4th Charge: A.A.Sec 40		RELEASED from the DETENTION BARRACK...D.Depot.....on .....2.Feb...1944..SENTENCE HAVING EXPIRED. Remission earned under "Rules for Detention Barracks & Military Prisons" 90 days Commandants Initials ????			

(1710)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11 Aug	Tpr		A.A.Sec 15(1) A.W.L. from 1550 hrs 9 Aug 43 to 0045 hrs 11 Aug 43 Absent 1 day 8 hrs 55 mins	Documentary	14 days detn to apply against remission of sentence of FGCM of 3 Aug 43 14 days loss of pay	13 Aug 43.	Lt.-Col. A.T. Paterson	AF 2 days pay concurrent with FGCM award of 3 Aug 43. AF 14 days pay concurrent with FGCM award of 3 Aug 43.

W. C. YOUNG Lt CERTIFIED TRUE COPY
for J. P. AGAR, Lieut.
Records Officer
No.1 Cdn Armd Corps Reinf Unit.

Exhibit B.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-77823	Trooper	Roberts, Arthur	9 Bn, 2 C.B.R.Gp.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL AA 15(1) 14 times.

For C.F.G.C. & M.D. AA 40 2 times.

For Disobeying Stdg Ord. AA 11 3 times.

For _____ _____ times.

Date of first entry in Field Conduct Sheet 29 Jan 41

Date of last entry in Field Conduct Sheet 9 Apr 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~3. The accused at the present time is under sentence for _____ beginning on the _____ day of _____~~

4. The accused has been awaiting trial on the present charges for No days in civil custody; and for XII days in military custody, *i.e.*, 2 days in open arrest, V days in close arrest; of which No days were spent in hospital.

5. The present age of the accused is 23 (Born 14 Jul 20)

6. The date of his attestation is 13 Mar 40

~~calling up for military service~~

7. The service which the accused is allowed to reckon is 4 yrs, 2 months

†State the military decorations (if any) held by accused.

8. The accused is in possession of† C.V.S.M. & Clasp

~~If the accused is a warrant officer or N.C.O. The accused has served continuously without reduction, to the present date.~~

~~Date of Promotion~~

~~9. In the substantive rank of _____~~

~~10. In the war substantive rank of _____~~

~~11. In the acting rank of _____~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

[21114] W1.8670/668 100,000 4.43 A.&E.W.Ltd. Gp.598
[21615] W1.29520/1873 60,000 2.44
Forms/B.296/W.(Gp)2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F.G.C.M.	31 Jul 42 Field	A.W.L. 31 days, 23 hrs, 55 mins. AA Sec 15(1)	180 days Detn. Stoppages of pay £3. 6. 1½ 0. 8. 2	54 days remission
F.G.C.M.	3 Aug 43 Field	1. A.W.L. 14 days, 1 hr, 20 mins AA Sec 15(1) 2. A.W.L. 8 hours. AA Sec 15(1). 3. AWL 33 days, 11 hrs. AA 15(1). 4. A.A. Sec 40.	9 months Detn. Stoppages of pay of $16.47.	90 days remission

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 16th day of May, 1944

(C.L. Nelson), Captain & Adjt.
9 Bn, 2 C.B.R. Group.

DD-61

PTE ROBERTS AA

DD-61 1

Correspondence to be PINNED here.

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 14th day of April, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 11 Cdn Inf Bde., 5 Cdn Armd Div, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

* ~~I am unable to appoint:—~~

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

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

~~for the following reasons, namely:—~~

*Omit if not applicable.

Proceedings Reviewed by Brig. Commanding Officer

Reviewing Officer

Martin Capt

12 Aug 43

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

President.

Rank.	Name.	Regiment.
Major	J.L.Tyrer	British Columbia Dragoons

Members.

Rank.	Name.	Regiment.
Capt	J.R.Nesbitt	Cape Breton Highrs
Lieut	D.D.Phelan	Irish Regt of Canada
	WAITING MEMBER	
Lieut	W.L.MacPherson	11 Cdn Inf Bde Sp Coy
	JUDGE ADVOCATE	
Capt	G.M.Morrison	ADJA 5 Cdn Armd Div

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

*Signed H Sharp

(H. Sharp) Brig

Commanding 11 Cdn Inf Bde

Convening Officer.

2

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F55577 Pte Angus Alphonsus ROBERTS C B Highrs 5 Cdn Armd Div	1st CHARGE When on active service, absenting himself without leave, in that he (see charge sheet att) Sec 13(1) A.A.	Guilty	Guilty of AWL from 1600 hrs. 25th Feb/43 to 1230 hrs 6 Apr/43	Confirmed 21 April 43 H Sharp Brig
	2nd CHARGE When on active service, conduct to the prejudice of good order and military discipline in that he, (see charge sheet att) Sec 40 A.A.	Not Guilty	Not Guilty	Noted
	3rd CHARGE When on active service committing an act to the prejudice of good order and military discipline, in that he, (see charge sheet att) Sec 40 A.A.	Not Guilty	Not Guilty	Noted?
			To undergo detention for 160 days and to be placed under stoppages of pay in the sum of $1-12-6. Cost of apprehension. 15 Apr/43 [signature] Major	Confirmed 21 April 43 H Sharp Brig

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

(Signed) H Sharp (H Sharp) Brig (Signed) [signature] Major

Commanding 11 Cdn Inf Bde President.
Convening Officer (c) G Mullorrison Capt. Judge Advocate

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

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

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

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

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

49

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

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 15th day of April 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court and Judge Advocate
2. The witnesses & shorthand writer
~~*(3. The Interpreter)~~ [initials]
~~*(4. The officers under instruction)~~ [initials]

were duly sworn.

*Omit if not applicable.

Signed this 15th day of April 1943.

G Mullorrison Capt Judge Advocate

[signature] Major
President of the Court Martial.

C. Certificate in case of death sentences.

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

~~Signed this day of 19 .~~

~~President of the Court Martial.~~ [initials]

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

D. Confirmation.

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

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

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

Signed this 21 day of April 1943.

H Sharp Brig
Confirming Officer

Promulgated and extracts taken in the case of F55577 Pte Angus Alphonsus Roberts

(a) (Dated) 21 Apr 43 (Signed) [signature] Officer Commanding The Cape Breton Highlanders, C.A. (A.F.)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

(20704) W:47595/242 25,000 2/42 A.& E.W.Ltd. Gp.698
(21785) W:19088/1359 40,000 7/42

CHARGE SHEET

3

The attached F55577 Pte. Angus Alphonsus ROBERTS, "Sp Coy", Cape Breton Highlanders, a soldier of the Canadian Army Overseas, is charged with:

First Charge
A.A.Sec.15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, absented himself without leave from 1600 hrs 25 Feb 43 until apprehended at 1450 hrs 6 Apr 43.

(Absent 39 days, 22 hrs, 50 mins)
Cost of apprehension £1-12-6.

~~Second Charge~~
~~A.A.Sec.~~

~~WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE~~

~~in that he,~~

~~in the company of two other soldiers of his unit at or about 2150 hrs 18 Feb 43 did cause a disturbance in a public house.~~

Second
~~Third~~ Charge
A.A.Sec.40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,

in the company of two other soldiers of his unit at or about 2150 hrs 18 Feb 43 did cause a disturbance in a public house, Liverpool Arms Hotel, Haywards Heath.

~~Fourth Charge~~
~~A.A.Sec.~~

~~WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE~~

~~in that he,~~

~~in the company of two other soldiers of his unit at or about 2150 hrs 18 Feb 43 did cause damage to property in the Liverpool Arms Hotel, Haywards Heath, to the extent of £15-0-0.~~

Third
~~Fifth~~ Charge
A.A.Sec.40

WHEN ON ACTIVE SERVICE COMMITTING AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,

in the company of two other soldiers of his unit at or about 2150 hrs 18 Feb 43, did cause damage to property in the Liverpool Arms Hotel, Haywards Heath, to the extent of £15-0-0

In the Field
14 Apr 43

R.B. Somerville (R.B.Somerville) Major,
A/Officer Commanding,
Cape Breton Highlanders

In the Field
14 Apr 43

To be tried by Field General Court-Martial.

H Sharp
(H Sharp) Brig
Comd 11 Cdn Inf Bde

Jack Cohen Maj R

MEDICAL CERTIFICATE

I certify that I have examined P55577 Pte. Roberts, A.A. to-day, the 15th day of April, 1943 and that he is physically and otherwise fit to undergo trial by Field General Court Martial.

Martin
.....Capt.
Medical Officer, C.B.H.

Trial of F65577 Pte Angus Alphonsus ROBERTS, C B Highrs, 5 Cdn Armd Div.

Held in the Field in England this 15th day of April, 1943.

PRESIDENT
Major J.L. Tyrer — 9 Cdn Armd Regt (RCD)

MEMBERS
Captain J.R. Nesbitt — C B Highrs
Lieut. D.D. Phelan — Ir R C

JUDGE ADVOCATE
Capta'n G.M. Morrison — ADJA 5 Cdn Armd Div

PROSECUTING OFFICER
Lieut W.L. Burke Robertson — C B Highrs

DEFENDING OFFICER
Lieut T.W. Lowe — C B Highrs

The President produced the Convening Order, Charge Sheet and Summary of Evidence

The President, in closed court, reads the Convening Order and the Charge Sheet to the Members, and the Court satisfy themselves that it is properly convened and constituted, that the accused is amenable to Military Law, and that each charge discloses an offence.

The accused is brought before the Court and at 1400 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can) 557 that the accused is fit to undergo trial by Court Martial. The certificate is signed by the President and attached to the Proceedings.

President to accused

Q. 1 Do you object to A57385 Cpl B.W. Henheffer, CMSC, Hq 5 Cdn Armd Div acting as shorthand writer?
A. 1 No, sir.

The shorthand writer is duly sworn.

The Convening Order is read in the hearing of the accused.

The names of the President and Members of the Court are read to the accused.

President to accused

Q. 2 Do you object to be tried by me as President or by any of the Officers whose names you have heard read over?
A. 2 Yes, sir, I object to Capt Nesbitt.

Q. 3 Do you object to be tried by Lieut W.L. MacPherson, the waiting member?
A. 3 No, sir.

Capt J.R. Nesbitt leaves and Lieut W.L. MacPherson takes his place on the Court.

The President, Members and Judge Advocate are duly sworn.

The Charge Sheet is signed by the President.

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty. He pleads as follows:

First Charge - Guilty

Second Charge - Not Guilty

Third Charge - Not Guilty

R.P. 35(B) is complied with, in respect to the 'Guilty' plea, by the President ascertaining that the accused understands the nature of the charge and his plea thereto, explaining the difference in procedure by the plea and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

President to accused

Q. 4 Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby or that you have not had sufficient time for preparing your defence?

A. 4 No, Sir.

The Prosecutor declines to make an opening address.

PROSECUTION

1st Witness, Mr Alfred Trinder, Liverpool Arms Hotel, Haywards Heath having been duly sworn is examined by the Prosecuting Officer:

Q. 5 Have you any occasion to recall the evening of 18 Feb?
A. 5 Yes, I have.

Q. 6 Would you tell the Court your account of this evening?
A. 6 I was at home and sitting in the back room with some of my friends and about 9.45 my wife came to me and asked me to come out as there was trouble brewing. I came through into the big room and I saw a man I know as Wilson trying to cause a row with a Sgt of the RCASC. I got there and tried to separate them and asked them not to quarrel in my house. The Sgt was definitely not quarrelsome and said he did not want a row.

Q. 7 Had the fight actually begun when you went in the big room?
A. 7 No, sir.

Q. 8 What was going on at that time?
A. 8 Wilson was definitely agitating for a row.

Q. 9 What did he say?
A. 9 He was using violent and foul language and the next thing I saw was the man Wilson striking the Sgt and then the fight began.

Q. 10 How many soldiers were in the pub?
A. 10 About 7 or 8.

Q. 11 How many civilians?
A. 11 2 or 3.

Q. 12 And when the fight started, did all the soldiers join in?
A. 12 No, I tried to get in between Wilson and the Sgt when I saw a chair coming towards me.

Q. 13 Who had the chair?
A. 13 Clements.

Q. 14 How long did this fight last?
A. 14 About 5 or 6 minutes.

Q. 15 Who, in your opinion, caused the fight?
A. 15 Definitely Wilson.

Q. 16 By striking the Sgt?
A. 16 Yes.

Q. 17 Did the entire number of soldiers ultimately join in the fight?
A. 17 No, some got out of the house, that is some RCASC chaps. I saw the accused fighting in the same room. In the fight itself there was a tremendous lot of glasses broken and three chairs in the big room. I got in behind the bar and told my wife to phone the police.

Q. 18 In connection with the breakages, did you see anyone in particular, do any damage?
A. 18 The damage was done during the fighting.

Q. 19 Did you see anyone do any damage?
A. 19 Well I saw Wilson push the counter stand over.

Q. 20 Describe the counter stand?
A. 20 It is a brass stand with 2 brass brackets with a big long plate glass ½" thick, with a glass top where our glasses stand on. This was broken after I got in the big room. I then told my wife to phone the police. Wilson pushed the stand over and said "I'll break your fucking pub up".

Q. 21 You mention the accused was fighting. Did you see him fighting at any other time?
A. 21 He was fighting down at the bottom end of the room.

Q. 22 How many was he fighting with?
A. 22 I don't know.

Q. 23 Was he fighting near the door?
A. 23 No he was farthest away from the door. The accused did not push over the brass stand.

Q. 24 Did you see anyone else besides Wilson cause any damage?
A. 24 Only Clements with the chair and I think where the accused was fighting there were quite a few glasses broken.

Cross Examination by the Defending Officer

Q. 25 You have stated that you got to the scene of the disturbance at quarter to ten?
A. 25 Approximately that time.

Q. 26 Were you in the saloon or bar prior to that, that evening?
A. 26 No, I was in the back room entertaining some friends. I had been in the bar early in the evening but previous to the time when these soldiers came in there.

Q. 27 Where were you when you observed this disturbance?
A. 27 Part of the time in the big room where it started and e eventually back of the bar.

Q. 28 Did you see the accused break any glasses in the large room?
A. 28 I think I have already stated that the mix-up was so great I could not say who broke the glasses in the big room.

Q. 29 With regard to the stand, was it quite a strong fixture?
A. 29 Yes, it was and it had been on that bar for over 60 years.

Q. 30 You saw Wilson break it down?
A. 30 Yes, I definitely saw him push it over.

Q. 31 When Wilson commited this act, was there any other person present in the bar?
A. 31 My wife.

Q. 32 Just the three of you--you, your wife and Wilson?
A. 32 I believe there was another person in there, a man known as Mr. Keene.

Q. 33 Did you, while you were in the bar, have anything in your hands?
A. 33 No, but I picked up the stand off the floor.

Q. 34 What was your intention?
A. 34 To put it out of the way so we could start to get the pub cleared out.

Q. 35 Where did Wilson grasp this stand?
A. 35 He pushed it over.

Q. 36 During this time the other 2 Cape Bretons were in the large room?
A. 36 I saw Clements go out before the stand was pushed over. I would not like to make a statement that he was there.

Q. 37 You mentioned that you got in when the row was starting?
A. 37 I was called in just previous to the row starting.

Q. 38 Would you say it had started when you arrived?
A. 38 No, it had not, but it was on the point of starting when I arrived.

Q. 39 Did you hear the accused make any remark?
A. 39 I heard some very funny remarks and some foul language. Who made them I could not definitely say.

Q. 40 Did you attempt any force against Wilson?
A. 40 I attempted no force against him.

By the Judge Advocate

Q. 41 When did you first see the accused in your house that evening?
A. 41 When I went in the big room. The first I noticed him was when he started fighting.

Q. 42 Then you saw the accused start to fight?
A. 42 Yes.

Q. 43 With whom?
A. 43 That is difficult to say.

Q. 44 With another soldier?
A. 44 Yes.

Q. 45 Did you see him after that?
A. 45 Yes, I saw him leave the pub and I saw him with Wilson when the police were there.

Q. 46 Did you hear the accused say anything?
A. 46 I never heard Roberts talking at all.

Q. 47 Who would you say started this fight?
A. 47 Definitely Wilson.

Q. 48 Then the accused joined in?
A. 48 Yes.

Q. 49 After that the general fight started?
A. 49 Yes.

Q. 50 Could you tell the court the actual damage occasioned to you as a result of the man Wilson pushing over this stand?

A. 50 I should imagine the cost of the stand and the glasses to be about £9 or £10.

Q. 51 How do you arrive at these figures?
A. 51 By a rough estimate. The stand is broken beyond repair. I can only make my own rough estimate as the stand was in the place when I came there. The glasses are quite a high price now.

Q. 52 Could you itemize the various items which you claim were damaged?
A. 52 No I can only give a rough estimate. In my £10, I included the chairs, tables and a number of glasses which were broken in the big room. I can only give an estimate There were 30 to 35 glasses on this stand. The stand was practically full as the house was very quiet this evening.

Q. 53 You estimate the damage done by Wilson as about £10?
A. 53 Yes.

Q. 54 Do you recognize Wilson?
A. 54 Yes.

Q. 55 Do you recognize the accused, Roberts?
A. 55 Yes, there. (Points to the accused).

By the Court

Q. 56 When you were intervening between Wilson and the Sgt were you struck by that chair?
A. 56 No I managed to dodge it.

Q. 57 Did your friends join in the fight?
A. 57 My friends were in the back room and never came in the bar.

Q. 58 Did you attempt to strike any of those who were fighting?
A. 58 No, sir.

Q. 59 Concerning the glasses, you say there were six or seven soldiers and two or three civilians. Were they coming and going all evening?
A. 59 Yes.

Q. 60 Is it a custom for your customers to bring their glasses to the bar to get them refilled?
A. 60 Yes, sir it is.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83 (B).

2nd Witness, Miss Margaret Harwood, 36 Western Road, Haywards Heath, having been duly sworn, is examined by the Prosecuting Officer:

Q. 61 Do you recall the evening of the 18 Feb 43?
A. 61 Yes.

Q. 62 What were you doing?
A. 62 We were at the Heath Hotel and from there we went to the Liverpool Arms Hotel.

Q. 63 With whom were you that evening?
A. 63 With Wilson, Clements, the accused and Miss White.

Q. 64 Can you point out the accused?
A. 64 There. (Points out the accused).

Q. 65 Where did you go from the Heath Hotel?
A. 65 To the Liverpool Arms.

Q. 66 What time did you leave the Heath Hotel?
A. 66 About 8.30.

Q. 67 How long did you stay?
A. 67 Unt'l about quarter to ten.

Q. 68 Any event occur between 8.30 and 10.00?
A. 68 Before I left there was a slight argument.

Q. 69 Who took part in that argument?
A. 69 A sgt of the RCASC and Wilson.

Q. 70 What happened?
A. 70 Not very much, we got it settled quickly.

Q. 71 What did you do then?
A. 71 I went out with Clements and went to the top of the road and waited for the other three.

Q. 72 Who do you mean by the other three?
A. 72 Miss White, Wilson and the accused.

Q. 73 Where did you then go?
A. 73 Clements went down to see if they were coming.

Q. 74 Did he go in the hotel?
A. 74 Yes.

Q. 75 Did you go in the hotel?
A. 75 I saw Miss White outside and asked her what was happening.

Q. 76 Did you then go in the hotel?
A. 76 I went in the doorway.

Q. 77 What was going on?
A. 77 The three were fighting to get clear of the RCASC.

Q. 78 Who do you mean by the three?
A. 78 Clements, Wilson and the accused.

Q. 79 How many ASC chaps did you see?
A. 79 About 20.

Q. 80 These twenty men were stopping the 3 Cape Bretons from getting out?
A. 80 Yes.

Q. 81 Were these three men trying to get out?
A. 81 Yes. They were trying very hard to get away from them.

Q. 82 Were these ASC chaps in the doorway?
A. 82 Yes, and there were some on each side of them.

Q. 83 You saw the accused trying to get out?
A. 83 He was fighting to get out of there.

Q. 84 With what was he fighting?
A. 84 His hands.

Q. 85 What was Pte Wilson doing?
A. 85 He was doing the same.

Q. 86 Were they together?
A. 86 Yes, side by side.

Q. 87 Was there any damage done during that fight?
A. 87 I saw a few glasses knocked off the table. Pte Wilson knocked them off.

Q. 88 Did you see him knock the glasses off the table?
A. 88 Yes but it was accidentally.

Q. 89 Did you see anything else?
A. 89 Nothing else.

Q. 90 How long did you remain there?
A. 90 I went out shortly after.

Q. 91 Had the fight stopped?
A. 91 It stopped when the three came out in the small room.

Q. 92 Do you recall how the bar was furnished?
A. 92 I saw a stand up in front of it.

Q. 93 Did you notice anything happen to the stand?
A. 93 No, I did not.

Q. 94 How many stands were there?
A. 94 I don't know.

Q. 95 Could you see the whole of the bar from the place where you were?
A. 95 No, only a part of it.

Cross Examination by the Defending Officer

Q. 96 When you first came to the Liverpool Arms Hotel on the evening of 18 Feb 43, did you notice any dissention or argument between the ASC and the Cape Bretons?
A. 96 There was a slight argument but I did not know what it was about.

Q. 97 There was a slight argument?
A. 97 Yes, but I do not know what about.

Q. 98 What was the first violence you saw?
A. 98 The first I saw was the ASC fellow trying to pick up a chair and try to hit Clements with it.

Q. 99 You mention that you saw some glasses broken but you did not say by whom?
A. 99 Wilson just knocked off four or five with his arm.

Q. 100 Was this done deliberately?
A. 100 No, I think it was by accident. He was sort of pushed against the table.

Q. 101 During the fight were you in the part known as the bar?
A. 101 Yes.

Q. 102 Who else was present in the bar?
A. 102 Only Miss White and myself were in the bar.

Q. 103 While the fight was going on, from where you stood, could you see the three Cape Bretons?
A. 103 Yes.

Q. 104 Could you see all three of them until the time you left?
A. 104 Yes.

Q. 105 Did you see Wilson grasp the stand in the bar?
A. 105 No, I did not see that.

Q. 106 Did you notice the stand with a glass top and brass legs?
A. 106 No, I did not.

Q. 107 Where was the proprietor of the hotel during this disturbance?
A. 107 In the bar.

Q. 108 Whereabouts in the bar?
A. 108 Behind the counter. From what I saw he never left there. He tried to get out but the boys stopped him.

Q. 109 If the accused had done any damage in the bar, would you have seen it?
A. 109 Yes, but I did not see him do any damage.

Q. 110 You did not see him do any damage in the bar?
A. 110 No.

Re-examination by the Prosecuting Officer

Q. 111 Did you see Wilson grasp the stand? You have already stated in your evidence that you could not see the bar or all of the bar from where you were standing?
A. 111 No, I could not.

Q. 112 How much of the bar could you see?
A. 112 Just a small piece of it.

Q. 113 When the fight was going on, how much of the big room could you see?
A. 113 I was standing in the doorway and could see it all.

Q. 114 There might have been some damage to the bar which you did not see?
A. 114 Yes.

By the Judge Advocate

Q. 115 You state that when you left the hotel, trouble was brewing and that when you came back the fight was going on. Is that correct?
A. 115 Yes.

Q. 116 There might have been damage occasioned while you were not there?
A. 116 Yes.

Q. 117 How long were you away?
A. 117 About 10 minutes.

Q. 118 Who was with you during the evening?
A. 118 Clements.

By the Court

Q. 119 How big was the big room?
A. 119 About 30' by 40'.

Q. 120 You went there about 8.15?
A. 120 About 8.30.

Q. 121 How many people were in there?
A. 121 There were a lot of ASC in there and about two or three civilians.

Q. 122 How many ASC?
A. 122 About 20.

Q. 123 Did any others come in?
A. 123 Not that I saw.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 63 (B).

The Prosecution is closed.

D E F E N C E

The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination or that he may, if he wishes make an unsworn statement upon which he cannot be cross-examined.

President to accused

Q. 124 Do you apply to give evidence yourself as a witness?
A. 124 Yes, sir.

Q. 125 Do you intend to call any other witness in your defence?
A. 125 Yes, sir.

Q. 126 Is he a witness as to character only?
A. 126 No, sir.

The Defending Officer declines to make an opening address:

1st Witness, F585V7 Pte Angus Alphonsus ROBERTS, C B Highrs, having been duly sworn is examined by the Defending Officer:

Q. 127 You are in Sp Coy of the C B Highrs?
A. 127 Yes, sir.

Q. 128 You remember the evening of Feb 18, 1943?
A. 128 Yes, sir.

Q. 129 Why do you remember that night?
A. 129 I was arrested that night.

Q. 130 Will you tell the Court why you were arrested and the facts leading up to your arrest?
A. 130 Wilson, Clements and I went to Haywards Heath on 18 Feb. Wilson and I went into the Heath Hotel and Clements left us. We had a few beers and then Clements came later on. He was with two women. We had a beer or two and then went to the Liverpool Arms Hotel and we had a beer there and shanty for the women. There was another woman there and we started talking to her and an ASC fellow came over and butted in. He and the woman started talking and Wilson went up and bought a few drinks. Then on his way back, this ASC fellow asked Wilson what the Jesus was he looking at, so the accused replied "Not Much". Then they had a little argument and I think Clements broke up the argument. Then Wilson, Clements and the two women played a game of darts. Then we decided to leave. The two women went out ahead and Clements followed them. This same ASC fellow stepped in front of Wilson and started the argument again. There was another fellow behind Wilson so I asked him why he was going to hit him and the fellow Wilson was talking with came after me, took a punch at me and then me and him started to fight and Wilson tried to keep the rest back. I heard him say distinctly "Give them a fair chance". After that we made our way for the door and tried to get out. When it broke up, the five of us were in the other room leading out. We all went out together and walked down the street. Then I and the accused went back later on as I had lost my Glengarry and to see whether I could find it. We did not go in the pub. A fellow outside handed me my Glengarry. Then the police came along and took us both to jail and later one of our trucks came out and took us to the guard house.

Q. 131 Where was the proprietor when the disturbance started?
A. 131 He was behind the counter. I did not see him in front of the counter. He stayed there during the fight.

Q. 132 Could you see him during the fight?
A. 132 No one of us looked. I did not see him while I was fighting.

Q. 133 Were you close to Wilson while you were fighting?
A. 133 Yes, sir, He was right beside me.

Q. 134 Did you succeed in staying close together?
A. 134 Yes, sir.

Q. 135 Where did this fight take place?
A. 135 In the big room.

Q. 136 Did you remain close together until it ended?
A. 136 Yes, I tried hard to keep close to him and get out of the pub with Wilson.

Q. 137 Did you see Wilson do any damage in the pub?
A. 137 No, sir, I did not.

Q. 138 Did you do any damage in the pub?
A. 138 No, sir, all I did was fight my way clear.

Q. 139 When violence started, who struck the first blow?
A. 139 This fellow I was fighting with swung first and I clinched with him and started to fight.

Q. 140 During this fight were you close to the part known as the bar?
A. 140 No, sir, I was away from the bar.

Q. 141 How far?
A. 141 Right to the other side of the wall, in the farthest corner of the bar.

Q. 142 Did you see Wilson go into the bar during the fight?
A. 142 No, sir.

Q. 143 What was your intention when the fight started?
A. 143 My intention was to get out of there as quick as I could.

Cross Examination by the Prosecuting Officer

Q. 144 While you were standing in the long room, you could see the bar at the other end?
A. 144 Yes, sir.

Q. 145 Did you buy any drinks during the evening?
A. 145 No, sir.

Q. 146 How many drinks did you have?
A. 146 Wilson bought a few drinks and I helped him bring them back to the table.

Q. 147 Where was the big room?
A. 147 At the other end of the bar.

Q. 148 And that is where they served the drinks?
A. 148 Yes, sir. There was a big crowd around the wicket and I think that Wilson went in the other room on that account.

Q. 149 Do you remember the bar itself?
A. 149 Yes, sir.

Q. 150 What was it like?
A. 150 It was only a small bar.

Q. 151 Did you notice where the glasses were kept?
A. 151 No, sir.

Q. 152 Did you see anyone do any damages during the fight?
A. 152 No, sir.

Q. 153 Damage was done and you were there at the time, did you cause any of the damage?
A. 153 No, sir I was fighting and did not see what went on.

Q. 154 You broke no chairs or glasses?
A. 154 No, sir.

Re-examination by the Defending Officer

Q. 155 You mention that Wilson left the room to go in the other room?
A. 155 Yes, sir.

Q. 156 Had the fighting started then?
A. 156 No, sir.

By the Court

Q. 157 During the period between the fights you said that Wilson and Clements played a game of darts. What did you do?
A. 157 I was at a table and watched the game until they came back.

Q. 158 Do you go with these friends all the time?
A. 158 No, I only know them slightly.

Q. 159 You went out after the fight through the smaller room?
A. 159 Yes, sir.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 93 (B).

2nd Witness, F083582 Pte Joseph Roy WILSON, C B Highrs having been duly sworn is examined by the Defending Officer:

Q. 160 What Coy are you in?
A. 160 Sp Coy.

Q. 161 Do you remember the date 18 Feb 43?
A. 161 Yes, sir.

Q. 162 Will you tell the court where you were on the evening of that day after you arrived in Haywards Heath?
A. 162 Clements, Roberts and I went to Haywards Heath and went to the Heath Hotel. Clements did not come along to the hotel but went to meet his girl. Roberts and I had a few drinks of beer. About a half hour after, Clements and Miss Harwood came in the Heath Hotel as also my girl friend. We drank there until about 8 o'clock and from there went to the Liverpool Arms Hotel.

Q. 163 When you came to the Liverpool Arms Hotel, who was there?
A. 163 There was a bunch of ASC soldiers there.

Q. 164 About how many?
A. 164 About 15 or 16.

Q. 165 Did you see the hotel proprietor?
A. 165 Yes, sir.

Q. 166 About what time was that?
A. 166 About 8.30.

Q. 167 What did you drink?
A. 167 I went to the bar and ordered three beers and two shanties.

Q. 168 Did the proprietor serve you?
A. 168 Yes, he did.

Q. 169 Just what happened?
A. 169 We went to the table and had a few drinks and were talking and chatting away. Any ASC fellow came over and sat down beside another girl who had joined us. He asked me what I was looking at. I said "Not much". We got into an argument. We were going to fight and Clements and his girl got it stopped and we began to play darts. Afterthe dart game we started to leave which was about quarter to ten.

Q. 170 Everything was peaceful until quarter to ten?
A. 170 Yes.

Q. 171 Then what happened?
A. 171 The girls and Clements left and the accused and I were drinking our last half glass of beer when an ASC fellow jumped in front of me and said "You are pretty saucy". We started arguing back and forth. Then the next thing I saw was the fellow I was arguing with hit the accused.

Q. 172 Why did he hit the accused?
A. 172 He was standing in front of me and when he swung I dodged and he hit the accused who was standing beside me. We all started to crowd around the accused and I saw one fellow with a chair.

Q. 173 Who had the chair?
A. 173 An ASC fellow.

Q. 174 What was he doing with the chair?
A. 174 He had it by the back. I asked him what he was going to do. He told me to keep the hell out of it or I would get hurt so I hit him and he and I got into a fight then. While I was fighting with him an ASC fellow tried to hit me with a chair and the proprietor was trying to hit me with a brass pipe about two feet long. I was knocked against a table and happened to knock some glasses to the floor.

Q. 175 These glasses were on the table in the big room?
A. 175 Yes, sir.

Q. 176 Will you go on?
A. 176 The fighting got quietened down and they stopped. They all started to go out. We came in the big room and Clements was there. The accused and I went in the big room and came into another little part of the pub. Clements, Miss Harwood and Miss White were standing out there. We went out together. We got half way up the lane and the accused had lost his cape and we went back with him.

Q. 177 Did you go back in the pub again?
A. 177 No, sir.

Q. 178 You mentioned that the proprietor served you during the evening?
A. 178 Yes, when I first came in.

Q. 179 Did you notice the fixtures around the bar?
A. 179 No, sir.

Q. 180 Did you see any other damage done during the disturbance beside what you have described?
A. 180 No, sir, but I heard a lot of glasses falling and I saw the ASC fellow with the chair.

Q. 181 Did you see any chairs broken?
A. 181 No, sir, I never noticed any.

Q. 182 Did you do any other damage yourself besides the glasses?
A. 182 No, sir.

Q. 183 You are quite sure of that?
A. 183 Yes, sir.

Cross Examination by the Prosecuting Officer

Q. 184 At the beginning of this affair, you said an Army Service Corps fellow came up and said "You are pretty saucy"?
A. 184 Yes, that was when we were going back to camp.

Q. 185 After the fight?
A. 185 After the first argument.

Q. 186 At the beginning of the fight?
A. 186 Yes, sir.

Q. 187 What did you do to make him say this?
A. 187 I didn't say anything but he was the same fellow I had the argument with before.

Q. 188 Who was the man who hit the accused? What was his rank?
A. 188 He was a pte.

Q. 189 Do you recall any NCOs there that evening?
A. 189 Yes, a sgt.

Q. 190 Did he, by any chance, stop a blow from you?
A. 190 No, sir, he might have in the row.

Q. 191 Had you been in the Liverpool Arms before?
A. 191 Yes, sir, once.

Q. 192 How long were you there the first time you went?
A. 192 About 15 to 20 minutes.

Q. 193 How were you served with your drinks?
A. 193 I went up to a wicket in the big room to get my drinks.

Q. 194 Did you see where the glasses came from?
A. 194 No, sir, he went around another counter to get the drinks.

Q. 195 Why did you not get your drinks in the back room?
A. 195 It was too crowded with a lot of people there.

Q. 196 How many people were in the long room at this time?
A. 196 About 30 counting civilians. There was also an A.T.S. there.

Q. 197 You found it better to go into the other part to get your drinks?
A. 197 Yes, sir.

By the Judge Advocate

Q. 198 What happened after the ASC fellow hit the accused?
A. 198 The accused and he were fighting on the floor. A fellow was going to hit Roberts and I asked him what he was going to do and he said to keep out of it.

Q. 199 You hit him?
A. 199 Yes, sir.

Q. 200 Where was the ASC Sgt at this time?
A. 200 I don't know.

Q. 201 Did you hear Mr Trinder's evidence about the stand being broken by you?
A. 201 Yes, sir.

Q. 202 Is he not telling the truth?
A. 202 No, sir.

Q. 203 You did not see the stand broken?
A. 203 No, sir, I did not recall the stand at all.

Q. 204 Were you drunk?
A. 204 No, sir.

Q. 205 Did you remark that you were going to smash his pub up?
A. 205 No, sir.

Q. 206 Do you know of any reason why Mr Trinder should blame you for doing these things?
A. 206 No, sir.

Q. 207 How is it then that he picked you out of all those people in the pub as being the one to make that remark?
A. 207 I don't know sir.

Q. 208 You and he have not been bad friends?
A. 208 No, sir.

By the Court

Q. 209 In Mr Trinder's evidence he made a statement that he had tried to separate you. Is that so?
A. 209 I never saw him from back of the bar.

Q. 210 You had been drinking a long time. You knew what you were doing?
A. 210 Yes, sir.

Q. 211 You were not so drunk that you did not know what you were doing?
A. 211 No, sir.

Q. 212 If Mr Trinder had come up and spoken to you, you would have known it?
A. 212 Yes, sir.

In the opinion of the Court and the Judge advocate it is not necessary to comply with R.P. 83 (B).

The Defence is closed.

The Closing Address by the Defending Officer is on a separate sheet, marked "X" and attached to the proceedings.

The Closing Address by the Prosecuting Officer is on a separate sheet, marked "Y" and attached to the proceedings.

In the opinion of the Court and the Judge Advocate a summing up by the latter is considered unnecessary.

The Court is now closed to consider the finding.

The Court being re-opened, the accused is again brought before it and the findings on the second and third charges of 'Not Guilty' are pronounced.

The charge to which the accused pleaded 'Guilty' is read to the accused.

President to accused

Q. 213 Do you desire to make any statement of the circumstances in reference to the charge to which you have pleaded guilty?
A. 213 No, sir.

Summary of Evidence is read aloud, in the presence of the accused, signed by the President and attached to the proceedings.

President to accused

Q. 214 Do you wish to make any statement in mitigation of punishment?
A. 214 No, sir.

Q. 215 Do you wish to give evidence yourself or call witnesses as to character?
A. 215 No, sir.

Statement of Character and Service and Field Conduct Sheet, signed in the manner required by A.A. 163 (1) (h) and purporting to refer to the accused by his number, rank, name, and Corps are produced to the Court, read, signed by the President and attached to the proceedings.

President to accused

Q. 216 Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of punishment?
A. 216 Yes, sir.

The Defending Officer makes the following plea in mitigation of punishment:

"The accused has pleaded guilty to the first charge and my remarks will be confined to mitigation of punishment.

The field conduct sheet of the accused discloses a number of crimes all of a petty nature. Most of these were committed while the accused was in Canada. He enlisted as a volunteer and came overseas in November of 1941. Since coming overseas he has had only four crimes or convictions of a very trifling nature.

The accused has built up quite a reputation in this regt as a boxer and this affects to some degree, the offences under consideration. The accused was promised leave on the 29 Dec as his privilege leave came due in that month. Due to the interregimental tournaments at that time, the accused did not get his leave. He went on a course and on returning he felt that he had not received very fair treatment with regard to leave and decided to go A.W.L. He belongs to my platoon and I know he is a capable soldier."

The Court is now closed to consider the sentence.

CERTIFIED A TRUE RECORD OF THIS TRIAL, this 15th day of April, 1943.

G Mellonson Captain
Judge Advocate

ADDRESS BY THE DEFENDING OFFICER

There are three charges against the accused. The first is a charge of A.W.L. for a period of 39 days to which the accused has pleaded guilty.

The second charge is under Sec 40 of the AA is with regard to causing a disturbance in a hotel--the Liverpool Arms. In connection with this charge, the evidence for the prosecution was evidence given by Mr Trinder, the proprietor. He did mention that he saw the accused fighting. I submit that there was no evidence brought out to show that the accused actually caused a disturbance. The accused, on his own admission, states he did take part in the disturbance, but did not cause it.

With regard to the third charge referring to causing damage to the extent of £15, in the evidence given by the hotel proprietor, as I recall it, there was no mention made to any actual damage done by the accused. This is concurred in by Miss Harwood's evidence. She was in a position to watch the accused and did not seem him commit any damage.

The question of the amount. The soldier is charged in that he in company of 2 other soldiers caused damage to the amount of £15. There is nothing in the evidence to show that damage to the amount of £15 was caused. The witness, Mr Trinder was unable to produce any list or statement of actual damage. Therefore, in connection with these two charges, I submit that there is no evidence that the accused caused a disturbance in regard to the second charge and in regard to the third charge, there is no direct evidence to show he actually did any damage.

Gwm.

ADDRESS BY THE PROSECUTING OFFICER

So far as the second and third charges are concerned, I agree with the defence that the evidence in support thereof is very slight, indeed. At the same time it is obvious that a fight of this kind, in which a number of men are involved can hardly be the fault of one man and therefore I suggest that the court decide the amount of damage so that Roberts can pay a reasonable portion of the £15 mentioned in the charge.

On Roberts' own admission, he was fighting in the Liverpool Arms Hotel on the 18 Feb, in company with two other members of his own unit. This is supported by the rest of the evidence and is not disputed by the defence. It all indicates that Roberts was a partial cause of the disturbance at that time and as I have already said, a disturbance of this kind cannot be blamed on only one man. All who participate are responsible for the results.

If Miss Harwood is an answer to anyone's prayers, she certainly is not to a prosecuting officer. Her evidence is contradictory and as a matter of fact was a witness for the defence in the case of Clements. It is true that Miss Harwood did not see any damage done, but she was not in a position to see what went on regarding the glass stand on the bar and that is the chief item of damage of which Mr Trinder complains. I, therefore, feel that the second charge is substantiated by the evidence and that the third charge will also be substantiated and think that the accused should be found guilty of causing some of the damage.

So far as concerns the self defence aspect of the accused which was brought out on his behalf, there is no evidence to disprove that, and it may be, in part, correct, but I feel that no man would be on the defensive continually and could easily have got out of range of the twenty or thirty men who were in the pub. I do not think that self defence is a plea for the defence.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of F 55577 Pte. Angus Alphonsus ROBERTS Cape Breton Highlanders, Canadian Army Overseas, charged with one offence under Section 15(1) of the Army Act and two charges under Section 41 of the Army Act, and two offences under Section 40 of the Army Act.

The Commanding Officer directs that the evidence be taken under oath.

First Witness: F54836 Sgt. MacDonald, V.T., Cape Breton Highlanders, sworn, states:

I am the Platoon Sgt of No. 5 Platoon, Cape Breton Highlanders. I am well acquainted with F55577 Pte. ROBERTS, A.A., who is a member of my platoon and whom I now recognize as the accused. On the afternoon of the 25 Feb 43 the Platoon was prepared to move off on an exercise. The accused was present at 1330 hrs on that date. At 1600 hrs the same date, 25 Feb 43, I made a final check-up of the Platoon and found the accused was absent. I next saw the accused when he was returned to the Bn under escort on 8 Apr 43. He was absent from parade between the two dates mentioned.

Signed .....

The accused declines to cross examine the witness.

Second Witness: Lieut. W.A.Standing, Adjutant, Cape Breton Highlanders, sworn, states:

I am Adjutant, Cape Breton Highlanders. I produce a document purporting to be a certificate signed by P.C.366 Redfern of the Civil Police, Nottingham dated 6 Apr 43, showing that the accused was apprehended by the civil police, on 6 Apr 43. I also produce an expense voucher purporting to be signed by Capt.C.Wood, No. 6 Provost Coy, Cdn Provost Corps, London, dated 7 Apr 43, showing expenses incurred in the return of the accused from Nottingham to London. I produce a third document purporting to be signed by the said Capt. Wood, dated 8 Apr 43, and showing the expenses incurred in the return of the accused from London to Crowborough.

Signed .....

The accused declines to cross examine the witness.

The documents mentioned by Lieut. Standing in his evidence were read to the accused, and attached hereto, as Exhibits A, B and C in the order of their presentation.

I certify that in my opinion, owing to the time and expense involved, the attendance of these witnesses at the taking of the Summary cannot be readily procured.

.....
Officer taking Summary

Third Witness: Miss Margaret Harwood,30 Western Road,Haywards Heath.

A Document purporting to be signed statement of evidence of Miss Margaret Harwood, of 30,Western Road Haywards Heath, was read over to the accused, marked Exhibit "D" and attached hereto.
I certify that in my opinion,owing to the time and expense involved, the attendance of this witness at thetaking of the summary of evidence cannot be readily be procured.

.....
Officer taking Summary

Fourth Witness: Mr.Alfred Trinder,Liverpool Arms Hotel,Haywards Heath.

A document purporting to be a signed statement of evidence of Mr.Alfred Trinder,Liverpool Arms Hotel, Haywards Heath, was read over to theaccused marked Exhibit "D" and attached hereto.
I certify that in my opinion owing to the time andexpense involved, the attendance of the witness at thetaking of the summary of evidence cannot be readily be procured.

.....
Officer taking Summary

The accused was warned as follows:

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

The accused declines to make a statement.

The accused declines to call witnesses in his own behalf.

I certify that R.P.A has been complied with.

Taken by me in the field in the presence and hearing of the accused this 16th day of April 1918.

.....
Officer taking summary

DESCRIPTIVE RETURN OF § Pte. Angus Roberts F/55577 who 31
was apprehended at 12.30 a.m. (hour) on the 6th day
of April, and was committed to confinement at The Guildhall, Nottm.
on the 6th day of April as a Deserter ~~(or Absentee without leave)~~ from the Bn. of the
Regiment of Cape Breton Highlanders

EXHIBIT "A"

Age 27 Height 5 feet 5 inches
Complexion fresh Hair brown Eyes grey
Marks Tattoo - rt forearm In uniform or plain clothes uniform

Probable date and place of attestation	15/7/40 Canada
Probable date of desertion or beginning of absence and from what place.	~~22/~~ Mayfield Sussex
Name, occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured.	P.C. 366 Redfern Nottm City Police
Particulars in the evidence on which the prisoner is committed, and showing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.	* P.C. Redfern on oath saith "I arrested prisoner at Shakespeare St. When charged with being an absent deserter, he replied "That's right" H.D. Snook

I DO HEREBY CERTIFY that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he†

The Guildhall Nottingham — Signature / Residence / Post Town — of Committing Magistrate. 6th April 1943

the before-mentioned Corps.

Angus Roberts ~~Date of Signature~~ Signature of Prisoner

P.C. 366 Redfern Signature of Informant

Or where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming

I HEREBY CERTIFY that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the day of for the purpose of obtaining such evidence.

~~Signature~~ Lieut. Residence Post Town — of Magistrate

W. Kent Police Officer Taking Sentence

Date of Signature

§ Care should be taken to insert Army No. and Rank.
† Insert "was apprehended" or "surrendered," as the case may be.
* It is important for the public Service, and for the interest of the Deserter or Absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.
‡ Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs," or "does not belong to," as the case may be.

32

Army Form O.1618.

PART II.

This portion of the Form, after the Magistrate has committed the soldier and completed the recommendations as to reward, will be handed by the Clerk of the Court to the Police, who will add overleaf a statement of any expenses incurred by them.

Apprehension of No. of

Regiment at on by

who was committed as a Deserter (or Absentee without leave) on the

RECOMMENDATION FOR REWARD.

I RECOMMEND*

Address

for a reward of

Signature of Committing Magistrate.

Date.

*The Magistrate will insert the name and address (in full) of the person for whom the reward is recommended, and the amount (5/-, 10/-, 15/-, or 20/-) which in his opinion should be granted in this particular case, having regard to the following rules :—

1. When soldiers are apprehended in uniform near their quarters it is considered that as a general rule 5/- is a sufficient reward. Not more than 10/- will be allowed in any case where the soldiers were in uniform.

2. When soldiers are apprehended in plain clothes, at a distance from their units, and after having been absent for some time, the reward may be increased to 10/- or 15/- according to the nature of the cases and the trouble incurred in apprehension. A reward in excess of 15/- will seldom be granted.

3. The reward of 20/- should be strictly reserved for cases where superior intelligence has been displayed in apprehending men in plain clothes, or under difficult or exceptional circumstances.

Rewards and expenses attendant upon apprehensions will be paid by the Command Paymaster of the Command or District in which the soldier's Unit is stationed.

4. No reward can be authorised if the Deserter or Absentee voluntarily surrendered, or if it shall appear that he was in collusion with the person who apprehended him, or if the apprehended man was not a Deserter or Absentee.

The following Statement of expenses (if any) incurred by the Police and chargeable to Army Funds should be certified by a Superintendent or Officer in charge of a station.

No expenses incurred in conveying a Deserter or Absentee from the Court to prison should be charged to Army funds. Such expenses can be included in the claim made on the Prison Commissioners.

The total amount allowed on account of expenses before committal will not together with the reward exceed 40/-.

I CERTIFY that the following expenses were incurred by the.....

Police in connection with the apprehension of.....

.....and are

payable to.....

.....
{Superintendent or Officer i/c Police Station at

Date.....

AUTHORITY for the PAYMENT of a REWARD. *(For Army use only.)*

The Command Paymaster.....is hereby authorised to

pay to.....being the person recommended by the

Committing Magistrate, a reward of.....for the apprehension

of.....

Date.....(O.C. Unit)
Officer Commanding.

Where no reward is authorised though one was recommended by the Magistrate, or where the reward authorised is less than that recommended, a brief explanation will be given below :—

Army Form C.1818.

IMMEDIATE.

PART I.

DESCRIPTIVE RETURN of a Deserter or Absentee without Leave.

INSTRUCTIONS FOR THE GUIDANCE OF MAGISTRATES.

(1) When a man is apprehended by the Civil Power as an absentee without leave, or as a deserter, if the information tendered leaves no doubt in the mind of the Magistrate that the prisoner is a soldier, this return should be completed and given to the Police to hand to the escort on arrival.

(2) To avoid delay in the arrival of the escort a telegram stating the Number, Rank, Name and Unit of the soldier should be sent by the Police, as soon as the man is committed, to the Officer Commanding the soldier's Unit. The place where the escort is required to attend should be stated, also whether the soldier *surrendered* or was *arrested*.

(3) Any recommendation for a reward should be made on Part II of this return.

(4) The Court fees chargeable for Descriptive Returns should be claimed periodically from the Command Paymaster of the Command in which the Court is situated.

(5) The stations of all Units are shown in the Monthly Army List, as are also the Depots of Corps.

In the case of doubt as to the location of a particular Unit reference should be made to the nearest O.C. Troops. Where the soldier's Unit is stationed overseas (outside Great Britain, Northern Ireland District, and the Channel Islands) the telegram for an escort should be despatched to the O.C. Depot, who will take all necessary action for its provision.

(71548) W14313/241 50,000 5/41 A.& E.W.Ltd Gp.859 Forms/C.1818/52

EXHIBIT "B"

Expense Voucher Re—: Ref: R.R. & O. (Can) 539 33

Reg. No. F5557 Rank Pte Name Roberts, A.A. Unit C B High

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Nottingham

Date	Particulars	Amount		
7 Apr. 43	Escorts return fare from LONDON To Nottingham		19	0
	Prisoners single fare to LONDON From Nottingham		9	6
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed,~~ Meals, Bus fares		5	0
	Total £	1	3	6

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] ~~Lieut.~~

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:55
40/P & S/483

W E Burke Robertson Lieut.
Officer Taking Summary.

EXHIBIT "C"

35

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. F55577 Rank Pte. Name Roberts, A.A. Unit C B High

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
8 Apr 43	Escorts return fare from LONDON To Crowborough		6	0
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Crowborough		3	0
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		9	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Elwood Capt. Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

W G Rusk Robertson Lieut.
Officer Taking Summary.

C.M.H.Q. 1000/55
40/P & S/483

EXHIBIT "D"

37

Statement of Miss Margaret Hawood

I am Miss Margaret Hawood, of 36 Weston Road, Haywards Heath. Dr 14 Feb 43 in Haywards Heath I was out in the same party as Pte Wilson J.R. & Pte Roberts, A.A. We were all at the Liverpool Arms Hotel around 8.30 pm in the evening when Pte Wilson & Roberts started arguing with some Service Corps chaps. Around 9.30 the Elements, with whom I was, left the others & went out. As they didn't follow, Pte Clements went back to get them. A few minutes later I went back into the Hotel when I saw Pte Wilson & Roberts fighting with the Service Corps chaps. I saw Wilson knock some glasses off a table during the scuffle. The glasses were smashed. Both Pte Wilson & Roberts and Roberts, A.A. are members of the C.B.H. Dated & signed this 12th day of April 43.

M. E. Hawood

Officer Taking Summary.

EXHIBIT "E"

Statement of Mr. Alfred Trunder

On 18 Feb 43 around 9.45 PM I was called from my private sitting room by my wife who was serving in the bar. The soldiers in the bar I noticed were arguing and were on the point of fighting. A fight did in fact start a few minutes later, although I did my best to stop it. I saw private Roberts, A. who was very aggressive, fighting with a chair which he subsequently smashed on the floor. Pte Roberts, A. is in the CBH.

Dated 13 Apr. 43.

A. Trunder.

W.S. Buchanan Lieut.
Officer Taking Summary.

List of Exhibits in the case of F55577 Pte. Angus Alphonsus ROBERTS, Cape Breton Highlanders.

Exhibit "A"	Certificate of apprehension of accused.
Exhibit "B"	Railway expense voucher, Nottingham to London.
Exhibit "C"	Railway expense voucher, London to Crowborough.
Exhibit "D"	Statement of Miss Margaret Harwood.
Exhibit "E"	Statement of Mr. Alfred Winder.

13 Apr. 43

I desire to avail myself of the Services of Lieut. T. M. Lowe, as my defending officer in my forthcoming trial by Court Martial, if that is possible

F55571 Pte A Roberts.

No. F55577 Name Roberts A.A. Sqn., Battery, or Company C Corps C.B. High'rs Date of enlistment 15/7/40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 A.F.B. 1176 (1934—7-41 (120)—20) (1934—7-41 (120)—20) 1172-36-1653

Date of last entry in Company Conduct Sheet 27/9/4 No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. C.D. Arnold Major

Place	Date of offence	Rank	Cause of drunken-ness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order (Same-wing with 22nd)	By whom awarded	Remarks
Maida Bks	1-12-41	Pte		A.A. 40 did not get out of bed when duly warned	Sgt MacDonald	7 days C.B.	2-12-41	Lt Col Small	
Maida Bks	10-4-42	"		A.A. 40 Left his Sec while on a Route March and approached offr without permission	L.S Haley J.	3 days C.B.	11/4/42	J.A. Crane	
Maida Bks	16-4/42	"		A.A. 40 Dirty Rifle	RCOC Armourer	7 days C.B.	16/4/42	Lt.Col Weir	5 days Pay
Maida Bks	29-4-42	"		A.A. 40 Dirty buttons on greatcoat	L/C McNeil	3 days C.B.	1/5/42	J.A. Crane Lt	
Field,	27/8/42	"		A.A. Sec 40 WOAS Neglect to the prejudice of good order and military discipline in that he on Ordnance Inspection was found to have a Rusty Rifle (#I5645)	CSMS O'Grady	5 days C.B.	29/8/42	Lt Col J.B. Weir	

(P.T.O.)

COPY

No. F55577 Name Roberts A.A. Sqn., Battery, or Company C Corps C.B. Highrs Date of enlistment 15/7/40 G.C. Badges Service or Proficiency Pay

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

Place	Date of offence	Rank	Cause of drunken-ness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order (Same-wing with 22nd)	By whom awarded
Sydney N.S.	15/9/40	Pte		AWL 14/9/40 to 15/9/40		1 days pay 5	C.B. 17/9/40	
" "	2/10/40	"		AWL 2230 hrs 1/10/40 to 2400 hrs 2/10/40		2 days pay - Admonished	7/10/40	
" "	2/11/40	"		AWL 0830 hrs 1/11/40 to 0900 hrs 2/11/40		2 days pay	2/11/40	
" "	16/11/40	"		Convicted and sentenced to seven days in county jail		Forfeits 7 days pay	16/11/40	
" "	15/12/40	"		AWL and breaking barracks 15/12/40 to 16/12/40		1 days pay 10 days dstn	16/12/40	
Barrack Green	1/3/41	"		AWL 7 hrs 45 mins.	Sgt Maclean	7 days C.B.	4-3-41	A.C. Sum
" "	19-3041	"		Absent from picquet was replaced	L/C McLean	7 days C.B.	20-3-41	C.D. Arnold Major

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified true copy

(W.A.Standing)Lieut.,
Adjutant, Cape Breton Highlanders

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	7/4/41	Pte		Breaking out of Barracks at 1100 hrs 7-4-41 absent until 1145 hrs 7-4-41. Failing to obey an order.	Sgt McLean	28 days Detn	8-4-41	Lt Col H. H. Small	
	3-5-41	Pte		AWL from 1400 hrs 3-5-41 until 2045 hrs 15-5-41 absent 12 days 6 hrs 45 min.	CSM Saith D.A.	10 days C.B.	28-5-41	Lt.Col Small	Auto forf 13 days pay & forf 10 days pay
	15/6/41	"		Absent from defaulters call at 1830 hrs 14/6/41 & 1345 hrs 15/6/41	Cpl Bonnar	5 days C.B.	15/4/41	Capt A.C.Gunn	
	1/7/41	"		Absent 44 hrs 41 min failed to return from pass 0100 hrs 1/7/41 to 2140 hrs 2-7-41	Cpl Handley	Aut o forf 5 days pay. 14 days C.B. 10 days forf pay	8-7-41	Lt.Col Small	
	27/7/41	"		Failing to get out of bed when ordered to do so by an N.C.O.	Sgt MacDonald	21 days Detn	18-7-41	Lt.Col Small	
	27/9/41	"		Failing to return from on furlough at 2200 hrs 27-9-41 until 0750 hrs 2-10-41. Absent 4 days 9 hrs 50 min	"	7 days C.B.	3-10-41	Major C.D. Arnold	Forf. 5 days pay

Jack Lipper Major 47

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F55577	Pte.	Angus Alphonsus ROBERTS	C.B.Highlanders

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

	Within last 12 months		Since enlistment or appointment	
For	A.A.Sec.15(1)	nil times	11	times
For	A.A.Sec.40	4 times	6	times
For		times		times
For		times		times

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

or,

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

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

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

or,

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

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

or,

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

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 9 days in military custody, making a total of 9 days in custody, of which none days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 27 yrs 8 mos

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 15 July 1940

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

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

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

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

48

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

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

..... Date of promotion.

In the rank of ..... yrs.

In the rank of ..... yrs.

In the rank of ..... yrs.

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

SCHEDULE

Of convictions by a court martial or civil court, of summary awards under section 17 of the Army Act, and of cases in which trial has been dispensed with of accused, Number 255577 Rank Pte

Name Roberts, A.A. of Cape Breton Highlanders Unit Regiment

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

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
Civil Court	16 Nov 40	Unknown	7 days County Jail	Nil

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

Signed this 15th day of April 1942 [signature] CAPT.

ADJUTANT.

The Cape Breton Highlanders, C.A. (A.F.)

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

2d-83

Pte Roberts C.R.

SCHEDULE.

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

Accused: T 57164 Private Chester Roy Roberts

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

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

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

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

Time in confinement awaiting present trial—a total of 5 days, of which Nil days were spent in hospital.(1)

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

Sentence Awarded by the Court:

To undergo detention for eighteen months (18)

(Sgd) ..... Judge-Advocate, if any. 18 Apr 45 Date awarded. (Sgd) D.C. MacDougall Maj President. (RP 45, 80.)

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

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

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING O/FR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 371(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1) NIL

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

Date 21 APR 45 (Sgd) C.D. Lund Brig

Commanding 3 CBR Bde Confirming Officer.

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

Accused.	Date.	Signature of Offr.
257164 Pte. Chester Roy ROBERTS	1500 hrs 22 Apr 45	Lieut. R.P. Stewart. R.P. Stewart Lt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 8 MAY 1945 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160 ... 51-1-3 ...

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Brig. D.C.H. Lund D.S.O. Comd 3 Can Bde RHQ dated 16 Apr 45

ACCUSED.

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

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
257164	Pte	Chester Roy	Roberts	4 CBR Bn

~~1. PROCEEDINGS REVIEWED~~ Pte

A.R.D. 29 May 45 Examined

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

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 18 April 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 693, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

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

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 103-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

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

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

A5. President to accused: ~~Do you object to~~ ..... as interpreter? Ans ~~The Interpreter is sworn.~~ (1) ~~Do you object to~~ ..... as shorthand writer? Ans ~~The shorthand writer is sworn.~~ (1)

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

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

President	Major	D.C. MacDougall	1 CBR Bn
Member	Capt	R.T. Cowan	4 CBR Bn
Member	Lieut	E. Hogg	4 CBR Bn
Judge-Advocate			
Prosecutor	Lieut	R.P. Stewart	4 CBR Bn
Defending Offr	Lieut	D.A. Mc Culloch	4 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 81 (b) and fn 2 were not followed. See D1 p 31.)

A8. The accused 257164 Pte Roberts, C.R. before arraignment make(s) (no) N plea to ~~p~~.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

President to accused : Do you wish to make a statement ? Ans ~~I do not~~ .....(5)

(1. RP 37(D). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

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

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

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

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.(1)

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

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

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

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

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a seperate sheet.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 80(C), 114, 115.)

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

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

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

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(7) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans ~~Yes. I wish to call a witness as to character.~~

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

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

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED F57164 PTE CHESTER ROY ROBERTS, NORTH SHORE REGT, ON STRENGTH OF 4 CDN RFT BN, 3 C.B.R. GP, A SOLDIER OF THE CDN ARMY OVERSEAS, IS CHARGED WITH:

1ST CHARGE
AA Sec 15(1)

WHILE ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he,

In the Field, in Belgium, absented himself without leave from 0800 hrs on the 30 Mar 45 until apprehended at 0045 hrs on the 10 Apr 45.

(Total time absent - 10 days 16 hrs 45 mins).

In the Field,
13 Apr 45.

(L.J. Flynn) Lt-col
Commanding
4 Can Rft Bn - 3 Cdn Base Rft Group - CMF

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
16 Apr 45

(J S H Lind) Brig
Comd 3 Can Base Rft Gp

D.T. MacDougall Maj
President

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-57164	Pte		Chester Roy	ROBERTS	N Shore R 4 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 16 Apr 45 endorsed by me, ~~(or by an offr of my staff for me),~~ " To be tried by Field General Court-Martial ". JM

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ JM

(Delete part in brackets when not required for compliance with RP 105(C).)

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

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ JM

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ JM

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D C MacDOUGALL	CAC 9 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by 4 Cdn Base Rft Bn	
Capt or Lt	To be detailed by 4 Cdn Base Rft Bn	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	To be detailed by 4 Cdn Base Rft Bn	

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in BELGIUM (Country.)

J. S. Lind (Signed personally. RP 105 fn 2.) Brig (Rank.)

Dat 16 Apr 45

Commanding (J S H Lind) 3 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (6143)

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

D.C. MacDougall mcg
— President

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) Para 557 April 18th 1945

I hereby certify that I have this morning examined No 157164 Pte ROBERTS C.R. on strength 4 Cdn Rft Bn, 1 C B R Gp, and in my opinion he is FIT/~~UNFIT~~ to undergo trial by Court Martial

D. I. MacDougall Mny
President

W. J. Grantz Capt
Medical Officer 4 Cdn Rft Bn.

1st Witness for Defence E-1

Lieut. O.K.H. Kearns, North Shore Regt. 4CBR Bn. having been duly sworn states:

I knew the accused, Pte Roberts, when he was a Bren Gunner in my platoon. I knew him from 4 Jan 45 until Feb. 45.

The former Platoon Cmdr. gave Pte Roberts a good recommendation, and while he served with me, he was an excellent Bren Gunner, and I was satisfied as to his work and his character as a soldier.

R.P. 83(b) complied with.

DM

Plea of mitigation in the case of F57164
Pte ROBERTS, C.R. charged with an offence under
AA 15(1)

This soldier joined the army on 6 Jul 43 and proceeded to the U.K. on 8 May 43. He came to France in Aug 44 and went to his unit the NORTH SHORE REGT on 6 Oct 44 where he served as a rifleman, an infantry soldier of the line until 4 Feb 44. He fought with his regiment through some of the toughest fighting of the war, the clearing of the SCHELDT. During his time with the regiment he showed all the qualities of a good soldier. He had no crimes of any kind and worked hard. When he came to GHENT his first wish was to get back to his regiment. This could not be done so he was forced to remain in GHENT. I beg to point out to the court that the contrast between fighting and living under front line conditions and living in any large Belgian city with its many diversions is considerable and it is apparent that these diversions proved too much for this man. He went absent with no intention of evading action in the front line but rather because he "took a chance" on seeing a bit of the brighter side of life. This man is not, essentially a bad soldier. He fought hard and well and wishes to do so again. I trust that in view of this man's past conduct and his past record as a soldier, along with his sincere desire to serve with his regiment again that the the court will view his crime with some degree of leniency.

D Zm

Ex 'C' D.J. MacDougall, Major President

Summary of Evidence in the case of F57164 Pte Chester Roy ROBERTS, North Shore Regt on strength of 22 coy, 4 Cdn Rft Bn 5 CBRC Gp a soldier of the Cdn Army Overseas who is charged with WOAS absenting himself without leave AA 15(1).

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

The accused is informed of his rights.

1st Witness B91985 K.E. French, C.S.M. of 41 coy 10 C.B.R. Bn - 2 C.B.R. Gp.

I certify that in my opinion the attendance of this witness is, owing to the absence of this CSM on duty at 10 C.B.R. Bn, not readily procurable and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as exhibit "A".

D.J. Hackey, Lieut
(D.J. Hackey) Lieut.
Officer detailed to take Summary of Evidence.

I do not require the attendance of this witness for the purpose of cross-examination.

C.R. Roberts

2nd Witness F54900 A/C.S.M. MacDonald, R.E. of 22 coy 4 Cdn Rft Bn, sworn, states -

I am F54900 A/C.S.M. MacDonald, R.E., of 22 coy 4 Cdn Rft Bn. At approximately 1200 hrs 31 Mar 45 I was present at 4 Cdn Rft Bn on the occasion of the mustering in of the North Shore X-4 personnel coming in to us from 10 Bn. I double checked the nominal roll and F57164 Pte Roberts, C.R. did not answer his name. I made a search of the area and could not locate him. I called the company roll twice daily from 31 Mar 45 and up until 10 Apr 45 on which roll appeared the name of F57164 Pte Roberts, C.R. and he did not answer his name on any occasion. He was placed on the absentee report of 22 coy for that period.

K.E. MacDonald

R 93(B) complied with.

Accused declines to cross-examine this witness.

Documentary Evidence Certificate of surrender under AA 163(1)(j) produced as documentary evidence was read over to the accused, signed by me, and attached hereto as exhibit "B".

D.J. Hackey, Lieut
(D.J. Hackey) Lieut.
Officer detailed to take Summary of Evidence.

The accused was cautioned as follows -

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

Answer by the accused

Accused declines to make a statement. C.R. Roberts

Accused does not call any witnesses.

I certify that the foregoing summary of evidence consisting of 2 pages was taken down by me in the presence of the accused and that R.A. 4 (C) (D) (E) (F) and (G) have been complied with.

L.J. Hachey, Lieut

(L.J. Hachey) Lieut.

In the Field.
12 Apr 45.

Officer detailed to take Summary of Evidence.

DTM

#1 Coy., 1o CHR Bn.

2 April, 1945.

DOCUMENTARY EVIDENCE

I, the undersigned, called the Muster Parade, at 0800 hrs., 30 March, 1945 and u/m soldiers were absent.

D 147711	Pte	Jones		W K	N Shore R	A.W.L.	from 0800 hrs	30-3-45	
F 5216	Pte	Roberts		C R	"	"	"	"	"
[illegible]									
F 48[illegible]	Pte	Wilson		R E	"	"	"	"	"
G 2401	Pte	Hale		L W	"	"	"	"	"

Exhibit "A"
K.J. Hinchey, Maj. Bn.

Signed K E French
(K E French CHR)
#1 Coy., 1O CHR Bn.

CERTIFICATE UNDER ARMY ACT. SECTION 163 (i) (j)

Certified that No. F-57164 Rank Pte Name Roberts C.R.

of the 22 Coy 4 Bn 3 C.B.R.G. Regt, ~~XXXXXXXXXXXXXXXX~~ No. L-72

was apprehended by

Rank L/cpl Name Puff J.E. of the 2 Cdn L of C Prov Coy

Ghent Detach at Ghent Belgium at 0045 hrs, on the 10

day of April 1945 as an absentee without leave.

He was wearing Military Uniform at the time of his ~~Surrender.~~ Arrest.

~~Civilian Clothes.~~

Place Ghent Belgium

Date 10 April 45

J.E. Thomson Lieut
Canadian Provost Corps.

A/D.A.P.M. J.E.Thomson
H.Q. 2 C.B.R.G.

Exhibit "B"
L.J. Hackey, Lieut

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F-57164	Private	Roberts, C.R.	North Shore Regt. on strength of 4 Cdn Rft Bn.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For AA Sec 15(1) 3 times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 11 Aug 43

Date of last entry in Field Conduct Sheet 6 Feb 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf. see over leaf.

*3. The accused at the present time is under sentence for N/A

~~beginning on the~~ ~~day of~~

4. The accused has been awaiting trial on the present charges for from 0045 10 Apr 45 days in civil custody; and for 4 days in military custody, i.e., NIL days in open arrest, 4 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 22

6. The date of his attestation ~~calling up for military service~~ is 16 Jul 43.

7. The service which the accused is allowed to reckon is 1 yr, 9 mons.

8. The accused is in possession of† N/A

9. ~~[illegible]~~ The accused has served continuously without reduction, as the present date

~~Date of Promotion~~

~~In the substantive rank of~~

~~In the [illegible] rank of~~

~~In the [illegible] rank of~~

*Strike out if not applicable.

†State the military decorations (if any) held by accused.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

Wt 55900/1602 20,000 3/44 51-4751. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 13th day of April 1945

L.F.J. Mongeon

(L.F.J. Mongeon) A/Adjt.,
4 Cdn Rft Bn.

MFM 6
(AFB 122)
40/P&S/136 (3458)

No F57164 Name Roberts, G.R. | Sqn, Battery, or Company | Corps CIC | Date of enlistment 16 Jul 42 | GC Badges | Service or Proficiency Pay

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Yarmouth NS	11 Aug 43	Pte		AWL at tattoo roll call 2200 hrs 11 Aug 43 (AA Sec 15(1)	Cpl Smeltzer Cpl Jury	Admonished	12 Aug 43	Maj E.I.H. INGS.	
Field	25 Sep 44	Pte		Blood donor 5 Jun 44 AA Sec 15(1) AWL from 1830 hrs 23 Sep 44 until 0700 hrs 26 Sep 44. (Absent 22 hrs 30 min).	Sgt Lang	14 days forf of pay	27 Sep 44	M.J. Stenar Lt-col	1 days pay FR&I 149(1)(a 14 days pay FR&I 149 (2)
Field	6 Feb 45	Pte		AA Sec 15(1) AWL from 1230 hrs 6 Feb 45 until 0030 hrs 8 Feb 45 (Total absence: 2 Days 8 hrs)	Documentary	10 days forf of pay	28 Feb 45	Lt-col A.C. HOOD	Forf 10 days pay 149 (2) Forf 3 days FR&I 149(1)(a

(PTO)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY OF ENTRY IN REGIMENTAL BOOK IN MY CUSTODY.					
				In the Field. 13 Apr 45					

2nd.

RECEIPT FOR CHARGE SHEET AND SUMMARY OF EVIDENCE (MML Ch 5 Sec 5 SS24)

I hereby acknowledge that I have this date 13 Apr 1945 received from Lieut. R.F. Stewart (Unit) one copy of Charge Sheet and Summary of Evidence referring to charge(s) of A A Sec 15 (1)

for which I was remanded for Court Martial.

C R Roberts
(Signature of Accused)

REQUEST FOR DEFENDING OFFICER (MML Ch 5 Sec 5 SS 27)

I hereby request that Major (or Capt) Dickey if available, act in my defence. If this officer is not available, I request the Commanding Officer of 4 Cdn Rft Bn (Unit) appoint an officer to act on my behalf.

C R Roberts
(Signature of Accused)

I hereby certify that ~~Lt McCullough~~ Lt D.A. McCulloch ~~LT L.J. HACHEY~~ was appointed (Rank & name) to defend F-57164 Pte Roberts, C.R. (number, rank and name) at his forthcoming trial by Court Martial and that the said ~~Lt McCullough~~ Lt D.A. McCulloch (Rank and name) was notified that he was to act as defencing Officer on 13 Apr 45 (date).

R J Morgan
(Adjt of Unit)
4 Cdn Rft Bn RCA

WHEN PROSECUTING OFFICER POSSESSES LEGAL QUALIFICATIONS (MML Ch 5 Sec 5 SS 25)

I hereby certify that I have been duly warned that the Prosecutor is an officer possessing legal qualifications.

(Signature of Accused)

51-83.

SCHEDULE.

"DM" **PART I. PLEA(S), FINDING(S) AND SENTENCE.**

Accused: F57164 Private Chester Roy Roberts

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

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

~~At present under sentence/in~~ ..... beginning on (date) ..... (1)

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

Time in confinement awaiting present trial—a total of 8 days, of which nil days were spent in hospital.(1)

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

Sentence Awarded by the Court:

To undergo detention for eighteen months (18)

"DM" (Sgd) ~~Judge Advocate~~ ..... 18 Apr 45 (Sgd) "D C MACDOUGALL" Major
Date awarded. President. (RP 45, 50.)

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

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

Date ..... (Sgd) ..... Commanding .....

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

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

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

Confirmed

~~I direct that the accused be not committed to penal or detention barracks until further orders.~~(1) "JSL"
(1. AA 57A. Delete if not used.)

(Sgd) "J S Lind" Brig

Date 21 Apr 45 Commanding 3 CBR Gp
Confirming Officer.

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

Accused.	Date.	Signature of Offr.
F57164 Pte Chester Roy ROBERTS	1500 hrs 22 Apr 45	Lieut R P Stewart "R P Stewart" Lt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CP(A)96 (To form 37 of AFA37) 40-P-W-B-1000 (16000) 4/38B

Convened by Order of Brig J S H Lind DSO Comd 3 CBRG dated 16 Apr 45

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F57164	Private	Chester Roy	ROBERTS	4 CBR Bn

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 18 April 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 29/87

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

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

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

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

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

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

"DM" A5. President to accused: ~~Do you object to~~ ~~no interpreter~~ ~~- Ans~~ ~~the interpreter sworn~~(1) ~~- Do you object to the interpreter being sworn~~ ~~- no amendment noted - Ans~~

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

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

Ans No sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

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

President	MAJOR	D C MACDOUGALL	CAC 2 CBR Bn
Member	CAPT	R T CONAN	SLT 4 CBR Bn
Member	LIEUT	E HOGG	SLT 4 CBR Bn
Judge-Advocate			
Prosecutor	LIEUT	R P STEWART	CHofO 4 CBR Bn
Defending Offr	LIEUT	D A McCULLOCH	Tor Scot 4 CBR Bn

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

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See DI p 3.)

"DM" A8. The accused F57164 Pte Roberts CR before arraignment make(s) (no) (a) plea. (1)

23May45 jwb

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

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

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

"DM" A10. The Court ~~re closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ 3 CBRG vol 1 p 38

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

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

D3. The evidence for the Prosecution is taken.[1]
(1. RP 39(C), 116, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

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

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

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

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf AO5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

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

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?[1]
Ans [illegible]
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex [illegible] and Ex [illegible] respectively.[3]
(1. AFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

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

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

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and ~~the JA, if any~~.[2]
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Oversea, RO 309, 2323, RP 48. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED F57164 PTE CHESTER ROY ROBERTS, NORTH SHORE REGT, ON STRENGTH OF 4 CDN RFT BN, 3 C.D.R. GP, A SOLDIER OF THE CDN ARMY OVERSEAS, IS CHARGED WITH:

1ST CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he,

In the Field, in Belgium, absented himself without leave from 0800 hrs on the 30 Mar 45 until apprehended at 0045 hrs on the 10 Apr 45.

(Total time absent - 10 days 16 hrs 45 mins).

L. J. Flynn

In the Field.
13 Apr 45.

(L.J. Flynn) Lt-col
Commanding
4 Cdn Rft Bn - 3 Cdn Base Rft Group - CMF

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

J. S. Lind

In the Field
16 Apr 45

(J S H Lind) Brig
Comd 3 Cdn Base Rft Gp

Dt. Mac Dougall mg.
president

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAN/1697 (2868)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F57164	Pte		Chester Roy	ROBERTS	N Shore R 4 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has (~~have~~) committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on "JSL" (*date*) 16 Apr 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

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

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

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

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	D C MACDOUGALL CAC	9 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
CAPT	To be detailed by 4 Cdn Base Rft Bn	
CAPT or LT	To be detailed by 4 Cdn Base Rft Bn	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
CAPT or LT	To be detailed by 4 Cdn Base Rft Bn	

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in BELGIUM (Country.) "J S Lind" (Signed personally. RP 105 fn 2.) Brig (Rank.)

Date 16 Apr 45 (J S H Lind) Commanding 3 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

"D C MACDOUGALL" MAJ
PRES

MEDICAL OFFICER'S CERTIFICATE (KR(Can) Para 557)

I certify that I have this day examined F57164 Pte Roberts C R

4 Cdn Rft Bn 1 CBR Gp and in my opinion he is fit ~~unfit~~ to undergo

trial by Court Martial.

Station

Date 18 April 1945

"W J FRANKS" Capt
Medical Officer
4 Cdn Rft Bn
Unit

Dr Wm Donnell Wing
President.

1st Witness for Defence E 1

Lieut O K H Kearns N Shore Regt 4 CBR Bn having been duly sworn states:

I knew the accused, Pte Roberts, when he was a Bren Gunner in my platoon.

I knew him from 4 Jan 45 until Feb 45.

The former Platoon Cmdr gave Pte Roberts a good recommendation and while he served with me, he was an excellent Bren Gunner, and I was satisfied as to his work and his character as a soldier.

RP 83 (b) complied with.

"DM"

Plea of mitigation in the case of F5716* Pte Roberts C R charged with an offence under AA 15(1)

This soldier joined the army on 6 Jul 43 and preceeded to the UK on 8 May 43. He came to France in Aug 44 and went to his unit the NORTH SHORE REGT on 6 Oct 44 where he served as a rifleman, an infantry soldier of the line, until 4 Feb 44. He fought with his regiment through some of the toughest fighting of the war, the clearing of the Scheldt. During his time with the regiment he showed all the qualities of a good soldier. He had no crimes of any kinds and worked hard. When he came to GHENT his first wish was to get back to his regiment. This could not be done so he was forced to remain in GHENT. I beg to point out to the court that the contrast between fighting and living under front line conditions and living in any large Belgian city with its many diversions is considerable and it is appare nt that these diversions proved too much for this man. He went absent with no intention of evading action in the front line but rather because he took a chance on seeing a bit of the brighter side of life. This man is not, essentially, a bad soldier. He fought hard and well and wishes to do so again. I trust that in view of this man's past conduct and his past record as a soldier, along with his sincere desire to serve with his regiment again that the court will view his crime with some degree of leniency.

"DM"

Ex C. Donnie Dougall Maj
President

Summary of Evidence in the case of F57164 Pte Chester Roy ROBERTS, North Shore Regt on strength of 22 coy, 4 Cdn Rft Bn 3 CBRG Gp a soldier of the Cdn Army Overseas who is charged with WOAS absenting himself without leave AA 15(1).

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

The accused is informed of his rights.

1st Witness B91985 K.E. French, C.S.M. of 41 coy 10 C.B.R. Bn - 2 C.B.R. Gp.

I certify that in my opinion the attendance of this witness is, owing to the absence of this CSM on duty at 10 C.B.R. Bn, not readily procurable and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as exhibit "A".

L.J. Hachey, Lieut
(L.J. Hachey) Lieut.
Officer detailed to take Summary of Evidence.

I do not require the attendance of this witness for the purpose of cross-examination.

C.R. Roberts

2nd Witness F54900 A/C.S.M. MacDonald, R.E. of 22 coy 4 Cdn Rft Bn, sworn, states -

I am F54900 A/C.S.M. MacDonald, R.E., of 22 coy 4 Cdn Rft Bn. At approximately 1200 hrs 31 Mar 45 I was present at 4 Cdn Rft Bn on the occasion of the mustering in of the North Shore X-4 personnel coming in to us from 10 Bn. I double checked the nominal roll and F57164 Pte Roberts, C.R. did not answer his name. I made a search of the area and could not locate him. I called the company roll twice daily from 31 Mar 45 and up until 10 Apr 45 on which roll appeared the name of F57164 Pte Roberts, C.R. and he did not answer his name on any occasion. He was placed on the absentee report of 22 coy for that period.

R.E. MacDonald

R 83(B) complied with.

Accused declines to cross-examine this witness.

Documentary Evidence Certificate of surrender under AA 163(1)(j) produced as documentary evidence was read over to the accused, signed by me, and attached hereto as exhibit "B".

L.J. Hachey, Lieut
(L.J. Hachey) Lieut.
Officer detailed to take Summary of Evidence.

The accused was cautioned as follows -

Q.- Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by the accused

Accused declines to make a statement. C.R. Roberts.

Accused does not call any witnesses.

I certify that the foregoing summary of evidence consisting of 2 pages was taken down by me in the presence of the accused and that R.P. 4 (C) (D) (E) (F) and (G) have been complied with.

L.J. Hackey, Lieut

(L.J. Hackey) Lieut.
Officer detailed to take Summary of Evidence.

In the Field.
12 Apr 45.

416 Coy 1o CBR Bn

2 April 1945

DOCUMENTARY EVIDENCE

I, the undersigned, called the muster parade, at 0800 hrs 30 March 1945 and the u/m soldiers were absent:

D143711	Pte	Jones W K N	Shore R	AWL	from	0800 hrs	30-3-45
F57164	Pte	Roberts CR	"	"	"	"	"
K48003	Pte	Wilson RW	"	"	"	"	"
G2491	Pte	Hale LR	"	"	"	"	"

Exhibit "A"
"L J Hackey" Lieut "DM"

"K E FRENCH"
(K E French CSM
Signed (B91985 CSM French K E)
41 Coy 10 CBR Bn

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT SECTION 168(1)(i)

I certify that No.F52164....Rank.Pte....Name..Roberts.GB.....

of...22.Coy.4.Bn.3.C.B.R.C.....unit was arrested by Lt/22.L/Cpl Puff JE
2 Cdn LofC Prov Coy Ghent Detach
....GHENT.Belgium...(place) at..0045.hrs on..10.April 1945
(date). He was dressed in uniform/~~civilian clothes~~

10 April 45
Date..Ghent.....
Belgium

"J A Thomson" Lieut
Signature & rank..A/DAPM..J.A.Thomson.....
HQ 2 C.B.R.B.
Unit or appointment .....

"DM"
Exhibit "B"
"L J Hackey" Lieut

NOTES

1. This certificate must be signed personally by the officer concerned.
2. In no circumstances may it be signed by one officer 'for' another or by anyone not holding corresponding rank.
3. In no circumstances should the place of apprehension be described as 'In the field'. The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
F-57164	Private	Roberts, C.R.	North Shore Regt. on strength of 4 Cdn Rft Bn.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15(1) 3 times.

For _____ times.

For _____ times.

For _____ times.

Date of first entry in Field Conduct Sheet 11 Aug 43

Date of last entry in Field Conduct Sheet 6 Feb 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf. see over leaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N/A ~~beginning on the~~ _____ day of _____ from 0045 10 Apr 45

4. The accused has been awaiting trial on the present charges for _____ days in civil custody; and for _____ days in military custody, *i.e.*, NIL days in open arrest, _____ days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 22

6. The date of his attestation ~~calling up for military service~~ is 16 Jul 43.

7. The service which the accused is allowed to reckon is 1 yr, 9 mons.

8. The accused is in possession of† N/A

†State the military decorations (if any) held by accused.

9. ~~(If the accused is a warrant officer or N.C.O.). The accused has served continuously, without reduction, to the present date.~~

	Date of Promotion.
~~In the substantive rank of~~	
~~In the next substantive rank of~~	
~~In the acting rank of~~	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

Wt 55900/1602 20,000 2/44 51-4751. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N I L Ex. "D" To Mrs. Dougall my president		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 13th day of April 1945

L.P.J. Mongeon

(L.P.J. Mongeon) A/Adjt.,
4 Cdn Rft Bn.

MFM 6
(AFB 122)
40/F&S/136 (3438)

No F57164 Name Roberts, C.R. Sqn, Battery, or Company | Corps CIC | Date of enlistment 16 Jul 40 | OC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Yarmouth NS	11 Aug 43	Pte		AWL at tattoo roll call 2200 hrs 11 Aug 43 (AA Sec 15(1)	Cpl Smeltzer Cpl Jury	Admonished	12 Aug 43	Maj E.I.H Ings.	
Field	25 Sep 44	Pte		Blood donor 5 Jun 44 AA Sec 15(1) AWL from 1830 hrs 25 Sep 44 until 0700 hrs 26 Sep 44. (Absent 22 hrs 30 min).	Sgt Lang	14 days forf of pay	27 Sep 44	M.J. Stenar Lt.-col.	1 days pay FRxI 149(1)(a 14 days pay FRx' 149(2)
Field	6 Feb 45	Pte		AA Sec 15(1) AWL from 1230 hrs 6 Feb 45 until 2030 hrs 8 Feb 45 (Total absence: 2 days 8 hrs)	Documentary	10 days forf of pay	28 Feb 45	Lt-col A.O. Hood	Forf 10 days pay 149(2) Forf 3 days FRxI 149(1)(a

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY OF MFM 6 FROM REGIMENTAL BOOKS IN MY CUSTODY. In the Field. 13 Apr 45.		L P J Mongeon (L.P.J. Mongeon) Lt., A/Adjt 4 Cdn Rft Bn - 3 Cdn Base Rft Group		- C.A.O.	

Ex. D.
Dimas Daugdemy
Pressant

MM-93

PTE ROBERTS D.E.A.

C-20725 Pte. Daniel Edward Alexander ROBERTS.
Cameron Highrs of O. - 5 C.I.R.U.
MM-93

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 10th day of AUGUST, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "G" GROUP CANADIAN REINFORCEMENT UNITS C.A.(O), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [~~I am unable to appoint:—~~
*(1. ~~Three Officers to form the Court.~~)
*(2. ~~A Field Officer as President.~~)
~~for the following reasons, namely:~~]

Proceedings Received
Ex Ulle Dowell Cmdt
for
22 Sep 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	S.A. GERMAN	1 C.A.S.C.R.U.

Members.

Rank.	Name.	Regiment.
Capt. A Captain	L.E. Fox to be detailed by O.C.	5 C.I.R.U.
Lieut. A Lieutenant	D.C. Grant to be detailed by O.C.	Seaforths of Canada 1 C.I.R.U.
Lieut. A Lieutenant	D.B. Mundy to be detailed by O.C.	Int. Cog 1 C.G.R.U.

Waiting Member

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J.R. Stewart Lough Brigadier
Commanding "G" Gp Cdn Rft Units,
Convening Officer. CA(O)

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C-20725 Pte. Daniel Edward Alexander ROBERTS C.H. of O. 5 C.I.R.U.	First Charge A.A. Sec 15(1) SEE CHARGE SHEET ATTACHED	Guilty	Guilty To undergo detention for a period of Ninety (90) days 10 Aug 43 S. Lerman Maj Pres.	Confirmed

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) J. R. Stewart Lough (Signed) S. Lerman Maj

Brigadier
Commanding "G" Gp Cdn Rft Units
Convening Officer (e) CA(O)

C.A.S.C.R.L.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10th day of Aug 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
~~2. The witnesses~~
*~~(3. The Interpreter)~~
*~~(4. The officers under instruction)~~

were duly sworn.

*Omit if not applicable.

Signed this 10th day of Aug 1943

S. Lerman Maj
President of the Court Martial.

C. Certificate in case of death sentence.

*See footnote (b) on page 782 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 11 day of Aug 1943.

J. R. Stewart Lough
Brigadier
Commanding "G" Gp. Cdn. Rft. Units.
Confirming Officer

Promulgated and extracts taken in the case of C.20725 Pte ROBERTS, D.E.A. Authority Pt 11 D.O. #139 d/13 Aug 43

(a) (Dated) 11 Aug 43 (Signed) [signature] Capt. & Adjt. 5 Cdn. Inf. Rft. Unit.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23066) Wt.28300/411 60,000 12/42 A.&E.W.Ltd. Gp.698

Do 139 d/13 Aug 43
E.D.B.

CHARGE SHEET

The accused No. C-80788 private ROBERTS, Daniel Edward Alexander, The Cameron Highlanders of Ottawa, on the strength of 6 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE — WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE
Army Act
Sec. 15 (1)

in that he

did absent himself from No. 1 Canadian Base Reinforcement Depot 1st Battalion, from 0800 hours the 18th day of June 1943 until he surrendered to the Officer I/c Rear Party, No. 1 Canadian Base Reinforcement Depot at Aldham at 2100 hours the 7th day of July 1943.

Total time absent 19 days 13 hours.

A. B. Pearson
(A. B. Pearson) Colonel,
Commander
6 Cdn. Inf. Reinf. Unit.

In the Field
the 9th day of August
1943.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

J.R. Stewart Lough
(J.R. Stewart Lough) Brigadier
Commanding
"B" Group Cdn Rft Units, C.A.(O).

10 Aug 43.

Convening Officer.

Medical Officers Certificate
K.R. (Can.) para 357

I certify that I have this morning examined No.....

..... and in my opinion he is fit to
(Rank) (Name)

undergo trial by Court Martial.

Station.....

Date.....

(Sgd.....
(Medical Officer)

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT
ON THE 10th DAY OF August 1943

The accused C20725 Pte. Muriel Edward Alexander Roberts Unit Cameron Highlanders of O. - S.C.I.R.U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Major S.A. German ...Unit I.C.A.S.C. R.U.

Members Capt. L.E. F.H. .....Unit Gen. Hist. S.C.I.R.U.

Lieut. D.C. Grant .....Unit Seaforths of Canada I.C.I.R.U.

The officers under instruction are duly sworn:-

.....Unit.....

.....Unit.....

Prosecutor Lieut J.H. ACKERMAN ..Unit Asst. P.E. - S.C.I.R.U.

Defending Officer Lieut J.C. KIRBY ..Unit C.I.C. ..... S.C.I.R.U.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) Calls witnesses as to character.
(c) Calls witnesses in mitigation of punishment.
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Accused makes statement in mitigation submitted in writing, signed by the President and attached to proceedings

[illegible]
Pres

Encl

Statement in Mitigation

Re: C. 20125 Pte. Roberts, D.E.A.

Sir:

I joined the Army on September 5, 1939 at the age of 19 with the Camerons of Canada. On July 7, 1940, I landed with my regiment in Iceland where I remained for 10 months. Then I arrived with the regiment in England on May 2, 1941. Since the time I joined in Sept, 1939 until about two months ago I was with the Camerons, a term of nearly four years. I was No 1 Medical Runner with the Camerons until Nov 1942, when I became a clerk in the Company Orderly Room. I was sent on a clerk's course on Feb 1, 1943 for seven weeks, after which I was sent to # 5 C.I.R.U. where I worked in the Records Office for 12 months. Then I was suddenly warned for draft and

(over)

(2)

sent to 1 C.B.R.D, where I was informed of my being a reinforcement with the H. and P.E. Regiment. This made me sore for I had been with the Camerons for nearly 4 years and had made many friends in the regiment. I became fed up and went A.W.L particularly when we were confined to barracks week after week for 5 weeks. Had I known that the H. & P.E. Regiment were going to Sicily I certainly would not have gone A.W.L.

Witness:

J C Kirby, Lieut

Pte J.E.A. Roberts.
C. 20725.

FIRST ORDER ISSUED — REAR PARTY 1 CANADIAN BASE REINFORCEMENT DEPOT — No. 1
Part 11 Orders issued by — 5 Aug 43.
CDN SEC GHQ 2nd ECHELON DET AT CAN RECORDS

1. STRENGTH DECREASE

(h) S.O.S. to 5 C.I.R.U. w.e.f. 18 Jun 43 whilst A.W.L. from 0800 hrs 18 Jun 43.
Auth - ESD/0009 d/26 Jul 43.
C20725 Pte Roberts, D.E.A.

(W.J.C. Johnston) Lieut.,
Cdn Sec., G.H.Q., 2nd Echelon Det. at Can Records

Certified true copy of extract taken from Rear Party Cdn Base Reinforcement Depot Part 11 Order No. 1 d/5 Aug 43.

.....Capt.
Records Officer,
5 C.I.R.U.

Pres

Exhibit B

WW7

Certificate of Surrender (AA163(i)i)

I certify that C 20725 Pte Roberts D.E.A. of 1C.B.R.D 1st Bn surrender at Chatham to myself at 2100 hrs on the 7th day of July 1943. He was in uniform.

7 Jul 43 MJ

Andr E Rivest Lt
O/C Rear Party
1C.B.R.D.

Documents at Mid Echelon

[illegible] Enemy
Pres

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
U.K.	19 Jun 42	Pte.		AA Sec 15(1) AWL from 1200 hrs to 2200 hrs 19 Jun 42 (Abs.10 hrs).		14 dys C.B.	20 Jun 42		Forf. 1 dys pay FR&I 149(1a)
U.K.	19Jul 42.	Pte.		AA Sec 15(1) AWL from 2359 hrs 19 Jul 42 to 1130 hrs 9 Aug 42 Absent 20 dys 11 hrs 31 min.		14 dys Detn.	10 Aug 42.		Forf. 14 dys pay FR&I 149(1b) 21 dys pay 149 (1a)
U.K.	2 Jan 43.	Pte		AA Sec 15(1) AWL from 29 Jan 43 to 1150 hrs 31 Jan 43 (Absent 1 dy 23 hrs 50 min.)		Admonished.	6 Feb 43		Forf. 2 dys pay FR&I 149(1a)

10 Aug 43

[illegible] Lanman Engr

Pres

Certified True Copy from documents in my custody

[illegible] .....Capt.
Records Officer
5 CIRU ~~28~~ Jul 43.
10 Aug 43

M.F.M. 6
(A.F. B.132)
40/P.&/S138 (2065)

No. C20725 Name Roberts D.E.A. Sqn., Battery, or Company CHofO Corps Cdn Inf Corps. Date of enlistment 8 Sept 39 Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Iceland	24 Jan 41.	Pte		AA Sec 40. Breaking out of Bks.		2 Dys Pay.	24 Jan 41		2 dys Pay FR&I 149(2)
U.K.	25 Sept 41			AA Sec 15 AWL from 1800 hrs 25 Sept 41 to 2015 29 Sept 41 (4 dys 2 hrs 15 min.)		14 dys C.B. Forf. 5 dys Priv leave.	30 Sept41.		Forf. 5 dys FR&I 149(1a).
U.K.	5 Nov. 41.			AA 15(1) AWL from 2300 5 Nov 41 to 1120 hrs 6 Nov. 41 (Absent 12 hrs 20 min.)		14 dys CB.	10 Nov 41.		Forf 1 dys pay FR&I 149)1a)
U.K.	8 Feb 42.			AA Sec 15(1) AWL from 2200 hrs 8 Feb 42 to 0630 hrs 9 Feb42 (8 hrs 30 min.).		4 dys C.B.	11 Feb 42.		Forf. 1 dys pay FR&I 149(a

(P.T.O.)

M.F.B. 335
(250—5-41 (572-9)
H.Q. 1772-89-620
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C-20725	Pte	Roberts D.E.A.	S.C.I.R.C.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For AA Sec 15 (1)	one (1) times	A.A. Sec 15 (1) Sec (6) times
For "	times	A.A. Sec 40 one (1) times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct NIL

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~ ~~Air Force Act~~ ~~A.F.A. 73~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and ~~34~~ 34 days in ~~military~~ Air Force custody, making a total of ~~34~~ 34 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 23 yrs 1 mo

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 8 Sep 39.

7. The service which the accused is allowed to reckon towards discharge is 3 yrs 10 mo 20 days

8. The accused is entitled to reckon 3 yrs 1 mo 20 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~(or is in possession of or entitled to)~~. ~~State any air force military decoration or reward.~~

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force dated ..... unit and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

In the rank of ..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank ..... Unit ..... Air Force Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ..... day of ..... 19..

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Tournai Barracks, Farnborough Hants on the 9th day of August 1943.

I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

C.20725 Pte Roberts D&A
(C.20725 Pte Roberts, D.E.A.)

Dated at Tournai Barracks
this 9th day of August 1943.

I hereby request the Convening Officer appoint an Officer to represent me at my trial. Lt JC Tully 5 C.I.R.U

C.20725 Pte Roberts, D&A
(C.20725 Pte Roberts, D.E.A.)

Dated at Tournai Barracks
this 9th day of August 1943.

4G-136

Pte. Roberts. D.R.

(28)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B486048 Pte DOUGLAS ROY ROBERTS, 4 Cdn Armd Ord Fd Pk, RCOC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA - 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for six months and to be discharged with ignominy from His Majesty's service.

(Sgd) ..... 14 Nov. 44 (Sgd) R.W. Willson, Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the finding and sentence for confirmation

Date 14 Nov 44 (Sgd) R H Noble Lt. Col Commanding RCOC 4 Cdn Armd Div

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(D). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....
Date 25 Nov 44 Commanding A/GOC 4 Cdn Armd Div
Confirming Officer.

I certify that there are no irregularities to justify withholding confirmation of these proceedings
25 Nov 44
DAG, Canadian GHQ

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B88048 Pte Roberts Douglas Roy	28 Nov 44	M. Cellan Rogers OC 4 Cdn Armd Div Asst. Jud. Adv. RCOC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

46/136

CPA36 (To join on AFA3) 40 P.M.G. (1945) (1000)

4/38B

Convened by Order of Lt-Col R.H. Noble Comd RCOC dated 13 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B486048	Pte.	Douglas Roy	ROBERTS	4 Cdn Armd Div Sig Coy

Certified true copy
Robinson Capt

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland at Velp near Arnhem on (date(s)) 14 Nov. 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form occurs, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

RFW A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

RFW A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~the Interpreter~~ As Interpreter I Ans ~~Nil~~

The Interpreter is sworn.(1) Do you object to ~~the shorthand writer~~ as shorthand writer I Ans ~~Nil~~
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court I Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(E). If objection, see procedure AA 31, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	R.F. WILLSON	Line & Weld Regt C.A.
Member	CAPT	R.A. CHAPIN	22 Cdn Fd Regt (SP) RCA
Member	LIEUT	W. LINGSTAM	26 Cdn Armd Regt
Judge-Advocate	~~Nil~~		
Prosecutor	LIEUT	W.H. CROCKER	4 Cdn Armd Div Ord Fd Pk
Defending Offr	LIEUT	H. BROWN	4 Cdn Mob Laundry Bath Unit, RCOC

RFW Questions by President: Is the Prosecutor a lawyer I Ans No Is the Defending Offr a lawyer I Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See Di p 3.)

RFW A8. The accused before arraignment make(s) (no) (a) plea (3)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

RFW A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B" & "C".

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the plea as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*ii*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

RFN B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

RFN B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
RFN (1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

RFN C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s) and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

RFN President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 (cs 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 40(A) fn 1, 80(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6). RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Yes
RFN (1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

RFN E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (ii), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "C" and Ex "D" respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

RFN E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes through my defending officer (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 809, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 504.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

APPENDIX "A"

CHARGE SHEET

The accused B-88048 Pte Douglas Roy Roberts, 4 Cdn Armd Division Ordnance Field Park RCOC a soldier of the Con Army Overseas:

CHARGE
Sec 15(1)
A.A.

WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

IN THAT HE

IN THE FIELD ON 5TH NOV 44 ABSENTED HIMSELF WITHOUT LEAVE FROM 2300 hrs 5 Nov 44 until 1400 hrs 6 Nov 44. (Total time absent 15 hrs).

In the Field

10 Nov 44

(Sgd) J.R. Allen Major
O.C. 4 Cdn Armd Division
Ordnance Field Park, RCOC

To be tried by FDCM.

In the Field
13 Nov 44

(Sgd) R.H. Noble, Lt-Col
Comd RCEME 4 Cdn Armd Div

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B88048	Pte		Douglas Roy	ROBERTS	4 Cdn Armd Div Ord Fd Pk, RCOC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 Nov 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	R.F. WILSON	Linc & Welld Regt

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
CAPT	R.A. SHARPE	R3 Cdn Fd Regt (SP) RCA
LIEUT	W. SANGSTER	R8 Cdn Armd Regt

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
LIEUT	W.B. ELLIS	4 LAD Att HQ RCEME

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

(Sgd) R.H. Noble Lt-Col (Signed personally. RP 105 fn 2.) (Rank.)

Dat 13 Nov 44

Commanding RCEME 4 Cdn Armd Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (8143)

MEDICAL OFFICER'S CERTIFICATE

RFW

I certify that I have this day examined B88048 Pte Roberts S.R. of 4 Cdn Armd Div Ord Fd Pk RCOC and in my opinion he is fit unfit to undergo trial by court martial.

(Sgd) G.W. Lewin, Major
MO

Station Field

Date Nov 14/44

APPENDIX "B" ORIGINAL EX "A"
RFW

SUMMARY OF EVIDENCE: In the case of B-86048 Pte Roberts, D.R. 4 Cdn Armd Division Ordnance Field Park RCOC Cdn Army Overseas charged with:

CHARGE
AA SEC 15(1) The accused B86048 Pte Douglas Roy Roberts, 4 Cdn Armd Division Ordnance Field Park RCOC a soldier of the Canadian Army Overseas: While on Active Service absenting himself without leave in that he in the Field on the 5th Nov 44 absented himself without leave from 2300 hrs 5 Nov 44 until 1400 hrs 6 Nov 44. (Total time absent 15 hrs).

THE CO. DIRECTS THAT EVIDENCE BE TAKEN ON OATH:

FIRST WITNESS

L-91137 SQMS Clunie G.E.A. 4 Cdn Armd Div Ord Fd Pk RCOC sworn states:

On Sunday 5 Nov 1944 as Sgt Major of the camp, with permission from the O.C. I laid on one lorry to transport personnel of the unit from camp to Antwerp for recreational purposes. The lorry was due to depart from camp 1300 hrs and to depart from Cdn Car Park Antwerp 2300 hrs the same night. The N.C.O. in charge of the lorry was told to advise the men the time of departure of the lorry from Antwerp. The accused declines to cross examine.

(Sgd) G Clunie, SQMS

SECOND WITNESS

H-64695 Cpl Wilson R.G. of the 4 Cdn Armd Div Ord Fd Pk RCOC sworn states:

On the night 5 Nov 44 I was in charge of the recreational lorry despatched from the camp to Antwerp. The accused Pte. Roberts was one of the passengers. All personnel travelling in the vehicle on debusement at the Cdn Car Park Antwerp were warned that the lorry would be leaving Antwerp to return to Camp at 2300 hrs. At later than 2300 hrs three men of whom Pte Roberts was one were not present. We waited until approximately 2325 hrs and these men still did not show up so we departed from Antwerp for camp. I reported the absentees to the Sgt. Major on the morning of the 6 Nov 44 before morning parade.

Witness cross-examined by the accused;

Q. What kind of a night was it ?

A. It was definately a dark and rainy night making it difficult to get around in a strange place.

Q. Did the vehicle leave the same gate as it went into the Car Park ?

A. There is an "In and "Out" gate at the Park and the vehicle left by the "Out" gate.

(Sgd) R.G. Wilson

THIRD WITNESS:

H87118 Pte Mower G.E. 4 Cdn Armd Div Ord Fd Pk RCOC sworn states:

I was a passenger on the recreational lorry from camp to Antwerp the night 5 Nov 1944. Pte Roberts the accused was also a passenger when the lorry left Camp for Antwerp. When we arrived at the Cdn Car Park Antwerp we were warned that the lorry would depart for camp at 2300 hrs. The lorry did wait for 5 or 10 minutes because of personnel who had not arrived. I am not sure actually the length of time it waited because my watch is not always correct. I am not sure of the personnel who did not arrive before the lorry departed because I was one of the first two men in the lorry.

Cross examined by the accused:

Q. Was there any roll call in the lorry after 2300 hrs ?

A. No.

Q. What kind of a night would you say it was ?

A. I would say it was a very bad night, rainy and very dark making it difficult for one to find his way.

(Sgd) G.E. Mower

FOURTH WITNESS:

C41224 Cpl Howland R.E. of 4 Cdn Armd Div Ord Fd Pk, RCOC sworn states:

On 6 Nov 44 I was Orderly Cpl of the 4 Cdn Armd Div Ord Fd Pk RCOC. On morning parade at 0815 hrs there were three men absent of which Pte. Roberts was one. The Sgt. Major was aware ofthe fact that these men were absent as he had been told by Cpl Wilson that morning in my presence. Shortly after 1400 hrs I met the three absentees including Pte Roberts outside the kitchen, they had not been on the noon parade. I immediately informed the Sgt Major who told me to place the men under open arrest which I did.

Cross examined by the accused:

Q. Cpl. Howland we were looking for you were we not ?

A. I would say that you were looking for someone and when you saw me you informed me that you had arrived.

(SGD) R.E. Howland

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath?" You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence".

The Accused:
"I have nothing to say at this time".

The accused declines to call witnesses in his own behalf.

(Sgd) D.R. Roberts

I Certify that R.J. 4 has been complied with.

Taken by me in the Field in the presence of the accused this 6 day of November, 1944.

(Sgd) (W.K. Crossen) Lt

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B88048	Pte	Roberts D.R.	4 Cdn Armd Div Ord Fd Pk RCOC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA Sec 15(1) A.W.L.	times	14 times.
For AA Sec 40 Creating disturbance	times	1 times.
For AA Sec 40 Unauth use of WD Veh	times	1 times.
For AA Sec 40 Speeding	times	1 times.
AA Sec 40 entering OofB Area		1
For AA Sec 40 not on duty when required		1 times.

~~Number of instances of gallantry or distinguished conduct~~

or

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or ~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. ~~The accused has been in confinement, awaiting trial on the present charges, for~~ 0 days in civil custody, and 0 days in military custody, making a total of 0 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his record of service / ~~attestation paper~~ is 31

6. The date of his ~~commission~~ / ~~attestation~~ specified in his record of service / ~~attestation paper~~ is 10 Nov 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 5 Years

8. The accused is entitled to deferred pay or gratuity in respect of 5 Years service.

9. The accused is entitled to reckon 5 Years service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*)). Entitled to OVSM and Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A, dated ____, and in his regiment (*or* corps *or* department) the rank of N/A dated ____

(*16548) Wt.20246,962 75,000 12/40 A.A.E.W.Ltd. Gp.698

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B88048	Pte	Roberts D.R.	4 Cdn Armd Div Ord Fd Pk RCOC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA Sec 15(1) A.W.L.	times	14 times.
For AA Sec 40 Creating disturbance	times	1 times.
For AA Sec 40 Unauth use of WD Veh	times	1 times.
For AA Sec 40 Speeding	times	1 times.
AA Sec 40 entering OofB Area		1
For AA Sec 40 not on duty wh[illegible] required		1 times.

~~Number of instances of gallantry or distinguished conduct~~

or

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or ~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. ~~The accused has been in confinement, awaiting trial on the present charges, for~~ 0 days in civil custody, and 0 days in military custody, making a total of 0 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his record of service ~~attestation paper~~ is 31

6. The date of his ~~commission~~ ~~attestation~~ specified in his record of service ~~attestation paper~~ is 10 Nov 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 5 Years

8. The accused is entitled to deferred pay or gratuity in respect of 5 Years service.

9. The accused is entitled to reckon 5 Years service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)) Entitled to CVSM and Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A, dated ....., and in his regiment (*or* corps *or* department) the rank of N/A dated .....

(*16048) Wt.20246/662 75,000 12/40 A.& E.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B65048 Rank Pte Name Roberts D.R. of 4 CAD OFP RCOC Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.		Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	In the Field 12 Aug 1941	1. AA Sec (18)(4)	Guilty	To undergo 1 years imprisonment with hard labour for 6 months (Sentence commuted to 12 months detention)	Remission earned under Rules for D.B. & M.P. 122 days. 1 day remitted under Rule 23.
		2. AA Sec 15 (4)	Guilty		
		3. AA Sec 15 (4)	Guilty		
		4. AA Sec 15 (4)	Guilty		
		5. AA Sec 15 (4)	Guilty		
		6. AA Sec 40	Guilty		
FGCM	In the field 13 Sept 1943	1. AA Sec 15 (1)	Guilty	To undergo detention for 90 days	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 9 day of Nov 1944

(Sgd) J.R. Allen, Major
OC 4 Cdn Armd Div Ord Fd Pk RCOC

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of ..... years, Date of Promotion .....

In the rank of N/A years .....

In the rank of ..... years .....

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such records as are available and the paragraphs completed accordingly.)

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath?" You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence".

The Accused:
"I have nothing to say at this time".

The accused declines to call witnesses in his own behalf.

(Sgd) D.R. Roberts

I Certify that R.P. 4 has been complied with.

Taken by me in the Field in the presence of the accused this 8 day of November, 1944.

(Sgd) (W.M. Crossen) Lt

No B88048 Name ROBERTS D.R. Sqn, Battery, or Company Corps RCOC Date of enlistment 10 Nov 1939 GC Badges Service or Proficiency Pay Ex "C" RFW MFM 6 (AFB 122) 40/PA3/136 (2438)

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 2 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
May 1944	Original sheet destroyed on completion of six months service Last entry 29 Feb 40 NO cases of Drunkeness								
Field 20 Jul 40				AA Sec 40 Conduct to the prejudice of good order and military discipline in that he at 2015 hrs created a disturbance in the Office of Dr. O'Connor in the town of Epsom When in close arrest, escaping at 2300 hrs 20 Jul 44 AA Sec 22	Capt Jepsom Sgt Nevin RP Smith CN	10 days det on combined charges	22 Jul 40	GW Beecroft Major	

RELEASED FROM THE DETENTION BARRACKS ALDERSHOT ON 7 Oct 40 Sentence having expired

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	by whom awarded	Remarks
Field	16 Aug 44			With absence from duty without leave in that he from 1400 hrs to 1700 hrs 16-8-40 was absent from fatigue duty in MOs tent	Sgt Burnham	5 dys C.B.	17 Aug 1940	GW Beecroft, Major	
Field	14 Sept 40			Conduct to the prejudice etc in that he at Epsom at 1845 hrs 14 Sept 40 was driving a WD veh (Austin lorry) without auth.	Sgt Henson	20 dys detn	16 Sep 40	Lt H.J. Thompson	
Field	14 Oct 40			AWL from St Andrews Hall from 2359 hrs 15 Oct 40 to 2215 hrs 16 Oct 40 (22¼ hrs)	Sgt Henson	5 dys detn	17 Sep40	Lt H.J. Thompson	
Field	28 Feb 41			AWL from 1200 hrs 28 Feb 41 to 0430 hrs 1 Mar 41 (16hrs 30Mins)		7 dys C.B.	3 Mar 41	RH Perry	Forf 1 dys pay

MFM 6
(AFB 122)
80/PAS/136 (3438)

No B88048 Name ROBERTS D.R. Sqn, Battery, or Company Corps Date of enlistment GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No No. 3 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29 Jun 41			AA 15(1) AWL from 0900 hrs 29 Jun 41 to 1800 hrs 30 Jun 41 (33hrs)	CSM Diplock	72 hrs detn		RW Frost LT-Col Forf 2 dys pay	
Field	29 Jun 41			Tried by FGCM on 12 Aug 41 Charges: 1. AA Sec 18(4) Finding Guilty 2. AA Sec 18(4) " " 3. AA Sec 18(4) " " 4. AA Sec 18(4) " " 5. AA Sec 18(4) " " 6. AA Sec 40	Capt HG Stratton Capt FE Farlinger Capt GW Cormack Capt GA Buchanan WE Holkinson E/A Lt OE Supeene A Sanderson S/Sgt WJ Conlan Pte D Rossi Pte Capt WB Keith E Nock Tpr	To undergo 1 years imprisonment with 6 mos hard labour (Sentence comutted to 12 mos detn)	12/8/41	RELEASED FROM DETN BKS WARLAND CAMP ON 11/4/42 Sentence having expired. Remission earned under rules for detn bks and mil prisons 122 dys. 1 day remitted under rule 23 for mil detn bks and mil prisons	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15 Jun 41			WOAS was AWL for 1 day 8 hrs AA Sec 15(1)	QMS Stratton	Forf 4 dys pay	18 Jun 41		
Field	30 Sep 42			AWL from 2359 hrs30 Sep 42 to 0825 hrs 1 Oct 42 AA Sec 15(1)	Sgt Showers	3 Dys C.B. 7 Dys Pay	1 Sep 42		1 Dys forf pay
Field	21 Nov 42			WOAS was AWL from 2359 hrs 20 Nov 42 to 0600 21 Nov 42 6 hrs 1 min	Cpl Falwell	7 dys C.B.	21 Nov 42		7 dys Pay
Field	24 Jan 43			WOAS was AWL from 2300 hrs 23 Jan 43 to 1000 hrs 24 Jan 43 Absent 11 hrs AA Sec 15(1)	Sgt Glynn	7 dys pay	24 Jan 43		1 dys pay
Field	4 Apr 43			AA Sec 15(1) WOAS AWL from 2300 hrs 3 Apr 43 to 1000 hrs 5 Apr 43 Absent 35 hrs	S/C Kronick	7 dys pay	6 Apr 43		2 dys pay
Field	8 Apr 43			AA Sec 40 did drive a mil veh at an excessive rate of speed	L/Cpl nocle	7 dys pay	23 Apr 43		

MFM 6
(AFB 122)
40/P&S/126 (5438)

No 880048 Name ROBERTS D.R. | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 4 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	16 Aug 43			AA Sec 15(1) AWL WOAS 24 dys 14 hrs 15 mins. Guilty	DOCUMENTARY	to undergo detn for a period of 90 dys	13 Sep43	FGCM	
				CERTIFIED TRUE COPY (SGD) Harold M Bailey) Col, Commanding Officer No. C.O.R.U.					
					RELEASED FROM DETENTION NOV 11 1943				
				SUPPLEMENTARY SHEET					
Field	14 Nov 43			AA Sec 15(1) WOAS AWL from 2359 hrs 13 Nov 43 until 2359 hrs 14 Nov 43 Absence 1 day	CSM Brown	Awarded 3 dys forf pay	16 Nov 43	Major SE Lewis	Forf 1 dys pay
Field	27 Dec 43			AWL from 0630 hrs 27 Dec 43 to 2300 hrs 2 Jan 44 (6 dys 16 hrs 30 min (AA 15(1))	Lt Parker L/Cpl Robbie	Admonished	3 Jan 44	Major RUE Airth	Forf 7 dys pay

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Cdn Volunteer Service Medal and Clasp w.e.f. 15 Jan 44. Pt II Order #2 d/4 Feb 44					
In Field	26 Jan 44			AA Sec 15(1) AWL from 0815 hrs 26 Jan 44 to 0800 hrs 27 Jan 44 23 hrs and 45 mins	A/CMS Norris L/Cpl Robbie	9 dys pay	8 Feb 41	Major Airth	forf 1 dys pay
In the Field	20 Mar 44			Conduct etc at about 1040 hrs 20 Mar 44 was seen about to enter the hand in hand public house Boxhill Surrey. (AA Sec 40)	Capt Gillepsie	14 dys F.P.	25 Mar 44	Major Tyrrell	Forf 14 dys pay
In the Field	25 Jun 44			AA Sec 15(1) WOAS AWL from 1600 hrs 25-6-44 to 2215 hrs 25-6-44 Absent 6 hrs 15 mins.	SCMS Harris	14 dys F.P.	26 Jun 44	Maj JR Allen	Forf 14 dys pay Automatic 1 dys pay (Total 15 dys pay).

MFM 6
(AFB 122)
[illegible]

No B88048 Name ROBERTS D.R. | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 6 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	15 Sept 44			AA Sec 40 WOAS conduct to good order and military discipline in that he in the field at approx 2200 hrs 15/9/44 was in Poeikapelle when his duty required him to return to his unit.	DOCUMENTARY	28 dys F.P.	2 Sep 44	Major FR Allen	28 dys forf pay.

CERTIFIED TRUE COPY OF B88048 Pte ROBERTS D.R.
M.F.M. 6's

(Sgd) J.R. Allen, Major
OC 4 Cdn Armd Div Ord Fd Pk RCOC

(PTO)

The accused sworn states:-

. . . "On 5 Nov. we were allowed a vehicle to proceed to Antwerp for recreational purposes. At about 1830 hrs there we left the veh in Antwerp we were warned that the veh would leave at 2300 hrs that night to return to camp. The vehicle was to leave from the Cdn Car Park Antwerp. At approximately 2230 hrs two oth r soldiers and myself started for the Car Park. The other soldiers were Pte Coldridge and Pte Lavesque, both of Ord Fd Pk. It was very dark and rainy and only the second time I had been in the city. We had difficulty in finding the Car Park. Knowing the three routes in the city I went to the "London" route and followed the "Cdn Car Park" sign down to the Park. Looking through the park we could not findour veh. I could not say what time it was then. From the PK We went back to the main "London" Route and stood for about two minutes when a lorry came by which was from our own unit. We yelled and whistled at them but no one seemed to hear. We stood around at that corner in the city on the "London" route for about half an hour trying to get a ride - not being able to get a ride we spoke to some American soldiers who took us to their camp until morning. This camp was about 4 miles on the other side of the Antwerp tunnel. In the morning we had breakfast with them and left immediately for camp. Not knowing that transportation was free on street cars and buses we walked from the Moerlook to Putte - this would be about 88 miles - then we got a ride from there to our unit arriving there between 13 0 and 1400 hrs."

No Cross-examination.

PLEA IN MIGITATION

OF

B88048 PTE ROBERTS D.R., R.C.O.C.

President and Members of the Court:-

Pte Roberts the accused joined the Cdn Army (Active), as a volunteer on 26 Aug 1939 and embarked for overseas duty on the 25 Jan 1940. He was stationed in England until July 1944 when he landed in Normandy with his present unit, 4 C.A.D. C.F.P.

Pte Roberts is married in Canada and has onechild, now 6 yrs of age. He has not seen his wife or child since 1940 and is very much concerned over this unfortunate incident, which, he believes, may hinder his opportunities should leaves be granted home in the near future, for long serving personnel.

True, he has been sentenced for numerous other offences against Military Law, which in all probability can be laid at the door of inactivity, such as we all know with regards the Canadian Army, activities as a whole up to "D" Day. Since "D" Day he has been awarded punishment once on a minor charge. With regards the charge he is now being tried for, Pte Roberts pleads guilty of that charge, but would request the court to take into consideration that this unfortunate affair could have happened to anyone. He had no malicious intent of going A.W.O.L. That thought was farthest from his mind, otherwise, he could have quite easily absented himself for days and probably weeks before being apprehended.

The N.C.O. in charge of the vehicle debussed his passengers at the car park in Antwerp and stated all personnel would be at the car park at 2300 hrs to return. As this park is quite extensive and there is an "Out" gate in it, it is possible for a person to have missed a lorry in the darkness of that night, especially when no specific point was given in the car park, where the passengers would be picked up.

When Pte Roberts and the other two men realized their transport was not in the park theyendeavoured to intercept it on the main street and actually did see their own truck go by. It did not stop in response to their yells and after trying several other unit's trucks fare ride back without success, they stayed in Antwerp the night with and American Unit. They immediately set out the following morning for their unit.

In view of the foregoing Pte Roberts would like to state that he did not wilfully absent himself and he fully realizes the seriousness of the charge against him. He expects just punishment for this missdventure and places himself at the mercy of the Court.

(Sgd) E. Brown, Lieut
for D.R. Roberts

In the Field.
14 Nov. 44

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B488048 PTE DOUGLAS ROY ROBERTS, 4 Cdn Armd Ord Fd Pk, RCOC

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA - 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence be served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for six months and to be discharged with ignominy from His Majestys service.

RFW

(Sgd) ..... 14 Nov. 44 (Sgd) R.F. Willson, Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I recommend re-finding and sentence for confirmation

Date 20 Nov 44 (Sgd) R.H. Noble Lt Col Commanding AC Coy 4 Cdn Armd Div

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 3, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1) (1. AA 57A. Delete if not used.)

(Sgd) J.C. Jeffreys Brig
Date 25 Nov 44 Commanding A.F.C. in Chief Canadian Section, GHQ, 21 Army Gp
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B88048 Pte Roberts Douglas Roy	28 Nov 44	R.F. Willson Major O.C. 4 Cdn Armd Div Ord Fd Pk RCOC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

I certify that there are no irregularities or irregularities to justify withholding confirmation of these proceedings.

20 Nov 44

DAAG Sec GHQ 21 Army Gp

46-134

FIELD GENERAL COURT-MARTIAL

CFAMS (To take place of AFAS) 4/38B

Convened by Order of Lt-Col R.H. Noble Comd RCEME dated 13 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B488048	Pte.	Douglas Roy	ROBERTS	Div Ord Fd Pk, RCOC 4 Cdn Armd Div

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 14 Nov. 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cautions do NOT include all relevant fns RofL. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which matters are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

RFW A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is XX fit to undergo trial by court-martial.(1)
RFW The Prosecutor informs the Court that accused XXXX

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(A). *As to plea when sentence may be death see RP* 35(D).

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 *(A) and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(C); *powers and duties of JA see RP* 105; *duty of Prosecutor see RP* 66(A) (ii); *duty and privileges of accused and Defending Offr see RP* 60(C), 87(C), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(C), 92(B), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(E) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans. No (5)

(1. *RP 37(E).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

RFW B3. ~~The President announces the finding(s) of the Court as follows: Charge(s) ... Guilty ... Not Guilty ... Court may be closed to consider the statement.~~ *Delete whole or part not used.*)

RFW B4. ~~On the ... President records finding(s) of~~ X Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A" initialled and read aloud by the President.(1)

RFW (1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

RFW

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)

(1. *If "yes", see RP 39(A) for procedure. Statement of evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

RFW

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. ..... Do you intend to call witnesses on your behalf ?

Ans. ..... Are they witnesses as to character only ? Ans. .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 45(A) fn 1, 80(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6). RP 45, 120(A).* 2. *AA 54(3). RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. Yes

RFW (1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true XXXX (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(3) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(4)

RFW

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes through my defending officer

RFW (1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6). RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 367. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

APPENDIX "A" RFW

CHARGE SHEET

The accused B-88048 Pte Douglas Roy Roberts, 4 Cdn Armd Division Ordnance Field Park RCOC a soldier of the Cdn Army Overseas:

CHARGE
Sec 15(1)
A.A.

WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

IN THAT HE

IN THE FIELD ON 5TH NOV 44 ABSENTED HIMSELF WITHOUT LEAVE FROM 2300 hrs 5 Nov 44 until 1400 hrs 6 Nov 44. (Total time absent 15 hrs).

In the Field

10 Nov 44

(Sgd) J.R. Allen Major
O.C. 4 Cdn Armd Division
Ordnance Field Park, RCOC

To be tried by FGCM.

In the Field
13 Nov 44

(Sgd) R.H. Noble, Lt-Col
Comd RCEME 4 Cdn Armd Div

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B88048	Pte		Douglas Roy	ROBERTS	4 Cdn Armd Div Ord Fd Pk, RCOC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 Nov 44 endorsed by me, (~~[illegible]~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reasons to a superior [illegible]~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons [illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~[illegible]~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	R.F. WILLSON	Linc & Welld Regt

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
CAPT	R.A. SHARPE	23 Cdn Fd Regt (SP) RCA
LIEUT	W. SANGSTER	28 Cdn Armd Regt

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
LIEUT	W.E. ELLIS	4 LAD Att HQ RCEME

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

(Sgd) R.H. Noble Lt-Col (Signed personally. RP 105 fn 2.) (Rank.)

Dat 13 Nov 44

Commanding RCEME 4 Cdn Armd Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 95 (In lieu of AFA 3) 40/F & S/1697 (6143)

MEDICAL OFFICER'S CERTIFICATE RFW

I certify that I have this day examined B88048 Pte Roberts D.R.
of 4 Cdn Armd Div Ord Fd Pk RCOC and in my opinion he is fit
~~unfit~~
to undergo trial by Court Martial.

(Sgd) G.W. Lewin, Major
MO

Station Field

Date Nov 14/44

APPENDIX "B" ORIGINAL Ex "A"
RFW

SUMMARY OF EVIDENCE: In the case of B-88048 Pte Roberts, D.R. 4 Cdn Armd Division Ordnance Field Park RCOC Cdn Army Overseas charged with:

CHARGE
AA SEC 15(1) The accused B88048 Pte Douglas Roy Roberts, 4 Cdn Armd Division Ordnance Field Park RCOC a soldier of the Canadian Army Overseas: While on Active Service absenting himself without leave in that he in the Field on the 5th Nov 44 absented himself without leave from 2300 hrs 5 Nov 44 until 1400 hrs 6 Nov 44. (Total time absent 15 hrs).

THE CO. DIRECTS THAT EVIDENCE BE TAKEN ON OATH:

FIRST WITNESS

L-9137 SQMS Cluie G.E.A. 4 Cdn Armd Div Ord Fd Pk RCOC sworn states:

On Sunday 5 Nov 1944 as Sgt Major of the camp, with permission from the O.C. I laid on one lorry to transport personnel of the unit from camp to Antwerp for recreational purposes. The lorry was due to depart from camp 1300 hrs and to depart from Cdn Car Park Antwerp 2300 hrs the same night. The N.C.O. in charge of the lorry was told to advise the men the time of departure of the lorry from Antwerp. The accused declines to cross examine.

(Sgd) G Clunie, SQMS

SECOND WITNESS

H-64695 Cpl Wilson R.G. of the 4 Cdn Armd Div Ord Fd Pk RCOC sworn states:

On the night 5 Nov 44 I was in charge of the recreational lorry despatched from the camp to Antwerp. The accused Pte. Roberts was one of the passengers. All personnel travelling in the vehicle on debusament at the Cdn Car Park Antwerp were warned that the lorry would be leaving Antwerp to return to Camp at 2300 hrs. At later than 2300 hrs three men of whom Pte Roberts was one were not present. We waited until approximately 2325 hrs and these men still did not show up so we departed from Antwerp for camp. I reported the absentees to the Sgt. Major on the morning of the 6 Nov 44 before morning parade.

Witness cross-examined by the accused;

Q. What kind of a night was it ?

A. It was definately a dark and rainy night making it difficult to get around in a strange place.

Q. Did the vehicle leave the same gate as it went into the Car Park ?

A. There is an "In and "Out" gate at the Park and the vehicle left by the "Out" gate.

(Sgd) R.G. Wilson

THIRD WITNESS :

H37112 Pte Mower G.E. 4 Cdn Armd Div Ord Fd Pk RCOC sworn states:

I was a passenger on the recreational lorry from camp to Antwerp the night 5 Nov 1944. Pte Roberts the accused was also a passenger when the lorry left Camp for Antwerp. When we arrived at the Cdn Car Park Antwerp we were warned that the lorry would depart for camp at 2300 hrs. The lorry did wait for 5 or 10 minutes because of personnel who had not arrived. I am not sure actually the length of time it waited because my watch is not always correct. I am not sure of the personnel who did not arrive before the lorry departed because I was one of the first two men in the lorry.

Cross examined by the accused:

Q. Was there any roll call in the lorry after 2300 hrs ?

A. No.

Q. What kind of a night would you say it was ?

A. I would say it was a very bad night, rainy and very dark making it difficult for one to find his way.

(Sgd) G.E. Mower

FOURTH WITNESS:

G41224 Cpl Howland R.E. of 4 Cdn Armd Div Ord Fd Pk, RCOC sworn states:

On 6 Nov 44 I was Orderly Cpl of the 4 Cdn Armd Div Ord Fd Pk RCOC. On morning parade at 0815 hrs there were three men absent of which Pte. Roberts was one. The Sgt. Major was aware ofthe fact that these men were absent as he had been told by Cpl Wilson that morning in my presence. Shortly after 1400 hrs I met the three absentees including Pte Roberts outside the kitchen, they had not been on the noon parade. I immediately informed the Sgt Major who told me to place the men under open arrest which I did.

Cross examined by the accused:

Q. Cpl. Howland we were looking for you were we not ?

A. I would say that you were looking for someone and when you saw me you informed me that you had arrived.

(SGD) R.E. Howland

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath?" You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence".

The Accused: "I have nothing to say at this time".

The accused declines to call witnesses in his own behalf.

(Sgd) D.R. Roberts

I Certify that R.P. 4 has been complied with.

Taken by me in the Field in the presence of the accused this 8 day of November, 1944.

(Sgd) (W.M. Crossen) Lt

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B088040	Lte	Roberts D.R.	4 Cdn Armd Div Crd Pd Tk RCOC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	AA Sec 15(1) A.W.L.	times	14	times.
For	AA Sec 40 Creating disturbance	times	1	times.
For	AA Sec 40 Unauth use of MD Veh	times	1	times.
For	AA Sec 40 Speeding	times	1	times.
For	AA Sec 40 entering Corps Area	times	1	times.
For	AA Sec 40 not on duty when required	times	1	times.

Number of instances of gallantry or distinguished conduct.

/0/

There are no entries in the conduct sheets of the accused.

2. ~~The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence for~~ beginning on the day of /

4. ~~The accused has been in confinement, awaiting trial on the present charge, for~~ 0 days in civil custody, and 0 days in military custody, making a total of 0 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 31

6. The date of his ~~commission~~ attestation specified in his ~~attestation paper~~ record of service is 10 Nov 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 5 Years

8. The accused is entitled to deferred pay or gratuity in respect of 5 Years service.

9. The accused is entitled to reckon 5 Years service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). Entitled to CVSM and Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated , and in his regiment (*or* corps *or* department) the rank of N/A dated

(*18646) Wt.30245/502 75,000 12/40 A.& E.W.Ltd. Gp.699

Schedule of Convictions by a Court Martial or Civil Court. of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B88048 Rank Pte Name Roberts D.R. of 4 CAD OFP RCOC Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.		Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	In the Field 12 Aug 1941	1. AA Sec (18)(4) 2. AA Sec 18 (4) 3. AA Sec 18 (4) 4. AA Sec 18 (4) 5. AA Sec 18 (4) 6. AA Sec 40	Guilty Guilty Guilty Guilty Guilty Guilty	To undergo 1 years imprisonment with hard labour for 6 months (Sentence commuted to 12 months detention)	Remission earned under Rules for D.B. & M.P. 122 days. 1 day remitted under Rule 23.
FGCM	In the field 13 Sept 1943	1. AA Sec 15 (1)	Guilty	To undergo detention for 90 days	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 9 day of Nov 1944

(Sgd) J.R. Allen, Major
OC 4 Cdn Armd Div Ord Fd Pk RCOC

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

			Date of Promotion
In the rank of	N/A	years,	
In the rank of		years	
In the rank of		years,	

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

No B88048 Name ROBERTS D.R. Sqn, Battery, or Company Corps RCOC Date of enlistment 10 Nov 1939 GC Badges Service or Proficiency Pay Ex "C" RFW MFM 6 (AFB 122) 80/P&S/126 (3438)

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 2 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
May 1944				Original sheet destroyed on completion of six months service Last entry 29 Feb 40 NO cases of Drunkeness					
Field 20 Jul 40				AA Sec 40 Conduct to the prejudice of good order and military discipline in that he at 2015 hrs created a disturbance in the Office of Dr. O'Connor in the town of Epsom When in close arrest, escaping at 2300 hrs 20 Jul 44 AA Sec 22	Capt Jepsom Sgt Nevin RP Smith CN	10 days det on combined charges	22 Jul 40	GW Beecroft Major	
						RELEASED FROM THE DETENTION BARRACKS ALDERSHOT ON 7 Oct 40 Sentence having expired			

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16 Aug 44			With absence from duty without leave in that he from 1400 hrs to 1700 hrs 16-8-40 was absent from fatigue duty in MOs tent	Sgt Burnham	5 dys C.B.	17 Aug 1940	GW Beecroft, Major	
Field	14 Sept 40			Conduct to the prejudice etc in that he at Epsom at 1345 hrs 14 Sept 40 was driving a MT veh (Austin lorry) without auth.	Sgt Henson	20 dys detn	16 Sep 40	Lt H.J. Thompson	
Field	14 Oct 40			AWL from St Andrews Hall from 2359 hrs 15 Oct 40 to 2215 hrs 16 Oct 40 (22¼ hrs)	Sgt Henson	5 dys detn	17 Sep40	Lt H.J. Thompson	
Field	28 Feb 41			AWL from 1200 hrs 28 Feb 41 to 0430 hrs 1 Mar 41 (16hrs 30Mins)		7 dys C.B.	3 Mar 41	RH Perry	Forf [illegible] dys pay

MFM 6
(AFB 122)
40/P&S/136 (3438)

No. 888048 Name ROBERTS D.R. Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No No. 3 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29 Jun 41			AA 15(1) AWL from 0900 hrs 29 Jun 41 to 1800 hrs 30 Jun 41 (33hrs)	CSM Diplock	72 hrs detn		RW Frost LT-Col Forf 2 dys pay	
Field	29 Jun 41			Tried by FGCM on 12 Aug 41 Charges: 1. AA Sec 18(4) Finding Guilty 2. AA Sec 18(4) " " 3. AA Sec 18(4) " " 4. AA Sec 18(4) " " 5. AA Sec 18(4) " " 6. AA Sec 40	Capt HG Stretton Capt FE Farlinger Capt GW Cormack Capt GA Buchanan WE Holkinson E/A Lt OE Supeene A Sanderson S/Sgt WJ Conlan Pte D Rossi Pte Capt WB Keith E Nock Tpr	To undergo 1 years imprisonment with 6 mos hard labour (Sentence comuted to 12 mos detn)	12/8/41	RELEASED FROM DETN BKS WARLAND CAMP ON 11/4/42 Sentence having expired. Remission earned under rules for detn bks and mil prisons 122 dys. 1 day remitted under rule 23 for mil detn bks and mil prisons	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15 Jun 41			WOAS was AWL for 1 day 8 hrs AA Sec 15(1)	CMS Stratton	Forf 4 dys pay	18 Jun 41		
Field	30 Sep 42			AWL from 2359 hrs 30 Sep 42 to 0825 hrs 1 Oct 42 AA Sec 15(1)	Sgt Showers	3 Dys C.B. 7 Dys Pay	1 Sep 42		1 Dys forf pay
Field	21 Nov 42			WOAS was AWL from 2359 hrs 20 Nov 42 to 0600 21 Nov 42 6 hrs 1 min	Cpl Falwell	7 dys C.B.	21 Nov 42		7 dys Pay
Field	24 Jan 43			WOAS was AWL from 2300 hrs 23 Jan 43 to 1000 hrs 24 Jan 43 Absent 11 hrs AA Sec 15(1)	Sgt Glynn	7 dys pay	24 Jan 43		1 dys pay
Field	4 Apr 43			AA Sec 15(1) WOAS AWL from 2300 hrs 3 Apr 43 to 1000 hrs 5 Apr 43 Absent 35 hrs	S/C Kronick	7 dys pay	6 Apr 43		2 dys pay
Field	8 Apr 43			AA Sec 40 did drive a mil veh at an excessive rate of speed	L/Cpl nocle	7 dys pay	23 Apr 43		

No B88048 Name ROBERTS D.R. Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/126 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 4 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	16 Aug 43			AA Sec 15(1) AWL WOAS 24 dys 14 hrs 15 mins. Guilty	DOCUMENTARY	to undergo detn for a period of 90 dys	13 Sep43	FGCM	
				CERTIFIED TRUE COPY (SGD) Harold M Bailey) Col, Commanding Officer No. C.O.R.U.					
					RELEASED FROM DETENTION NOV 11 1943				
				SUPPLEMENTARY SHEET					
Field	14 Nov 43			AA Sec 15(1) WOAS AWL from 2359 hrs 13 Nov 43 until 2359 hrs 14 Nov 43 Absence 1 day	CSM Brown	Awarded 3 dys forf pay	16 Nov 43	Major SE Lewis	Forf 1 dys pay
Field	27 Dec 43			AWL from 0630 hrs 27 Dec 43 to 2300 hrs 2 Jan 44 (6 dys 16 hrs 30 min (AA 15(1))	Lt Parker L/Cpl Robbie	Admonished	3 Jan 44	Major RCE Airth	Forf 7 dys pay

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Cdn Volunteer Service Medal and Clasp w.e.f. 15 Jan 44. Pt II Order #2 d/4 Feb 44					
In Field	26 Jan 44			AA Sec 15(1) AWL from 0815 hrs 26 Jan 44 to 0830 hrs 27 Jan 44 23 hrs and 45 mins	A/CMS Norris L/Cpl Robbie	9 dys pay	8 Feb 41	Major Airth	forf 1 dys pay
In the Field	20 Mar 44			Conduct etc at about 1040 hrs 20 Mar 44 was seen about to enter the hand in hand public house Boxhill Surrey. (AA Sec 40)	Capt Gillespie	14 dys F.P.	25 Mar 44	Major Tyrrell	Forf 14 dys pay
In the Field	25 Jun 44			AA Sec 15(1) WOAS AWL from 1600 hrs 25-6-44 to 2215 hrs 25-6-44 Absent 6 hrs 15 mins.	SCMS Harris	14 dys F.P.	26 Jun 44	Maj JR Allen	Forf 14 dys pay Aotomatic 1 dys pay (Total 15 dys pay).

No B86048 Name ROBERTS D.R. | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 10/PAM/126 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 6 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	15 Sept 44			AA Sec 40 WOAS conduct to good order and military discipline in that he in the field at approx 2200 hrs 15/9/44 was in Poeikappelle when his duty required him to return to his unit.	DOCUMENTARY	28 dys F.P.	2 Sep 44	Major FR Allen	28 dys forf pay.

CERTIFIED TRUE COPY OF B86048 Pte ROBERTS D.R.
M.F.M. 6's
(Sgd) J.R. Allen, Major
OC 4 Can Armd Div Crd Fd Pk RCOC

(PTO)

The accused sworn states:-

"On 5 Nov. we were allowed a vehicle to proceed to Antwerp for recreational purposes. At about 1830 hrs where we left the veh at Antwerp we were warned that the veh would leave at 2300 hrs that night to return to camp. The vehicle was to leave from the Cdn Car Park Antwerp. At approximately 2230 hrs two oth r soldiers and myself started for the Car Park. The other soldiers were Pte Colridge and Pte Levesque, both of Ord Fd Pk. It was very dark and rainy and only the second time I had been in the city. We had difficulty in finding the Car Park. Knowing the three routes in the city I went to the "London" route and followed the "Cdn Car Park" sign down to the Park. Looking through the park we could not findour veh. I could not say what time it was then. From the Pk we went back to the main "London" Route and stood for about two minutes when a lorry came by which was from o r own unit. We yelled and whistled at them but no onesseemed to hear. We stood around at that corner in the city on the "London" route for about half an hour trying to get a ride - not being able to get a ride we spoke to some American soldiers who took us to their camp until morning. This camp was about 4 miles on the other side of the Antwerp tunnel. In the morning we had breakfast with them and left immediately for camp. Not knowing that transportation was free on street cars and busses we walked from the American to Putte - this would be about 28 miles - then we got a ride from there to our unit arriving there between 13 0 and 1400 hrs."

No Cross-examination.

PLEA IN MITIGATION

OF

B86048 PTE ROBERTS D.R., R.C.O.C.

President and Members of the Court:-

Pte Roberts the accused joined the Cdn Army (Active), as a volunteer on 26 Aug 1939 and embarked for overseas duty on the 28 Jan 1940. He was stationed in England until July 1944 when he landed in Normandy with his present unit, 4 C.A.D. O.W.I.

Pte Roberts is married in Canada and has onechild, now 6 yrs of age. He has not seen his wife or child since 1940 and is very much concerned over this unfortunate incident, which, he believes, may hinder his opportunities should leaves be granted home in the near future, for long serving personnel.

True, he has been sentenced for numerous other offences against Military Law, which in all probability can be laid at the door of inactivity, such as we all know with regards the Canadian Army, activities as a whole up to "D" Day. Since "D" Day he has been awarded punishment once on a minor charge.With regards the charge he is now being tried for, Pte Roberts pleads guilty of that charge, but would request the court to take into consideration that this unfortunate affair could have happened to anyone. He had no malicious intent of going A.W.O.L. That thought was furthest from his mind, otherwise, he could have quite easily absented himself for days and probably weeks before being apprehended.

The N.C.O. in charge of the vehicle debussed his passengers at the car park in Antwerp and stated all personnel would be at the car park at 2300 hrs to return. As this park is quite extensive and there is an "Out" gate in it, it is possible for a person to have missed a lorry in the darkness of that night, especially when no specific point was given in the car park, where the passengers would be picked up.

When Pte Roberts and the other two men realized their transport was not in the park theyendeavoured to intercept it on the main street and actually did see their own truck go by. It did not stop in response to their yells and after trying several other unit's trucks fora ride back without success, they stayed in Antwerp the night with and American Unit. They immediately set out the following morning for their unit.

In view of the foregoing Pte Roberts would like to state that he did not wilfully absent himself and he fully realizes the seriousness of the charge against him. He expects just punishment for this misadventure and places himself at the mercy of the Court.

(Sgd) H. Brown, Lieut
for D.R. Roberts

In the Field.
14 Nov. 44

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE. 4 CDN ARMD ORD FD PK RCOC

Accused: B88048 Pte Douglas Roy Roberts.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA - 15 (1)	Guilty	Guilty.	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~Apparent further entry in time~~ ~~imprisoning as (one)~~ (*)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF b296 admitted in evidence under E2.)

Sentence Awarded by the Court:

RJH To be imprisoned with hard labour for Six Months and to be discharged with ignominy from his Majesty's Service.

(Sgd) ..... 14 Nov. 44 (Sgd) R. F. Willson Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 46)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the finding and sentence for confirmation

Date 17 Nov 44 (Sgd) R.H. Noble Lt Col Commanding R.C.E.M.E. 4th Cdn Armd Div

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RF 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1. AA 57A. Delete if not used.)

(Sgd) [signature] Brig

Date 20 Nov 44 ~~Commanding~~ A.D.C.G. 4 Cdn Armd Div.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B88048 Pte Roberts. Douglas Roy	28 Nov 44	[signature] Maj

O.C. 4 CDN ARM'D DIV. ORD FD PARK RCOC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

I certify that there is no objection or observations to [illegible] proceedings

20 JAN 44 DJAG

RECORDED AT CMHQ IN AB 160

REVIEWED 15 SEP 44 JAG BRANCH NDHQ

FIELD GENERAL COURT-MARTIAL

CPA56 (To form of AFA21) 40-1-8 B-1-1944 4/388

Convened by Order of 2 i/c Col R.H. Noble Comd R.C.E.M.E. 4 Cdn Armd Div dated 13 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B88048	Pte	Douglas Roy	Roberts	DIV ORD FD PK RCOC 4 CDN ARMD DIV

PROCEEDINGS REVIEWED

[signature] Lt Col 4 Cdn Armd Div

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 14 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevent fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number (keeping reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for words and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

RJH A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

RJH ~~The Secretary, in the absence of the Judge-Advocate, read to the accused the substance of the charge and the answer of the accused thereto.~~ ~~accused (plea).~~

(1. KR Can 557. 2. AA 46(2), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

~~A5. President to accused: Do you desire to [illegible] an interpreter? Ans~~

RJH ~~The interpreter is sworn(1). To you object to [illegible] as shorthand writer? Ans~~

~~The shorthand writer is sworn(2).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major R.F. Willson	Linc & Welld R. C.A.
Member	Capt R.A. Sharpe	23 Cdn Fd Regt (SP) RCA
Member	Lieut W. Dangster	28 Cdn Armd Regt.
Judge-Advocate		
Prosecutor	Lieut W.M. Grossen	4 Cdn Armd Div Ord Fd Pk
Defending Offr	Lieut H. Brown	4 Cdn Mob Laundry Bath Unit RCOC

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

RJH (1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

RJH A8. The accused before arraignment make(s) (no) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

RJH A9. The accused is (are) arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B" "E"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty to them, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*ii*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No .(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the ... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) to ... charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. ~~On the charge(s) to which the plea(s) of Guilty is (are) not changed the~~ President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*)(*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 535. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 80(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. .....
Do you intend to call witnesses on your behalf ?
Ans. .....
Are they witnesses as to character only ? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 44(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Yes.
(1. *Evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Age as to Character and Particulars of Service(1), and certified true ~~copy~~ (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(1) and Conduct Sheet(s), and in mitigation of punishment ?(2) Ans. Yes. through my defending offr
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviss, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RD* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

APPENDIX "A"

R.H.

CHARGE SHEET

The accused B-88048 Pte Douglas Roy Roberts, 4 Cdn Arm'd Division Ordnance Field Park RCOC a soldier of the Cdn Army Overseas:

CHARGE
Sec 15 (1)
A.A.

WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

IN THAT HE

IN THE FIELD ON 5th Nov 44 ABSENTED HIMSELF WITHOUT LEAVE FROM 2300 hrs 5 Nov 44 until 1400 hrs 6 Nov 44.(Total time absent 15 hrs)

In the Field

10 Nov 1944

.....Major
(J.R. Allen)
O.C. 4 Cdn Arm'd Division
Ordnance Field Park RCOC.

To be tried by F G CM

In the field
13 Nov 44.

R.H. Noble Lt Col
Commanding RCOC 4th Cdn Arm'd Div

R 7h

FIELD GENERAL COURT-MARTIAL

CFA35 (In lieu of AFA43)
40/T&C/1497 (20/6/43)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B80048	Pte.	Douglas Roy	ROBERTS	4 Cdn Armd Div Grd Fd Pk, RCOC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has (~~have~~) committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (*date*) 13 Nov 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	R. F. WILLSON		Line & Weld Regt
(Rank.)		(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	R.A. SHARPE		23 Cdn Fd Regt (SP) RCA
Lieut	W. SANGSTER		28 Cdn Armd Regt
(Rank.)		(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Lieut	W.E. ELLIS		4 LAD Att HQ RCEME
(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country) (Signed personally. RP 105 fn 2.) (Rank.)

Date 13 Nov 44 Commanding ACCME 4 Cdn Armd Div.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE

B77

I certify that I have this day examined B88048 Pte Roberts D.R.
of 4 Cdn Arm'd Div Ord Fd Pk RCOC and in my opinion he is ~~unfit~~ fit
to undergo trial by court martial.

G.W. Irwin Major
.....
MO

Station. Field
Date. Nov. 14/44

Plea In Mitigation

of

B88048 Pte Roberts, D.R., R.C.O.C.

President and Members of the Court:-

Pte Roberts, the accused, joined the 16th Army (Active), as a volunteer on 26 Aug 1939 and embarked for overseas duty on the 25th Jan 1940. He was stationed in England until ~~the~~ July 1944 when he landed in Normandy with his present unit, 1st C.A.O.C.

Pte Roberts is married in Canada and has one child, now 6 yrs of age. He has not seen his wife or child since 1940 and is very much concerned over this unfortunate incident, which, he believes, may hinder his opportunities should leaves be granted home in the near future, for long serving personnel.

True, he has been sentenced for numerous other offences against Military law, which, in all probability can be laid at the door of inactivity, such as we all know with regards the Canadian Army, activities as a whole, up to "D" Day. Since "D" Day he has been awarded punishment once for a minor charge.

With regards the charge he is now being tried for, Pte Roberts pleads guilty of that charge, but would request the court to take into consideration that this unfortunate affair could have happened to anyone. He had no malicious intent of going A.W.O.L. That thought was farthest from his mind, otherwise, he could have quite easily absented himself for days and probably weeks before being apprehended.

The N.C.O. in charge of the vehicle disbanded his passengers at the car park in Antwerp and

stated all personnel would be at the car park at 2300 hrs to return. As this park is quite extensive and there is an Out gate on it, it is possible for a person to have missed a lorry in the darkness of that night, especially when no specific point was given in the car park, where the passengers would be picked up.

When Pte Roberts and the other two men realized their transport was not in the park they endeavoured to intercept it on the main road and actually did see their truck go by. It did not stop in response to their yells and after trying several other unit's trucks for a ride back without success, they stayed in Antwerp the night with an American unit. They immediately set out the following morning for their unit.

In view of the foregoing Pte Roberts would like to state that he did not wilfully absent himself and he fully realizes the seriousness of the charge against him. He expects just punishment for this misdemeanour and places himself at the mercy of the court.

A Brown Lieut
for J.P.C. Roberts

In the field
14 Nov 44

APPENDIX "B"

Original E&A

SUMMARY OF EVIDENCE: in the case of B-88048 Pte Roberts D.R. 4 Cdn Arm'd Division Ordnance Field Park RCOC Cdn Army Overseas charged with:

CHARGE
AA SEC 15(1)

The accused B-88048 Pte Douglas Roy Roberts, 4 Cdn Arm'd Division Ordnance Field Park RCOC a soldier of the Cdn Army Overseas: While on Active Service absenting himself without leave in that he in the Field on 5th Nov 44 absented himself without leave from 2300 hrs 5 Nov 44 until 1400 hrs 6 Nov 44. (Total time absent 15 hrs)

THE CO. DIRECTS THAT EVIDENCE BE TAKEN ON OATH:

FIRST WITNESS

L-9137 SQMS Clunie G.E.A. 4 Cdn Arm'd Div Ord Fd Pk RCOC sworn states:

On Sudnay 5 Nov 1944 as Sgt Major of the camp, with permission from the O.C. I laid on one lorry to transport personnel of the Unit from Camp to Antwerp for recreational purposes. The lorry was due to depart from camp 1300 hrs and to depart from Cdn Car Park Antwerp 2300 hrs the same night. The N.C.O. in charge of the lorry was told to advise the men the time of departure of the lorry from Antwerp.

The accused declines to cross examine

.....

SECOND WITNESS:

H-64695 Cpl Wilson R.G. of the 4 Cdn Arm'd Div Ord Fd Pk RCOC sworn states:-

On the night 5 Nov 1944 I was in charge of the recreational lorry despatched from the Camp to Antwerp. The accused Pte Roberts was one of the passengers. All personnel travelling in the vehicle on debussment at the Cdn Car Park Antwerp were warned that the lorry would be leaving Antwerp to return to Camp at 2300 hrs. At later than 2300 hrs three men of whom Pte Roberts was one were not present. We waited until approximately 2325 hrs and these men still did not show up so we daparted from Antwerp for camp. I reported the absentees to the Sgt. Major on the morning of the 6 Nov 44 before morning parade.

Witness cross-examined by the accused;

Q. What kind of night was it?

A. It was definately a dark and rainy night making it difficult to get around in a strange place.

Q. Did the vehicle leave the same gate as it went into the Car Park?

A. There is an "In and "Out" gate at the Park and the vehicle left by the "Out" gate.

.....

THIRD WITNESS:

H37112 Pte Mower G.E. 4 Cdn Arm'd Div Ord Fd Pk RCOC sworn states;

I was a passenger on the recreational lorry from Camp to Antwerp the night 5 Nov 1944. Pte Roberts the accused was also a passenger when the lorry left camp for Antwerp. When we arrived at the Cdn Car Park Antwerp we were warned that the lorry would depart for camp at 2300 hrs. The lorry did wait for 5 or 10 minutes because of personnel who had not arrived. I am not sure actually the length of time it waited because my watch is not always correct. I am not sure of the personnel who did not arrive before the lorry departed because I was one of the first two men in the lorry.

Cross Examined by the accused:

Q. Was there any roll call in the lorry after 2300 hrs?

A. No.

Q. What kind of a night would you say it was?

A. I would say it was s very bad night, rainy and very dark making it difficult for one to find his way.

G. E. Mower
.....

FOURTH WITNESS:

G41224 Cpl Howland R.E. of 4 Cdn Arm'd Div Ord Fd Pk RCOC sworn states:

On 6 Nov 44 I was Orderly Cpl of the 4 Cdn Arm'd Div Ord Fd Pk RCOC. On morning parade at 0815 hrs there were three men absent of which Pte Roberts was one. The Sgt. Major was aware of the fact that these men were absent as he had been told by Cpl Wilson that morning in my presence. Shortly after 1400 hrs I met the three absentees including Pte. Roberts outside the kitchen, they had not been on the noon parade. I immediately informed the Sgt. Major who told me to place the men under Open Arrest which I did.

Cross examined by the accused;

Q. Cpl Howland we were looking for you were we not?

A. I would say that you were looking for someone and when you saw me you informed me that you had arrived.

R. E. Howland
.....

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath?" You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence".

The accused:

"I have nothing to say at this time."

The accused declined to call witnesses in his own behalf.

...A.R.Roberts.....

I certify that R.P. 4 has been complied with.

Taken by me in the Field in the presence of the accused this 8 day of November 1944.

D.M. Crossan Lt.
.....

The Accused, Sworn, States -

"On 5 Nov. We were allowed a veh to proceed to Antwerp for recreational purposes. At about 1830 hrs when we left the veh at Antwerp we were warned that the veh would leave at 2300 hrs that night to return to Camp. The veh was to leave from the Cdn Car Pk Antwerp. At approx 2230 hrs two other soldiers and myself started for the car park. The other soldiers were Pte Coldrige and Pte Levesque, both of Ord Fd Pk. It was very dark and rainy and only the second time I had been in the City, we had difficulty in finding the car park. Knowing the 'three' routes in the City I went to the "London" route and followed the "Cdn. Car. Pk" sign down to the Park. Looking through the park we could not find our veh. I could not say what time it was then. From the Pk we went back to the main "London" route and stood for about two minutes when a Lorry came by which was from our own unit. We yelled and whistled at them but no one seemed to hear. We stood around at that corner in the City on the "London" route for about half an hour trying to get a ride - Not being able to get a ride we spoke to some American soldiers who took us to their camp until morning. This camp was about 4 miles on the other side of the Antwerp tunnel. In the morning we had breakfast with them and left immediately for camp. Not knowing that transportation was free on street cars and busses we walked from the American Camp to Putte - this would be about 28 miles - then we got a ride from there to our unit arriving there between 1330 and 1400 hrs."

No Cr. Exam.

Ex B RSA

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B-88048	Pte	Roberts D.R.	4 Cdn Arm'd Div Ord Fd Pk RCOC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA Sec 15 (1) A.W.L.	5 times	14 times.
For AA Sec 40 Creating disturbance	times	1 times.
For AA Sec 40 Unauth use WD Veh	times	1 times.
For AA sec 40 Speeding	times	1 times.
For AA Sec 40 entering OofB Area	1	
For AA sec 40 not on duty when required	1 times	times.

~~[illegible]~~

2. ~~[illegible]~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~[illegible]~~

4. ~~[illegible]~~ 0 days in civil custody, and 0 days in military custody, making a total of 0 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his record of service ~~[illegible]~~ is 31

6. The date of his ~~[illegible]~~ attestation specified in his record of service ~~[illegible]~~ is 10 Nov 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 5 Years

8. The accused is entitled to deferred pay or gratuity in respect of 5 Years service.

9. The accused is entitled to reckon 5 Years service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*)). Entitled to CVSM and Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A, dated ____, and in his regiment (*or* corps *or* department) the rank of N/A dated ____

(*16548) Wt.30246/862 75,000 12/40 A.& E.W.Ltd. Gp.698
(17033) Wt.48491/1987 25,000 4/41 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-88048 Rank Pte Name Roberts D.R. of 4 C&D OFP RCOC Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	In the Field 12 Aug 1941	1. AA Sec (18) (4) Guilty 2. AA Sec (18) (4) Guilty 3. AA Sec (18) (4) Guilty 4. AA Sec (18) (4) Guilty 5. AA Sec (18) (4) Guitly 6. AA Sec (40) Guilty	To under go 1 years imprisonment with hard labour for 6 months (Sentence commutted to 12 months detention)	Remission earned under Rules for D.B. & M.P. 122 days 1 day remitted under rule 23.
FGCM	In the Field 13 Sept 1943	1. AA Sec 15 (1) Quilty	To undergo detention for 90 days.	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 9 day of Nov 1944

[signature]
S.C. 4 CDN. ARMY RCOC
ORD. PO. PARK RCOC

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of	years,	
In the rank of	N/A years	
In the rank of	years,	

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such courts as are available and the paragraphs concerned amended accordingly.*)

E & C R Th

MFM 6
(AFB 122)

No B88048 Name ROBERTS D.R. | Sqn, Battery, or Company | Corps RCOC | Date of enlistment 10Nov 1939 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet: N/A | No and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No 2 | Signature OC Company, etc

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing with trial	By whom awarded	Remarks
May 1944		Original	sheet destroyed on completion of six months service			Last entry	29 Feb 40		NO cases of Drunkeness.
Field	20 Jul 40			AA Sec 40 Conduce to the prejudice of good order and military discipline in that he at 2015 hrs created a disturbance in the office of Dr. O'Connor in the town of Epsom When in close arrest, escaping at 2300 hrs 20 Jul 44 AA Sec 22	Capt Epsom Sgt Nevin C.M.P. Sgt Smith C.M.P.	10 days Det on combined charges	22 Jul 40	GW Beecroft Major	
							RELEASED FROM THE DETENTION BARRACKS ALDERSHOT ON 7 Oct 40 Sentence having expired		

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 16 Aug 44				With absence from duty without leave in that he from 1400 hrs to 1700 hrs 16-8-40 was absent from fatigue duty in MOs tent	Sgt Burnham	5 days C.B.	17 Aug 40	GW Beecroft Major	
Field	14 Sept 40			Conduct to the prejudice etc in that he at Epsom at 1845 hrs 14 Sept 40 was driving a WD vehicle (Austin lorry) without authority.	Sgt Henson	20 days detention	16 Sept 40	Lt. H.J. Thompson	
Field	14 Oct 40			AWL from St Andrews Hall from 2359 hrs 15 Oct 40 to 2215 hrs 16 Oct 40 (22¼hrs)	Sgt Henson	5 days Detention	17 Sep 1940	Lt. H.J. Thompson	Forfeits 1 days pay
Field	28 Feb 41			AWL from 1200 hrs 28 Feb 41 to 0430 hrs 1 Mar 41 (16 hrs 30 min)		7 Days C.B.	3 Mar 41	RH Perry	Forfeits 1 days pay

MFM 6
(AFB 122)
[illegible]

No B88048 Name Roberts D.R. Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No No. 3 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29 Jun 41			AA 15(1) AWL from 0900 hrs 29 Jun 41 to 1800 hrs 30 Jun 41 (33 hrs)	CSM Diplock	72 hrs Detention	12/8/41	RW Frost Lt Col	For 2 days pay.
Field 29 Jun 1941				Tried by FGCM on 12 Aug 41 Charges 1. AA Sec 18(4) Finding Guilty 2 " " " 3 " " " 4 " " " 5 " " " 6 " 40 "	HG Stratton Capt FE Farlinger Capt G.W. Cormack Capt GA Buchanan Capt WE Holkinson E/A OE Supeene Lt A Sanderson S/Sgt WJ Conlan Pte D rossi Pte WB Keith Capt E Nock Tpr	To undergo 1 years imprisonment with 6 months hard labour (Sentence commutted to 12 months detention)	RELEASED FROM THE DETENTION BKD WARLAND CAMP ON 11/4/42 Sentence Having expired. Remission earned under Rules for Detention Barracks and Military Prisions 122 days 1 day remitted under Rule 23 R for M.D. Bks & M. Prisons		

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15 Jun 41			WOAS was AWL for 1 day 8 hrs AA Sec 15 (1)	QMS Stratton	Forfeits 4 days pay	18 Jun 41		
Field	30 Sept 42			AWL from 2359 hrs 30 Sept 42 to 0825 hrs 1 Oct 42 AA Sec 15 (1)	Sgt Showers	3 days ~~pay~~ CB 7 days pay	1 Sep 42		1 days payForfe
Field	21 Nov 42			WOAS was awl from 2359 hrs 20 Nov 42 to 0600 21 Nov 42 6 hrs 1 min	Cpl Falwell	7 days C.B.	21 Nov 42		7 days pay.
Field	24 Jan 43			WOAS was AWL from 2300 hrs ~~24~~ 23 Jan 43 to 1000 hrs 24 Jan 43 Absent 11 hours AA Sec 15 (1)	Sgt Glynn	7 days pay	24 Jan 43		1 days pay
Field	4 April 43			AA Sec 15 (1) WOAS AWL from 2300 hrs 3 Apr 43 to 1000 hrs 5 Apr 43 Absent 35 hours.	S/C Kronick	7 days pay	6 Apr 43		2 days pay
Field	8 Apr 43			AA Sec 40 did drive a Military Vehicle at an excessive rate of speed	L/Cpl Noorle	7 days pay	23 Apr 43		

MFM 6
(AFB 122)
40/PAS/136 (5458)

No B88048 Name Roberts D.R. Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 4 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	16 Aug	43		AA Sec 15 (1) AWL WOAS 24 days 14 hrs 15 minutes. Guilty.	DOCUMENTARY	To undergo detn for a period of 90 days	13 Sept	43 FGCM	
				Certified True Copy (Harold M Bailey) Colonel Commanding Officer No. C.O.R.U.					

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (date) relating with (the)	By whom awarded	Remarks

MFM 6
(AFB 122)
40/P&S/138 (3488)

No B88048 Name Roberts D.R. | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 5 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14 Nov 43			SUPPLEMENTARY COPY AA. Sec 15 (1) WOAS A.W.L. from 2359 hrs 13 Nov 43 until 2359 hrs 14 Nov 43 Absence 1 day.	CSM Brown	Awarded 3 days for pay	16 Nov 43	Major SE Lewis	For 1 days pay
Field	27 Dec 43			A.W.L. from 0630 hrs 27 Dec 43 to 2300 hrs 2 Jan 44 (6 days 16 hrs 30 min A.A. 15 (1)	Lt. Parker L/Cpl Robbie	Admonished	3 Jan 44	Major RCE Airth	Forfeits 7 days pay
				Cdn Volunteer Service medal and Clasp w.e.f. 15 Jan 44 Pt II order No. 2 4 Feb 44					

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In Field	26 Jan 44			A.A. Sec 15 (1) A.W.L. from 0815 hrs 26 Jan 44 to 0800 hrs 27 Jan 44 (23 hrs 45 mins)	AQMS N rris L/Cpl Robbie	9 days pay	8 Feb 44	Major Airth	1 days pay
Field	5 Feb 44			A.A. 15 (1) A.W.L. from 2230 hrs 5 Feb 44 to 1000 hrs 6 Feb 44 11 Hrs 30 min	L/Cpl Robbie Sgt Simcoe	9 days pay	8 Feb 44	Major Airth	forfeits 1 days pay.

No. B88048 Name Roberts D.R. | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/TA/30/138 (3488)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 6 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
The Field	20 Mar 44			Conduct to the prejudice of good and military discipline in that he at about 1040 hrs 20 Mar 44 was seen about to enter the Hand in hand public house Boxhill Surrey. AA. Sec 40	Capt Gillespie	14 days F.P.	25 Mar 44	Major Tyrrell	forfeits 14 days pay.
The Field	25 Jun 44			AA Sec 15 (1) WOAS was AWL from 1600 hrs 25-6-44 to 2215 hrs 25-6-44 Absent 6 hrs 15 min.	SQMS Harris	14 days F.P.	26 June 44	Major JR Allen	forfeits 14 days pay Auto 1 days pay Total 15 days pay.

(170)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
The Field	15 Sept 44			A.A. Sec 40 WOAS conduct to good order and military discipline in that he in the field at approx 2200 hrs 15-9-44 was in Poeikappelle when his duty required him to return to his Unit	Documentary	28 days F.P.	2 Sept 44	Major JR Allen	28 ~~14~~ days Forfeit pay.

Certified True copies of B88048 Pte Roberts D.R.
M.F.M. 6's.

.....
Major J.R. Allen
O.C., 4 Cdn Arm'd Div Ord Fd Pk RCOC

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.88048 Pte Douglas Roy ROBERTS, 4 Cdn Armd Ord Fd Pk RCOC

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA. 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

~~Acquitted under evidence for ..... charging on (date) .....~~

(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

RFW To be imprisoned with hard labour for six months and to be discharged with ignominy from His Majesty's Service.

(Sgd) ..... Judge-Advocate, if any. 14 Nov 44 Date awarded. (Sgd) "R.F. Willson" Maj. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve this finding and sentence for confirm ation.

Date 14 Nov 44 (Sgd) "R.H. Noble" Lt.-Col. Commanding R.C.E.M.E. 4th Cdn Armd Div

I certify that there are no illegalities or irregularities to justify withholding confirmation of these proceedings. "T.G. Norris" Col. 21 A Gp 20 Nov 44 DJAG Cdn Sec GHQ

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(7), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: KR Con 573. Quashing after promulgation: RP 53, MML p 65. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be restored to [illegible]~~ JCJ

(1. AA 57A. Delete if not used.)

(Sgd) "J.C. Jefferson" Brig.

Date 25 Nov 44

~~Commanding~~ A/GOC 4 Cdn Armd Div.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B.88048 Pte Roberts Douglas Roy	28 Nov 44	"J.R. Allen" Major O.C. 4 CDN ARMD DIV ORD FD PARK RCOC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 15 DEC 44 JAG BRANCH CMHQ

RECORDED AT CMHQ IN AB 160 40-136

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Lt.-Col. R.H. Noble, ComdRCEME 4 Cdn Armd Div dated 13 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, a rank or Appmt, if any, see AA 140, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/T, or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.88048	Pte	Douglas Roy	ROBERTS	Div Ord Fd Pk RCOC 4 Cdn Armd Div

PROCEEDINGS REVIEWED "J.R. Miquelon" Capt. 15 Dec 44

REVIEWING OFFICER JAG BRANCH CMHQ KGM

PROCEEDINGS REVIEWED DATE 3 Dec 44 "W.H. Waugh" Major. D.J.A. Cdn Sec G.H.Q. 2 Echn 21 Army Gp.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 14 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 14/49

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 885, for books and instrs on how to record evidence, exhibits, etc, which points are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

RFW A2. The President initials and lays before the Court the Convening Order and Charge Sheet (X) attached thereto.(1) The Court is satisfied that it is properly convened and is ~~not~~ duly constituted(2), accused is (XX) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (XX) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (XX) fit to undergo trial by court-martial.(1)

RFW ~~The Prosecutor informs the Court that accused should be tried by court-martial instead of being dealt with summarily for the~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

RFW A5. ~~President to accused: Do you object to be tried by me as President? Ans ..... as interpreter: Do you~~ ~~object to ..... as shorthand writer? Ans .....~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 31, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R.F. WILLSON	Lind & Weld R. CA
Member	Capt	R.A. SHARPE	23 Cdn Fd Regt (SP) RCA
Member	Lieut	W. SANGSTER	28 Cdn Armd Regt
Judge-Advocate	-------	-------	----------
Prosecutor	Lieut	W.M. CROSSEN	4 Cdn Armd Div Ord Fd Pk
Defending Offr	Lieut	H. BROWN	4 Cdn Mob Laundry Bath Unit RCOC

RFW Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) (X) plea (1)

RFW

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsF cited. Insert in A8 rank and name of the accused making the plea.)

RFW A9. The accused is (XX) arraigned ~~XXXXXXX~~ on all charges in the charge sheet.(1) The accused does (XX) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 885 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B" & "E"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

V3
N.56

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

RFW B3 – ~~The Court considers the accused's statement(s) – The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty as to charge(s) – The accused is now informed, and he (does not) changes his (their) plea(s) as to charge(s) – Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

RFW B4. ~~On the charge(s) to which the plea(s) of Guilty is (are) not changed the~~ President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

RFW B5. The Summary of Evidence is marked Ex "A" initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on ~~which~~ accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

RFW C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), s 4, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 80(C), 114, 115.*))

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....
Do you intend to call witnesses on your behalf ?
Ans.....
Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 40(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA (see RP 42, 103(b)).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (d), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Yes
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1.*)

RFW *Accused and witnesses are sworn. Evidence recorded per Notes.*)

RFW E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~XXX~~ (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(*1. MFB 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

RFW E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes, through my defending offr.
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

APPENDIX "A"

RFW

CHARGE SHEET

The accused B-88048 Pte Douglas Roy Roberts, 4 Cdn Arm'd Division Ordnance Field Park RCOC a soldier of the Cdn Army Overseas:

CHARGE
Sec 15 (1)
A.A.

WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

IN THAT HE

IN THE FIELD ON 5th Nov 44 ABSENTED HIMSELF WITHOUT LEAVE FROM 2300 hrs 5 Nov 44 until 1400 hrs 6 Nov 44. (Total time absent 15 hrs)

In the Field
10 Nov 1944

"J.R. Allen" Major
(J.R. Allen)
O.C. 4 Cdn Armd Division
Ordnance Field Park RCOC

TO BE TRIED BY FGCM

In the Field
13 Nov 44

"R.H. Noble" Lt-Col.,
Commanding RCEME 4th Cdn Armd Div.

RFW

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appnt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.88048	Pte.		Douglas Roy	ROBERTS	4 Cdn Armd Div Ord Pk, RCOC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 13 NOV 44 endorsed by me, (~~or by an offr of my staff for me~~)" To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)–
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint – (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	R.F. WILLSON		Line & Weld Regt

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	R.A. SHARPE		23 Cdn Fd Regt (SP) RCA
Lieut	W. SANGSTER		28 Cdn Armd Regt

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	W.E. ELLIS		4 LAD Att HQ RCEME

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in			
HOLLAND (Country.)	"R.H. Noble" (Signed personally. RP 105 fn 2.)		Lt.-Col. (Rank.)

Date 13 Nov 44

Commanding RCEME 4 Cdn Armd Div.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

RFW

MEDICAL OFFICERS CERTIFICATE

I certify that I have this day examined B.88048 Pte Roberts D.R. of 4 Cdn Arm'd Div Ord Fd Pk RCOC and in my opinion he is fit ~~XXXXX~~ to undergo trial by court martial.

"G.W. Lewin" Major
MO

Station Field

Date Nov 14/44

Plea in Mitigation

of

B.88048 Pte Roberts, D.R., R.C.O.C.

President and Members of the Court:-

Pte Roberts, the accused, joined the Cdn Army (Active), as a volunteer on 26 Aut 1939 and embarked for overseas duty on the 25 Jan 1940. He was stationed in England until July 1944 when he landed in Normandy with his present unit, 4 C.A.D., C.F.P.

Pte Roberts is married in Canada and has one child, now 6 yrs of age. He has not seen his wife or child since 1940 and is very much concerned over this unfortunate incident, which, he believes, may hinder his opportunities should leaves be granted home in the near future, for long serving personnel.

True, he has been sentenced for numerous other offences against Military law, which, in all probability can be laid at the door of inactivity, such as we all know with regards the Canadian Army, activities as a whole, up to "D" Day. Since "D" Day he has been awarded punishment once on a minor charge.

With regards the charge he is now being tried for, Pte. Roberts pleads guilty of that charge, but would request the court to take into consideration that this unfortunate affair could have happened to anyone. He had no malicious intent of going A.W.O.L. That thought was farthest from his mind, otherwise, he could have quite easily absented himself for days and probably weeks before being apprehended.

The N.C.O. in charge of the vehicle debussed his passengers at the car park in Antwerp and

---

2.

stated all personnel would be at the car park at 2300 hrs to return. As this park is quite extensive and there is an "Out" gate in it, it is possible for a person to have missed a lorry in the darkness of that night, especially when no specific point was given in the car park, where the passengers would be picked up.

When Pte Roberts and the other two men realised their transport was not in the park they endeavoured to intercept it on the main street and actually did see their truck go by. It did not stop in response to their yells and after trying several other unit's trucks for a ride back without success, they stayed in Antwerp the night with an American unit. They immediately set out the following morning for their unit.

In view of the foregoing Pte Roberts would like to state that he did not wilfully absent himself and he fully realises the seriousness of the charge against him. He expects just punishment for this misadventure and places himself at the mercy of the court.

"H. Brown" Lieut.
for"D.R. Roberts"

In the field
13 Nov 44

APPENDIX "B" Original Ex. "A" WPW

SUMMARY OF EVIDENCE: In the case of H-88048 Pte Roberts, D.R. 4 Cdn Arm'd Division Ordnance Field Park RCOC Cdn Army Overseas charged with:

CHARGE AA SEC 15(1) The accused H-88048 Pte Douglas Roy Roberts, 4 Cdn Arm'd Division Ordnance Field Park RCOC a soldier of the Cdn Army Overseas: While on Active Service absenting himself without leave in that he in the Field on 5th Nov 44 absented himself without leave from 2300 hrs 5 Nov 44 until 1400 hrs 6 Nov 44. (Total time absent 15 hrs)

THE CO DIRECTS THAT EVIDENCE BE TAKEN ON OATH:

FIRST WITNESS

L-9137 SQMS Clunie, G.E.A., 4 Cdn Arm'd Div Ord Fd Pk RCOC sworn states:

On Sunday 5 Nov 1944 as Sgt Major of the camp, with permission from the O.C. I laid on one lorry to transport personnel of the Unit from Camp to Antwerp for recreational purposes. The lorry was due to depart from camp 1300 hrs and to depart from Cdn Car Park Antwerp 2300 hrs the same night. The N.C.O. in charge of the lorry was told to advise the men the time of departure of the lorry from Antwerp.

The accused declines to cross examine

"G.E.A. Clunie" SQMS

SECOND WITNESS:

H-64695 Cpl Wilson, R.G., of the 4 Cdn Arm'd Div Ord Fd Pk RCOC sworn states:

On the night 5 Nov 1944 I was in charge of the recreational lorry despatched from the Camp to Antwerp. The accused Pte Roberts was one of the passengers. All personnel travelling in the vehicle on debussment at the Cdn Car Park Antwerp were warned that the lorry would be leaving Antwerp to return to Camp at 2300 hrs. At later than 2300 hrs three men of whom Pte Roberts was one were not present. We waited until approximately 2325 hrs and these men still did not show up so we departed from Antwerp xxx for camp. I reported the absentees to the Sgt. Major on the morning of the 6 Nov 44 before morning parade.

Witness cross-examined by the accused:

Q. What kind of night was it?

A. It was definately a dark and rainy night making it difficult to get around in a strange place.

Q. Did the vehicle leave the same gate as it went into the Car Park?

A. There is an "In and "Out" gate at the Park and the vehicle left by the "Out" gate.

"R.G. Wilson"

THIRD WITNESS:

H.37112 Pte Mower G.E. 4 Cdn Arm'd Div Ord Fd Pk RCOC sworn states:

I was a passenger on the recreational lorry from Camp to Antwerp the night 5 Nov 1944. Pte Roberts the accused was also a passenger when the lorry left camp for Antwerp. When we arrived at the Cdn Car Park Antwerp we were warned that the lorry would depart for camp at 2300 hrs. The lorry did wait for 5 or 10 minutes because of personnel who had not arrived. I am not sure actually the length of time it waited because my watch is not always correct. I am not sure of the personnel who did not arrive before the lorry departed because I was one of the first two men in the lorry.

Cross Examined by the accused:

Q. Was there any roll call in the lorry after 2300 hrs?

A. No.

Q. What kind of a night would you say it was?

A. I would say it was a very bad night, rainy and very dark making it difficult for one to find his way.

"G.E. Mower"

FOURTH WITNESS:

G.41224 Cpl Howland R.E. of 4 Cdn Arm'd Div Ord Fd Pk RCOC sworn states:

On 6 Nov 44 I was Orderly Cpl of the 4 Cdn Arm'd Div Ord Fd Pk RCOC. On morning parade at 0815 hrs there were three men absent of which Pte Roberts was one. The Sgt. Major was aware of the fact that these men were absent as he had been told by Cpl Wilson that morning in my presence. Shortly after 1400 hrs I met the three absentees including Pte. Roberts outside the kitchen, they had not been on the noon parade. I immediately informed the Sgt. Major who told me to place the men under Open Arrest which I did.

Cross examined by the accused:

Q. Cpl Howland we were looking for you were we not?

A. I would say that you were looking for someone and when you saw me you informed me that you had arrived.

"R.E. Howland"

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath?" You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused:

"I have nothing to say at this time."

The accused declined to call witnesses in his own behalf.

"D.R. Roberts"

I certify that R.I. 4 has been complied with.

Taken by me in the Field in the presence of the accused this 8 day of November 1944.

"W.M. Crossen" Lt.

Accused, sworn, states:

"On 5 Nov. we were allowed a Veh to proceed to Antwerp for recreational purposes. At about 1830 hrs when we left the Veh at Antwerp we were warned that the Veh would leave at 2300 hrs that night to return to camp. The Veh was to leave from the Cdn Car Pk, Antwerp. At approx 2230 hrs two other soldiers and myself started for the car park. The other soldiers were Pte Coldgie and Pte. Levesque, both of Ord Fd Pk. It was very dark and rainy and only the second time I had been in the city. We had difficulty in finding the car park. Knowing the three routes in the city I went to the "London" route and followed the "Cdn Car Pk" sign down to the Park. Looking through the park we could not find our veh. I could not say what time it was there. From the Pk we went back to the main "London" route and stood for about two minutes where a Lorry came by which was from our own unit. We yelled and whistled at them but no-one seemed to hear. We stood around at that corner in the city on the "London" route for about half an hour trying to get a ride. Not being able to get a ride we spoke to some American soldiers who took us to their camp until morning. This camp was about 4 miles on the other side of the Antwerp tunnel. In the morning we had breakfast with them and left immediately for camp. Not knowing that transportation was free on Street cars and busses we walked from the American Camp to Putte - this would be about 28 miles - there we got a ride from there to our unit arriving there between 1330 and 1400 hrs."

No Cr-Exam.

Ex. "B" RFW
Army Form B.296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED.

Number	Rank	Name	Regiment (or as the case may be)
B-88048	Pte	Roberts, D.R.	4 Cdn Arm'd Div Ord Fd Pk RCOC

1. The following is a fair and true summary of the regimental and squadron battery or company conduct sheets of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:-

	Within last 12 months.	Since Enlistment.
For AA Sec 15(1) A.W.L.	5 times	14 times
For AA Sec 40 Creating disturbance	times	1 times
For AA Sec 40 Unauth use WD Veh	times	1 times
For AA Sec 40 Speeding	times	1 times
For AA Sec 40 entering OofB Area	1 times	times
For AA Sec 40 not on duty when required	1 times	times

xxxx

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-88046 Rank Pte Name Roberts, D.R. of 4 CAD OFP RCOC Regiment(or as the case may be)
(Instruction- A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge or order of the dispensing authority.	Punishment Remitted.
FGCM	In the Field 12 Aug 1941	1. AA Sec(18) (4) Guilty 2. AA Sec(18) (4) Guilty 3. AA Sec(18) (4) Guilty 4. AA Sec(18) (4) Guilty 5. AA Sec (18) (4) Guilty 6. AA Sec(40) Guilty	To undergo 1 years imprisonment with hard labour for 6 months (Sentence commuted to 12 months detention)	Remission earned under Rules for D.B. & M.F. 122 days 1 day remitted under rule 23
FGCM	In the Field 13 Sept 1943	1. AA Sec 15 (1) Guilty	To undergo detention for 90 days.	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 9 day of Nov 1944

"J.R. Allen" Major
O.C. 4 CDN ARMD DIV
ORD FD PARK RCOC

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

In the rank of N/A Date of Promotion
In the rank of Years
In the rank of Years
Years

INSTRUCTION- If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.

Ex. "C" RFW

No B88048 Name ROBERTS D.R. Sqn, Battery, or Company Corps RCOC Date of enlistment 10 Nov 1939 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/PAS/156 (3488)

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 2 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
May 1944		Original		sheet destroyed on completion of six months		service Last	entry 29	Feb 40 No	cases of Drunkenness.
Field	20 Jul 40			AA Sec 40 Conduct to the prejudice of good order and military discipline in that he at 2015 hrs created a disturbance in the office of Dr. O'Connor in the Town of Epsom When in close arrest, escaping at 2300 hrs 20 Jul 44 AA Sec 22	Capt Jepsom Sgt Nevin R.P. Smith, C.N.	10 days Det on combined charges	22 Jul 40	GW Beecroft	Major
							RELEASED FROM THE DETENTION BARRACKS ALDERSHOT ON 7 Oct 40 Sentence having expired.		

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 16 Aug 44				With absence from duty without leave in that he from 1400 hrs to 1700 hrs 16-8-40 was absent from fatigue duty in MOs tent	Sgt Burnham	5 days C.B.	17 Aug 40	GW Beecroft Major	
Field	14 Sep 40			Conduct to the prejudice etc in that he at Epsom at 1845 hrs 14 Sep 40 was driving a WD vehicle (Austin lorry) without authority.	Sgt Henson	20 days detention	16 Sep 40	Lt. H.J. Thompson	
Field	14 Oct 40			AWL from St Andrews Hall from 2359 hrs 15 Oct 40 to 2215 hrs 16 Oct 40 (22¼hrs)	Sgt Henson	5 days detention	17 Sep 1940	Lt. H.J. Thompson Forfeits 1 days pay	
Field	28 Feb 41			AWL from 1200 hrs 28 Feb 41 to 0430 hrs 1 Mar 41 (16 hrs 30 min)		7 days C.B.	3 Mar 41	RH Perry	Forfeits 1 days pay

No B88048 Name Roberts D.R. | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/156 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29 Jun 41			AA 15(1) AWL from 0900 hrs 29 Jun 41 to 1800 hrs 30 Jun 41 (33 hrs)	CSM Diplock	72 hrs detention		RW Frost Lt Col For 2 days pay.	
Field	29 Jun 1941			Tried by FGCM on 12 Aug 41 Charges 1. AA Sec 18(4) Finding Guilty 2 " " " " 3. " " " " 4 " " " " 5 " " " " 6 " " 40 "	HG Stratton Capt FE Farlinger Capt G.W. Cormack Capt GA Buchanan Capt WE Holkinson E/A OE Supeene Lt A Sanderson S/Sgt WJ Conlan Pte D rossi Pte WB Keith Capt E Nock Tpr		12/8/41 RELEASED FROM THE DETENTION BKD WARLAND CAMP ON 11/4/42 Sentence having expired. Remission earned under Rules for Detention Barracks and Military Prisons 122 days 1 day remitted under Rule 23 R for M.D. Bks & M. Prisons		

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15 Jun 41			WOAS was AWL for 1 day 8 hrs AA Sec 15(1)	QMS Stratton	Forfeits 4 days pay	18 Jun 41		
Field	30 Sep 42			AWL from 2359 hrs 30 Sep 42 to 0825 hrs 1 Oct 42 AA Sec 15(1)	Sgt Showers	3 days CB 7 days pay	1 Sep 42		1 days pay Forf
Field	21 Nov 42			WOAS was awl from 2359 hrs 20 Nov 42 to 0700 21 Nov 42 6 hrs 1 min.	Cpl Falwell	7 days C.B.	21 Nov 42		7 days pay
Field	24 Jan 43			WOAS was AWL from 2300 hrs 23 Jan 43 to 1000 hrs 24 Jan 43 Absent 11 hours AA Sec 15(1)	Sgt Glynn	7 days pay	24 Jan 43		1 days pay
Field	4 April 43			AA Sec 15(1) WOAS AWL from 2300 hrs 3 Apr 43 to 1000 hrs 5 Apr 43 Absent 35 hours.	S/C Kronick	7 days pay	6 Apr 43		2 days pay
Field	8 Apr 43			AA Sec 40 did drive a Military Vehicle at an excessive rate of speed	L/Cpl Noorle	7 days pay	23 Apr 43		

No B88048 Name Roberts D.R. Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3488)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 4. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	16 Aug	43		AA Sec 15(1) AWL WOAS 24 days 14 hrs 15 minutes. Guilty	DOCUMENTARY	To undergo detn for a period of 90 days	13 Sep 43	FGCM	

Certified True Copy

(Harold M. Bailey) Colonel
Commanding Officer
No. C.O.R.U.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with Trial	By whom awarded	Remarks

Released from Detention

Nov 11 1943.

MFM 6
(AFB 122)
40/PAM/156 (3438)

No B88048 Name Roberts D.R. | Sqn, Battery, or Company | Corps | Date of enlistment | OC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 5. | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				SUPPLEMENTARY COPY					Forf 1 days pa
Field	14 Nov 43		1	AA Sec 15(1) WOAS A.W.L. from 2359 hrs 13 Nov 43 until 2359 hrs 14 Nov 43 Absence 1 day.	CSM Brown	Awarded 3 days for pay	16 Nov 43	Major SE Lewis	
Field	27 Dec 43			A.W.L. from 0e30 hrs 27 Dec 43 to 2300 hrs 2 Jan 44 (6 days 16 hrs 30 min A.A. 15(1)	Lt. Parker L/Cpl Robbie	Admonished	3 Jan 44	Major RCE Airth	Forfeits 7 days pay
				Cdn Volunteer Service medal and Clasp w.e.f. 15 Jan 44 Pt II order No. 24 Feb 44.					

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In Field	26 Jan 44			A.A. Sec 15(1) A.W.L. from 0815 hrs 26 Jan 44 to 0800 hrs 27 Jan 44 (23 hrs 45 mins)	A/MS Norris L/Cpl Robbie	9 days pay	8 Feb 44	Major Airth	1 days pay
Field	5 Feb 44			A.A. 15(1) A.W.L. from 2230 hrs 5 Feb 44 to 1000 hrs 6 Feb 44 11 hrs 30 mins.	L/Cpl Robbie Sgt Simcoe	9 days pay	8 Feb 44	Major Airth	forfeits 1 days pay.

No. B88048 Name Roberts D.R. Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 6 | Signature OC Company, etc

MFM 6 (AFB 122) 40/PAM/130 (3483)

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
The Field	20 Mar 44			Conduct to the prejudice of good order and military discipline in that he at about 1040 hrs 20 Mar 44 was seen about to enter the Hand in hand public house Boxhill Surrey. AA. Sec 40	Capt Gillespie	14 days F.P.	25 Mar 44	Major Tyrrell	forfeits 14 days pay
The Field	25 Jun 44			AA Sec 15(1) WOAS was AWL from 1600 hrs 25-6-44 to 2215 hrs 25-6-44 Absent 6 hrs 15 min.	SQMS Harris	14 days F.P.	26 Jun 44	Major JR Allen	forfeits 14 days pay Auto 1 days pay Total 15 days pay

(OTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
The Field	15 Sep 44			A.A. Sec 40 WOAS conduct to good order and military discipline in that he in the field at approx 2200 hrs 15-9-44 was in Poelkappelle when his duty required him to return to his Unit.	Documentary	28 days F.P.	2 Sep 44	Major JR Allen	JRA 28 days Forfeit pay.

Certified True copies of B88048 Pte Roberts D.R.
M.F.M. 6's.

"J.R. Allen" Major

Major J.R. Allen
O.C. 4 Din Arm'd Div Ord Fd Pk RCOC

PP-92
PTE ROBERTS D R.

805/1CORU/3
B88048 Pte. Douglas Roy ROBERTS
1 C.O.R.U.

PP 92

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this THIRTEENTH day of SEPTEMBER, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "F" GROUP, CANADIAN REINFORCEMENT UNITS CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~ LK

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~I am unable to appoint~~ —

*~~(1) Lieut. Officers to form the Court~~)

*~~(2) A Field Officer as President~~) LK

~~to the following reasons, namely~~

*Omit if not applicable.

Proceedings [illegible]

[illegible] 1 Oct 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lt.Col.	D.L. Redman, V.D.	H.Q.,C.R.U.

Members.

Rank.	Name.	Regiment.
A Major	from	2 C.I.R.U.
A Captain	From	2 C.I.R.U.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature]
(LOUIS KEENE) Colonel
Commanding "F" Group, C.R.U.
Convening Officer.

[signature] Lt Col

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B88048 Pte.Douglas Roy ROBERTS 1 C.O.R.U.	Sect.15(1) Army Act	Guilty	Guilty Sentence To undergo detention for a period of ninety (90) days. 13th Sept 1943 (See attached charge sheet)	Confirmed Louis Keene Col.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A).):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) Louis Keene Col. (Signed) [illegible]
(LOUIS KEENE) Colonel
Commanding 1st Group, C.R.U.
Convening Officer (d) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 13th day of Sept 1943 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. ~~The witness~~ *
3. ~~The Interpreter~~ *
4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 13th day of Sept 1943

[illegible] Lt Col
President of the Court Martial.

C. Certificate in case of death sentence.

*See footnote (b) on page 782 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this ~~day of 19~~.

President of the Court Martial.

D. Confirmation.

I have dealt with the ~~findings and~~ sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 14 day of Sept 1943

Louis Keene Col.
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 14th September 43 (Signed) H.L.Hamer. Lt Col

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23171) 10,500,000 50,000 2-43 A.F.W.3121 Gp.848
(24284) W.3121/2/71 100,000 3-43

CHARGE SHEET

The accused, B-88048 Pte. Douglas Roy Roberts, Royal Canadian Ordnance Corps, on strength of No. 1 Canadian Ordnance Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with, while on active service

Section 15(1) Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he

at South Louisburgh Barracks, Bordon at 0600 hrs. 16 August 1943 did absent himself without leave until he surrendered to Cpl. Coreau of the Regimental Police in the Guard Room, South Louisburgh Barracks at 2215 hrs. 9 September 1943. Tatal absence 24 days 14 hrs. 15 minutes.

(Harold M. Bailey O.B.E. V.D.)Colonel
Officer Commanding
1 Canadian Ordnance Reinforcement Unit

Bordon Hants.
11 Sept. 1943

To be tried by Field General Court Martial

(LOUIS KEENE) Colonel
Commander
"P" Group, C.R.U.

Bordon, Hants.
13th Sept.1943

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No. B8804E Roberts D J
(Rank) PTE (Name)
of NO.1 C.O.R.U. and in my opinion he is fit ~~unfit~~ to undergo
trial by Court Martial.

Station

Date

Sgd. C.J. Greece Capt.
(Medical Officer)

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT Laurentide Barracks, W. Ewley, Surrey,
ON THE 13th DAY OF September 1943

The accused B 88048 Pte Roberts D.K. Unit 1 C.O.R.U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lt. Col. D.L. Redman (VD) Unit HQ. CRU
Members Maj. N.M. Swoffield Unit 2 CIRU
Capt. A.W. Long Unit 2 CIRU

The officers under instruction are duly sworn:-

Lt. J.J. Moffat, Unit 2 CIRU
Lt. R.B. Porter, Unit 2 CIRU
Prosecutor Capt T.J. Marrion Unit 1 C.O.R.U.
Defending Officer Major J.E. Bennell Unit 1 C.O.R.U.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s), R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, ~~AFB 296~~ and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) ~~Makes a statement in mitigation of punishment.~~
(b) ~~Calls witnesses as to character.~~
(c) ~~Calls witnesses in mitigation of punishment.~~
(d) Addresses the Court by his Defending Officer. attached

Oversees R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER.

[signature]

In the case of D88048 Pte Roberts D. R.C.O.C. the Defending Officer presents;

This soldier enlisted at the outbreak of war in the Lincoln and Welland Regt and transfered into Ordnance to come overseas. He is extremely anxious to get into action as soon as possible. in Feb 1940.

He is married and has one boy aged 5 living in Canada.

He has been in the field with Ordnance Units continuously since coming Overseas.

May it please this Court to consider this soldier's length of service and his will to fight when considering Sentence.

Respectfully Submitted

J.A. Bennell Major
Defending Officer

13 Sept 1943.

EXTRACT OF NO. 1 C.O.R.U. D.O. No. 208 "EXHIBIT A"
d/ 23 Aug. 43.
In the case of B-88048 Pte. Roberts, D.R.

Absent Without Leave

Reported A.W.L. from 0800 hrs. 16 Aug. 43.

B-88048 Pte. Roberts, D.R.

Certified true extract of DO #208 1 CORU
d 23 Aug 43 - Adjutant

EXTRACT OF NO. 1 C.O.R.U. D.O. No. 221 "EXHIBIT C"
d/ 6 Sept. 43.
In the case of B-88048 Pte. Roberts, D.R.

Absent Without Leave

Reported A.W.L. from 0800 hrs. 16 Aug. 43. Still absent at 0800 hrs. 6 Sept. 43. (21st day)

B-88048 Pte. Roberts, D.R.

EXTRACT OF No. 1 C.O.R.U. D.O. No. 212 "EXHIBIT B"
d/ 27 Aug. 43.
In the case of B-88048 Pte. Roberts, D.R.

Absent Without Leave

Reported A.W.L. from 0800 hrs. 16 Aug. 43. Still absent at 0800 hrs. 26 Aug. 43 (8th day)

B-88048 Pte. Roberts, D.R.

Certified true extract copy of original D.O. 212)CORU d27 Aug 1943

SUMMARY OF EVIDENCE TAKEN IN THE CASE OF
B-88048 Pte. ROBERTS, D.R. ON STRENGTH OF
NO. 1 CANADIAN ORDNANCE REINFORCEMENT UNIT
ON INSTRUCTIONS FROM Lt. COL. F.M. MEARS
A.D. OFFICER COMMANDING "B" WING NO. 1
CANADIAN ORDNANCE REINFORCEMENT UNIT.

First Witness For Prosecution

B-2621 Cpl. West, W.J. having been duly sworn states.

I am B-2621 Spl. West, W.J. N.C.O. i/c hut No. 13, No. 6 Coy. "B" Wing No. 1 C.O.R.U. On the morning of Monday 16 Aug. 1943 at 0800 hrs. while on on duty as Hut Orderly of No. 6 Coy. Hut No. 13, I called the roll in Hut No. 13. At this roll call B-88048 Pte. Roberts, D.R. failed to answer his name. I reported Pte. Roberts absent without leave to Sgt. Walker A/C.S.M. of No. 6 Coy. at 0815 hrs.
The accused declined to cross examine the witness.

W J West
(B-2621 Cpl. West, W.J.)

SUMMARY OF EVIDENCE

In the case of B-88048 Pte. Douglas Roy Roberts, R.C.O.C. on strength of 1 Canadian Ordnance Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of evidence is taken on Oath

First Witness Prosecution

B-2621 Cpl. West W.J. R.C.O.C. on strength No. 1 Canadian Ordnance Reinforcement Unit, a soldier of the Canadian Army Overseas having been duly sworn states:-

I am B-2621 Cpl. West W.J. On the morning of 16 August 1943 at 0800 hrs. I, as Hut N.C.O. Hut number 13 South Louisburgh Barracks, called the 0800 hour roll. At this roll call B-88048 Pte. Roberts D.R. failed to answer his name. I reported Pte Roberts absent without leave to Sgt, Walker A/CSM of No. 6 Coy. at 0815 hours.

The accused declines to cross examine this witness

For signature see original attached

(B-2621 Cpl. West, W.J.)

Second Witness Prosecution

D-122617 Sgt. Walker, F. R.C.O.C. on strength No. 1 Canadian Ordnanae Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn states:-

I am D-122617 Sgt. Walker F., A/CSM No. 6 Coy. 1 C.O.R.U. At 0815 hrs. 16 August 1943 Cpl West reported to me that B-88048 Pte. Roberts D.R. Was absent without leave at 0800 hr. roll call. I immediately instituted a search of Louisburgh Camp and ensured that Pte. Roberts was not in the camp. I then reported Pte. Roberts absent without leave to the orderly room. I produce as exhibits extracts from 1 Canadian Ordnance Reinforcement Unit Part 11 Daily Orders as follows:- Part 11 Order No. 208 d 23 August 1943 showing B-88048 Pte Roberts D.R. absent Without leave from 0800 hours 16 August 1943. Part 11 Order No. 212 d 26 August 1943 showing B-88048 Pte. Roberts D.R. absent without leave on the 8th day. Part 11 Order No. 221 d 6 September 1943 showing B-88048 Pte. Roberts D.R. still absent on the 21st day. (Marked respectively Ex. A, B, C)

The accused declines to cross examine this witness

F Walker

(D-122617 Sgt. Walker F.)

SUMMARY OF EVIDENCE

Third Witness Prosecution

L-13229 Cpl. Coreau, W. R.C.O.C. on strength No. 1 Canadian Ordnance Reinforcement Unit a soldier of the Canadian Army Overseas having been duly sworn states:-

I am L-13229 Cpl. Coreau W. On Tuesday 9 September 1943 I was N.C.O. i/c Regimental Police at South Louisburgh Barracks. At 2215 hous on this date B-88048 Pte Roberts D.R. reported in to the guard room and voluntarily surrendered himself to me as an absentee. He was sober and properly dressed. I immediately placed him under close arrest. I produce Regimental Police report of the return to barracks of B-88048 Pte Roberts D.R.(marked as Exhibit "D") and Regimental Police report of admission to Unit Guard room of B-88048 Pte. Roberts D.R. (marked as Exhibit "E") under close arrest.

The accused declines to cross examine this witness.

W. Coreau
(L-13229 Cpl. Coreau W.)

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence

I certify that the foregoing Summary of evidence consisting of two pages was taken down by me in the presence of the accused and in his hearing, and that Rules of Procedure 4(C);(D),(e)~~,~~(f) ~~and(g)~~ have been complied with.

T.J. Marrion
(T.J. Marrion, Capt.)
Officer detailed to take Summary of Evidence.

LIST OF WITNESSES

In the case of B-88048 Pte. Roberts, D.R. R.C.O.C. on strength of No. 1 C.O.R.U.

(For the prosecution)

B-2621 Cpl West, W.J. No. 6 Coy. No. 1 C.O.R.U.

D-1226173 Sgt. Walker, W.J. No. 6 Coy. No. 1 C.O.R.U.

L-133229 Cpl. Corens, W. Admin. Wing No. 1 C.O.R.U.

(For the defence)

None.

LIST OF EXHIBITS

In the case of B-88048 Pte. Roberts, D.R. R.C.O.C. on strength of [illegible]/C.O.R.U.

A. Extract from No. 1 C.O.R.U. Part II D.O. No. 208 d 23 August 1943.

B. Extract from No. 1 C.O.R.U. Part II D.O. No. 212 d 27 August 1943.

C. Extract from No. 1 C.O.R.U. Part II D.O. No. 221 d 6 September 1943.

D. Regimental Police Report showing return to barracks of B-88048 Pte. Roberts D.R. at 2215 Hrs. 9 September 1943

E. Regimental Police Report showing admission to Unit Guard Room under Close Arrest of B-88048 Pte. Roberts D.R. on 9 September 1943.

Bordon, Hants. 11 Sept. 1943.

I do not wish to have an officer appointed to represent me at my forthcoming Court Martial.

D.R. Roberts B-88048

Bordon, Hants.
11 Sept. 1943.

I hereby acknowledge that I have received a true copy of the Summary of Evidence taken at Bordon preliminary to my Court Martial and I further acknowledge receipt of a copy of the Charge Sheet under which I am being brought to Court Martial.

D.R. Roberts B-88048

[illegible] Officer Commanding
No. 1 Con. Ordnance Regt. [illegible] C.O.R.C.

Bordon, Hants.
11 Sept. 1943

M.F.M. 6
(A.F. B.1236)
40/P & /B136 (12965)

No. B-88048 Name Roberts, D.P. Sqn., Battery, or Company Corps R.C.O.C. Date of enlistment 10-10-39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
10 May 40 sheet destroyed on completion of six months service, last entry 29 Feb. 40 No cases of drunkenness									
Field	20 Jul 40	Pte.	NIL	AA Sec 40 Conduct to the prejudice of good order and military discipline in that he at 2015 hrs. created a disturbance in the office of Dr. O'Connor in the town of Epsom. When in close arrest, escaping at 2300 hrs. 20 Jul 40 AA Sec.22	Capt Jepson Sgt Nevin R.P. Smith, C.N.	10 days Detention on combined charges.	22 Jul 40	GW Beecroft Major	
						RELEASED FROM THE DETENTION BARRACK ALDERSHOT ON 7 Oct. 40 SENTENCE HAVING EXPIRED.			
Field	16 Aug. 40	Pte.		With absence from duty without leave in that he from 1400 hrs. to 1700 hrs 16-8-40 was absent from fatigue duty in MCs tnet.	Sgt. Burnham	5 days CB	17 Aug. 40	GW Beecroft Major	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 14	Sep 40	Pte.	Nil	Conduct to the prejudice etc in that he at Epsom at 1345 hrs. 14 Sep 40 was driving a WD Vehicle (Austin Lorry) without authority	Sergeant Henson	20 days Detention	16 Sep 40	H.J. Thompson Lt. Col.	
Field 14	Oct. 40	Pte.		AWL from St. Andrews Hall from 2359 hrs. 15 Oct. 40 to 2215 hrs. 16 Oct. 40 (22½hrs)	Sergeant Henson	5 days Detn.	17 Sep 40	H.J.Thompson Lt. Col.	Forfeits 1 day PAY
Field 28	Feb. 41	Pte.		AWL from 1200 hrs. 28 Feb. 41 to 0430 hrs. 1 Mar. 41 (16 hrs. 30 mins.)		7 days CB	3 Mar. 41	RH Percy	Forfeits 1 days pay
Field	29 Jun	41 Pte.		AA 15 (1) AWL from 0900 hrs. 29 Jun 41 to 1800 hrs. 30 Jun 41 Total 33 hours	CSM Diplock	72 hrs. Detn.		RH Frost Lt. Col.	Forf. 2 days pay

M.F.M. 6
(A.F. B.122)
40/F & /B136 (2965)

No. B-88043 Name Roberts D.R. Sqn., Battery, or Company Corps R.C.O.C. Date of enlistment 10-10-39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine Sheet No. 3 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29 Jun 41	Pte.	NIL	Tried by FGCM on 12 Aug. 41	HG Stratton Capt.	To undergo 1 years imprisonment with 6 mths Hard Labor. (Sentence commuted to 12 mths. detention)	12 Aug. 41	FGCM	
				Charges:	FE Farlinger Capt.				
				1. AA Sec 18(4) Finding Guilty	GW Cormack "				RELEASED FROM THE DETENTION BKS
				2. " " " " "	GA Buchanan "				WARLAND CAMP ON 11/4/42 SENTENCE
				3. " " " " "	WE Holkinson				HAVING EXPIRED. REMISSION
				4. " " " " "	Educ adviser				EARNED UNDER "RULES FOR DETENT-
				5. " " " " "	OE Supeene Lt.				ION BARRACKS AND MILITARY
				6. " " 40 " "	A Sanderson S/Sgt.				PRISONS"
					W.J. Conlan Pte.				122 DAYS
					D Rossi Pte.				
					WB Keith Capt.				
					E. Nock Tpr				

1 day remitted under rule 23 rules for Military Detention Bks & Mil Prisons

(P.T.O.)

Place	Date of offence	Rank	Class of divisional corps	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15 Jun 41	Pte.		WOAS was AWOL for 1 day 8 hrs. AA Sec 15 (1)	QMS Straiton	Forfeits 4 days pay	18 Jun 41		
Field	30 Sep 42			AWL from 2359 hrs. 30 Sep 42 to 0825 hrs. 1 Oct. 42 (AA Sec 15(1))	Sgt. Showers JT	3 days CB	1 Oct 42		1 days auto forf. pay
Field	21 Nov. 42	Pte.		WOAS was AWL from 2359 hrs. 20 Nov 42 to 0600 21 Nov 42 6 hrs. 1 minute.	Cpl. Fallwell DT	7 days pay 7 days CB	21 Nov 42		7 days auto forf pay
Field	24 Jan 43	Pte.		WOAS was AWL from 2300 hrs. 23 Jan. 43 to 1000 hrs. 24 Jan. 43 Time absent 11 hrs. (AA Sec 15 (1)	Sgt. Glyun	7 days pay	24 Jan 43		1 days auto forf pay
Field	4 Apr. 43	Pte.		AA 15 (1) WOAS AWL from 2300 hrs 3 Apr. 43 to 1000 hrs. 5 Apr. 43 Time absent 35 hours	S/Condr. Kronick D	7 days pay	6 Apr. 43		2 days auto forf. pay
Field	8 Apr. 43	Pte.		AA 40 did drive a military vehicle at an excessive rate of speed	L/Cpl. Moore DS	7 days forf pay	23 Apr. 43		

Certified true copy of the original document in my possession

[illegible] RECORDS OFFICER
1 CDN. ORD. REINF. UNIT.

M.F.B. 355
22M—5-41 (573-5)
H.Q. 1772-99-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number B-86048 Rank Pte Name Douglas Roy ROBERTS (or unit) # 1 C.O.R.U.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	AASec 15 (1) AWL	4 times	AA Sec 15(1) AWL	9 times
For	Drove W.D. Vehicle at excessive rate of speed	1 times	Creating a disturbance	1 times
For		times	Escaping while in close arrest	1 times
For		times	Driving W.D.Vehicle whth Out authority	1 times
For		times		

Number of instances of gallantry or distinguished conduct Nil

or,

There are no entries in the conduct sheets of the accused. N/A

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement. A.A. 73 1

3. The accused is not under sentence at the present time N/A

or,

The accused at the present time is under sentence for N/A beginning on the N/A day of N/A

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 37 days in military custody, making a total of 37 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 29 years 9 months

6. The date of his attestation specified in his attestation paper is 10 Nov 1939

7. The service which the accused is allowed to reckon towards discharge is 10 Nov 39

8. ~~The accused is entitled to reckon~~ service for the purpose of increasing his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or military reward (or is in possession of or entitled to). State any military decoration or reward. Nil

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit N/A 467 dated N/A 467, and in his regiment (or corps), the rank of N/A 467 dated N/A 467.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of N/A 467 years.

In the rank of N/A 467 years.

In the rank of N/A 467 years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ 467 Army Act, and of cases in which trial has been dispensed with of accused, Number B88045 467 Rank Pte 467 Name Douglas Roy ROBERTS 467 of 1 C.O.R.U. 467 ~~Regiment~~ Unit 467

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

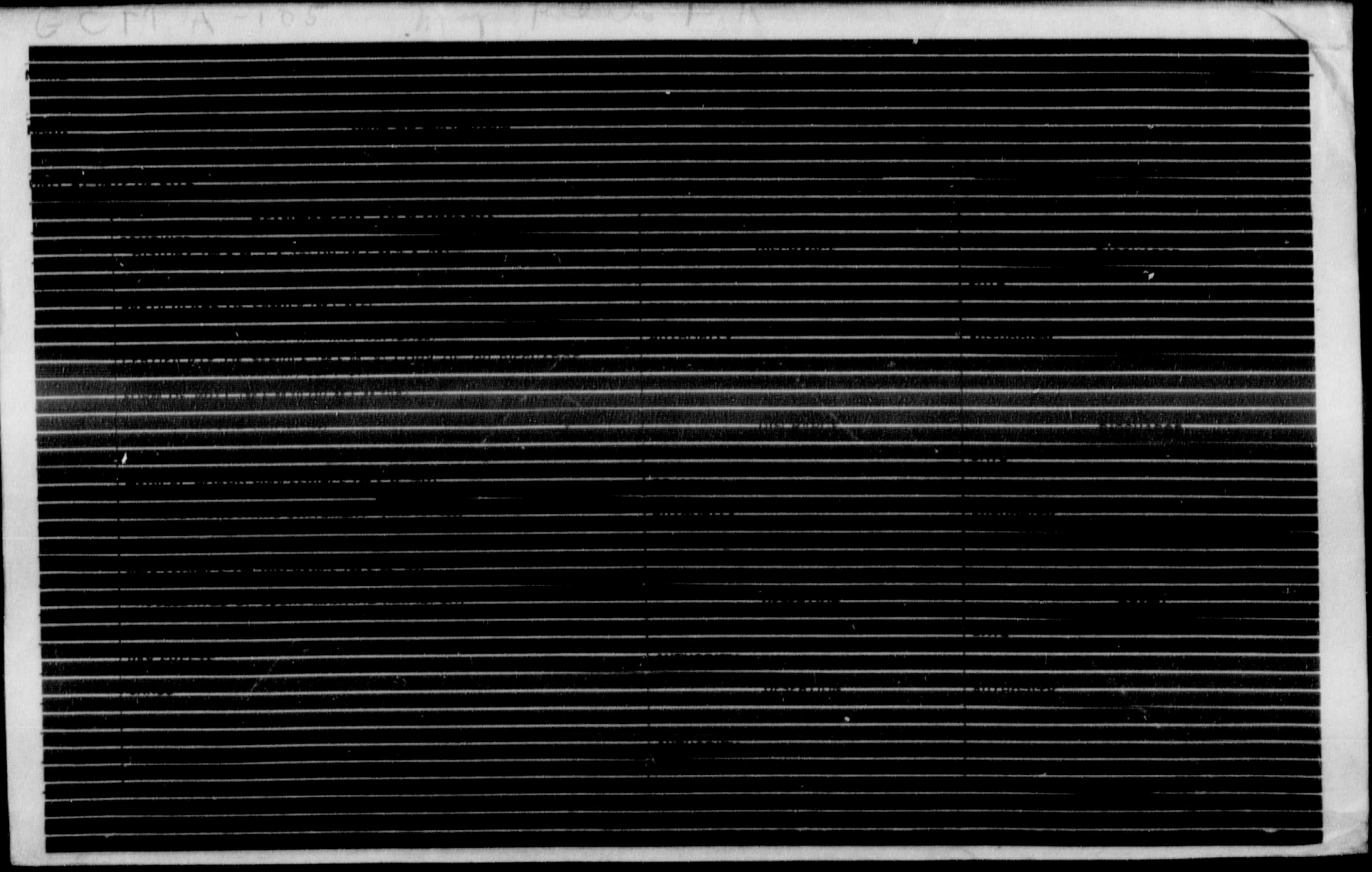
Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M. 467	Field 29 June 41 467	(1)AA Sec 18(4) (2)AA Sec 18(4) (3)AA Sec 18(4) (4)AA Sec 18(4) (5)AA Sec 18(4) (6)AA Sec 40 467	To undergo 1 year imprisonment with 6 mths hard labour (Sentence commuted to 12 Mths detention) 467	122 days 467

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13th day of September/43. G C Hussey Lieut Asst Records Officer for No. 1 C.O.R.U.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

[signature]



RECEIVED 6 JUL 1944 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160 Gen A 105

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General ~~and District~~ Courts-Martial

Proceedings of a General Court-Martial held at In the field on the 7th day of June 1944 by order of Major/General G. KITCHING DSO Commanding 4 Cdn Armoured Divisions dated the 6th day of June 1944

President. 8/16

Brigadier J.C. JEFFERSON, DSO, ED
Comd 10 Cdn Inf Bde

Members.

Lt-Col A.J. HAY - Alq Regt
Lt-Col W.W. HALPENNY - 22 Cdn Armd Regt
Major J.A. COOK - 8 Cdn Lt AA Regt RCA
Major H.G. DAWSON - Lake Sup R (M)

Waiting Members

Major J.W. AYLWARD - 15 Cdn Fd Regt RCA
Major A.G. BOWES - HQ RCASC 4 Cdn Armd Div

Capt H.A. HANSON, HQ 4 Cdn Armd Div Judge Advocate.

Trial of* Major Frederick Alexander ROBERTS
18 Cdn Armd C Regt (12D)

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

~~The Court satisfy themselves that is not available to serve owing to~~

~~waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Lieut L.M. Hanway, 21 Cdn Armd Regt (See waiver attached)

~~Counsel~~‡ or defending officer† Capt D.E. Lewis, HQ 10 Cdn Inf Bde (Barrister at Law)

At 1430 o'clock the Trial commences.

The order convening the Court is read, and is marked X signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Q.1 Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. A.1. No sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
15M—9-41 (1762)
H.Q. 1772-39-224

PROCEEDINGS REVIEWED
J.C. Campbell major
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

There are no illegalities or irregularities sufficient to warrant withholding confirmation on the first and second charges. The sentence is legally in order.
10 June 44.
Frank Cole
D.J.A.
Cdn Sec G.H.Q. 2 Ent. 21 Army Gp.

PROCEEDINGS REVIEWED
Date
D J A
Cdn. Sec G H Q 2 Ent.
21 Army Gp

The President, members and judge-advocate are duly sworn.

Q.2 Do you object to M 11436 S/Sgt Elliott or B 52259 Col Imrie, R.M. acting as shorthand writers?

A.2 No sir, neither of them (Shorthand writers are sworn)

The following officers under instruction are duly sworn.

Charge-Sheet

Instruction. *If the accused has elected to be tried under Army Act, sec. 56 (8) the fact should be here recorded.*

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Q.3 Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

A.3 Not guilty sir. *Answer.*

Q.4 Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

A.4 Not guilty sir. *Answer.*

Q.5 Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

A.5 Not guilty sir. *Answer.*

~~Q. Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with:~~

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge

Ann 11

MED OFFRS CERTIFICATE
KR (Can) para 557

I certify that I have this day examined Maj Frederick Alexander Roberts of 18 Cdn Armd C Regt and in my opinion he is fit to undergo trial by court martial.

(E H Brotman) Capt RCAMC
MO IC 18 Cdn Armd C Regt

In the fd
7 Jun 44

J.E. Jefferson Brig.
7 Jun. 44.

CHARGE SHEET

The accused Major Fredrick Alexander ROBERTS, 18th Armoured Car Regiment (XII Manitoba Dragoons), C.A.C. an officer of the Cdn Army Overseas, is charged with:

First Charge
Sec 19
Army Act

WHEN ON ACTIVE SERVICE, DRUNKENNESS

in that he

at TUNBRIDGE WELLS on the night 3/4 Jun 44 was drunk.

Second Charge
Sec 40
Army Act

Conduct to the prejudice of good order and military discipline

in that he

at TUNBRIDGE WELLS on the night of 3/4 Jun 44 in a lorry when other officers and soldiers were present improperly discharged a pistol loaded with ball ammunition.

Third Charge
Sec 40
Army Act

Conduct to THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at TUNBRIDGE WELLS on the night of 3/4 Jun 44 in the Drill Hall while a dance was in progress created a disturbance.

In the Fd
5 Jun 44

J A Roberts

(J A Roberts) Lt-col,
CO 18 Cdn Armd C Regt,
(XII MANITOBA DRAGOONS)

In the fd
6 Jun 44

To be tried by General Court Martial

G Kitching

(G Kitching) Maj gen,
GOC 4 Cdn Armd Div.

B2.

J.C. Jefferson.
Brig.
7 Jun. 44.

Hartenson Capt
Judge Advocate.

C

Proceedings on Plea of Not Guilty

**Instruction. (See R. P. 20 (A)) Question.*

Q.6 *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. A.6 No sir.

~~The prosecutor makes an opening address [hands in a written address, which is read, marked ——, signed by the President, and attached to the proceedings].~~

The prosecutor proceeds to call witnesses.

First witness for prosecution.

B 61475 Tpr Carty, F.J. 18 Cdn Armd C Regt

being duly sworn, is examined by the prosecutor.

Q.1 Will you identify yourself to the court giving your number, rank name and unit?
A.1 B 61475 Tpr Carty, F.J., 18 Cdn Armd C Regt.
Q.2 Do you recall thenight of the 3rd of June last?
A.2 Yes sir.
Q.3 Where were you that night?
A.3 I was at A Sqn dance in Tunbridge Wells sir.
Q.4 Do you know the accused?
A.4 I know him sir, as a superior officer.
Q.5 Do you know his name?
A.5 Yes sir, Major Roberts
Q.6. Did you see Major Roberts in Tunbridge Wells at the dance?
A.6 Yes sir.
Q.7 Where were you at this particular time?
A.7 I seen Major Roberts in the bar sir.
Q.8 How many bars are there in this place?
A.8 To my knowledge there is only one.
Q.9 Where was Major Roberts?
A.9 He was sitting on the edge of a table.
Q.10 Was there anything peculiar about his sitting on the edge of the table?
A.10 No sir.
Q.11 Did he have anything in his hand?
A.11 When I came back from the bar he had his pistol in his hand, in his right hand.
Q.12 What was he doing with the pistol?
A.12 Nothing sir, just had it in his hand down at his side.
Q.13 Did you see any other officers at the dance?
A.13 Well sir, I was duty driver and I saw some.
Q.14 Did you see any officers in the dance hall?
A.14 Yes sir.

Q.15 Did any of them carry pistols in the hall?
A.15 I could not say sir.
Q.16 Did anything happen after you saw Major Roberts sitting there with the pistol in his hand?
A.16 I was coming back fromthe bar and had three glasses of beer in my hand and put them on a table behind Major Roberts where I was sitting with two ladies and Major Roberts swung around and knocked the beer over.
Q.17 How did he knock it over, with his hand, the one he had the pistol in?
A.17 I could not really say, he just sort of swung around and knocked it over.
Q.18 What was the condition of Major Roberts, would you like to say?
A.18 I could not say, he seemed quite normal.
Q.19 Were you talking with him?
A.19 No sir.
Q.20 Were there any other officers present?
A.20 I could not say sir.

Cross examined by the Defence

Q.21 At the time Major Roberts knocked over the glasses of beer would you say it was an accident?
A.21 It was quite possible sir.
Q.22 Something that could happen to anyone?
A.22 Yes sir.
Q.23 Was his back to you?
A.23 Yes his back was to me.
Q.24 He was sitting on the edge of the table?
A.24 Yes sir.

Questioned by the court

Q.25 About how long did you have Major Roberts under your observation?
A.25 Just about a matter of three or four minutes sir.
Q.26 All this time did he have his pistol in his right hand?
A.26 Yes sir.
Q.27 Did he seem to be doing anything with it?
A.27 No sir.
Q.28 Did you hear him say anything when he upset the beer?
A.28 He said something like it sounded like I am sorry
Q.29 What could you say as to his speech when he said those words?
A.29 His speach was quite normal sir.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Second Witness for the Prosecution

P 1078 Sgt Heymans, A.H., 18 Cdn Armd C Regt being duly sworn is examined by the Prosecution.

Q.1 Will you identify your self to the court?
A.1 I am P 1078 Sgt Heymans, A.H., 18 Cdn Armd C Regt, 12 Manitoba Dragoons.
Q.2 Do you recall the night of the 3rd of June, 1944?
A.2 Yes sir.
Q.3 Where were you that evening?
A.3 I was at a dance held by A Sqn in the Drill Hall at Tunbridge Wells.
Q.4 Do you know the accused?
A.4 Yes sir.
Q.5 Who is he?
A.5 Major Roberts sir.

Q.6 Did you see Major Roberts while at the Drill Hall?
A.6 Yes sir.
Q.7 Where did you see him?
A.7 The canteen first sir.
Q.8 The canteen, is that part of the drill hall?
A.8 Yes sir.
Q.9 Did you notice anything peculiar about Major Roberts when you saw him in the Drill hall canteen, anything out of place?
A.9 I did not see anything out of place when I first saw him, he was sitting on the edge of the table with a pistol in his hand.
Q.10 Were there ladies present?
A.10 Yes sir, there were ladies in the hall and canteen at the time.
Q.11 Did this effect any of the ladies?
A.11 Yes sir, it did, three of four of them were a little frightened, the idea of the pistol being out.
Q.12 Did you see any other officers at the dance?
A.12 Yes sir, most of our Sqn officers were there.
Q.13 Were any of them wearing pistols?
A.13 Not that I noticed sir.
Q.14 Did you speak to Major Roberts?
A.14 No sir, I did not.
Q.15 How did he look at the time you saw him, did he look normal?
A.15 He looked a little abnormal.to me in the fact that he was not smiling, I have known him a long time and he is usually cheerful.
Q.16 Was there any indication he had been drinking?
A.16 I could not swear to that.
Q.17 Did you see him drink at all?
A.17 I could not swear to that.
Q.18 Were there glasses on the table?
A.18 There were, I don't know if they belonged to Major Roberts or the people behind.
Q.19 What did you do when you saw this pistol was making the ladies frightened?
A.19 When I saw this I went and called Major Farmer, our Sqn Comd and told him about this pistol and asked him if he could speak to Major Roberts.
Q.20 Did you go back with Major Farmer?
A.20 Yes I came back.
Q.21 Did Major Farmer do anything about it?
A.21 Yes he took the pistol away from Major Roberts.
Q.22 Was there any argument or fight?
A.22 No sir.
Q.23 Was there any discussion?
A.23 No sir.
Q.24 Do you recall seeing Major Roberts later in theevening?
A.24 I saw him standing on thedance floor a couple of times while I was dancing.
Q.25 Later in theevening did you notice anything peculiar about
A him?
A.25 No sir, as soon as the pistol was taken off him I figured it was all over that far, and just noticed him standing in the corner a couple of times probably a couple of hours after.
Q.26 Would you draw a diagram showing the dance hall in question and the position of Major Roberts?
A.26 The witness draws a diagram of the dance hall.
Q.27 Is this too scale?
A.27 Not a measured scale.
Q.28 Which would you say was the dance hall area?
A.28 Witness writes the words "dance hall" on the diagram.
Q.29 And the mens canteen?
A.29 Writes word "canteen" on the diagram.
Q.30 The position of the bar?
A.30 Witness writes letter "B" on the diagram.
Q.31 The table Major Roberts was sitting at?
A.31 Witness writes letter "T" on thediagram.
Q.32 What is this that joins the canteen and the dance hall?
A.32 Witness marks word "corridor" on thediagram.

Q.33 At the opposite end of the dance hall what is there?
A.33 The mens bath room on the right sir, and there is a stage I believe, there is an officers mess upstairs.
Q.34 How do you get upstairs?
A.34 I don't know there must be an inside entrance, I did not see it.

The Prosecution tenders the diagram tothe court, which is accepted, initialled by the President and marked Exhibit "G"

Question by the court

Q.35 Have you any objection to the exhibit Mr. Defending Officer?
A.35 No sir.

Cross examined by the Defence

Q.36 Had you been drinking this evening yourself?
A.36 Yes sir, I had a few drinks that evening.
Q.37 What time was it you noticed the accused had this pistol in his hand?
A.37 Around nine or nine thirty sir.
Q.38 What time did you get to the dance?
A.38 About eight thirty sir.
Q.39 Had you been in any pubs on the way to the dance?
A.39 Yes, I had one drink on the way to the dance.
Q.40 You don't remember whether or not the other officers were wearing their pistols that evening?
A.40 I am pretty sure they were not, the officers I spoke to were not.
Q.41 How familiar are you with the dance hall?
A.41 I have been there three times.
Q.42 How long is this canteen?
A.42 Between 15 and 20 feet.
Q.43 I notice on the diagram you show only two tables, is that all there are?
A.43 To the best of my knowledge there are only two and I believe there is a bench along the wall.

XXXX In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Third Witness for the Prosecution

Major K.P. Farmer, 18 Cdn Armd C Regt being duly sworn is examined by the Prosecution.

Q.1 Will you identify yourself to the court?
A.1 I am Major K.P. Farmer, Officer Commanding A Sqn 18 Cdn Armd C Regt.
Q.2 Do you recall the night of the 3rd of June, 1944?
A.2 Yes I do.
Q.3 Where were you that evening?
A.3 I was at a Sqn dance held by A Sqn at Tunbridge Wells.
Q.4 Do you know the accused?
A.4 I do.
Q.5 Who is he?
A.5 Major Roberts.
Q.6 Did you see Major Roberts on the nightof 3 June 1944?
A.6 Yes I did.
Q.7 Where did you see him that evening?
A.7 The first time I saw Major Roberts was about 2030 hrs or perhaps a little before, it was shortly after I came to the dance.
Q.8 Where did you see him?
A.8 I saw him fairly near the door to the entrance about twenty feet from the entrance on the left side.
Q.9 The next time you saw him where was he then?
A.9 The next time was in the men's bar.

Q.10 Approximately what time was that?
A.10 About 2045 hrs I think, I am not certain of that.
Q 11 You say the men's bar, are there two bars?
A.11 That is right, there is a special bar rigged upstairs in a small room which the officers were using, it was exclusive for just officers.
Q.12 Will you point out on Exhibit "G" where you saw Major Roberts?
A.12 The witness marks the letter "X" and initials it on Exhibit "G".
Q.13 Where was the room that was being used for the officers bars?
A.13 There is an entrance at the opposite end and the bar was upstairs (The witness initials certain additions made at the opposite end to the men's canteen)
Q.14 When you saw Major Roberts was there anything peculiar that you noticed about him in the men's canteen?
A.14 He had a pistol in his hand.
Q.15 Were you wearing a pistol that night?
A.15 I wore a pistol to the dance, but took off my web equipment with my pistol and put it in a cupboard in the officers bar.
Q.16 Were any other officers wearing pistols that night?
A.16 All officers wore pistols to the dance.
Q.17 Did any at the dance?
A.17 I am almost certain that all officers put their pistols in the officers mess, at least all A Sqn officers did.
Q.18 When you saw Major Roberts with the pistol in his hand did you do anything?
A.18 Yes I took the pistol away from him.
Q.19 How did you do this?
A.19 I undid the lanyard hook from the butt of the pistol then took the pistol and took it away with me and put it in the officers bar.
Q.20 Did he make any attempt to stop you?
A.20 No
Q.21 Did he say anything to you?
A.21 I don't believe he spoke at all.
Q.22 Did he notice you taking the pistol away?
A.22 Well he gave no argument and did not say anything.
Q.23 Was there any indication that he had been drinking?
A.23 Yes
Q.24 What indications were there?
A.24 Well he was sitting at the table with the pistol, and I am certain if he had not been drinking he would not have had the pistol loaded in his hand.
Q.25 Did you notice if the pistol was loaded?
A.25 I had been told it was loaded, and I knew it was.
Q.26 How could you tell?
A.26 I could see the rounds around the chamber in the pistol.
Q.27 When did you next see Major Roberts?
A.27 The next time was about twenty minutes later.
Q.28 Where did you see him this time?
A.28 On thedance floor.
Q.29 Did you have any conversation with him?
A.29 Yes, he approached me and asked me to return his pistol and I was very reluctant to do this.
Q.30 Why were you reluctant to do this?
A.30 I thought it would be better, I thought it was not safe for him to have a loaded pistol in the men's bar.
Q.31 You were afraid of what?
A.31 I was responsible for the affair and I did not want to have any accidents.
Q.32 Did you feel he was incapable of handling the pistol, did he have full control of his faculties?
A.32 I don't think he was incapable.
Q.33 Would you care to say anything more about the condition of Major Roberts?
A.33 Major Roberts asked me for his pistol, you must understand I spoke to him probably only for three or four minutes at the time I took the pistol I don't believe we exchanged any words. At the time he asked me for the pistol I endeavored to stall him off I did not want to return it, then Capt Stilwell came along and said don't argue on the dance floor.

Q.34 Was it developing into an argument?
A.34 No, I don't remember anything Major Roberts said to me that could be an argument and I certainly was not arguing but Capt Stilwell thought we were and said come upstairs and we will settle this.
Q.35 What happened there?
A.35 Major Roberts was very insistent he have his pistol returned to him, I am not certain what he said, but it was to the effect someone had his pistol and he wanted it.
Q.36 Was this conversation upstairs or in the dance hall?
A.36 We were upstairs.
Q.37 Where upstairs?
A.37 On the landing at the top of the stairs andMajor Roberts was very insistent his pistol be returned to him. He said he was going home and I agreed to return it to him and I gave it to Capt Stilwell who I believe returned it to Major Roberts.
Q.38 What was the condition of Major Roberts at this time?
A.38 He was in an argumentive mood he insisted this pistol be returned but he did not say antying to me, did not threaten me in any way or anything of that nature.
Q.39 Did you see Major Roberts later in the evening?
A.39 I saw him about 2345 hrs.
Q.40 Where did you see him this time?
A.40 He was on the landing near where we had been talking before.
Q.41 Was he alone?
A.41 No he was with L/Cpl Albone of A Sqn, there were two or three others there, and L/Cpl Albone and Major Roberts were sort of wrestling or some sort of horseplay going on, no fight or anything of that nature, sort of good natured wrestling only.
Q.42 Who carried firearms on the 3rd of June, 44?
A.42 At this particular affair all officers all officers of our Regt were carrying pistols, I know of no one else.
A.43 Did you see any other ranks carrying weapons that night?
A.43 No.

Cross examined by the Defence

Q.44 Who had A Sqn previous to you taking it over?
A.44 Major Roberts
Q.45 Could you tell the court how long he had that position?
A.45 I believe it was approximately nine months I am no certain.
Q.46 I supposed he was well known by all the men in the Sqn?
A.46 Yes he was.
Q.47 Can you give the court any idea as to what they thought of him, was he popular with the men?
A.47 Yes
Q.48 Was there anything unusual in his fooling around with L/Cpl Albone?
A.48 No
Q.49 Did any of the other officer during the evening use the men's war?
A.49 Yes
Q.50 It was not strictly for themen?
A.50 No
Q.51 It would not be unusual for the ex Sqnleader to go in and mix with the men?
A.51 No
Q.52 Do you remember how the order read with respect to pistols in the Regt?
A.52 The effect of it was that all officers would carry pistols xxxxxxxxxxxxxxx after a certain date.
Q.53 Are you absolutely certain that no officers in thehall were wearing pistols?
A.53 I cannot swear to that because there were other officer there from HQ and whether they took their pistols off Icannot say.
Q.54 Had you been drinking yourself that evening?
A.54 I had a bout two drinks.

Questioned by thecourt.

Q.55 You gave evidence you took the pistol off the accused and he did not speak to you are you certain as to that?
A.55 Yes I am

Q.56 Would you call this unusual or not?
A.56 Yes I would.
Q.57 Do you know how to determine or form an opinion as to whether a man is drunk or not?
A.57 Yes I can form an opinion.
Q.58 How would you base that opinion?
A.58 Well on his actions and his conduct.
Q.59 In your opinion what was the condition of the accused when you saw him the evening of the 3 June 44 at various times?
A.59 I think he was under the influence but he was not incapable at any time.
Q.60 Was he drunk or not?
A.60 Yes, since you ask me.
Q.61 On what do you base youropinion?
A.61 Only on his actions, that he had this pistol in his hand which was unusual, I don't think he would have had it there if he was sober.

In the opinion of thecourt and the judge advocate it is not necessary tocomply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Fourth Witness for the Prosecution

Captain V.C. Stilwell having been sworn is examined by the Prosecution.

Q.1 Will you identify yourself to the Court.
A.1 I am Captain V.C. Stilwell Second-in-Comd 'A' Squadron, 18 Canadian Armoured Car Regiment(12th Manitoba Dragoons).
Q.2 Do you recall the night of 3 June 44.
A.2 Yes Sir.
Q.3 Where were you that evening.
A.3 I was at a dance held in Tunbridge Wells in the Drill Hall. I was one of the first ones there and was there about 1930 hours until close to 2345.
Q.4 Do you know the accused.
A.4 Yes Sir. I recognize him as Major Roberts.
Q.5 Did you see Major Roberts that evening.
A.5 Yes Sir.
Q.6 When did you see him.
A.6 The first time I saw him was about 9 o'clock upstairs in the officers bar. Later I saw him when he came down on the floor and he was talking to Major Farmer.
Q.7 Were you able to hear the conversation.
A.7 No I didn't hear very much of it except that it was rather heated and I asked them to leave the floor.
Q.8 Will you explain what you mean by "heated".
A.8 They seemed to be talking rather loud and were in the middle of the floor. I gathered there was some kind of argument and so I asked them to leave.
Q.9 Where were they standing.
A.9 They were standing fifteen to twenty feet out from where the orchestra stand was and about thirty feet from the wall fairly close to the centre of the floor.
Q.10 When you asked them to leave,, did they go.
A.11 Yes.
Q.11 Where.
A.11 Behind the stage doors to the first landing.
Q.12 Did you go up.
A.12 Yes I went up.
Q.13 What took place up there.
A.13 There I requested them not to fight here. I asked them to settle their dispute some other time. They seemed agreeable to that and then Major Roberts requested that his pistol be given back to him. He seemed very determined.
Q.14 What happened then.
A.14 I went and followed Major Farmer into the officers bar where he had evidently placed Major Roberts pistol before hand. I emptied the rounds out of the pistol and handed the pistol to Major Roberts open. I said I'd keep the rounds till to-morrow or words to that effect but he did not seem satisfied with this and said he wanted the rounds back.
Q.15 Did he get the rounds back.
A.15 Yes I gave them back to him.
Q.16 Why were you reluctant to give the rounds back.
A.16 I thought it safer not to give him the rounds. I think he had been drinking a bit and that it would be safer if he had an empty pistol with him.
Q.17 You say you think he had been drinking. Would you care to say why you thought so.
A.17 Well, from his appearance.
Q.18 What about his appearance.
A.18 When you see a man who is drunk or has been drinking he does not appear quite normal, his conversation is not quite as coherent and he does not seem to think as quickly as a man does if he hadn't had a drink.
Q.19 Why then did you return the rounds.
A.19 I thought he was going home and was sure if I didn't give him the rounds there might be trouble.

Fourth Witness for the Prosecution(Continued)

Cross-examined by the Defence

Q.20 Major Farmer made the statement that it was not an argument but rather a heated discussion taking place in the middle of the dance floor. Did you hear what they were saying.
A.20 No. I came out from the front of the stage and saw the two men standing there in the middle of the floor. I didn't stop to hear what they were saying.
Q.21 If you had stopped would an argument have started.
A.21 I am sure an argument would have started very easily.
Q.22 Had you been drinking yourself during the evening.
A.22 Yes
Q.23 How much.
A.23 Not much.
Q.24 Do you know your own capacity.
A.24 Yes
Q.25 Had you been drinking considerably during the evening.
A.25 No. I had been drinking.

The witness is questioned by the Court

Q.26 You mentioned giving the rounds back to Major Roberts. How many rounds were there.
A.26 Either five or six.
Q.27 Were these ball ammunition.
A.27 Yes
Q.28 You have given the Court some evidence as to the condition of Major Roberts when you saw him. What is your opinion as to his sobriety at the time or at any time during the evening.
A.28 I would say he had had a considerable amount to drink.
Q.29 Was he drunk or not drunk in your opinion.
A.29 Well, that is a question there. I don't think I am qualified to state whether a man is drunk or not drunk.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with the provisions of R.P. 83(b).

Fifth Witness for the Prosecution

Captain W.E. Jones having been sworn is examined by the Prosecution.

Q.1 Will you identify yourself to the Court.
A.1 I am Captain W.E. Jones, Captain Home Guard administrative officer of the 22 Tunbridge Wells Battalion, Kent Home Guard.
Q.2 Do you recall the night of 3 June last.
A.2 Yes.
Q.3 Where were you that evening.
A.3 Well, I was in the drill hall premises most of the evening.
Q.4 The drill hall - what drill hall.
A.4 St. Johns Rd, Tunbridge Wells.
Q.5 Do you recall the early morning of 4 June.
A.5 Yes.
Q.6 Do you recall any particular incident which took place early that morning.
A.6 Yes. I had gone away from the drill hall and arrived back about 15 minutes past midnight. There was a car coming out of the gate of the drill hall and I stopped to let it out. I then drove through the gate to find another truck standing on the drive to the drill hall. Not being able to get my car down into the drill hall premises, I stopped and got out of my car.

Fifth Witness for the Prosecution (Continued)

Q.7 Before you go any further, will you tell the Court the width of the drive to the drill hall premises.
A.7 About fifteen feet wide.
Q.8 When you passed through the gates and saw this second vehicle on the drive, could you not get past.
A.8 No.
Q.9 Is it possible for two small vehicles to pass on this drive.
A.9 Yes.
Q.10 Two trucks.
A.10 No
Q.11 You returned to the drill hall, drove through the gates and found a truck. Is that right.
A.11 Yes.
Q.12 What did you do.
A.12 The truck was in the middle of the drive. I stopped my car just off the drive and got out to watch until the drive had been cleared.
Q.13 When you did get out, did anything peculiar happen.
A.13 Yes. There was a shot fired from the truck.
Q.14 Was it close to you or in the opposite direction.
A.14 The shot was fired directly in my direction.
Q.15 Could you tell where the shot came from.
A.15 Yes. I saw a flare and heard an explosion somewhere about the middle of the truck.
Q.16 Could you tell where the round went.
A.16 Yes. It passed very close to me and hit some brick work.
Q.17 Did you notice what part of the brick work it hit.
A.17 No. The brick work was behind me.
Q.18 You are quite certain you heard it hit the brick work.
A.18 Yes.
Q.19 Was it a live round.
A.19 Definitely.
Q.20 What had been going on in the drill hall that evening.
A.20 There had been a unit dance.
Q.21 What unit.
A.21 The 12th Manitoba Dragoons.
Q.22 What did you do after this shot was fired.
A.22 Went over to the truck and asked who let a round off.
Q.23 Did you get any reply.
A.23 No
Q.24 Did you see any officers there.
A.24 I could not identify any of them.
Q.25 Did you see anyone around the truck.
A.25 No. I told the driver to stay where he was until I made further inquiries and I again tried to get information as to who let the round off. At that time I was quite under the impression it was accidentally discharged.
Q.26 Did you notice any pistols or other weapons about the truck.
A.26 There was at least three officers in the truck with holsters.
Q.27 After you had called into the truck for the second time, what then took place.
A.27 An officer of the Manitoba Dragoons came along who began to take charge of the situation and got the truck off the premises without any further trouble.
Q.28 Did you get his name.
A.28 No I didn't and don't know if I could identify him.
Q.29 Did anything else happen.
A.29 Yes, before the truck was off the premises there was another shot fired from the truck.
Q.30 Are you certain there was a second shot fired from the truck.
A.30 Yes.
Q.31 Did anything further take place.
A.31 Not when the truck was on our premises but when the truck got about 100 yards away from the drill hall another shot was fired.

Fifth Witness for the Prosecution(Continued)

Q.32 Did you do anything more about this situation.
A.32 Nothing more - I say nothing more, but I had the guard turned out.
Q.33 When.
A.33 When I couldn't get any reply from the truck in the first instance.
Q.34 How many of the guard turned out.
A.34 All of them - sixteen.
Q.35 Did they do anything.
A.35 No, they waited on my instructions. I gave no instructions.
Q.36 You say you are the administrative officer of the 22 Tunbridge Wells Battalion Home Guard. Where are your HQ.
A.36 The drill hall Tunbridge Wells. This is the drill hall in question.
Q.37 Have you any plan or map of that drill hall.
A.37 Yes

The witness is questioned by the Court

Q.38 By whom was it made.
A.38 I would not like to say. It is a blueprint which has been in my possession since marching in here.

The court ruled that the document of the witness will not be admissible as evidence.

Cross-examined by the Defence

Q.39 This shot that hit the brick wall - can you give me any idea how high off the ground it was.
A.39 No, I heard the charge hit the brick work behind me but did not know then what part of the wall it hit.
Q.40 Did you examine the wall in the morning.when it was light.
A.40 Yes. I failed to find any mark that could be identified as being caused by a bullet.
Q.41 Were you in the hall at any time during this dance.
A.41 I was there on two or three occasions.
Q.42 What type of party would you say it was - rowdy or otherwise.
A.42 A very good party which got a bit noisy towards the end.

The witness is questioned by the Court.

Q.43 How far away were you from the lorry when the first shot was fired.
A.43 I haven't measured it but my estimate would be about fourteen feet.
Q.44 And how far away when the second shot was fired.
A.44 At least sixty feet away.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with the provisions of R.P. 83(b).

Sixth Witness for the Prosecution

Lieut C.E. Henry having been sworn is examined by the Prosecution.

Q.1 Will you identify yourself to the Court.
A.1 Lieut C.E. Henry 1st Troop 'A' Squadron 18 Canadian Armoured Car Regiment(12th Manitoba Dragoons).
Q.2 Do you recall the night of 3 June last.
A.2 Yes, I do.
Q.3 Where were you that evening.
A.3 I attended a Squadron dance at the drill hall Tunbridge Wells.

Sixth Witness for the Prosecution (Continued)

Q.4 Do you know the accused.
A.4 Yes. He is Major F.A. Roberts.
Q.5 Did you see Major Roberts on the night of 3 June last.
A.5 Yes, Major Roberts attended our dance.
Q.6 Where abouts in the drill hall did you see Major Roberts.
A.6 At one time in the bar and at another time on the dance floor.
Q.7 Were these the only times you saw the accused.
A.7 No. I saw him several times during the evening as I went about the hall.
Q.8 At any time that you saw him, was anything unusual taking place.
A.8 Yes, on the landing leading to the small room upstairs being used by the officers. There was some sort of argument going on between Major Roberts and Major Farmer.
Q.9 Were you present when the argument took place between Major Farmer and Major Roberts.
A.9 Yes
Q.10 What sort of argument was it.
A.10 I didn't hear all the words but Major Roberts was asking for his pistol and was very insistent.
Q.11 Did you take any part in it.
A.11 No.
Q.12 What else did you see.
A.12 Captain Stilwell and Major Farmer walked towards the officers room and when he returned he had a pistol with him.
Q.13 Did Major Roberts appear normal to you.
A.13 Well, I could tell that he had had something to drink at some time during the evening.
Q.14 You say you could tell. How. What indication was there.
A.14 It is a bit difficult but I think he was a bit unbalanced and was speaking much louder than he normally would be.
Q.15 Did you see Major Roberts early the next morning.
A.15 Yes, I saw him just shortly after midnight somewhere about 0030 hours.
Q.16 Where was he.
A.16 I was walking home from the dance along the main road and heard a lorry coming along and knowing some of our vehs were at the dance I hailed the vehicle and found Major Roberts present in the lorry.
Q.17 Did you get in.
A.17 Yes and found myself a spot near a corner.
Q.18 Were you standing or sitting.
A.18 Sitting.
Q.19 Where in the vehicle was Major Roberts.
A.19 Major Roberts was - you know how there are four seats .....

The witness at the request of the Prosecution and with the approval of the Court draws a diagram of the inside of the lorry.

The witness is ~~XX~~questioned by the Court

Q.20 Where were you in the lorry. Mark with an 'X' and initial. Where was Major Roberts. Mark with an 'R' and initial.
Q.21 Do you know Cpl Bowden.
A.21 Yes. He was standing in the lorry.
Q.22 Approximately where. Mark with a 'B' and initial.

At the request of the Prosecution this diagram is admitted as evidence and marked "Exhibit 'H'".

Sixth Witness for the Prosecution(Continued)

The Prosecution resumes his examination

Q.23 Who else was in the lorry besides ~~XXXX~~ Cpl Bowden, yourself and Major Roberts.

A.23 Hone
Lieut Caswell, Lieut Chaplin, Lieut ~~XXXX~~ and Cpl Downie.

Q.24 Besides Major Roberts, were these all the officers in the veh.

A.24 Yes, as far as I can be sure.

Q.25 Did any of the other ranks have weapons.

A.25 No.

Q.26 After you got into the lorry, did anything unusual take place.

A.26 There was some sort of disturbance going on ~~XXXXXXXX~~ in the rear of the lorry. I recall Major Roberts and Cpl Bowden having an argument.

Q.27 Did you do anything about it.

A.27 Yes. I moved over there and sat on Major Roberts' lefthand side, immediately next to him.

Q.28 What was the argument about.

A.28 The argument concerned a pistol. Just as I sat down Cpl Bowden asked for the pistol Major Roberts had in his hand and he took the pistol from Major Roberts and emptied the rounds from the pistol onto the floor of the lorry. Major Roberts ordered Cpl Bowden to pick up the rounds that were on the floor of the lorry and to give him back his pistol. Cpl Bowden refused to give him back his pistol.

Q.29 Did you do anything.

A.29 Yes. I took the pistol from Cpl Bowden and placed the pistol beside me on my side.

Q.30 On what side.

A.30 I was sitting on Major Roberts' left and placed the pistol on my right.

Q.31 Did that end the argument.

A.31 The vehicle stopped in a few moments to pick someone up and Cpl Bowden got off the vehicle. It seemed best that way.

Q.32 Do you recall any of the words used in this argument.

A.32 No, not the actual words. The argument definitely concerned a pistol between Cpl Bowden wanting to keep it away from Major Roberts and Major Roberts insistent on getting it back.

Q.33 What sort of argument was it.

A.33 It could be heard throughout the entire lorry.

Q.34 Did Major Roberts threaten to strike Cpl Bowden when he refused to return his pistol.

A.34 That is when I took the pistol and in order that such a thing might not take place, Mr Caswell and I restrained Major Roberts. It was a physical restraint. I placed my hands on Major Roberts' shoulder and Cpl Bowden assisted.

Q.35 What would you say was the condition of Major Roberts at this time.

A.35 I would say that he had been drinking but by no means drunk. It is a hard word to define. I think he had been drinking. He was tipsy and unruly. I know him well enough to know that if he had not been drinking, he would not be arguing with one of the NCOs.

Cross-examined by the Defence

Q.36 Going back to the dance hall, in the summary of evidence you make the statement that "I followed him(referring to Capt Stilwell) and found him talking to Major Roberts about a pistol". In the examination by the Prosecution you stated they were having an argument. Why did you use the word "argument".

A.36 There was actually an argument going on and by "argument" I mean two or three people talking at once and talking about this pistol in louder voices than usual.

Q.37 How do you account for Major Farmer saying in his evidence that he and Major Roberts were having a discussion but that at no time was it considered an argument.

Sixth Witness for the Prosecution(Continued)

A.37 I would say as far as Major Farmer was concerned he was right. Captain Stilwell was talking more loudly in his effort to find out what the trouble was and Major Roberts wanted his pistol and was insistent. Capt Stilwell was making as much noise if not more than anyone else.
Q.38 Had you been drinking yourself during the evening.
A.38 Yes
Q.39 Very much.
A.39 No.
Q.40 Did you feel you had had near your capacity.
A.40 No

The witness is questioned by the Court.

Q.41 You mentioned Cpl Bowden taking the pistol away from Major Roberts. Was it necessary to use force when you did this.
A.41 No, not really, merely a physical restraint.
Q.42 Did Major Roberts resent the taking of the pistol.
A.42 I do not think Major Roberts realized what Cpl Bowden was doing until he found the pistol gone.
Q.43 Are you able to define when a man is drunk or sober.
A.43 I should say I am unable to define the word. I can tell when a man has been drinking.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with the provisions of R.P. 87(b).

Seventh Witness for the Prosecution

Lieut R.N. Caswell, 18 Cdn Armd C Regt having been duly sworn is examined by the Prosecution

Q.1 Will you identify yourself to the court?
A.1 I am Lieut R.N. Caswell 18 Cdn Armd C Regt 12 Dragoons.
Q.2 Do you recall the night of 3 June1944?
A.2 Yes I do.
Q.3 Where were you that evening?
A.3 I was at a dance in thedrill hall in Tunbridge Wells at Home Guard HQ.
Q.4 Do you know the accused, the officer without his hat on?
A.4 Yes I do sir.
Q.5 Who is he?
A.5 Major Roberts of C Sqn.
Q.6 Do you recall the events that took place immediately after the dance?
A.6 Yes I do sir.
Q.7 Where did you go after the dance was over?
A.7 As soon as it was over I arranged with a few of theofficers to get transport and went outside to help and generally supervise around and see that everyone got away.
Q.8 Did you see Major Roberts at that time?
A.8 Yes I did sir.
Q.9 Where?
A.9 I saw him sitting on a low wall about fifteen yards from the entrance to thedrill hall.
Q.10 Did you speak to him?
A.10 Yes I did.
Q.11 What did you say?
A.11 I told him the last lorry was ready to leave and he had better get on it.
Q.12 What did he reply?
A.12 He said allright, or words to that effect.
Q.13 Did he go over to the lorry?
A.13 Yes he went over to the lorry.
Q.14 How did he appear at that time?
A.14 How do you mean sir.
Q.15 Did he appear normal?
A.15 No, he was slightly wavering.
Q.16 What do you mean?
A.16 He was staggering, I did not have to help him climb up the back of the truck, but he sort of stumbled up.
Q.17 After you got into the lorry did anyting take place?
A.17 Not immediately sir.
Q.18 Shortly afterwards?
A.18 The first thing I knew I was standing away from thetruck when I heard a pistol shot, and at the same time a car was coming into thegate and a Home Guard Officer got out and asked who had fired the shot.
Q.19 Did you know where the shot came from?
A.19 At that time I did not sir.
Q.20 What did you do about it?
A.20 I hopped up in the back of the truck and just as I did that was the time the Home Guard officer drove up and I jumped down and went over to see him and tried to straighten things up.
Q.21 Do you know what officers were on the lorry at the time?
A.21 Lieut Hone, Lieut Chapman, Major Roberts and myself sir.
Q.22 You were not on thelorry?
A.22 Just getting ready to get on it.
Q.23 Did you see any other ranks carrying weapons of any sort?
A.23 No sir.
Q.24 When you got up on the lorry did you see any other ranks with weapons?
A.24 No sir.
Q.25 Did you subsequently climb into the truck?
A.25 I did sir.
Q.26 Where was Major Roberts sitting?
A.26 In the left rear corner sir.

Q.27 Will you look at Exhibit "H" and point out where Major Roberts was sitting?
A.27 Witness marks the letter R on Exhibit "H" and initials it.
Q.28 Where were you sitting?
A.28 Witness marks the letter A on Exhibit "H" and initials it.
Q.29 Did you subsequently start up in the truck?
A.29 We stayed there a while because of the difficulty with Capt Jones of the Home Guard, after that was cleared up we proceeded.
Q.30 As you started to move did anything unusual take place?
A.30 I was standing beside Major Roberts and he raised his right arm with the pistol in it and I immediately spoke to him and said we were close to the Home Guard place to takeit easy and he lowered his arm for the time being.
Q.31 Was there anything further?
A.31 As the vehicle rolled on about 100 yds further he raised his armd and fired.
Q.32 Were you watching him at the time?
A.32 Yes
Q.33 Are you definitely sure you saw him fire the pistol?
A.33 Positive sir.
Q.34 As you proceeded along the highway did anything further happen?
A.34 Yes, the same thing happened about two or three times, I am not sure how many times?
Q.35 How many times are you sure of?
A.35 I am sure of three.
Q.36 Did you see him each time?
A.36 Yes, each time I was watching his hand to make sure he did not swing around.
Q.37 After the last shot was fired what happened?
A.37 He proceeded to unload the pistol and threw the empty cartridges over the tailboard of the truck and the truck stopped to pick up more people.
Q.38 Did you stay where you were?
A.38 I moved up to the front of the vehicle.
Q.39 Did anything further take place?
A.39 Later on I heard a scuffle in the back of the lorry and I did not know what was up so went to find out and there was Cpl Bowden in one corner and Major Roberts and both were standing up and there seemed to be a heated argument taking place so I stood in front of Cpl Bowden andtried to stop it.
Q.40 Were you successful?
A.40 Yes we were, Lieut Henry stood in front of Major Roberts and the vehicle came to a halt and Cpl Bowden hopped down, although I did not tell him to, he just dissapeared.
Q.41 Do you remember some of the things said in this argument?
A.41 They were arguing about nothing in particular, Cpl Bowden just stood on his rights.
Q.42 What was Major Roberts doing?
A.42 He was talking and looked as if was threatening him, I could not swear to it, it sounded like it.
Q.43 You say you stood in front of him, was anything taking place other than words?
A.43 Major Roberts was trying to get over to him and at one time tried to take his tunic off.
Q.44 At any time on the way home did you remove your pistol from the holster?
A.44 No sir.

Cross examined by the Defence

Q.45 When Major Roberts got on the lorry in the first place did he seem quite drunk to you?
A.45 Well I would say he was drinking sir.
Q.46 Did he look to be badly intoxicated?
A.46 I would say he was drunk but not badly intoxicated, he was staggering and he did not say much.
Q.47 Did he speak to you?
A.47 Yes sir.

Q.48 Called you by name?
A.48 No sir.
Q.49 Do you know if he recognized anyone in the vehicle?
A.49 No I don't sir.
Q.50 Did anyone else in the vehicle draw a pistol and shoot?
A.50 No sir.
Q.51 Had you been drinking yourself?
A.51 I had about four pints about 7 o'clock that evening.
Q.52 Was there anyone else in the vehicle drunk at that time in yourestimation?
A.52 Yes sir.
Q.53 How many would you say?
A.53 One or two were for sure.
Q.54 Did anyone object to Major Roberts firing thepistol?
A.54 Yes sir.
Q.55 Who was the chief one?
A.55 I was first, I was the only one.
Q.56 Did any of the officers make any effort to stop him?
A.56 I imagine they took it for granted I was looking after him, they had company, women with them.
Q.57 Do you not think the officers should have helped with a person who was careless with a firearm, would that not be the normal thing?
A.57 I was thinking the officers were both accompanied by ladies andthey were sitting with them.

Questioned by the court

Q.58 When Major Roberts fired the pistol the first time in what direction did he fire?
A.58 Upwards sir, straight up.
Q.59 Was there a tarpaulin on the lorry?
A.59 No sir.
Q.60 You refer to ladies, were these civilians?
A.60 Yes sir.
Q.61 They were partners of the officers at the dance?
A.61 Yes sir.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Eighth Witness for the Prosecution

Lieut H.W. Chaplin, 18 Cdn Armd C Regt having been duly sworn is examined by the Prosecution

Q.1 Will you identify yourself to the court?
A.1 I am Lieut H.W. Chaplin, Troop leader, 2 Tp A Sqn 18 Cdn Armd C Regt.
Q.2 Do you recall the night of 3 June 1944?
A.2 Yes, the same day and date I attended a dance at the drill hall in Tunbridge Wells.
Q.3 At the completion of the dance where did you go?
A.3 On the completion of the dance I went out to the car park and finding no transport there returned inside to see if I could phone for a cab.
Q.4 Were you successful?
A.4 No, being unsuccessful, chatted a few minutes with the Adjt then went back out to the car park and one of our 15 cwts arrived.
Q.5 Did you get in the truck?
A.5 Not immediately, I was rounding up the odd persons who had not bothered to get in, I knew that was thelast truck.
Q.6 Did anything unusual happen?
A.6 While I was rounding them up there was a shot fired from the 60 cwt.
Q.7 Are you sure it was from the 60 cwt?
A.7 I could not swearit was.
Q.8 How close were you to the truck at the time?
A.8 About 8 ft from the truck.
Q.9 After the shot was fired did you subsequantly get on the truck
A.9 Yes that is right.
Q.10 When you got on the truck did you notice anyone with weapons in their hand?
A.10 Yes, when I got on the truck I noticed Major Roberts with a pistolin his hand pointed down at the floor of the truck.
Q.11 Do you recognize the accused?
A.11 Yes sir.
Q.12 Who is he?
A.12 Major Roberts
Q.13 The same Major Roberts?
A.13 Yes
Q.14 Did you say anything to Major Roberts?
A.14 I asked him to put his weapon away and he answered just no.
Q.15 Anything further?
A.15 I had no further words with him.
Q.16 What happened then?
A.16 I was standing beside him and he was quiet so I moved to the centre of the truck.
Q.17 Would you point out on Exhibit "H" where you were standing?
A.17 Witness marks it with letter "C" and initials it.
Q.18 Would you show on Exhibit "H" where Major Roberts was sitting
A.18 Witness marks "RI on Exhibit and initials it.
Q.19 Did the truck move off right away?
A.19 While I was standing there, I stood for a short while then went up to tell the driver to advance then returned to approximately the same position and the driver started moving and while moving forward I saw Major Roberts raise his right arm and fire a shot into the air.
Q.20 You are definitely sure it was Major Roberts you saw fire?
A.20 I could see no possibility of it being anyone else.
Q.21 After the shot was fired did you do anything?
A.21 Not immediately no.
Q.22 Did you notice what officers were on board at this time?
A.22 I did not particularly notice at that time, but I knew who were left and it was thelast vehicle and everyone was on board.
Q.23 Who were there?
A.23 There was Major Roberts, Lieut Caswell and Mr. Hone.

Q.24 Did you make any check to make sure these officers were on board?
A.24 No I did not make a physical check, but I did make a check of the grounds to make sure no one was around.
Q.25 Did you see any other ranks with weapons?
A.25 No none at all.
Q.26 Did you remove your pistol from the holster at all that evening?
A.26 No I did not.
Q.27 After you pulled well clear of the drill hall did any further incident occur?
A.27 After we had moved on the main road about 25 yds down another shot was fired, and then further down the road again another one was fired.
Q.28 How many shots were fired in all?
A.28 To my knowledge, four, I am sure of the one before I got on the truck, one when I was getting on and two going down the road.
Q.29 After the shots were fired did anything else happen inthe truck?
A.29 A number of people surrounding Major Roberts seemed to be in a bit of an argument and there was quite a lot of noise but as I had moved up to the front of the truck directing the driver I could not say just what was going on.
Q.30 In your opinion what condition was Major Roberts in?
A.30 In my opinion he had had too much to drink.
Q.31 What indications were there of this?
A.31 When I spoke to him on the vehicle he did not seem to recognize me and he was slumped in his seat head down towards his chest, sprawled sort of attitude.

The Defence declines to cross examine.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Ninth Witness for the Prosecution

Lieut C.E.J. Clacey, 18 Cdn Armd C Regt being duly sworn is examined by the Prosecution

Q.1 Will you identify yourself to the court?
A.1 I am Lieut C.E.J. Clacey 18 Cdn Armd C Regt.
Q.2 Do you recall the night of 3 June, 1944.
A.2 I do.
Q.3 Where were you that evening?
A.3 I was at A Sqn dance at Tunbridge Wells Drill Hall.
Q.4 Do you recognize the accused?
A.4 I do, Major Roberts.
Q.5 Did you see him that evening?
A.5 I did.
Q.6 Where did you see him?
A.6 I saw him at the dance, it was around 10 o'clock when I saw him first.
Q.7 Was there anything unusual going on?
A.7 When I saw him the first time he was talking to Major Farmer and at that time he was demanding he be given his pistol.
Q.8 Did you hear the conversation?
A.8 I could not repeat it word for word, I did hear him demand his pistol and I tried to stand aside not to bring notice, then I heard Major Farmer say lets go upstairs where there was a little room used for the officers bar.
Q.9 Did they go upstairs?
A.9 They did, I preceded them and they went up to the landing and stopped there and Major Roberts insisted he be given back his pistol andhe removed his webe belt and pointed to his empty holster and said it is not there. Capt

Stilwell stepped in between them and said there is to be nofighting here, if you want to do any fighting do it some place else.

Q.10 What would make him make a statement like that?
A.10 I believe it looked like Major Roberts might take more action to get his pistol back, because Capt Stilwell had motioned to me when we were downstairs for me to stay near by.

Q.11 What would you say was thecondition of Major Roberts?
A.11 I would say he had obviously been drinking.
Q.12 What made you think this?
A.12 Well, he seemed to be thinking only of one thing, could not see Major Farmer's points as to the danger of having a loaded pistol in his hand, but I could not say as to his exact condition.

Q.13 After thedance where did you go?
A.13 I left the dance around 12 o'clock, Capt Stilwell had asked me to take charge of the vehicle taking some ATS girls home and I wnet to their camp then returned to the drill hall.

Q.14 What time did you return?
A.14 I am not sure, it must have been in theneighborhood of 12:30.

Q.15 What did you find when you got back?
A.15 When I got back I intended to take the vehicle into the grounds on the driveway but a civilian car wasblocking the way so left the vehicle on the road and walked in and found another one of ourvehicles loading or loaded and blocked by the civilian car.

Q.16 Did you do anything about theother vehicle?
A.16 Yes, I walked down to the gates and then went back and found out who owned the civilian car and it was the Adjt of the Home Guard who said.

Q.17 Was the accused present at the time?
A.17 No, he was on the truck.
Q.18 After this conversation with the Home Guard was over what did you do?
A.18 I climbed on the vehicle and asked who had fired a shot and inside I saw Major Roberts, Mr. Caswell and Mr. Chaplin

Q.19 As far as you recall were these the only officers you saw on the truck?
A.19 That is all, then I spoke to Mr. Chaplin and asked him to give me a list of theofficers there, then the Adjt of the Home Guard removed his vehicle and the vehicle loaded with personnel pulled out.

Q.20 Did anything else happen?
A.20 Yes, I remember hearing two shots, one when I was talking to the Adjt and one on theroad, and I directed my driver to follow the other truck but heard no further shots fired.

Cross examined by the Defence

Q.21 The first time you saw the accused with Capt Stilwell was it much of an argument?
A.21 Major Roberts was speaking quite loudly, not shouting.
Q.22 Was Capt Stilwell speaking quite loudly at this time?
A.22 No, he was very insistent in what he did say, but he was not talking loudly or shouting.
Q.23 Would you say Major Roberts had been drinking much that evening?
A.23 No, I would not say he was drinking much, I saw him sitting quietly in theofficers mess.
Q.24 Had you been drinking?
A.24 I had a few drinks, yes.

Questioned by the court

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

The Prosecution states that he proposes to call Lieut J.H.C. Hone, 18 Cdn Armd C Regt who did not give evidence at the summary of evidence, but that he had sent a message to the Defending Officer the previous day, stating briefly what his evidence would consist of.

Questioned by the court

Q.1 Have you received notice as to this witness?
A.1 Yes, I received notice and I have no objection to him being called.
Q.2 Do you wish to apply for an adjournment, you understand under R.P. 76 you are entitled to an adjournment?
A.2 There is no need of it in this case.

Tenth Witness for the Prosecution

Lieut J.H.C. Hone having been sworn is examined by the Prosecution:

Q.1 Will you identify yourself to the Court.
A.1 I am Lieut J.H.C. Hone 18 Canadian Armoured Car Regiment, 12th Manitoba Dragoons.
Q.2 Do you recall the night of 3 June last.
A.2 Yes.
Q.3 Where were you.
A.3 I was at the Squadron dance.
Q.4 After the dance was over, where did you go.
A.4 After the dance was finished I remember going and getting into a 60-cwt truck outside the hall. I was on a 24-hour leave of absence and remember getting out of the truck just on the outskirts of town very close to where I was staying.
Q.5 Do you know the accused.
A.5 Yes I do.
Q.6 What's his name.
A.6 Major Roberts
Q.7 Was he in the truck you got into.
A.7 Yes he was.
Q.8 Did anything unusual happen when you were in the truck.
A.8 Yes, I remember hearing some shots. I don't know how many but I remember hearing one in particular that was quite loud.
Q.9 Did you at any time after you left the dance hall or after you got into the truck remove your pistol from its holster.
A.9 No. As a matter of fact I was not wearing my pistol. Upstairs in the drill hall a room had been set aside for officers. I, as well as nearly all the officers at the dance, put my pistol and holster in a little sort of cupboard in this room. When I was coming out from the dance I went with my lady friend and got my pistol. She kept the pistol and gave it to me when she met me when I got off the truck. I was not wearing my pistol in the truck.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with the provisions of R.P. 83(b).

Eleventh Witness for the Prosecution

D.77435 Cpl Bowden J having been sworn is examined by the Prosecution.

Q.1 Will you identify yourself to the Court.
A.1 I am D.77435 Cpl J Bowden 18 Canadian Armoured Car Regiment, 12th Manitoba Dragoons.
Q.2 Do you recall the night of 3 June 44.
A.2 Yes.
Q.3 Where were you that evening.
A.3 At the Squadron dance.
Q.4 After it was over, where did you go.
A.4 The dance had just been over and I left the dance hall and after I came out I heard a shot.
Q.5 Tell the story in your own words.
A.5 I heard a shot and I investigated. I looked around the area to see if I could find out where it came from. I couldn't tell at that time where it came from. I then heard another shot which I thought came from the truck around there. A Home Guard Captain yelled. I got into the veh by the front end and I yelled to the rear and heard another shot and could tell it came from the rear of the vehicle. I yelled to the rear of the vehicle and I saw the Major and he had a pistol in his hand.
Q.6 Do you recognize this officer in the court room.
A.6 Yes sir right there, Major Roberts.

Eleventh Witness for the Prosecution(Continued)

A.6(Continued)

I looked at Major Roberts. He was the only one in the truck with a pistol out. I said "Isn't that enough Sir" and he answered back "Do you know how long we've got to go". I asked him for the pistol, took it and broke it open. Six rounds fell to the floor of the vehicle. I handed the pistol back to Major Roberts and he said to load it. I asked him if that was an order, and he replied "Yes". I told him I was sorry but would not obey the order. I handed the pistol backbut do not know whether or not Major Roberts received it. He made a grab for me and the truck stopped. Someone suggested that I leave the vehicle. I did so and walked home.

Q.7 What is your opinion of the condition of Major Roberts.
A.7 Well, Sir, I cannot say for sure. He seemed in a bad mood but that is all I can say.
Q.8 Do you know the accused very well.
A.8 No

The witness is cross-examined by the Defence.

Q.9 The statement was made a moment ago to the effect that when you broke the pistol open you found it fully loaded - six complete rounds, live rounds in the cyclinder. How many rounds does a pistol hold.
A.9 Six, Sir.
Q.10 Did you not say you heard a shot when you were coming out of the building that was before you broke the pistol open in the truck.
A.10 I heard a shot as I was coming out of the hall.
Q.11 Was the pistol warm.
A.11 I can't say.
Q.12 Did you hear another shot after you broke the pistol and took the rounds out.
A.12 No Sir.
Q.13 Do you know who you gave the pistol back to.
A.13 No Sir I don't.

The witness is questioned by the Court.

Q.14 Where did you say you first got into the truck.
A.14 On the right on the driver's side on the running board and into the front end.
Q.15 Were you sitting in the cab all the time.
A.15 No Sir I was standing in the truck.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with the provisions of R.P. 83(b).

Motion by the Defence as to no prima facie case

I wish to make a motion under note 1 to Sec 40 MML on the question of a Prima Facie case in respect to the third charge (Charge is read) and it is the submission by the Defence that the Prosecution in this case has not brought forth any evidence to support a charge in this connection. There have been certain witnsses come forward who say that there was a discussion on the dance floor in between dances and again on the landing. We have heard the witnesses and there is a lot of controversy as to what this discussion constituted and I can see no where where the discussion interfered with the dance itself. We have Major Farmer, and Major, Roberts, and Capt Stilwell all talking and the talking was loud. Major Farmer states it was not an argument, he was quite clear on that nor is there any evidence in this case that there was an argument, The accused is charged with creating a disturbance, which is conduct to the prejudice of good order and military discipline and I maintain you have to read the two together in connection with this disturbance. It was not a military affair and the argument or discussion was not the type that bothered people, and to create a disturbance as charged, it must be conduct both to the prejudice of good order and military discipline, and I submit that the third charge should be dismissed on these grounds.

Reply by the Prosecution

Gentlemen, listening to the arguments of thedefence, I feel they have forgotten a vital part of theevidence on this charge and that is the evidence of Major Roberts having a loaded pistol out of his holster and in his hand in a dance hall or canteen, which was part of the drill hall andthat in itself is enough to cause a disturbance. It bothered theladies who were present. The other evidence of distrubance was the argument and although the evidence was not 100% straight forward , I still feel there has been sufficient evidence to establish a prima facie case. At this time you are not finding whether or not the man is guilty or not guilty but whether there is sufficient evidence to find him guilty if he did not provide a reasonable explanation.

Summation by the Judge Advocate

It is my duty toadvise you as to the law on this point. Let me make it clear that my function is merely to advise as to the law and although I may have to refer to the evidence briefly in summation, the facts are within your own responsibility and you are the sole judges.

This is a motion that no case has been made out by the Prosecution in relation to the third charge. The rule of law is that a prima facie case has been established when sufficient evidence is adduced where a person is or must be put to his defence. That is known as a prima facie case. Obviously if there was not sufficient evidence brought forth sufficient to have the accused take the stand in his defence then there is no case. On the other hand if you feel there is some evidence which would require an explanation by the accused then the motion should be disallowed. This is a matter for you to decide. I might saw this that in all cases theburden of proof lies upon the prosecution. The Prosecution may discharge this by showing a prima facie case.

There are three instances you may consider in this case, first, the incident in the men's canteen, we have heard evidence that Major Roberts was there with his pistol out and in his hand. This pistol was subsequently taken from him and found to be loaded. The second instance took place in the dance hall and the third instance took place on the landing. You have heard from the witnesses of these three instances and it is for you to decide. One thing further, as the Defence has brought out, in order to constitute a crime it must be donduct to the prejudice of both, good order and military discipline. You are the sole judges of these facts and in the light of your own military knowledge as to whether they come within that definition.

The court is closed to consider the motion

The court is re-opened and the President announces that the motion has been dis-allowed.

You will now proceed with your defence

The Judge Advocate explains

You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross examination. You may, however, make a statement without being sworn, and you will not be subject to cross examination. But a statement which could have been made on oath will not carry with the court the same weight as sworn testimony. You may call witnesses in your defence and as to character, whether you give evidenceor make a statement or do neither.

Q.1 You have had an opportunity to discuss you defence with your Defending Officer?
A.1 Yes sir.
Q.2 You understand your rights?
A.2 Yes sir.

D

The prosecution is closed.

Defence

Question to the accused. Q.1 Do you apply to give evidence yourself as a witness?

Answer. A.1 Yes I do.

Question. Q.2 Do you intend to call any other witness in your defence?

Answer. A.2 No

Question. Is he a witness as to character only? *Answer.*

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with: Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. ~~Have you anything to say in your defence?~~

Answer. ~~The accused in his defence says:~~

~~[Hands in a written address which is read, marked signed by the Preside.t and attached to the proceedings.]~~

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

First witness for the Defence

The accused, Major F.A. Roberts 1E Cdn Armoured Car Regt(12th Manitoba Dragoons) having been sworn is examined by the Defence.

Q.1 Will you give the Court in your own words the events as you remember them on the day and night of 3 and 4 June with relation to the charges that have been placed against you.

A.1 Well Sir, we have been working very hard on waterproofing of vehicles all week and on the morning in question I was up early and working hard all morning and did not even take a break for lunch and in order to facilitate the transportation of personnel to the dance to which I was invited I picked up the lady I was taking to the dance about 5 o'clock in the afternoon. We came into Tunbridge Wells where I had arranged for her to change into evening dress and while there ran into many friends who were also coming to the dance and we had several drinks together. Between 6 and 6:30 that evening we telephoned for a taxi and proceeded to the dance. We did not have any dinner as we were not able to make any arrangements for dinner at the hotel. I got to the dance and when I got there there were a good many of the NCOs and men of my old Squadron whom I knew. They asked me to come into the men's bar and have some drinks with them. I went in there and I recall having one drink with L/Cpl Albone, Sir and I have no recollection of anything else that may have taken place. There are spotty things. I can recall vaguely trying to get my pistol back and I remember asking for it but I have no further recollections of what transpired other than that.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with the provisions of R.P. 67(b).

Second Witness for the Defence

Major P.C.R. Black having been sworn is examined by the Defence.

Q.1 Will you identify yourself to the Court.

A.1 I am Major P.C.R. Black, Second-in-Comd 18 Canadian Armoured Car Regiment.

Q.2 How long have you known the accused.

A.2 Since 1937.

Q.3 How long with present unit.

A.3 He came to the unit approximately June 43.

Q.4 Will you give the Court any comments you may have as Second-in-Comd as to his ability.

A.4 Since I came to the unit last September and I have observed his work, it has been very good from the point of view of training the Squadron and I feel the Regiment owes him considerable in that respect.

The Defence addresses the Court.

Q.5 Gentlemen, there is one point I would like to bring up. There is a document on the course the accused attended which was destroyed by fire ready to proceed on this next exercise. Major Black can give us some indication as to what it contained. We didn't have time to have a copy sent down from the RAC TC. May Major Black give us the contents of the report.

Q.6 Is it a confidential report.

A.6 Yes

The Judge Advocate addresses the Court and the Defence

It is my view that if the Defence considers the document in question will carry any weight with the Court, then it should be heard by the Court and the accused should not be prejudiced in any way on producing this evidence.

The Defence continues his examination.

Q.7 Will you tell the Court what you know about this document.

A.7 This was a report which was forwarded to the unit from the R.A.C. T.C. which was a good report. I cannot remember the exact wording in it but I consider it a good report.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with the provisions of R.P. 83(b).

Closing Address by the Prosecution

Considering the evidence in this case, I would like to consider the second and third charges and their relation to the first charge the evidence of which tends to run through the evidence in the second and third charges. The second charge is conduct to the prejudice of good order and military discipline in that he at Tunbridge Wells on the night of 3-4 June did display a pistol loaded with ball ammunition in a lorry where other officers and soldiers were present. Now there is no one giving evidence who actually states he saw Major Roberts fire the first pistol shot but there are two witnesses who actually recall seeing Major Roberts fire successive shots. Now it is rather difficult to prove from the rounds fired that ball ammunition was used but I think it is a logical conclusion that can be drawn from the fact that ball ammunition was in the pistol at the time it was emptied in the officers bar at the drill hall and that that ammunition was given back to the accused. After the pistol had been fired when it was subsequently reloaded according to Cpl Bowden it was reloaded with ball ammunition. There seems to be no other conclusion to draw and there is the evidence in Capt Jones' evidence that the rounds struck against the wall and is certain in his own mind that it was ball ammunition. I see no need to go into that in great detail. There is no mentioned of any other type of ammunition and it is known who fired the weapon. I believe that is all that need be said about the second charge. The accused was seen loading and firing the pistol in the lorry by other officers and other ranks and the ammunition to the best of knowledge must have been ball amn. The Third charge, at Tunbridge Wells on the night of 3 and 4 June in a drill hall when a dance was in progress created a disturbance. In relation to that charge there are three separate events to consider. The first event was in the men's canteen when he pulled out a pistol and while he may have done nothing but hold it in his hand, it was sufficient to make several of the ladies present a little frightened and it certainly was out of place. The second event was in the form of an argument with Major Farmer in the middle of the dance hall floor while a dance was in progress. The third event took place on the landing to the officers bar where a further argument ensued. There is no doubt that he had been drinking. He must have had a considerable lack of control when a senior officer conducts himself in this manner in what must be considered a fairly public place. There is the evidence of several witnesses giving their opinion as to why they considered him under the influence of liquor. The evidence is strongest at the point when he is about to get into the lorry when the dance was over. I refer to the evidence of Lieut Caswell who seems as clear as he possibly can be about events that night and from his evidence he had as clear a mind about the events of the night as anyone. He says when he first saw the Major into the lorry he got into the truck in a [illegible] staggering manner and actually fell into the truck. The evidence of many witnesses is mostly concerned with his speech. He spoke extremely loudly and the argument which subsequently took place with Cpl Bowden also tends to show he was making a mountain out of a very small matter and must tend to show that there is strong evidence that he was drunk at that time.

Closing address of the Defence

With the charges we have no argument, the only one was the third one and a submission was made. The evidence has been quite clear. The only thing I would like to bring to the attention of the court is a question of law and the Judge Advocate who is present at this trial will give you the law. Anything, I bring forth is my interpretation. The accused in this case came before the court under oath and stated that he had a number of drinks then went to the dance hall, had no breakfast or dinner and went direct to the dance hall which was a rather warm place and then had a drink with someone there and from then on his mind was an absolute blank. He mentions that he does not remember anything about the dance with one or two exceptions, just a vague recollection of some instances. At no time does he have a clear recollection of what was happening that would be sufficient to give him the intent that is necessary to commit the crimes with which he is charged, other than the first charge, and it is my submission that the general rule of law commonly known as McNaughtons Law comes in to this case (Reads from page 105 MML paras 6 & 8. I refer the court to MML page 10b Chap 7 Sec 9 (This is read) I submit that in this case the accused was effected by drink that he did not know the nature and quality of his acts. We have evidence that the accused did not recognize one of his own brother officers. We have again, evidence brought forward by Major Farmer that he went into the room and took the pistol from the accused and the accused saw nothing. It is my submission therefore that the accused cannot be convicted of the third and second charges due to the fact that he did not know what he was doing and his mind was such he was not capable of knowing the quality and nature of his acts. He was more or less in a mental fog and did not have the intent to carry out the acts for which he is charged.

Address in Mitigation by the Defending Officer

The court has heard the evidence that has come forward today and has seen the witnesses and have some idea of the offences for which the accused has been charged. In the first instance I wish to draw the attention of the court to the Sec of MML which deals with the maintenance of discipline page 60 sec 68 second para (This is read). I ask the court to keep that in mind, when they come to the point of making a finding. The second point is Sec 48 Chap 3 MML and deals with drunkenness.(This is read) In this case we have the first offence and the offences which accompany it (Reads second and third charge) It is my submission in the case at bar that the act of firing the pistol and causing a disturbance can be quite serious, but the fact that the accused had been drinking and was not aware of what he was doing minimizes that. I want to point out that at the time the accused was not on duty merely at a social event and it was without malice it was merely something done on the spur of the moment. I would ask the court to take into consideration the army's attitude towards drunkenness. You have all had men before you and have heard the facts of that particular case before making an award and every man is allowed his first drunk. I would ask the court in this instance to think of the circumstances that surround this case in which the accused has been brought before you today. In the first instance he went to the Sqn dance of the Sqn he had previously commanded, was invited and knew the people there. The affair itself was not dry in that the officers themsevles had seen fit ~~ak~~ to open a bar of their own on another floor. There was also the men's canteen in the building and the officers mixed with the men and drank with them, which was something the accused did. I submit that these circumstances may have some bearing on the case in question. The accused working hard all day came to the dance, had nothing to eat and the building was very hot, and the drinks he had had effected him and he became under the weather. It is my contention that all these events arose out of theone thing, drunkenness and must be taken in to consideration. The accused has not been up on any charge at all and theyhave laid down a system whereby it is merely a fine.in respect to other ranks in cases of drunkenness and I submit that the rule in this case of an ordinary soldier should becarried out and in the maintenance of discipline it would be of little difference..

To deal with the accused himself he is a man of 33 years of age, married with his wife in Canada and two children, one seven the other nine. In private life he is an accountant with an Insurance Company. His army career is rather a lengthy one. In 1935 he was in the N.P.A.M. in the Governor Generals Horse Guards and was commissioned in that unit. On the 30 Aug 39 that particular unit was mobilized to defend the Welland Canal and the accused as a Lieut joined up and became active. Later they were given the opportunity of going back to N.P.A.M. or active service and the accused transferred to the R.C.A.P.C. who took him in immediately. He came overseas in Jan 40 with the 1st Div Fd Cash and then in Mar 42 transferred to the R.C.D. which were more suited to his temperament and love of adventure. In Jun 43 he worked himself up to be 2 i/c of a Sqn and as he had a brother with the 18 Cdn Armd C Regt the accused transferred tothat Regt to be with his Brother who was then 2 i/c of the unit. He also felt that his training with the R.C.Ds would make him quite beneficial to the 18 Cdn Armd C Regt and would help his brother and the unit in training. His brother later became CO of the unit. His courses have been confined to two due to lack of time. He was at the C.T.S. Gas course and came back with a distinguished. The second was with the Royal Armd Tank school and his record there was a very good record and had a good written report as Major Black has stated. His record is clean and there are no entries on his conduct sheet. I submit that

the accused is an excellent soldier, fully trained in a unit xxxxxxxxxxxxxxxx and it would be quite a blow for a unit to lose a man of this calibre. It is my submissionthat the court should take all these circumstances into consideration and ask the court to be lenient as possible in this case for the reasons I have stated.

Closing address by the Judge Advocate.

Gentlemen, I have already explained to you my functions so I do not refer to that again other than to point out that you are to be sole judges of the facts. In so far as the law is concerned it is your duty to be guided by my views as to the law and you should not disregard these views except for the ~~most~~ weightiest reasons. As to the charges themselves, The first charge being one of drunkenness is a familiar charge to you all. It is simple drunkenness, not drunkenness on duty or when warned for duty. No satisfactory definition for drunkenness has been evolved so far as law courts are concerned. If someone can tell me where a horse's tail begins and his backbone ends, then I can tell when a man is drunk or sober. Drunkenness will be regarded by a court of law in the ordinary meaning it would have in civil life. The fact that a man is incapable of performing his duties in the normal manner does not mean he is drunk. You should consider from your experiences in ordinary life whether the accused was drunk in the sense that drunkenness is known in either civil or military life. In so far as the second and third charges are concerned, in general, the court in order to find the accused guilty should find that his conduct was both prejudicial to good order and prejudicial to military discipline. Proof of one of these elements without the other is not sufficient. In so far as the facts are concerned you have heard the witnesses, the Prosecution officer and the Defending officer and I am sure that you have these facts well in mind. It will not be necessary for me to make a formal summary of these facts. You will judge them according to the weight to which you consider should be attached to the witness and you are the sole judges of these facts. I will, of course, refer to a few of these facts to illustrate the principles of law concerned in the main defence of the accused.

I will now deal with the principle defence of the accused. in relation to the second and third charges. A crime consists of two elements. Firstly the act itself and secondly the intent which accompanies that act. Proof of the act is usually made through the verbal evidence of witnesses, what they saw and what they heard. Proof of the intent, however, is more difficult to show as the thought of man being an intangible thing is not subject to accurate proof. In arriving at the intent of the accused the law has laid down the principle that a man is ~~XXXXXX~~ presumed to intend the natural and probable consequences of his act. Accordingly, if a man is seen to strike another it is presumed that he intended to commit the act. This intention, however, may be rebutted showing that the striking was accidental. In certain instances a man is incapable because of some dissability to form the intent necessary to commit an act. The case of insane persons is a good illustration of this. Extreme intoxication may be another instance. However the test that you will apply is this, when the accused committed the act did he understand the nature and consequences of the act or did he understand the distinction between right and wrong. That is a rough definition of the defence raised by the accused.

You should examine the actions of the accused throughout the evening very carefully to determine whether or not he knew the nature and consequences of those acts or whether he knew the difference between right and wrong. If you find that he knew these things or knew what he was doing then if you feel that the acts alleged in the charge sheet are proved beyond reasonable doubt you should find him guilty. On the other hand if you feel

Closing address by the Judge Advocate(Continued)

that the accused did not have the necessary intent which has been outlined to you he was incapable of committing the crime and accordingly you should acquit.

In considering whether the defence of the accused has been proved you may refer to all the evidence in the case and not confine yourselves to that given by the defender alone. In arriving at your verdict you should give the accused the benefit of any reasonable doubt which arises in your minds. This is not a fantastic doubt. It is the doubts which are readily apparent to reasonable men.

I certify that this is a true transcript of the evidence taken at the trial

In the field
8 June 44.

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused Major Frederick Alexander Roberts 18th Armoured Car Regiment (X 11 Manitoba Dragoons) C.A.C. - guilty on all charges.

J. C. Jefferson
Brig.
Pres.

H. Hanson
Capt
Judge Advocate.

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Lieut L.M. Hanway, 21 Cdn Armd Regt is duly sworn.

Question by the President.

Q.1 Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* A.1 Yes sir.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked X, signed by the President, and annexed to the proceedings.

Question by the President.

Q.2 Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* A.2 Yes sir.

Question.

Q.3 Have you compared the contents of the above statement with the regimental books? *Answer.* A.3 Yes sir.

Question.

Q.4 Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* A.4 Yes sir.

Cross-examined by the accused.

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Q.5 Do you wish to address the Court? *Answer.* Yes sir, through my A.5 Defending Officer

The Court is closed for the consideration of the sentence.

F

Sentence

The Court sentence the accused | Sentence.

Major Frederick Alexander Roberts 18th Armoured Car Regiment (X11 Manitoba Dragoons) C.A.C. to be dismissed from His Majesty's Service - | Dismissal

Signed in the field this seventh day of June 1944

J. C. Jefferson
Brig.
Pres.
Thackerson Capt
Judge Advocate.

I reserve the finding and sentence of the Court for confirmation by superior authority.

In the field
8 June 44

Guido Maj. Gen.
G.O.C. 4 Cdn Armd Div.

I confirm the findings of the Court on the first and second charges. I do not confirm the finding on the third charge.

I commute the sentence of the Court so that it shall be as follows "To take rank and precedence in his Corps and in the Canadian Army as if his appointment as Major bore date the first day of January 1944 and to be severely reprimanded" and confirm the sentence as commuted

H. D. G. Crerar.
H. D. G. Crerar, Lt-Gen.
G.O.C.-in-C.
First Canadian Army
11 JUN 1944

PROMULGATION

Promulgated and extracts taken in the fd this 15th day of June 1944.

E F Bastedo Capt
(E F Bastedo) Capt & Adjt 18 Cdn Armd C Regt

ORDERS BY MAJOR-GENERAL G. KITCHING, DSO
COMMANDING - 4 CANADIAN ARMOURED DIVISION

In the Field
6 Jun 44

Major Frederick Alexander ROBERTS
18 Cdn Armd C Regt (12th Manitoba Dragoons) CAC

The detail of officers as mentioned below will assemble in the field on Wednesday the seventh day of June 1944 for the purpose of trying by a General Court Martial the accused person named in the margin, and any such other person or persons as may be brought before them.

PRESIDENT

Brigadier J.C. Jefferson DSO, ED Comd 10 Cdn Inf Bde is appointed President.

MEMBERS

Lt-Col A.J. HAY	Alg Regt
Lt-Col W.W. HALPENNY	22 Cdn Armd Regt
Major J.A. COOK	8 Cdn LAA Regt RCA
Major H.G. DAWSON	Lake Sup R (M)

WAITING MEMBERS

Major J.W. AYLWARD	15 Cdn Fd Regt RCA
Major A.G. BOWES	HQ RCASC 4 Cdn Armd Div

JUDGE-ADVOCATE

Capt H.A. HANSON - HQ 4 Cdn Armd Div is hereby appointed Judge-Advocate.

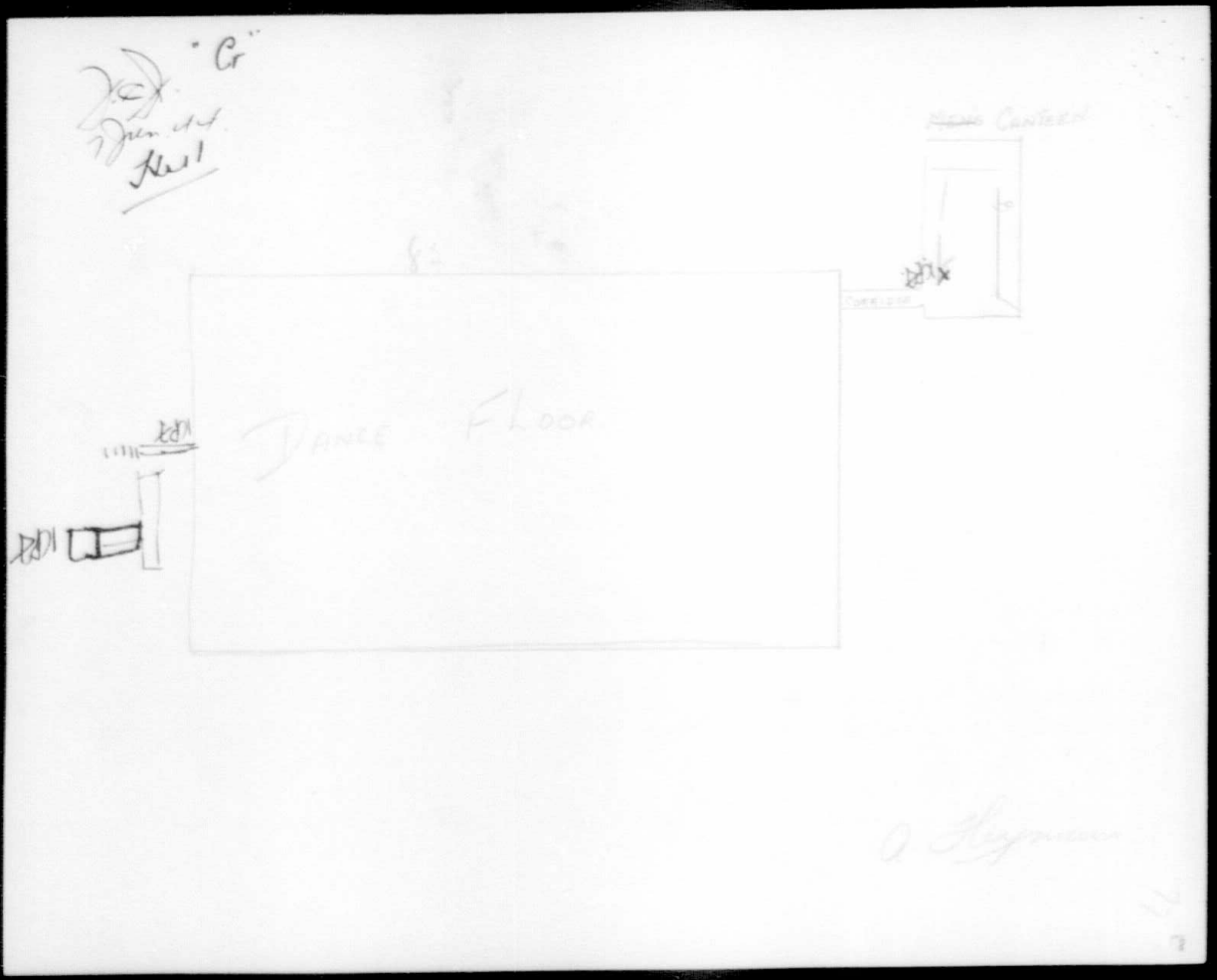
The accused will be warned and all witnesses duly required to attend

The proceedings will be forwarded to the AA & QMG 4 Cdn Armd Div

Signed in the Field this sixth day of June , 1944

"X"
J.C. Jefferson
Brig.
7 Jun 44
Hal Lawson Capt

(G Kitching) Maj-Gen
GOC 4 Cdn Armd Div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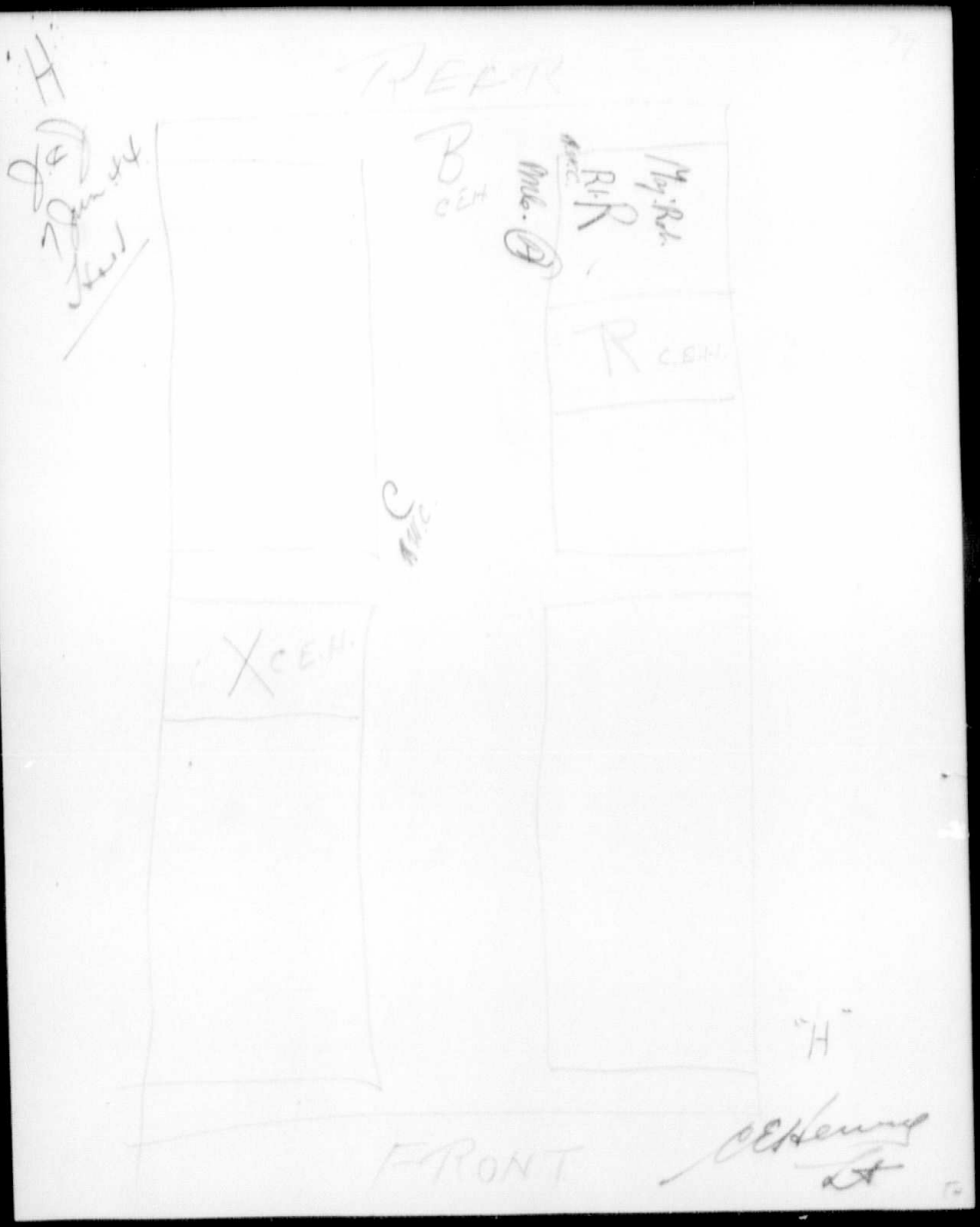
"H"
REAR
B
C.E.H.
Mag. Rob.
R
R
C.E.H.
C
X C.E.H.
"H"
FRONT
C.E.Henry
Lt

I, Maj Frederick Alexander Roberts, 1st Cdn Armd C Regt, hereby waive any objection which I might have to the employment of a prosecutor with legal qualifications without seven days' notice to me, at my forthcoming trial by General Court Martial.

F A Roberts

(F A Roberts) Maj
1st Cdn Armd C Regt

In the fd
6 Jun 44

I desire the convening offr to detail an offr to represent me at my forthcoming trial by General Court Martial.

~~I desire the services of~~
~~if he is available.~~

F A Roberts Major

In the fd
5 Jun 44

(F A Roberts) Maj
18 Cdn Armd C Regt

Summary of Evidence in the case of Major Frederick Alexander Roberts, 18th Armoured Car Regiment (XII Manitoba Dragoons), an officer of the Canadian Army Overseas, charged with drunkenness and an act to the prejudice of good order and mil discipline

The CO directs that the evidence be taken on oath.

First Witness

P 1078 Sgt Heymans, A H'A' Sqn 18 Cdn Armd C Regt, sworn, states:

I was on 3 Jun 44 and am still, a Sgt of 5 tp 'A' Sqn 18 Cdn Armd C Regt. I am acquainted with Maj Roberts whom I recognize here. I was sitting in the canteen at the dance on 3 Jun 44 and noticed Maj Roberts had his pistol drawn at rest posn. He had it drawn for several minutes. The place was rather crowded and some of the people were getting a bit nervous so I went out of the canteen and told Maj Farmer. I asked him if he would come in and speak to Maj Roberts. Maj Farmer came in and took Maj Roberts' pistol. I then left the canteen.

The accused declines to cross examine this witness.

A. Heymans. Sgt
(A H Heymans) P 1078

Second Witness

Maj K P Farmer, 'A' Sqn 18 Cdn Armd C Regt, sworn, states:

I was on 3 Jun 44 and am still, sqn leader 'A' Sqn 18 Cdn Armd C Regt. I am acquainted with Maj Roberts whom I recognize here as the accused. At approximately 2045 hrs at my sqn dance in the Drill Hall, Tunbridge Wells on 3 Jun 44, I was dancing when Sgt Heymans approached me and said that Maj Roberts had a loaded pistol in the men's bar and said, "I think you had better do something about it." I went to the men's bar immediately and saw Maj Roberts sitting on a bench near the door. He had a pistol in his hand which was beneath the table pointing towards the floor. I unhooked the pistol from the lanyard and placed it in a cupboard in the offrs' bar. The pistol was loaded. When I took the pistol away from Maj Roberts there was no sign of any disturbance in the men's bar and I did not say anything to Maj Roberts at the time. It was obvious Maj Roberts had been drinking but as I did not speak to him, and I am not prepared to state whether or not he was drunk, about 20 minutes later Maj Roberts stopped me on the dance floor and asked me to return his pistol as he was going home. I was reluctant to give it to him. We discussed the matter for a few moments and then moved off the dance floor and upstairs where the discussion continued. Capt Stilwell joined us and suggested that Maj Roberts get his pistol as he was leaving the dance. Maj Roberts gave no indication of creating trouble or wanting to fight but was quite insistent that

his pistol be returned to him. I finally agreed and Capt Stilwell followed me into the offrs' bar. I took Maj Roberts' pistol from the cupboard where I had placed it and gave it to Capt Stilwell to return to him. I don't remember seeing Maj Roberts for some time afterwards but recall seeing him upstairs in the passage way outside the offrs' bar when I was on my way home at approximately 2345 hrs. Maj Roberts at the time was with L/Cpl Albone and others. There was a good deal of talking and fooling and good natured pushing about between Cpl Albone and Maj Roberts but everything seemed in good order so I passed on and left the building for home.

The accused declines to cross examine this witness.

K.P. Farmer Major
~~(K P Farmer)~~ Major
K. P. FARMER

Third Witness

Capt V C Stilwell, 'A' Sqn 18 Cdn Armd C Regt, sworn, states:

I was on 3 Jun 44 and am still 2IC 'A' Sqn 18 Cdn Armd C Regt. I am acquainted with Maj Roberts whom I recognize here as the accused. I was at the Drill Hall, Tunbridge Wells on 3 Jun 44 from 1930 hrs until 2330 hrs attending my sqn dance. I was sitting in the offrs' bar at approximately 2100 hrs when one of the men, I am not sure now who, came up to me and asked me to come downstairs as Maj Roberts and Maj Farmer were having an argument. I immediately went down and saw Maj Roberts and Maj Farmer talking together. They appeared to be in a rather heated discussion. I went over to them and asked them to leave the centre of the dance floor. I took them upstairs to the landing on the first floor and on the way up asked Mr Henry and Mr Clacy to accompany me. It was apparent that Maj Roberts had had considerable to drink. I asked them not to fight there but go elsewhere if they wished to fight. Maj Roberts then told me that Maj Farmer had his pistol and that he was going home and wanted it back. I asked Maj Farmer to get the pistol and I followed him into the bar where he took it from a cupboard and gave it to me. I then returned to Maj Roberts who was waiting on the landing. The pistol was loaded when I received it but I removed the rounds before offering it to Maj Roberts. I said to him, "I have the rounds, Sir, and will give them to you tomorrow", or words to that effect. He said, "No", and that he felt he wasn't wanted there and he wanted the rounds back and that he was going to leave. He then went down the stairs and I thought he left but Mr Clacy informed me at approximately 2230 hrs that Maj Roberts was on the dance floor. I left the dance hall at 2345 hrs when the dance was over, in the sqn H.U.P. and came back to camp.

The accused declines to cross examine this witness.

V.C. Stilwell
(V C Stilwell) Capt

Fourth Witness:

Lieut C E Henry, 'A' Sqn 18 Cdn Armd C Regt, sworn, states:

I was on 3 Jun 44 and am still, tp leader of 1 tp 'A' Sqn 18 Cdn Armd C Regt. I am well acquainted with Maj Roberts whom I recognize here. I was present at the sqn dance in the Drill Hall, Tunbridge Wells, Saturday, 3 Jun 44. At one time during the evening Capt Stilwell who was running the dance stopped me on the dance floor and asked me to come with him. I followed him and found him talking to Maj Roberts about a pistol. Maj Farmer was also there. I heard Capt Stilwell say, "I don't know what the trouble is but this is a sqn dance and we don't want any trouble here." Maj Roberts replied but I didn't hear what he said. Capt Stilwell then said, "Alright, I will go and get your pistol." I left them there and returned to the dance floor. I did not see Maj Roberts again until approximately 0030 hrs when I hailed a passing lorry which stopped and which I mounted and found to be one of our sqn vehs. There were about 15 men and offrs in the lorry and I moved well up to the front where there was a vacant seat. I heard an argument going on at the rear of the lorry and moved down to see what it was. I heard Cpl Bowden of 'A' Sqn asking Maj Roberts for his pistol so that he could empty it. Maj Roberts refused to give it to him and a further argument ensued. I saw Cpl Bowden take the pistol from Maj Roberts' hand and eject the rounds from it. Maj Roberts ordered him to pick the rounds up and Cpl Bowden refused and said, "You may have the pistol but no rounds." I then took the pistol from Cpl Bowden and placed it on the seat beside me out of either of their reaches. Maj Roberts threatened to strike Cpl Bowden but was restrained by Lieut Caswell and myself. The next time the veh stopped Cpl Bowden got out and into another veh. Maj Roberts wished to follow him but was prevented fromdoing so by our veh moving off. It was apparent that Maj Roberts had been drinking considerably and was under the influence of liquor. We next stopped at a cross roads 100 yds from 'A' Sqn camp where I alighted and when the veh was clear of everyone who wished to get off I gave Maj Roberts his empty pistol and returned to camp.

The accused declines to cross examine this witness.

(C E Henry) Lieut

Fifth Witness:

Lieut R N Caswell, 'A' Sqn 18 Cdn Armd C Regt, sworn, states:

I was on 3 Jun 44 and am still, tp leader of 4 tp 'A' Sqn 18 Cdn Armd C Regt. I am well acquainted with Maj Roberts whom I recognize here as the accused. I attended the sqn dance in the Drill Hall, Tunbridge Wells on 3 Jun 44. I saw Maj Roberts there and everything seemed normal and I saw nothing unusual happen at the dance. After the dance

outside the Drill Hall I was helping to load the last lorry. I saw Maj Roberts sitting on a low wall about 20 yds in front of the drill hall entrance. I went to him to tell him that the last lorry was ready to go back to camp. He stood up and staggered over and got into the lorry. I heard a pistol shot come from the lorry. I climbed into the lorry and looked around to see who had fired it. Just then Capt Jones, Adjt HQ Home Guard came up and asked who had fired the shot. I climbed down to speak to him and told him I didn't know. He replied that he would have to call out the guard and did so. The lorry moved to turn around within the grounds during which time another pistol shot was fired. The Adjt Home Guard stopped the lorry on the way out and again spoke to me and asked me again if I knew who had fired the shot. I answered, "No", and he replied "I will have to report this to your Colonel." I climbed into the back of the lorry and he allowed us to proceed. I noticed Maj Roberts sitting in the left rear corner of the lorry with his pistol in his lap and as we were going out the driveway he raised it as if to fire. I asked him not to and he didn't; but after we had turned along the highway and gone a short distance he did fire a round and fired again two more within the next half mile. All shots were fired straight up into the air. I tried to get him to put his pistol away but could not reason with him owing to his condition. In my opinion he was drunk. He then unloaded his pistol and threw the empty cartridges over the tailboard. The lorry halted to pick up Cpl Downie and Lieut Henry. Then I moved up to the front of the lorry. The next thing I knew there was an argument going on at the rear of the veh. I pushed my way to the back and heard words being exchanged between Maj Roberts and Cpl Bowden, J of 'A' Sqn. I don't quite remember what was said but I could see that tempers were high and that there was going to be trouble so I stood in front of Cpl Bowden who was standing up in the right rear of the veh. Shortly after that I saw Cpl Bowden climb out over the tailboard on to the street. The veh had stopped at the time. Lieut Chaplin also got out there and I asked him to go to the driver with orders to move on quickly. The lorry moved off and left Cpl Bowden on the street. Nothing else out of the ordinary happened on the way back to camp.

The accused declines to cross examine this witness.

(R N Caswell) Lieut

Sixth Witness:

Lieut H W Chaplin, 'A' Sqn 18 Cdn Armd C Regt, sworn, states:

I was on 3 Jun 44 and am still, tp leader of 2 Tp 'A' Sqn 18 Cdn Armd C Regt. I am well acquainted with Maj Roberts whom I recognize here as the accused. I attended the sqn dance at Tunbridge Wells on 3 Jun 44. I saw Maj Roberts at the dance and spoke to him twice during the evening and noticed

nothing unusual. At the completion of the dance I was outside the dance hall. No tpt was available at the moment. I returned inside the dance hall to the office of the Home Guard to phone for a cab. This being unsuccessful, I returned outside. A 60-cwt was parked at the entrance and while I was collecting everyone to get aboard I heard the sound of a shot. I then got on the truck and saw Maj Roberts seated in the truck at the back left hand corner, with a pistol in his hand. I asked him to put it away. He said "No". Maj Roberts was not his normal self. In my estimation he was drunk and not aware of what he was doing. He was holding the pistol down by his side pointed at the bottom of the truck. I stood beside him for a short time and as he was sitting quietly I moved into the centre of the truck. I spoke to the dvr to move off but there was a car parked in front of the lorry on the driveway and he was only able to move a short distance. When the lorry moved Maj Roberts raised his pistol and shot 1 round up into the air. Someone called call out the guard. Mr Clacy asked me to make a mental note of the offrs on board. The civilian car blocking the drive was moved out of the way and I ordered the lorry dvr to adv. We drove out on to the main rd and turned towards the town. When we were a short way down the main rd another shot was fired from the rear of the truck. Further down the rd another shot was fired. Following this an argument started in the rear of the truck. I could not make out what was said. We continued down the rd to the cross roads at the post office, where I stopped the truck and got out. Lt Hone got out with me and I also saw Cpl Bowden dismount. Then I told the dvr to adv.

The accused declines to cross examine this witness.

H W Chaplin
(H W Chaplin) Lieut

Seventh Witness:

Lieut C E J Clacy, 'A' Sqn 18 Cdn Armd C Regt, sworn, states:

I was on 3 Jun 44 and am still, tp leader 5 tp 'A' Sqn 18 Cdn Armd C Regt. I am acquainted with Maj Roberts whom I recognize as the accused. I was present at the sqn dance at Tunbridge Wells on 3 Jun 44. I saw Maj Roberts at the dance. At approximately 2200 hrs I was talking to Maj Farmer on the dance floor when Maj Roberts approached and asked Maj Farmer for his pistol. A discussion followed whilst I stood back and I did not here all

that was said. I then heard Maj Farmer say, "Well, let's go upstairs." Capt Stilwell had come up by this time and motioned me to stay close by. When I saw them moving to go upstairs I preceded them and when they reached the landing they stopped again and Maj Roberts was very insistent that he get his pistol back. I noticed him take off his belt and holster and Capt Stilwell stepped in between Maj Farmer and Maj Roberts and I heard Capt Stilwell say to Maj Roberts, "There is to be no fighting here. If you want to do your fighting, do it somewhere else." Then Maj Farmer said he would give the pistol back and everything seemed to be settled. I was in charge of one of the lorries transporting personnel from the dance. I had delivered one load and returned with the lorry to pick up others. There was a civilian car blocking the drive so I walked in to the entrance of the Drill Hall where one of our other lorries was parked and loaded. I was met by the Adjt Home Guard and he informed me that the car in the drive was his and that he would not let the lorry out until he found out who had fired the shot. He also said he had to fall out the guard which I noticed lined up behind the veh. I asked him to let me take the responsibility of seeing that no more shots were fired. He agreed and arranged to have his car moved out of the drive. I then climbed up on the lorry and asked that no more shots be fired and requested Lieut Chaplin to note the names of the offrs in the lorry. The lorry then moved on to the main rd towards TUNBRIDGE WELLS and I heard two more shots fired as it moved down the rd. I got into my lorry and instructed the dvr to follow. The veh ahead stopped twice on the way back to camp but there were no more shots fired.

The accused declines to cross examine this witness.

J B Clacy

(C E J Clacy) Lieut

Eighth Witness:

D77435 Cpl Bowden, J, 'A' Sqn 18 Cdn Armd C Regt, sworn, states:

I was on 3 Jun 44 and still am a rft increment Cpl att to trg tp 'A' Sqn 18 Cdn Armd C Regt. I am acquainted with Maj Roberts whom I recognize here. I was at the sqn dance in TUNBRIDGE WELLS on Saturday 3 Jun 44. I did not notice Maj Roberts during the evening but he was in the lorry which I got in, to come back to camp after the dance. When I came out of the dance hall I heard a shot fired and looked around about the area to see if I could locate the person who fired it. I could not determine from where the shot came. There was a second shot fired and the Capt of the Home Guard called the guard out. Then I climbed in the front of the truck.

There was another shot fired and I determined it came from the back of the lorry. I moved to the back of the lorry and saw Maj Roberts with his pistol in his hand and he was loading it. I then said to him, "Isn't that enough, Sir?" He answered back, "Do you know how long we've got to go." I asked him if I could have his pistol and he gave it to me. I opened it and it was fully loaded. I unloaded it and the rounds fell on the floor of the veh. I then handed him back his empty pistol. He handed the pistol back to me and told me to load it. I asked him if that was an order and he replied, "Yes." I said, "I am sorry, Sir, I'll have to refuse to obey this order." I then handed him back his pistol in his general direction. I do not know whether he received it or another party. He got quite agressive and made a grab for me. Someone intervened and the veh stopped to let off some passengers, and I was advised by someone, I do not know who, that it would be a good idea if I got off the veh. I thought so too, and did so. I walked home.

The accused declines to cross examine this witness.

J Bowden. Cpl
(J Bowden) D77435

Ninth Witness:

Capt W E Jones, Capt H G, 22 (TUNBRIDGE WELLS) Bn Home Guard, sworn, states:

I was on 3 Jun 44 and am still, Capt H G Adm Offr to 22 (TUNBRIDGE WELLS) Bn Home Guard. I do not know or recognize the accused. I returned to the Drill Hall, St Johns Rd, TUNBRIDGE WELLS at approximately 0015 hrs on Sunday, 4 Jun 44 to ascertain whether the hall was cleared after a dance. On arrival at the maingate I stopped to allow a truck to back out into the road. I then drove in through the gates to find a second truck which was being loaded blocking the drive. I switched off the engine of my car and was getting out of the car when a shot was fired from the truck. I saw the flash and heard the report, the whine of the bullet, and the flash as the bullet hit brick or stone work. Thinking that a round had been let off accidently I climbed on to the truck and asked who fired. No answer was forthcoming. I therefore turned out the guard in case of trouble. When an offr of the Canadian Dragoons (unknown by name to me) stated that he would see the truck off the premises I instructed the driver to proceed. A second shot was fired before the truck left the premises, this shot into the air. A third shot was fired when the truck was some 100 or more yds away from the Drill Hall proceeding along St Johns Rd in a southerly direction. The sky was overcast when I climbed on to the truck. I would not be able to identify any of the occupants. I quite thought the first shot was accidentally discharged, as I saw no reason for anyone to fire at me or my car. It was the lack of confirmation of accidental discharge that caused me to take a serious view of the situation.

The accused declines to cross examine this witness.

W. E. Jones
(W E Jones) Capt

Tenth Witness:

B61475 Tpr Carty, F J, RHQ 18 Cdn Armd C Regt, sworn, states:

I was on 3 Jun 44 and still am a dvr-batman at RHQ 18 Cdn Armd C Regt. I am acquainted with Maj Roberts whom I recognize here. I was at 'A' Sqn dance at TUNBRIDGE WELLS on Saturday 3 Jun 44. I was duty dvr and was in the men's bar sitting with two lady friends whom I had met there. Maj Roberts was sitting at the end of the same table as I was sitting at. I had just come back from the bar when I passed Maj Roberts. He had his pistol in his hand. As I went to sit down I put the beer on the table behind Maj Roberts. He turned around rather suddenly knocking the glasses over with his pistol. He immediately got up and said, "I am sorry." I then got up and left the bar.

The accused declines to cross examine this witness.

F J Carty Tpr
(F J Carty) B61475

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused: I have nothing to say at this time.

F A Roberts Maj
(F A Roberts) Maj

I certify that RP 4 has been complied with.

Taken by me in the fd in the presence and hearing of the accused this fifth day of June 1944.

A G Pryce Maj
(A G Pryce) Maj
18 Cdn Armd C Regt

M.F.B. 355
5M-10-39 (2492)
H.Q. 1772-39-620

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number | Rank | Name | Regiment (or unit)

Major Frederick Alexander ROBERTS, 18 Cdn Armd C Regt

1. The following is a fair and true summary of the entries in the Field Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	nil times	times
For	times	times
For	times	times
For	times	times

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for N/K days in civil custody, and 4 days in military custody, making a total of 4 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is thirty-three years one month

6. The date of his commission specified in his record of service is 15 APR 1937

9. The accused is in possession of Cdn Voluntary Service Medal and entitled to 1939-43 star

11. (In the case of an officer.) The accused holds in the Cdn Army unit the rank of Major dated 4 Oct 43, and in his regiment (or corps), the rank of Major dated 4 Oct 43

Dated of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If a matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number -- Rank Maj

Name Frederick Alexander Roberts of 18 Cdn Armd C Regt Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		N I L		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7th day of Jun 44 (E F Bastedo) Capt
Adjt 18 Cdn Armd C Regt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

S.D-147.

Pte. Roberts, F.D.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B.74399 Pte FRANK DAVID ROBERTS

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AD 15 (2)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 120 days, of which 111 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

TO BE DETAINED FOR 120 DAYS (ONE HUNDRED AND TWENTY DAYS)

(Sgd) ..... Judge-Advocate, ~~if any~~. 16 MAR 45 Date awarded. (Sgd) A M Russell Lt-Col President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until confirmation.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date 6 MAR 45 Commanding ~~Officer~~ 1 Can Base Rft C. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B74399 Pte ROBERTS, F.D.	17 Mar 45	Sam S. Johnston, Major.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AF B296 (CASE file for files of AFAB) 40-21-8/1608 (40/21)

5D-147

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of 1 Cdn Base Sub Area Comd dated 13 MAR 45

20 APR 1945 JAG BRANCH CMHQ

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-74399	Pte.	FRANK DAVID	ROBERTS	2 Can. AFRD

PROCEEDINGS REVIEWED

J Russell Capt. 21 Ap 45

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held at ..... on (date(s)) 16 MAR 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : ~~As you object to~~ ..... as interpreter ? Ans .....

~~The Interpreter is sworn.(1) Do you object to~~ ..... as shorthand writer ? Ans .....

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans ~~I do not~~.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	A.M. RUSSELL (CAN)	HQ. 1 CAN. A.P.
Member	CAPT.	W.W. HUGHES (CAN)	2 CAN. INF. DIV.
Member	LIEUT.	H. LAPORTE (CAN)	2 CAN. INF. DIV.
Judge-Advocate			
Prosecutor	LIEUT.	S.E. MULLINS (CAN)	2 CAN. ARMD. BDE.
Defending Offr	LIEUT.	G.F.S. DAVIS (CAN)	2 CAN. ARMD. BDE.

Questions by President : Is the Prosecutor a lawyer ? Ans ~~No~~ Is the Defending Offr a lawyer ? Ans ~~No~~.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dis p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

0-29

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*b*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *securing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on ..... charge(s).~~ Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*E*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-4 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. *RP 115.* 2. *RP* 40(*A*), *see* 60(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 113(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(2) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans .....

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *MAM 6.* 3. *RP* 46, *KR Con 558. If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in extenuation of punishment ?(1) Ans .....(2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(*b*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishments or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 562-566. *Overseas HO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

FER

The Accused, B74399 Pte Frank David ROBERTS CIC on strength Cdn Sec 2nd Echelon - APHQ, a soldier of the Canadian Army, Overseas, is charged with,

FIRST CHARGE
ARMY ACT 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

In the Field, in ITALY, absented himself without leave from 0830 hours 28 Jan 45 until apprehended at 1145 hours 1 Mar 45. (Time absent 32 days, 3 hours, 15 minutes).

In the Field (Italy)
13 Mar 45

(GMG Johnstone) Major
Camp Commandant
Cdn Sec 2nd Echelon - APHQ

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
13 Mar 45

(S.A. Lee) Colonel
Comd 1 Cdn Base Rft Group

FIELD GENERAL COURT-MARTIAL

CF-30 (To face CAFAS) 45/AS/1107 (2603)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, o. (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.74399	Pte.		Frank David	ROBERTS	Cdn Sec 2 Sch AFHQ

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 Mar 45 endorsed by me, ~~(or by an offr of my staff for me)~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) A.M. Russell (C.I.C.) (Must be named. RP 106.) HQ 1 CBRGp (Unit.)

MEMBERS.

Capt or Lieut to be detailed by OC 2 Cdn NETD

Capt or Lieut to be detailed by OC 2 Cdn NETD (Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

Capt or Lieut to be detailed by OC 2 Cdn NETD (Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in Italy (Country.)

Date 13 Mar 45

(Signed personally. RP 105 fn 2.)

(S.R. IRE)

Colonel (Rank.)

Commanding 1 Cdn Base Rft Group

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

14 Mar 45

I hereby certify that I have medically examined
B.74399 Pte Roberts F.D. and find him fit
to undergo trial by Field General Court Martial.

(W.A. Robb) Capt
Medical Officer
Cdn Sec 2nd Echelon - AFHQ

PLEA OF MITIGATION 14 Mar 45

Gentlemen,

In my plea of mitigation on behalf of Pte Roberts, there are several points I would like to bring to the Court's attention.

1. Pte Roberts enlisted in the Cdn Army at the age of 20 on the 29th of May 1940. He went overseas with his Unit (The 48th Highlanders of Canada) in August of the same year and served with them in the U.K. There he met and married an English girl in April 1943. The Unit left the U.K. - Pte Roberts with them, and landed in Sicily. There he fought with his Unit in action until October when he contracted malaria. The malaria re-occurred four times and prevented Pte Roberts from joining his friends. From October 1943 until July 1944 the accused spent most of his time in various Convalescent Depots and Hospitals.

2. He was then posted to 2nd Echelon and served continuously and faithfully until now. He was in the Records Section and there were no complaints against him. At this time, I would have brought forth character witnesses on Roberts' behalf but unfortunately they have left the theatre.

3. However I would bring to the Court's attention the accused's MFM 6 which shows no crimes from April 1943 until now. His record of two years without a mark against him is exceptional and shows the type of soldier that Roberts can be.

I hope the Court will take the above points into consideration when making its decision and will of consequence let Pte Roberts off with a short period of detention.

W. A. Davis Lt.
Defending Officer.

Summary of Evidence in the case of
B 74399, Pte Roberts, T.D.
Cdn. Sec., 2nd Echelon, A.F.H.Q.
charged with absenting himself without leave, in that he, in the field, did absent himself without leave from 0830 hours, 28 Jan 45 until apprehended by C.M.P. at 1145 hours, 1 March 45 (time absent, 32 days, 3 hours, 15 minutes). A A 15 (1)

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness: 782153, Cpl. Bernard, C.J., Cdn. Sec., 2nd Ech., A.F.H.Q., having been duly sworn, states:-
I am employed in the Q.M. Stores at 2nd Ech. & I herewith submit the declaration of the Court of Inquiry held on the accused, B74399, Pte Roberts, T.D.
× C.J. Bernard
The declaration of the Court of Inquiry, produced as documentary evidence, was read over to the accused, marked Exhibit 'A', signed by me, & attached hereto.
S.G. Mullins Lieut.
The accused declines to cross-examine this witness.

Second Witness: A 108178, T/Cpl. Campeau, E., Cdn. Sec. 2nd Ech., A.F.H.Q., having been duly sworn, states:-
I am ~~one~~ of the R.P. at 2nd Ech &, in accordance with A.A 163 (i)(ii), I herewith submit the certificate of Apprehension of the accused, B 74399, Pte. Roberts, T.D.
× L/Cpl Campeau E.
The certificate of apprehension produced as documentary evidence, was read over to the accused, marked Exhibit 'B', signed by me, & attached hereto.
S.G. Mullins, Lieut.

The accused declines to cross-examine this witness.

Third Witness: 782153, Cpl. Bernard, C. J., Cdn. Sec., 2nd Ech., A.F.H.Q., having been duly sworn, states:
I am employed at the Q. M. Stores, 2nd Ech, & I have checked the kit of the accused, Pte. Roberts, F. D. I herewith submit the list of deficiencies.

C J Bernard

The list of deficiencies, produced as document my evidence, was read over to the accused, marked Exhibit "C", signed by me, & attached hereto.

S O Mullins Lieut.

The accused declines to cross-examine the witness.

The accused was cautioned as follows: -

Question: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing & may be used as evidence.

Answer: I do not want to make a statement.

The accused does not call any witnesses.

I certify that the foregoing summary of evidence, consisting of two pages was taken down by me in the presence of the accused & that R.P. 4, (C, D, E, F.) have been complied with.

S O Mullins
Lieut
Cdn. Sec. 2nd Ech., A.F.H.Q.

In the Field
11 March 45

Exhibit "A." Exh. B.T. B5.

Army Form B 115.

Somerville Lt.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 20 day of February 19 45, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B74399 PTE ROBERTS FD CIC

DECLARATION.

The Court declare No. B74399 PTE ROBERTS FD Cdn Sec 2nd Echelon - AFHQ, illegally absented himself without leave from leave party at ROME at 0830 hrs on the 28 day of January 1945, that he is still so absent, and that on the 30 day of January he was deficient, and that he is still deficient of the following articles:- List attached.

Names of President and Members

President	A.B. Johnson,	Lt
Members	S.G. Mullins	Lt
	J. Edelson	Lt

Signature of Commanding Officer Michael S. Dunn, Col.
OIC Cdn Sec 2nd Echelon-AFHQ

CERTIFIED TRUE COPY.

G M G Johnstone Major

Signature of Officer having custody of the Original Record.

(21200) Wt.10085/791 130,000 4/42 A.& B.W.Ltd. Gp.598 Forms B.115/58
(25490) Wt.29052/1800 100,000 10/42 " "

ARTICLES		VALUE
Blouses, battle-dress	(2)	$ 7.88
Boots, ankle, prs	(2)	8.19
Drawers, cellular, short, prs	(1)	.32
Drawers, woollen, prs	(2)	1.80
Greatcoat, drab	(1)	8.48
Shirts, angola, drab	(2)	3.05
Shoes, canvas, prs	(1)	.49
Trousers, battle-dress, prs	(2)	8.09
Vests, woollen	(2)	1.80
Bags, kit, universal	(1)	.77
Braces, prs	(1)	.21
Brushes, clothes	(1)	.36
Brushes, shaving	(1)	.27
Brushes, shoe, blacking	(1)	.21
Brushes, shoe, polishing	(1)	.21
Caps, comforter	(1)	.24
Combs, hair	(1)	.03
Discs, identity, sets with cord	(1)	.02
Fork, NS Table	(1)	.05
Holdall	(1)	.14
Housewife, complete	(1)	.13
Knife, Table	(1)	.12
Razor, safety, with blade	(1)	.04
Patches, distinguishing, prs	(2)	.02
Shorts, gymasium, prs	(2)	.65
Spoon, NS Dessert	(1)	.05
Vest, cotton, gym	(2)	.54
Unit or Corps Titles, prs	(2)	Free Issue
Belts, waist, web	(1)	.50
Bottles, water	(1)	.62
Carriers, waterbottle	(1)	.28
Packs	(1)	1.38
Tins, mess, TP	(1)	.27
Blankets	(3)	6.91
Mugs, drinking	(1)	.10
Sheets, ground	(1)	2.21
Total		$ 56.43

S.O. Mullins
Lieut

Exhibit B

Ex. B. 5

Certificate in accordance with the Army Act Sec. 163 (1) (ii)

I certify that

No B74399 Rank Private Name ROBERTS.F.D.

of the 48th Highlanders of Canada, att. GHQ Cdn. 2nd Ech.

was arrested at ROME at 1145 Hrs.,

on the 1st day of March 1945

Signature of P. M., A. P. M., or other Officer into whose custody the above named person was taken on arrest.

Rank Captain

Appointment (if any) O.C.

Commanding 279 Provost Coy., C.E.Police.

Date 2nd March 1945

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
B74399	Pte	ROBERTS, F.D.	CIC on str Cdn Sec 2 Ech-AFHQ

NOTE—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	Sec of Army Act unknown	1 times.
For	AA 40 1-6-42	1 times.
For	AA 15(1) as shown below	7 times.
For	26-10-41; 17- 6-42 29-12-41; 23- 9-42 10- 3-42; 14- 1-43 28-4-43 30-11-40	times.

Date of first entry in Field Conduct Sheet 28-4-43

Date of last entry in Field Conduct Sheet

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for Nil

beginning on the Nil day of Nil

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for N/L days in civil custody; and for 14 days in military custody, *i.e.*, N/L days in open arrest, 14 days in close arrest; of which N/L days were spent in hospital.

5. The present age of the accused is 27 yrs 2 mos

6. The date of his attestation is 29 May 40

7. The service which the accused is allowed to reckon is 4 yrs 8 mos 11 days

8. The accused is in possession of† CVSM & Clasp ; 1939-43 Star

†State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

		Date of Promotion.
In the substantive rank of	N/A	N/A
In the war substantive rank of	N/A	N/A
In the acting rank of	N/A	N/A

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W1 15900/1602 20,000 3/44 51-4751. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 12 day of MARCH 1945

C. M. G. Johnston, Major.
Camp Commandant
Canadian Section 2nd Echelon ATIPS

EXHIBIT F.

3/17 MFM 6

No. 374399 Name ROBERTS, P.D. Sqn, Battery, or Company "D" Corps CIC Date of enlistment 29-5-40 UC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Count of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				6 months service completed 29-11-40 without any entries Sheet destroyed.					
Kingswood	26-10-41	Pte		WOAS, A.W.L. from 2259 hrs 26-10-41 to 2200 hrs 29-10-41 (absent 2 days 22 hrs & 1 min)A.A. 15(1)	Sjt Helliker	Admonished	30-10-41	Major W.B. Hendrie	3 days pay FR&I 149(1)(a)
Field	30-11-40	Pte		Section Army Act unknown WOAS, A.W.L. from 0800 hrs 29-12-41 to 2200 hrs 30-12-41 (absent 1 day 14 hrs) A.A. 15(1)	Cpl.Foote Sjt Helliker	7 days CB 7 days pay FR&I 149(2)	31-12-41	Major W.B. Hendrie	Forf 1 daysP 2 days pay FR&I 149(1)(a)
Littlehampton	29-12-41								
Littlehampton	10-3-42	Pte		WOAS A.W.L. from 1200 hrs 10-3-42 to 2300 hrs 30-3-42 (absent 20 days 11 hrs) A.A. 15(1).	Sjt Gunter	28 days F.P.	15-4-42	Lt.col. J.E. Ganong	21 days pay FR&I (1)(a) 28days pay FR&I 149 (2)TP

(P10)

Place	Date of Offence	Rank	Name of Accused	Offence	Name of Witness	Punishment awarded	Date of Award of Punishment	Punishment awarded	Remarks
In the fd	1-6-42	Pte		WOAS, Conduct to the prej.etc., in that he was unsteady on parade A.A. 40.	Capt MacPherson	3 C.B.	5-6-42	Capt. MacPherson	
In the fd	17-6-42	Pte		WOAS, A.W.L. from 2300 hrs 17-6-42 to 0800 hrs 18-6-42(Absent 9 hrs) A.A. 15(1)	Sjt.Bernie	Admonished	20-6-42	Capt. MacPherson	Forfs 1 days pay FR&I 149(1)(a)
In the fd	23-9-42	Pte		WOAS,A.W.L. from 2359 hrs 23-9-42 until 1445 hrs. 4 Oct 42. (absent 10 days 14 hrs & 46 mins.) A.A. 15(1)	CSM Stoutley L-Cpl. Hall	ordered to Forfeit 15 days pay FR&I 149(2)	6-10-42	Lt.col. J.E. Ganong	Forfeits 11 days pay FR&I 149(1)
Field	14-1-43	Pte		W.O.A.S. A.W.L. from 2359 hrs 14 Jan 43 until 2200 hrs 21 Jan 43 (Absent 6 days, 22 hrs., 1 min.) Sec. 15(1) A.A.	Cpl. Burton R	Forfs. 14 days pay FR&I 149(2) 14 days C.B.	22-1-43	Major Y.S. Johnston	Forfs 7 days FR&I 149(1)a.

EXHIBIT F.

No. B74399 Name ROBERTS, FD | Sqn, Battery, or Company HQ | Corps CIC | Date of enlistment 29/5/40 | OC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 10/PAS/128(5412)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Apr 43	Pte		WOAS AWL from 2359 hrs 28 Apr 43 until apprehended at 0610 hrs 15 May 43 (Absent 16 days 6 hrs 11 mins) Sec 15 (1) AA	CSM Crossley	5 days FP Forfs £3/10/1 FR&I 172(8)	19/5/43	Capt HC Mitchell	Forfs 17 days pay FR&I 149 (1)(a) Forfs 5 days pay FR&I 149(1)(b)

CERTIFIED TRUE COPY OF MFM 6 HELD IN MY CUSTODY

G. m. S. Johnstone Major.
(GMS Johnstone) Major
Camp Commandant
Cdn Sec 2nd Echelon - AFHQ

(PTO)

I desire the services of an officer to defend me

at my trial by Field General Court Martial.

I desire the services of No Off'r requested by name.

if available.

In the Field (Italy)
12 Mar 45

W D Roberts
(B74399 Pte Roberts FD)

WWW-139.

Pte. Roberts. H.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-84380 Pte (L/Cpl) Roberts, F.R. 33 Cdn C T po Coy RCASC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd	GUILTY	GUILTY	
3rd	GUILTY	GUILTY	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 403 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and on loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~5 yrs~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which 0 days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for six months.

(Sgd) Gordon N. Jermyn, Judge-Advocate, if any. 26 Aug 44 Date awarded. (Sgd) H.E. Morris Lt/Col President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1) Nil

(1. AA 57A. Delete if not used.)

(Sgd) H.E. Morris Lt/Col

Date 30 Aug 44

Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B/84380 Pte (L/Cpl) Roberts F.R.	27 Aug 44	A.E. Wirsching Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 WWII-189
CP488 (To first of AF B2)
40-P-M-8-1668 (4)
4/38B

RECEIVED 27 SEP 1944 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt Col. H.E. Morris dated 24 Aug 44 Comd RCASC 2 Cdn C T po

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-84380	Pte	(L/Cpl)	Frederick Roland	Roberts	33 Cdn C T po Coy RCASC

PROCEEDINGS REVIEWED
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.
Date

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) France on (date(s)) 26 Aug 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under Instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (A) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (is) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (is) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (is) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 561(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under Instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H.E. Morris	2 Cdn C T pt Coy RCASC
Member	Capt	K.S. Kendall	2 Cdn C T pt Coy RCASC
Member	Lt.	W.W. Slater	34 Cdn C T po Comp Coy RCASC
Judge-Advocate	Capt	G.N. Jermyn	NS 2 Cdn Corps
Prosecutor	Capt	A.E. Wirsching	33 Cdn C T po Comp Coy RCASC
Defending Offr	Capt	J.F. Rowlton	33 Cdn C T po Comp Coy RCASC

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DJ p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~no~~) plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (is) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~does~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 Corps Book II p. 23

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The ~~President~~ JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO SIR.....(5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

~~B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex 'A', initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B); 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans.....Do you intend to call witnesses on your behalf?

Ans.....Are they witnesses as to character only? Ans.....

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans NO SIR.....

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement of Service as to Character and Particulars of Service(1), and certified true copy ~~sheet~~ of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement of Service and Conduct Sheet and in mitigation of punishment?(1) Ans. Yes sir by my defending officer.....(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 3019, 2122, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B.84380 Pte (L/Cpl) Frederick Roland ROBERTS 33 Cdn Corps Tps Comp Coy, RCASC, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
Army Act
Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field absented himself without leave from his unit, 33 Cdn Corps Tps Comp Coy RCASC, from 1800 hrs to 2200 hrs 11 Aug 44 (Absent 4 hours).

SECOND CHARGE
Army Act
Sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field between 1800 hrs and 2200 hrs 11 Aug 44 with A.208 Pte Miles, C.A., F.87684 Pte Macdonald, W.G. and F.96308 Pte McGee, T. improperly and without authority used Cdn Mil Veh No. CL 4238668 for his private purposes.

THIRD CHARGE
Army Act
Sec 19

WHEN ON ACTIVE SERVICE DRUNKENNESS

in that he

in the field at about 2100 hrs on 11 Aug 44 was drunk.

IN the Field
Aug 44

(G. Walker) Major
Commanding 33 Cdn Corps Tps Comp Coy RCASC.

To be tried by Field General Court Martial.

24 Aug 44

(G D Ross-Smith)Lt-Col
Comd RCASC 2 Cdn C Tps

The Court satisfy themselves that Lt W M Therien 4 Cdn Armd Div Tpt Coy is not available to serve owing to the exigencies of the service Lt. H. W. Slater 34 Cdn C Tps Comp Coy, waiting member, takes his place as a member of the court.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-84380	Private (L/Cpl)	Frederick Roland	ROBERTS	33 Cdn C Tps Comp Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (date) ..... endorsed by me, ~~(or by an offr of my staff for me)~~, to be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	K E Morris	2 Cdn C Tpt Coy RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	K G Kendall	2 Cdn C Tpt Coy RCASC
Lt	W M Therien	4 Cdn Armd Div Tpt Coy RCASC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	D W Slater	34 Cdn C Tps Comp Coy RCASC

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	G H Jermyn	HQ 2 Cdn Corps

On Active Service in the Fd

in France (Country.)

(Signed personally. ~~RP 105 fn 2.~~) (G D Ross-Smith) Lt-Col (Rank.)

Date 24 Aug 44

Commanding RCASC 2 Cdn C Tps Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA95 (In lieu of AFA3) 40/P & S/1697 (4931)

APPENDIX G

MEDICAL OFFICER'S CERTIFICATE

K.R. (Can) Para 557

I certify that I have this morning examined No R.R43930 L/Cpl Roberts, F.R.

of 33 Cdn Corps Tps Coy RCASC and in

my opinion he is fit to undergo trial by court-martial.

Station Field

Date 26 Aug 44

(I.A. Frames) Capt
Medical Officer

E-3,

L/Cpl Roberts is a man of sterling character. He enlisted in the Service in October 1940 and in approximately four years has never been in

E-3.

trouble in either military or civilian sense. In pleading guilty to these charges he admits his guilt. May I suggest to the court, L/Cpl Roberts, as the charges shown are aggravated and brought on by drunkiness. Roberts should have been charged with drunkiness and his first offence would have been admonished or reverted to the ranks. Since landing in Normandy he has been working under trying conditions with very little or no recreation. On the day in question he had on his own admission partaking of spirits, as you may know some of the French wines and liquors can especially to the novice prove quite fatal. This is what has occured in this case. Under these circumstances and the fact that the man has a clean crime sheet after four years service and that he has spent 14 days under close arrest for which on conviction he automatically loses 14 days pay. It is my humble opinion that reverting to the ranks, the 14 days loss of pay and the mental lession this man has learned is [redacted] punishment enough for this offence.

EXHIBIT 'A'

Summary of evidence in the case of B84380 L/Cpl Fredrick Roland ROBERTS, 33 Cdn Corps Tps Comp Coy RCASC, Cdn Army Overseas charged with, absence without leave, improperly and without authority using Cdn Military Veh and drunkenness.

The Commanding Officer directs that the evidence be taken on oath:

First Witness

Lieut D.D. Darling 33 Cdn Corps Tps Comp Coy RCASC having been duly sworn states:-

I am Lieut D.D. Darling Pl Commander of "B" Tpt Pl of 33 Cdn Corps Tps Comp Coy RCASC. Pl Orders as given verbally by me on parades lay down that personnel desirous of leaving Pl Lines not on duty will seek permission from the Pl Comd or the Pl Sgt or in their absence the Pl Admin Sgt.

The accused L/Cpl Roberts did not request or obtain permission to leave Pl Lines on the 11 Aug 1944 from me.

The accused declines to cross examine this witness.

Douglas D. Darling
.....
Signature of Witness

Second Witness

K52992 L/Cpl Royston, R.A. No.2 Cdn Provost Coy Cdn Provost Corps having been duly sworn states:

I am K52992 L/Cpl Royston R.A. of No.2 Cdn Provost Coy Cdn Army Overseas. While on duty on the 11 Aug 44 at approx 2100 hrs on highway patrol, duty between BRETTEVILLE SUR LAIZE and PONT DU FRESNEY moving the 6th Cdn Bde up to forward positions, riding a motorcycle and travelling north on the above mentioned highway one of the 5 cwts went past and an officer yelled that there was a three ton lorry following him full of drunken soldiers: to stop it and place them under arrest. He gave me the number of the Veh. The road was narrow and the convoy was being held up so I wrote the number down. I proceeded on north to endeavour to find the veh and came across it at map reference 035546 approx. The lorry had stalled. I asked who was in charge of the veh and B84380 L/Cpl Roberts, F.R. whom I later identified, said that he was in charge. Pte Miles whom I now recognize was wandering about the rear of the truck waving his arms, apparently under the influence of liquor. I gave the Cpl in charge an order to move the veh off the road into a driveway and was informed that the starter was broken. I stopped an 8th Recce Bren Gun Carrier and had the lorry towed and started. I went behind the veh to guide him in and Cpl Roberts climbed on the side of the veh and the veh pulled ahead. I hollered for them to stop but the lorry kept going leaving Miles behind. I went over to my motorcycle to catch them and as I turned my motorcycle about Pte Miles got in the road saying: "You are not going up the hill," Miles continued "if you go up the hill I am going with you," with those remarks he climbed on the rear of the motorcycle. I ordered him off, he didn't obey so I stopped the machine and got off. Pte Miles did likewise. I told him to get away from me which he did for a moment until I started up the motorcycle again and pulled away, with this he jumped on the back of the motorcycle putting his arms over my shoulders seizing the handgrips and twisting the throttle full on. I tried to stop the motorcycle as it was careening from one side of the road to the other picking up speed all the time finally ending up against the bank on the opposite side of the road. I got up from the machine and Miles followed suit. Across the road there were three personnel from the 6th Fd Regt RCA. I ordered them to hold Miles under close arrest until I returned. I couldn't locate the lorry so returned to the 6th Fd Regt RCA. On my return I could locate neither the accused nor the escort. I contacted L/Cpl Cederstrand in the village about 300 yards away. He informed me there was a drunken soldier behind one of the houses whom he was trying to catch. The soldier was

finally caught and it proved to be Pte Miles. He became objectionable desireous to fight. He was soaking wet evidently having been in water up to his waist. At this point one of my Coy's 5 cwts appeared with Cpl Ford in charge and I explained the circumstances to this N.C.O. Cpl Ford said he would take over the custody of Pte Miles and ordered him into the 5 cwt. Pte Miles got in the front and proceeded to toss out the signs that were in the rear of the car. Miles proved more troublesome so L/Cpl Cederstrand proceeded with Cpl Ford and Pte Miles. From where I stood I watched the car proceed for about 500 yards where it came to a stop. Another 5 cwt of our Coy in charge of Sgt Mitchell came alongside Cpl Ford's veh. They loaded Pte Miles into Sgt Mitchell's 5 cwt. Sgt Mitchell with Pte Miles drove down to where I was standing in order to turn and at this point Pte Miles kept kicking the gears and attempting to grab the steering wheel. It was decided to tie Pte Miles up. The Sgt and Cpl Ford and L/Cpl Cederstrand tied him up and laid him across the hood of the 5 cwt with Sgt Mitchell walking on one side holding his head and L/Cpl Cederstrand on the other holding his feet. I reported the above occurrences to the orderly sergeant on my return at approx 2300 hrs to my unit. On the morning of the 12 Aug 44 I was detailed to proceed to 75 F.D.S. to obtain full particulars re Pte Miles. I was informed that during the night Pte Miles had broken close arrest. I then proceeded to 33 Cdn Corps Tps Comp Coy RCASC and contacted the adjutant telling him of the circumstances. In company with the adjutant and L/Cpl Cederstrand we proceeded to "B" pl of 33 Cdn Corps Tps Comp Coy RCASC. I saw Pte Miles again ordered him into close arrest. This was done. We then proceeded to the Admin lorry and asked the pl Sgt as to who was the driver of lorry No. CL 4236662 and was informed that L/Cpl Roberts was the driver. L/Cpl Roberts was sent for and I recognized him as the soldier who on the previous night told me that he was the N.C.O. i/c lorry No. CL 4236662. He was not the soldier who drove the lorry. L/Cpl Roberts stated he could remember nothing of the previous evening except that he went out in his lorry and was in the vicinity of CAEN.

Cross-examined by the accused.

Question 1 Did you tell us to go up the road to the nearest field and park?

Answer 1 No, I told you to pull ahead from the wall so you could back into a larger driveway on the other side of the road.

.....
Signature of Witness

Third Witness

B84469 L/Sgt Ferguson R.S. 33 Cdn Corps Tps Comp Coy RCASC having been duly sworn states:-

I am B84469 L/Sgt Ferguson R.S. 33 Cdn Corps Tps Comp Coy RCASC. The accused L/Cpl Roberts did not request or obtain permission to leave the Pl Lines on the 11 Aug 44.

There was no duty requiring L/Cpl Robert's vehicle to leave the Pl Lines or any authority given for its use.

The accused declines to cross examine this witness.

R S Ferguson
Signature of Witness

Fourth Witness

B83872 Sgt Webb J.T. 33 Cdn Corps Tps Comp Coy RCASC having been duly sworn states:-

I am B83872 Sgt Webb J.T. 33 Cdn Corps Tps Comp Coy RCASC. The accused L/Cpl Roberts did not request or obtain permission to leave the Pl Lines on the 11 Aug 44.

The accused declines to cross-examine this witness.

J.T. Webb Sgt
Signature of Witness

The accused was warned as follows:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused: I wish to make a statement under oath.

B84380 L/Cpl Fredrick Roland ROBERTS 33 Cdn Corps Tps Comp Coy RCASC having been duly sworn states:

I am B84380 L/Cpl ROBERTS F.R. 33 Cdn Corps Tps Comp Coy RCASC. Ptes Miles, McGee and MacDonald and myself were drinking in the field adjoining "B" Pl lines. The next thing I remember I was standing on a box between the cab and the body of the vehicle. The left side of the vehicle was up against a wall. I jumped down and saw a Provost there. The lorry was stalled and the Provost hailed a Bren Carrier and he towed us up a side road. I was walking behind the vehicle and the Provost Cpl told me where he wished the vehicle parked, showing me a small lane up the road. I told the Provost Cpl that we would be unable to park the lorry in that lane at the same time noticing that it was my lorry. I asked if we could take the vehicle up to the next field and park. I climbed on the running board and looked back at Pte Miles talking to the Provost. We pulled into the field, parked and waited about three minutes whereupon the Provost Cpl came up. I walked over with the Provost Cpl to his motorcycle which was leaning against a post leaving Ptes McGee and MacDonald with the lorry. I then understood the Provost Cpl to say to go on home. I got in and presume somebody cranked the lorry and I drove back to the platoon lines arriving at about 2200 hrs. I went to bed in my tent having been sick. On the morning of the 12th August carried out my maintenance on my vehicle and noticed a broken shackle reporting it to my D.M. and Fitter. A 1056 was prepared and I drove the vehicle to workshops telling workshops that the vehicle had been driven over a slit trench thereby causing the broken shackle. I returned for dinner and was called for by the adjutant and the Provost Cpl of yesterday night. I was placed under arrest.

~~The accused declines to cross-examine this witness.~~

F.R. Robert
Signature of Accused

I certify that R.P. 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this 12th day of August 1944.

A.E. Wisking Capt
Signature of Officer Taking Summary

I desire the services of Capt Price of
64 Cdn Gen Tpt Coy R.C.A.S.C. if he is available
to defend me at my forthcoming trial by Field
General Court Martial.

G R Roberts
(Signature of accused)

EXHIBIT B

M.F.B. 355
225M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B /84380	L/Cpl	ROBERTS, F.R.	33 Cdn Corps Tps Comp Coy RCASC

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	nil	times	nil	times
For		times		times
For		times		times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

~~xx~~

There are no entries in the conduct sheets of the accused.

~~Note: If the charge is for drunkenness the entries for drunkenness must be stated separately.~~

2. The accused has not been previously convicted

~~xx~~

~~Previous convictions of the accused by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.A. 76 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~xx~~

~~The accused at the present time is under sentence beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and 13 days in Air Force military custody, making a total of 13 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his record of service is ~~attestation paper~~ is

6. ~~[illegible]~~ 18 Sep 39.

7. The service which the accused is allowed to reckon towards discharge is 4 years 11 months

8. The accused is entitled to reckon 4 yrs 11 months service for the purpose of determining his pension, etc.

9. The accused is in possession of C.V.S.M. and Clasp ~~[illegible]~~

10. ~~If the accused is a warrant officer, the accused is to be [illegible] the regimental rank of~~

11. ~~(In the case of an officer) The accused holds in the Royal Canadian Air Force the rank of~~ ~~Permanent Force~~ ~~Reserve~~

~~dated~~ ~~and in this regiment for service the rank of~~

~~dated~~

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

20 Oct 42 Date of promotion.

In the rank of L/Cpl 1 yr 9 mos ~~years~~

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Air Force

Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

NONE

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26 st day of Aug 1944 [signature] Capt
Adjutant II Can Corps Troops Coy R.C.A.S.C.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

EXHIBIT C

MFM 6
(AFB 122)
40/PAS/136 (3438)

No B84380 Name ROBERTS, F.R. Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 18 Sep 39 | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet N.A. | No and date of last drunk N.A. | Period not reckoning towards freedom from extra fine N.A. | Sheet No 1. | Signature OC Company, etc | Character "G. Walker" Major.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed	18 Mar 40			date of last entry...Nil.cases of drunkenness		...Nil last instance on		N/A	
						"A.E. Wiskins" .....Capt & Adjt.			

Certified true copy from the regimental books in my custody

A.E. Wiskins Capt.
(Capt & Adjt.)

(PTO)

~~SS-4~~ TT4

M-17388 Spr. Roberts, G.

805/3 CGPC/13
M17388 Spr. George ROBERTS
3 C.G.F.C.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this TWENTY-SEVENTH day of OCTOBER, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "F" GROUP CANADIAN REINFORCEMENT UNITS CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* [I am unable to appoint

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reasons, namely:]

*Omit if not applicable.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lt.Col.	D.L. Redman, V.D.	N.S.,C.R.U.

Members.

Rank.	Name.	Regiment.
A Capt.	from	1 C.C.R.U.
A Capt.	from	1 C.C.R.U.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (LOUIS KEENE) Colonel
Commanding "F" Group, C.R.U.
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M17388 Spr George ROBERTS 3C.G.P.C.	Sect.15(1) Army Act	Guilty	Guilty	
			Sentence To undergo Detention for a period of six (6) months. 28th Oct 1943 [illegible]	Confirmed Louis Keene Col 28 Oct 43
	(See attached charge sheet)			

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) Louis Keene Col. (Signed) [illegible]
(LOUIS KEENE) Colonel
Commanding "P" Group, C.R.U.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 28th day of Oct 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
~~2. The witnesses~~
~~*(3. The Interpreter)~~
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 28th day of Oct 1943

[illegible]
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 782 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this ..... day of ..... 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 28 day of Oct 1943.

Louis Keene Col
Confirming Officer.

Promulgated and extracts taken in the case of M17388 Spr George Roberts
(a) (Dated) Pt II O O 59 0/3 Nov 43 28 Oct 43 (Signed) [illegible]

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[23000] W.L.28300/411 60,000 22/42 A.& E.W.Ltd. Gp.498

CHARGE SHEET

The accused, No.M-17386, Spr. George ROBERTS, on strength of No.3 Cdn. Gen. Pioneer Coy., a soldier on strength of the Canadian Army Overseas is charged with

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

Sec 10(1) Army Act

in that he

at East Louisburg Barracks, Bordon, Hants, at 2359 hours on the 17th. day of September 1943 absented himself without leave until surrendering himself at East Louisburg Barracks, Bordon, Hants, at 1200 hours on the 26th. day of October 1943.
Total absence, 38 days, 12 hours, 1 minute.

W. Worsick .....Major
(W. Worsick) Major
Officer Commanding
No.3 Cdn. Gen. Pioneer Coy.

Bordon, Hants.
27 Oct. 43

To be tried by Field General Court Martial

Louis Keene Col

Bordon, Hants.
27th Oct 1943

(LOUIS KEENE) Colonel
Commander,
"P" Group C.A.U.

I certify that I have this morning examined No.M 17388 Spr.G.H.Roberts of No.3 Cdn. Gen.Pioneer Coy and in my opinion he is fit to undergo trial by Court Martial

Bordon, Hants
26 Oct 43

.....Capt.
Medical Officer,
No.3 Cdn. Gen.Pioneer Coy.

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT Canada Ammunition Borden
ON THE 28 DAY OF October 1943

The accused M17388 Spr. G. Roberts Unit 3 C.G.P.C.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lt. Col. D.L. Redman Unit H Q C R U

Members Capt. W. M. Stedman Unit #1 Corps

Capt. F. H. Whittack Unit #1 Corps

The officers under instruction are duly sworn:-

Lt. K. Shaw Unit #1 C Bow

Lt. ~~[illegible]~~ G.H. Adams D.R. McGill Unit R C A

Prosecutor Capt. A. J. Davies Unit No. 3 Cdn Gen Pioneer Coy.

Defending Officer Lt. T.P.L. McGiverin Unit No. 3 Cdn Gen Pioneer Coy.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
MW The Prosecutor produces MFB 355, ~~AFB 296~~ and MFM 6.
The Court complies with R.P. 36(B).

Pursuant to R.P. 37 THE ACCUSED:-

MW (a) ~~Makes a statement in mitigation of punishment.~~
MW (b) ~~Calls witnesses as to character.~~
MW (c) ~~Calls witnesses in mitigation of punishment.~~
MW (d) Addresses the Court by his Defending Officer. attached

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER.

MW

Mitigation of Punishment

In the Case of H 17388 Sgr Roberts G.

This Soldier has been in the army since 28 May 1940, and overseas since the 2nd Sept 1940. In that time he has successively been with the Edmonton Regt, the R.C.E. and the Pioneers, and in his words he has never been able to settle down and Soldier. Sgr Roberts has told me that he has not heard from his family in over six months, and is convinced that there is something wrong at Home. Although this is not given as an excuse for his lapse from duty - it is a Situation that could quite easily prey on anybody's mind, so that a Soldier could lose some of his sense of Responsibility, and I am convinced in this last lapse it has been so - I may add in this connection that this matter is being taken up through our Unit Padre, and that the accused will have some definate word in the near future.

I would also like to point out to the Court that this Soldier voluntarily gave himself up at Borden.

Borden 28 Oct 43

I.P.L. McGuerin Lt

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier

RECORD of the Declaration of a Court of Inquiry assembled at Bordon, Hants, on the 9th day of October 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. M-17386 Spr. George ROBERTS, No. 3 Cdn. Gen. Pioneer Coy.

DECLARATION.

The Court declare

That No. M.17386, Spr. George ROBERTS, No. 3 Cdn. Gen. Pioneer Coy. illegally absented himself without leave (or other sufficient cause) at East Louisburg Barracks, Bordon, Hants, on the 17th. day of September 1943 and that on the 17 th. day of Sept. 1943, he was deficient and that he is still deficient of the following articles:-

Nil.

Names of President and Members

Lieut. F.W.Kemp. No.3 Cdn. Gen.Pioneer Coy.

Lieut. T.P.LMcGiverin No.3 Cdn. Gen.Pioneer Coy

Signature of Commanding Officer

CERTIFIED TRUE COPY

O.C.No.3 Cdn. Gen. Pioneer Coy.

Signature of Officer having custody of the Original Record.

[illegible] Wt.10085/791 130,000 4/42 A.&E.W.Ltd. Gp.698
[illegible] Wt.2865/2180 100,000 10/42 " " Form B.115/38

SUMMARY OF EVIDENCE

In the case of M-17388 Spr.George H ROBERTS,on strength of No.3 Cdn. Gen.Pioneer Coy, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

First Witness Prosecution

Capt. A.J.Davies,2 i/c No.3 Cdn. Gen.Pioneer Coy.having been duly sworn states:-

"I am Capt. A.J.Davies.I am 2i/c No.3 Cdn. Gen.Pioneer Coy and I produce:-
(A) A certified true copy of the Record of Declaration of the Court of Enquiry concerning the absence of the accused dated 9th.October 1943

The accused declines to cross-examine this witness

A.J. Davies .....Capt.
(A.J.Davies) Capt.

Second Witness Prosecution

No.M15881,A/Sgt.J.Flynn,No.3 Cdn. Gen.Pioneer Coy, having been duly sworn states:-

" I am M 15881, A/Sgt.J.Flynn,Orderly Sergeant of No.3 Cdn. Gen.Pioneer Coy.
At 1200 hours,on the 26th. day of October 1943, the accused,whom I now recognize,surrendered himself to me at East Louisburg Barracks, Bordon, Hants, as an absentee."

The accused declines to cross examine this witness

J.J. Flynn ...A/Sgt.
(J.Flynn)

MJ

The accused having been duly cautioned as follows:-
Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Reserves his Defence

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and in the hearing of the accused and that Rules of Procedure 4(c)(d)(e)(f) and (g) have been complied with.

.....Capt.
(A.J.Davies)Capt.
Officer detailed to take down Summary of Evidence.

LIST OF WITNESSES

In the case of M-17368 Spr.George ROBERTS,No.3 Cdn. Gen. Pioneer Coy.

(For the Prosecution)

1.Capt.A.J.Davies — No.3 Cdn. Gen.Pioneer Coy.

2.A/Sgt.J.Flynn — No.3 Cdn.Gen.Pioneer Coy.

(For the Defence)

None

LIST OF EXHIBITS

(For the Prosecution)

A.
A certified true copy of the Record of Declaration of a Court of Enquiry concerning the absence of the accused, dated 9th. Oct.1943

(For the Defence)

None

I hereby request that the Convening Officer appoint Lieut. T.P.L.McGiverin,No.3 Cdn. Gen.Pioneer Coy to represent me at my forthcoming Court Martial.

G H Roberts
..... Spr.
(Accused)

Bordon, Hants
27 Oct 43

I hereby acknowledge that I have received a true copy of the Summary of Evidence taken at Bordon preliminary to my Court Martial and I further acknowledge receipt of a copy of the Charge Sheet under which I am being brought to Court Martial.

G H Roberts
.....Spr.
(Accused)

Bordon, Hants,
27 Oct 43

No. M-17388 Name ROBERTS, G.H. Sqn., Battery, or Company — Corps — Date of enlistment 28May40 — Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc.

M.F.M. 6
(A.F.B.122)
40/P.S./9136 (2965)

Place	Date of offence	Rank	Class of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet Destroyed 28/11/40					
Currie Bks.	18/5 41	Pte.		A.W.L. from 2359 hrs. on 11/5/41 to 1430 hrs. on the 18/5/41. (Absent 6 days 14 hrs. 30 mins.)	A/Cpl. Mantle, A.	14 days C.B.	19/5/41	Major A.H. Elliott	Forfeits 7 days pay.
Currie Bks.	2/8 41	Pte.		Losing by neglect his equipment to the value of$4.11	C.Q.M.S. Newall, J.S.	Admonished Stoppage of pay to amount of $4.11 to cover loss	4-8-11	Capt. J.T.W. Grass	
Salamanca Barracks	18/9 41	Pte.		Conduct to the prejudice etc. A.A.40 Dirty equipment for Royal Inspection.	Sgt. Salter Cpl. Deluce	5 days C.B.	20-9-41	E. Henderson Major	

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order convening trial	By whom awarded	Remarks
Bordon	30 Jun. 42	Spr.		A.A. Sec.15(1) A.W.L. from 1700 hrs. 30 Jun 42 until 0745 hrs. 15 Jul.42 (14 dys.14hrs.45 mins).	L/Cpl. Harbourne	Admonished	16 Jul. 42	Capt.M.T. Woods	Forf.15 dys pay F.R.&I. 149 (1)(a)
Field	16/8 .42	Spr.		A.A.(15(1) A.W.L. from 2200 hrs. 16-8-42 to 1115 hrs. 4-9-42 Absent 18 dys.13 hrs. A.A.40 Losing by neglect kit to the value of Ll.0.3	Sgt.Taylor and Civil Police	Fort. of 19 dys. pay F.R.&I.149(1)(a) Forf.21 days pay A.A.46 Placed under stoppages of Ll-4-2 for cost of appreh.also loss by neglect the sum of Ll.0.0	8 Sep.42	Lt.Col. Thompson	Total Forf. 40 days pay F.R.&I 149(1)(a) A.A.46

M.F.M. 6
(A.F. B.122)
40/P & /S126-(2005)

No.	Name	Sqn., Battery, or Company	Corps	Date of enlistment	G.C. Badges	Service or Proficiency Pay
M 17388	Roberts G.H.			28 May 1940		

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. [signature] | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	22 Aug 43	Spr		A.A. 15(1).A.W.L. from 2359 hrs 22 Aug 43 to 1100 hrs 2 Sep 43 Absent 10 days 11 hrs 1 min	Doc.	7 days F.P.	10 Sep 43	Major A.E.Chalmers	Forfeits 11 days pay R.R.1 149(1)(a)

CERTIFIED TRUE COPY OF ORIGINAL M.F.M.6 IN MY CUSTODY
TAKEN THIS 27th.DAY OF OCTOBER 1943 [signature] CAPT.

OFFICER HAVING CUSTODY OF ORIGINAL RECORD

(P.T.O.)

F	Date of offence	Rank	Cost of prosecution	OFFENCE	Names of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26 Feb. 43	Spr.		W O.A.S. was absent from Roll Call at 2300 hrs.	Cpl.Semple Sgt.Lebrun	Fined 7 dys. pay FR&I 149(2)	27 Feb. 43	Major E.H. Wright	
Field	15 Mar. 43	Spr.		A.W.L. from 2300 hrs.15 Mar.43 to 1445 hrs. 3 Apr.43 Absent 18 days 15 hrs. 45 mins. Tried by F.G.C.M. for A.W.L.	Cpl.Copeland Cpl.Langley	Remanded for Summary of Evidence 60 days Detn. 20 days Remission	5 Apr.43 10-4-43		
Field	17 May 43			A.A. 15(1) WAOS, AWL from 0600 hrs 17 May 43 to 2200 hrs 7 Jun 43 Absent 21 days 16 hrs 20 mins. (2) A.A. 24, (2) Losing by neg. Value 15/3½	Doc.	F.G.C.M 90 days detn Stoppage of pay £ 1-11-8 Cost of Appre	14 Jun 43	F.G.C.M	30 Days Remission

M.F.M. 6
(A.F. B.122)
40/P & /3135 (2065)

No. M 17388 Name ROBERTS, C.H. Sqn., Battery, or Company Corps Date of enlistment 28May40 G.C. Badges Service or Proficiency Pay 1/ Character

Date of last entry in Company Conduct Sheet No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of or order dispensing with trial	By whom awarded	Remarks
Field	29 Dec. 42	Spr.		A.W.L. from 0820 hrs. 29Dec.42 to 2200 hrs. 29 Dec.42 (Total absence 13 hrs. 40 mins.)	Sgt.Heaton Cpl.Worrall	Fined 10 days pay FR&I 149(2)	30 Dec. 42	Maj.E.H. Wright	Forf.1 dys P&A 149(1)(a)
Field	1Nov. 42	Spr.		A.W.L. from 1200 hrs. 1Nov.42 to 0750 hrs. 3 Nov.42 (Total 19 hrs. 50 mins.)	Sgt.Heaton	14 days C.B.	5 Nov. 42	Major Wright	Forf.2 dys. P&A FR&I 149 (1) (a)
Field	31Jan 43	Spr.		A.A.Sec.15(1) A.W.L. from 2359 hrs. 31 Jan.43 to 1855 hrs. 2 Feb.43 Absent 1 day 18 hrs. 56 mins.)	Sgt.Voisey A.E. C.S.M.Woods,G	14 days F.P.	3 Feb. 43	Maj.E.H. Wright	Forf.2 days pay FR&I149 (1)(a) Forf.14days pay FR&I. 149(1)b)

(P.T.O.)

M.F.B. 388
22M—5-41 (572-3)
B.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M-17388	Spr.	George H Roberts	No.3 Cdn.Gen.Pioneer Coy.

1. The following is a fair and true summary of the entries in the Regimental Conduct sheets of the accused, exclusive of convictions by a Court-Martial

	Within last 12 months		Since enlistment or appointment	
For	Sec.15(1) A.A.	5 times	Sec.15(1) A.A.	8 times
For		times	Sec.24(2) A.A.	2 times
For		times	Sec.40 A.A.	1 times
For		times		times

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. Previous convictions of the accused by a court-martial are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for 2 days in military custody, making a total of 2 days in custody.

5. The present age of the accused according to his record of service is 31 years, 6 months & 27 days.

6.

7.

8. The accused is entitled to reckon 3yrs.5 mos. service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or military reward.

10. Air Force.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... dated ..... Permanent Force unit, and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N.A.

Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial ~~[illegible]~~ of accused, Number M 17388 Rank Spr. Unit Regiment

Name George H Roberts of No. 3 Cdn. Gen. Pioneer Coy

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	10 Apr 43 (Field)	Sec.15 (1) A.A.	60 days detention	20 days.
F.G.C.M.	14 Jun 43 (Field)	Sec.15(1) A.A. Sec.24(2) A.A.	90 days detention	nil

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28th day of October 1943

[illegible] Capt
24 Cdn No. 3 Cdn Gen Coy

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

[illegible]

44 C.
A. 4044 Pte Roberts G.
No 1 Cdn Inf Hold Unit.

~~28 Nov 41 [illegible] to A G Sc (Pers)~~
~~9 Dec 41 " " [illegible]~~

Correspondence to be PINNED here.

R-4044 Pte. Roberts,G.
No.1 Cdn Inf Hldg Unit

Army Form A.3.

446

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 4th day of August, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS,CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

*[illegible]:—

*(1. [illegible]

*(2. [illegible]

*(3. [illegible]

[illegible]

* Omit if not applicable.

President.

Rank.	Name.	Regiment.
Major	C.D. McCreary	No1 Cdn (MG) Hldg Unit.

Members.

Rank.	Name.	Regiment.
Captain	D. Storey	No.3 Cdn Inf Hldg Unit.
Lieutenant	L.E. M. Jarvis	No.1 Cdn (MG) Hldg Unit
Lieutenant	T.J. McArthur	No.1 Cdn Inf Hldg Unit.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [signature] Brigadier

Commanding Cdn Base Units,Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A-4044 PTE. ROBERTS, G. No.1 Cdn Inf Hldg Unit.	First Charge A.A. sec 12(1)(a)	Not Guilty	Guilty	Confirmed [signature] Brig
	Second Charge A.A. sec 24(2)	Guilty	Guilty	
	Third Charge A.A. sec 12(1)(a)	Not Guilty	Guilty	
	See charge sheet attached.		To be imprisoned with hard labour for twelve(12) months and to be placed under stoppages of pay until he has made good the sum of £5-3-10, cost of apprehension and £9-6-4½ value of deficiencies of kit.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):— NO.

(Signed) [signature] Brigadier (Signed) [signature] Major

Commanding Cdn Base Units, Cdn Army. / C.M.G.H.V.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 7th day of August 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. The ~~XXXXXXXX~~ Shorthand writer
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 7th day of August 1941.

[signature] Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 16th day of August 1941

[signature] Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of A-4044 Pte ROBERTS, G.

(a) (Dated) 20 Aug 41 (Signed) [signature] Major.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(11759) Wt. 40115—893 000 20 1/40 P. St. G. 620

CHARGE SHEET.

The accused, A-4044 Pte. Roberts, G. (Royal Canadian Regiment), on the strength of No.1 Cdn. Inf. Hold. Unit as a reinforcement, a soldier of the Canadian Army (Overseas), is charged with:-

FIRST CHARGE — When on active service, deserting His Majesty's Service--

in that he

SECTION 12 (a) ARMY ACT — When in lawful custody, and under escort, at Algonquin Camp, Witley, Surrey, absented himself without leave from 1345 hours on 19 Feb. 1941 until apprehended by the civil power at Southport at 1845 hours on 9 July, 1941, dressed in plain clothes, thereby incurring expenses to the public for his apprehension in the amount of £3-0-7.

SECOND CHARGE — When on active service, losing by neglect his equipments, clothing, and regimental necessaries--

in that he

SECTION 24 (a) ARMY ACT — on the 21 July, 1941 at Algonquin Camp, Witley, Surrey was deficient of the following articles:

		£	s.	d.
Anklets, web, prs.	1	0	4	4
Badges, shoulder, prs	3	0	1	10½
Battle Dress, blouse	2	2	5	0
Battle Dress, trousers	2	2	1	0
Boots, ankle, prs.	1	1	1	6
Cap, comforter	1	0	1	8
Cap, field service	1	0	2	5
Greatcoat	1	2	8	6
Dressing, first field	1	0	1	1
Gloves, Woollen, prs.	1	0	1	11
Jacket, sweater	1	0	6	8
Knife, clasp & lanyard	1	0	3	5
Helmet, steel	1	0	7	0
TOTAL		9	6	4½

THIRD CHARGE — When on active service, deserting His Majesty's Service--

in that he

SECTION 12 (a) ARMY ACT — when in confinement, at Algonquin Camp, Witley, Surrey, absented himself without leave from 1830 hours on the 25th July 1941 until apprehended by the civil power at Southport at 1235 hours on the 26th July 1941 dressed in plain clothes, thereby incurring expenses to the public for his apprehension in the amount of £2-3-3.

L.W.W. Slack ..... Lt-Col.
(L.W.W.Slack) Officer Commanding
No.1 Cdn. Inf. Hold. Unit

Witley, Surrey,
1st Aug. 1941.

To be tried by Field General Court Martial

(F.R. Phelan) Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This 4th day of Aug 41.

A.40[illegible] Pte. Roberts, G., No.1 Cdn Inf Holding Unit tried by Field General Court Martial at Witley, Surrey, on the 7th day of August, 1941.

The order convening the Court, the charge sheet, summary of evidence and medical certificate are laid before the Court.

Prosecutor - Lieut F.S. Weatherstone
Defending Officer - Lieut Maxted

At 1000 hrs the Trial commences.

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No, sir.

The President, and members are duly sworn.

Q2 - Do you object to P.382[illegible] Sgt. Rice, W.A., H.Q., C.B.U., acting as Court Stenographer?
A2 - No, sir.

The Court Stenographer is duly sworn.

The charge sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge sheet.

Q3 - Are you guilty or not guilty of the first charge against you, which you have heard read?
A3 - Not guilty, sir.
Q4 - Are you guilty or not guilty of the second charge against you, which you have heard read?
A4 - Guilty, sir.
Q5 - Are you guilty or not guilty of the third charge against you, which you have heard read?
A5 - Not guilty, sir.

R.P. 35(b) has been complied with by the Court in relation the the second charge.

Prosecutor - I produce herewith document in relation to the accused.

EXHIBIT "A"--A F.O.1616 of A.40[illegible] Pte.Roberts,G., No.1 C.I.H.U.

The Prosecutor proceeds to call witnesses.

First witness for prosecution U.151[illegible] C.S.M. Ayre, G.L., S.I.D., C.P.C., C.M.H.Q., being duly sworn, is examined by the prosecutor.

Q6 - Will you give the Court your name, rank, initials, etc.?
A6 - U.151[illegible], C.S.M. Ayre, G.L., S.I.D., C.P.C., C.M.H.Q., London.
Q7 - Sergt-Major, had you anything to do with the accused Roberts?
A7 - Yes, sir.
Q8 - What was it?
A8 - I took a statement after duly cautioning him.
Q9 - Is this the statement you took?
A9 - That is the statement. That is my signature.
Q10- Is this Robert's signature?
A10- Yes, sir.
Q11- Was the statement made voluntarily?
A11- Yes, sir, it was made after I had duly cautioned him, and I asked him after if he wanted to take anything back.

EXHIBIT "B" --Statement of Witness dated 15 Jul, 41, relating to A.40[illegible] Pte. Roberts, G.

Defence declines to cross examine this witness.

Second witness for prosecution G.370 Pte. Girouard, F.L., No.1 C.I.H.U., being duly sworn, is examined by the prosecutor.

Q12 - Will you give your rank, name and regimental number?
A12 - G.370, Pte. Girouard, F.L., No.1 C.I.H.U.
Q13 - You are in H.Q., Coy?
A13 - I am sir.
Q14 - Were you on or before the 19th of February, 1941 a L/Cpl?
A14 - I was, sir.
Q15 - You were with the Regimental Police of this unit?
A15 - Yes, sir.
Q16 - Do you recognize the accused?
A16 - I do.
Q17 - Can you tell me what happened in relation to him about the 19th of February, 1941?
A17 - I was a member of a party of three men which I had on a garbage fatigue back of the Officers' Mess. When I turned the corner of the building I had two other men go to the kitchen together to pick up a barrel of garbage. While my back was turned, Pte. Roberts jumped off the truck and drove into the rear by the bushes. I saw him with my own eyes as I turned from the corner driving into the bushes, but couldn't apprehend him on account of having two other men with me.
Q18 - Was Roberts a prisoner in detention?
A18 - Yes, sir, he was a prisoner of No.1 Detention.

Cross-examination by the Defending Officer .

Q19 - What were your orders at that time?
A19 - I was given orders to take three men on a garbage team.
Q20 - Were there any orders given to keep them in hearing?
A20 - I had no specific orders as to the three together. That would be impossible to do at that job. At the time there were no specific orders given that the three men were to be kept together.
Q21 - Did you mention anything to the driver?
A21 - I did mention to the driver to keep an eye on the men if I turned my back.

Third witness for the prosecution Lieut E.J. Rider, being duly sworn, is examined by the Prosecutor.

Q22 - Will you give the Court your name, rank and appointment?
A22 - Lieut E.J. Rider, Officer i/c Records, No.1 Cdn Inf Regt Unit.
Q23 - I have a document here, will you explain it to the Court?
A23 - Lieut E.J. Rider, explains to the Court a document Ref:K.R.&.O.(Can.) 939 relating to A.Bobb Pte. Robert, G., No.1 C.I.H.U.

EXHIBIT "C" --Document Ref: K.R.&.O. (Can.) 939 relating to A.Bobb Pte. Robert, G., No.1 C.I.H.U.

Defending Officer declines to cross-examine.

Fourth witness for the prosecution Lieut Mills, being duly sworn, is examined by the Prosecutor.

Q24 - Your are Assistant to the Adjutant of No.1 C.I.H.U.?
A24 - Yes, sir.
Q25 - In performance of your duties did you have anything to do with the letters written by the accused?
A25 - I censored all letters.
Q26 - Had you any occasion to censor any letters written by the accused?
A26 - I had, that last one being Tuesday last.
Q27 - I produce to you a letter containing a envelope addressed to Messrs. D. Dore. Wil you tell me if that is the letter?
A27 - Yes, sir, that is the letter.

Prosecutor proceeds to read the letter.

Defending Officer - Roberts admits that that is his signature on the letter.

Prosecutor - We have evidence that he has been on the 19th of February, apprehended in Southport in civilian clothes. He went to South Ireland and got a job there working on a farm, then he returned back to Southport. He didn't intend to return. I submit that there is evidence, first of a.w.l., and sufficient evidence before you to infer that he had no intentions of returning to his unit.

Defending Officer - In the first charge just completed there are several points to show that the accused did not intend to desert. First he took a number of passes with him. He put his own name on them, and signed some name on the bottom. He didnot try to misrepresent himself as a soldier. In regards to working he had to do that. He didn't stay long in Ireland. When he came back he got a job in the Naval Dockyards. During that time he apparently tried to joined the Army. He worked at a job that required man-power. They would not take him in the Army at that time. He wasn't trying to desert. The other point is that he used his own name on all occasions. When he was apprehended by the Police he didn't try to conceal his identity as a soldier and also he intended to come back at a later date. The job ended in July so he had to stay on.

Q26
Court - When did he attempt to join the Army?
A28 - Defending Officer - 10th of May. We have no evidence except the accused on statement. There is another point, and that is that the accused always had his paybook.

Prosecutor - This fact should be proven by a statment from the accused.

The accused A.WOM4, Pte. Roberts, G., No.1 C.I.H.U., is duly sworn and examined by the Defending Officer -

Q29 - You tried to join the Army?
A29 - In the first place I tried to get into the R.A.F, but they turned me down. They turned me over to the Army. I went to join the R.A.C.
Q30 - Are you at present in any military force?
A30 - No, sir.

Prosecutor cross-examines -

Q31 - You tried to enlist first of all in the R.A.F., and again in the R.A.C., is that the only two units you tried to enlist in?
A31 - Yes, sir.
Q32 -
Court - Any further questions?
A32 - Defending Officer - One point in his examination proves the fact that he didn't try to desert.

Prosecutor - It is proven that he had no intention of coming back to the Canadian Army. Whether he intended to join the R.A.F., or the R.A.C., he obviously intended to desert the Canadian Army, and to me that is the only Army I am interested in at the present time. His own statement proves that.

Defending Officer - If he does leave the Canadian Army and joins the British Army he is not deserting his Majesty's Forces.
Prosecutor - He is deserting his Majesty's Canadian Forces.

Fifth witness for the Prosecution in relation to the third charge, B.73290, Pte. Durham, R.F., No.1 C.I.H.U., being duly sworn, is examined by the Prosecutor.

Q33 - What is your regimental number, rank, name and unit?
A33 - I am B.73290 Pte. Durham, R.F., No.1 C.I.H.U.
Q34 - Pte. Durham, were you on the 25th of July, a member of the Regimental Police of No.1 C.I.H.U.?
A34 - Yes I was, sir.

Q35 - Was the accused at that time a prisoner there?
A35 - Yes, sir.
Q36 - Was he under your care during that time?
A36 - Yes, sir.
Q37 - Did anything happen at the time he was under your care? When he escaped?
A37 - Yes, sir.
Q38 - Will you tell the Court the circumstances? How did he get the opportunity to escape? First of all what time was it?
A38 - About 6.30 sir.
Q39 - Where were you at that time?
A39 - I was in the compound back of No.9 Detention Barracks.
Q40 - What were you doing? Were you by yourself?
A40 - No, sir, there was myself and six others besides.
Q41 - What were you doing?
A41 - My job was to watch them.
Q42 - Will you tell the circumstances of Roberts' escape?
A42 - On the evening band from 107 Camp was playing at the change of the guard.
Q43 - Were they playing at 6.30?
A43 - Approximately 6.30.
Q44 - What happened?
A44 - All the prisoners under escort were at the end of the compound.
Q45 - That is to listen to the band?
A45 - Yes, sir and also the guard marching back. When my back was turned at the top end of the compound. Pte. Roberts went behind me and over the wall.
Q46 - When did you first notice his escape?
A46 - It was called to my attention that someone was running through the woods.
Q47 - At about that time?
A47 - Yes, sir. I took immediate action to see who was missing.
Q48 - It was Roberts?
A48 - Yes, sir.
Q49 - He didn't return that night?
A49 - No, sir.

Cross-examination by the Defending Officer -

Q50 - This wall is about eight feet high?
A50 - Yes, sir.
Q51 - You had your back turned to the prisoner?
A51 - My back was turned to the end of the compound.
Q52 - Where were the prisoners?
A52 - All down at one end sir. This end facing the main road.
Q53 - You had only six prisoners?
A53 - I had seven counting Roberts.
Q54 - The point is where were you in regards to the prisoner?
A54 - About the centre.
Q55 - If you had been in the rear of the prisoners watching, could you not have prevented Roberts escaping?
A56 - Yes, sir. When the band came up we moved up to the fence. The natural thing to do would be to put your hands up on the fence which would bring the prisoners level with me.
Q57 - In orders words you gave Roberts by getting close to the fence, you gave him his method of getting away?
A57 - It was quite accidental sir.

Re-examination by the Prosecutor -

Q58 - What dress was he in?
A58 - He was in fatigue clothes.

Lieut E.J. Rider, third witness for the prosecution is recalled - and produces A.F.C. 1612 relating to A.[illegible] Pte. Roberts, G., No.1 C.I.H.U.

Prosecutors closing address - In respect to the first charge sir, this documentary evidence before you shows that he was absent without leave for a period of time for which he is charged. I ask you to infer from the evidence before you that he didn't intend to return to any military corps. Notes Section 12---reads---I ask you to infer that sir from the evidence before you. We have first of all the following facts from which you can adduce that inference. First the fact that he was absent from 19th of February until he was apprehended on the 6th of July. The fact that he was in civilian clothes at the time of his apprehension. We have too the fact that when he absented himself he had two stolen passes which would assist him in his escape. Then too he went to Ireland and stayed there working on a farm. There is no statement as to why he left, but he did come back to England, in the early part of April, 19[illegible]1 and there he got a job at Southport, which again is very strong evidence that he had intentions to desert. Then in addition to that we have his own statement here in the letter---reads---Obviously from that letter it is adduced that he had no intention at that time of returning to his unit. We have some vague statement that he wanted to join the R.A.F. or the R.A.C., and here again if he had joined one of those units he could still be charged with desertion from the Canadian Army. I have not gone into the enquiry. He intended to desert from the Canadian Army can be proven because he had tried to join some Imperial Unit. These are the facts which I adduce inference and which are quite sufficient for you to pass a conviction of desertion. The third charge there is no evidence that he intended to desert other then the fact that he escaped while in confinement. He went back to the same place and again was picked up there in civilian clothes. If he had intention to desert the first time, it is only natural to infer that he had intention to desert on the second time.

Defending Officer - The Prosecutor mentioned that the accused had two stolen passes on him. The point is were they stolen. It is not in the charge at all. It is definitely not the charge. The man is being charged for desertion. I ask that that fact be struck off the Prosecutor's statement.

The Prosecution is closed.

Q59 - Do you apply to give evidence yourself as a witness?
A59 - No, sir.
Q60 - Do you intend to call any other witness in your defence?
A60 - No, sir.

The Court is closed for the consideration of the finding.

The Court being re-opened, the accused is again brought before it.

The Prosecutor, Lieut F.S. Weatherstone, is duly sworn.

Q61 - Have you any evidence to produce as to the character and particulars of service of the accused?
A61 - Yes, sir, A.F.B. 296 and M.F.M.C.
Q62 - Is the accused the person named in the statement which you have heard read?
A62 - Yes, sir.
Q63 - Have you compared the contents of the above statement with the regimental books?
A63 - Yes, sir.
Q64 - Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A64 - Yes, sir.

The accused declines to cross-examine this witness.

Q65 - Do you wish to address the Court?
AQ5 - Defending Officer - I have known Roberts for a long time in "A" Company, and I might mentioned the fact that the C.S.M. of "A" Company, R.C.R., at that time found him to be a good clean soldier and had no trouble with him. I met him first in Valcartier Camp. He was a clean soldier and a good soldier. He left Barossa Barracks in Aldershot and I didn't see Roberts from that time until I met him in Aldershot again one day. He was wearing Corporal stripes. Apparently he had seem fit to be made a L/Cpl and then a Corporal. He had a good job. He committed an offence which was contrary to regulations by breaking out of prison. It must remember that he has a wife. We know that a man will do anything to help his family out. He went absent then and got a job. He went to Ireland. He also came back to England and got a job in the Naval Dockyards. It must remembered that through all this he took his wife with him and supported her. He could have waited and saw his Commanding Officer, but the point was that he had lost his promotion and he thought everything was against him and he just didn't know the seriousness of the act he committed. It must be remembered that he did work at a government job, and with the act he committed first started these charges you have in front of you now. He went absent for the first time; the reason for going absent was he had not enough pay to support his wife. His wife was in need, and at the time he had no money to carry it out. He made no pretence of not being Roberts when apprehended. He made no pretence of not being in the Canadian Army, and also while he was working in the dockyards he was working for His Majesty's Government. He was afraid to come back; naturally he would be. These two escapes he made, both of them he was left open. He just took the bull by the horns and made a get away. In the first case he was left on the truck. The second case the guard went forward to the gate and let him get behind. It was only human nature. I would like to apply for leniency on the grounds that the stretting off of this thing was thinking about his wife, and also that he had to support her.

The Court is closed for the consideration of the sentence.

SUMMARY OF EVIDENCE

In the case of A-4044 Pte. Roberts, G.
(R.C.N.) No. 1 Cdn. Inf. Hold. Unit

The Commanding Officer directs that the evidence shall be taken under oath.

1st Witness C-370 Pte. Girouard, F.L. (H.Q. Coy) No. 1 Cdn. Inf. Hold. Unit, having been duly sworn states:

On 19 Feb. 1941, I was a L/Cpl. on the Regimental Police of No. 1 Cdn. Inf. Hold. Unit and was in charge of the garbage fatigue on that date. A-4044 Pte. Roberts, G. was a member of that fatigue because he was a prisoner in detention at that time. At about 1345 hrs. on that date he escaped by jumping off the truck, behind the Officers Mess of No. 1 Cdn. Inf. Hold. Unit, and running off through the bushes. There were three men on the fatigue and I was the only escort. I was therefore unable to apprehend Pte. Roberts. I took the other two men back to the Detention Block and reported Pte. Roberts as having escaped.

...F. L. Girouard...Pte.

(The accused declines to cross-examine this witness)

2nd Witness Lieut. E.J. Rider Officer i/c Records, No. 1 Cdn. Inf. Hold. Unit, having been duly sworn, states:

I am Officer i/c Records, No. 1 Cdn. Inf. Hold. Unit, and as such produce the following documents in evidence:

1. Army Form O.161B showing the apprehension of the accused at Southport at 1845 hours, 9 July, 1941 by the civil power.

2. Statement of expenses of apprehension and return from Southport to London, in the amount of £3-0-7.

3. Statement of a Court of Inquiry held on 9 April, 41.

These documents refer to A-4044 Pte. Roberts, G. whom I now recognize.

...E.J. Rider.....Lieut.

(The accused declines to cross-examine this witness)

3rd Witness C.S.M. Ayre (Canadian Provost Corps, London) will put in evidence, a statement signed by the accused in his presence which is shown as an exhibit in this summary.

The accused is duly cautioned (R.P. 4(e)), and declines to make any statement.

Certified that Rules of Procedure No. 4 (c), (d), (e), (f), and (g), have been fully complied with.

.....H.M. Howell.....Lieut.
(H.M. Howell) Court Martial Officer
No. 1 Cdn. Inf. Hold. Unit
Officer taking Summary

Witley, Surrey
18 July, 1941

ADDITIONAL SUMMARY OF EVIDENCE

In the case of A-4044 Pte. Roberts, G. (R.C.R.) No.1 Cdn. Inf. Hold. Unit.

The Commanding Officer directs that the evidence be taken under oath.

4th Witness — C.Q.M.S. Spooner, W.R. (H.Q. Coy.), No.1 Cdn. Inf. Hold. Unit, having been duly sworn states:

On 21 July, 1941, I took a complete inventory of kit of A-4044 Pte. Roberts, G. and found deficiencies in the amount of £9-6-4½, as set out in a Deficiency List, signed by me, dated 21 July, 1941 marked Exhibit "3".

W.R. Spooner .....C.Q.M.S.

(The accused declines to cross-examine this witness)

5th Witness — R-73290 Pte. Durham, R.E. (H.Q. Coy) No.1 Cdn. Inf. Hold. Unit, having been duly sworn, states:

I was on duty as Regimental Police at 1830 hours on 25 July 1941, and went with the prisoners into the compound, being in charge of seven (7) prisoners all told. That evening the band from Camp 103, Witley, Surrey was playing for the changing of the guard and when the band came by the detention block all the prisoners walked to the end of the compound to watch the band come by, myself included. Pte. Roberts also was at the end and must have dropped back and went up over the wall while we were watching the band. Someone called to me that a man was running through the woods. I took an immediate count of the prisoners and found we had only six (6). Pte. Roberts being the one missing.

R.B. Durham .....Pte.

(The accused declines to cross-examine this witness)

6th Witness — Lieut. E.J. Rider, Officer i/c Records, No.1 Cdn. Inf. Hold. Unit, having been duly sworn, states:

I am Officer i/c Records, No.1 Cdn. Inf. Hold. Unit, and as such produce the following documents in evidence:

1. Army Form C.1618 showing the apprehension of the accused at Southport at 1235 hours, 26 July, 1941 by the Civil Power.

2. Statement of expenses of apprehension and return from Southport to London, in the amount of £2-3-3.

These documents refer to A-4044, Pte. Roberts, G. whom I now recognize.

E.J. Rider .....Lieut.

(The accused declines to cross-examine this witness)

Certified that Rules of Procedure No.4 (c), (d), (e), (f), and (g), have been fully complied with.

H.M. Howell .....Lieut.
H.M.Howell) Court Martial Officer,
No.1 Cdn. Inf. Hold. Unit
Officer taking Summary.

Witley, Surrey,
1st Aug. 1941,

Ref: K.R.& O.(Can.)539

Reg't.No: A-4044

Rank: Pte.

Name: Robert G.

Regt: Inft. Hold. Unit.

Unit: No.1.

The following expenses were incurred in apprehending and returning the a/n soldier to his unit from Southport.

DATE	PARTICULARS	AMOUNT		
14-7-41.	Escorts return fare from Southport to London	1.	10.	7.
	Prisoners single fare to London from Southport		15.	4.
	Prisoners single fare from London to			
	Escorts expense for bed, meals, bus fares and meals for the prisoners.		14.	8.
	TOTAL -- £	3.	0.	7.

I certify that the above statement of expenses is correct and that the amounts are fair and just.

Capt.
(V.Haynes Gond)
D.A.P.M. Canadians.

NOTE.

No reimbursement for this account is to be sent to our office from your goods if as the amount has been paid from petty cash and charged to Public Funds.
If the accused is found guilty a stoppage of pay should be put through your units Part II Orders.

The following Statement of expenses (if any) incurred by the Police and chargeable to Army Funds should be certified by a Superintendent or officer in charge of a station and forwarded to the General Officer Commanding-in-Chief the Command or General Officer Commanding District in which the arrest was effected.

No expenses incurred in conveying a Deserter or Absentee from the Court to prison should be charged to Army funds. Such expenses can be included in the claim made on the Prison Commissioners.

The total amount allowed on account of expenses before committal will not together with the reward exceed 40/-.

I certify that the following expenses were incurred by the _____

Police in connection with the apprehension of _____

_____ and are

payable to _____

{ Superintendent or Officer i/c Police Station at

Date _____

(For Army use only.)

AUTHORITY for the PAYMENT of a REWARD.

The Command Paymaster _____ is hereby authorized to pay to _____ being the person recommended by the Committing Magistrate, a reward of _____ for the apprehension of _____

General Officer,
Commanding District or Command.

Date _____

Where no reward is authorized though one was recommended by the Magistrate, or where the reward authorized is less than that recommended, a brief explanation will be given below.

IMMEDIATE.

Army Form O. 1618.

PART I.

DESCRIPTIVE RETURN of a Deserter or Absentee without Leave.

INSTRUCTIONS FOR THE GUIDANCE OF MAGISTRATES.

(1) When a man is apprehended by the Civil Power as an absentee without leave, or as a deserter, if the information tendered leaves no doubt in the mind of the Magistrate that the prisoner is a soldier, Part I. of this return should be filled up and forwarded by post by the Clerk to the Justices to the General Officer Commanding-in-Chief the Command or the General Officer Commanding the District in which the arrest was effected. *(See list below.)*

(2) Where the unit, to which a defaulting soldier belongs, is in the neighbourhood of the place in which he is detained in police custody, arrangements for the provision of an escort may be made by the Police direct with the officer commanding the unit. In this case Part I. of this return should be given to the Police to hand to the escort on arrival.

(3) To avoid delay a telegram stating the Number, Rank, Name, Unit and Place from which the soldier is absent should be sent by the Police as soon as the man is committed to the General Officer Commanding to whom this form is to be despatched.

(4) Any recommendation for a reward should be made on Part II. of this return, which, when completed, will be forwarded by the Police to the proper quarter.

(5) The Court fees chargeable for Descriptive Returns should be claimed periodically from the Command Paymaster of the Command in which the Court is situated.

LIST OF COMMANDS AND DISTRICTS.

Aldershot Command	G.O.C. in C., Aldershot Command, Aldershot.
Eastern Command	G.O.C. in C., Eastern Command, 50, Pall Mall, S.W.1.
Irish Command	G.O.C. in C., the Forces in Ireland, Parkgate, Dublin.
Northern Command	G.O.C. in C., Northern Command, York.
Scottish Command	G.O.C. in C., Scottish Command, Edinburgh.
Southern Command	G.O.C. in C., Southern Command, Salisbury.
Western Command	G.O.C. in C., Western Command, Chester.
London District	G.O.C., London District, 11, Carlton House Terrace, S.W.1.
Jersey	G.O.C., Jersey District, Jersey.
Guernsey and Alderney	G.O.C., Guernsey and Alderney District, Guernsey.

The following modifications to the above list will be observed :—

In the case of Canadian soldiers	information regarding their apprehension will be sent to :—
	A.P.M., Canadians, London, 105, Oxford Street, W.1. Telegraph: "Cabuckian Oz London." Tel.: Museum 3313, 3618.
" Australian (except Southern Command) ...	A.P.M., A.I.F., London, 58, Warwick Square, S.W.1. (Telegraph: "Apmaustra, London." Telephone: Victoria 8826.)
" " Southern Command ...	A.P.M., A.I.F., Bhurtpore Barracks, Tidworth (Tel.: "Provost, Salaciers, Tidworth." Tel.: 101 Tidworth.)
" New Zealand	A.P.M., New Zealand Imperial Force, 30, Chester Square, London, S.W.1. (Telegraph: "Zeapromal." Telephone: Victoria 1013.)
" South African	Staff Officer, South Africans, London, 65, Victoria Street, S.W.1. (Telegraph: "Safence." Telephone: Victoria 4011.)
" Royal Marines	Adjutant-General, R.M., Admiralty, 55, Spring Gardens, London, S.W.1. (Telegraph: Royal Marines, London.) (Telephone: Admiralty 420.)

N.B.—Part I. of this return will be given to the Escorts in the case of Canadian Soldiers, Australian Soldiers within and outside the Metropolitan Area, New Zealand and South African Soldiers and the Royal Marines, and Part II. sent direct to the A.P.M. or Staff Officer concerned as above.

NOTE.—In cases of doubt as to the Command concerned, application should be made to the nearest Assistant-Provost Marshal.

(S 65 78) W1798—P1053 100,000 5/18 HWV(hhM1223)

EXHIBIT "A"

Descriptive Return of § George Roberts who was apprehended at Southport at (hour) 6 45 pm on the 9th day of July 1941, and was committed to confinement at Southport on the 9th day of July 1941 as an ~~Deserter (or~~ Absentee without leave) from the ~~[illegible]~~ No. 1 Canadian Holding Unit ~~Regiment of~~

Age 23 Height 5 feet 7 inches.
Complexion Fresh Hair Brown Eyes Blue
Marks Tattoo both arms In uniform or plain clothes Plain clothes.

Probable date and place of attestation.	
Probable date of desertion or beginning of absence and from what place.	23rd February 1941: Whitley Camp Surrey
Name, occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured.	Acting Detective Inspector Hampson Southport C. B. Police

Particulars in the evidence on which the Prisoner is committed, and shewing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.

*On other Police Enquiries being made the Prisoner admitted being an absentee without leave from His Majesty's Army.

I do hereby Certify that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he† is an absentee without leave from the before-mentioned Corps.

Thomas O'Neill Signature
The Law Courts Residence
Albert Road Post Town
Southport
10th July 1941 Date of Signature.
of Committing Magistrate.

Geo. Roberts. Signature of Prisoner.

Robert M. Hampson Signature of Informant.

Or, where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming.

I hereby certify that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming; and that the case was adjourned until the day of for the purpose of obtaining such evidence.

Signature
Residence
Post Town
of Magistrate.
Date of Signature.

§ Care should be taken to insert Regtl. No. and rank.
* It is important for the public Service, and for the interest of the Deserter or Absentee without leave, that this part of the Return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.
† Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs" or "does not belong to," as the case may be.

Army Form O. 1618.

PART II.

This portion of the Form to be detached, after the Magistrate has committed the soldier and completed the recommendation as to reward, and handed by the Clerk of the Court to the Police, who will add overleaf a statement of any expenses incurred by them and despatch it as there directed.

Apprehension of No. _____ of _____

Regiment at _____ on _____ by _____

who was committed as a Deserter (or Absentee without leave) on the _____

RECOMMENDATION FOR REWARD.

I recommend* _____

Address _____

for a reward of _____

_____ Signature of Committing Magistrate.

_____ Date.

* The Magistrate will insert the name and address (in full) of the person for whom the reward is recommended, and the amount (5/-, 10/-, 15/-, or 20/-) which in his opinion should be granted in this particular case, having regard to the following rules:—

1. When soldiers are apprehended in uniform near their quarters it is considered that as a general rule 5/- is a sufficient reward. Not more than 10/- will be allowed in any case where the soldiers were in uniform.

2. When soldiers are apprehended in plain clothes, at a distance from their units, and after having been absent for some time the reward may be increased to 10/- to 15/- according to the nature of the cases and the trouble incurred in apprehension. A reward in excess of 15/- will seldom be granted.

3. The reward of 20/- should be strictly reserved for cases where superior intelligence has been displayed in apprehending men in plain clothes, or under difficult or exceptional circumstances.

Rewards and expenses attendant upon apprehensions will be paid by the Command Paymaster of the Command or District in which the Deserter or Absentee is apprehended

CANADIAN MILITARY HEADQUARTERS

CANADIAN PROVOST CORPS
Special Investigation Department

STATEMENT of WITNESS

LONDON, 15 July 41.

NAME - Roberts, George

REG.No. A-4044 RANK - Pte. AGE - 24

UNIT - Royal Canadian Regiment, #1 Cdn. Infantry Holding Unit.

S T A T E M E N T :

I have been cautioned by C.S.M. AYRE in the presence of Sgt. CHESTER that I need not say anything unless I wish to do so but that anything I do say will be taken down in writing and may be used in evidence and to show that I understand this I sign my name here

Geo. Roberts.....

I went absent without leave from my unit at Witley Camp at the end of February, 1941. I had about £5-0-0 in cash and two blank passes in my possession. I filled out the passes for seven days leave on each one for the purpose of proceeding to ROSSLARE, Irish Free State. I used my own name on the passes and signed the name of an officer - I dont remember the name - and added Major to it. I had enough money to buy my ticket to Rosslare.

The civilian clothes that I am wearing were some that I had purchased about seven months before for the purpose of wearing on leave and I had them checked at the Sailors' Home at Aldershot. The same day that I left my unit, I went to the Sailors Home and changed from my uniform into the civilian clothes. I then wrapped my uniform, steel helmet and respirator in a parcel and when I got on a train at Reading the same night I threw the parcel out of the train window between Reading and Fishguard.

I went straight from Reading to Rosslare where I got a job on a farm doing ordinary labour. I worked at the farm until the early part of April, 1941 and then returned to Fishguard and from there to Southport where I went to the labour exchange and applied for an unemployment card. I was asked for my Identification Card I told them that I had just come from Ireland where I had been working on a farm and had not been in England on National Registration Day and therefore had not been given a card. I was then given a slip of paper which stated that I had applied for a National Registration Identity Card by the Registration Bureau where I had been sent by the Labour exchange. At the Labour Exchange I was then given an Unemployment Card and sent to work for COSTAINE's Limited, Contracting Firm from Liverpool, at the present time at work on a Naval Barracks at Southport.

While I was in Southport I stayed at my people's home at 18 Hall Street, Southport. I told them that I had been discharged from the Army for being medically unfit and had just come back from Ireland after having been sent there for a rest.

I stayed at this job until the Registration Bureau made enquiries and not being satisfied, called in the civil police who made further inquiries and discovered that I was an absentee. On the 9th July 41, at about 18.00 hrs. I was arrested and held for the arrival of the escort from the Canadian Provost Corps.

This Statement has been read over to me and it is true.

Witness to Signature..W.L. Ayre CSM Signature..Geo. Roberts.....

CANADIAN MILITARY POLICE
LONDON AREA
D.A.P.M.

CANADIAN MILITARY HEADQUARTERS

CANADIAN PROVOST CORPS
Special Investigation Department

STATEMENT of WITNESS

LONDON, 16 July 41.

NAME - Roberts, George

REG.No. A-6044 RANK - Pte. AGE - 24

UNIT - Royal Canadian Regiment, #1 Cdn. Infantry Holding Unit.

S T A T E M E N T :

I have been cautioned by C.S.M. AYRE in the presence of Sgt. CHESTER that I need not say anything unless I wish to do so but that anything I do say will be taken down in writing and may be used in evidence and to show that I understand this I sign my name here

Geo. Roberts

I went absent without leave from my unit at Witley Camp at the end of February, 1941. I had about £5-0-0 in cash and two blank passes in my possession. I filled out the passes for seven days leave on each one for the purpose of proceeding to ROSSLARE, Irish Free State. I used my own name on the passes and signed the name of an officer - I dont remember the name - and added Major to it. I had enough money to buy my ticket to Rosslare.

The civilian clothes that I am wearing were some that I had purchased about seven months before for the purpose of wearing on leave and I had them checked at the Sailors' Home at Aldershot. The same day that I left my unit, I went to the Sailors Home and changed from my uniform into the civilian clothes. I then wrapped my uniform, steel helmet and respirator in a parcel and when I got on a train at Reading the same night I threw the parcel out of the train window between Reading and Fishguard.

I went straight from Reading to Rosslare where I got a job on a farm doing ordinary labour. I worked at the farm until the early part of April, 1941 and then returned to Fishguard and from there to Southport where I went to the labour exchange and applied for an unemployment card. I was asked for my Identification Card I told them that I had just come from Ireland where I had been working on a farm and had not been in England on National Registration Day and therefore had not been given a card. I was then given a slip of paper which stated that I had applied for a National Registration Identity Card by the Registration Bureau where I had been sent by the Labour exchange. At the labour Exchange I was then given an Unemployment Card and sent to work for COSTAINE's Limited, Contracting Firm from Liverpool, at the present time at work on a Naval Barracks at Southport.

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I stayed at this job until the Registration Bureau made enquiries and not being satisfied, called in the civil police who made further inquiries and discovered that I was an absentee. On the 9th July 41, at about 18.00 hrs. I was arrested and held for the arrival of the escort from the Canadian Provost Corps.

This Statement has been read over to me and it is true.

Witness to Signature..H.L. Ayre CSM Signature..Geo. Roberts.....

D.A.P.M.
CANADIAN MILITARY POLICE
LONDON AREA

Descriptive Return of § George Roberts who was apprehended at Southport at (hour) 12.35pm on the 26th day of July, and was committed to confinement at Southport on the 26 day of July as a ~~Deserter (or~~ Absentee without leave) from the ~~Unit of the~~ 1st Canadian Holding Unit ~~Regiment of~~

Age 24 Height 5 feet 5 inches.
Complexion fresh Hair brown. Eyes grey.
Marks — In uniform or plain clothes plain clothes

Probable date and place of attestation.	—
Probable date of desertion or beginning of absence and from what place.	25th July 1941.
Name, occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured.	Detective Constable III Wright. Central Police Office. Southport.
Particulars in the evidence on which the Prisoner is committed, and showing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.	* On information received the defendant was arrested at 12.35pm on the 26th July 1941 ~~to~~ at 18, Hall St, Southport

I do hereby Certify that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he † is an absentee without leave from the before mentioned Corps.

Harold Brodrick Signature of Committing Magistrate.
The Law Courts Residence
Southport Post Town
28th July 1941 Date of Signature.
Geo. Roberts. Signature of Prisoner.
[illegible] Signature of Informant.

Or, where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming.

I hereby certify that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the day of for the purpose of obtaining such evidence.

Signature of Magistrate.
Residence
Post Town
Date of Signature.

§ Care should be taken to insert Regtl. No. and rank.
* It is important for the public Service, and for the interest of the Deserter or Absentee without leave, that this part of the Return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.
† Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs," or "does not belong to," as the case may be

Army Form O. 1618.

PART II.

This portion of the Form to be detached, after the Magistrate has committed the soldier and completed the recommendation as to reward, and handed by the Clerk of the Court to the Police, who will add overleaf a statement of any expenses incurred by them and despatch it as there directed.

Apprehension of No. of
Regiment at on by
who was committed as a Deserter (or Absentee without leave) on the

RECOMMENDATION FOR REWARD.

I recommend*

Address

for a reward of

Signature of Committing Magistrate.

Date.

* The Magistrate will insert the name and address (in full) of the person for whom the reward is recommended, and the amount (5/-, 10/-, 15/-, or 20/-) which in his opinion should be granted in this particular case, having regard to the following rules:—

1. When soldiers are apprehended in uniform near their quarters it is considered that as a general rule 5/- is a sufficient reward. Not more than 10/- will be allowed in any case where the soldiers were in uniform.

2. When soldiers are apprehended in plain clothes, at a distance from their units, and after having been absent for some time the reward may be increased to 10/- to 15/- according to the nature of the cases and the trouble incurred in apprehension. A reward in excess of 15/- will seldom be granted.

3. The reward of 20/- should be strictly reserved for cases where superior intelligence has been displayed in apprehending men in plain clothes, or under difficult or exceptional circumstances.

Rewards and expenses attendant upon apprehensions will be paid by the Command Paymaster of the Command or District in which the Deserter or Absentee is apprehended.

The following Statement of expenses (if any) incurred by the Police and chargeable to Army Funds should be certified by a Superintendent or officer in charge of a station and forwarded to the General Officer Commanding-in-Chief the Command or General Officer Commanding District in which the arrest was effected.

No expenses incurred in conveying a Deserter or Absentee from the Court to prison should be charged to Army funds. Such expenses can be included in the claim made on the Prison Commissioners.

The total amount allowed on account of expenses before committal will not together with the reward exceed 40/-.

I certify that the following expenses were incurred by the _____

Police in connection with the apprehension of _____

_____ and are

payable to _____

Date _____ { Superintendent or Officer i/c Police Station at

(For Army use only.)

AUTHORITY for the PAYMENT of a REWARD.

The Command Paymaster _____ is hereby authorized to pay to _____ being the person recommended by the Committing Magistrate, a reward of _____ for the apprehension of _____

Date _____ General Officer, Commanding District or Command.

Where no reward is authorized though one was recommended by the Magistrate, or where the reward authorized is less than that recommended, a brief explanation will be given below.

IMMEDIATE.

Army Form O. 1618.

PART I.

DESCRIPTIVE RETURN of a Deserter or Absentee without Leave.

INSTRUCTIONS FOR THE GUIDANCE OF MAGISTRATES.

(1) When a man is apprehended by the Civil Power as an absentee without leave, or as a deserter, if the information tendered leaves no doubt in the mind of the Magistrate that the prisoner is a soldier, Part I. of this return should be filled up and forwarded by post by the Clerk to the Justices to the General Officer Commanding-in-Chief the Command or the General Officer Commanding the District in which the arrest was effected. (*See list below.*)

(2) Where the unit, to which a defaulting soldier belongs, is in the neighbourhood of the place in which he is detained in police custody, arrangements for the provision of an escort may be made by the Police direct with the officer commanding the unit. In this case Part I. of this return should be given to the Police to hand to the escort on arrival.

(3) To avoid delay a telegram stating the Number, Rank, Name, Unit and Place from which the soldier is absent should be sent by the Police as soon as the man is committed to the General Officer Commanding to whom this form is to be despatched.

(4) Any recommendation for a reward should be made on Part II. of this return, which, when completed, will be forwarded by the Police to the proper quarter.

(5) The Court fees chargeable for Descriptive Returns should be claimed periodically from the Command Paymaster of the Command in which the Court is situated.

LIST OF COMMANDS AND DISTRICTS.

Aldershot Command	G.O.C. in C., Aldershot Command, Aldershot.
Eastern Command	G.O.C. in C., Eastern Command, 59, Pall Mall, S.W.1.
Irish Command	G.O.C. in C., the Forces in Ireland, Parkgate, Dublin.
Northern Command	G.O.C. in C., Northern Command, York.
Scottish Command	G.O.C. in C., Scottish Command, Edinburgh.
Southern Command	G.O.C. in C., Southern Command, Salisbury.
Western Command	G.O.C. in C., Western Command, Chester.
London District	G.O.C., London District, 11, Carlton House Terrace, S.W.1.
Jersey	G.O.C., Jersey District, Jersey.
Guernsey and Alderney	G.O.C., Guernsey and Alderney District, Guernsey.

The following modifications to the above list will be observed :—

In the case of Canadian soldiers	information regarding their apprehension will be sent to :—
	A.P.M., Canadians, London, 103, Oxford Street, W.1. Telegraph: "Canarkian Ox London." Tel.: Museum 3513, 3510.
" Australian (except Southern Command) ...	A.P.M., A.I.F., London, 58, Warwick Square, S.W.1. (Telegraph: "Apmansira, London." Telephone: Victoria 8906.)
" " Southern Command ...	A.P.M., A.I.F., Bhurtpore Barracks, Tidworth (Tel.: "Provost, Salaustra, Tidworth." Tel.: 103 Tidworth.)
" New Zealand	A.P.M., New Zealand Imperial Force, 30, Chester Square, London, S.W.1. (Telegraph: "Zeaprosal." Telephone: Victoria 1012.)
" South African	Staff Officer, South Africans, London, 65, Victoria Street, S.W.1. (Telegraph: "Safiron." Telephone: Victoria 4011.)
" Royal Marines	Adjutant-General, R.M., Admiralty, 35, Spring Gardens, London, S.W.1. (Telegraph: Royal Marines, London.) (Telephone: Admiralty 420.)

N.B.—Part I. of this return will be given to the Escorts in the case of Canadian Soldiers, Australian Soldiers within and outside the Metropolitan Area, New Zealand and South African Soldiers and the Royal Marines, and Part II. sent direct to the A.P.M. or Staff Officer concerned as above.

NOTE.—In cases of doubt as to the Command concerned, application should be made to the nearest Assistant-Provost Marshal.

(8 65 78) W1798—P1053 100,000 5/18 HWV(hhM1223)

[illegible] 539

Regt.No: A-4044.

Rank: Pte.

Name: Roberts G.

Regt: NO.1.Inf.Hold Unit.

Unit:

The following expenses were incurred in apprehending and returning the m/n soldier to his unit from South Port.

DATE	PARTICULARS	AMOUNT		
	Escorts return fare from LONDON to SOUTH PORT.	1£	12s	6d
	Prisoners single fare to London from SOUTHPORT.		16s	6d
	Prisoners single fare from London to			
	Escorts expense for bed, meals, bus fares and meals for the prisoners.		14s	3
	TOTAL -- £	2	3s	3d

I certify that the above statement of expenses is correct and that the amounts are fair and just.

M. C. Byers, Lieut. ~~Capt.~~

(W. Hey [illegible] Good) ~~CAPT.~~

for O.C. No. 6 COMPANY,
CANADIAN PROVOST CORPS.

NOTE.

No reimbursement for this account is to be sent to our office from your goodself, as the amount has been paid from petty cash and charged to Public Funds.

If the accused is found guilty a stoppage of pay should be put through your units Part II Orders.

21st July, 1941.

DEFICIENCY LIST OF KIT

of

A-4044 Pte. Roberts, G.

		£	s.	d.	
Anklets,web, prs.	1	0	4	4	
Badges,shoulder, prs.	3	0	1	10½	
Battle Dress,blouse.	2	2	5	0	
" " ,trousers.	2	2	1	0	
Boots,ankle,prs.	1	1	1	6	
Cap, comforter.	1	0	1	8	
" , field service.	1	0	2	5	
Greatcoat.	1	2	8	6	
Dressing, first field.	1	0	1	1	
Gloves,woollen,prs.	1	0	1	11	
Jacket, sweater.	1	0	6	8	
Knife,clasp & Lanyard.	1	0	3	5	
~~Shoes, canvas,prs.~~	~~1~~	~~0~~	~~3~~	~~7~~	NRS.
Helmets, steel.	1	0	7	0	
TOTAL		~~0 9 10½~~			NRS.
		£9.6.4½			NRS.

I hereby certify that this is a correct statement of deficiencies of the above mentioned soldier on checking his kit with his M.F.C.300 Sheets.

A-34045 ~~W.R. Spoone~~ C.Q.M.S.
H.Q.Coy. No.1, C.I.H.U.

MEDICAL OFFICER'S CERTIFICATE

I certify that this day I have examined No. A-4044,
Pte. Roberts, G. , and find him fit to stand trial by
Court-Martial.

7th Aug. 1941,
Witley, Surrey,

.....Capt.
Medical Officer,
No. 1 Cdn. Inf. Holding Unit

WAIVER

I, No. A-4044 Pte. Roberts, C. (R.C.R.)
No. 1 Canadian Infantry Holding Unit, having full knowledge that, under Rule of Procedure No. 89, I am entitled to seven days' notice of my trial if the officer prosecuting has legal experience,

HEREBY WAIVE MY SAID RIGHTS.

Geo. Roberts.....

STATEMENT BY DEFENDING OFFICER

I, No. A-4044 Pte. Roberts, C. (R.C.R.)
No. 1 Canadian Infantry Holding Unit, desire to have an officer assigned by the Convening Officer to represent me at my trial by Court-Martial.

I desire the services of Lieut. Maxted (R.C.R.)
if he is available.

Geo. Roberts.....

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Algonquin Camp on the 9th day of April 19 41, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. A-4044 Pte. Roberts, G.M. (H.Q. Coy)

DECLARATION.

The Court declare that A-4044 Pte. Roberts, G.M., illegally absented himself without leave from 1350 hrs. on 19 Feb. 41 and that he is still so absent, and that on 19 Feb.41 he was deficient and that he is still deficient of the following articles of kit:

	£	s	d
Badges, shoulder 1			7½
B.D. Blouses 2	2	5	0
" Trousers 2	2	1	0
Boots, ankle 2	2	5	
Braces, prs. 1	0	1	6
Brasses, button 1	0	1	2
Brushes, boot blkg 1	0	1	2
" polish 1	0	2	1
" shaving 1	0	1	2
" tooth 1	0	0	5
Cap comforter 1	0	1	8
" field service 1	0	2	5
Greatcoat 1	2	8	6
Comb, hair 1	0	0	2
Drawers, woollen 2	0	15	6
Dressing, F.F.1	0	1	1
Gloves, woolen prs.	0	1	11
Housewives 1	0	0	7
Jacket Sweater 1	0	8	6

	£	s	d
Knife, clasp & lanyard 1	0	2	11
Overalls, blouse denim 1	0	12	9
Trousers, denim prs 1	0	11	9
Shirts, flannel, Khaki 2	1	0	0
" woollen 2	0	15	6
Shoes, canvas, prs. 1	0	2	3
Socks, prs. 2	0	3	10
Towels, hand 1	0	1	6
Helmets, steel 1	0	7	0
Resp. complete 1	0	16	6½
Outfit, A.D. 1	0	0	2½
Eyeshields 6	0	2	3
Ointment, Gas 2	0	1	7
Detectors 2	0	0	6
	£16	3	3½

Names of President and Members

President -- Capt. M.C. Upper (R.W.L.I.)
Members -- Lieut. G.C. Dalton (C.G.R.)
Lieut. J.W. McCann (48th Hrs.)

Signature of Commanding Officer "L.W.W. Slack" Lt-Col.
CERTIFIED TRUE COPY. L.W.W. Slack, Officer Cmdg.
No. 1 Cdn. Inf. Wold. Unit

E.J. Richmond Lieut
Signature of Officer having custody of the Original Record.

(12241) W1.54318/1628 75,000 10/39 A.A.E.W.Ltd. Gp.698
(12443) W.L.81/730/760 250,000 1/40 " " Forms/B115/56

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
E.J.R.				

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7th day of August, 1941

E.J. Rider
(E.J. Rider) Officer i/c Records
No. 1 Cdn. Inf. Hold. Unit

Lieut

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

A-4044 Pte. Roberts, G. of the Royal Canadian Regt. No. 1 CIHU

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be appeared to the proceedings.

Dep. Fact. 861, U.R. 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTIONS.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	*Within last 12 months.		*Since Enlistment.	
For Absence without Leave	2	times	2	times
For Con. to the prej.	1	times	2	times
For Failing to appear at a place of parade	0	times	1	times
For		times		times

Number of instances of gallantry or distinguished conduct, nil

or,

~~There are no entries in the Conduct sheets of the accused.~~ E.J.R.

2. The accused has not been previously convicted,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Wt. 42648,664 50,000 2/40 W. S. Ltd. 11—1004

3. ~~The accused is not under sentence at the present time.~~ E.J.R.

or,

~~The accused at the present time is under sentence for~~ E.J.R.
beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges

for 2 days in Civil Custody,

and 10 days in Military Custody.

Total 12 days.

Of which no days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper E.J.R. is 23

6. The date of his ~~enlistment~~ attestation ~~as~~ specified in his ~~record of service~~ attestation paper E.J.R. is 30 Sept. 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 22 months

8. The accused is entitled to deferred pay or gratuity in respect of 22 months ~~xxxx~~ E.J.R. service.

9. The accused is entitled to reckon 22 mos ~~xxxx~~ E.J.R. service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward ~~or is in possession of or entitled to~~ E.J.R.

E.J.R. 11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or corps or department*) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion.
In the rank of	years,	
In the rank of	years,	
In the rank of	years,	E.J.R.

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name A-4044 Pte. Roberts, G. of the Royal Canadian Sgt. No. 1 Cdn. Inf. Hold. Unit

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted*

Descriptions of Court by which tried, or stating that Officer dispensing of the charge so dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority	Punishment remitted
		NIL		

(Continued overleaf.

No. A-4044 Name Roberts, G. Sqn., Battery or Company "A" Corps Royal Canadian Regiment Date of enlistment 30-9-39 G.C. Badges Service or Proficiency Pay M.F.M. 6

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. "H.M. Logan" Character Maj.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Previous Barrosa Bks.	sheet 1 Apr. 40	destroyed Pte.		30 Mar. 40 "E.W.H.B." Failing to appear at place of parade appointed by his commanding Officer. (Sec 15(2))	CSM (WOII) Bingham, P.R.	7 days C.B.	2 Apr. 40	E.W.H. Berwick Lieut.	"E.W.H.B."
Mychett	7 May 40	Pte.		When on active Service improperly in possession of public property in that he on 7 May 40 was improperly in possession of Company Office's truck.	CSM Bingham, P.R.	7 days C.B.	10 May 40	E.W.H. Berwick Capt.	"E.W.H.B."
Bordon Hants	Nov 14 Oct 6	Cpl		Conduct to the prejudice of good order etc. Accepted money on loan from prisoners in his charge.	Sgt. Rowen Pte. Smith, G. Pte. Ridgeway, J. Pte. Cowat, G.F.	Reduced to Pte.	26-11-40	Lt.-Col. L.W.W. Slack	"D.I."

E.J.R.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Witley Surrey	31-1-41	Pte.		A.W.L. from 2200 hrs. 31-1-41 to 0600 hrs. 1-2-41. A.A. Sec. 15(1)	Cpl.Runion		1-2-41	Lt-Col Slack	Forf 1 days pay FRI "D.I
Witley	14-2-41	Pte.		A.W.L. from 1130 hours 1-2-41 to 1500 hours 14-2-41. A.A. Sec.15(1)	Cpl. Cowin	28 dys detn.	15-2-41	Lt-Col. Slack	Forf.14 dys pay FRI. forf 28 dys pay in detn. Total 42 days pay. "D.I."

Certified Copy of W.P.W.6.

Witley, Surrey
26 July, 1941

E.J. Rider
(E.J. Rider) Officer i/c Records
No.1 Cdn. Inf. Hold. Unit

36-b. L/Sgt Roberts. S.B. 10/R/261
S.S.R.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this Seventh day of March, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 2 Canadian Division, Canadian Army (Active), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer;~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

~~*I am unable to appoint:—~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~*(3. Three Officers having more than one year's service.)~~

~~for the following reasons, namely:—]~~

Major A.E. Embury, C.M.H.Q. IS HEREBY APPOINTED JUDGE-ADVOCATE

President.

Rank.	Name.	Regiment.
MAJOR	J.M. TAYLOR	CALG. HIGHLANDERS

Members.

Rank.	Name.	Regiment.
MAJOR	B.J.S. MacDONALD	ESSEX SCOTTISH
CAPT.	L.H. SMITH	R.C.A.S.C. 2 CDN. DIV
*LIEUT.	J.D. HARRISON	4 CDN. FD. REGT.
*(Waiting Member)		

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed (V.W. ODLUM) MAJOR-GENERAL
Commanding 2 CANADIAN DIVISION
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
L 12250 Cpl.(L/Sgt) Geoffrey Bamford Roberts, S.S.R., Canadian Army (Active)	FIRST CHARGE A.A.41 Committing a civil offence, namely indecent assault on a male person (See charge sheet attached)	Not guilty		
	In the alternative SECOND CHARGE A.A.18(5) W.O.A.S. Disgraceful conduct of an indecent kind (See charge sheet attached)	Not guilty		
	THIRD CHARGE A.A.41 Committing a civil offence, namely gross indecency (See charge sheet attached)	Not guilty		
	In the alternative FOURTH CHARGE A.A. 18(5) W.O.A.S. Disgraceful conduct of an indecent kind (See charge sheet attached)	Not guilty		

The Court finds the accused not guilty on all charges.

J. M. Taylor Brig. President

A. W. Lindsay Maj. Judge Advocate

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) (V.W. Odlum) MAJOR-GENERAL
Commanding 2 Canadian Division
Convening Officer (e)

(Signed) J. M. Taylor Brig
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10th day of March 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 10th day of May 1941.

J. M. Taylor Brig
President of the Court Martial.

A. W. Lindsay Maj
Judge Advocate

C. Certificate in case of death sentence.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this day of 19

Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(43220) Wt. 46443—993 200 M. 12/40 P. St. G. 720

CHARGE SHEET

The accused, No. L12250, Cpl. (L/Sgt.) Geoffrey Bamford Roberts, of the South Saskatchewan Regiment, a soldier of the Canadian Army, is charged with:

WHEN ON ACTIVE SERVICE

FIRST CHARGE
A.A. Sec. 41

Committing a civil offence, that is to say, indecently assaulted a male person, contrary to Section 62 of the Offences against the Persons Act, 1861.

in that he

at Cove, Hants, on or about 16 Jan 41 indecently assaulted B25192, Spr. Gibbs, C. W. L., a male person

IN THE ALTERNATIVE

SECOND CHARGE
A.A. Sec. 15(c)

The said accused is charged with, When on Active Service, disgraceful conduct of an indecent kind,

in that he

at Morval Barracks, Cove, Hants, while acting as Sergeant of the Guard, did, between the hours of 2300 hours 16 Jan 41 and 0400 hours 17 Jan 41, enter the cell of B25192, Spr. Gibbs, C.W.L. and took hold of the testicles of Spr. Gibbs, and endeavoured to persuade Spr. Gibbs to allow him to take his penis in his mouth for perverted sexual pleasure.

THIRD CHARGE
A.A.Sec. 41

The said accused is charged with, When on Active Service, committing a civil offence, that is to say, gross indecency, contrary to Sec. 11 of the Criminal Law Amendment Act, 1885,

in that he

at Cove, Hants, on or about 16 Jan 41, being a male person, attempted to procure an act of gross indecency with L-12722, Pte. Barrett, P. P., a male person

IN THE ALTERNATIVE

FOURTH CHARGE
A A Sec. 15(c)

The said accused is charged with, When on Active Service, Disgraceful conduct of an indecent kind, in that he at Morval Barracks, Cove, Hants, while acting as Sergeant of the Guard, did, between the hours of 2300 hours 16 Jan 41 and 0400 hours 17 Jan 41, enter the cell of L12722, Pte. Barrett, P. P., S. Sask. R., on four occasions and on two of these visits did stroke the throat of L12722, Pte. Barrett, P. P., and he did endeavour to persuade L12722, Pte. Barrett, P. P. to allow him to take his penis in his mouth for perverted sexual pleasure.

Acting Commanding, South Saskatchewan Regt., Canadian Army.

TO BE TRIED BY F.G.C.M.

Dated at Aldershot, Hants,
this 7th day of ~~February~~ March, 1941.

Major-General
Comdg. 1 Cdn. Div.

Proceedings in the case of
No.L.12250 L/Sergt. ROBERTS, Geoffrey Bamford.
Sth. Sask. R., (C.A.)

Held at Cove, Hants. 10 MAR. 41.

Prosecuting Officer - Major H.F. Lazier, R.H.L.I.

Defending Counsel - ~~Mr. Max Turk~~ Laurence Vine London
Mr. ~~Lorne~~ Vine,
~~Solicitors, Farnborough,~~ Hants.

Solicitors for the accused - Max Turk Farnborough

Court assembled at 1030 Hours.

Judge Advocate raised the point as to whether Civilian Counsel was permitted to act at a Field General Court Martial and after discussion and consultation with the Civilian Counsel it was decided to ask for a Ruling from the G.O.C. and the Court adjourned until 1330 hours for that purpose.

Court re-assembled at 1330 hours.

The Court satisfied themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

The Convening Order is read by the President, and Marked "A"

Q.1. Do you object to tried by me as President or by any of the Officers whose names you have heard read over?

A.1. No Sir.

Q.2. Do you object to a Shorhand Writer taking the proceedings?

A.2. No Sir.

President and Members and Shorthand Writer duly sworn.

Charge Sheet is read by the President and marked "B.2."

Q.3. Are you Guilty or Not Guilty of the First charge against you which you have heard read?

A.3. Not Guilty Sir.

Q.4. Are you Guilty or Not Guilty of the Second Charge against you which you have heard read?

A.4. Not Guilty Sir.

Q.5. Are you Guilty or Not Guilty of the Third Charge against you which you have heard read?

A.5. Not Guilty Sir.

Q.6. Are you Guilty or Not Guilty of the Fourth Charge against you which you have heard read?

A.6. Not Guilty Sir.

Q.7. Do you wish to apply for an adjournment on the Ground that any of the Rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A.7. No Sir.

Pros: Mr. President and Members of the Court there are four charges against the accused but two are in the alternative, that is the accused can only be found Guilty on two of the charges.
The evidence will be that while the prisoners, Sapper Gibbs, Sapper Last and Private Barrett were in the Cells the accused entered the cell of Gibbs and asked him to let him "Suck him off", and also attempted to force Gibbs to agree to this by getting hold of his testicles. The Second two charges are similar to the First and will show that he entered the cell of Private Barrett and made a proposal to Barrett with precisely the same words used in the case of Gibbs and in addition stroked the throat of Barrett and it will be shown that it was the accused who was Sergeant of the Guard who entered the cells on that night.
In addition to the Witnesses mentioned I proposed to to call the Corporal of the Guard who is not shown on the Summary of Evidence, but I have advised the Counsel for the accused and understand there is no objection.

1st. WITNESS Lieut. G.W. Mason, S. Sak. R. having been duly sworn is examined by the prosecutor.

Q.8. What is you Name, rank and Unit?
A.8. G.W. Mason, Lieut. South Sask. Rangers.
Q.9. And you were with that Unit on 16th. and 17th. January 1941?
A.9. Yes Sir.
Q.10. In what capacity?
A.10 Asstistant Adjutant, Sir.
Q.11. Do you identify this document here?
A.11 Yes. that is the Battalion orders I signed for the 16th. January (EX.P.1.)
Q.12. Does that mention the accused Sergeant Roberts?
A.12. Yes Sergeant of the Guard.
Q.13. When for?
A.13 17th. January.
Q.14. When did that commence?
A.14. On the evening of the 16th. until the evening of the 17th.
Q.15. From what time?
A.15. I think they have changed the time to 1900 hours.
Q.16. Will you tell the Court what this document is?
A.16. That is the Guard report showing members of the Guard. (EX.P.2.)
Q.17. What period does that cover?
A.17 The period for which he was Commander of the Guard 1900 hours on the 16th. until 1900 hours the 17th.

Def: I have a Plan in more detail of the Guard Room, if it will help you.

Pros: Q.18. Can you identify that plan, (EX.P.3.)
A.18 Yes Sir, that is a plam of the Guard Detention Room.
Q.19 Do you know what cells were occupied on the night of Jan. 16th. - 17th.?
A.19 Two men in No.1. Cell, Gibbs and Last. Barrett in No.2. and Poroznok was in No.3.
Q.20 And where was Bassett? and Hearn?
A.20 In the one marked Detention Room.
Q.21 Do you know where Private Poroznok is?
A.21 Yes in Birmingham, Sir.
Q.22 Do you know where Pte. Hearn is?
A.22 No I do not know.

Defence no questions.

2nd. WITNESS No.B.25192 Sapper Gibbs C.W.L. 2 Field Coy. R.C.E. having been duly sworn is examined by the Prosecutor.

Q.23 What is your Number, rank and name?
A.23 No.B.25192 Sapper Gibbs, C.W.L.
Q.24 And your Unit?
A.24 2 Field Coy. Royal Canadian Engineers.
Q.25 Were you with that Unit on 16th. and 17th. January this year.
A.25 No Sir I was in Detention.
Q.26 What for?
A.26 A.W.L.
Q.27 Had you been sentenced?
A.27 Yes Sir.
Q.28. Will you tell the Court what happened on the night of 16th - 17th. January.
A.28 On January 16th. I was in No.1. Cell, S.S.N. Guard Room and went to bed, Sapper Last was in the same cell, my bed was on the right hand side of the door. We had both gone to bed and were lying awake and about one thirty at night the lights went on and Sergeant Roberts came in. Sapper Last asked him what time it was and he said about one o'clock and he came in between the two beds and offered me a cigarette and put his arm over my left shoulder and lit my cigarette and asked me if I wanted to have a good time and I said No, and he put his hand under the blankets and took hold of my testicles and he tried to coax me and I said no, and he gave them a squeeze, and then said that he would be back in twenty minutes and that I was to be ready to move to the big Detention Room where we could have a good time. As he was going out he said something about washing off the walls, and he then went along the corridor and we heard him go into No.2. Cell and then into No.3. Cell. Shortly after this we heard footsteps coming along the corridor again and pass our cell. About half an hour later I turned and faced the wall and tried to go to sleep and Sergeant Roberts came again over to my bed and sat down on it and rubbed my face I pretended I was asleep and he then twisted my ear and told me to wake up, and I told him to go away and leave me alone. Then Sapper Last told him to leave me alone and get to hell out, and Sergeant Roberts went out and locked the door and we then heard No.2. cell being unlocked again and then I think he went to No.3. Cell and went he came

down the corridor Sapper Last shouted out to him to put out our lights and after that I went to sleep. Sometime later, I do not know how long, I awoke and found Roberts sitting on my knees and I told him to get out and let me go to sleep.

Q.29 You were both in the same cell?
A.29 Yes Sir.
Q.30 And as Roberts came in you were in the bed on his right?
A.30 Yes Sir.
Q.31 And he came in between the beds?
A.31 Yes Sir, and Sapper Last asked him what time it was and he said one o'clock and he gave us a cigarette.
Q.32 Which hand did he have on your left shoulder?
A.32 His Right hand.
Q.33 And which one under the cover?
A.33 The left one.
Q.34 At any other time did you ask what time it was?
A.34 No Sir.
Q.35 Did you have any means of telling what time it was?
A.35 No Sir,
Q.36 And when Sergeant Roberts used this phrase what did you think it was?
A.36 I thought it was to take my penis in his mouth.
Q.37 You have no idea what time it was?
A.37 No Sir.
Q.38 What time did the Military Police come?
A.38 About eight in the morning.
Q.39 Was that the first time?
A.39 The first time.
Q.40 And what did you say?
A.40 I told them I wanted to make a complaint against Sergeant Roberts.

Witness cross-examined by the Defence Counsel.

Q.41 How long elapsed between the first and second visit?
A.41 About half an hour.
Q.42 Is there a bell in the room where you were sleeping?
A.42 Yes Sir.
Q.43 Did you ring it?
A.43 No Sir.
Q.44 You say that when he visited you, he got hold of your testicles? Q.44 Yes Sir.
Q.45 And then he left you, what was to prevent you pulling that bell?
A.45 No answer.
Q.46 If your story is true, you say that Sergeant Roberts came in the first time and then left you for half an hour, why did you not ring the bell?
A.46 Sergeant Roberts was Commander of the Guard?
Q.47 There was a Corporal, why not report it to him? and there were other men there too?
A.47 I do not know how many were there.
Q.48 Between the first and second visit you did nothing?
A.48 I tried to get some sleep
Q.49 And yet you never reported it either to the Corporal of the Guard or anyone else?
A.49 No Sir.

Q.50 What was the earliest time you reported it?
A.50 Approximately 8 'oclock.
Q.51 The next morning?
A.51 Yes Sir.
Q.52. The last and third visit tha t Sergeant Roberts made when did that happen?
A.52 I could not say, it was after midnight.
Q.53 Several hours before 8 o'clock?
A.53 I cannot say Sir.
Q.54 Did you mention it to anyone before that?
A.54 I could'nt.
Q.55 You saw others you could have complained to? Did you go to the Lavatory?
A.55 Yes Sir.
Q.56 What was the time you made your complaint?
A.56 Approximately 8 o'clock.
Q.57 And before 8 o'clock you were taken for breakfast?
A.57 Yes Sir.
Q.58 And when you made the complaint was Last and Barrett with you?
A.58 Yes Sir.
Q.59 Did you make some notes about these things?
A.59 No Sir. I wrote the note for the Lieut. to read?
Q.60 Did Barrett read it?
A.60 No Sir.
Q.61 Did Last read it?
A.61 No Sir.
Q.62 How long elapsed between the 2nd. & third visit of Roberts?
A.62 I do not know.
Q.63 Had you had any trouble at all?
A.63 No Sir.
Q.64 Did he not tell you before - the day before, that you would have to clean out the cell?
Q.65 Did he tell you something about some drawings on the wall?
A.65 Yes Sir.
Q.66 I suggest to you that all three of you were annoyed with him about that?
A.66 No Sir.
Q.67 Were you on what you might term friendly terms with Sergeant Roberts?
A.67 That was only the second time I saw him.
Q.68 You yourself have had quite a criminal career?
A.68 No answer.
Q.69 Well I have the record here, I will just read it and you can say if it is right or not?

1928 Nov.22 Suspended Sentence for Carrying Concealed Weapons.

1928 Dec.2 9 to 12 months for theft

1931 Mar.10 30 days for Vagrancy

1932 Feb.12 Regina 10 days. for vagrancy.

1933 Oct.19 One to two years for theft.
1933 Port Hope One Year for theft

1933 Dec.20 Mimico Six months for Burglary.
1933 Sep.3 Toronto Possession of Burglars Tools
1939 Sep.8 do Breaking of traffic Act.

1939 Sep.12 do Breaking and Entering

Q.69 And you are in Detention for Absence without leave 35 days detention?
A.69 Yes Sir.
Q.70 And 100 days pay?
A.70 Yes Sir.
Q.71 You mention that he gave you a cigarette?
A.71 Yes Sir.
Q.72 When you gave evidence before did you say an Export cigarette?
A.72 Yes Sir.
Q.73 Do you say that to-day?
A.73 Yes Sir.
Q.74 Did you know there was a bell in your room?
A.74 Yes Sir.
Q.75 And as far as you know it was working?
A.75 Yes Sir.
Q.76 Was the Sergeant rather strict as to discipline?
A.76 No Sir.
Q.77 Will you swear that you did not compare your notes with the others?
A.77 Yes Sir.
Q.78 You said at the Summary of Evidence,"I then let a bellow out of me", what did you mean?
A.78 I yelled.
Q.79 People in the next cell hear it?
A.79 Yes Sir if there were any people.
Q.80 People in the detention room?
A.80 No Sir.
Q.81 You did not say anything to anyone outside until you complained to the Military Police?
A.81 No Sir.
Q.82 How many people had you seen, after getting up, before you complained?
A.82 Some in the Guard Room.
Q.83 How many,
A.83 I could not say.
Q.84 Had you seen a dozen?
A.84 I would not say that.
Q.85 Half a dozen?
A.85 There might have been that?

Witness re-examined by the Prosecution.

Q.86 Have you never used this bell?
A.86 No Sir. It has been pushed for the fun of it!

Def: Q.87 I suggest that Sergeant Roberts did'nt go into your cell at all that night?
A.87 He did.

Pros: Q.88 You do not know whose duty it is to answer the bell?
A.88 No Sir.
Q.89 On what side were you lying when he first went into your cell?
A.89 On my left.
Q.90 How were you dressed?
A.90 in my underwear?
Q.91 Combinations?
A.91 No Sir, Shirt and drawers.

2nd
~~3rd~~. WITNESS No.A.20106 Sapper Last. R. 11th.Field Coy. R.C.E. having been duly sworn is examined by the prosecutor.

Q.92 What is your number rank and name?
A.92 No.A.20106 Sapper Last R.
Q.93 And your Unit.
A.93 11th. Field Coy. R.C.E.
Q.94 You re-call very well the 16th. 17th. January 41
A.94 Yes Sir.
Q.95 Where were you at that time?
A.95 In No.1. Cell S.S.R. Guard Room?
Q.96 What were you there for?
A.96 A.W.L. 28 days detention.
Q.97 You had been sentenced?
A.97 Yes Sir.
Q.98 Will you tell the court what happened?
A.98 Well I was sleeping and I was awakened by the key going into the door.
Q.99 Who was in there with you?
A.99 Sapper Gibbs, and I woke up when the Sergeant came in and I asked him what time it was.
Q.100 Were the lights on?
A.100 Yes Sir. He came in and sat on Sapper Gibbs bed I asked him if he would go out and he said something about the walls and said we had to clean them and he went out and went to No.2. cell and after two or three minutes he came out and went along the corridor and then we heard him go to No.3. cell and went he came out of there he came back to our cell.
Q.101 How long elapsed?
A.101 I could not say, five or ten minutes and he came again.
Q.102 Into your cell?
A.102 Yes Sir, I was lying down and could not hear what he was saying and I asked him to go out and turn the lights, out and then he was sitting in the chair and he put his hand on my forehead and then he sat on my bed and I asked him again to go out and then he went down to No.3. cell, and as he was passing out cell I told him to get to hell out
Q.103 Did you have any way of telling the time?
A.103 No Sir.
Q.104 You were trying to see what he was doing?
A.104 Yes Sir but I could only see one hand.
Q.105 Which one?
A.105 His right hand.
Q.106 His right arm across Gibb's body?
A.106 Yes Sir
Q.107 You could not see his other hand at all?
A.107 No Sir.

Witness cross-examined by the Defence

Q.108 Did you have any trouble with Sergeant Roberts at All?
A.108 No Sir.
Q.109 Had you no trouble on the 4th. and 5th. of January
A.109 No Sir.
Q.110 Did he not tell you about the drawings on the walls?
A.110 No Sir.

Q.111 You say that between the first and second visit something like ten minutes elapsed? it might have been half an hour?
A.111 I do not think so.
Q.112 When you gave evidence before at the Summary you two or three minutes, do you remember that?
A.112 Yes Sir.
Q.113 Now yoy say ten minutes, which is right?
A.113 Two or three minutes.
Did you know there was a bell push in that room?
Q.114
A.114 Yes Sir.
Q.115 If your story is true, why did you not ring it?
A.115 No answer.
Q.116 You know it is untrue and that is why you did not ring it?
A.116 No Sir.
Q.117 The Corporal was out there, is there any reason why you could not have spoken to him?
A.117 No Sir.
Q.118 You did not did you?
A.118 No Sir.
Q.119 And between six and eight o'clock you saw half a dozen people you could have complained to?
A.119 Yes Sir.
Q.120 When did you concock this story?
A.120 We did not.
Q.121 Did you compare notes?
A.121 No Sir.
Q.122 Did you know that he had had some trouble with Gibbs and Barrett?
A.122 No Sir.
Q.123 You have been in trouble before?
A.123 Yes Sir.

Pros: I will read your record.

Petawawa Jun.6. A.W.L.
do Jul.10.A.W.L.

Q.124 Is that right?
A.124 It must be.

Cove Jul.8. A.W.L.
Cove Dec.27 A.W.L.
Jan.31 A.W.L.
Q.125 Is that right?
A.125 Yes Sir.

Q.126 1931 Feby. Deported from the United States to Canada Is that right?
A.126 Yes Sir, but what has this to do with this case?
Q.127 I am just giving the Court the record of your character?
A.127 That is no Crime?
Q.128 Is it correct?
A.128 Yes Sir.
Q.129 You knew about the bell?
A.129 Yes Sir.
Q.130 If you knew about Sergeant Roberts why did you not ring it?
A.130 I do not know.
Q.131 If you did not want to be bothered that night with the bell, you could have shouted out?
A.131 I could have.

Pros: Q.132 Did you use that bell at any time?
A.132 The only time it was used was when we wanted to go to the toilet.
Court: Q.133 You say the Sergeant came into your room after you had been asleep and his hand was on your body, which part of your body was that?
A.133 My forehead, he was sitting on a chair.
Q.134 And did he touch you anywhere else?
A.134 No Sir but he tried to.
Q.135 At eight o'clock the next morning did you complain?
A.135 No Sir, I said nothing.
Q.136 Did you hear anyone else complain?
A.136 No Sir.

4th. Witness No.L.12722 Private Barrett, P.P. Sth. Sask. R. having been duly sworn is examined by the Prosecutor.

Q.137 What is your Number rank and name?
A.137 Number L.12722 Private Barrett P.P.
Q.138 And yourUnit?
A.138 South Sak. Rangers. 3rd. Canadian Infantry Holding Unit.
Q.139 What were you with on the 16th. January?
A.139 South. Sask. Rangers.
Q.140 Where were you on that night?
A.140 S.S.R. Guard Room awaiting Court-martial for A.W.L.
Q.140 You remember the night of 16th. 17th. January?
A.141 Yes Sir.
Q.142 Will you tell the Court what happened that night? What cell were you in?
A.142 No.2.
Q.143 Anyone else with you?
A.143 No Sir.
Q.144 Who was in No.3. cell?
A.144 Pte. Poroznok. After we had our supper and were locked up and the lights went out I went to sleep and I was awakened and the lights went on.
Q.145 What time was that?
A.145 About twelve thirty, according to the Sergeant's statement. He walked up to my bed and sat on my bed and he said,"You are very fond of women Barrett" and I said, "Oh I don't know" and then he said, "I have not abused you have I" and then I asked him if it was time to get up and then he sat on my bed. He had one arm this way. (indicating)
Q.146 Was you bed on the right hand side?
A.146 Yes Sir. When he entered he sat on my bed he had one arm over my left shoulder and he asked me how I felt and I said,"I feel sick", and he started stroking my throat and he said "Let us have some fun" and I will Poof you" and I said no, and after a few more minutes he left.
Q.147 After that what?
A.147 He went to Cell No.3.
Q.148 Did he go from No.3. to No.1.?
A.148 There must have been a break because there was a click which shut off the light.
Q.149 And he entered the Guard Room?
A.149 I think he went to No.1. Cell.
Q.150 How long would that be?
A.150 Well when he visited my cell it would be ten or fifteen minutes, that is when he came out of Poroznok's Cell No.3. When he had left I heard the remark, "What did the Sergeant want" and I heard the reply "He tried to suck me off"

Q.151 Did he come back to your cell?
A.151 Yes Sir he sat on my bed and said"Come on it won't take long and I said I am sick and he left my Cell.
Q.152 Did he come back?
A.152 Yes he came back.
Q.153 How long would that be the third time?
A.153 When the third time?
Q.154 Yes, would it be half an hour, one hour?
A.154 About half an hour.
Q.155 What happened when he came back the third time?
A.155 He wakened me up and I said keep out or I will tell the R.S.M. and he looked at me and walked out.
Q.156 Where did he go?
A.156 I do not know, I would not like to say.
Q.157 Did you see him again?
A.157 He tried to enter again the fourth time but he only just opened the door about two feet and walked out.
Q.158 Did you do anything about this?
A.158 I reported it to the R.S.M. the following morning.
Q.159 Was he the first one?
A.159 The M.P. had been told.
Q.160 When would that be?
A.160 About Seven to seven thirty.
Q.161 Had you any means of telling the time?
A.161 I did not sir.
Q.162 What does that expression, "Poof you", mean do you know?
A.162 I think it was "Suck you off".

Witness cross-examined by the Defence.

Q.163 Did you know there was a bell push in your cell?
A.163 Yes Sir.
Q.164 Did you use it?
A.164 No Sir.
Q.165 If your story is true, why did you not use it then?
A.165 No answer.
Q.166 You knew there was a Corporal of the Guard?
A.166 Yes Sir, but Roberts was in charge of the Guard.
Q.167 But you could have called the Corporal?
A.167 I suppose so.
Q.168 And you compared notes?
A.168 I did not.
Q.169 You did not complain to anyone that night?
A.169 No Sir.
Q.170 No you did not complain until several hours afterwards, in fact the next morning?
A.170 I complained to the R.S.M.
Q.171 Yes, you say about Seven thirty, hours afterwards. Have you had some trouble with Sergt. Roberts?
A.171 No Sir.
Q.172 Did you not have some trouble in Canada?
A.172 No Sir.
Q.173 But you escaped there?
A.173 Yes Sir.
Q.174 Did you have trouble in this Camp on the 4th. and 5th. of January of this year?
A.174 No Sir.
Q.175 You have had trouble in this camp on 16th. and 17th. of January, I suggest you had on the 4th. and 5th.?
A.175 Not to my knowledge.
Q.176 You were in cell No.2. by yourself?
A.176 Yes Sir.
Q.177 There was one man next to you in No.3 and two in No.1.?
A.177 Yes Sir.
Q.178 Did you have any communication?
A.178 No.

Q.179 Did you have any communication with anyone after you went to breakfast?
A.179 I did not
Q.180 When was the last time you rang that bell?
A.180 About four days before.
Q.181 Why was that? When you wanted to go to the lavatory?
A.181 Yes Sir.
Q.182 You had had about 6 punishments for Absence without leave?
A.182 I have.
Q.183 And you have had 5 for crime in Canada?
A.183 Yes Sir.
Q.184 1935 April 5, Theft of money, 30 days Hard Labour is that right?
A.185 Yes
Q.185 What is your correct name?
A.185 Zaharek.
Q.186 1936 March 18 Regina A fine or 10 days what was that for?
A.186 Vagrancy.
Q.187 1936, Swift Current, One year for Forgery
A.187 Not Sir I was not sent over, I was put on probation.
Q.188 1936 Regina, Three years,
1939 Regina 12 Months for Forgery, is that right?
A.188 Yes Sir.
Q.189 Can you tell me the nature of the Vagrancy charge?
A.189 I Cannot say.
Now your Military Offenses.

Q.190 30th. Apl. 40 A.W.L. for 15 days
24th. Apl. 40 A.W.L. for 5 days 21 hours.
21st. Jun 40 A.W.L. for 15 days.
1st. Aug 40 Absent from Parade.

A.190 That is a false statement, it is not correct.
Q.191 Well lets us go on?
9th. Aug. 40 Escaping from custody
27th. Aug 40 A.W.L. and losing by Neglect Equipment.
What did you get for that? 60 days?
A.191 I am sorry Sir that is improper I never did sixty days.
Q.192 Well what was it?
A.192 28 days.
Q.193 Did Sergeant Roberts complain to you about indecent drawings on your walls?
A.193 He complained to me but I did not do them.
Q.194 I am asking did he complain?
A.194 Yes Sir.
Q.195 And they seemed to be fresh drawings?
A.195 If I could draw like that I would not be here.

J.A. Answer the question.

Def. Q.196 I am suggesting to you that he complained to you about them?
A.196 Yes Sir.
Q.197 And I suggest to you that Sergeant Roberts did not interfere with you in any way that night?
A.197 I beg to differ Sir.

Court. Q.198 You enlisted under what name?
A.198 Barrett Sir.
Q.199 Not Zaharek?
A.199 No Sir.
Q.200 Why not?
A.200 Because of my record, Sir.

Q.201 And you are now known under that name?
A.201. Yes Sir.
Q.202 You are one and the same person?
A.202 Yes Sir.
Q.203 What is your nationality?
A.203 U kranian.
Q.2 04 Were you a friend of Gibbs of Last in Canada?
A.204 I have not known them.
Q.205 Had you known Sergeant Roberts?
A.205 No Sir.
Q.206 How often had Sergt. Roberts been on Guard?
A.206 I think that was the Second Time.

The accused then asked the following question.

Sir, Might I ask why they have taken all particulars of my A.W.L. There is always a reason and I would like to state my reason.

Conduct sheet examined by the Court.

President: The Court does not think this is revelant.

5th. Witness No.L.12629 Private Bassett G.H., S.S.R. having been duly sworn is examined by the Prosecutor.

Q.207 What is your number rank and name?
A.207 No.L.12629 Private Bassett, G.H.
Q.208 What Unit.
A.208 S.S.R.
Q.209 What Unit were you with on the 16th. & 17th. of January last?
A.209 S.S.R.
Q.210 You remember where you were on the 16th.- 17th. January?
A.210 I was in detention.
Q.211 Where?
A.211 In the Guard Room of the S.S.R.
Q.212 What were you in there for?
A.212 Awaiting trial on three charges.
Q.213 Where abouts in the Guard Room were you sleeping?
A.213 I was Sleeping in the large Guard Room.
Q.214. This is a plan of the Guard Room, EX.P.1. which is the Room?
A.214 In the one marked Detention Room.
Q.215. Is that where your bed was? (Indicating on plan)
A.215 Yes Sir.
Q.216 After you went to bed did you see Sergeant Roberts?
A.216 Yes Sir.I did not know the time and I asked Sergeant Roberts and he told me 12 o'clock.
Q.217 What happened?
A.217 When I woke up he was sitting on my bed and I did not know what it was all about and I had my arms behind my head and he had hold of me under the arm pits and I brought my arms down and he let go, and he asked me, "Do you want to have a good time" and I said, "You had better go out" and he got up and went out, but he came back again that night.

J.A. Q.218 This witness is not on the list?
Pros: A.218 No Sir.

Def. I was just going to call your attention to that Sir, this witness did not give evidence at the enquiry and I have not had any opportunity of looking into his record. I am not anxious to have an adjournment.

Court adjourned for five minutes to consider the admissibility of this witness's evidence.

J.A. Q.219 Do you take the line that you have no objection?
Def. A.219 Yes Sir.

Pros: Prosecutor continued to examine the witness

Q.220 What did you understand Sergeant Roberts to mean by this question to you?
A.220 I did not just know was he meant, but I wanted to go to sleep.

Witness cross-examined by the Defence.

Q.221 Apparently you did not attach much importance to it?
A.221 No Sir.
Q.222 When did you first mention it?
A.222 This morning Sir.
Q.223 That it from the night of January 16-17th to March 10th.?
A.223 I mentioned it this morning?
Q.224 Who to?
A.224 The Prosecutor.
Q.225 Was anyone else in that Detention Room that night, was not Bird in there?
A.225 I do not know
Q.226 You do not know who was in that room during the night?
A.226 I do not know.
Q.227 I suggest to you that Sergeant Roberts did not go into the Detention Room that night?
A.227 He was in that room that night.

Court. Q.228 Bassett, was the light on when Sergeant Roberts came in?
A.228 The light was on.
Q.229 Is that the large Room?
A.229 Yes Sir.
Q.230 Is there any possibility of your being confused as to who was sitting on your bed?
A.230 No Sir.

Def: Q.231 Have you any convictions against you?
A.231 In Army life but not in Civil life.
Q.232 How many?
A.232 one or two.

Def: The next witness did not give evidence at the Summary either but I understand the Defence have no objection.

6th. Witness L.12091 Lance Corporal Muirhead W.J. S.S.R. having been duly sworn is examined by the Prosecutor.

Q.233 What is you Number rank and name?
A.233 Number L.12091 L/C Muirhead W.J.
Q.234 And your Unit?
A.234 S.S.R.
Q.235 Were you with that Unit on the 16th. 17th. Jan. last. ?
A.235 Yes Sir.
Q.236 What were your duties at that particular time?
A.236 I was Corporal of the Guard Sir.
Q.237 What time did you go on duty?
A.237 At seven o'clock Sir.
Q.238 Or 1900 hours?
A.238 Yes Sir.
Q.239 What was Sergeant Roberts?
A.239 Sergeant of the Guard Sir.
Q.240 What time did you go to sleep that night?
A.240 2300 hours Sir.
Q.241 Where?
A.241 In the Guard Room Sir.
Q.242 On which bed?
A.242 On that one marked Corporal's bed, on the plan.
Q.243 Did you go to sleep?
A.243 Not right away Sir.
Q.244 Where was Sergeant Roberts?
A.244 In the Guard Room.
Q.245 Were the lights on?
A.245 Yes Sir.
Q.246 Were they turned off?
A.246 About 11.30 p.m.
Q.247 Who turned them off?
A.247 I could not say who turned them off.
Q.248 Who was up in the Guard Room?
A.248 Everybody was lying down , Sergeant Roberts was the only one up.
Q.249 Did you see Sergeant Roberts moving around at all?
A.249 I never saw him go out.
Q.250 Did you see him go anywhere at all?
A.250 I could not say.
Q.251 If the Sergeant of the Guard leaves the Guard Room does he report it to you?
A.251 Yes Sir.
Q.252 Did he at any time report to you that he was leaving?
A.252 No Sir.
Q.253 What time did you get up again?
A.253 Pretty close to 2 o'clock.
Q.254 Sergeant Roberts in the Guard Room then?
A.254 Yes Sir, he woke me up.
Q.255 Where did he go?
A.255 To lie down.
Q.256 Where?
A.256 On the Sergeant's bed (Indicating on the plan)
Q.257 How long did you stay up then?
A.257 All night Sir.
Q.258 Sergeant Roberts from that time on was sleeping?
A.258 Yes Sir.
Q.259 While you were waking up did you hear anyone in the cell block?
A.259 What time Sir.
Q.260 Well you say he woke you up about 2 o'clock?
A.260 Well I heard the door open and the lights went on
Q.261 What did he do, where did he come from?
A.261 I could not tell whether he was coming in or going out.

Witness Cross-examined by the Defence.

Q.262 Did you see Sergeant Roberts in the bed you mention? at six o'clock in the morning?

A.262 Yes Sir.

Q.263 Did you wake him up?
A.263 Yes Sir.
Q.264 How long had he been here?
A.264 Four hours.
Q.265 Were any other members of the Guard in the Guard Room between those hours?
A.265 There should have been four.
Q.266 You know there is a bell in the Cells?
A.266 Yes Sir.
Q.267 Had you visited the cells during those hours?
A.267 No Sir.
Q.268 Had anyone rung the bell would you have answered it?
A.268 Yes Sir.
Q.269 Did you hear that bell at all?
A.269 No Sir.
Q.270 You cannot say that he switched on the lights or went into the cell?
A.270 No Sir.
Q.271 Can the lights be switched on from the outside or inside of the cells?
A.271 Outside.
Q.272 There is a peep hole?
A.272 Yes Sir.
Q.273 About 8 or 9 inches square?
A.273 Yes Sir.
Q.274 Anyone can open that slide and look in?
A.274 Yes Sir.
Q.275 You had done it yourself?
A.275 Yes Sir.
Q.276 Can you tell me when Bird and Batte came off duty that night?
A.276 No Sir.

Pros: Q.277 Are the lights in the Guard Room and cells switched on from the Guard Room?
A.277 Yes Sir.

Court: Q.278 Did you hear any noise or commotion in the Cell Block that night?
A.278 No Sir.
Q.279 Did I understand you to say that you had to open the Cell Block to switch on the light?
A.279 You switched them on at one spot in the Guard Room.
Q.280 And you did not hear the bell that night?
A.280 No Sir.
Q.281 And there was no complaint made to you in the morning?
A.281 No Sir, the accused was not present at the time.
Q.282 At what time?
A.282 About 6.20 a.m. when I took the Guard and prisoners to Breakfast.
Q.283 And where did the complaint originate?
A.283 I think it was Poroznok.
Q.284 Any other complaint at that time?
A.284 I cannot tell you Sir.

7th. WITNESS No.L.12241 Private Farrell, J. S.S.R. having been duly sworn is examined by the Prosecutor.

Q.285 What is your number rank and name?
A.285 No.L.12241 Private John Farrell,
Q.286 And your Unit?
A.286 I was with the S.S.R. but now with the Reconnaissance Squadron.
Q.287 What Unit were you with on the 16th. 17th. January
A.287 S.S.R.
Q.288 Were you on duty that night?
A.288 Yes Sir.

Q.289 What was your duty?
A.289 I was a member of the Guard Sir.
Q.290 When were you on post that night?
A.290 My first tour was from Eleven to one and from Five to Seven o'clock in the morning.
Q.291 Who was in the Guard Room when you came off duty at 0100 hours?
A.291 Sergeant Roberts and the rest of the Guard.
Q.292 What did you do when you came off duty?
A.292 Sergeant Roberts, Private Archer and myself were talking together for sometime and then Archer and I went to bed.
Q.293 What time did you go to bed?
A.293 About a Quarter to two.
Q.294 When you were on duty where were you posted?
A.294 At the Main Entrance.
Q.295 How far is that away from the entrance to the Guard Room
A.295 About twenty five to thirty yards.
Q.296 If anyone had left the Guard Room between those hours you would have seen them?
A.296 Yes Sir.
Q.297 Did you see anyone leave the Guard Room?
A.297 No Sir.

Witness cross-examined by the Defence.

Q.298 You say you spoke to Sergeant Roberts and Private Archer when you came off duty?
A.298 Yes Sir.
Q.299 For how long?
A.299 About Three quarters of an hour.
Q.300 What time?
A.300 About a quarter to two.
Q.301 So that Sergeant Roberts was in your Company from 1.05 to 1.45?
A.301 Yes Sir.
Q.302 What happened after that?
A.302 I went to bed.
Q.303 Did you see Sergeant Roberts on a bed that night?
A.303 Yes Sir about Five o'clock in the morning.
Q.304 In the Guard Room?
A.304 Yes Sir.
Q.305 When you were on your beat, where would you be? would you be outside the building?
A.305 Yes Sir.
Q.306 You did not hear any commotion that night?
A.306 No Sir.
Q.307 You would be right outside, at the Main Entrance?
A.307 Yes Sir.
Q.308 At the Guard Room, while you were speaking to him during that time he behaved normally?
A.308 Yes Sir.
Q.309 Quietly?
A.309 Yes Sir.
Q.310 Sensibly?
A.310 Yes Sir.
Q.311 When did you hear about this?
A.311 About Noon.
Q.312 Later in the day?
A.312 Yes Sir.

Pros: Q.313 You told me that your beat was 25 yards from the Guard Room, and you told Mr. Vine you were right outside, which do you mean?
A.313 I meant, right outside on the Main road.
Q.314 When you came off your beat where was Sergeant Roberts? Was he in the Guard Room or in the Corridor of the Cell block?
A.314 Yes Sir, coming from the Corridor of the Cell Block.

Q.315 What was he doing there?
A.315 He was just closing the door.

Court: Q.316 In your statement which you made when they were taking the Summary of Evidence you said that you saw Sergeant Roberts coming through the door from the Cell Block?
A.316 Yes Sir.
Q.317 At approximately 0105 hours?
A.317 YesSir.

8th. WITNESS No.L.12928 Private Bahke S.M. S.S.R. having been duly sworn is examined by the Prosecutor.

Q.318 What is your number,rank and name?
A.318 No.L.12928 Private S.M. Bahke,
Q.319 And your Unit.
A.319 S.S.R.
Q.320 Do you remember the 16th. and 17th. of January last?
A.320 Yes Sir.
Q.321 What time were you on duty?
A.321 From Nine to eleven, and three to five in the morning and ------

Court Q.322 Has the Defence any objection to this witness?
A.322 No Sir.

Pros: Q.323 When you came off duty did you go into the Guard Room?
A.323 Yes Sir.
Q.324 Who was there at the time?
A.324 Sergeant Roberts.
Q.325 Anyone else?
A.325 Yes Sir but they were all asleep.
Q.326 What did you do?
A.326 I went to bed about 11.15 or 11.30.
Q.327 Was Sergeant Roberts still in the Guard Room when you went to bed?
A.327 I think so, I do not know.
Q.328 When did you wake up?
A.328 About three o'clock.
Q.329 Who was in the Guard Room when you woke up?
A.329 I just do not remember.

Witness cross-examined by the Defence

Q.330 Were you on duty with Private Bird?
A.330 Yes Sir.
Q.331 Did you hear any commotion?
A.331 No Sir.
Q.332 Anyone complain to you?
A.332 No Sir.

9th. WITNESS No.L.12249 Private Bird J. S.S.R. Having been duly sworn is examined by the Prosecutor.

Q.333 What is your number, rank and name?
A.333 Number L.12249 Private Bird, James.
Q.334 And your Unit?
A.334 S.S.R. Holding Unit.
Q.335 Where were you on the 16th - 17th. January last?
A.335 On Guard Sir.
Q.336 Where, at this Barracks?
A.336 Yes Sir.

Q.337 What time were you on duty?
A.337 From Nine to eleven.
Q.338 Did you go into the Guard Room at 11 o'clock?
A.338 Yes Sir.
Q.339 Who was in the Guard Room?
A.339 All the Others were in bed.
Q.340 Where was Sergeant Roberts?
A.340 In the Cells.
Q.341 How do you know he was in the cells?
A.341 He came and told me to go and get some sleep, and I heard the lights go out and the doors close a couple of times but I do not know which ones.
Q.342 What time did you wake up again?
A.342 I was on duty from three to five.
Q.343 Who woke you up?
A.343 The Corporal woke me up Sir.
Q.344 When you came in at 2300 hours what did you do?
A.344 I sat on my bed.
Q.345 Did you see the Sergeant?
A.345 Yes Sir.
Q

Witness Cross-examined by the Defence.

Q.346 You say you saw the Sergeant coming from the Cells.?
A.346 Yes Sir.
Q.347 But you might have been confused?
A.347 I do not think so Sir.
Q.348 Was Bassett sitting on the bed there?
A.348 I do not know.
Q.349 Bassett was in the Detention Room did you know that?
A.349 I did not know that Sir.
Q.350 You were taking Guard Outside?
A.350 Yes Sir.
Q.351 Did you have any conversation with Sergeant Roberts?
A.351 No Sir.
Q.352 When you made your statement to Mr. Turk you did not say anything about seeing Sergeant Roberts coming out of the cells?
A.352 He came through that room where the cells are.
(Defence read the statement to the witness)
Q.353 You did not mention anything about that in your statement which was read over to you and which you signed?
A.353 No Sir.
Q.354 You made one statement to the Prosecution and one to the Defence, can you tell me when you made the one to the Prosecution side?
A.354 I do not know what date it was.
Q.355 Was it within a day or two? Perhaps ~~the~~ my friend the Prosecutor can help?
A.355 8th. of March.
Q.356 You did not make a statement before that?
A.356 Yes I did.
Def: I give it up.

10th. WITNESS, No.L.12095 Private Archer H.M. R.S.R. having been duly sworn is examined by the Prosecutor.

Q.357 Will you give your Number rank and name?
A.357 No.L.12095 Private Archer H.M.
Q.358 What Unit?
A.358 S.S.R.

Q.359 You remember 16th. - 17th January 1941?
A.359 Yes Sir.
Q.360 What were your duties?
A.360 On Guard Sir.
Q.361 At Morval Barracks?
A.361 Yes Sir.
Q.362 Do you recall the time you went on duty?
A.362 Yes Sir.
From Eleven to one and Five to Seven in the morning?
Q.363 When you went on Guard who was in the Guard Room?
A.363 All the rest of the Guard Sir.
Q.364 Do you re-call where Sergeant Roberts was?
A.364 I could not say.
Q.365 When you came off duty at one o'clock who was there?
A.365 Sergeant Roberts.
Q.366 What did you do?
A.366 Sat and talked to him and Private Farrell.
Q.367 You then went to bed?
A.367 Yes Sir.
Q.368 What then?
A.368 I was wakened at Five o'clock to go on Guard.
Q.369 Did you notice who was in the Guard Room at that time?
A.369 No Sir.

Witness cross-examined by the Defence

Q.370 Tell me, when you saw Sergeant Roberts in the Guard Room what time was it?
A.370 When I came in off Guard?
Q 371 Yes
A.371 About one o'clock.
Q.372 So you stopped talking to him for three quarters of an hour?
A.372 Yes Sir.
Q.373 And what did Sergeant Roberts do after the talk, do you remember?
A.373 I did not pay any particular attention.
Q.374 Did he lie on his bed?
A.374 I think he did.
Q.375 Who was on Guard with you?
A.375 Private Farrell.
Q.376 The same periods Eleven to one and five to seven?
A.376 Yes Sir.
Q.377 While you were talking to Sergeant Roberts did he appear perfectly normal?
A.377 Yes Sir.
Q.378 Had you gone to bed, when Roberts left to go to bed
A.378 We went about the same time.

Case for the Porsecution closed.

Defence: Perhaps it would help the Court if I outlined what I propose to do?

Court: There are certain rules that have to be complied with.

Rule of Procedure 40(A) complied with.

Q.379 Do you apply to give evidence yourself as a witness?
A.379 Yes Sir.

Q.380 Do you intend to call any other witness in your defence?
A.380 Yes Sir.
Q.381 Are they as to character only?
A.381 No Sir.

Defence: What I propose to do Sir is, I could address you in open Court, but I would like to call a witness from Lancashire first so that if necessary he can get away.

Court: I think that is alright.

1st.WITNESS for the DEFENCE Reverend John Morgan, Great Marsden Vicarage Nelson, Lancashire.having been duly sworn is examined by the Defence:

Q.382 Is your name John Morgan?
A.382 It is.
Q.383 Do you live at Great Marsden Vicarage, Nelson in Lancashire?
A.383 Yes Sir.
Q.384 Clerk in Holy Orders?
A.384 Yes Sir.
Q.385 A vicar for 33 years?
A.385 Yes Sir.
Q.386 Have you known Sergeant for some time?
A.386 A number of years.
Q.387 Was Sergeant Roberts a Solicitor?
A.387 Yes Sir.
Q.388 He succeeded his father?
A.388 Yes Sir.
Q.389 It was a surprise when you heard of this charge?
A.389 Indeed it was.
Q.390 Upright in character and sincere in all he did?
A.390 Totally in every respect.
Q.391 Have you ever heard of him being in trouble like this before?
A.391 No, I have not.

Witness Cross examined by the Prosecution:

Q.392 Why did Sergeant Roberts move from Nelson?
A.392 I think that before the declaration of War he was recommended to go for a cruise. He went to visit his uncle in Canada, that was in 1939.

Defence: Can this witness be released now?

Court. Yes.

2nd. WITNESS No.L.12250 L/Sergt. Roberts G.B. S.S.R., having been duly sworn is examined by the Defence:

Q.393 Is your name Geoffrey Bamford Roberts?
A.393 Yes Sir.
Q.394 And your number is L.12256?
A.394 Yes Sir.
Q.395 And you are an Acting Lance Sergeant?
A.395 Yes Sir.
Q.396 With the South Saskatchewan Regiment?
A.396 Yes Sir.
Q.397 And you are 37 years of age?
A.397 Yes Sir.
Q.398 Were you admitted as a solicitor in May 1926?
A.398 Yes Sir.

Q.399 From 1926 to 1936 were you a member of the Town Council?
A.399 I was
Q.400 How was it you went to Canada?
A.400 I went primarily for a holiday.
Q.401 On January 16th. that is in the Evening and the 17th. were you on duty?
Defence Will the Court excuse me if I do not use Army language?
Court Yes.
A.401 Yes Sir.
Q.402 And you were in charge of thw Guard?
A.402 Yes Sir.
Q.403 When did you start on that duty?
A.403 At Seven o'clock on the evening of the 16th.
Q.404 Private Braelsford and Private Arnold were the first to go on duty then and the rest stayed in the Guard Room until what time?
A.404 Well I think the next wto were Bird and Bahke who went on at nine O'clock.
Q.405 And in the meantime you went to have a look around?
A.405 Yes Sir.
Q.406 And did you go to the Sergeants' Mess?
A.406 Yes I went to the Sergeants' Mess shortly after 9.30 There was demonstration of Physical Training on.
Q.407 When did you get back?
A.407 I got back to thw Guard Room just after lights out.
Q.408 Did you see Bird and Bahke?
A.408 Yes.
Q.409 Did you tell Bird where they could sleep?
A.409 Yes, Bird asked where he could sleep.
Q.410 What took place then?
A.410 I went to the mess and got two packets of cigarettes.
Q.411 It is suggested that you gave one of the members an Export cigarettes?
A.411 I never had any in my life.
Q.412 What time did you get back to the Guard Room then?
A.412 I got back to the Guard Room about one o'clock.
Q.413 Who was on Guard then?
A.413 Arnold and Braelsford, and in the Guard Room some of them were lying on the beds.
Q.414 Did you enter any of the Cells No.1. No.2 or No.3. that night?
A.414 After I mounted the Guard I went around and found that the doors were open and the Guard wandering around and I took the keys and locked them and that was the only time I went into the Cell Block.
Q.415 You have heard the evidence of the witness Gibbs, did you touch his testicles?
A.415 No Sir.
Q.416 Did you touch the lights?
A.416 Yes Sir I put them off.
Q.417 Can you suggest any reason to the Court why they should manufacture such a wicked story against you?
A.417 Yes Sir I have on account of trouble with Gibbs and Last. I found them in one cell and told them that one would have to move out.
Q.418 What about Barrett?
A.418 I had some trouble with him also?
Q.419 Did you go into his Cell?
A.419 No I did not.
Q.420 You have had trouble with him before?
A.420 Yes Sir.
Q.421 Did you open the peep holes of any of these dells at all?

A.421 Yes Sir. you had to to see that everything was alright.
Q.422 When you opened these peep holes did you say anything?
A.422 Nothing at all.
Q.423 Did you hear the bell ring that night?
A.423 Yes Sir
Q.424 After one o'clock where did you go?
A.424 After talking to Archer and Farrell I went to bed but I woke the Corporal up first.
Q.425 Bassett says that you made overtures to him about having a good time?
A.425 Bassett was occupying the bed in the Detention Room and I never spoke to him.
Q.426 He says he has been in Detention two or three times for Absence without leave, do you know anything about that?
A.426 No Sir.

Witness cross-examined by the Prosecution.

Q.427 I understood you to say that the bells rang frequently that evening?
A.427 Yes Sir.
Q.428 And what did you do?
A.428 It was a case of the men going to the Lavatory.
Q.429 What time or times?
A.429 I could not tell you.
Q.430 I suppose Corporal Muirhead was in the Guard Room?
A.430 Yes Sir.
Q.431 Did you hear him say he did not hear them ring?
A.431 Yes Sir I heard him say that.
Q.432 You did not answer them?
A.432 No Sir I did not answer them.
Q.433 Was that the usual procedure? did one of the Guard go to see what was wanted? did not the Corporal or Sergeant go in?
A.433 Well if they did ring it was not anyone in authority that went.
Q.434 You say that you came back to the Guard Room at one o'clock?
A.434 Yes Sir. I was in the Guard Room when they came off duty at one o'clock. I went to see if the door of the Detention Room was locked and was surprized to find it was not. I switched on the lights and walked down the corridor and looked into each cell and came out and switched off the lights and closed the corridor door, I also tried the door handles of the cells.
Q.435 When was the last time you had seen the prisoners before that?
A.435 About 7.45 p.m.
Q.436 What time were you absent from the Guard Room?
A.436 A quarter past eight to Twenty or twenty five minutes to nine and from 9.45 to twenty minutes past ten, When I got back the bugler had just come in from blowing lights out.
Q.437 The second time you were out were you on duty?
A.437 No Sir.
Q.438 And the next time was from 11.20 until one o'clock?
A.438 I was not on duty then Sir.
Q.439 Was it not unusual?
A.439 It was but it is perfectly true Sir. When I got to the Sergeants Mess I found that it had not closed up and stayed talking to one or two and the time slipped by.

Q.440 By what door did you leave the Guard Room to go to the Sergeants' Mess?

A.440 I walked on the cement road.

Q.441 Who were the Guards at the main gate at that time?

A.441 Private Archer and Farrell Sir. You must understand that they stand right outside.

Q.442 They did not see you leave?

A.442 They could not see me leave.

Q.443 They say it was moonlight?

A.443 My impression is that it was not.

Q.444 They say no one could leave without being seen?

A.444 No one could.

Q.445 They could hear your footsteps on the cement road?

A.445 They could.

Q.446 Do you say that you were not near the door or in the Cell corridor at 11.30?

A.446 I do

Q.447 Corporal Muirhead said that you woke him up and were standing near the door?

A.447 I might have been near the door from time to time.

Q.448 Corporal Muirhead must have been wrong then about the time?

A.448 Yes Sir.

Q.449 Private Bird said the same thing?

A.449 I do not agree. I let Private Bird into the Detention Room and that might have been what they heard.

Q.450 You cannot give any other explanation?

A.450 No Sir.

Q.451 You are not suggesting that they are telling a deliberate falsehood?

A.451 No Sir, but I am suggesting that I am telling the truth.

Q.452 Who was waiting in the Guard Room from elven o'clock to Eleven thirty?

A.452 I was

Q.453 Any one else?

A.455 Pte. Bird and Bahke

Q.454 Anyone else? where was Brealsford?

A.454 I think they were lying on their beds.

Q.455 Do you know whether Brealsford was reading?

A.455 I do not know.

Q.456 How long was it before you were notified of this complaint?

A.456 Not until 12 o'clock on the Sunday the 19th. it was not until Sunday afternoon that ~~Sixxxx~~ Barrett and Last complained.

Q.457 You must have gone back for details when you were notified?

A.457 No, I was notified on the Sunday, the Summary took place on the Monday and I saw Mr. Turk on Tuesday and saw each member of the Guard. I finished out the Guard on the Friday and I knew nothing about it until Sunday.

Q.458 This trouble that you had with the prisoners?

A.458 Yes Sir.

Q.459 That was the usual trouble with all prisoners?

A.459 I do not think it is usual.

Q.460 The trouble was nothing out of the ordinary?

A.460 Oh yes it was so far as the trouble about the walls was concerned, it was out of the ordinary.

Q.461 Were the other three men there when you were on Guard before?
A.461 Yes Sir.
Q.462 This was only the second time?
A.462 So far as the three men were concerned it was the second time, but I have been on Guard several times.
Q.463 And you are quite positive that from 7.45 p.m. until 1 o'clock you were not in the Cells?
A.463 Absolutely positive.
Q.464 You say that these men are absolutely wrong?
A.464 I do.
Q.465 Is it not peculiar that they should have concocted this story?
A.465 I do not know why they should.
Q.466 You had a good deal of trouble with these men?
A.466 I have had trouble with three of them and Barrett in particular.
Q.467 I suppose Barrett caused trouble before when he escaped?
A.467 I was not very popular.
Q.468 But he should not hold any animosity against you?
A.468 No Sir.
Q.469 What happened to your practice when you went on holiday?
A.469 My brother carried on, he is now called up and we have another firm of solicitors looking after it.

Court Q.470 You say you were in the Sergeants' Mess until one o'clock?
A.470 Yes Sir.
Q.471 And there was someone else in the mess?
A.471 Yes Sir.
Q.472 And the Mess was open until that time?
A.472 Yes Sir.
Q.473 Were they selling drink up to that time?
A.473 Yes Sir.
Q.474 When you returned did you have any conversation with the prisoners?
A.474 No Sir.
Q.475 And you turned the lights on?
A.475 Yes Sir, I switched on the lights and tried the doors.
Q.476 There was no conversation?
A.476 No Sir.
Q.477 Was anyone else walking in the corridor at that time?
A.477 No Sir.
Q.478 It was not your duty to post the Guard?
A.478 No Sir, If I may say so in all due respect, the Corporal posted the first two at the gate and they had made a practice of changing themselves, then either the Corporal or the Sergeant saw that the relief was ready to go out.
Q.479 At 11 o'clock who posted them?
A.479 At 11 o'clock I told Archer and Farrell it was time to go. At 1 o'clock Corporal Muirhead Told Brealsford and Arnold.
Q.480 Have any of these prisoners shown any animosity towards you?
A.480 Yes Sir. When I went back I found them in the Room talking and I sent them back to their cells and locked the doors and they resented it
Q.481 Did Gibbs and Last object to being moved?
A.481 Yes very strongly.
Q.482 Did I understand you to say that you left the Guard Room at 2320, you went to the Mess and were talking with others, do you know who they were?
A.482 Yes Sir, one was Sergt. Eddy, he is the Bar Steward.

Q.483 The Sergeants' Mess was open at that time?
A.483 Yes Sir. It should have been closed but th ere had been a P.T. demonstration and the visitors were being entertained afterwards.
Q.484 You say that you were missing from the Guard Room from about 2325 to One o'clock, according to Bird ~~xmm~~ his duty ended at 2300 hours and that at that time they were all in the Guard Room and you were in the cells and he saw you coming from the cells?
A.484 That is not correct.
Q.485 What he said was, that you came from the Cells?
A.485 He is mistaken.
Q.486 You were in the Guard Room at o1o5?
A.486 Yes Sir.
Q.487 Were you in the Cell Block then?
A.487 Yes Sir.
Q.487 At least you were seen coming from there then?
A.487 I might have been. I was only a few seconds.
Q.488 With reference to these cigarette boxes, what are they supposed to represent?
A.488 They are just to show that they were not Export Cigarettes.
Q.489 You were on Guard on the 4th. and 5th. of January.
A.489 Yes Sir.
Q.490 Were Gibbs, Barrett and Last there then?
A.490 Yes Sir.
Q.491 Did you complain of any trouble with them?
A.491 No Sir I did not complain.
Q.492 Did you have any trouble?
A.492 Yes Sir.I did, with Barrett, he was not doing his work
Q.493 Bird came off duty at 11 o'clock?
A.493 Yes Sir.
Q.494 And he came into the Guard Room?
A.494 Yes Sir.
Q.495 He says he saw you coming from the cells?
A.495 Well it must have been shortly after 11 o'clock, I switched off the lights in the c ells and went to the Sergeants Mess.
Q.496 Do you know whether Corporal Muirhead was awake at the time?
A.496 I do not know. It is not very light in the Guard Room.

3rd.WITNESS No.L.12228 S/Sgt. Eddy J.O. having been duly sworn is examined by the Defence.

Q.497 What is your number rank and name.
A.497 No.L.12228 S/Sergt. Eddy J.O.
Q.498 Were you at the Sergeants Mess on the 16th. January?
A.498 Yes Sir.
Q.499 Had you an entertainment on that night?
A.499 Yes Sir, we had a P.T. demonstration and afterwards we entertained the visitors.
Q.500 Did you see Sergeant Roberts there?
A.500 Yes Sir.
Q.501 What time did you see him?
A.501 About 1o o'clock and then again at 11.3o.
Q.502 Did you have any conversation with him?
A.502 Yes Sir.
Q.503 Was he quite normal?
A.503 Yes Sir.
Q.504 Were you standing quite close to him?
A.504 Yes Sir.

55

Witness cross-examined by the Prosecution.

Q.505 What are the regulations about the closing hour of the Mess?
A.505 About 12 o'clock.
Q.506 What time did it close that night?
A.506 It stayed open that night on account of the visitors.
Q.507 What time did they leave?
A.507 About 10.30 p.m.
Q.508 So that there was really no reason to stay open?
A.508 No Sir.
Q.509 How many were in there after that?
A.509 Between five and twelve, in and out.
Q.510 What do you serve in your Sergeants' Mess?
A.510 Liquor and beer.
Q.511 How long had you been in there?
A.511 Since 10 o'clock.
Q.512 Had you been drinking very much?
A.512 Not much.
Q.513 What Company are you in?
A.513 "C" Company.
Q.514 What Company is Sergeant Roberts?
A.514 "B" Company.
Q.515 Have you known Sergeant Roberts for some time?
A.515 Before the war Sir we must have met, and we came from the same town.
Q.516 Did you know that Sergeant Roberts was Sergeant of the Guard?
A.516 I did not.
Q.517 What was he wearing?
A.517 He was wearing his Overcoat.
Q.518 What do they usually wear on Guard, Web Equipment?
A.518 Yes Sir.
Q.519 Was he standing there all that time with his greatcoat on?
A.519 I think so I just cannot remember, Sir.
Q.520 If he was standing there all that time what was he talking about that made you remember that night so well?
A.520 Because it was the only night I stayed so long.
Q.521 You do not remember whether he was wearing his Web equipment?
A.521 No Sir I do not.
Q.522 Were you talking to anyone else?
A.522 Yes Sir.
Q.523 Why are you so positive about that evening?
A.523 Because I stayed so late.
Q.524 Are you positive it was that night?
A.524 Yes positive.
Q.525 Did you give a statement?
A.525 Yes Sir.
Q.526 When?
A.526 On the Tuesday.
Q.527 Are the hours for the Sergeants Mess the same every night?
A.527 There are unless we have visitors.

Court Q.528 To whom did you give that statement?
A.528 The Solicitor, Mr. Turk.
Q.529 How many drinks did Sergeant Roberts have that night?
A.529 Two Sir.
Q.530 Whiskey or beer?
A.530 Beer Sir.

Q.531 Did you see him buy cigarettes?
A.531 Yes Sir.
Q.532 Do you know what they were?
A.532 I do not know.
Q.533 How many packages did he get?
A.533 Two Sir.
Q.534 Were you approached by Sergeant Roberts, prior to making the statement?
A.534 No Sir.
Q.535 How did you know what you were going to the Solicitor for?
A.535 Some of the Sergeants had told me, and Sergeant Horrie told me that Sergeant Roberts was on this charge.
Q.536 Do I understand from what you say that you had Talked it over with Sergt. Horrie?
A.536 Yes Sir.
Q.537 Sergt. Roberts was in the Mess at 10 o'clock, were you talking to him then?
A.537 No the place was crowded.
Q.538 What time was it he came the second time?
A.538 Just after 11.30
Q.539 How do you know?
A.539 I had my watch and I kept pulling it out because it was after my time for bed.
Q.540 And what made you remember that it was 2330. hours
A.540 Because 2330 hours was the time I allowed myself to leave.
Q.541 Did you leave?
A.541 I intended to leave, Sir but kept on talking.
Q.542 Did you not think of leaving before?
A.542 I did Sir, but we got talking.
Q.543 When did you find out that you had known Sergeant Roberts?
A.543 That night Sir.
Q.544 Not before that?
A.544 No Sir.
Q.545 And was he talking to you only, until he left?
A.545 No Sir, he was talking to someone else.
Q.546 Are you sure that he went out the first time?
A.546 I saw him come Sir.
Q.547 Were you paying any particular attention to him?
A.547 No Sir
Q.548 Can you name any other Sergeants in the Mess between these times?
A.548 Sergeant Neath was one there were some others.
Q.549 Who was in the Mess at 10 minutes to one?
A.549 Sergt. Neath, the accused and myself.

4th. WITNESS No.L.12572 Private J.E. Arnold, S.S.R. having been duly sworn is examined by the Defence.

Q550 Is your Number L.12572?
A.550 Yes Sir.
Q.551 What is your Regiment?
A.551 S.S.R.
Q.552 You were a member of the Guard from Seven o'clock on the 16th. January to Seven o'clock on the 17th?
A.552 Yes Sir.
Q.553 You were on duty from Seven to nine on the 16th. and from One to Three in the morning of the 17th.
A.553 Yes Sir.

Q.554 After you came off duty at Nine o'clock what happened?
A.554 Nothing unusual.
Q.555 Did you notice anythig particularly?
A.555 No Sir.
Q.556 You came off duty again at three a.m.?
A.556 Yes Sir.
Q.557 Did you hear any bells?
A.557 No Sir.
Q.558 Are you hard of hearing at all?
A.558 No Sir.

Witness corss-examined by the Prosecution.

Q.559 What did you do when you came off duty?
A.559 I went to bed?
Q.560 What woke you up,or who woke you up ?
A.560 I do not know.
Q.561 Did you see anybody?
A.561 No Sir.
Q.562 You went on duty again at one o'clock?
A.562 Yes Sir.
Q.563 Did Archer call you just before one o'clock?
A.563 I do not know?
Q.564 He was in the Guard Room by the stove?
A.564 I did not notice.
Q.565 Where was the Corporal?
A.565 In the Guard Room.
Q.566 Where was the Sergeant?
A.566 I did not see him.

re-examined by the Defence

Q.567 Did you come off duty or go on at one o'clock?
A.567 I went on at one o'clock.
Q.568 Did you see Sergeant Roberts?
A.568 No Sir.
Q.569 When you went on duty was there anybody on the Sergeants Bed?
A.569 No Sir.

5th. Witness No.12126 Private Braelsford K.A., S.S.R. having been duly sworn is examined by the defence

Q.570 Is your name Braelsford, K.A.?
A.570 Yes Sir.
Q.571 And your number is L.12136?
A.571 Yes Sir.
Q.572 And your Regiment is?
A.572 S.S.R.
Q.573 Were you a member of the Guard on the 16th. and 17th. January?
A.573 Yes Sir.
Q.575 Did you go on duty with Private Arnold from Seven to nine that evening?
A.575 Yes Sir.
Q.576 Did you come off at nine?
A.576 Yes Sir.
Q.577 What time did you go to sleep?
A.577 About 11.30 p.m.
Q.578 Did someone waken you up?
A.578 I was awakened by the Corporal of the Guard.

Q.579 A little before one o'clock?
A.579 About ten minutes to one.
Q.580 Did you see Sergeant Roberts when you went on duty?
A.580 I cannot say.
Q.581 Did you hear any complaints?
A.581 No Sir.

Witness corss-examined by the Prosecution.

Q.582 What were you doing up to 11.30?
A.582 Reading.
Q.585 From nine to 11.30?
A.583 Well I had my lunch and then read?
Q.584 Did you see Sergeant Roberts during that time?
A.584 I saw him before 11.30
Q.586 What was Sergeant Roberts doing while you were reading?
A.586 While I was reading I was not paying much attention.
Q.587 But you did see him?
A.587 I do remember seeing him coming into the Guard Room about 11.15.
Q.588 Did you see him enter the Cell Block?
A.588 Sure about three times
Q.589 You saw him going in three or four times between 11 o'clock and 11.30, did you see him put the lights on at all?
A.589 I did not see him put the lights on.
Q.590 Do you remember anything else?
A.590 He took the keys on one accasion.
Q.591 Did you hear anything when he went into the Cell Block?
A.591 No Sir.
Q.592 Where did you sleep?
A.592 On abench by the Stove.
Q.593 At what time would that be?
A.593 About 11.30
Q.594 He was still there?
A.594 Yes Sir he was lying on the bed.

Witness re-examined by the defence.

Q.595 Tell me, how many times did you see Sergeant Roberts that night?
A.595 I do not know, but I saw him between 11 o'clock and 11.30.
Q.596 He was in the Cell Block?
A.596 He was just walking around.
Court. Q.597 Between 11 o'clock and 11.3o he entered the Cell Block three or four times?
A.597 Yes Sir.
Q.598 For what length of time?
A.598 About five minutes.
Q.599 Each time he went from the Guard Room to the Cell Block would the door be open?
A.599 Yes Sir.
Q.600 Did you hear any noise or anyone speak?
A.600 No Sir.
Q.601 Were you in a position to hear whether there were doors opening or closing?
A.601 Yes Sir.
Q.602 Did Sergeant Roberts go into the Detention Room?
A.602 Yes once.
Q.603 Between these same times?
A.603 Yes Sir.

Q.604 Did you have a watch?
A.604 ~~No~~ Yes Sir.
Q.605 What makes you so positive?
A.605 Because I was reading and I had to know what time it was, and I asked the time.
Q.606 And you were reading at the time?
A.606 Yes Sir.
Q.607 And you saw him go into the Cell Block three or four times?
A.607 Yes Sir.
Q.608 And you did not hear anything?
A.608 No Sir.
Q.609 What drew your attention to it?
A.609 He was the only one.
Q.610 You were quite close to the Corridor?
A.610 Yes Sir.
Q.611 And you still say that you did not hear anything?
A.611 Yes Sir.
Q.612 Did Roberts turn on the lights when he went into the Detention Room?
A.612 I do not know Sir.
Q.613 I understand, you fixed the time because you asked what time it was?
A.613 Yes Sir.
Q.614 Who did you ask?
A.614 No one in particular.
Q.615 You say that Sergeant Roberts was in the Cell Block?
A.615 Yes Sir.
Q.616 How long after you had asked the time did Sergeant Roberts come out of the Cell Block?
A.616 I did not see him come out of the Cell Block.
Q.617 Were you dressed at 11.30 when you asked the time?
A.617 Yes Sir.
Q.618 Did you undress to go to bed?
A.618 No Sir.

Witness re-examined by the Defence.

Q.619 You made a statement to Mr. Turk?
A.619 Yes Sir.
Q.620 It was read over to you and you signed it?
A.620 Yes Sir.
Q.621 When did you make that?
A.621 I just do not remember. (Statement read to the Court)
Q.622 Did you make a statement to the Prosecutor?
A.622 ~~No~~ Yes Sir.
Pros: I have been handed a statement signed K.A. Braelsford dated January 23rd.

6th. WITNESS No.L.12476 Private Kelly A.E. having been duly sworn is examined by the Defence.

Q.623 You were or are a Bar attendant in the Sergeants' Mess
A.623 Yes Sir.
Q.624 You remember the 16th. January?
A.624 Yes Sir.
Q.625 Do you remember Seeing Sergeant Roberts between Ten o'clock and One o'clock that night?
A.625 Yes Sir.

Q.626 Was he talking to several Sergeants?
A.626 Yes Sir.
Q.627 Do you remember who they were?
A.627 The Sergeant Cook and Sergeant Eddy.
Q.628 You closed rather late that night?
A.628 Yes Sir.
Q.629 Where was Sergeant Roberts when you ~~inf~~ closed?
A.629 He had just left.
Q.630 What time?
A.630 About five minutes to one.
Q.631 While he was there did he buy some cigarettes?
A.631 I do not remember.
Q.632 Did he ask you to get some for him?
A.632 I do not remember.
Q.633 When did Sergeant Roberts come into the Mess?
A.633 Between 11.30 and 12 o'clock.
Q.634 Had Sergeant Roberts been drinking in the Mess?
A.634 He had some beer.
Q.635 What fixes the time in your mind?
A.635 Because it was late and I was anxious to get to bed.
Q.636 Were there others in the Mess besides Sergt.Roberts?
A.636 Yes Sir.
Q.637 Was Sergt. Neath there?
A.637 Yes Sir.
Q.638 What time did he come into the mess?
A.638 I just do not know but he was there a fair part of the evening Sir.
Q.639 About the same time as Roberts?
A.639 Yes Sir.
Q.640 Did he come in before or after Sergt. Roberts?
A.640 About the same time Sir.
Q.641 Do you know whether or not he was there on one or two occasions?
A.641 Well if he was away he was not away for any length of time.

J.A. Under R.P.64(b) we will have to find some reason for continuing after six o'clock?

Def: That is all the evidence Sir.

Court: After some consultation the Court decided that as it was a serious case it was not possible to finish it and therefore adjourned until 1000 hours 11 Mar.41

P. 1.
J. M. Laylor mij

67

BATTALION ORDERS
BY

Lt. Col. J.E. Wright
Officer Commanding
S. Sask. R., CASF

No. 11
16 Jan 41

PART ONE

1. Duties for January 17

Field Officer	Major D.G. Orme
Next for Duty	Major E.[illegible] White
Orderly Officer	Lieut. [illegible] Gardner
Next for Duty	Lieut. L.R. McIlvee[illegible]
Orderly Sgt.	Sgt. Toillon, A.G.
Next for Duty	Sgt. Long, [illegible]
Orderly Cpl.	Cpl. Kubian, F.
Next for Duty	Cpl. Wearing, [illegible]

2. Guard for January 17

Sgt. of the Guard	Sgt. Roberts, G.B.
Next for Duty	Sgt. Longmuir, L.L.
Cpl. of the Guard	L/Cpl. Muirhead, W.J.
Next for Duty	L/Cpl. Gordon, [illegible]

3. Hospital Guard

For January 17	Sgt. Cunningham, [illegible]
Next for Duty	Sgt. McAvoy, J.[illegible]

4. Duty Company

For January 17	"B" Coy
Next for Duty	"C" Coy

BLACKOUT:
1750 hrs. to 0830 hrs.

NOTICE:
Pay Books - Part II - Personnel going on landing leave on or about 23rd of January 1941.

Company Commanders are requested to turn in by 1200 hrs 17-1-41 lists of all men going on landing leave on 23rd inst. together with Part II of the pay books for the men concerned.

The above is necessary so that arrangements can be made to issue pay for these men on 22nd Jan 41.

[illegible] Lieut.
for A/Adjutant S. Sask. R., CASF.

Certified true copy of the original Part I Order, dated 16 Jan 41.

Detail: Officers	Sergeants	Drummers	Corporals	Privates	Duty: By Day	By Night	Articles in charge of the Guard: Tables	Forms	Stools	Trestles	Padlocks & Keys	Hot Bronzes	Candlesticks	Water Pails	Long Scrubbers	Hand Ditto	Lanterns	Mops	Coal Trays	Coal Boxes	Sentry Boxes	Locks and Keys	Polaris	Fenders	Fire Shovels	Fire Grates	Arm Racks	Accoutrements	Bundles of Clothes	Handcuffs	Urinal Tubs	Inspection Bench	Stretchers	Watch Coats	Guard Beds	Water Cans	Meat Boxes	Fire Buckets	Bun Boxes	Clocks	Lamps & Globes

Articles received over broken or damaged	To whom chargeable	Articles damaged, &c., by present Guard	To whom chargeable	REMARKS
I.	II.	III.		

GUARD REPORT

of the Guard furnished by A. Park R. Guard

Parole

Countersign

Mounted at Ronaldsay on 16/11/41

Dismtd. at Ronaldsay on 17/11/41

at 0700 o'clk. m.

To the O. C. Park R.

Army Form B166

Soldiers confined in Barrack Detention Rooms under Charge of the Commander of the Guard.

No.	Corps	Company	NAMES	Sentence	Hours done	Hours to do	REMARKS
L12629	S.I.R.	A	Barrett J.H.	3 days	5	187	
B28192	R.C.E.	2nd	Sjt Gibbs ~~awaiting sentence~~ 33 days		437	403	
L12772	S.I.R.	A	Barrett AP awaiting sentence				
L12555	S.I.R.	B	Prozank P	18 days	5	427	
L12711	S.I.R.	A	Stearns CW.L. awaiting sentence				
A28106	R.C.E.	11 Fd	Park R. awaiting removal to Soldiers [illegible]				

Report of Soldiers confined in Hospital in charge of Sentries furnished by the Guard.

No.	Army No.	Rank and Names	Corps	Company	Date of offence	Days	Nights	Offence and Remarks

W1 43091/429 1,150m 3/41 R.M. 51-6232 Forms B166/42

GUARD REPORT.

Army Form B160
(See King's Regulations)

Certificate.

Before the old Guard marched off, I took over the soldiers in arrest or under sentence. They were washed and shaved.* The articles in charge of the Guard corresponded with the inventory, and were in good order except those noted on page 4; I received over the Guard-room and everything was in good order; walls, &c., not defaced, except..... I received a duplicate copy of the previous day's Guard Report. I explained the orders of the Guard to the men before I dismissed them, and to the first relief on its return to the Guard-room. I visited my sentries at..... by day, and at..... by night, and found them alert, and acquainted with their orders. I inspected every relief going out and coming in, and found them..... The Guard was under arms at reveille, retreat and tattoo. On each occasion I inspected the men, and found all present and correct. I sent out patrols at..... o'clock during the night, which found everything correct. The men's meals were properly served. Each man of the Guard received a cup of hot..... during the night.

The soldiers in arrest or under sentence were visited every two hours; the boots of all charged with drunkenness were removed, and their clothes loosened, before they were placed in confinement.

The Guard was visited by the Field Officer of the day at..... by day, and at..... by night.

Ditto	ditto	Captain	ditto	1000 hrs	ditto	.....	ditto
Ditto	ditto	Subaltern	ditto	.....	ditto	.....	ditto
Ditto	ditto	Medical Officer	ditto	.....	ditto	.....	ditto

N.B.—Here add any special Certificate that may be required by the orders of the Guard or Garrison. †

(Signed) Sjt Roberts G.B. | Commanding Guard.

(The Commander of the Guard will report any unusual occurrence.)

This report is correct so far as it relates to the Guard-room and articles on charge.

Note.—When any portion of the duties indicated in the above Certificate has been omitted, the pen is to be drawn through the portion, and the erasure is to be initialled.

(Signed) Sgt Rogerson J.H. | Commanding Relieving Guard.

Time and Post Roll.

No.	Army No.	Rank and Name	Corps	Class	Post	Time From	Time To	Time From	Time To	Time From	Time To	Time From	Time To	Time From	Time To	Remarks
1.	L12572	Arnold J.E.	S.I.R.	B	1	1900	2100	0100	0300	0700	0900					
2.	L12126	Brackpool K.A.	"		2	1900	2100	0100	0300	0900	1100					
3.	L12249	Bird J.	"		1	2100	2300	0300	0500	1100	1300					
4.	L12928	Baker S.M.	"		2	2100	2300	0100	0300	1300	1500					
5.	L12096	Archer H.M.	"		1	2300	0100	0500	0700	1500	1700					
6.	L12261	Jones J.	"		2	2100	0100	0300	0500	1711	1900					
	L12359	Munroe H.V.														
	L12091	L/Cpl Meldrum		Cpl		of the Guard.										

*This rule does not apply to soldiers charged with drunkenness, who should not be allowed to shave till perfectly sober.

(In case more room is required than is here given for any Special Certificate, &c., the latter may be appended as manuscript.)

71

South Sask. Regt.

Army Form B 160

Report of Soldiers confined in the Mowal Barrades Guard mounted by the above Corps at Cove on the 17 day of Jan. 1941

Corps	Company	Army Number	Rank	NAMES *	Place of Offence	Date of Offence	When Confined	Cases of Drunkenness	No. of G.C. Bodies	Offences, and by whom confined, giving Rank and Corps	Witnesses	Whether Elected to be dealt with summarily **	Punishment †	REMARKS ‡
SSR.	B	L 12565	Pte	Porozniuk P.	Mowal ~~[illegible]~~ Barrades	9-1-41	15-1-41			1. Absent without leave. 2. Losing by neglect his equipment in that he lost 1 reparator complete	Sgt Clark G.B. Sgt Clark G.B.		18 days det.	Forfeits 7 days Pay F.R.1. assessed cost of new respirator
SSR.	A.	L 12629	Pte.	Bassett G.H.	Mowal Barrades	14-1-41	15-1-41			1. Disobeying a lawful command given by his superior officer 2. Conduct to the prejudice of good conduct and military discipline 3. Failing to appear at place of parade appointed by his commanding officer	L/Sgt. Abel A.L. L/Cpl. McIntyre J.R. L/Sgt. Abel A.L. L/Cpl. McIntyre J.R. L/Sgt. Abel A.L. L/Cpl. McIntyre J.R. Cpl. Ward F.A.		8 days det.	assessed damages 5 door £1-10-9

J. Enright Lt. Col

Signature Lt Col

Commanding South Sask. Regt.

Date 17-1-41

* The names of all Soldiers who have been confined in the Guard-room during any portion of the time the Guard has mounted, to be inserted.
** This column will be completed in all cases where a C.O. is required by S.46 (8), Army Act, to ask the Soldier whether he desires to be dealt with summarily or to be tried by Court Martial.
† The punishment awarded or decision come to, to be written in words in the handwriting of the Officer disposing of the case.
‡ Among other remarks, opposite his name, the fact of any Soldier having been admitted to Hospital from the Guard-room, or the fact of any Soldier having been discharged from Hospital to the Guard-room, and in the case of Garrison Guards the Guard-room to which Soldiers have been passed, should be stated.

Medical Certificate.

I certify that I have examined

No. L-12562 PTE. POROZNUK P.,
and find him free from disease, and
fit to undergo the punishment awarded
to him.

Delville Medical
Reception Station.

17-1-41
Date.

[signature]
Medical Officer.

Medical Certificate.

I certify that I have examined

No. L-12563 PTE. POROZNUK P.
and find him free from disease, and
fit to undergo the punishment awarded
to him.

Delville Medical
Reception Station.

17-1-41
Date.

[signature]
Medical Officer.

Medical Certificate.

I certify that I have examined

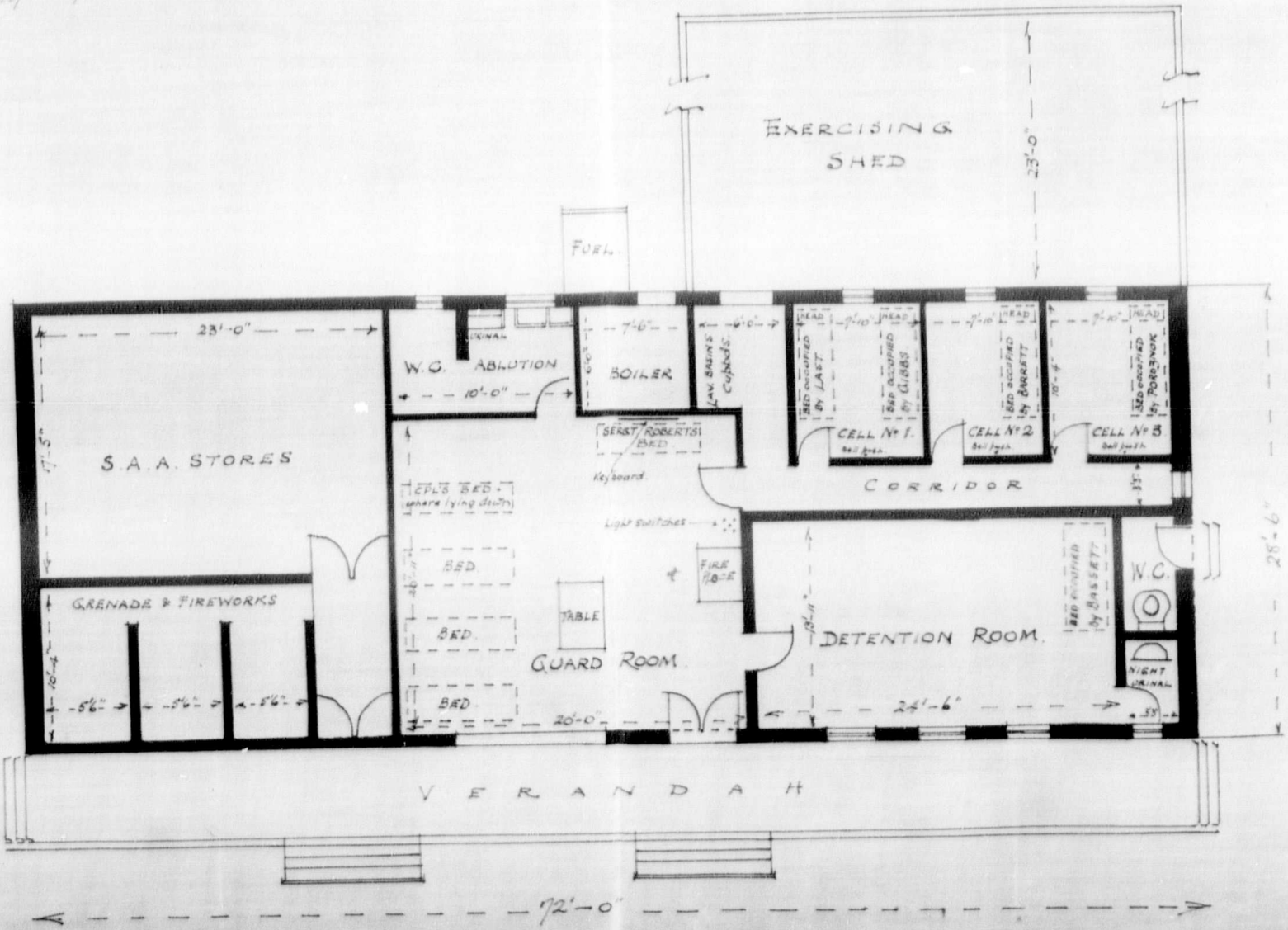
No. L.12629 PL. BASSETT. E.H.,
and find him free from disease, and
fit to undergo the punishment awarded
to him.

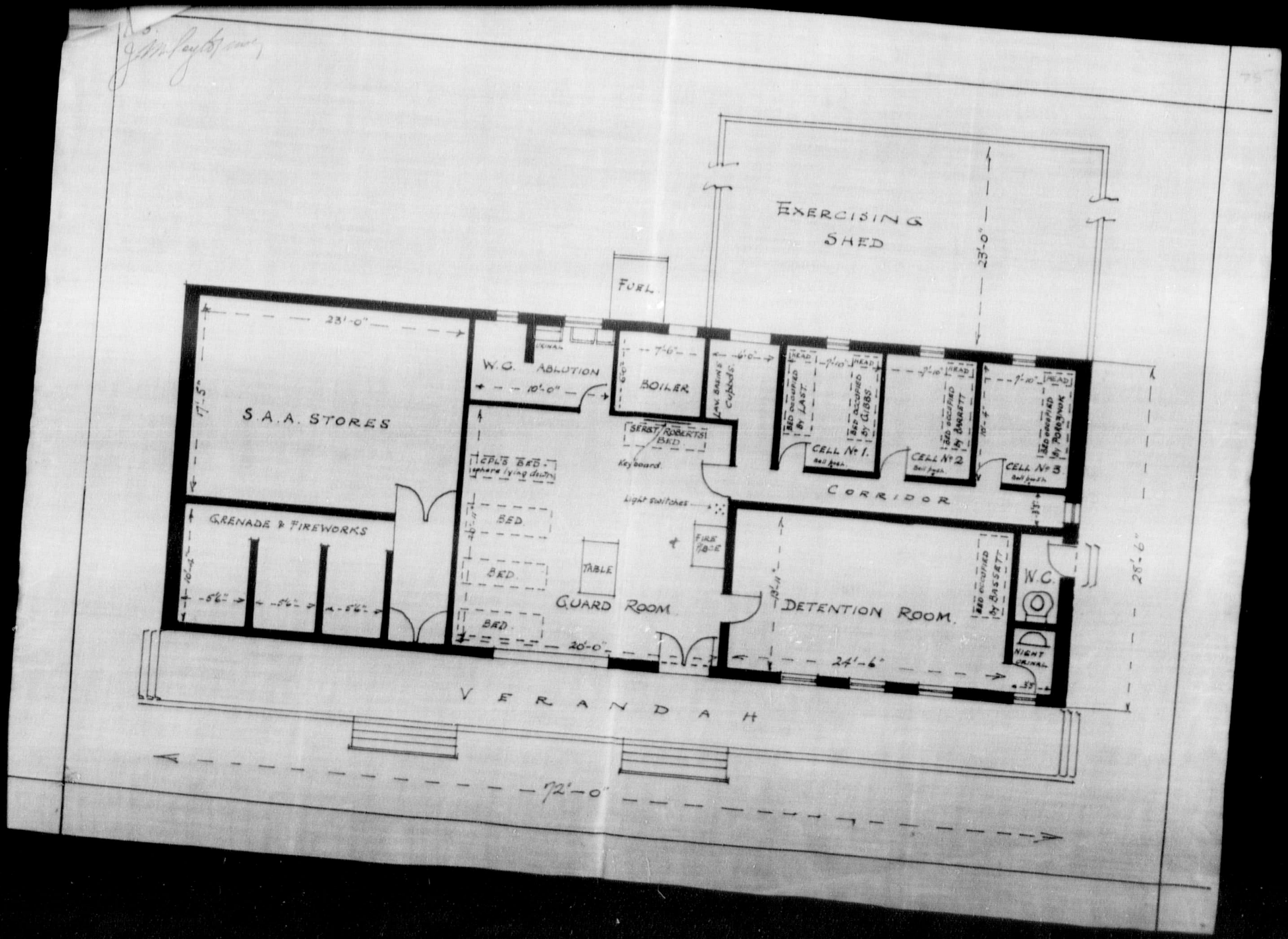
Delville Medical
Reception Station.

17-1-41
Date.

G. C. Robson
Medical Officer.

P. 3.


EXERCISING SHED
23'-0"
FUEL
23'-0"
W.C. ABLUTION
URINAL
10'-0"
BOILER
7'-6"
6'-0"
LAV. BASIN'S CUPBDS.
HEAD
BED OCCUPIED BY LAST
BED OCCUPIED BY GIBBS
BED OCCUPIED BY BARRETT
BED OCCUPIED BY POROZNOK
CELL No 1.
CELL No 2
CELL No 3
Bell push
S.A.A. STORES
17'-5"
SERGT. ROBERTS BED
Keyboard
CORRIDOR
CPL'S BED
Light switches
BED
FIRE PLACE
GRENADE & FIREWORKS
TABLE
GUARD ROOM
DETENTION ROOM
BED OCCUPIED BY BASSETT
W.C.
NIGHT URINAL
28'-6"
5'6"
20'-0"
24'-6"
VERANDAH
72'-0"


EXERCISING SHED
23'-0"
FUEL
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S.A.A. STORES
W.C. ABLUTION
10'-0"
7'-6"
BOILER
LAV. BASINS Cupbds.
HEAD
BED OCCUPIED BY LAST.
BED OCCUPIED BY GIBBS
BED OCCUPIED BY BARRETT
BED OCCUPIED BY POROZNUK
CELL No 1.
CELL No 2
CELL No 3
Bell push
SERGT ROBERTS BED
Keyboard
CPL'S BED
Light switches
CORRIDOR
GRENADE & FIREWORKS
BED
BED
BED
TABLE
FIRE PIECE
GUARD ROOM
DETENTION ROOM
BED OCCUPIED BY BASSETT
W.C.
NIGHT URINAL
28'-6"
20'-0"
24'-6"
VERANDAH
72'-0"

F.C.C.M. L/Sgt. Roberts

CLOSING ADDRESS OF COUNSEL FOR THE DEFENCE:

May it please the Court: It now becomes my duty to address you on behalf of the accused. You have listened, if I may say so, with the greatest attention, to a considerable volume of evidence, both for the prosecution and for the defence and, of course, I need not emphasize to this Court the very serious nature of the offences with which my client is charged and, of course, what it means to him if you should come to the conclusion he is guilty of only one or all of them.

My learned friend was frank enough to admit that the charges as they are before the Court are in the alternative, so the two charges I imagine I have to meet mainly is the first one, which accuses my client of committing a civil offence-- indecent assault on a male person-- and the person mentioned in that particular charge is Sapper Gibbs, a male person.

Now, you have heard Gibbs give his evidence and you have heard his record. It is always extremely unpleasant, but a duty which has to be performed, to attack a man's character, particularly a man who has volunteered to come many thousand miles away from his own country to help us in this great war; but, unpleasant duty as it may be, one is forced to take that line when the Court has got to consider his credibility as a witness. On one hand you have Gibbs, with his record and on the other hand you have Sgt. Roberts, concerning whom I was able to call witnesses as to character. You have heard as to his past; you have heard the clergyman whom I called, who has known him as a boy, and when he was on the local town council for years; that he is a qualified solicitor of the Supreme Court. Not only has he never had a blemish against him in any way, shape or form-- as far as I know his army sheet is completely clean, so that before you you have a man with an unblemished record, against a man who has been before the Courts on innumerable occasions, dating back from November 1928, convictions for theft, vagrancy twice, breaking and entering, burglary, possession burglar's tools and instruments-- twice in possession of burglar's tools, the last conviction being in Toronto in 1939, and then there is an army offence of being absent without leave in Aldershot in 1940. Now, can you attach the slightest importance to the word of a man of that character, when you consider that you are dealing with a man of unblemished record. It is very obvious, indeed, sir, that with all the hundreds of men in this camp, and all the times my client has been on guard, that the only complaint issued against him during his long experience here, has been lodged against him, should be lodged against him-- I am now dealing with the case of Gibbs alone-- by a man like Gibbs. It is hardly worth the time it takes to take the evidence.

That brings me to this point of this class of crimes-- sexual cases, whether it be a man concerned, or whether it be a girl concerned, there has been a well-established practice, going back for many years, in such cases as this it is highly desirable there should be corroboration of the complainant's story. Corroboration, even where the complainant is a man of absolutely unblemished reputation, in order to save any possible miscarriage of justice, for over and over again Judges have warned juries trying this type of case that it would be dangerous to convict a man on the uncorroborated evidence of a complainant, be he or she a person of the highest integrity. Experience has taught judges and anyone experienced in this class of work that it would be dangerous to convict, and I am going to adopt that view very strongly in dealing with this case, because if in the same class of cases a jury has got to be warned that it is dangerous to convict, I am going to ask you to adopt the same principle exactly, and I suggest to you that if you convict my client on this very serious indecency assault charge, without any corroboration you would be doing what is termed a dangerous thing, not that I doubt you are preapred to do many dangerous things in connection with the war.

But to convict a man of a criminal offence, involving his liberty and his living after this war, I venture to suggest that you are going to hesitate a long time before you indulge in doing dangerous things. In this connection, therefore, I am asking you to be good enough to see if there is any corroboration of Gibbs' story, because if there is none, I submit my task is strictly a simple one and that you wouldn't dream of convicting my client.

That brings us to the degree of corroboration required. A little fantastic suggestion isn't good enough. Case after case has been quashed because matters have been suggested as corroboration which are not, in fact, corroboration, so while we are dealing with the point of corroboration, it is necessary that I should remind you that corroboration has got to be something more than suspicion. I personally have heard Lord Chief Justice Ewart direct a jury in these terms: "in testing the rule the test is, is the corroboration of such a nature as to make an independent case against the accused, leaving out the complainant's story. You may think that that is a rather high test, and that brings me to the next point: what sort of corroboration does the prosecution rely on today ? Now, it is very significant on that point. It is very significant, because you have one complainant seeking to corroborate the other and there is ample authority against it; that is only mutual corroboration, which cannot be accepted, because you would have one complainant, "A", surely a man of bad character, corroborating "B", who is in exactly the same boat as "A", and here you have two men of bad character each corroborating the other, and on this evidence they seek to prove the complainants' case against this man of exemplary record. That brings me to the point, you can't have mutual corroboration. You can't have Gibbs corroborating Barrett and Barrett corroborating Gibbs, so what do we find; we find this rather extraordinary thing in this case. We have in the charges which were before the inquiry, when the summary was taken, we have a man in this charge named Last and you will remember he was called here as a witness, and the charge says, "At Morval Barracks, Cove, Hants," and so on and then it gives the names of the witnesses, Last, Gibbs and Barratt. The summary was taken and Last gave evidence at the inquiry. When my friend opened the case yesterday and indeed a few hours before that we knew there was no longer a charge in respect of Last. Now, these incidents are alleged to have taken place on the 16/17 January, and we didn't hear until Sunday last, when my client is given a new list of charges. We don't hear what the charges are which will come before this Court Martial, but we find there is no charge in respect of Last at all, but Sapper Last is introduced, I suppose, to support the evidence of Barrett and Gibbs, in the position of being the corroborative witness. That won't do, in my submission to you. I am sure my friend is quite incapable of trying to secure a point against the defence of an unfair nature, and he probably wouldn't appreciate the position, but I am putting it to you that it is patently clear that if Last remains a complaining witness, as he was on the summary, he can't then be put forward as a corroborative witness of Gibbs and Barrett. The charge having gone, Last is then put forward as some sort of corroborative witness. That won't do. You can't drop a complaining witness and make him a corroborative witness by dropping a charge on which he was a complainant for weeks. He did appear before the inquiry and his name is down as one of the witnesses at that inquiry and there is a charge in respect to him, which are in the charges before the inquiry, and therefore I suggest to you that you ought to treat Last as a complainant and not as a corroborative witness, because he was a complainant. He gave evidence on oath as a complainant, and then when he comes before you we don't find Sapper Last any longer as a complainant, but put forward to you as a corroborative witness and you can't have corroboration of that kind, because

you are getting to the mischief of the mutual corroboration. A case on that point is the case of Rev x Madison.

And what does Last's evidence come to? He says he could hear them speaking in the room because he occupied a cot in the same cell as Gibbs; they were talking quite a lot and he heard footsteps coming down the corridor, and then he heard him, ~~xxx~~ two or three minutes later coming back. And Gibbs said in the summary it was half an hour elapsed between the time ~~xxx~~ when Sgt. Roberts is said to have entered the cell on the first occasion, and yesterday, if my recollection serves me, he said a few minutes, ten minutes. I am not pinning Gibbs down to a few minutes in the night when he is awakened, but you might think that it is very significant that the man is prepared to swear on oath that it wasn't half an hour, when Last is brought in as a corroborative witness. And then Last says-- what is the worst Last says? He says he saw him put his hand under the bedclothes, that is the wors that Last says.

In my respectful submission to you that is an extremely unlikely story, because here you have two men, Gibbs and Last in the same cell, Last listening, or trying to listen to a conversation in a subdued tone, which he says he can't hear. You might think he must have some suspicion of what is going on, but he takes no steps whatever to prevent it, nor does Gibbs, which you heard so much about yesterday. He could have adopted a very simple course of action of pushing a bell and having as much assistance as they needed. Neither of them did anything, and you may think I may have laboured the point unnecessarily, but it is, of course, a matter of such grave importance to my client, but one does know this, that when there is a complaint of indecency, the one thing the Courts always look for is what was the attitude of the alleged complainant at the time? Was ~~x~~ he a willing partner to it; did he acquiesce in it, did he become an accomplice in it, or did he resent it?. I might emphasize this point as hard as I can. You would have expected if Sapper Gibbs and Sapper Last had been respectable men that they would have done something to stop that beastly behaviour, if it be beastly behaviour, and my client took part in it, but not a thing did they do. They could have called the Cpl. of the Guard, they could have struck out, they did nothing. And then you have Gibbs, a man whose word I suggest to you you can't rely on for a single moment. He says that ~~xxx~~ Sergeant Roberts was holding his testicles. No doubt you gentlemen have taken part in sports, and you will know that the slightest touch of a testicle causes considerable pain, and you will know that Gibbs is telling a flagrant lie when Gibbs says he squeezed his testicles harder, and he eventually says he let out a bellow. It is significant that this is supposed to have happened in the cells, with other people about and not a soul has been called to say they heard the slightest commotion for one single fraction of a moment during the night between 12 and 4-- 2400 and 0400 hours, according to the original charges, and according to the latest charges between 2300 and 0400 hours. You see the charges are different now; the times are different; the complainants are different, and coupled with that, we are faced yesterday with having to go into this case with a new set of witnesses, with four or five witnesses who don't appear in the summary at all-- that is a most unusual proceeding to come to a Court Martial and you find that the summary is most unreliable and that you have to meet several other witnesses. I know it was put to me that you can have an adjournment to meet it, and therefore please don't think I am mentioning this point as a greviance; I am not, but it is a matter where in the summary one witness appears as a complainant and then he is brought in as a corroborative witness at the trial. But, you will appreciate, that seven weeks of this
[illegible]rge hanging over my client, with all it means to him, is enough for
[illegible]an and I wasn't going to agree to put him through the ~~xxx~~ again
[illegible] for another fortnight while this case was pending, but I do say
[illegible]ittle unfortunate, that by their desire to be very fair and
[illegible]l the rules that allow you to see that everybody gets a

square deal-- it is a little unfortunate for this reason, too, that where we had time to look into the matter about Gibbs and Barrett, otherwise Zurack, we found out a good deal about them; so far as Bakke was concerned, a newcomer to the hearing, we had no time to look into his antecedents at all. For allwe know he may be a man of blameless character. If we had been in the same position at Court with Gibbs and Barrett we should have only known their Army crimes and you might have considered these two complainants as ill-treated, very respectable young men who wouldn't be likely to tell a lie, and fortunately the time allowed us to cable and we got the information from Canada, a matter which I attach very great importance to, because their evidence is not even worth challenging in Court.

Now, the next point. You have had called before you Gibbs and Barrett. The first charge deals with Gibbs; the second charge deals with Gibbs, so I rank these two together. The third charge deals with Sapper Barrett. Now, he was the man, he was in the single cell, No. 2, you will remember. He was on his own in this cell2. There is a push bell, you observe, in that cell and I think he said in answer to me that he knew it, and he goes along and he says the sergeant said "I will suck you off," and Barrett's supposed to have said "no, I am sick" and then he says "get out of here and let me sleep" and then he says "get out or I will tell the R.S.M." The same remarks apply to him as they apply to Gibbs. There is no one in the cell with him, but he has ample opportunity of getting protection if he needed it; there is no evidence that he even called out to the two men in the adjoining cell, and what was to prevent him calling out to stop, and members who were in an adjoining cell, merely separated by some compound like papier mache-- ordinary conversation, almost, could be heard, I should think, leaving out the question of shouting. He didn't call out at all. He didn't complain first thing in the morning, and then because after he and Gibbs had met and made some notes they complained. And who are the people who are complaining? Barrett has a criminal record going back as far as April, 1927, charged under the name of Paul Zurak, Moosomin, and then at Regina in 1936, he is charged again and fined $10 in the same name and then he is sentenced to a year for forgery and then again in 1936 at Regina he is sentenced to three years for forgery and uttering, and then in 1939-- it couldn't have been very long after he came out of prison-- he was sentenced to 18 months for uttering. Private Barrett is a forger. He didn't seem very ashamed of it. A man who wouldn't hesitate to forge the name of another-- a man who wouldn't hesitate to draw a cheque, when he knew it to be a forgery-- a man who is quite willing to adopt the somewhat British name of Barrett in the place of his real name-- Zurak. Are you going to rely on the evidence of a man like that. I say you would be adopting a highly dangerous principle in, for one moment, thinking of convicting my client on the word of Barrett and I should think it is obvious that you couldn't possibly act on that sort of complaint, particularly when you know there was ample opportunity of getting assistance; there was ample opportunity to ring that bell; there was ample opportunity of communicating with his comrades in detention in the next cells, and kx his reaction to it all is he just turns over and goes to sleep. The next morning, have you any doubt at all, that Gibbs, Barrett and Last compared notes before they made the complaint to the R.S.M.?

Now, the only other witnesses that you might deal with-- there were Gibbs and Barrett and Last, and then there was Farrell, Brailsford, Baake, Archer and Bird. Now, so far as the Court is concerned, I don't think they carried the matter much further. My friend though, despite the fact they weren't in the summary called all these witnesses and he also called Lieut. Mason, the Assistant Adjutant. I don't think I need occupy your time regarding these men. You heard their evidence-- they merely go to times, and in this casethe defence are at some little disadvantage, because the complainants here are so hazy about the times that there is no satisfactory evidence before the Court at all when these alleged incidents did happen, if they happened at all. But Brailsford, and I make this point about him--

his evidence must have been available when the summary was taken, but he doesn't make a statement to my learned friend until apparently just a little before these proceedings started, and then just ~~x~~ before we come into the room I am told he is going to say that Sgt. Roberts saw him in the Guard Room and he said something about having a good time and he touched his face. Are you going to go on flimsy evidence of that nature? He said quite fairly, if I remember rightly, that he didn't attach any importance to the matter and he didn't tell anyone until just before this Court Martial began.

Now, sir, that is really all I have to say about the prosecution, although the charges are in the alternative, anyone of them, if there is a conviction on any one of them there is enough to ruin my client for life.

As far as the defence is concerned, and ~~xxx~~ may I just remind you of this before I pass on/the the defence, that, of course, in this case, if ever there was any case, the onus of proving to your satisfaction, without a reasonable doubt, is on the prosecution. It starts with the prosecution, remains with the prosecution and never leaves the prosecution, and if you have any reasonable doubt about it please don't adopt the view that the accused should be given the benefit of any doubt-- that is an old and hackneyed phrase, which has done duty for many years. It is no question of benefit. It is a question of law, and as a matter of law he has a right to be acquitted.

The only way to look at it, if I may suggest very respectfully, is, if you think they have set up a case of sorts, with the evidence available, then go on to consider the defence, if you are satisfied in your mind there is a case, but I should think that it wouldn't be necessary to consider the defence in this particular case, and that you could quite fairly and quite properly come to the conclusion that my learned friend, with all the skill and judgment he has exercised in this case, and his desire to be fair, because of the tained evidence at his disposal, has failed to establish a prima facie case. If, on the other hand,when the prosecution have got so far as to establish a case of sorts, then please consider, as I am sure you will, the character of the evidence I have called for the defence, and first and foremost is the defendant himself. Now, I put it and I put it quite deliberately, before ever he gave evidence, I was able to call the Rev. Mr. Morgan, who has known him since boyhood, who told you how he had joined the local Council, been a judge of the council, became a solicitor, succeeding to his father's practice and obviously is very respected in Lancashire, and if a man is respected in Lancashire, I submit he is to be respected anywhere. He goes to Canada for a holiday and comes back in the Forces, comes to this Camp, been on guard over and over again, mixes up with the lads here, and until this night of the 16th/17th January, I challenge anyone to say there was a single word against him, either as a civilian or while he was in the Army. I put his character right in issue. He could have been shot at and you have got to accept him as a man whose integrity is of the highest, and he tells you what happened on that night. He went out and had one or two beers and was in the Sergeants' Mess, and then I was able to call the Sergeant-Major and Private Gale. These two witnesses, in my submission to you, virtually dispose of this case in favour of the defendant, if you accept their story, because ~~xx~~the time is set much earlier here and we have him in the Sergeants' Mess just before one o'clock; they had had some special occasion and the Sergeant Major and Private Gale are both certain that Sgt. Roberts was in that bar until a few minutes to one, and then we called Bra~~x~~sford and Arnold, and the only thing I desire to make about these two witnesses is that neither of them heard any complaint in the night-- neither of them heard any commotion at all. One gave us a statement, but despite that he was interviewed by the prosecution and he said he saw the Sergeant go into the corridor by the detention room cells three times during that evening, somewhere around 11 or 12 o'clock. Well, he didn't tell us a word about that. You saw him in the box. He is a man I don't think whose mentality is very high, and we had very little time to check up on him, and he gave his

evidence, I submit, in a most unsatisfactory manner. And my submission to you is that it would be very unwise to take much notice of him at all. Arnold merely deals with the time.

I am fortunate to be before a Court which I know do appreciate to the full the gravity of the issues which are to be decided here. It is a day which my client, of course, will never forget. It is a day on which you have to decide whether his arrest finishes today and he goes on with his normal duties as a soldier, a volunteer, or, on the other hand whether he has got to be put in detention and possibly be struck off the rolls by the Law Society. I don't ask you to allow these matters to weigh the judgment of the Court, and it has been a very unpleasant task for me to have to accuse volunteers in the way I have done but I considered it my bounden duty.

But if I may summarize my points for you as shortly as possible and I venture to suggest you would be good enough to consider these points in my case, it should, at least, raise doubt in your minds.

The first point I desire to make is that in my submission the prosecution have failed to make out their case, because two of the complainants are absolutely unreliable witnesses and their credibility has been attacked. Secondly, that the desirability of corroboration in this case is overwhelming and in practice it is required and I submit that no judge and jury would convict on the evidence of the two Complaints, Gibbs and Barrett, without ample corroboration setting up an independent case. The corroboration point I desire to suggest is that the corroboration relied upon is unsatisfactory. In the first place, I suggest Last's evidence is valueless as corroboration because he was originally a complainant. Secondly, if you are against me on that, his corroboration doesn't amount to corroboration at all, in law.

The next point is where you have men of bad character deposing in evidence against a man of good character. More credence should be applied to the evidence of a man of good character, because if ever a man stands in a position as this man is in today, the fact that he is a man of good character, ought naturally to weigh the balance in his favour. You appreciate, sir, that you must have proof; suspicion is not enough, and in my submission to you the proof is lacking here to justify you in convicting my client on any of these charges, and I very respectfully suggest to you the proper verdict is one of not guilty.

THE JUDGE-ADVOCATE: On the question of corroboration. My understanding is corroboration is required in the case of offences against women and young children and in the case of accom--plices. Do you argue that it extends to cases of this kind? Have you definite authority for that?
THE DEFENDING COUNSEL: Yes, I have ample authority, if necessary. I think it is highly desirable and has become a practice which becomes almost a rule of law and judges always warn juries in these cases that it is dangerous to convict in a case of this kind without corroboration.
THE JUDGE-ADVOCATE: Would it be an improper thing in a court of law that a jury should not be so charged?
THE DEFENDING COUNSEL: In every case where there has been no such warning the verdict has been quashed by a Court of Appeal.
THE JUDGE-ADVOCATE: I have got to go farther than my previous understanding. I have to say that it not only applies in cases of females and children, but also in cases between male persons of indecency.
THE DEFENDING COUNSEL: I can assure you that is right and I can assure you that where the warning has not been given the cases have been quashed.
THE JUDGE-ADVOCATE: That is, in these particular kind of cases?
THE DEFENDING COUNSEL: Yes, I have been in such cases myself.

CLOSING ADDRESS OF THE PROSECUTOR:

I think the defending counsel is attempting to put the complainants in the same position as accomplices which, of course, they are not. I am quoting here from Phippson's Manual of Evidence, 5th Edition, page 239: "Where corroboration is required by law, a Conviction obtained without it will be quashed, where required merely by rule of practice the judge must caution the juryxxxxxxxxxx"

Now, all that refers merely to accomplices and that is the rulex the defence counsel has been quoting and these men are not accomplices, with all due respect to my learned friend, I don't think that rule applies in this case. In the address the defending Counsel made he referred first of all to a charge originally involving a complaint made by Last. I would like to make it quite clear to the Court that as far as I am concerned I am not attempting to conceal anything. I never knew until it was mentioned that any such charge had been made. The only charges I have ever seen are the charges that are before the Court now. The defending counsel also said that he was surprised by the fact that five more witnesses were going to be called by the prosecution and I would like to point out to the Court that the defence had statements from four of these witnesses. Pte. Baake he didn't have a statement from, and had no opportunity of investigating the man. I endeavored to have all the persons who were in the guard room at that time called as witnesses, but unfortunately two of them weren't available. It was only in an endeavour to have all the best evidence before the Court that Pte. Baake was called. In the address of the defending counsel he stated that Barrett admitted that there was comparison of notes between Barrett, Last and Gibbs before the complaint was made. If I am not mistaken, I think that that was one thing they all denied and there was no evidence called at all to show that they, at any time made any comparison of notes or talked about it before they made their complaints to the Regimental police. And going on with the matter of making complaints, the Sgt. Major admitted that if the regimental police were called on the night previous to see what the prisoners wanted, they might not have paid much attention to them, and the prisoners no doubt knew this and I submit that when the regimental police came in the morning that that was the first opportunity they had to make their complaints at the first possible time.

If the Court please the evidence that has been called by the prosecution, I submit there is ample evidence to substantiate the charges that are at the present time before the Court. It is quite true that there are serious discrepancies between the evidence given by Gibbs, Last and Barrett, which involve the matter of time and the number of times in their cells, but the Court must remember that these men had been sleeping and were awakened rather suddenly, and if their story is true that which happened must have been rather unsettling to them and it is only to be expected that they wouldn't remember these side details clearly. I also submit that it shows that they didn't compare notes and that they didn't concoct this story together; otherwise, if they had done they would have settled all these details as to time, the number of times of entering the various cells, etc. But what they all do agree is are the main points in issue.

However, it is true that Gibbs and Barrett have had former criminal records. These records don't involve such offences as perjury. They gave their evidence very frankly. The defence, other than the sergeant, didn't adduce any testtimony which showed that either of these men, or Last, were lying and I think it is the experience of everyone that men who go to Church and serve as Town Councillors, if necessary, will lie just as easily as men who will steal motor cars or forge cheques and do other crimes, and in that respect I would like to point out there were two very important items in Sergeant Roberts' testimony that he was contradicted on, not only by the evidence offered for the prosecution, but by his own evidence He said the bells were rung but he didn't bother about them. There

was not a single witness called who said a bell was rung at any time that evening that they heard, other than Sergeant Roberts, who was also very explicit that he didn't enter the cel or the cell corridors between the hours of a quarter to eight and one o'clock and while we have the testimony of Bird, who told the Court that he saw the sergeant come from the cell corridor about 1130, or 2330 hours; the testimony of L/Cpl. Murihead, who said he was awakened by Sgt. ~~Roberts~~ Roberts closing the door from the cell block and then we have the evidence of Pte. Brailst, a witness called for the defence, who says that Sgt. Roberts went into the cell block three or four times between 11 and 11:30. I submit that from the frank manner in which the evidence was offered by Gibbs, Barrett and Last in this particular case they should be believed much more than Sgt. Roberts, whose evidence has been contradicted in two very important items.

However unpleasant the consequences may be for Sgt. Roberts it is the duty of this Court to arrive at a verdict on the evidence and they shouldn't take into consideration the consequences that their verdict may bring about. If corroboration is required to the degree suggested by the defending counsel there is corroboration in the evidence offered by Sapper Last, by Pte. Baake, who gave evidence that somewhat similar propositions were made to him at the same time, but Privates Bird and Brailsford, who saw the accused in the cell block, and although Pte. Porosnik wasn't before the Court one of the witnesses stated that Pte. Prosnik made a complaint in the morning that similiar suggestions had been made to him by Sgt. Roberts. There was some attempt yesterday in the suggestions made by the defence that Gibbs, Barrett and Last had a motive in that they were annoyed with Sgt. Roberts, and had deliberately concocted this story in order to get revenge on Sgt. Roberts. Part of the motive suggested was that the Sgt. had split up Gibbs and Last, when the Sgt. himself admitted that that wasn't done until the afternoon of the 17th, after the complaint had already been made. The other suggested reasons were that the sergeant wasn't satisfied with the way in which these men did their cleaning up and work. Well, the Sergeant hadn't been on duty before the night of the 16th, since the 3rd of January, 11 days prior and these prisoners hadn't had to do any particular work on this particular occasion before they made their complaints and I don't think there is really much ground for these suggested motives and apparently the defending counsel doesn't think so either, as he didn't mention it in his summing up.

SUMMATION BY THE JUDGE-ADVOCATE

In the first place I should point out that the duty of the Judge-Advocate is to give instruction to the remaining members of the Court in matters of Law and that his function is in no sense to influence the Court in deciding their finding as to the facts.

In this particular case the accused has been charged with four charges; the first is laid under Army Act Section 41, committing a civil offence, that is to say, indecently assaulted a male person, contrary to Section 62 of the Offences Against the Persons Act, 1861; the second charge is laid under Army Act Section 18(5), as follows: "...disgraceful conduct of an indecent kind, in that he, at Morval Barracks, Cove, Hants, while acting as Sergeant of the Guard, did, between the hours of 2300 hours 16 Jan 41 and 0400 hours 17 Jan 41, enter the cell of B 25192, Spr. Gibbs, C.W.L. and took hold of the testicles of Spr. Gibbs and endeavoured to persuade Spr. Gibbs to allow him to take his penis in his mouth for perverted sexual pleasure."

It is not open to the Court to find the accused guilty on both these charges; that is true because they are laid in the alternative and relate to the same set of circumstances, so that if the Court finds him guilty on the first charge they are bound, as a matter of law, to find him not guilty on the second. The same remarks apply to the 3rd and 4th charges.

With respect to the first charge "Indecent Assault"-- now an assault is defined by our Manual of Military Law as follows:

> "An 'assault' is a movement which attempts or threatens the unlawful application of force to another person without his consent..."

An indecent assault is an assault accompanied by some evidence of evidence of an immoral, disgraceful, perverted character or intention.

In support of that charge the Prosecution has brought evidence of Spr. Gibbs, in the first place that the accused entered his cell at or about 12 o'clock, midnight, the hour having been ascertained by what the accused is reported to have said to Spr. Gibbs, sat on the edge of the bed, with his right arm across the bed of the witness Gibbs, and that his left hand, according to Gibbs, laid hold of his testicles and endeavoured to persuade him to allow him to suck him off, to use the exact words of the witness, and that when the witness, Gibbs, demurred, that he squeezed his testicles. I can instruct the Court that if they believe that evidence, it is an indecent assault. Also, for the prosecution, Spr. Last, who occupied a bed on the other side of the ~~xxii~~ cell in which Gibbs was detained, gives evidence which corroborates to some extent the evidence given by Gibbs. He states, for example that the accused was in the cell at or about the time stated and was sitting on the bed of the witness Gibbs.

The prosecution has also offered evidence by the witnesses, Pte. Barrett, Private Bakke, and the Cpl. of the Guard and sundry members of the Guard. None can offer direct evidence as to what went on while the accused sat on Gibbs' bed at the time and place that the offence is alleged to have been committed.

The defence, on the other hand, offers evidence, first of bad character and unreliability of the witness, Gibbs. I can instruct the Court that where a criminal record of a witness, as this one is shown to have, it should properly be taken into consideration by them in deciding as to his credibility, and that where evidence can be adduced to the contrary by a more reliable witness, that the evidence of the more reliable witness in that respect, should carry more weight than that of the less reliable witness. The defence offers that as one excuse, because the accused himself has denied the truth of what Sapper Gibbs has said and no evidence has been produced to impeach the previous

good character of the accused, although his character was put into issue by reason of evidence of good character having been given by the defence. The defence also offers evidence of bad character of Last and of Barrett. They state that they are not reliable witnesses.

Another defence offered by counsel for the defence is the fact that a push bell is found in the cell and it wasn't used by Gibbs when he said he was assaulted, within the meaning of the terms of the first charge.

The gentlemen of the Court are at liberty to use their own military knowledge in considering matters of general military affairs. As officers, they will know what the effect of a military prisoner pushing a push bell-- when that message was received in the outer guard room-- and what measure of assistance a prisoner would be likely to obtain from the guard and what the duties of that guard would be when a prisoner did signal for such assistance. They know the conditions of service of Canadian troops here and the general conduct of affairs in guard rooms generally.

There is evidence-- well there is conflicting evidence-- that several bells were rung on the evening in question. The accused states that several of them were rung. Other members of the guard don't recall having heard bells rung. If the Court concludes that by ringing the bell the witness Gibbs would be acting more reasonably by seeking assistance, when having been treated as he said he had been treated, they can take that circumstance as being in favour of the accused, because there is no ~~xixx~~ evidence that at the time of the alleged assault that the bell was rung, as a matter of fact there is direct evidence to the effect that it wasn't rung.

The accused also offers the defence that he wasn't during the period from approximately 1120 that evening until between 10 and 5 minutes to one o'clock in the morning, in the guard room in question and that consequently he could not have been in the cell at 12 o'clock when the accused is said to have been there by the witness Spr Gibbs. Spr. Gibbs, however, states that that time was given to him by the accused himself and that he had no direct knowledge of the time, such as by looking at a timepiece himself. The Court, if it believes the fact offered in evidence that if the offence was committed at 12 o'clock, and also believes that the accused wasn't in the guard room at that time, will, of course, acquit the accused on both the charges.

It will be necessary, along that point, to state that the offences referred to in the 1st, 2nd, 3rd and 4th charges were all reported to have been committed very close to the same time; therefore, if they believe the story of the alibi as to the time and the story of the witnesses Gibbs and Barrett as to the time, then they must of necessity acquit the accused.

The accused also offers evidence that ~~the~~ accused Gibbs and Barrett weren't on good terms with him. There again the Court can use their general military knowledge of soldiers and take what would be called in a civil court "judicial notice" of the general conditions of sergeants and men and the general relationship existing between the sergeant of the guard and a prisoner. I think it is fair to say that prisoners don't usually entertain very high regard or a very friendly attitude towards the sergeant of the guard in whose charge they are detained, and the worse the prisoner the more difficult the sergeant of the guard's job becomes, but evidence has been given by the accused that the previous n.c.o. in his position on the guard followed the practice of permitting prisoners to remain in their cells with the doors unlocked and prisoners took advantage of whatever that privilege

entailed, and he has given evidence, also, that when he became sergeant of the guard he wasn't satisfied with the arrangements and insisted upon the prisoners being locked up in their cells. That, I imagine, wouldn't be a very well liked turn of events or developments as far as the witnesses Gibbs and Barrett were concerned and might, by itself, antagonize them and colour their evidence against him, if, of course, the Court believes the evidence of the accused.

The substantial difference between the 1st and the 2nd charges is that in order to find the accused guilty of the 1st offence you must find him guilty of an assault, as I have defined it, but in order to find him guilty of the 2nd offence you are not bound to come to the conclusion that an assault was committed. The charge laid under Army Act Sec. 18(5) is laid under a wider section and includes and "disgraceful conduct of an indecent or unnatural kind." That may or may not be an assault. Beyond that the particulars set out in the charge must be proved specifically by valid evidence. An assault can, of course, be disgraceful conduct of an indecent kind, so that the second charge will include an assault and the Court need not be hampered by any consideration on that point.

With respect to the matter of corroboration, raised by counsel for the defence. He has assured me that the rule as to corroboration in regard to indecent acts as they affect young children and female persons, also applies as to indecent acts when they occur between grown men. I hope that counsel for the defence will correct me if I misquote him. In the light of his assurances to me I am prepared to direct you that it will be unwise for you to convict the accused unless you can find some corroboration of Spr. Gibbs' story as to the guilt of the accused. When I say corroboration, or corroborating evidence, I mean evidence which directly implicates the accused and not mere suggested evidence, such as might be gleaned from the evidence of somebody in the next room who, perhaps, might have given evidence as to the state of mind of the accused at the time, but doesn't directly implicate the accused in the particular offence at the time and place stated. You must find evidence directly implicating the accused, otherwise you cannot consider it as being corroborative. Such corroboration must be found with respect to the four charges upon which the accused is now being tried.

With respect to the 3rd charge, the accused, according to the evidence of Barrett, came into his cell and stroked his throat and made sundry improper proposals to him, which the Court no doubt remembers and there is no need for me to recapitulate them here now. If the Court believes that the accused can be found guilty under Section 11 of the Criminal Law Amendments Act, 1885. The same remarks apply to the 4th charge. One appears to be just as wide as the other and I can detect no real difference between them, as far as the elements go to prove them are concerned. Corroboration will be necessary, as I have said, with respect to both of them.

I think that sums up as well as I can the evidence and the issues which the Court must consider. I should point out, in conclusion that the accused is an innocent person until such time as he has been proved guilty, and that if, upon the whole of the evidence which is given before the Court, they entertain any reasonable doubt as to his guilt, then the accused shall be given the benefit of that doubt, and that he is entitled to it, because the prosecution shall have failed to have established the burden which is upon them to do.

Is there anything that either of you gentlemen wish to comment upon or wish me to include in this summary?

NEITHER THE PROSECUTION OR DEFENCE REPLIED.

THE COURT IS CLOSED TO CONSIDER THE FINDING.

THE COURT IS RE-OPENED AND THE ACCUSED IS BROUGHT IN

THE PRESIDENT: The Court finds you not guilty on all charges.

SUMMARY OF EVIDENCE

In the case of L-132850 L/Sgt. Roberts, Geoffrey Bamford

S. Sask. R., C.A.S.F.

The Commanding Officer directs that all evidence be taken on oath.

The three charges were read to the accused.

1st. Witness B-35192 Spr. Gibbs, C.W.L., 2nd. Fd. Coy. R.C.E., having been duly sworn states:

"About midnight of January 16, 17, 1941 B-35192 Spr. Gibbs, C.W.L. which is my name, was in number one detention cell of the S. Sask. R. where I was serving my sentence for being A.W.L. I was in the cell along with Spr. Last of the 11th Fd. Coy, R.C.E. The cell is approximately six by nine feet. My bed was on the right hand side as you went in the door, and Spr. Last's bed was on the corresponding left hand side almost infront of the door which opened on the said left hand side as you enter the cell. At the head of the two beds which is furthest from this door and between them, was a plain wooden chair. I was undressed, in bed beneath three blankets. Spr. Last was undressed and likewise in bed. The lights were out in the cell and the door was locked. I was awakened by the light of the cell being switched on. The light is switched on from outside the cell. I heard the sound of the key in the lock of the cell and the door was opened and Sgt. Roberts, the accused, walked in. The door in opening struck Spr. Last's bed and the accused had to work his way past the bed and the door which he closed. He then came in between the two beds a distance of about four feet. As he was coming between the beds Spr. Last rolled over and asked him what time it was. The accused replied: "It is going on for about one o'clock". Spr. Last then turned over again on his right side and faced the wall. The accused then took out a package of Export Cigarrettes and handed me one and sat down on my bed. He struck a match and gave me a light. He asked me, "Do you want to have a good time". I at this time was lying on the flat of my back. He put his right arm which carried his cigarrette across my body. I then asked him, "What do you mean by that". The accused replied, "You know what I mean". The accused slipped his left hand beneath the blankets and grabbed both of my ~~pppppppp~~ testicles. At about the same time he replied, as above. The accused then said, "I will suck you off". I attempted to turn toward the wall when the accused squeezed my testicles which hurt me and made me fear that if I continued turning he would squeeze them harder. As I was turning I said, "No". The accused retored, "Oh yes you will". He then told me that he was going to go out for about twenty minutes and that I was to be ready to move my blankets and go to the big detention room where we could have a good time. I told him, "No". At this point I raised my voice above a whisper and he gave my testicles another squeeze. Then Spr. Last turned his head towards us and the accused got up and said, "Oh yes tomorrow we will have to wash these walls off". Then he went out. He did not lock our door but just closed it. I saw his head through the peep hole in the door. I saw him turn in the lighted hall and go toward number two cell. I heard his foot steps. I heard him open number two cell door. There were no other foot steps that I could hear in the guard room.

(signed) Spr. Gibbs C.W.L.

-- About two or three minutes later I heard number two cell door opened, closed and locked. I heard footsteps go down toward number three cell in the corridor and heard number three cell being unlocked. About two or three minutes after that again, I heard this cell door being opened, closed and locked. I then heard ~~feetses~~ footsteps come along the corridor and pass our cell door and I saw through the peep hole Sgt. Roberts head go past. I then turned over on my left side and faced the wall. The lights were still on. Approximately half an hour later the accused came back into the cell. He came over to my bed, sat down on it and started rubbing the right side of my face with his right hand and then twisted my right ear, I know it was his right hand by the way his thumb came around the lobe of my ear. I pretended that I was asleep. I shook my head to loosen his grasp on my ear. He then grabbed the loose hair at the crown of my head and raised my head off the pillow saying, "Wake up". /I shook my head and/ He released my hair and I then shook my head and said, "Leave me alone". He bent down towards my head and said, "Kiss me". I told him again to leave me alone. He then got up and I heard the paper on the chair crackle as though he were sitting on it. About a minute or so later I heard Spr. Last say, "Get to hell out of here and leave me alone". I then heard the accused get up, and go out of the cell, and I heard the door being locked. All this time I kept my face toward the wall. I then heard number two cell being unlocked again and footsteps go in and out of the cell. I heard number two cell being locked and then the accused went down to number three. I heard number three cell being unlocked, the sound of footsteps going into the cell and a minute or so later going out again. I heard footsteps coming up the corridor from number three cell and I heard number one cell being unlocked again. I heard Spr. Last call out, "Don't open that door, turn the lights out and let us get to sleep". I then went to sleep after that as the accused did not come in. Sometime later, how much later I do not know I awoke and found the accused sitting on my knees. I was at that time laying on my right side with my back toward the wall and my knees were ~~p~~ drawn up toward my chin. I then let a bellow out of me, "Get to hell out of here and let me go to sleep", which he did. I then heard him lock the door, go out in the main guard room and that is all.

The accused ~~he~~ declines to cross examine this witness.

(signed) Spr Gibbs C.W.L. 2pages
E-25193 Spr. Gibbs, C.W.L.

2nd. Witness

A-20106 Spr. Last, R., 11th Fd. Coy. R.C.E., after being duly sworn states:-

"I t was between 12 and 1 o'clock of Friday morning, 17 January 1941, the lights of our cell went on. I was awakened by the rattle of the key in the door and he came in, that is the accused, and shut the door behind him. I do not definitely know from my own knowledge what time it was. He came in between the beds, sat down on Spr. Gibbs bed on the edge of Spr. Gibbs' bed and gave Spr. Gibbs a cigarrette, and started to talk to Spr. Gibbs in a low whisper. I was laying on my back and looking over and was trying to hear what the accused was saying, but I could not understand him because it was too low a whisper. Every time I looked over the accused, who was doing something which I do not know, and who was watching me, and every time what he saw me looking at him he moved his hand - his left hand which was down around the covers of Spr. Gibbs bed. I do not know whether it was under the covers or not. His right hand was over Spr. Gibbs body somewhere on the upper part. I could not see where. I asked him if he would go out, and then he got up and said, "The walls are dirty". I replied, "That the man had been around and cleaned them". Then the accused said, "We will have to clean them tomorrow". So then he went out, closed the door behind him and locked the door. He went to number two cell, unlocked the door. I heard footsteps go in. I heard some sound I do not know what and a few minutes later I heard footsteps go out and the door being closed. I could not say whether it was locked or not and then I heard footsteps going to number three cell. I don't know what he did then but two or three minutes later he came back to our cell and came in and I was sitting up in bed. He came over and sat on Spr. Gibbs bed and I laid down on my back and did not pay any more attention to what he was doing. I heard Gibbs say I cannot tell you the exact words but the gist of it was he wanted the accused to go out and let him get to sleep. He stood up and stayed there for a while and I watched him not knowing what he was going to do so I asked him to go out myself and let us go to sleep. So he went out, closed the door but did not lock it. He went out to the main guard room. I do not know how long he was out there but he came back and went passed our cell down the corridor again towards number two and three cell. I was laying there looking over at Gibbs as these footsteps were coming back. He came to our door and as he did so I shouted out, "For Christs sake lock the door, turn the lights out and leave us alone". He did that and went out of the corridor and then the lights went out and then I fell asleep. Something woke me up and he was sitting on the chair at the head of the bed and had hishand on my forehead. He got up and sat on my bed so I rolled over and put my back to him. I felt his hand or hands on my hip, I do not know, and then he tried to get them under the covers but I had them wrapped around me and he could not do so. Then he got up and sat on Gibbs' bed so I just lay there and went to sleep. I do not remember hearing anything more. When the accused first came in the cell I asked him what time it was and he said, "One-thirty".

The accused declines to cross examine this witness.

(signed) R.Last.
A-20106 Spr. Last, R.

3rd. Witness

L-12722 Private Barrett, P.P., S. Sask. R. after being duly sworn states:

"I was sleeping in cell number two and I was awakened by the sound of the door opening in my cell. The lights were on when I awoke and the accused came in. He came up to me and sat on my bed. He said to me, "You are very fond of women Barrett, aren't you"? I said, "Oh I don't know". Just before this he had asked me how I ~~fl~~ felt and I said, ~~f~~ I felt sick and sleepy. Then he asked me asked me the question above, and after I had said, "Oh I don't know". He asked me if he had ever treated me badly and then I said, "Oh I don't know". Then he said to me let's have a bit of fun and then I asked him what he meant by that. Then he said I will "poof"? you and suck you off. I said no I am sick. Then I asked him to take his hand,which was on my throat,off of it. Then he said it was good to have something cold around your throat when it was sore and after a few more remarks he left the room and then entered cell number three. After some commotion in there I heard the remark of get out of here and let me sleep. Then he entered cell number one and stayed there for some time. Then he came into my cell again and this time the lights were out and he again sat on my bed, and then he put his hand on my throat again and asked me how I felt and then he said come on I will "poof"? you,it won't take long. I said no I was sick to leave me alone. Soon after he got up and left. Every time he left my cell he locked the door. He then went to cell number three and again the remark of get out of here and let me sleep, can't you. On the second time that he came in the light in my cell was out but the light in the hall was on. After he had gone to cell number three he went to cell number one again. Sometime after that he tried to come in again and I yelled keep out or I will tell the R.S.M., he came in about four feet and then went out and locked the door. Sometime later he came in about two feet, looked at me,turned and walked out. On the first time I heard Gibbs tell the other Spr. that he was trying to suck him off, in answer to the question of the other Spr. with Gibbs, "What did the Sgt. want".

The accused declines to cross examine this witness.

(signed) P.P.Barrett.

L-12722 Pte. Barrett, P.P.

On his evidence being read to him this witness pointed out that the following evidence was not included in the above summary:

"When the accused first woke me, I asked the accused if it was time to get up and he told me, no it was ~~twelve~~/ twelve o'clock. What the true time was I do not know as the accused never looked at any watch".

(signed) P.P.Barrett.

L-12722 Pte. Barrett, P.P.

4th Witness

L-12241 Pte. Farrell, J . S. Sask. R., after being duly sworn states: -

"I was a member of the guard on the night of 16 - 17 January 1941, and was detailed for duty as third relief which would make my first tour of duty to be from 2300 hours 16 January to 0100 hours 17 January. When Pte. Archer and myself were relieved from our Sentry duties at approximately 0100 hours and 0105 hours 17 January upon entering the guard room I saw Sgt. Roberts come through the door into the guard room from the cell blocks. This door is the door which leads to the corridor upon which the doors of each cell opens. Pte. Archer, Sgt. Roberts and myself stood talking in front of the fire for approximately three quarters of an hour. Pte. Archer and I then went to our respective beds to go to sleep. That is all.

Question by the accused:

Which bed did I use to sleep in during the night?

Answer by Witness

The bed directly opposite the main door above which is the case in which all the keys for the guard room are kept.

Question by the Accused

Do you remember what brand of cigarette I gave you and Pte. Archer while we stood talking before the fire?

Answer by the Witness

No, I do not remember.

Question by the Accused

What was the Cpl. of the Guard doing while we were talking?

Answer by the Witness

He was sleeping on his bed.

Question by the Accused

After we had finished our conversation and decided it was time to go to bed, what happened then?

Answer by the Witness

You wakened up Cpl. Muirhead and told him you were going to lay down on your bed.

Question by the Accused

What time were you on your beat again?

Answer by the Witness

I was on my beat at five o'clock.

Question by the Accused

Where was the Cpl. of the Guard when you went on your beat at five o'clock?

Answer by the Witness

I can't remember.

Question by the Accused

Where was I when you went on your beat at five o'clock?

Answer by the Witness

You were on your bed.

(signed) J.Farrell.

L-12241 Pte. Farrell, J.

5th. Witness

Lieutenant G. W. Mason, S. Sask. R., being duly sworn states: -

"On January 16, 1941 I signed Part One Orders for the Acting Adjutant, P.C. Jardine, E.D. One Part One Orders the Sgt. of the Guard for January 17, 1941 was one, L/Sgt. Roberts, G. B. Duties for the Guard Commencing at 1900 hours 16 January 1941, terminating 1900 hours January 17, 1941. I hereby submit a copy of Part One Orders S. Sask. R. Order No. 14 dated 16 January 1941."

The accused declines to cross examine this witness.

(signed) G.W.Mason.
Lieut. G. W. Mason.

Question to the Accused - E-18250 A/L/Sgt. Roberts, G.B.

"Do you wish to make any statement, or to give any evidence on oath? You are not obliged to say anything, or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and maybe used in evidence."

The accused does not desire to make a statement or give evidence.

The accused declines to call any witnesses on his behalf.

Rules of procedure of 4 (c), (d), (e), (f) and (g) have been complied with.

Taken down & before me at Cove, Hants, this 30th Day of January 1941.

Captain J. K. Mather.

This is to certify that this is a true and correct copy of the original Summary of Evidence taken down before at Cove, Hants., on the30th day of January 1940.

Captain J. K. Mather.

MEDICAL CERTIFICATE

I CERTIFY that I have examined a/L/Sgt.

Roberts G. B.

of the South ~~Battalion~~ Saskatchewan Regiment,

and find him free from disease, and fit to stand trial by Court-Martial

D M Wood Capt

Signature of Medical Officer.

Station Cove

Date 10 Mar. 1941

(13382) Wt.44963/734 50,000 1/40 A.& E.W.Ltd. Gp.698 Forms/B72/42

CC-80
SPR ROBERTS G.H.

CC-80

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

"A." Order convening the Court.

On Active Service, this Ninth day of April, 19 43

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Div, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

~~*[I am unable to appoint:~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~for the following reasons, namely:—]~~

131

Judge Advocate

Major F J Gilmour HQ 3 Cdn Div

Proceedings Reviewed

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	C E Corrigan	DADMS 3 Cdn Div

Members.

Rank.	Name.	Regiment.
Lieut	E A W Paterson	8 Cdn Inf Bde Coy RCASC
Lieut	W K Carruthers	3 Cdn Div Sigs

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (R F L Keller) Major-Gen

Commanding 3 Cdn Div

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M/17388 Spr G H Roberts 18 Cdn Fd Coy, RCE	Army Act Sec 15(1) (See charge sheet att)	Guilty	Guilty 60 days Detention [signature] Major 10 Apr 43 Pres. [signature] Major J.A.	I confirm the finding but remit 20 days (twenty) detention from the sentence of the Court. [signature]

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (to be recorded on separate sheet if necessary) :—

(Signed) [signature] (R F L Keller) Major-Gen
Commanding 3 Cdn Div
Convening Officer (e)

(Signed) [signature] (C E Corrigan) Major
DADMS 3 Cdn Div
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10 day of April 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses and the Judge Advocate

*~~(3. The interpreter)~~

*~~(4. The officers under instruction)~~ [initials]

~~were duly sworn.~~

* Omit if not applicable.

Signed this 10 day of April 1943.

[signature]
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

Signed this day of 19 .

[initials]
~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 10th day of April 1943.

[signature]
R. F. L. KELLER Maj. Gen.
Confirming Officer.
G.O.C. 3rd Cdn. Div.

Promulgated and extracts taken in the case of M-17388 SPR G.H. ROBERTS

(a) (Dated) 13 Apr 43 (Signed) [signature] Major
O.C. 18 Cdn Fd Coy, RCE

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Wt. 47787/1867 10 M. 5/41 KJL/8265(2) Gp. 688/3

CHARGE SHEET

The accused M-17388 Spr. Roberts, G.H. 18th Cdn. Fd. Coy., R.C.E., a soldier of the Canadian Army (Overseas) being on active service, is charged with:-

First Charge
15(1) A.A.

Absenting himself without leave

in that he

in the field, absented himself without leave from 2300 hours 15 Mar 43 until 1445 hours 3 Apr 43. (18 days 15 hours 45 mins).

Dated in the field this
5th day of April, 1943.

E H Wright

Major E. H. Wright
Officer Commanding
18 Cdn. Fd. Coy., R.C.E.

To be tried by Field General Court Martial.

R F L Keller

In the field
9 Apr 43

(R F L Keller)
Major-General
GOC 3 Cdn Div

B2

MEDICAL OFFICER'S REPORT

I have this morning examined

I certify that No. M17388 Spr. Roberts, G.H.

of 18th FD. COY. R.C.E. is in a good state of health,

and able to undergo Trial by Court martial.

[illegible]
Medical Officer

Station In the Field

Date April 10th 1943

M. F. B. 246
26M—9-40 (4393)
H.Q. 1772-39 480

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field Genl Court-Martial held at In the field on the 10 day of April 1943 by order of Major General RFL Keller Commanding 3rd. Cdn. Div. dated the 9 day of April 1943.

President.

Major C. E. Corrigan
DADMS. 3 Cdn. Div.

Members.

Lieut E. A. W. Paterson
8 Cdn Inf Bde Coy
RCASC

Lieut W. K. Carruthers
3 Cdn Div Sigs.

, ~~Judge Advocate~~.

Trial of* M-17388- Spr. G. H. Roberts
18 Cdn. Fd Coy RCE

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that ..... is not available to serve owing to~~

, ~~waiting member takes his place as a member of the Court~~.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt. R. D Mills 18 Fd Coy RCE

Counsel‡ or defending officer† Lt. W M Robinson 18 Fd Coy RCE.

At 1115 o'clock the Trial commences.

The order convening the Court is read, and is marked 'A', signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. Wt.W16839/78. 35,000 sets. 6/40. K. & H., Ltd. G657/11. Forms A 9/55.

Vab.

B

The President, members and judge-advocate are duly sworn.

~~The following officers under instruction are duly sworn.~~ N/A.

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act sec. 46 (3) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty Sir. *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Question.*

N/A. *Answer.*

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

N/A. *Answer.*

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

N/A. *Answer.*

The accused having pleaded Guilty to the charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

N/A.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*~~[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]~~ [illegible]

The accused M 17388 Spr ROBERTS, G.H. 18th Cay RCE is found guilty of the charge

†The summary ~~(or abstract)~~ [illegible] of evidence is read, marked G signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Yes.

Answer. The accused in mitigation of punishment says :—

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~ [illegible]

The reason why I was AWL was that I had quite a bit of trouble on my hands as follows - A certain young lady in England claims that she was in the family way by me, which I proceeded to investigate. Also whilst on leave before, while staying at the YMCA in London near Russell Square I checked my overcoat at the YMCA intending to pick it up on returning from leave. This I was unable to do owing to having to rush back from leave. After thinking it over I found it didn't pay to hang around any longer trying to straighten things out, also I did not know whom to ask for the privilege of returning to London. That is all sir.

Instruction. † If there is [illegible] summary or abstract of evidence, sufficient evidence to enable the Court to determine the [illegible]ntence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

[illegible]

DD

Do you wish to give evidence yourself or to call any witnesses as to character? Yes.

Question to the accused.

Answer.

Evidence as to character.

1st Character Witness

A 20553 A/Cpl LANGLEY, G.E, 18th Coy RCE

duly sworn states –

I have known the accused for the past 6 months. He is in my platoon. He has been a good worker and I have had no trouble with him. He was always willing at training and construction and always did his best. On some occasions he appeared to be worrying about something.

(R.P. 53B complied with).

The defending officer reads a statement in mitigation which is handed in & attached to the proceedings & marked "J"

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~ 1.6

~~The Court find that the accused.~~

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before* Sentence.

*~~The Court being re-opened, the accused is again brought before it.~~ 1.6

Evidence of character, &c.

Lieut G.D. Mills 18th Cay RCE is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* yes AFB 296 and certified copy of MFM 6.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked Hand I, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* yes.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. yes

Cross-examined by the accused.

no.

[Instruction.—If the nature of the nature of the accused is a superior [illegible] or character, the finding of the Court renders him liable to any [illegible] punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No, my defending Officer will

The Court is closed for the consideration of the sentence.

1.6

F

Sentence.

The Court sentence the accused Spr G.H. ROBERTS Sentence. 60 days dtn.

To undergo detention for a period of 60 days.

[illegible] Pres.

10/April 43

F J Gilmour
Major
J.A.

Summary of Evidence

By order of Major E. A. Wright, Officer Commanding, 18th Cdn. Fd. Coy. R.C.E., a summary of evidence was taken in the case of M-17388 Spr. Roberts, G. H., 18th Cdn. Fd. Coy R.C.E.

Place - In the field

Time - 1500 hours 6 Apr. 43.

First Witness:-

M-20553 Cpl Langley, G.E., having been duly sworn states:-

I am senior cpl. in no.1 platoon hut, and the accused, Spr. Roberts, is in no.1 platoon. On the morning of 16 Mar. 43. at 0800 hours I reported to L/Sgt Dodd that Spr Roberts had been absent from 2300 hours 15 Mar. 43. I did not report this absence the night before as I was under the impression Roberts had a late pass.

G E Langley.

Accused declines to cross-examine witness.

Second Witness

B-5911, L/Sgt Dodd, W. B., having been duly sworn states:-

I am platoon L/Sgt in no.1 platoon to which accused, Spr. Roberts, belongs. On 15 Mar 43 I was orderly sgt. and Spr. Roberts was reported absent at tattoo roll call. He failed to answer his name on every platoon roll call from that time until his return on the afternoon of 3 April 43.

S/Sgt Dodd W.B.

Accused declines to cross-examine witness.

No. 6

Third Witness

B-27070 Cpl. Copeland, G. B. having been duly sworn states:-

I am the Coy. pay clerk and was on duty in the Coy orderly room on 3 April 43. Spr Roberts reported to me at 1445 hours and I placed him under open arrest. I reported his return to C.S.M. Worde.

G.C. Copeland

Accused declines to cross-examine witness.

Fourth Witness:

B-27057 Spr. Morton, W. H. C. having been duly sworn, testified as follows:-

Q.- What is your position in No 1 platoon.
A.- I am platoon clerk sir.
Q.- Did Spr Roberts have a late pass on the evening of 15 Mar. 43.
A.- No Sir.

W.H.C. Morton

Accused declines to cross-examine witness.

I certify that Rules of Procedure 4 (C), (D) (E) and (F) have been complied with.

G. A. Mills, Lieut.
A/2IC 18 Cdn. Fd Coy RCE.

G

W.J.

18 Cdn Fd Coy R CE
10 Apr 43.

Spr Roberts

Case for Mitigation of Sentence

Spr Roberts went AWL because he was worried by a series of troubles which gradually built up until his sense of proportion was lost. ~~and~~

He is by nature shy, and not given to confiding his troubles to other people, nor to asking for help. His troubles over the last three months have been as follows:

1. Although married in Canada, he has become involved with an English girl who is to have a baby which she says is by him. Spr Roberts doubts this but could see no solution to the problem.

2. Although he has received a letter about every two months from his wife, he has received no parcels or cigarettes for over six months; his wife assures him in each letter that they are being sent regularly 1 parcel and one cig parcel per month, but none have arrived. Money and a wristwatch were to have been sent in this way, and have not been received.

Wb

3. Roberts has a dog which until recently he kept with civilian friends. These people could not keep the dog any longer, so Roberts brought the dog home to the Unit. His platoon reacted very unfavourably to the dog, and would not ~~permit~~ tolerate the animal near the Platoon.

4. He had worked a great deal with motors in civilian life. In the Army he was passed as an Eng. Art "B" in Canada, but retradetested in England and failed. He considers the test very unfair and not hard enough in the Engine Artificers part but too difficult in the theoretical part. He is inarticulate and does not explain things to a trade test board easily.

The trade test board told Roberts however that he would have no difficulty in passing a trade test in Driver Mech. C or Mot. Mech. B. He gave Sgt Renouf (Transport Sgt) this info, but was not called for tradetest in this line and saw no chance of being called.

wlp

5. In January while on leave he left an overcoat at a YMCA near Russell Square. When he realized his loss he ~~[illegible]~~ had no time to return, and has since been trying to recover the coat by himself, but with no success.

In each of these troubles Roberts could have been given assistance by either his Platoon NCOs, his Pl Officer, or the Company Welfare Officer. The ~~[illegible]~~ non-receipt of parcels is being looked into by the Orderly room but the information will not come through for some time.

Due to his nature he kept the rest of the difficulties to himself. They increased in severity until finally he went to Wh in a fetch "do something about it" gesture.

T

W M Robinson Lieut
Defending Officer.

"J"
[illegible]

M.F.M. 6
(A.F.B. 122)
500M—11-42 (8025)
H.Q. 1772-43-18

No. M17388 Name ROBERTS, G.H. Sqn., Battery, or Company 6 Cdn. Const. Coy., RCE Corps

Date of enlistment 28/5/40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 20/10/40 No. and date of last drunk Nil Period not reckoning towards freedom from extra fine

Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 28/11/40					
Currie Barracks	18 May 41	Pte		A.W.L. from 2359 hrs on 11/5/41 to 1430 hrs on the 18/5/41. Absent 6 days 14 hrs 30 min.	A/Cpl. Mantle, A.	14 days' C.B.	19/5/41	Major A.H. Elliot	Forfeits 7 days' pay.
Currie Barracks	2 Aug 41	Pte		Losing by neglect his equipment to the value of $4.11	C.Q.M.S. Newall, J.A.	Admonished Stoppage of pay to amount of $4.11 to cover loss	4-8-41	Capt. J.T.W. Grass	
Salamanca Barracks	18 Sep 41	Pte		Conduct to the prejudice etc A.A.40 Dirty equipment for Royal Inspection.	Sgt. Salter Cpl. Deluce	5 days' C.B.	20-9-41		
Bordon	30 June 42	Spr.		A.A.Sec.15(1) A.W.L. from 1700 hrs 30 Jun 42 until 0745 hrs 15 Jul 42 (14 dys, 14 hrs, 45 mins)	L/Cpl. Harbourne	Admonished	16 Jul 42	Capt. M.T. Woods	Forfeits 15 dys' pay FRI 1[illegible](1)(a)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				VERIFIED IN ACCORDANCE WITH C.A.R.O. 2084 3 Sep 42. (Signed G.E. Atkinson)					
Field	16 Aug 42	Spr.		A.A.15(1) A.W.L. from 2200 hrs. 16 Aug 42 to 1115 hrs 4 Sep 42. Absent 18 dys 13 hrs. A.A.40 Losing by neglect kit to the value of £1-0-3	Sgt.Taylor & Civil Police	Forfeiture of 19 dys pay FRI 149(1)(a) Forfeits 21 dys pay A.A.46 Placed under stoppages of £1-4-2 for cost of apprehension also loss by neglect the sum of £1-0-3	8 Sep 42	Lt.Col. V.S. Thompson	Total forfeiture 40 days' pay F.R.&I.149(1)(a) and A.A.46
In the Field	1 Nov 42	Spr.		A.W.L.from1200 hrs 1 Nov 42 to 0750 hrs 3 Nov 42(Total 1 day 19 hrs 50 mins)	Sgt.Heaton, J.L.	14 days C.B.	5 Nov 42	Maj.Wright	Forfeits 2 dys' P&A FRI 149(1)(a)

No. Name Sqn., Battery, or Company Corps Date of enlistment G.C. Badges Service or Proficiency Pay

M.F.M. 6
A.F.B. 122
500M—11-46 (8025)
H.Q. 1775-43-18

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	29 Dec 42	Spr		A.W.L. from 0820 hrs 29 Dec 42 to 2200 hrs 29 Dec 42 (Total absence 13 hrs 40 mins)	Sgt. Heaton J.I. Cpl. Worrall, W.B	Fined 10 dys Pay FRI 149 (2)	30 Dec 42	Major E.H. Wright	Forfeits 1 dys' P&A 149(1)(a)
In the Field	31 Jan 43	Spr		A.A.Sec.15(1) A.W.L. from 2359 hrs 31 Jan 43 to 1855 hrs 2 Feb 43. Absent 1 day, 18 hrs and 56 mins.	Sgt. Voisey, A.E. C.S.M. Woods G.	14 days F.P. Forfeits 14 days pay F.R. &I. 149(a)	3 Feb 43	Maj. E.H. Wright	Forfeits 2 days pay F.R. &I. 149(1)(a)
In the Field	26 Feb 43			W.O.A.S. was absent from roll call at 2300 hrs.	Cpl. Semple A. Sgt. Lebrun, J.	Fined 7 dys' pay F.R.&I. 149(2)	27 Feb 43	Major E.H. Wright	

CERTIFIED TRUE COPY

G. D. Mills, Lieut, I having the custody of the records for O.C. 18 Cdn Fd Coy R.C.E.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M-17388	Spr.	Roberts, G.H.	18 Cdn. Field Coy., R.C.E.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement, but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the numbers as entered in the conduct sheets, the sentence being given in the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Absent without leave	6 times	7 times.
For Losing by neglect equipment to the value of $4.11	times	1 times.
For Dirty equipment on Royal inspection	times	1 times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, Nil

or

~~There are no entries in the conduct sheets of the accused~~

2. The accused has not been previously convicted, ~~xxc~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~xxxx

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. M-17388 Rank Spr. Name Roberts, C.H. of 18 Cdo. Fd. Coy. R.E. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or statement of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		N/A		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 6th day of April, 1943.

E.H. Wright-Mag

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion.
In the rank of N/A	years,
In the rank of	years
In the rank of	years,

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

JJ-29 (case #2)

SPR ROBERTS GH

See CC-80 for 1st case

M.17388 Spr. Roberts, G.H.
1 C.E.R.U.
BGHQ 5-6-2/236

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this 22nd day of JUNE, 1943

Whereas it appears to me, the undersigned, an officer in Command of B GROUP CANADIAN REINFORCEMENT UNITS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer];

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint :—
*(1.) Three Officers to form the Court;
*(2.) A Field Officer as President;
for the following reasons, namely:—]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	W.A. de Graves, D.S.O.	1 C.A.S.C.R.U.

Members.

Rank.	Name.	Regiment.
1 Capt	from	1 C.E.R.U.
1 Lieutenant	from	1 C.S.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (P.R. Shields)Brig

Commanding Comd "B" Gp CRU

Convening Officer.

3/6 June 43

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M.17388 Spr. ROBERTS, George, Harry, 1 C.E.R.U.	First Charge A.A.Sec.15(1)	Guilty	Guilty	Confirmed
			90 days detention	P.R. Shields 23 Jan 43 Brig
			Stoppages of £1.11.8 Costs of apprehension	
			W.A. de Graves 23 6 43	Major
	See Attached Charge Sheet			

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(*Signed*) (P.R. Shields) Brig (*Signed*) W.A. de Graves Major

Commanding "B" Gp C.R.U. *Convening Officer (e)* *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23rd day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court were duly sworn
2. ~~The witnesses~~
*(3. ~~The interpreter~~) def
*(4. ~~The officers under instruction~~)

~~were duly sworn.~~

* Omit if not applicable.

Signed this 23rd day of June 1943.

W.A. de Graves Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 579 of 1918 have been complied with.~~

~~Signed this 23rd day of June 1943~~ def

~~W.A. de Graves Major~~
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ Pas

Signed this 23 day of Jan 1943.

P.R. Shields Brig
Confirming Officer.

Promulgated and extracts taken in the case of M17388 Spr Roberts G.H.

(*a*) (Dated) 25 June 43 (Signed) H.K. Kett, Major

Promulgated and extracts taken in the case of

(Dated) DATE 3/7/43 ORDER No. 159 (Signed) G.F.B. Humble Lieut

No. 1 Cdg. Engineers' Holdings

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Wt. 47765/1907 30 M. 5/41 KJL/5285(2) Gp. 698/3

Entered 00159 d/5 Jul 43

CHARGE SHEET

The accused M-17388 Spr. ROBERTS, George, Harry, Royal Canadian Engineers, No. 1 Canadian Engineer Reinforcement Unit, a soldier of the Canadian Army (Overseas) is charged with:-

CHARGE
A.A. (50)

WHEN ON ACTIVE SERVICE, ABSENT WITHOUT LEAVE

in that he

At Guillemont Barracks, COVE, Hants., absented himself without leave from 0300 hrs 17 May 43 until apprehended at FILTON, Gloucestershire, by Civil Police at 2220 hrs 7 June 43.

(Total Absence 21 Days 16 Hrs 20 Mins)
(Cost of apprehension £1-11-8)

COVE, Hants.,
25 June 43

(W.H. MEYER) Col. M.C. V.D.
Officer Commanding,
No. 1 C.E.R.U.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(P.R. Shields)Brig
Comd "B" Gp
Cdn. Rft. Units

22 Jun 43

W. A. de Graves
23 6/43
Prep. major

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. 1017388 Mr. Roberts G.H.

of No. 1 C.C.R.U. and in my opinion he

is ~~unfit~~ fit to undergo Trial by Court Martial.

Station Cove

Date 23 June 1943

T.W. Brohovski Lt.
Medical Officer.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT Guillemont Bks ON THE 23rd DAY OF June 1943.

TRIAL OF:- No. M/14388 Spr Roberts G. H. Hove Unit 1 C E R V.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- Capt (Name) G. Monette (Unit) 1 C E R V

Defending Officer:- H (Name) J. D. Sidens (Unit) 1 C E R V.

At 0945 hrs the trial commences.

The order convening the court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 - No

The President, members and judge-advocate (if any) are duly sworn.

The following constitute the Court:

President Maj. W. A. de Javes DSO (Unit) 1 C A S C R V

Members Capt. W. J. Leeky (Unit) 1 C E R V

Lt. F. C. Boss (Unit) 1 C S R V

The officers under instruction are duly sworn.

Q2 ~~Do you object to ..... acting as shorthand writer? A2.~~ def

~~The shorthand writer is duly sworn.~~

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court is closed to consider its finding. Court is re-opened.

Name Capt A. Monette (Unit) 1 C.E.R.V. sworn, produces AFB 296 and MFM 6 and upon being questioned by Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3. (To accused) - Do you wish to make any statement in mitigation of punishment? A3 - Yes (attached herewith)

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4 - No

---

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

W. A. de Javes Maj Presidents 23/6/43

Plea in mitigation of sentence upon
Spr. Thornton L.A.

Attested	28 May 1940		
1st charge	18 " 1941	12 month interval	6 days A.W.L.
2nd "	2 Aug 1941	3 " "	Lose equipt.
3rd " *	18 Sep 1941	5 week "	duty on parade.
4th	30 June 1942	10 month interval	14 days A.W.L.
5th †	16 Aug 1942	6 week "	16 days A.W.L.
6th	1 Nov. 1942	10 " "	19 hrs "
7th	29 Dec 1942	2 month interval	13 " "
8th	31 Jan 1943	1 month "	2 days "
9th	26 Feb 1943	1 month "	absent roll call
10th F.G.C.M.	15 May 1943		18 days A.W.L.
11th F.G.C.M.	23 June 1943		21 " A.W.L.

In civil life he had no criminal charges.
First crime in army - 1 year after joining.
* 2nd & 3rd - due to carelessness -
† 4th & 5th - " " desire for money. worked in fields for 1/6 per hour - 15 s. per day - during then absences.
6th & 7th due again to carelessness
9th & 10th - domestic trouble at home, and resentment at being cut off from Artificers Trades Pay through failure to re pass examination.
11th charge - was so far in hole, and still letters coming from wife - wanting her increase in assigned pay. no parcels received from her.

I have submitted letters from his wife with portions underlined, giving reasons for the doubt in his mind about her fidelity. He was an orphan, and married a girl who was already the mother of two children, the youngest at the time being 6 months old. Upon my asking him point blank why he married - he said "I never had a mother

or a home". From his M.F.M.6, and at the evidence I see in the man before me, and judging from the type of girl he married I suggest the man is definitely weak in character, and inclined to resent what he considers unjust treatment, continually being frustrated.

His wife was ill this spring and one of her letters bore the postmark PONOKA, Alberta, and he asked me if I thought she was an inmate there. I pointed out that he would have been notified in that case. Apparently he has not applied to go back to Canada, lacking the push necessary to ask for help from the welfare authorities. From one of his wife's remarks re "the inspectors always being around" he believes she is 'horsing around'.

I would also point out that this man has no drunkenness charges against him.

From the increased frequency of his offenses, I submit that the Army is not helping him, nor is he helping in Aud. in view of the already heavy debit hanging over him, I apply, if permissible under 557(5), for suspended sentence, in view of the fact that he is guilty of going A.W.L. under mental stress, and would suggest that he be examined by a psychiatrist, and his ~~case~~ troubles re his domestic affairs, by the proper authorities.

[illegible]
Major
President.

EXHIBIT A.

CERTIFICATE IN ACCORDANCE WITH P.O. 2707 of 10 Apr 43.

I CERTIFY that No. M-1738. . Rank Spr. . . . Name . Roberst, G.H. . . . .

Unit . . No. . C.E.R.U. . . . . was arrested at . Pilning . . . (Place)

at . 2220 hrs. (hour) on . 7 June 43 . (date) and that at the time of his arrest he was wearing (Military Uniform) or (xxxxxxxxxxxxxxxxxxx). Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the Section of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

W. Furn . . . . . Capt.
(W. Furn) D. A. P. M.,
London Area

W. Dedeleaves
Major
Pres.

104
11/6/43

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

(18271) Wt.16874/180 10,000 6/41 A.& E.W.Ltd. Gp.698 Forms/O.1617/12

EXHIBIT B.

I CERTIFY that the man whose personal description is given below surrendered himself to* after interrogation was willing to P.C. FARRY, at PILNING, at (hour) 22.30 on the 7th. day of June 1943., as being No. 17388 (Rank and Name) Private George Harry ROBERTS, ~~deserter~~ (or absentee without leave) from COVE, Aldershot., and it appears to me from his confession that he is a ~~deserter~~ or absentee without leave.

* After the word " to " to be inserted the name and rank of the police officer concerned.

Age 31 years Height 5 Feet 7½ Inches

Complexion Fresh Hair Fair Eyes Blue

Marks Tattoo Right Forearm.

In uniform or plain clothes Uniform.

Probable Date and Place of Attestation	28th. May 1940. EDMONTON, Alberta, Canada.
Probable Date of Desertion or beginning of absence, and from what place	15th. May 1943. No.1. Reinforcement Unit, Cove, Aldershot.

GLOUCESTERSHIRE CONSTABULARY STAPLE HILL BRISTOL

Signature of Officer of Police in charge of Frederick Wearing Staple Hill Station.

8th June 1943 Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

EXHIBIT C

RECEIPT.

No. 17,388 Rank. PO

Name: Roberts G. A.

Coy. Y.P. Reinforcement Unit

Regiment: Canadian Forces

Station: [illegible]

Date: 8 June 43

Sir,

I was Commander of the Regt Police Guard on the 18TH day of JUNE. 194[illegible] at about 12.10 hrs when the a/n. was handed over to me by the Military Police.

He was S.P.D

Station: Horfield Barracks

Date: 8. 6. 43

L/Cpl. Eden. E.A.

(signature). (Rank

Regiment

Commander of the Guard

W. Ridgeway
Pres. Major

EXHIBIT D.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. M17388 Rank Spr Name Roberts, G.H. Unit 18 Fld. Coy ICERO

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Bristol

Date	Particulars	Amount		
11 June 43	Escorts return fare from LONDON To Bristol		18	1
	Prisoners single fare to LONDON From Bristol		9	1
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~ Meals, Bus fares		4	6
	Total £	1	11	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature]

CAPT. (W. FERN) D.A.P.M. LONDON AREA.

..... Capt.

Officer Issuing Railway Warrant and Expense Monies
No. 6 Provost Company, Canadian Provost Corps, London.

[signature] Major
Pres

C.M.H.Q. 1000 55
40/P & S/463

(3) Summary of Evidence

Summary of Evidence in the case of M17888 Spr. Roberts, George Harry, Royal Canadian Engineers, No 1. Canadian Engineer Reinforcement Unit, a soldier of the Canadian Army (Overseas)

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION. F91651 Sgt. Roper, J.P. having been duly sworn states as follows.

"I am F91651 Sgt. Roper J.P. of No. 1 C.E.R.U. On 17 May 43 I was Sec. Sgt. of No. 6A. Section A Company No 1. CERU, and Spr. Roberts G.H. was a member of my section. When calling the roll at 0600 hrs. 17 May 43 I found Spr. Roberts G.H. to be absent". I remained with that section until 26 May 43 but Spr. Roberts G.H was not seen by me between the dates mentioned"

F 91651 Sgt. J.P. Roper

The accused declines to cross examine the witness.

SECOND WITNESS For The Prosecution Lt. F. G. B. Maskell, Ass't Admin Offr. No. 1 CERU having been duly sworn states as follows.

I am Lt. F. G. B. Maskell, Ass't Admin. Offr. No. 1 CERU. I present the following documents [illegible] map

(a) Certificate in accordance with PC 2797 of 1st April 42 referring to M 17388 Spr. Roberts G. H.

(b) Army Form O. 1617 dated 8 June 43 referring to No. 17388 Pte. George Harry Roberts

(c) Receipt dated 8 June 43 and signed by L/Cpl. Eden E. A., also referring to 17388 Pte. Roberts, G. H.

(d) Expense voucher of cost of apprehension and return dated 11 June 43 referring to M 17388 Spr. Roberts G. H.

(e) Statement purporting to have been made in the name of R. G. Pole of the Great Western Railway, Bristol and referring to No. 26 17388 Spr. Roberts G. H.

I am satisfied that these documents refer to the accused M 17388 Spr. Roberts G. H., and the differences are due to typographical and like errors.

G. Maskell Lt

The accused declines to cross examine the witness.

W. A. de Jeanes Mfr
Pres

THIRD WITNESS
For the Prosecution.

Frederick Wearing, Police Officer in charge of Staple Hill Police Station of the Gloucestershire Constabulary

Owing to the exigencies of the service the presence of this witness was not readily obtainable. The accused does not demand the presence of this witness.

The evidence of Frederick Wearing is in the form of a statement on Army Form O.1617 ~~and is~~ included as Exhibit B. I reads as follows:

"I certify that the man whose description is given below after interrogation was willing to surrender himself to P.C. Parry at Pilning at 2220 on the 7th day of June 1943 as being 17388 Private George Harry Roberts, absentee without leave from Core, Aldershot, and it appears to me from his confession that he is an absentee ~~with~~ without leave.

FOURTH WITNESS
For the Prosecution.

[illegible] / [illegible]

L/Cpl. Eden, E.A., R.P., Harfield Barracks

Owing to the exigencies of the service the presence of this witness was not readily obtainable. The accused

does not demand the presence of this witness.

The evidence of L/Cpl. Eden is in the form of a statement and is included as Exhibit C. It reads as follows.

17388 Pte. Roberts G. H., No 1 Reinforcement Unit Canadian Forces, Conc., Aldershot 8 June 43. I was commander of the Regt. Police Guard on the 8th day of June 1943 at about 1210 hours when the a/m ~~soldier~~ was handed over to me by the Military Police. He was S.P.D. Station Harfield Barracks. Date 8 June 43.

FIFTH WITNESS
For the Prosecution.

R. G. Pole of the Great Western Railway Bristol.

The presence of this witness was not readily obtainable. The accused does not demand the presence of this witness.

The evidence of Mr. Pole is in the form of a statement ~~pr~~ made out in his name and is included as Exhibit E. It reads ~~of~~ as follows.

Roberts, G. H., Spr., No 2617388, 31 A Coy, 1 C E R U. stationed in the field. It is reported to me that on 24th May the above named travelled from Paddington to Bristol without a ticket. Will you be good enough to collect and send me at your earliest

W. Kidd
Capt
Major

Convenience a remittance of the amount due to the Company, viz:- 9s 1d. or a warrant to cover the journey.

The accused was cautioned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything if you do not wish to do so, but any evidence you may give or statement you may make will be taken down in writing and may be used in evidence against you"

The accused does not wish to give evidence or make any statement.

G H Roberts

Certified the Rules of Procedure of (c) (d) (e) (f) (g) have been complied with.

Taken down by me in the presence of the accused at Cove Hants this ~~fifteenth~~ day of June 1943.

[illegible]

H C Bent Lt.
(H.C. Bent) Lt, R.C.E.

19 June 1943.

[illegible]

LIST OF WITNESSES

List of witnesses in the case of M17388 Spr. Roberts, G.

FOR THE PROSECUTION

F 91651 Sgt. Roper, J. R.,
Lt. F. C. B. Maskell, ~~No 1 CCRU~~ Asst. Admin. Offr, No. 1 CCRU.

Frederick Wearing, Gloucestershire Constabulary
W/Cpl. Eden, E. A., R. R., Harfield Barracks
R. C. Pole of the Great Western Railway, Bristol.

FOR THE DEFENCE.

Nil.

LIST OF EXHIBITS

A. Certificate in Accordance with R.C. 2797
B. Army Form 01617 purporting to be signed by Frederick Wearing of Staple Hill Police Station
C. Statement purporting to be signed by W/Cpl Eden, E. A., R. R. Harfield Barracks.
D. Statement of Cost of Apprehension
E. Statement of purporting to have been made in the name of R. C. Pole, G. W. Railway, Bristol.

[signature] Major

No. M-17388 Name ROBERTS, G.H. Sqn., Battery, or Company | Corps R.C.E. | Date of enlistment 28-5-40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /B138 (2065)

Date of last entry in Company Conduct Sheet | No. and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 28-11-40					
Currie Bks	18-5-41	Pte		AWL from 2359 hrs on 11-5-41 to 1430 hrs on the 18-5-41 (Absent 6 Dys 14 Hrs 30 Mins)	A/Cpl Mantle A.	14 Dys C.B.	19-5-41	Major A.H. Elliott	Forf 7 Dys Pay
Currie Bks	2-8-41	Pte		Losing by neg. Equip. to the value $4-11	C.Q.M.S. Newall	Admonished Stoppage of pay to the amount of $4.11 to cover loss	4-8-11	Capt. J.T.W. Grass.	
Salamanca Barracks	18-9-41	Pte		Cond to the prej. etc. A.A.40 Dirty equipment For Royal Inspection	Sgt. Salter Cpl. Deluce	5 Dys C.B.	20-9-41	E Henderson Major	
Bordon	30 Jun 42	Spr		A.A15(1) AWL from 1700 hrs 30 June 42 until 0745 hrs 15 July 42 (14 Days 14 Hrs 45 Mins)	L/C Harbourne	Admonished	16 July 42	Capt. M.T. Woods	Forf 15 Dys Pay FR&I149(1)(a)

W. A. de Pasquales major
Des.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				VERIFIED IN ACCORDANCE WITH G.A.R.O. 2084 5 Sept 42 G.E. Atkinson.					
Field	16-8-42	Spr		A.A.15.(1) AWL from 2200 hrs 15-8-42 to 1115 hrs 4-9-42 (Absent 18 Days 13 Hrs)A.A 40 Losing by neg. Kit to the value of £1-0-3.	Sgt. Taylor and Civil Police	Forf. of 19 Days Pay FR&I 149(1)(a)Forf 21 Days Pay A.A. 40. Placed under Stoppages of £1-4-2 for cost of apprehension also loss by neglect to the sum of £1-0-0	8 Sept42	LT.COL.VS Thompson	Total Forf.40 Days Pay FR&I 149(1)(a) & A.A.40

No. B-17388 Name ROBERTS, G.H. Sqn., Battery, or Company | Corps R.C.E. | Date of enlistment 28-5-40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /3136 (2963)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29 Dec 42	Spr		AWL from 0820 hrs 29 Dec 42 to 2200 hrs 29 Dec 42 (Total Absence 13 hrs 40 Mins)	Sgt. Heaton Cpl. Worrall	Fined 10 Dys Pay FR&I 149(2)(	30 Dec 42	Major E.H. Wright	Forf 1 Dys Pay FR&I 149(1)(a)
Field	1-11 42	Spr		AWL from 1200 hrs 1-11-42 to 0750 hrs 3-11-42(Total 19 hrs 50 mins)	Sgt. Heaton	14 Dys C.B.	5-11-42	Major Wright	Forf 2 Days Pay FR&I 149(1)(a)
Field	31 Jan 43	Spr		A.A.15(1)AWL from 2359 hrs 31 Jan 43 to 1855 hrs 2 Feb 43 (Absent 1 Day 18 Hrs 56 Mins)	Sgt. VOISEY A.E. CSM Woods, G	14 Days F.P. Forf 14 Days Pay FR&I 149(1)(a)	3 Feb 43	Major E.H Wright	Forf 2 Days Pay FR&I 149(1)(a)
Field	26 Feb 43	Spr		WOAS was absent from roll call at 2300 hrs.	Cpl. Semple Sgt. Lebrun	Fined 7 Days Pay FR&I 149(2)	27 Feb 43	Major E.H. Wright	

A. A. Wilson Major
Pres.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15 Mar 43	Spr		AWL from 2300 hrs 15 Mar 43 to 1445 hrs 3 Apr 43 Absent 18 Dys 15 Hrs 45 Mins	Cpl. Copland : Langley	Recommended for Summary of Evidence.	5 Apr 43	Major E.H. Wright	
Field	15 Mar 43			Tried by Field Gen. Court Martial for AWL.		60 Dys Detn 20 Days Remission	10-4-43	G.O.C. 5 Div.	Forfs 10 Dys Pay Forfs 40 Dys Pay : : : Total 50 Dys Pay

RELEASED from the DETENTION BARRACKS (H.Down) 6 May 43 SENTENCE having expired REMISSION EARNED under Rule of Detention Barracks and Military Prisons 13 Days. Commandants Initials ???

CERTIFIED TRUE COPY (R.C. Garratt) Capt.
18 Can. Fd. Coy. RCE

"I hereby certify that the above is a true extract from the original document in my custody"

15 June 43

Burnsby Capt

M.F.W. 355
(2M.—9-41 (372-3))
W.D. 1772-30-620
A.F.S. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M17288	Spr.	Roberts George Harry	No. 1 CE RU

1. The following is a fair and true summary of the entries in the ~~Service and Regimental~~ and ~~Squadron, Battery~~ ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. 15 (1)	6 times	A.A. 15 (1)	7 times
For	A.A. 24 (2)	1 times	A.A. 24 (2)	2 times
For		times	A.A. 40	1 times
For		times		times

Number of instances of gallantry or distinguished conduct nil.

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

~~Note.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~

2. ~~The accused has not been previously convicted.~~

~~or~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ ~~A.F.A. 77~~ Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for [illegible] beginning on the [illegible] day of [illegible].~~

4. The accused has been in confinement awaiting trial on the present charges, for ~~Air Force~~ days in civil custody, and days in military custody, making a total of days in custody, of which days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 31 3/12

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 28 May 40

7. The service which the accused is allowed to reckon towards discharge is 3 1/12

8. The accused is entitled to reckon 3 1/12 service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward.

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer (on [illegible]~~ ~~Air Force~~ ~~the regimental rank of [illegible].~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number M17388 Rank Spr.

Name Roberts, George Harry of No. 1 C E R U Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F. G. C. M.	Field 10 Apr 43	A.A. 15 (1)	60 days detention	13 days.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody. [illegible] Lieut

Signed this ..... day of .....

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

WN·114
PTE. ROBERTS J.

D-77725 Pte. Joseph ROBERT,
2 Sub-Depot, 1 CBOD.

NN.114

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this THIRTEENTH day of AUGUST, 19 FORTY-THREE

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [illegible] JHR

*Omit where Convening Officer is Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[illegible] JHR

Proceedings Reviewed 29 Sep 43
G.E. Tritschler Capt.
for Reviewing Officer (JAG) CMHQ

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	N.D. THEOBALD, MC.	5 CIRU

Members.

Rank.	Name.	Regiment.
A CAPTAIN	FROM	1 CIRU
A LIEUT.	FROM	1 CGRU

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J.H. Roberts
Commanding (J.H. Roberts) Maj-Gen., Cdn Rft Units.
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-77725 Pte Joseph Robert, 2 Sub-Depot 1 CBOD.	FIRST CHARGE Sec 15(1) A.A.	Guilty	Guilty	
	SECOND CHARGE Sec 15(1) A.A.	Guilty	Guilty	
	THIRD CHARGE Sec 41 A.A.	Guilty	Guilty To undergo detention for a period of 10 months. 13 Aug 43. N.D.Theobald Maj. President.	Confirmed. JHR
	See Charge Sheet Attached.			

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) J.H. Roberts (J.H. Roberts) Maj-Gen., Cdn Rft Units.
Commanding Convening Officer (e)

(Signed) N.D. Theobald Major. (Westm Regt) 5 CIRU
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 13th day of Aug 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

NDT *(~~XXXXXXXXXXXXXX~~ NDT

*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 13th day of Aug 19 43.

N.D. Theobald Major.
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 703 M.M.L. 1920.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

NDT

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

JHR

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 14th day of Aug 19 43.

J.H. Roberts
Confirming Officer.
J.H. Roberts, Maj-Gen
Comd. Cdn. Rft. Units.

Promulgated and extracts taken in the case of D77725 Pte. Robert, J.

(a) (Dated) 18/8/43 (Signed) J.C.McGlashan Lieut & Adjt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(7550-73) (34256) 57-46178-820 50,000 2-43 A.& E.W.Ltd. Gp.698 54-111942-71 100,000 2-43 " "

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-77725 Pte Joseph Robert, 2 Sub-Depot 1 CBOD.	FIRST CHARGE Sec 15(1) A.A.	Guilty	Guilty	
	SECOND CHARGE Sec 15(1) A.A.	Guilty	Guilty	
	THIRD CHARGE Sec 41 A.A.	Guilty	Guilty To undergo detention for a period of 10 months. 13 Aug 43. N.D.Theobald Maj. President.	Confirmed. JHR
	See Charge Sheet Attached.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(*Signed*) J.H. Roberts (J.H. Roberts) Maj-Gen., *Commanding* Cdn Rft Units. *Convening Officer (e)*

(*Signed*) N.D. Theobald Major. (Westm Regt) 5 CIRU *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 13th day of Aug 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

NDT *(~~xxxxxxxxxxxxxx~~ NDT

*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 13th day of Aug 19 43.

N.D. Theobald Major.
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (b) on page 752 M.M.L. 1929.

Signed this day of 19 .

NDT

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.) JHR

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 14th day of Aug 19 43.

J.H. Roberts
Confirming Officer.
J.H. Roberts, Maj-Gen
Comd. Cdn. Rft. Units.

Promulgated and extracts taken in the case of D77725 Pte. Robert, J.

(*a*) (Dated) 18/8/43 (Signed) J.C.McGlashan Lieut & Adjt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23579) Wt.46179/900 50,000 2/42 A.& E.W.Ltd. Gp.698
(24256) Wt.11192/71 100,000 9-43 " "

JAG BRANCH - REVIEW RECORD

Accused

Robert. D. 77725

Remarks	Date
Trial in (Country)	
Charges	
Sentence	
Rec'd from GR at JAG Branch	
To _____ for (pre)(post) rev	

Recommendations by _____

(1) Pass and record.
(2) Ltr on irregularities
(3) Quash _____ charge(s).
(4) _____

Ret'd to JAG Rev 1 by	
Passed to R.S.M. Copy for Can.	25 Nov.
Passed to Rev 4 to certify	30 Nov 43
To AG 5 for	
Ret'd from AG 5 to JAG Rev 1	
Instrs by JAG Rev 1 on disposal	
File [signature]	
	30 Nov 43
Instrs completed by	

CHARGE SHEET

The accused No. D-77725 Private Joseph Robert, No.2 Sub-Depot, 1 Canadian Base Ordnance Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
SECTION 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field absented himself without leave from 1800 hours on the 19th day of June, 1943, until reporting back, sober and properly dressed at 1930 hours on the 5th day of August, 1943, Total absence 47 days 1 hour 30 minutes.

SECOND CHARGE
SECTION 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field at 0615 hours on the 7th day of August, 1943, did absent himself without leave from the Guard Room while under close arrest and remained absent until apprehended by the Civil Police at 1530 hours on the 9th day of August, 1943. Absent 2 days 9 hrs 15 minutes.

THIRD CHARGE
SECTION 41
ARMY ACT

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE THAT IS TO SAY DID FELONIOUSLY STEAL FROM A DWELLING HOUSE CONTRARY TO SECTION 13(1) OF THE LARCENCY ACT 1916.

in that he

at Woking, Surrey, on the 3rd day of August, 1943, did feloniously steal from the dwelling house of Margaret May Baker, situated at No.105 Courtenay Road, Woking, Surrey, goods to the value of seven pounds (£7-0-0) the property of the said Margaret May Baker.

E.F.S. Morgan(?) Major.
C.O. No.2 Sub-Depot
1 Canadian Base Ordnance Depot.

IN THE FIELD
12 AUGUST 1943

To be tried by Field General Court-Martial.

J.H. Roberts
(J.H. Roberts) Maj-Gen.,
Comd, Cdn Mft Units.

In the Field,
13 Aug 43

N.D. Theobald Major.

MEDICAL OFFICER'S REPORT

I certify that I have this day examined No. D-77725 Pte. Robert, J. of No.2 Sub-Depot, 1 CBOD is in a good state of health, and fit to undergo Trial by Court Martial.

J.C. Portneuf(?) Capt.
Medical Officer.

Station In The Field

Date 13 Aug 43

N.D. Theobald Major.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT
ON THE 13 DAY OF August 1943

The accused D77725 Pte. Robert, J. Unit No. 2 Sub Depot No. 1 C.B.O.D.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Maj. N.D. Theobald Unit Westm R. No. 5 CIRU

Members Capt. N.S. Innis Smith Unit PPCLI No. 1 CIRU

Lieut. L.J.J.C.Benoit Unit R.22 R. No. 1 CGRU

The officers under instruction are duly sworn:-

Lieut. J.C. Benmore Unit No. 1 C.I.H.U.

Prosecutor Capt. H.K. MacCharles Unit No.2 Sub DepotNo 1 CBOD

Defending Officer Lt.W.S.McFarlane Unit No.2 Sub DepotNo 1 CBOD

The charge sheet is signed ty the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

See attached statement.

N.D.Theobald Major.

Aug. 13th 43.

TO

The Court (Martial)

Sir:-

The accused, Pte. Robert, J. D77725 pleads guilty to all charges and places himself on your mercy. I plead for leniency on his behalf for the following reasons.

(1) He is a soldier and wants to be transferred to the R.M.Rs. a fighting unit. His request for this transfer has been disregarded. When it was submitted to the Regimental Officer of his unit No. 2 Sub Depot CBOD he was told to be "a good soldier and his request would be considered." He explained at the time of his request that he wanted to be with his brother in the R.M.R's.

(2) He has never heard of the Army Act, even after two years service in the Canadian Army. This act has never been read or explained to him strange though it may seem.

He cannot read English although he understands spoken English very well indeed. Even when in custody he simply walks off to see his brother. He does not know any better, he has never been told (incredible!) There are hundreds of men in a similar position in the army. They never even heard of the Army Act.

(3) His offences, when looked at in full view of the circumstances, are not serious. No one has been hurt. He is a victim of the misunderstanding and lack of sympathy which must inevitably exist in such a large and so quickly organized body.

(4) His association with the woman in the case only aggravated his inclination to go astray.

(5) I plead that he be not confined for any appreciable period, as his services i.e. the services of an A.1 man who has volunteered for service overseas and is anxious to be transferred to a fighting unit, may be urgently required in the near future. I plead for leniency and this Court, I feel certain, will show what mercy can reasonably be expected in what may at first sight be an indefensible case.

I am,

Respectfully,

Your humble servant,

W.S. McFarlane Lieut.

Defending Officer N.D. Theobald Major.

Summary of Evidence in the case of D.77725 Pte. Robert, J., No.2. Sub-Depot, 1 Canadian Base Ordnance Depot, R.C.O.C., a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence shall be taken on oath.

First Witness For the Prosecution.

Lieut. J.C. Mc.Glashan, No.2 .Sub-Depot, 1 C.B.O.D., an Officer of the Canadian Army Overseas, having been duly sworn states as follows :-

"I am Regimental Officer of No.2. Sub-Depot, 1 C.B.O.D. and am in charge of all regimental records. I submit herewith Army Form B.116, marked "A", a Record of the Declaration of a Court of Inquiry held 10 July 43 declaring that the accused, D.77725 Pte. Robert, J. illegally absented himself without leave at 1800 hours 19 June, 43. As Regimental Officer I am in charge of the Quartermaster Stores of this Unit, and I have to-day had the accused man's kit inspected, and it is now complete."

Signed J.Charles McGlashan

The accused declines to cross examine this witness.

Second Witness

For the Prosecution

C.4078 Cpl. Parker, R.D., No.2. Sub-Depot, 1 C.B.O.D., a soldier of the Canadian Army Overseas, having been duly sworn states as follows :-

"I am Corporal in charge of Regimental Police at No.2. Sub-Depot, 1 C.B.O.D. At 1930 hours 5 August, 43, the accused, Pte. Robert, J. reported to the Guard Room, sober and properly dressed. I reported to Sgt. Daniels, who placed the accused under arrest. I took Robert to the Men's Kitchen, had him fed, and from there he was taken to the Guard Room at No.1. C.A.C.R.U."

Signed Cpl. Parker, R.D. C4078

The accused declines to cross examine this witness.

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence on oath; you are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

N.D. Theobald Major.

The accused declines to make a statement or to give evidence on oath.

The accused declines to call any additional witnesses on his behalf.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in writing in the presence of the accused and Rules of Procedure 4 (C),(D),(E) and (F) have been complied with.

L.M.Hunt Capt.

6 August 43.

N.D. Theobald Major.

Supplementary Summary of Evidence in the case of D-77725 Pte. Robert, J. No.2 Sub-Depot, 1 Canadian Base Ordnance Depot, R.C.O.C. a soldier of the Canadian Army (OS)

The Commanding Officer directs that the evidence shall be taken on Oath.

Third Witness For the Prosecution.

L-64088 L/Cpl. Dexter,E.F. No.1 CACRU a soldier of the Canadian Army Overseas having been duly sworn states as follows.

"I was on duty in No.1 CACRU Guard Room from 0200 hrs till 1200 hrs (noon) on 7 Aug 43. Along with the other prisoners in the guard room I woke the accused Pte. Robert at 0600 hours. At approximately 0615 hours two of the prisoners were taken to breakfast by L/Cpl. Abraham and I remained in the guard room on duty. I thought that L/Cpl. Abraham had also taken the accused Pte. Robert with him to breakfast. The rest of the prisoners were accounted for with the exception of the accused and the other two that L/Cpl Abraham had taken to breakfast. L/Cpl. Abraham then returned with the two prisoners from breakfast and the accused was not with them. We looked around the guard room for the accused, but he could not be found. Then we looked in the compound where we found what we thought were his dishes and we thought that the accused had escaped over the wall of the compound. We proceeded to No.2 Sub-Depot 1 CBOD and reported the details to Sgt.Daniels in charge of the Regimental Police of the depot. L/Cpl. Abraham and myself searched the camp but could not find the accused. We then reported the matter to the Woking Police.

Signed L/Cpl. Dexter, E.F.

The accused declines to cross-examine the witness.

Fourth Witness For the Prosecution

Frederick Arthur Messenger,Detective C.I.D. Surrey Joint Police Force,Woking, having been duly sworn states as follows;

"During the morning of Saturday 7 Aug 43 while on duty at Woking Police Station I received information that Pte. Robert had escaped from detention at Inkerman Barracks. I was furnished with full particulars of his description. At 4 P.M. (1600 hours) the following day I accompanied Sgt. Daniels to No. 105 Courtenay Road, Woking, with a view to obtaining information likely to assist in the apprehension of Robert. We interviewed Mrs. Margaret May Baker at this address and she made a complaint that between 7.10 (1910 hrs) and 8.20 P.M.(2020 hours) on Tuesday 3 August 1943 while she was temporarily away from her dwelling house the following property had been stolen;-

1 (one) gold bracelet
1 (one) gold locket
1 (one) pair chromium plated dress-making scissors
1 (one) gold signet ring with initial "N" thereon

(cont'd over)

N.D.Theobald Major.

The total value of this property she stated was seven pounds (£7-0-0). Together with Sgt.Daniels and other police officers I made inquiries in the Maybury,Woodham and Woking Districts with a view to apprehending Robert but we were unseccessful. At 2.30 P.M.(1430 hours) on the following day the 9 Aug 43 in consequence of certain information received at Woking Police Station I organized a search party comprising civil police and Regimental Police from Inkerman Barracks. As a result of searching the woods in the neighbourhood of Monument Road, Maybury, the accused was apprehended at 1530 hours by P.C. No. 213 John Willian H.Cable and taken to Woking Police Station. I saw the accused at Woking Police Station at about 1545 hours and cautioned him. I said to him." I am making inquiries regarding the theft of a gold locket, a gold ring ,a pair of scissors and a gold bracelet from the dwelling house of Mrs Margaret May Baker at 105 Courtenay Road Woking. I understand that you sold the locket to Mrs Morris at 107 Courtenay Road where you had been living. I also understand that you gave the bracelet to a child living with Mrs. Morris" The accused replied - "All lies- the bracelet belonged to my daughter in Canada and the locket to my wife"
I then saidfand I showed him the ring and scissors when I said this to him)

"This signet ring and this pair of scissors which are amongst your personal property are similar to articles stolen from No.105 Courtenay Road and I shall charge you with stealing the whole of the property from the swelling house of Mrs. Baker"

The accused said;- "The scissors are my own property, the ring is mine too. I had it given me at the barracks three or four weeks ago"

The accused was then detained in police cells. At 1245 hours on the following day the 10 Aug 43, the accused asked to see me in his cell and he said he wished to say something to me. After caution he said -"I will play ball. I did take the stuff from the old lady's house. I got through the open window at the back. I gave the gold bracelet to Patricia Taylor where I was stopping and the locket I sold to Mrs. Morris for ten shillings but she hasn't paid me for it yet. The ring and scissors I had in my property when I was arrested are what I got from the old lady's house. I plead guilty to this job but I swear I know nothing of any other offences in Woking"
I now produce the pair of scissors marked "B" which I have referred to in my testimony. I also produce the gold signet ring marked "C" which I have referred to in my testimony.

Signed.F.A. Messenger.

The accused declines to cross-examine the witness.

N.D.Theobald Major.

Fifth Witness for the Prosecution

Margaret May Baker, 105 Courtenay Road, Woking, having been duly sworn states as follows:-

I have seen the accused frequently at the house of Mrs. Morris who lives at 107 Courtenay Road next door to me.
On Tuesday August 3, 1943, at about a quarter past seven in the evening (1915) I left my house to go to the Goldsworth Arms Slate Club. When I was going out I saw the accused standing at the corner of Courtenay Road. He said "Good evening!Going for a stroll?"
I said "Yes, but not for long; I have to go to my slate club".
When I got back home at about twenty past eight (2020 hrs) I saw that a chair near the kitchen window was disarranged and not as I had left it. I looked for a pair of scissors but could not find them. I needed them for some work I was doing.
On Thursday morning, 5 August 1943, I said to Mrs. Morris - "Have you lost your helpmate?"
She said "Yes, he gas gone back."
I said "I am very glad Mrs. Morris, I do not trust that man."
I did not see Mrs. Morris again until Saturday 7 August 1943.
On Saturday morning between 0800 and 0900 hours I went down to the gate at the end of my garden; I saw the accused near the gate. He asked me if I knew if Mrs. Taylor was about. I had forgotten her name and I said "Mrs. Taylor, who is that? Do you mean Vi?"
I said "It's Johhnie, isn't it?"
That was the only name I had heard the accused called.
I said "Why don't you go to the house yourself?"
He said, "I don't want to".
I said, "I'll call her for you".
That was the last time I saw him until now.
On Saturday evening 7 August 1943, Mrs. Morris said - "Mrs. Baker I want to show you Pat's birthday present."
I said "When is her birthday?" and she said "Last Wednesday".
Mrs. Morris showed me this bracelet marked "D".
I said "That is my little Reta's bracelet. Come with me and I will show you where it is kept."
She came up to my daughter's bedroom where I took the lid off a jewellery box and found the bracelet missing.
Mrs. Morris said "Don't upset yourself Mrs. Baker. If it is Reta's you shall have it back."
I looked in a dressing table drawer in a ring case where a signet ring with the letter "N" is kept and found the ring gone. When Mrs. Morris said goodnight to me the same night, she said "Mrs. Baker, did Enid ever have a gdd locket?"
I said "Yes".
She showed me this gold locket marked "E" which belonged to my daughter and which was kept in a small box with some other trinkets in the same drawer as the ring. Mrs. Morris stated that she had obtained the locket from "Johnnie" the name by which the accused was known. Mrs. Morris returned the locket to me.
I identify the ring marked "C" as the signet ring with the letter "N", removed from the ring case in the dressing table drawer at my house.
I identify the scissors marked "B" as those which I tried to find when I returned home from my Slate Club on Tuesday evening 3 August 43.

Margaret May Baker
(Margaret May Baker)

The accused declines to cross-examine the witness.

N.D.Theobald Major.

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The accused elects to give evidence on oath.

D.77725 Pte. Robert, J. No. 2 Sub-Depot, 1 Canadian Base Ordnance Depot, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:

After returning from detention in May I wanted to transfer to the R.M.Rs where I have two older brothers. About the middle of June while appearing before the Regimental Officer on a charge, I told him that I wanted to transfer to the R.M.Rs. He told me that if I were a good soldier the application would be considered. I did not fill out any application forms as I was not given any to complete. I was feeling discouraged and "browned off" for this and for other personal reasons. My wife has been sick in bed at home for the past five months and I have been worried about her. As a result of all these discouraging facts I went A.W.L. on 19 June 43 and did not return to my unit until 5 August 43. On 6 August 43 I got mail which included a letter from my wife and one from my brother who had just recently come overseas. On the morning of August 7, 1943, at about 0610 hrs I walked out of the guard room at No. 1 C.A.C.R.U. and left the barracks. I went to Aldershot by train from Byfleet to see my brother at No. 7 C.I.R.U. I found that my brother was away on leave so I stayed overnight at the unit. On Sunday 8 August 43, I came back to Woking by train. I stopped in to see Mrs. Taylor at 107 Courtenay Road. While I was in the house she went out and phoned the R.Ps. This was about 1500 hours in the afternoon. I left the house while Mrs. Taylor was phoning. Mrs. Taylor is known to me as "Vi" as her name is Violet. I had intended to return to barracks that afternoon but when Mrs. Taylor phoned the R.Ps I knew I would be picked up before I got back so I tried to cross the canal but there were several R.Ps on the bridge. I hid in the bush beside the road until midnight and then went up to the Wheatsheaf intending to follow the canal along to Saint Johns and thence back to barracks. The civilian police were at the Wheatsheaf so I had to stop over the rest of the night in a civilian house near the Wheatsheaf. On Monday I could not get back because the police were watching all the roads and bridges. I decided that if I could not get back Tuesday I would give myself up. I spent Monday in the civilian house and Monday night as well. On Tuesday the police were still watching and I could not get back so I gave myself up to one of the civilian police and they took me to Woking Police Station. While a.w.l. from 19 June 43 till 5 August 43, I lived in a civilian house at 107 Courtenay Road with Mrs. Taylor whose mother is Mrs. Morris. During this period, Mrs. Taylor suggested that I should take some valuables from the home of Mrs. Baker in order to raise money. So while Mrs. Baker was out I went into her house through a back window at about 1900 hrs or 1930 hrs on 3 August 43. I went upstairs and took the articles marked Exhibits "B", "C", "D" and "E" and left the house the way I had entered. I returned next door to 107 Courtenay Road where I sold the locket to Mrs. Morris for ten shillings but she did not pay me for it. The bracelet I gave to the children. The scissors and the ring I kept in my possession until I gave myself up to the police.

J. Robert D.77725
(J.Robert) D.77725, R.C.O.C.

N.D.Theobald Major.

The accused declines to call any additional witnesses on his behalf.

I certify that the foregoing supplementary Summary of Evidence consisting of five pages was taken down by me in writing in the presence of the accused and Rules of Procedure 4 (c), (d),(e) and (f) have been complied with.

L.M. Hunt
(L.M. Hunt) Capt.

12 Aug 43.

N.D. Theobald Major.

Summary of Evidence in the case of D.77725 Pte. Robert, J. No. 2 Sub-Depot, 1 Canadian Base Ordnance Depot, R.C.O.C., a soldier of the Canadian Army Overseas.

List of Witnesses

Lieut. J.C. McGlashan - No. 2 Sub-Depot, 1 Cdn. B.O.D., R.C.O.C.

C. 4078 Cpl. Parker, R.S. - No. 2 Sub-Depot, 1 Cdn. B.O.D., R.C.O.C.

L. 64088 L/Cpl. Dexter, E.F. - No. 1 C.A.C.R.U.

Frederick Arthur Messenger, Detective, C.I.D., Surrey Joint Police, Woking.

Margaret May Baker, 105 Courtenay Road, Woking.

-----oOo-----

N.D.Theobald Major.

Summary of Evidence in the case of D.77725 Pte. Robert, J. No. 2 Sub-Depot, 1 Canadian Base Ordnance Depot, R.C.O.C., a soldier of the Canadian Army Overseas.

LIST OF EXHIBITS

Exhibit "A" - Army Form B.115

Exhibit "B" - Chromium plated scissors

Exhibit "C" - Gold signet ring bearing initial "N"

Exhibit "D" - Gold lady's bracelet

Exhibit "E" - Gold locket and chain

N.D. Theobald Major.

LMH "A" Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at on the 10 day of July 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D-77725 Pte. Robert J.

DECLARATION.

The Court declare that D-77725 Pte. Robert J., No. 2 Sub Depot, 1 Canadian Base Ordnance Depot, R.C.O.C. illegally absented himself without leave at Inkerman Barracks at 1800 hours on the 19th day of June 1943; that he is still so absent, and that on the 10th day of July 1943 he was deficient, and that he is still deficient of the following articles:

see reverse

N.D. Theobald Major

Names of President and Members

President	Capt. H.H. Hamilton	R.C.O.C.
Members	Lieut. S.E.Hunter	R.C.O.C.
	Lieut. V.W.Porter	R.C.O.C.

Signature of Commanding Officer F.S.Morgan Major.
No. 2 Sub Depot CBOD

Certified True Copy

J.C. McGlashan Lt.
Signature of Officer having custody of the Original Record.

	Article.	Cat. No.	Quan.	Price
CB	Badges Cap		1	0- 0- 5½
CC	Braces, prs.	0009-16	1	0- 1- 3½
	Brasses Cleaning	0020	1	0- 0- 2
	Brushes Shaving	0045	1	0- 1- 4
	Fork N.S. Table Small	0177	1	0- 0- 5
	Holdall	0385	1	0- 0- 9
	Knives Clasp	0532	1	0- 5- 2½
	Knives Table	0534	1	0- 0- 9½
	Razor Safety Sets	0556	1	0- 1-10½
	Spoons N.S. Dessert	0731	1	0- 0- 4½
	Vests Woolen	0941-43	2	0-10- 2
CD	Boots Ankle, prs.	0001-71	1	1- 1- 6
	Shoes Canvas Prs.	0610-28	1	0- 8-10
CF	Caps Field Service	0520-37	1	0- 3- 8
CG	Battledress Blouses	0499-19	1	1- 7- 8
	Battledress Trousers	0579-99	1	1- 7-11
A-1	Bags Ration		1	0- 0- 2
	Belts Waist W.E.Pn.'37 small		1	0- 0- 4
			TOTALS	5-16-11
			Less 25% Discount	0- 9- 3
			REMAIN	4- 7- 8

N.D. Theobald Major.

13 Aug 43.

Received from the President of F.G.C.M. held this date at Barrossa Barracks, Aldershot, the following articles, same being exhibits in the case of

D.77725 Pte. Robert, J., No. 2 Sub Depot, C.B.O.D.

Exhibit "B" - Chromium Plated Scissors.

Exhibit "C" - Gold Signet Ring bearing initial "N"

Exhibit "D" - Gold Lady's bracelet

Exhibit "E" - Gold Locket and chain.

H. McPhail Capt.
No.2 Sub Depot, 1 C.B.O.D.

N.D. Theobald Major.

(COPY)

No D-77725 Name Robert J. | Sqn., Battery, or Company | Corps R.C.O.C. | Date of enlistment 5 Jul 41 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet: 24 Aug 42 | No. and date of last drunk: Nil | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Previous sheet destroyed on completion of six months service.						5 Jan 42			
Bordon	4 Feb 42	Pte.		A.A.Sec.15(1) AWL WOAS from 0800 hrs 4 Feb 43 to 2140 hrs 4 Feb 43(Absent 13 hrs 40 mins)	CSM Turley L/C Gordon	14 days CB	5 Feb43	HMBailey Lt.Col.	Forf 1 day pay
Field	17 Apr 43	Pte.		(1)Sec 18(4)A.A.Theft of 1 pr shoes canvas,property of G-53559 Pte. MacDonald J.J. (2)Sec.40 A.A. In possession of 1 pr braces (civ)Property of G53559 Pte. MacDonald J.J.	Sgt.Daniels Cpl. Wright Pte.MacDonald	27 days Detn.		EJL Morgan Major.	Forf 27days pay.FR&I 149(1)(b). Forf 4 days pay FR&I 149(1)(c)
					N.D.Theobald Major	Released from Canadian Detention Barracks May 17 1943, sentende having expired.			

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28May 43	Pte.		Sec. 15(1) A.A. AAL from 0800 hrs 28 May 43 until 0800 hrs 1 Jun 43 (absent 4 days)	DSM Diplock J.T.		1 Jun43	J.C.McGlashan Lieut.	4 days auto forf pay PR&I 149(1) on admission to hospital.

CERTIFIED TRUE COPY OF ORIGINAL MFM 6 IN MY POSSESSION

J.C.McGlashan
(J.C.McGlashan) Lieut.
Records Officer
1 C.B.C.D.
13 Aug 43.

N.D.Theobald Major.

M.F.B. 358
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-77725	Pte.	Robert, J.	No.2 Sub-Depot, 1 C.B.O.D

1. The following is a fair and true summary of the entries in the ~~[illegible]~~ JCMcG ~~[illegible]~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~[illegible]~~ JCMcG of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For Sec.15(1)A.A. AWL		times	one	times
For Sec.40 A.A.	One	times	One	times
For		times		times
For		times		times

~~[illegible]~~ JCMcG

or,

~~[illegible]~~ JCMcG

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~[illegible]~~ JCMcG ~~[illegible]~~

3. The accused is not under sentence at the present time.

or,

~~[illegible]~~ JCMcG

4. The accused has been in confinement awaiting trial on the present charges, for No days in civil custody, and Four days in Air Force military custody, making a total of Four days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his JCMcG ~~[illegible]~~ attestation paper is 25 years 2 mos.

6. The date of his JCMcG ~~[illegible]~~ attestation specified in his JCMcG ~~[illegible]~~ attestation paper is 5 Jul 41

7. The service which the accused is allowed to reckon towards discharge is 2 year 1 mo.

8. The accused is entitled to reckon 2 yr. service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~[illegible]~~ military decorations or ~~[illegible]~~ military ~~[illegible]~~ JCMcG ~~[illegible]~~

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force

N.D.Theobald Major.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force

unit

..... dated ....., and in his regiment (or corps), the rank of

..... dated ..... .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number D-77725 Rank Pte.

Unit

Name Robert, J. of No.2 Sub-Depot, 1 C.B.O.D. Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NOT APPLICABLE		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12 day of August 1943 J.C.McGlashan Lt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

N.D.Theobald Major.

12 Aug 43

TO WHOM IT MAY CONCERN

May the services of an Officer be obtained to defend me should I be tried by a F.C.C.M.

J. Robert
(D-77725 Pte. Robert, J.)

N.D.Theobald Major.

UK-104

L/SGT. ROBERTS J.

UK-104

FIELD GENERAL COURT-MARTIAL

(FORM 17th Issue of AFAS) (C.F.G.M. H/1608/12804)

Convened by Order of Brig PC Tees Comd 2 Can Div Artly dated 2 Nov 43.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A28012	4/Sgt.	John	Roberts	4 Can Fd Regt RCA

Proceedings Reviewed
R. Deane Wills
Capt.
26 Nov 43

Reviewing Officer (J.A.G.) F.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 4 Nov 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ as interpreter ? Ans ~~The Interpreter is sworn (1) Do you object to~~ as shorthand writer ? Ans ~~The shorthand writer is sworn (1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A Birmingham	2 Can Hk Regt RCA
Member	Capt	W J Riley	5 " Fd " "
Member	Lt.	[illegible] Markay	5 " " " "
Judge-Advocate		Nil	
Prosecutor	Capt	H B Smith	4 " " " "
Defending Offr	Capt	J L Dreury	4 " " " "

Questions by President: Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 33.)

A8. The accused A28012 4/Sgt John Roberts before arraignment make(s) (no) ~~his~~ plea(s) (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. ~~The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form~~ B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A28012 4/Sgt John Roberts — 4 Can Fd Regt RCA.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn b.)

~~At present under sentence for~~ beginning on (date) 4.11. (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: [redacted] 4/11.

To forfeit 60 days pay.
To be severely reprimanded.

4 Nov 43 (Sgd) A Birmingham Major RCA
(Sgd) ..... Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) C Vokes Maj-Gen Comd 2 Can Div
Date 6 Nov 1943 Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
A-8012 Sgt Roberts J	8 Nov 43	Lt Col R. Major also in Regt Rlbd.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (E); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) allowed (not) to change his (their) plea(s) on charge(s). Part 1 of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by continuing with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans .....
Do you intend to call witnesses on your behalf?
Ans .....
Are they witnesses as to character only? Ans .....
(1. *RP 155.* 2. *RP 40(A), see 86(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 116(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith.(2) and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(3)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pieces of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM p.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes (see Ex B & C)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part 1 of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Case of
H 28012 A/Lt John Roberts - 4 Can Fd Regt RCA

Recommendation of Court

The Court recommend that the accused due to his ill health which has affected the responsible carrying out of his duties be given a Medical Re-board with a view to returning him to Canada with the possibility of being employed in a climate more conducive to his better health.

A O Birmingham
President of Court.

AJB

CHARGE SHEET

The accused A.28012 Lajt John Roberts of the 4 Cdn Field Regiment R.C.A., a soldier in the Canadian Army (Overseas) is charged with:

FIRST CHARGE
Sec 15(1)
Army Act

"WOAB ABSENTING HIMSELF WITHOUT LEAVE "
in that he, In theField, on 20 Sep 43, absented himself without leave from 2359 hrs 20 Sep 43 to 1010 hrs 23 Sep 43.
Absent 2 days, 10 hrs 11 mins.

SECOND CHARGE
Sec 15(1)
Army Act

"WOAB ABSENTING HIMSELF WITHOUT LEAVE "
in that he, In the Field, on 24 Sep 43, whilst under open arrest absented himself without leave from 2300 hrs 24 Sep 43 to 1530 hrs 4 Oct 43.
Absent 9 days, 16 hrs, 30 mins.

30 day of October 1943.

William R. Fleury
(W.R. Fleury) Lt-Col
Comd, 4 Cdn Fd Regt RCA

1st day of Nov 1943.
In the Field
To be tried by FGCM

R.O. Dees Brigadier
C.M.A., 2 Cdn Inf Div

4th Nov 43

HQ C.R.A.
2 Cdn Inf Div

MEDICAL OFFICER'S CERTIFICATE

I certify that No. A.28012 L/Sit. Roberts, J 4 Cdn Fd. Regiment

is@ fit to undergo trial by Court-Martial.

B. Duncan Capt., RCAMC
Signature of Medical Offr.

@Insert "fit" or "unfit"

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA5)
40/PA8/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appm.t, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A28012		L/Sgt	John	Roberts	4 Cdn Fd Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) ..... endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

~~2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial, (and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	F G Bermingham	2 Cdn A Tk Regt

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	W J Riley	5 Cdn Fd Regt
Lieut	F P Marlay	5 Cdn Fd Regt

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	F J Shaughnessy	2 Cdn A Tk Regt

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in the Field (Country.)

(Signed personally. RP 105 fn 2.) Brig (Rank.)

Date 2 Nov 43

Commanding 2 Cdn Div Arty
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Case of
A 28012 Sgt John Roberts RCA

El. Statement of Character Witness:
A17103 TBSM Dennis G.F. – 4 Can Fd Regt RCA
having been duly sworn, states.

"The accused came to my Tp in March 43 – he was a very efficient No 1. Several times he reported severe headaches and experienced difficulty in carrying out his duties efficiently. I considered him to be more than a good No 1.

Second Character Witness
Capt J.L. Drewry – 4 Can Fd Regt RCA
having been duly sworn states:

"I have known the accused for about 2½ years during which time he served in the same Bty as I did and performed his duties capably. He came from Holding Unit about 3 years ago as a WO but as there was no vacancy for him he reverted at his own request to the rank of Bdr. He had periods when his work definitely deteriorated due to his health.

Ex "C"

I, A28012 L/Sgt Roberts J., have had continuous service in the artillery since May 1928 when I enlisted in the 29th(H) Bty N.P.A.M., then re-enlisted on 6 Sep 39 arriving in England Feb 1940 and subsequently being transferred to the 4th Field Regiment in Nov 1940.

Apart from periodical intense headaches due to sinusitis, I have had normal health until July 1942 when I was admitted to hospital with conjunctivitis. Major DeLane in charge of the case reported that it could be due to or caused by sinusitis. I was discharged from hospital in Aug 42 to No. 1 CARU where I became an out patient taking treatment for sinusitis. Major McCart I/C case reported that the dampness of this English climate aggravated such a complaint as was mine, also that I would never be definitely cured while remaining in England. He, Major McCart, instructed me to report back to him should the headaches become consequential again. Being in the field I was unable to do so but I fought against it which did get out of control some times.

While on strength of No. 1 CARU recently I was interviewed by a S.P.O. during which time I considered it my duty to tell him of the restless nights, sore eyes and headaches which I found to be detrimental to the full discharge of my various duties. I also expressed my desire which has become almost a craving to be sent home as a P.O.W. escort if necessary, because my own ill health combined with a series of domestic troubles have kept my mind in a constant turmoil. Very often I find my mind wandering to Canada, worrying and thinking of things at home, so much that it has almost become an obsession. It was during one of these attacks that was more prolonged than usual that I took the path of least resistance.

I confess that I do feel bitterly homesick which shows no sign of improvement, consequently I suffer mentally and physically, but if I could get home if only for a little while I feel sure that I would be able to restore tranquility to my little family and regain my own peace of mind.

I would like to remind the court of the countless hours even days that I have sacrificed time and effort to the betterment and increased proficiency of my own particular sub-unit, primarily, and unit as a whole, secondly.

Ex "A"

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No. A.28012 L sjt John Roberts, 26 Cdn Fd Bty, 4 Cdn Fd Regt R.C.A., a soldier of the Canadian Army Overseas.

The accused is informed of his rights.
The C.O. directs that evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION B.88461 Sjt Davis, C.R., 4 Cdn Fd Regt RCA, having been sworn states:

" On 21 Sep 43 at 0800 hrs I called the roll of E Tp and found Lsjt Roberts absent. He had been due back from leave at 2359 hrs 20 Sep 43. I made inquiries and found that Sjt Roberts' pass had not been turned in to the guard room, nor was he in the camp area. He remained absent throughout the succeeding days until 23 Sep 43. I was acting TpBSM during this period and called the roll at 0800 and 1330 hrs daily."

The accused declines to cross-examine.

(Sgd) C.R. Davis, Sjt.

SECOND WITNESS FOR THE PROSECUTION A.17110 Bdr Davidson, T.S., 4 Cdn Fd Regt R.C.A., having been sworn states:

" On 23 Sep 43 I was guard comd of the Regt guard. At 1400 hrs the accused, Sjt Roberts whom I recognize reported in sober and properly dressed. He surrendered his pass to me and I noticed that he was AWL. I noted the time on his pass."

The accused declines to cross-examine.

(Sgd) T.S. Davidson, Bdr.

THIRD WITNESS FOR THE PROSECUTION B.9123 Sjt Hart, J.A., 4 Cdn Fd Regt RCA, having been sworn states:

" On the night of 24 Sep 43 at 2300 hrs I called the roll of E Tp. The accused was absent. He was not in the camp area at that time."

The accused declines to cross-examine.

(Sgd) J.A. Hart, Sjt.

FOURTH WITNESS FOR THE PROSECUTION A.17102 BSM Oleniuk, P., 4 Cdn Fd Regt RCA, having been sworn states:

" On 23 Sep 43 Sjt Roberts was tried by the bty comd and was remanded to the C.O. under open arrest. He was reported absent on 2300 hrs roll call 24 Sep 43 and again at 0330 hrs 25 Sep 43 when the bty fell in prior to moving off on a scheme. He has been absent from all subsequent parades during the exercise."

The accused declines to cross-examine.

(Sgd) P. Oleniuk, BSM

FIFTH WITNESS FOR THE PROSECUTION C.19590 RQMS Firth, F., 4 Cdn Fd Regt R.C.A., having been sworn states:

" On 4 Oct 43 I was W.O. i/c Rear Party. At 1330 hrs the accused reported in to me sober and properly dressed. He had not been present with the rear party since the regt had left on a scheme on 25 Sep 43."

The accused declines to cross-examine.

(Sgd) F. Firth, RQMS

The accused having been duly cautioned with RP 4 (e) states :

" I do not wish to make a statement at this time."

(Sgd) J. Roberts, Lajt

The accused does not wish to call witnesses in his defence at this point.

Certified that RP 4 E complied with.

In the Field
28 Oct 43.

(Sgd) A.B. Smith, Capt.
Officer detailed to take
Summary of Evidence.

M.F.M. 6
(A.F. B.122)
40/P & /B136 (2965)

No A28812 Name ROBERTS J | Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment 5Sep39 | G.C. Badges n.a. | Service or Proficiency Pay n.a.

Date of last entry in Company Conduct Sheet n.a. | No. and date of last drunk n.a. | Period not reckoning towards freedom from extra fine n.a. | Sheet No. 2 | Signature O.C. Company, etc. "G.C. Savage" Capt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 5 Mar 40. No entries.	Cases of drunkenness - NIL				
Field	15Oct42	L/Sgt		A.A. 15(1) A.W.L. 2 hrs	BSM Collard	Severe reprimand	15Oct42	Col Inch	
Field	16Jun43	A/Sgt		A.A. 15(1) A.W.L. from 2350 hrs 16 Jun 43 to 2330 hrs 17 Jun 43 (Absent: 23 hrs and 23 mins)	Sgt Davis Bdr Carpenter	To be reduced appt of L/Sjt	18 Jun 43	Lt-Col. W.E. Fleury	

Certified to be a true copy of original.

(A.B. Smith) Capt.
Adjt., 4 Cdn Fd Regt RCA

(P.T.O.)

Ex "B"
AB

(Substitute for AFB 296)
or MFB 355

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

NO. A.28012 NAME John Roberts UNIT 4 Cdn Fd Regt RCA

AGE 32 MARRIED OR SINGLE M NO OF DEPENDENTS 2

DATE OF ATTESTATION 5 Sep ~~45~~ 39 FDB

NO OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL) Nil

CIVIL _____ MILITARY _____ HOSPITAL _____ TOTAL _____

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATIONS OF RANK, IF ANY

6 Sep 39 A/Sgt
14 Dec 39 confirmed Sgt
15 Feb 40 A/BSM
28 Oct 40 confirmed WO II
28 Nov 40 Bbr, A, L, Sgt
22 Jul 41 confirmed L Sgt
25 May 43 A Sgt
29 Jun 43 L Sgt
1 Sep 43 A Sgt
9 Oct 43 L Sgt

A CERTIFIED TRUE COPY OF MFM 6 MUST ACCOMPANY THIS FORM

(Officer i/c Records)
AB Smith Capt Uni

Dated at In the field
This 4th day of Nov 1943
(To be dated and signed as of date of trial)

JAG BRANCH - REVIEW RECORD

Accused

A 28012. L/sgt. Roberts J.
4 Cdn. Fd. Regt.

Remarks	Date
Trial in (Country) Eng	4 Nov.
Charges 15 (1)	
Sentence 60 days pay & Severe Rep	4 Nov.
Rec'd from CR at JAG Branch	25 Nov.
To _____ for (~~pre~~)(post) rev	25 Nov.
Recommendations by DW	
(1) Pass and record.	
~~(2) Ltr on irregularities~~	
~~(3) Quash charge(s).~~	
(4) Note recommendation of Court.	
Ret'd to JAG Rev 1 by DW.	25 Nov. 43
Passed to _____	
Passed to _____	
To AG 5 for _____	
Ret'd from AG 5 to JAG Rev 1	
Instrs by JAG Rev 1 on disposal	
Record & file Blot	25 Nov. 43
Instrs completed by _____	

96T.

Segmn. Roberts, J.

96 T.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this First day of December, 1942.

Whereas it appears to me, the undersigned, an officer in Command of Third Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.] G

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint :—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.) G

for the following reasons, namely :—]

* Omit if not applicable.

Proceedings Reviewed: [signature] Reviewing Officer (A.G.) M.H.Q. 12 Dec 42

70

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	F.H. Stehlin	West N.S.R.

Members.

Rank.	Name.	Regiment.
Capt	J.H. Farthing	Carlt & York R
Lieut	J. Roy	R 22e R
(Waiting) Lieut	H.M. Eisenhauer	West N.S.R.

*Signed [signature] Brigadier

Commanding 3 Cdn Inf Bde.

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F34801 Sigmn John, ROBERTS "L" Sec 1 Cdn Div Sigs.	1st Charge:- Sec 15 (1) A.A.	Guilty	Guilty	I confirm the finding and sentence but remit 30 days detention Charles Faulkes Brigadier, Comd. 3 Cdn. Inf. Bde. 2 December 1942
	See charge Sheet attached		To undergo detention for ninety days (90) 2 Dec 1942 P.H. Stehelin Mgr. Pres	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) Charles Faulkes Brigadier (Signed) P.H. Stehelin Major

Commanding 3 Cdn Inf Bde — Convening Officer (e)

West N.S.R. — President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Second day of December 42, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. ~~The witnesses~~ Sgt. P.H.S. Pres
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this 2nd day of Dec. 1942.

P.H. Stehelin Mgr.
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 2 day of December 1942

Charles Faulkes Brigadier
Confirming Officer. 3 Cdn Inf Bde.

Promulgated and extracts taken in the case of F34801 Sigm John Roberts.

(a) (Dated) 2 Dec 42 (Signed) John Galbraith Lieut.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[B4] Wt. 38092/1316 70m 2/41 W. & Co., Ltd. Gp. 748/2

CHARGE SHEET.

F34801 Signm John ROBERTS, "L" Sec 1 Cdn Div Sigs, attached to H.Q. 3 Cdn Inf Bde., a soldier of the Canadian Army Overseas Stationed in the Field, is charged with,
while on active Service.

1st Charge
Sec 15 (1)
A.A.

ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

Absented himself without leave from 2300 hours 13 Nov 42 until 0200 hours 30 Nov 42.

In the Field
1 Dec 42

J. Galbraith Lieut.
(J. Galbraith) Lieut.
O.C. "L" Sec.
1 Cdn Div Sigs.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
1 Dec 42

(R. Foulkes) Brigadier.
Comd 3 Cdn Inf Bde.

B[illegible] T. N. [illegible] Mgr
Pte

CHARGE SHEET.

F34801 Sigmn John ROBERTS, "L" Sec 1 Cdn Div Sigs, attached to H.Q. 3 Cdn Inf Bde., a soldier of the Canadian Army Overseas Stationed in the Field, is charged with,
While on active Service.

1st Charge
Sec 15 (1)
A.A.

ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

Absented himself without leave from 2300 hours 13 Nov 42 until 2200 hours 30 Nov 42.

In the Field
1 Dec 42

J. Galbraith Lieut.
(J. Galbraith) Lieut.
O.C. "L" Sec.
1 Cdn Div Sigs.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
1 Dec 42

Charles Foulkes
(C. Foulkes) Brigadier.
Comd 3 Cdn Inf Bde.

Bt J. H. Fletcher Mgr
Pres

MEDICAL OFFICER'S CERTIFICATE

Royal Air Regiment.

This is to certify that I have medically examined the undermentioned,

No. F 34801 Rank Pte. Names Roberts J.

That I have found him in a good state of health, physically FIT

and free from infectious diseases to undergo detention with hard labor, field punishment, or trial by court martial.

Date 2 Dec 42 Place In the field

Guy Salmon Capt.

Signature of Medical Officer.

P. H. Stitchens Major

Pres.

A Army Form A 9.

**All printed matter not applicable to the particular Court Trial, held should be struck out and initialled by the President.

**Form of Proceedings for Field General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field

on the 2nd day of December 1942 by order of

Charles Foulkes Comd. 3 C. I. B.

Commanding

dated the 1st day of December 1942

President.

Maj Stitchbrook W. H. S. R.

Members.

Capt J. H. Fastning Carlt's York R.

Lieut J. Ray. Rez. R.

Waiting member. Lieut. H. M. Eisenhauer W. H. S. R.

Trial of* F-34801 Sig'mn John Roberts, Judge Advocate.

"2" Sec 1 Can Div Sigs att 3 H.A. 3 C I B.

Medical Certificate S 2

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

~~The Court satisfy themselves that is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Major J. A. Northey. Toronto Scottish - (MG)

Counsel‡ or defending officer† Capt. G. F. Foster - Carlt & Y R.

At 1010 o'clock the Trial commences.

The order convening the Court is read, and is marked S I, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

P. H. Stitchbrook Mgr Pres

Q263. Wt.W.G.203-426. 10,000 sets. 1/40. K. & H., Ltd. Gp.7/11. Forms A 8/55.

B

The President, members ~~and judge advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 16 (2) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read ? *Question to the accused.*

Answer. Not guilty

~~Are you guilty or not guilty of the second charge against you, which you have heard read ?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read ?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read ?~~ *Question.*

Answer.

The accused having pleaded Guilty to this charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

Proceedings on Plea of Not Guilty.

Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer.

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution.

being duly sworn, is examined by the prosecutor.

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer.

Question. Do you intend to call any other witness in your defence?

Answer.

Question. Is he a witness as to character only? *Answer.*

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 10 and 11 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 10 (C) (iv) and 11 (A) (ii) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

P.H.S. Pres

The accused is found guilty of a charge is said-

†The summary (~~or abstract~~) of evidence is read, marked 3 3 signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment ?

Answer. no. The accused in mitigation of punishment says :— not

P.H.S. Pres

[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

P.H.S. Pres

Instruction. † If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

P. H. Stitchens Major
Pres.

Do you wish to give evidence yourself or to call any witnesses as to character ?

Question to be asked.

Answer.

Evidence as to character.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

See Schedule - P.H.S.

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

Evidence of character.

*The Court being re-opened, the accused is again brought before it.

Major J. H. Northey ——— is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked S. 4, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

Cross-examined by the accused.

P.H.S.

[Instructions.—(1) In whole or the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment, or addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire with the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused

Sentence.

See Schedule.
P.H.S.
Pres

Summary of Evidence in the case of F 34801 Signmn John Roberts, L Sec 1 Cdn Div Sigs Canadian Army, Overseas, in the Field

By order of Brig C. Ffoulkes, Comd 3 Cdn Inf Bde This evidence is taken on Oath

1st Witness A2275 Sgt Joseph Francis McCarthy having been duly sworn states

I am the Sec Sgt of L Sec 1 Cdn Div Sigs, and at 2300 hrs 13 Nov 42 when I called the Sec Roll, Signmn Roberts was not present. The roll has been called twice daily since that time, and he has not been present, nor has he been on duty with the Sec. A2275 J F McCarthy Sgt

The accused declined to cross examine this witness

2nd Witness A2193 Cpl Alexander Matthew MacPherson having been duly sworn states -

I was duty NCO of L Sec 1 Cdn Div Sigs on the night of 30 Nov 42. At about 2200 hrs Signmn Roberts reported to me at the Sigs billets

A2193 A. M. MacPherson Cpl

The accused declined to cross-examine this witness

Certified that RP 4(c)(d)(e)(f) have been complied with

Taken down by me in the presence & hearing of the accused this 1st day of Dec 1942

J McCarthy Major

P. H. Stibbins Major
Pres

~~2 Cdn Inf Bde~~ ~~Adk Coy~~

No. F34501 Name Roberts. J. Sqn., Battery, or Company 4 Sec 1 Cdn Div Sigs Corps Date of enlistment 2 Sep 39 C.O. 1 Jan 41 Service or Proficiency Pay 2 M.F.M. 6 A.F.B. 122 8000—4/39 (1942) H.Q. 1171-49-19

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Duties Signature O.C. Company, etc. Capt Swan — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
~~Guelph~~ ~~Rd~~	~~30 May 40~~	~~Pte~~		~~Sec 15: AWL from 2300 hrs 30 May 40 To 1100 hrs 31 May 40 (14 hours absent)~~	~~Lt Comeau~~	~~14 days CB forfeits 3 days pay Sec 40 (1) (a) JRs 3 (Can 148 (1)(b))~~	~~30 May 40~~	~~Capt Swan~~	
~~Ewell Hornby~~	~~31 May 40~~	~~Pte~~		~~Sec 15 AWL from 1200 hrs 31 May 40 to 1100 hrs 5 June 40 (119 hours absent)~~	~~Lt D Neil~~ ~~OC A Unit~~	~~forfeits 3 days pay Sec 40 (1) (a) JRs (Can 148 (1)(b))~~			
				~~Sec 5 (a) 119 hours absent~~		~~148 (1) 28 days~~	~~5 June 40~~	~~Capt Swan~~	
~~In the Field~~	~~30 Jan 41~~	~~Pte~~		~~WOAS Sec 15 AA Absenting himself without leave from 2300 hours 29 Jan 41 to 2300 hrs 30 Jan 41 total 24 hours~~	~~Sgt Mc Bowan~~	~~Forfeits one day pay Forfeits 5 days pay Total 6 days pay~~	~~5 Feb 41~~	~~J H Nealand Captain~~	
				~~1200 hrs 23 Feb 41 to~~	~~Lt Taylor~~	~~Dismissed~~	~~25 Feb 41~~	~~R.S. Bramfitt~~	
~~Field~~	~~23 Feb 41~~	~~Sapper~~		~~AA 15 (1) AWL 2359 hrs 23 Feb 41 to 2359 hrs 24 Feb 41 (11 hours)~~	~~Lt Taylor~~ ~~Lt Mc Bowan~~	~~1 day pay 148 (1) (a) JRs 7 days pay 148 (1)(b)~~	~~2 Jan 41~~	~~Jas Bailey~~	
~~Field~~	~~31 May 41~~	~~"~~		~~AA 15 (1) AWL 2359 hrs 30 to 2330 hrs 31 May 41 (23½ hours)~~					

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded 149 F.R.I. (1)(a) 9 days pay	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	Jan 41	Sergm		AA Sec 15 (1) AWL. 2359 hrs 6 Jan 41 to 2230 hrs 15 Jan 41 8 days 22½ hrs	Cpl Slaine Sgt Taylor	28 days detn 28 days Pay under FR 43 (b)	18 Jan 41	L.E. Kenyon Capt ~~[illegible]~~	
Field	17 Jan 41	"		Sec 22 AA. Attempting to escape when in Limpet Cemetery	Cpl Prever	7 days detn	21 Jan 41	L E Kenyon Capt	7 days Pay FR 41 149 (1) (b)
Field	11 Aug 41	"		Sec 15 (1) AWL from 0001 hrs 11 Aug 41 to 2100 hrs 11 Aug 41 20 hrs	Sgt Spinalak	1 days Pay FR 43 7 days CB	18 Aug 41	R S Martin Lieut	
Field	30 Sep 41	"		AWL from 1445 hrs 30 Sep 41 to 0930 hrs 1 Oct and from 1400 hrs 3 Oct to 2359 hrs 5 Oct 41	Cpl Slaine Cpl Gerard Sgt Bradford	28 F.P. with forfeit in of Pay. Forfeits 4 days Pay FR 43 149 (c) Total forfeiture 32 days Pay	7 Oct 41	L E Kenyon Capt	
Field	31 Jan 42	"		AA 15 (1) AWL. 2100 hrs 31 Jan 42 to 2200 hrs 8 Feb 42 8 days 1 hrs	Cpl Hilton	4 days Pay FR 43 149 (1)(A) 21 days F.P. FR 149 (1)(b)	10 Feb 42	R C Irwin Capt	
Field	23 Jul 42	"		AA. 15 (1) AWL from 1000 hrs 22 Jul 42 to 0835 23-7-42 Total 22 hrs 35 min	H/Sgt Mosgrove Sgt McCarthy	1 days [illegible] Pay 2 " [illegible] Pay Total 3 days Pay	23 Jul 42	J M Galbraith Lieut	

M.F.M. 6
(A.F.B. 122)
500M—8-39 (1793)
H.Q. 1772-45-18

No. F34801 Name Roberts J Sqn., Battery, or Company "A" Corps P.L. Fus M.C. CASF Date of enlistment 2/1/39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17 Oct 42	Cpl		AWL. 1200hrs 17 Oct to 2000 18 Oct. AA. 15 (1)	Sgt McCarthy	Reprimand	20 Oct 42	Dr Hay Capt	Forfeits 2 Deep Pay FR&S. 149 (1)(c)

Certified True Copy

J. Galbraith
(R.F. Osten) Lieut.
Jms. J. Galbraith
1 Dec 42.

S.4 P.H. Stebelzi Mgr.
Pres

(P.T.O.)

[illegible]

(a) The accused has been in confinement awaiting trial on the present charges for ...NIL... days in Civil Custody and ...-/-... days in military custody, having a total of ...-/-... days of which ...NIL... days were spent in hospital.

(b) The present age of the accused according to his attestation paper is ...30...

(c) The date of his attestation specified in his attestation paper is ...2 SEPT 39

(d) The accused is in possession of, or entitled to be military decoration or military reward, ~~[illegible]~~

I hereby certify that the foregoing particulars are true extracts from the Regimental Books in my custody.

J. Galbraith Lieut

P. H. Stebbing Mgr
Pres.

REVIEW SHEET

F.G.C.M. - Trial: F.34801 Sigmn. Roberts, J., "L" Sec 1 Cdn Div Sigs

Date of Trial: 2 Dec 42

President of Court: Major P.H. Stehlin, West N.S.R.

1. For the information of the officers asked to sign below, the following irregularities are noted :

(a) Particulars of first charge omit name where offence ocurred - e.g. "in the field" (M.M.L. 701(18)).

(b) Medical certificate does not state that accused was examined the morning of the trial (K.R. (Can) 557).

(c) Statement of particulars of Service undated.

(d) Unit of accused omitted from minute of promulgation.

2. May these remarks and the authorities quoted be read by the following officers, signed and returned to this Headquarters.

O.C. ~~Wxxx~~ "L" Sec 1 Cdn Div Sigs

Adjt N/A

President

A.D.J.A. 1 Cdn Div

Staff Offr for Convening Offr

Staff Offr for Confirming Offr

Ian Graham
Captain
A.D.J.A. 1 Cdn Div

2 Dec 42

R R. 100 (Can #2)

PTE ROBERTS J

See T-96 for 1st case

F.34801 Pte. ROBERTS, J.
1 C.A.S.C.R.U.
BGHQ 5-6-2/337

RR-100

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this TWENTY SEVENTH day of SEPTEMBER, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "B" GROUP, CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ Pr.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* ~~[I am unable to appoint—~~
~~*(1) Three Officers to form the Court.)~~
~~*(2) A Field Officer as President.)~~ Pr.
~~for the following reasons, namely:—]~~

"B" GROUP
OCT 1943
REINFORCEMENT UNITS

Proceedings Received
30 Oct 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lt. Col.	D.L. Redman	HQ CRU

Members.

Rank.	Name.	Regiment.
A Captain	To be detailed by	1 C.S.R.U.
A Captain	To be detailed by	1 C.E.R.U.

*Must be [illegible] personally [illegible] officer.

*Signed [signature]
(P.R. Shields) Brig
Commanding "B" Gp, Cdn Rft Units
Convening Officer.

[signature] Lt Col

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
P.34801 Pte. ROBERTS, John 1 CASCHU	First Charge A.A.Sec12(1)(a)	Not Guilty	Guilty	
	Second Charge A.A. Sec 41(5)	not Guilty	Guilty	
	Sentence To undergo detention for a period of Two (2) years. 30th Sept 1943 RM			2 Oct 43 Confirmed HR Tyrrell Lt Col A/Comd 8 Bde
	See Attached Charge Sheet			

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" Answer— No
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) (P.R. Shields) Brig
Commanding "B" Group C.R.U.
Convening Officer (*c*)

(Signed) RM Lieut-Col
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 30th day of September 1943 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. The officers under instruction)
were duly sworn.

*Omit if not applicable.

Signed this 30th day of September 1943.

RM Lieut-Col
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (*b*) on page 762 M.M.L., 1929.

~~RM I certify that the terms of *A.C.I. 670 of 1918 have been complied with.~~

~~RM Signed this day of 19 ,~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~The Officer Commanding the soldier named in the margin be requested to cause the said soldier to undergo the sentence passed upon him by the Court in prison/detention barrack until further orders~~ HR

Signed this 2 day of Oct 1943.

HR Tyrrell. Lt Col
Confirming Officer.

Promulgated and extracts taken in the case of
(*a*) (Dated) 4 October 43 (Signed) [illegible]

Promulgated and extracts taken in the case of
(Dated) 2.0.241 6.0.843 (Signed) [illegible]
Officer i/c Records
1 Can. A.S.C. Reinf. Unit.

Promulgated and extracts taken in the case of
(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23066) Wt.28330/411 60,000 12/42 A.S.& W.Ltd. Gp.698

CHARGE SHEET

The accused, F 34801 Pte. John ROBERTS, RCASC., 1 Cdn. A.S.C. Rft. Unit, a soldier of the Canadian Army, Overseas is charged with:

WHEN ON ACTIVE SERVICE

1st Charge
A.A. Sec 12(1)(a)

DESERTING HIS MAJESTY'S SERVICE

in that he

at Farnborough, Hampshire absented himself from 1 Cdn. A.S.C. Rft. Unit from 0800 hrs 19 Jan 43 to 1400 hrs 13 Sep 43 when apprehended, in plain clothes, at Croydon, by the civil police. Total Time Absent - 236 days 6 hrs 15 mins.

2nd Charge
A.A. Sec 41(5)

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, FALSELY REPRESENTED THAT HE WAS THE PERSON TO WHOM IDENTITY CARD NO. YCLA 1499:503 RELATED CONTRARY TO Sec 6 (1) (a) (i) of NATIONAL REGISTRATION ACT 1939

in that he

at Croydon on 13 SEP 43 when apprehended by the civil authorities produced Identity Card No. YCLA 1499:503 in the name of William Diver, 115a Waddon New Road, Croydon and represented that he was the person therein named and described, well knowing the said representation to be false.

J.M. McGown

Farnborough, Hants.
25 SEP 43.

(J.M. McGown) Lt-Col.,
Comd., No. 2 Trng. Wing,
1 Cdn. A.S.C. Rft. Unit

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

P.R. Shields

(P.R. Shields) Brig
Comd "B" Gp
Cdn Rft Units

27 Sep 43

Medical Officers' Cert.
K.R.(Can) para 557.

I certify that I have this morning examined No. F34801 Pte Roberts J.
No 1 Cdn ASC Reinf Unit .....and in my opinion is fit to undergo
trial by Court Martial.

Station: Field

Date: 30.9.43.

W G Krauser Lt.
(Medical Officer)
1 Cdn ASC - Rft Unit

[illegible] WWL

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT Bisheim Barracks
ON THE 30 DAY OF September 1943

The accused F.34801-Pte. Roberts J. Unit 1 C.A.S.C.R.U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lt Col D.L. Redman Unit (Calg Highrs) HQ CRU

Members Capt. G.D. Kellam Unit 1 C.E.R.U.
Capt. W.D. Mills Unit 1 C.S.R.U.

The officers under instruction are duly sworn:-
Lieut. D.L. Mumford 1 C.S.R.U.
Lieut. P.L. Saunders Unit 1 C.S.R.U.
Lieut. J.G. Clendenning Unit 1 C.E.R.U.

Prosecutor Lieut. M.R. Kane Unit 1 C.A.S.C.R.U.

Defending Officer Lieut. R.A. Briggs Unit 1 C.A.S.C.R.U.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, AFB 296 and MFM 6.
The Court complies with R.P. 36(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) Calls witnesses as to character.
(c) Calls witnesses in mitigation of punishment.
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER.

Proceedings Follow in Longhand.

RMS

Trial of F 34801 Pte J. Roberts 1 C.A.S.C.R.U.

Page 1

The Accused when arraigned pled Not Guilty to each of the charges. The Question when R.R 39A was asked. The answer, "no", was recorded.

1st witness for the Prosecution.

Lieut. J. E. Tappin 1 C.A.S.C.R.U. being duly sworn states:

I produce A.F.B. 115 with respect to the accused relating to him (marked Ex 1) I produce A.F.O 1618. relating to the accused (marked Ex 2)

The Def. Officer declined to Cross-examine.

2nd Witness for the Prosecution.

Detective Leslie Stapoley of Met. Police stationed at Croydon being duly sworn states:

I recognize the accused. On 13 Sep. 43 at about noon I entered the Dog and Bull Public House, Croydon. In the public Bar I saw the accused in plain clothes. I thought he was a Cdn soldier whom I had seen some time before in uniform. I called him out. I identified myself and asked for his Identity Card. He produced one which I now produce (marked Ex. 3) Copy is also produced compared and certified for this ~~award~~ court. The witness requiring the Original for proceedings in civil court). The witness continues — I gave him the usual caution

By saying "you are not obliged to say anything unless you wish but whatever you do say will be taken down in writing and may be given in evidence" I made no threats or promises his statement which he made appeared to be

voluntary.
I object to the admission of the statement
The witness retired. The 4 of Officer
asked that accused be sworn to give
evidence respecting the admission
The accused being duly sworn states
when the 4 elective, the last witness
asked me for my Identity Card I gave
him the one I bo't. He said you're a
Cdn Soldier This card doesn't belong
to you. He didn't caution me there.
I said "O.K the jigs ups" I did not at
any time represent myself to be the
man whose name was in the card.
To the best of my knowledge this 4 electric
did not caution me at any time
2nd witness for Prosecution 4 elective
Stapeley recalled states
I definitely gave the accused the caution
which I gave this repeated to this court
immediately after I looked at the identity
card. I have had 12 yrs service with
Met. Police during which time I have
been taking statements for the last 8 years
I am acquainted with The Judges Rules
and Regulations respecting admissions. I
always comply with them and did in
this case.
The Court is closed The Court Reopened.
The President announced that it would
accept the admission.
The witness 4 et Stapeley continues
after cautioning him I said "Is your
name Diver" He said "Yes. It is on
the card. I then said "I believe you are a

deserter from the Cdn army" and again
gave him the same caution He said "Yes
you have got me. I bo't the identity card
for £4-0-0. I have been living in Croydon
with my wife on the money her mother
left her. I then took him to Croydon
Police Station where he was charged
with desertion and cautioned again in
the same words in my presence. There was
an escort with him when taking the
accused to the Station. There was no
conversation between them. In the
station the charge was read to the
accused and he said "O.K." He appeared
before the Justices at Croydon Borough
petty sessions and was remanded to await
military escort. The accused made
other ~~statements~~ observations to me before I cautioned him
which I am not offering in evidence
Cross Examined by 4 of Officer
I was in this Pub as a matter of Routine
duty not as with respect to Identity
cards particularly. At the time I called
out the accused from the pub I also called
out William Diver who was known to
me and was selling by the accused. He also
speaks with a Cdn accent. He was not
an agent in any way of the Police and
is now in custody charged with Larceny
and will be charged further with selling
the Identity card to x 3 to the accused.
Diver did not hear any conversation
between me and the accused which I have
related. I took about 3 yds down the
passage. He handed me the Identity card

I did then caution him definitely because I had made up my mind that he was a deserter. I had known Wiver for a considerable period as a steady customer of this Pub.
Case for Prosecution is closed.
The President advised the accused under note 2. R. P. 40.

The accused made a statement not under oath as follows
at noon on 17th Sept I was in "The Gun" Public House I then went to the "Dog & Bull." William Wiver went in with me when Wet Stapeley asked for my Identity Card. "I gave him the one I had bot. He said This card does not belong to you - you are a Cdn Soldier I said "Yes you've got me. The jig is up." I never held myself out to be the rightful owner of that card or to be William Wiver Wiver and I had been drinking the previous saturday. after I got home I found I had the identity card and I was short £4-0-0. I had no intention as to this card. My Army Clothes are in Croydon at 23. Tamworth Road. I asked Provosts to take me to get them but they refused I have written for them.
The case for the Defence is closed
The Prosecutor addressed the Court on the finding saying accused away 236 days and was apprehended thereby showing his intent not to return. He had identification card as a civilian. He was in civilian clothes

Trial of F 34801 Pte J. Roberts CASCRU

Page 5

On 2nd charge evidence of the Detective an experienced man should be believed. Cooberated by the card Ex 3 and some of the evidence of the accused.

Address by Def Officer is attached

The Court is closed to consider its Finding

The Court reopened.

The Prosecutor produced M F B 355 and list copy of M F M 6 respecting the accused. R P 46 (B) is coupled with the Def Officers Plea in mitigation is attached

CAO R 03262 is coupled with

The Court adjourned to consider its Sentence

[signature]

A Field General Court Martial held at #1 6 Dn A.S.C. R.U. on the 30 Sep 43 in the matter of one, F 34801 Pte Roberts, John.

Sir.

Re the 1st charge I would but draw your attention to page 19 relating to the essentials to prove a charge of desertion. An absence without leave can only be desertion if the prosecution shows positively that the accused had at some time during his absence formed an intention to never return to the Army. This the Prosecution has failed to do and I therefore respectfully submit that the court cannot find the accused guilty of desertion.

Re the 2nd charge the Court is well aware of the conflicting evidence adduced. The Court heard the accused under oath say that at no time did he hear the Constable caution him. Further that he did not at anytime hold himself out as the owner of the identity card. The Constable swears that he asked the accused for his identification card and upon the accused producing one, immediately and without further ado cautioned the accused as to statements. Despite the long service of the constable and his apparent meticulous adherence to the small details, I respectfully submit that the constable is playing upon the credulity of Counsel and the Court when he suggests that he starts his conversations out with a caution. There is therefore a very definite doubt as to what actually did happen but through it all the straightforward evidence of the accused while under oath comes

through as the most logical. There therefore being a doubt it must be given to the accused. I therefore respectfully submit that this Court is in duty bound to dismiss this charge.

I am, sir, your obedient servant

R.A.S. Briggs Lt.

Counsel for accused

Plea in Mitigation

No indication has been given as to which finding I must plead to in charge number one - Desertion or AWL - I am at a distinct disadvantage and must therefore speak as if a finding had been made of desertion. His conduct sheet shows other AWL charges in some of which he has been apprehended while in others he has given himself up. I suggest that he had no intention of not returning to the and therefore I would ask that the Court deal leniently with the accused.

On the second charge in as much as a similar case brought in a civil court would bring a fine as a penalty I would ask that in view of the inability of a FGCM to award a fine that this Court deal leniently with the accused.

I am, sir, your obedient servant

R.A.S. Briggs Lt.

Counsel for Defence

Ex 1

Exhibit A

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Farnborough, Hants. on the 16 day of February 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. F-34801 Pte. Roberts, J. 1 Cdn. A.S.C. Reinf. Unit.

DECLARATION.

The Court declare, that F-34801 Pte. Roberts, J. 1 Cdn. A.S.C. Reinf. Unit illegally absented himself without leave from Blenheim Barracks, Farnborough, Hants at 0800hrs, on the 19th day of January, 1943. that he is still absent, and that on the 16th day of February, 1943 he was deficient, and that he is deficient of the following articles to the amount of £ 8 - 5 - 8.

(See reverse side)

Capt. L.C. Lindley. R.C.A.S.C.
1 Cdn. ASC. Reinf. Unit PRESIDENT.

Lieut. W. Drinkwater. R.C.A.S.C.
1 Cdn. ASC. Reinf. Unit MEMBER

Lieut. A.N. Ouellette. R.C.A.S.C.
1 Cdn. ASC. Reinf Unit. MEMBER

Names of President and Members

Signature of Commanding Officer Lt. Col. E.P. Bonnick.

CERTIFIED TRUE COPY. J.G. Pearce. Lieut.
1 Cdn. A.S.C. Reinf. Unit.

Signature of Officer having custody of the Original Record.

(12281) Wt.54318/1622 75,000 10/39 A.& E.W.Ltd. Gp.498
(13443) Wt.45725/760 225,000 1/40 " " Forms/B115/56

ARTICLES		TOTAL VALUE	USE
Blouse S.D.	1	£ 1-7-8	£ 1-0-9
Trousers S.D.	1	1-7-11	1-1-0
Boots Ankle	1 pr	1-1-6	0-13-1½
Badge Cap	1	0-0-4½	0-0-3½
Cap Comforter	1	0-1-1½	0-0-9½
Cap Field Service	1	0-3-8	0-2-9
Great Coat	1	3-17-½	2-17-9
Comb	1	0-0-2	0-0-1½
Dressing FirstField	1	0-1-0	0-0-9½
Knife Clasp	1	0-5-2½	0-3-10½
		£ 8-5-8	£ 6-4-3

1 COM. A. SERVICE C. REINF. UNIT
16 SEP 1943
OFFICE



F 34801

DESCRIPTIVE RETURN OF § John Roberts Exhibit B who was arrested at 2-10 PM (hour) on the 13th day of Sept and was committed to confinement at Croydon on the 14 day of Sept as a Deserter (or Absentee without leave) from the Bn. of the 1st Canadian R.A.S.C. Regiment of Reinforcement Unit Aldershot

Age 31 Height 5 ft 8 ins feet — inches

Complexion Sallow Hair Dark brown Eyes Grey

Marks Star right wrist In uniform or plain clothes Plain Clothes

Probable date and place of attestation	
Probable date of desertion or beginning of absence and from what place.	19/1/43 Aldershot
Name, occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured	P.C. (C.I.D.) Stapeley Police Station Croydon
Particulars in the evidence on which the prisoner is committed, and showing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.	* In saloon bar of Dog & Bull at 2 pm on 13.9.43. in plain clothes. Recognised by Det. Stapeley as a Canadian soldier, he was asked for Admt Card and produced one No. YCLA/1499/503 in the name of William Diner of 118 Waddon New Road, Croydon, which he admitted buying from the owner for £4. Has been living at 23 Farmington Rd Croydon. to Stapeley Det. "7"

I DO HEREBY CERTIFY that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he†

the before-mentioned Corps.

Signature of Committing Magistrate

Town Hall Residence

Croydon Post Town

14th September 1943 Date of Signature

John Roberts Signature of Prisoner

L. Stapeley. Det. "7" Signature of Informant

Or where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming.

I HEREBY CERTIFY that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the day of for the purpose of obtaining such evidence.

Signature of Magistrate

Residence

Post Town

Date of Signature

§ Care should be taken to insert Army No. and Rank.

‡ Insert "was apprehended" or "surrendered," as the case may be.

* It is important for the public Service, and for the interest of the Deserter or Absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.

† Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs," or "does not belong to," as the case may be.

Ex 2

PART II.

Army Form O.1618.

This portion of the Form, after the Magistrate has committed the soldier and completed the recommendations as to reward, will be handed by the Clerk of the Court to the Police, who will add overleaf a statement of any expenses incurred by them.

Apprehension of No. of

Regiment at on by

who was committed as a Deserter (or Absentee without leave) on the

RECOMMENDATION FOR REWARD.

I RECOMMEND*

Address

for a reward of

Signature of Committing Magistrate.

Date.

*The Magistrate will insert the name and address (in full) of the person for whom the reward is recommended, and the amount (5/-, 10/-, 15/-, or 20/-) which in his opinion should be granted in this particular case, having regard to the following rules :—

1. When soldiers are apprehended in uniform near their quarters it is considered that as a general rule 5/- is a sufficient reward. Not more than 10/- will be allowed in any case where the soldiers were in uniform.

2. When soldiers are apprehended in plain clothes, at a distance from their units, and after having been absent for some time, the reward may be increased to 10/- or 15/- according to the nature of the cases and the trouble incurred in apprehension. A reward in excess of 15/- will seldom be granted.

3. The reward of 20/- should be strictly reserved for cases where superior intelligence has been displayed in apprehending men in plain clothes, or under difficult or exceptional circumstances.

Rewards and expenses attendant upon apprehensions will be paid by the Command Paymaster of the Command or District in which the soldier's Unit is stationed.

4. No reward can be authorised if the Deserter or Absentee voluntarily surrendered, or if it shall appear that he was in collusion with the person who apprehended him, or if the apprehended man was not a Deserter or Absentee.

The refund of expenses incurred by the Police applies *only* in the case of the Police authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

The following Statement of expenses (if any) incurred by the Police and chargeable to Army Funds should be certified by a Superintendent or Officer in charge of a station.

No expenses incurred in conveying a Deserter or Absentee from the Court to prison should be charged to Army funds. Such expenses can be included in the claim made on the Prison Commissioners.

The total amount allowed on account of expenses before committal will not together with the reward exceed 40/-.

I CERTIFY that the following expenses were incurred by the.....

Police in connection with the apprehension of.....

.....and are

payable to.....

..... Superintendent or Officer i/c Police Station at

Date.....

AUTHORITY for the PAYMENT of a REWARD. *(For Army use only.)*

The Command Paymaster.....is hereby authorised to pay to.....being the person recommended by the Committing Magistrate, a reward of.....for the apprehension of.....

Date..... .....(O.C. Unit)
Officer Commanding.

Where no reward is authorised though one was recommended by the Magistrate, or where the reward authorised is less than that recommended, a brief explanation will be given below :—

IMMEDIATE.

Army Form O. 1618.

PART I.

DESCRIPTIVE RETURN of a Deserter or Absentee without Leave.

INSTRUCTIONS FOR THE GUIDANCE OF MAGISTRATES.

(1) When a man is apprehended by the Civil Power as an absentee without leave, or as a deserter, if the information tendered leaves no doubt in the mind of the Magistrate that the prisoner is a soldier, this return should be completed and given to the Police to hand to the escort on arrival.

(2) To avoid delay in the arrival of the escort a telegram stating the Number, Rank, Name and Unit of the soldier should be sent by the Police, as soon as the man is committed, to the Officer Commanding the soldier's Unit.* The place where the escort is required to attend should be stated, also whether the soldier *surrendered* or was *arrested*.

(3) Any recommendation for a reward should be made on Part II of this return.

(4) The Court fees chargeable for Descriptive Returns should be claimed periodically from the Command Paymaster of the Command in which the Court is situated.

* (5) The stations of all Units are shown in the Monthly Army List, as are also the Depots of Corps. In the case of doubt as to the location of a particular Unit reference should be made to the nearest O.C. Troops. Where the soldier's Unit is stationed overseas (outside Great Britain, Northern Ireland District, and the Channel Islands) the telegram for an escort should be despatched to the O.C. Depot, who will take all necessary action for its provision.

* NOTE.—Special instructions apply in war for the disposal of absentees and deserters apprehended by the civil police ; e.g., such personnel will be taken over from the civil authorities by the O.C. the nearest military Unit or the O.C. Troops at the nearest military station. (A.C.I. 489/1940).

(*19749) Wt.34006/1401 50,000 10/41 A.& E.W.Ltd. Gp.693 Forms/O.1618/54.

Exhibit 3

NUMBER			
YCLA	1499503	SURGEON DIVES	

Christian Names (First only in full)

WILLIAM

Class Code

A

Full postal address

115A WADDON NEW ROAD,
CROYDON, SURREY

Holder's signature

Changes of address: No entry except by National Registration Officer, to whom removal must be notified.

Removed to (Full Postal address)

Removed to (Full Postal address)

Removed to (Full Postal Address)

Stamp

National Registration Office
Cla
12 Jun
43

I acknowledge Receipt of the original of this document which I require for use in Proceedings in Civil Court against William Dixon. I can return it when those proceedings are over

L. Stapleton. Det. 7

SUMMARY OF EVIDENCE

In the case of

P 34801 Pte. John ROBERTS, RCASC., on strength of 1 Cdn. A.S.C. Rft. Unit, a soldier of the Canadian Army Overseas.

The Commanding Officer, Colonel J.M. Peacock, 1 Cdn. A.S.C. Rft. Unit, directs that the evidence be taken on oath.

1st Witness for the prosecution

I am, Lieut. J.E. Tappin, "HQ" Wing, 1 Cdn. A.S.C. Rft. Unit, and have knowledge and am custodian of certain documents pertaining to the case and relative to the accused.

I produce: (i) A.F.B. 115 - Certified true copy, Record of Declaration of a Court of Inquiry on illegal absence of a soldier which refers to the accused, whom I now recognize as P 34801 Pte. ROBERTS, J., declaring him illegally absent from 0530 hrs., 19 Jan 42 by Court of Inquiry held 16 Feb 43. This is marked Exhibit "A".

(ii) A.F.C. 1615 - Descriptive return relating to the accused whom I now recognize purporting to be signed by Leonard Rogers, Magistrate, Croydon certifying as to the apprehension of the accused, P 34801 Pte. ROBERTS, J., by Police Constable (C.I.D.) Stapeley, Police Station, Croydon at 1415 hrs., 15 Sep 43. This is marked Exhibit "B".

J.E. Tappin Lieut
(J.E. Tappin) Lieut., RCASC,
1 Cdn. A.S.C. Rft. Unit

I do not wish to cross-examine this witness.

J Roberts
(P 34801 Pte. Roberts, J.)
1 Cdn. A.S.C. Rft. Unit

The accused was cautioned under R.P. 4(e) as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I hereby certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

J.E. Tappin Lieut
(J.E. Tappin) Lieut., RCASC,
1 Cdn. A.S.C. Rft. Unit.

I, P 34801 Pte. John ROBERTS, 1 Cdn. A.S.C. Rft. Unit, desire the assignment of an Officer to defend me at my Court Martial.

J Roberts
(P 34801 Pte. Roberts, J.)
1 Cdn. A.S.C. Rft. Unit.

Farnborough, Hants
15 SEP 43.

ADDITIONAL SUMMARY OF EVIDENCE

in the case of

F 34801 Pte. John ROBERTS, RCASC., on strength of 1 Cdn. A.S.C. Rft. Unit, a soldier of the Canadian Army Overseas.

1st Witness for the prosecution

Police Constable (C.I.D.) N. Stapeley, Police Station, Croydon giving evidence of the apprehension of the accused, F 34801 Pte. Roberts, J., states:

In saloon bar of Dog & Bull at 2 p.m. on 13.9.43 in plain clothes. Recognized by Det. Stapeley as a Canadian soldier, he was asked for Ident Card and produced one No. YCLA/1499/503 in the name of William Diver of 115a Waddon New Road, Croydon, which he admitted buying from the owner for £4. Has been living at 25 Larmuoruth Rd., Croydon.

Signed by N. Stapeley Det. "Z"

I do not require the presence of the above witness at my F.G.C.M.

J. Roberts

(F 34801 Pte. Roberts, J.)
1 Cdn. A.S.C. Rft. Unit

The accused was cautioned under R.P. 4(e) as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I hereby certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

J. E. Tappin Lieut

(J.E. Tappin) Lieut., RCASC,
1 Cdn. A.S.C. Rft. Unit.

Witness

M.F.M. 6
(A.F.R. 122)
40/[illegible] B/136 (2637)

No. P 34801 Name ROBERTS J | Sqn., Battery, or Company | Corps RTR Sect 1 Cdn Div Sigs | Date of enlistment 2 Sep 40 | O.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Guillemont	30 May 40	Pte		Sec 15- AWL from 2300 hrs 30 May 40 to 1100 hrs 2 Jun 40(60 hrs. absent)	Sjt Connors	14 days C.B. Ffts 3 days Pay FRAI 149(1)(a)	30 May 40	Capt. Swan	JH Swan Capt
East Kor-ely	2 Aug 40	Pte		Sec 15 AWL from 1200 hrs 2 Aug 40 to 1100 hrs 5 Aug 40(71 hrs absent)	Sjt O'Neill CSM Hunt	Ffts 3 days Pay FRAI 149(1)(a) 6 days FRAI 149(1)(c)	5 Aug 40	Capt Swan	Swan Capt
In the Field	30 Jan 41	Pte		WOAS(Sec 15 A.A.) Absenting without leave from 2300 hrs 29 Jan 41 until 2300 hrs. 30 Jan 41 Total 24 hrs	Sjt McGowan J.W.	Ffts 1days Pay Ffts 5 days Pay Total 6 days Pay	5 Feb 41	JH Reeland	Capt.
Field	23/4/41	Sign		AA 15(1) AWL 1200- 23/4/41 to 2300 - 23/4/41 (11 hrs)	Sjt Taylor	Dismissed	23/4/41	BB Bramfo[illegible]	Lt.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31/5/41	Sigmn		AA 15(1) AWL - 2359 hrs until 2330 hrs 31/5/41 (23½ hrs)	Sjt Taylor Sjt McGowan	PRAI 149(1)(e) 1 days Pay PRAI 149(1)(e) 7 days Pay	2/6/41	W Oxley, Lt.	
Field	5 Jun 41	Sigmn		AA 15(1) AWL 2359 hrs 5 Jun 41 to 2330 hrs 15 Jun 41 Total 9 days 22½ hrs	Cpl Stairs Sjt Taylor	28 Days Det'n Pfts 28 days PRAI(1)(e) PRAI 149(1)(e) 9 days Pay	18 Jun 41	L Thompson, Capt.	
Field	19 Jun 41	Sigmn		Sec 22 A.A. Attempting to escape when in lawful custody	Cpl Peever	7 days Det'n	21 Jun 41	L Thompson, Capt	7 days Pay PRAI 149(1)(e)
Field	11 Aug 41	Sigmn		Sec 15(1) AWL from 0001 hrs 11 Aug 41 to 2000 hrs 11 Aug 41 (20 hrs.)	Sjt Spicolur	1 days Pay PRAI- 7 day CB	15 Aug 41	K Martin, Lieut.	

M.F.M. 6
(A.F.B. 122)
40/P & S/136 (2637)

No. P 54301 Name ROBERTS J Sqn., Battery, or Company "LB Sect" Corps 1 Cdn Div Sigs Date of enlistment 2 Sep 39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30 Sep 41	Sigmn		AWL from 1445 Hrs 30 Sep to 0930 hrs 1 Oct and from 1400 hrs 3 Oct to 2359 hrs 3 Oct 41	Cpl Stairs Cpt Girard Sjt Bristow	28 F.P. with fftrs of Pay and fftrs 4 days Pay PRAI 140(1a) Total fftrs 32 days Pay	7 Oct 41	L.E. Keynon, Capt.	
Field	31 Jan 42	Sigmn		AA Sec15(1) WOAP AWL 2100 hrs 31 Jan 42 to 2200 hrs 2 Feb 42 (2 days 1 hr)	Cpl Hutton	9 days Pay PRAI 149 -1A 21 days F.P. PRAI 149 -1B	10 Feb 42	R.C. Irvine Capt.	
Field	23-7 42	Sigmn		AA15(1) AWL from 1000 hrs 23-7-42 until 0835 25-7-42 Total time absent 22 hrs and 35 minutes	L/Sjt Lazaron Sjt McCarthy	1 days Auto fftrs and 2 days fft pay Total- 3 days Pay	23-7-42	Lieut J.A. Galbraith J Lapointe, Capt.	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order discussing with trial	By whom awarded	Remarks
Field	17 Oct 42	L/Cpl		AWL 1200 hrs 17 Oct 42 to 2000	Sjt McCarthy	Reprimand	30 Oct 42	DW Hay, Capt.	J Galbraith, Lie Ffts 3 days Pay
Field	2 Dec 42	Pte		WOAS AA Sec 15(1) AWL		30 days Det'n	2 Dec 42	F.G.C. Martial	

(Released from the Detention Barrack "B. Down" on Jan 11 1943 SENTENCE HAVING EXPIRED. Remission earned under Rules for Detention Barracks and Military Prisons 19 days.
COMMANDANT'S INITIALS J.A.

CERTIFIED TRUE COPY, COMPILED FROM DOCUMENTS NOW IN MY POSSESSION. H.A. Redmond, Capt.
Officer i/c Records.
1 Can. A.S.C. Aft. Unit

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-020
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F 34801	Pte.	[illegible]	[illegible]

1. The following is a fair and true summary of the entries in the ~~Service and General~~ ~~Regimental and Squadron, Battery~~ ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	AA 30 [illegible] 1 times	[illegible] 1 times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted.~~

~~or~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.F.A. 73~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for xxxxxxxx beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 1 days in civil custody, and ~~x~~15 ~~days~~ ~~Air Force~~ in military custody, making a total ~~of~~ ~~x~~16 days in custody, of which N/A days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 31 yrs.

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 2 SEP 39

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward. N/A

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of ~~Air Force~~ N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N/A dated ....., and in his regiment (or corps), the rank of

N/A dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A Date of promotion.

In the rank of N/A years.

In the rank of N/A years.

In the rank of N/A years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

AIR FORCE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number [illegible] Rank Private Unit

Name John [illegible] of 1 Con. A.S.C. Reinf. Unit Regiment

NOTE.—A verbatim extract from the regimental books stating those convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	2 DEC 42 Pirie	A.A. Sec 15(1)	60 days detention	19 days.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30th day of DEC 42.

Officer i/c Records
1 Con. A.S.C. Reinf. Unit.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and attached to the proceedings.

4 OCT 43.

Part II
Off

PROMULGATION

F 34801 Pte. Roberts, John, RCASC having been tried by F.G.C.M. at Blenheim Barracks, Farnborough, Hampshire 30 SEP 43.

Charges

1st Charge - A.A. Sec 12(1)(a) W.O.A.S. - Deserting his Majesty's service in that he at Farnborough, Hampshire absented himself from 1 Cdn. A.S.C. Rft. Unit from 0800 hrs 19 Jan 43 to 1400 hrs 13 Sep 43 when apprehended, in plain clothes, at Croydon, by the Civil Police.
Total time absent - 236 days, 6 hrs, 15 mins.

2nd charge - A.A. Sec 41(5) W.O.A.S. - Committing a civil offence, that is to say, falsely represented that he was the person to whom identity card No. YCLA 1499:503 related contrary to Sec 6 (1) (a) (i) of Nation Registration Act 1939 in that he at Croydon on 13 Sep 43 when apprehended by the civil authorities produced Identity Card No. YCLA 1499:503 in the name of William Diver, 115a Waddon New Road, Croydon and represented that he was the person therein named and described, well knowing the said representation to be false.

FINDING — Guilty on both charges.

SENTENCE — To undergo detention for a period of two (2) years.

CONFIRMATION — Finding and sentence confirmed by Colonel H.R. Tyner, A/Comd "B" Group, Cdn Rft. Unit on 2 OCT 43.

IN CUSTODY — Under close arrest from 1400 hrs. 13 SEP 43 to 30 SEP 43.

FORFEITURES — Forfeits 237 days pay 149(1)(a) FR&I
Forfeits 731 days pay 149(1)(b) FR&I
Forfeits 16 days pay 149(1)(c)(ii) FR&I
Total forfeiture of pay 984 days pay.

PROMULGATED — At Blenheim Barracks, Farnborough, Hampshire on 4 OCT 43.

Officer i/c Records

The above for publication in Pt II Orders, please sign and date the attached A.F.A.3. Proceedings and return to Catering Wing.

Quote here D.O. Number and Date. Y41 46 Oct 43

(L.C. Parkinson) Major
O.C. C&B Wing
1 Cdn. A.S.C. Rft. Unit.

LIST OF WITNESSES

for the Prosecution

in the case of

F 34801 Pte ROBERTS, John

Lieut. J.E. Tappin, (R.C.A.S.C.)
1 Cdn. A.S.C. Rft. Unit

Police Constable (C.I.D.) N. Stapely,
Police Station, Croydon, Surrey.

LIST OF EXHIBITS

in the case of

F 34801 Pte ROBERTS, John

Exhibit "A" - A.F.B. 115 - Certified true copy of a Record of Declaration of a Court of Inquiry.

Exhibit "B" - A.F.O. 1618 - Descriptive return certifying as to the apprehension of the accused.

Exhibit "C" - National Registration Identity Card No. YCLA 1499:503 in the name of William Diver, 115a Waddon New Road, Croydon.

223 E - C.S.M. Roberts J.W.

O. H. M. S.

M. F. B. 270
1000 M 12-40 (8868-69-70)
H.Q. 1772-39-67

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order Convening the Court.

On Active Service, this SIXTH day of JANUARY, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 5th CANADIAN INFANTRY BRIGADE, 2nd CANADIAN DIVISION, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

[redacted]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

[redacted]

[redacted] In my opinion, military exigencies, namely the dispersion of units, difficulties of communication, and other difficulties, render it inexpedient to comply with those rules inconsistent with Appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

PROCEEDINGS REVIEWED

President.

Rank.	Name.	Regiment.
Major	M. Archambault	R de Mais

Members.

Rank.	Name.	Regiment.
Capt.	D.A.McDonald	Calg Highrs.
Capt.	B.R. Ritchie	R.H.C.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

Waiting Member: A Capt. or Lieut. to be appointed by C.C. R de Mais

*Signed (G.V.Whitehead) Brigadier
Commanding 5 Cdn Inf Bde, 2 Cdn [redacted] C.A.A.F.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M/11117, W.O. II (C.S.M.) John William, ROBERTS Calgary Highlanders a soldier of the Canadian Army (AF)	FIRST CHARGE A.A. Sec 8(2) (see charge sheet attached)	Not Guilty	Not Guilty	
	SECOND CHARGE A.A.Sec 19 (Alternative to 1st charge) (see charge sheet attahhed)	Guilty	Guilty REDUCED TO THE RANK OF ~~SERGEANT~~ SERGEANT	
	THIRD CHARGE A.A.Sec 8 (2) (see charge sheet attached)	Not Guilty	not Guilty	Confirm G.V.W.
	FOURTH CHARGE A.A.Sec 19 (Alternative to 3rd charge) (see charge sheet attached)	Not Guilty	Not Guilty	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (8)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary): No, sir

(Signed) G.V.Whitehead (G.V.Whitehead) Brigadier
Commanding 5 Cdn Inf Bde
Convening Officer (e)

(Signed) H. Lambert mjr
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

35

B. Certificate of President as to proceedings

I certify that the above Court assembled on the 22nd day of January 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
3. ~~The interpreter~~ *
4. ~~The officers under instruction~~ *

were duly sworn.

* Omit if not applicable

Signed this 22nd day of January 1942

H. Lambert mjr
President of the Court Martial.

C. Certificate in case of death sentence

* See Instruction (i) on page 762 M.M.L. 1940.

~~I certify that the terms of A.A.A. 69 of 1940 have been complied with.~~ *

~~Signed this 22nd day of January 1942~~

H. Lambert mjr
President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~I direct that the soldier named in the margin be not committed to prison until further orders.~~ * G.V.W.

* To be omitted unless penal servitude or imprisonment having been awarded the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 27th day of January 1942.

G.V.Whitehead
Confirming Officer. Brig
COMD. 5 CDN. INF. BDE.

Promulgated and extracts taken in the case of M 11117 W.O.II (C.S.M.) J.W. Roberts, J.R.

(a) (Dated) 29 Jan 42 (Signed) H. Lambert mjr

Promulgated and extracts taken in the case of M 11117 W.O.II (C.S.M.) J.W. Roberts J.R.

(Dated) 31 Jan 42 (Signed) G.V.Whitehead Brig.
COMD. 5 CDN. INF. BDE.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] W5 40113—251 400 6 [illegible] P. St. Q. Bar

- I -

3

THE CALGARY HIGHLANDERS C.A.(O).

22ND January, 1942.

M/11117 C.S.M. Roberts J.W.

The a/n WO is free from contagious and communicable diseases, and vermin, and physically fit to undergo trial by Field General Court Martial.

..... RCAMC.

5

CHARGE SHEET

The accused, No.11117,W.O.II(C.S.M.) John William Roberts, Calgary Highlanders, a soldier of the Canadian Army, Active Service, is charged with:-

FIRST CHARGE
A.A.SEC.8(2)

WHEN ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER

in that he, at Eastbourne, on 24 Dec 41, struck with his fist, Captain K. McLaren Paton, 1st Bn Gordon Highlanders, his superior officer.

SECOND CHARGE
A.A.SEC. 19
(Alternative to 1st charge)

WHEN ON ACTIVE SERVICE, DRUNKENNESS

in that he, at the Clifton Hotel, Eastbourne, Sussex, on 24 Dec 41, was drunk and did the thing alleged in the first charge.

THIRD CHARGE
A.A.SEC.8(2)

WHEN ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER

in that he, at Eastbourne, on 24 Dec 41, struck Captain W.G.Stone, attached to Calgary Highlanders, his superior officer.

FOURTH CHARGE
A.A.SEC.19
(Alternative to 3rd Charge)

WHEN ON ACTIVE SERVICE, DRUNKENNESS

in that he, at the Clifton Hotel, Eastbourne, Sussex, on 24 Dec 41, was drunk and did the thing alleged in the third charge.

TO BE TRIED BY F.G.C.M.

G.V.Whitehead

(G.V.Whitehead) Brigadier,
Commanding
5 Cdn. Inf. Bde.

Date this day of January, 1942

In the Field.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a FIELD GENERAL Court-Martial held at EASTBOURNE on the 22ND day of January 1942 by order of BRIGADIER G.V. WHITEHEAD Commanding 5TH CDN. INF. BDE. dated the 6th day of January 1942

MAJOR M. ARCHAMBAULT, R.DE MAI, President.

Members.

CAPT. D.A. MC DONALD, CALG. HIGHRS.
CAPT. B.R. RITCHIE, R.H.C.

, ~~Judge Advocate~~.

Trial of* M 11117 (C.S.M.) N.D. II ROBERTS J.W., CALGARY HIGHLANDERS,

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that is not available to serve owing to~~

, ~~waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† MAJOR A.B. CONSTABLE, CDN. SCOT. (ATTACHED CALG HIGH)

~~Counsel~~‡ or defending officer† MAJOR H.C.A. HEAVEY, CALG HIGH.

At 1130 o'clock the Trial commences.

The order convening the Court is read, and is marked G signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused.

No, Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
10M—9-39 (2132)
H.Q. 1772—39-224

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Nil.

Charge-Sheet

Instruction. If the accused has elected to be tried under Army Act, sec. 50 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

NOT GUILTY *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

GUILTY *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

NOT GUILTY *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

NOT GUILTY

The accused having pleaded Guilty to ~~the~~ the 2ND CHARGE charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

9 Pa

C

Proceedings on Plea of Not Guilty

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer.

No, Sir.

The prosecutor makes an opening address [~~hands in a written address, which is read, marked ——, signed by the President, and attached to the proceedings.~~] Pa

The prosecutor proceeds to call witnesses.

First witness for prosecution.

Capt. K.M. Paton Mt Rn. Gordon Highlanders

being duly sworn, is examined by the prosecutor.

On the night of 24 Dec 41 at about 2100 or 2200 hrs I was in the Saloon Bar of the Clifton Hotel Eastbourne Sussex, having a drink with two men. The accused whom I recognize came up and intimated he wanted to have a fight. We endeavoured to persuade him we did not wish to fight, and after some 10 or 15 minutes I left the bar in an endeavour to find an officer belonging to his unit. This I failed to do and on my return to the bar, I found the accused and the 2 men with whom I had been drinking, fighting and falling down the stairs to the Billiard Room. I followed them down, sent the 2 men away and endeavoured to persuade the accused to calm down and go away. After some 10 minutes, we came upstairs together and got as far as the exit,

A. Not generally in any way.

Q. Am I correct in understanding your wife is connected with the management?

A. Yes, she is the manageress.

Q. In your evidence you state you remonstrated with the accused for some considerable period you are an officer of Imperial Army, you are familiar with regulations about an officer placing himself in a position where

He might be struck by a person under the influence of liquor.

A. Yes.

~~Q. Knowing this you followed this man around~~

Q. If you had not followed the accused downstairs is it ~~not~~ possible that you would not have been struck.

A. It is quite possible.

Q. In your opinion was the accused drunk

A. Yes.

Questions by the Court

Q. What made you believe the accused was drunk.

A. By his inability to control himself, he was not walking straight, his speech was reasonably clear.

Second witness for the prosecution } Capt. Walter George Stone, 2nd Battalion Canadian Scottish, being duly sworn is examined by the prosecutor.

On the evening of 24 Dec 41, ~~about~~ between 2200 and 2230 hrs I was in the lounge of the Clifton Hotel. Capt. Paton of Gordon Highlanders came to me and reported that a Sergeant Major of the Cal Highs, to which unit I am attached was causing a disturbance in the bar. I proceeded with Capt Paton to the bar, where I found the accused. By the time I got there he was in the toilet. He came rushing out of the toilet, fighting, striking at everything in sight. I managed to grab his arms and hold him. I then talked to him

to try and persuade him to leave the premises quietly. As soon as I released him, he grabbed hold of me and we fell to the floor. He retained his grip on me until several men pulled him away and ejected him from the hotel. The following morning I reported this to my C.O. and made a statement to the Provost. That is all.

Q. What do you mean when you say the accused came out of the toilet fighting, hitting at everything in sight?

A. He was fighting drunk, he hit everything anybody, in sight.

Cross Examined by Defending Officer.

Q. Did you see the accused strike Cpt. Paton?

A. No.

Q. In the charge the accused "struck you."

A. He did not actually strike at, he struck at me.

Question by the Court.

Q. When you arrived in the bar, were there a lot of soldiers, [illegible] there who were trying to restrain the accused?

A. There were a lot there but not trying to restrain him. I did not give any orders for them to do so.

Ordinances for the prosecution } Major J. L. Weir 1st Bn Black Watch, R.H.R. of Canada being duly sworn is examined by the prosecutor.

On the evening of 24/25 Dec I was in

C5 2230 R 13

the Clifton, Hotel. At about ~~2250~~ hrs ~~I~~ ~~was told that~~ I went into the hallway when a Calgary Highlander, C.S.M. came out of the saloon bar door, he was being restrained by several soldiers and was obviously very drunk and was in a very dishevelled condition, one eye was well marked and cut he was forcibly ejected, but returned in a minute or so by another door, he was ejected again and I was told that he had been knocked out. In the meantime Lieut Mc Laurin of the Black Watch was telephoning for the Provost. I went outside and C.S.M. Roberts was lying on the sidewalk unconscious. I remained there with him until the arrival of the provost who took him away in their truck. I do now recognize C.S.M. Roberts as the soldier I saw in the Clifton, that night.

Q. You say the accused was obviously very drunk, on what do you base this assumption?

A. He looked drunk, his eyes were bloodshot, he was staggering, struggling and did not have control of himself in the way a normal sober person would.

Cross Examined by Def. Officer

Q. Did you see the accused strike either Capt Paton or Capt. Stone.

A. No.

14 C 6. 12

Fourth witness for the prosecution } Lieut. W.D. Heyland, Calgary Highlanders of Canada, being duly sworn is examined by the prosecutor.

At 2230 hrs 24 Dec 41 C.S.M.

Roberts was handed over to me by Sgt. Hills and Cpl Sands of the Can Provost Sec. C.S.M.

Roberts was at that time in a drunken condition but easy to handle.

Q. You say ~~[illegible]~~ the accused was in a drunken condition how do you come to this conclusion.

A. You can tell when a person is drunk or not he had to be assisted out of the truck by two provosts

Fifth Witness for Prosecution } Lieut. E. Snotzfeldt, 1st Bn Black Watch (R.H.R.) of Canada, being duly sworn is examined by prosecutor.

At approximately 2200 hrs 24 Dec 41 I was at the Clifton Hotel with a number of my brother officers and was about to leave when Capt. Paxton informed me of a soldier who was drunk in

C7. 15 R

the bar situated in the right side of the hotel. ~~[illegible]~~ Upon Capt. Peters request for assistance, I went into the office and telephoned the police. I went to the door of the bar where the accused was standing against the wall the accused appeared drunk. Upon returning to the hall of the hotel I witnessed the accused being pushed through the swing door on to the street, he reappeared within a brief moment and was again ejected. Some 5 minutes after on leaving the hotel I found the accused lying on the pavement outside the hotel. A number of soldiers were standing in the immediate vicinity. I told them to go and enlarged with the accused until members of Can Provost Coy arrived.

B. Lambault
mg.

D

The prosecution is closed.

Defence

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes, under oath.

Question. Do you intend to call any other witness in your defence?

Answer. Yes

Question. Is he a witness as to character only? *Answer.* Yes.

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[Hands in a written address which is read, marked

signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

Question by the Court

Q. Do you often take a drink

A. Yes, sir, the odd drink of beer or whiskey but seldom get drunk

Q. Do you remember how many drinks you had that night?

A. I dont know.

Q. How many pubs were you in that night.

A. At least 3.

Q. How many drinks do you think you had approximately in these pubs.

A. There wasn't many in the first pub, but after that I dont remember.

2nd witness for the defence (character)

M 10693 a/R.S.M. McArthur M.C. Calgary Highlanders being duly sworn, is examined by Defending Officer.

Q. What sort of a man have you found C.S.M. Roberts?

A. Until very recently I have been a C.S.M. with C.S.M. Roberts. I have known him since 7 Sept 39, during which time I found him to be an excellent disciplinarian and always had the utmost respect for his superiors. I have

D4

never knowing C.S.M. Roberts to be drunk. As a C.S.M. he has proved himself a very capable W.S. Sir.

3rd Witness for defence (character)

Major T. B. Donald, Calgary Highlanders being duly sworn is examined by the Defending Officer.

Q. You have known the accused the some considerable time, will you please tell the court what sort of soldier and man he is.

A. I was Adj of Calg. Highs on 20 Sept 39 I have my duties as Adj and contact with him as C.S.M. of C. Coy. I have found him reliable and a good disciplinarian and respectful at all times to me as Adj. I also know that he has the respect and admiration of all his men and on the 3rd Sept 40 I was 2 1/2 C. Coy until July 41; during that period I found C.S.M. Roberts an excellent NCO respectful to authority and carried out his duties without equivocation of any kind. I feel that one of the happiest times since I joined the Calgary Highlanders was when I was associated with C.S.M. Roberts.

21

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused M 11117 (CSM) WO II ROBERTS, J.W., CALL HIGH

is NOT GUILTY ON FIRST CHARGE
GUILTY ON THE 2ND CHARGE
NOT GUILTY ON 3RD CHARGE
NOT GUILTY ON 4TH CHARGE

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

MAJOR A.B. CONSTABLE, HANDS IN ORIGINAL OF ~~is duly sworn.~~ CONDUCT SHEET (ACCEPTED BY THE DEFENCE

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes, sir,

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked H, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes, sir.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes, sir,

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes, sir.

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused.
WRITTEN STATEMENT FROM C.O. HANDED IN MARKED K
ADDRESS TO THE COURT BY DEFENDING OFFICER MARKED J.

Question to the accused.

Do you wish to address the Court? *Answer.* Yes.

The Court is closed for the consideration of the sentence.

F

Sentence

The Court sentence the accused TO BE REDUCED TO THE RANK OF SERGEANT.

Sentence.

SAID IN DEFENCE BY DEFENDING OFF. 22-1-42 -J-

25

Mr President & Gentlemen

Capt Paton stated that his wife is the managerial of the Bar in the Clifton Hotel & that Roberts was drunk in the Bar room. Also that he (Capt Paton) remonstrated with Roberts for over ten minutes and later followed him down some stairs. He also admitted having taken a drink or two himself and that he knew the customs of the Army regarding Officers in relation to soldiers under the influence of liquor. Not withstanding all this he placed himself in such a position that he alleges that Roberts struck him. The Prosecution has not produced any evidence in corroboration of this striking.

The 3rd & 4th Charges relate to Roberts striking Capt Stone who has sworn that he did not strike him. Therefore I submit that he cannot be found guilty of these two charges. There was no other evidence to support the charge. You may however if you consider the evidence justify it find him guilty of Offering violence.

Roberts has given his evidence under Oath and unfortunately cannot remember being in the Clifton. Had he been in a condition to remember his actions would certainly have been different & these charges would therefore not have been laid.

[signature]

K 27

F.G.C.M. M.11117 CSM.Roberts, J.W.

STATEMENT OF CHARACTER BY LIEUT. COL. J.F. SCOTT, O.C. THE CALGARY HIGHLANDERS, C.A.(O).

TO PRESIDENT OF THE COURT:/

I had hoped to appear as a character witness for C.S.M. Roberts, J.W. (M.11117), but owing to the Cdn Corps Study week, which has been necessary that I attend, I am submitting this Statement of Character to the Court.

M.11117 CSM. Roberts, J.W. is an excellent soldier and his M.F.M. 6 is clear of any entry. He is a natural leader of men and his conduct has been exemplary. On the 25th December, being the day after the charge was laid against C.S.M. Roberts, M.10928 RSM E.V. Stanley was injured in a motorcycle accident and was admitted to hospital. RSM Stanley has been acting in the capacity of RSM ever since this Unit mobilized in 1939. After he was admitted to hospital it was necessary to appoint an RSM and the best NCO capable of handling this position thoroughly and efficiently was CSM Roberts, J.W., and I would have promoted him immediately as A/RSM without hesitation. He is well thought of by all members of this Unit, officers and Other Ranks. He is a disciplinarian, and I cannot speak too highly of him.

(J.F. Scott) Lt.-Col.,
Officer Commanding,
The Calgary Highlanders,
C.A.(O).

ABSTRACT OF EVIDENCE

-1-

29

in the case of

No. M11117 C.S.M. Roberts, J.W., "C" Company,

The Calgary Highlanders, C.A.(O)

1st Witness
Capt. W.G. Stone

On the evening of Dec. 24th, 1941, I was at the Clifton Hotel at approximately 2215 hrs. Capt. Paton of the Gordon Highlanders came to me and said that there was a C.S.M. of the Calgary Highlanders causing a disturbance in the saloon bar, I proceeded with Capt. Paton to the saloon bar , where I found a C.S.M. of the Calgary Highlanders whom I now recognize as C.S.M. Roberts. He was drunk, and in a very excited condition. I tried to reason with him, and persuade him to leave the premises but he grappled with me and we fell to the floor together. A little later some other ranks succeeded in getting C.S.M. Roberts out of the hotel and he was brought home by two members of the Provost Corps.

(Signed) W.G. Stone, Capt.

Certified true copy. G.B. Constable - Major
Commanding "C" Company, 2nd Bn. Can. Scot. Regt.
The Calgary Highlanders. C.A.(O) Attached Calgary Highlanders

2nd Witness
Capt. K.M.Paton

At 2130 hrs. I was in the saloon bar of the Clifton Hotel, drinking with two friends of the Air Force, when a C.S.M. of the Calgary Highlanders whom I recognize as C.S.M. Roberts, Suggested to me that he wanted to fight. I suggested to him that there was only one person we wanted to fight and that was Hitler. I remonstrated with him for some ten minutes, and left the bar to find an officer of the Calgary Highlanders. On my return to the bar I found him assaulting two R.A.F. friends and at that moment they all fell down the stairs to the billiard room. I followed, and told the R.A.F. men to go upstairs which they did. I reasoned with C.S.M. Roberts for some further ten minutes, and helped him up the stairs, and endeavoured to persuade him to go outside, on reaching the exit door he turned and struck me. I closed with him and endeavoured again to persuade him to keep quiet. He quietened down, and I again left the bar to search for a Calgary Highlanders officer. I found Capt. Stone who informed me that he was attached to the Calgary Highlanders. We both returned to the bar where we further remonstrated with the C.S.M. who then struck both Capt. Stone and myself. Capt. Stone and the C.S.M. fell to the floor, and I went to the assistance of Capt. Stone. The C.S.M. was then arrested by two members of the C.R.A. that I did not know, and bodily removed. After ten minutes fighting outside the Provost Corps were phoned for and the C.S.M. was removed by them.

(Signed)K. Maclaren Paton, Capt.
1st Bn. The Gordon Highlanders,
Gordon Castle
Fochabers,
Morayshire. MORAYSHIRE

Certified true copy: G.B. Constable - Major
Commanding "C" Company
The Calgary Highlanders, C.A.(O)

3rd Witness
Sgt. E.W. Hills

At about 2300 hrs. I received a phone message from the civil police, saying that there was a disturbance at the Clifton Hotel. I went to the Winter Gardens and picked up Cpl Sands and the rest of the patrol and then proceeded to the Clifton Hotel. On arriving there first thing I noticed was several people standing around the main entrance and when I got out of the truck I noticed a soldier lying on the side walk. An officer that I

recognised as being from the Black Watch asked me if I was from the Provost Corps. I said we were, and he told me the soldier on the sidewalk was C.S.M. Roberts from the Calgary Highlanders and that the C.S.M. had assaulted two officers in the hotel. He then asked me if I would come inside so that he could give me the particulars as he knew them. I told Cpl Sands to take care of the C.S.M. while I went inside with the officer. Soon as we got in he told me he was Lieut. Motezfeldt of the Black Watch and that he was their I.O. Another officer then came up and Lieut. Motezfeldt told me that this officers name was Capt. Paton, who had been assaulted by the C.S.M. At the same time he told me that another officer had been assaulted and Capt. Paton said this officer was Capt. Stone of the Canadian Scottish attached to the Calgary Highlanders. Lieut. Motezfeldt then gave me the names of three more officers of the Black Watch, their names were Major Weir, Lieut. McLaurin and Lieut. Boswell. I then arranged with Capt. Paton and Lieut. Motezfeldt for a meeting on the 26th Dec. to get a statement. I then proceeded to the Civil Police station and told the station Sergeant that I had attended to the matter. I then took the C.S.M. to the Calgary Highlanders H.Q. where Mr. Heyland took charge of the C.S.M. I told Mr. Heyland the facts of the case as I knew them.

(Signed) E.M. Hill, Sgt.
No. 2 Coy. Cdn Provost Corps.

Certified true copy: C.B. Costello Major,
Commanding "C" Company,
The Calgary Highlanders, C.A.(O)

4th Witness
Cpl. Sands, D.E.

Upon arrival at the Clifton Hotel I was told by Sgt. Hills to look after a soldier who was lying on the sidewalk, and appeared to be drunk. I noticed he was a C.S.M. from the Calgary Highlanders. With the assistance of L/Cpl. Nelson I carried the man on the truck. After that I went into the hotel and informed the Sgt. that the man was on the truck, and to my way of thinking there was nothing seriously wrong with him apart from being drunk. Sgt. Hills then told me to stand by until he had obtained particulars, which I did.

(Signed) D.E. Sands, Cpl.
No. 2 Coy.
Canadian Provost Corps.

Certified true copy: C.B. Costello Major,
Commanding "C" Company,
The Calgary Highlanders, C.A.(O)

5th Witness
Lieut. W.D. Heyland

At 2330 hrs. 24 Dec. 1941, C.S.M. Roberts was handed over to me by Sgt. Hills and Cpl. Sands of the C.P.S. C.S.M. Roberts was at that time, in a drunken condition but easy to handle.

(Signed) W.D. Heyland, Lieut.
"C" Company,
The Calgary Highlanders CA(O

Certified true copy: C.B. Costello Major,
Commanding "C" Company,
The Calgary Highlanders, C.A.(O)

ABSTACT OF EVIDENCE
in the case of

33

NO.M11117 C.S.M. ROBERTS J.W., "C" COMPANY,

THE CALGARY HIGHLANDERS, C.A.(O)

6 st witness
MAJOR J. B. WEIR

At about 2350 hrs 24th Dec. 41 I was in the CLIFTON HOTEL EASTBOURNE, I was told that there was a fight going on in which a CANADIAN SOLDIER was involved, I went into the main hallway when a CALGARY HIGHLANDER C.S.M come out of the saloon bar door, he was being restrained by several soldiers and was obviously very drunk and was in a very dishevelled condition, one eye was well marked and cut he was forcibly ejected, but returned in a minute or so by another door he was ejected again and I was told that he had been knocked out, in the meantime LIEUT. MACLAURIN of the BLACK WATCH was telephoning for the PROVOST.
I went outside and C.S.M. ROBERTS WAS LYING ON THE side wall unconcious, I remained there with him until the arrival of the PROVOST, who took him away in thier truck.
I now recognize C.S.M. ROBERTS as the soldier I saw in the CLIFTON HOTEL that night.

(Signed) J.B. WEIR
I st Bn. THE BLACK WATCH
(RHR) OF CANADA

Certified true Copy

A.B. Constable Major

O.C. "C" Coy.

The Calgary Highlanders

No. M11117. Name John William Roberts. Sqn., Battery, or Company "C" Coy. Corps Calgary Highrs. C.A.S.F. Date of enlistment Sept. 17. 1939. O.C. Badges Service or Proficiency Pay -3- -4-

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Major. D.G. MacLauchlan. Character

MFM 6 (A.F.B. 122) 500M - 6-39 (1703) H.Q. 1722-43-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified a true copy. as at 22 Jan 42

E.S. Sparks Lieut & Adjt
Calgary Highlanders (C.A.(C)) "M Auchenbach Major"

(P.T.O.)

XXX-16

PTE ROBERTS M.G.

RECORDED AT CMHQ IN AB 160 XXX-16

RECEIVED 26 SEP 1944 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CP/AB (To Beg of AFAA) 40/P 36 40/1000 (40/01) 4/38B

Convened by BRIG E.W. HALDENBY M.C. Comd 1 CDN BASE RET GP dated 12 Aug 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR,Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 40105		MURDOCK GORDON	ROBERTS	1 BASE RET GP

FINDING/S REVIEWED 27 Sep 44 W.A. Thompson Lt-Col DEPUTY ASSISTANT JUDGE ADVOCATE GENERAL REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date/s) 22 Aug 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A63, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1045 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(F), RP 60 fn 1. For effect see KR Con 813(c). Delete, if not applicable.)

A5. President to accused: Do you object to [illegible] as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	W.de C. HEPBURN	QAC	SBN 2CBRD
Member	CAPT	J.H. WELLS	RCA	RBN 2CBRD
Member	LIEUT	A.R. DELANGER	RCE	7BN 2CBRD
Judge-Advocate				
Prosecutor	LIEUT	A.H. POIRIER	CIC	1BN 1CBRD
Defending Offr	LIEUT	A. DESROSIERS	CIC	1BN 1CBRD

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 108, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused F 40105 PTE MURDOCK GORDON ROBERTS before arraignment make(s) (a) plea [illegible] IN BAR OF TRIAL [illegible] (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 1. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A50 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F 40105 PTE. ROBERTS W.G.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. SEC. 40	NOT GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... to date.
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 27 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO UNDERGO ~~30 DAYS~~ to date DETENTION FOR A PERIOD THIRTY DAYS.

(Sgd) ..... Judge-Advocate, if any. 22 Aug. 44 Date awarded. (Sgd) W. de C. Hepburn Maj President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.)

Date 23 Aug 44 (Sgd) E.W. Haldenby Brig
Commanding COMMANDER 1 CDN BASE RET GROUP Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F 40105 Pte Roberts W.G.	25 Aug '44	J.K. Rhodes Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ONE charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ONE charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed on the former, ~~but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(1. Delete remainder of this para. If submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. YES. Do you intend to call witnesses on your behalf ? Ans. NO. Are they witnesses as to character only ? Ans. NO
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ONE charge(s), being subject to confirmation, will be promulgated later.(1)
Or, ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. C and Ex. H respectively.(3)
(1. MFB 355 or MFB 295. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. NO.....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Loan Ctr.

C H A R G E S H E E T

The accused, F 40105 Pte ROBERTS Murdock Gordon, 1 Cdn. Base Rft. Bn., 1 Cdn. Base Rft. Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
A.A. Sec. 40.

WHEN ON ACTIVE SERVICE,
CONDUCT TO THE PREJUDICE
OF GOOD ORDER AND MILITARY
DISCIPLINE,

In that he,

In the Field, in Italy, at 1555 hrs. 5 Aug 44 was improperly in possession of one blanket, said blanket being Public Property.

Vincent L. Kenna Lt-Col
(VINCENT KENNA)
Commanding Officer
1 Cdn Base Rft Bn., 1 C.R.R.D.

In the Field
12 August 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
18 Aug 44

E W Haldenby

(E. W. HALDENBY) Brigadier
Comd 1 Cdn Base Rft Gp
Cdn Army-CMF

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F40105	Pte		Murdock Gordon	ROBERTS	1 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (*date*) 18 Aug 44 endorsed by me, ~~(or by an offr of my staff for me)~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~ EWH

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ EWH

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ EWH

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W&C HEPBURN (CAC)	5 Bn 2 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lieut to b e detailed by OC 1 Bn		1 CBRD
Capt or Lieut to be detailed by OC 8 Bn		2 CBRD

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC 7 Bn		2 CBRD

~~JUDGE-ADVOCATE.~~ EWH

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

EWHaldenby (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(E. W. HALDENBY)

Date 18 Aug 44

Commanding 1 Cdn Base Rft Gp - CEF
Convening Officer

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA95 (In lieu of AFA5) 40/P & S/1697 (4931)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE
(KR (Can) 557)

I certify that I have this morning examined No. F.40105 Rank PTE.

Name Roberts, M. G. of W.N.S.R.

and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

In the Field

Date 22 aug/44

(Medical Officer)

Waffle

A 8

Plea in bar of trial by the defense.

The defense states there is no case against the accused F 40105 Pte Roberts M.S. on the grounds that the summary of evidence taken down in this case has no bearing and brings no proof on the charge laid against the said soldier

Prosecution points out that the circumstances in which the blanket in question was found in possession of the accused. If they are not in conformity with the manner in which a soldier is permitted to deal with such an item of equipment and that is a matter of military knowledge that such circumstance if they are sufficient would be namely the terms of the charge that is a possession that it is not proper considering the purpose for which such an item of equipment is in possession of a soldier.

Prosecution has failed to point out any official order that defends to be in possession of a blanket

RP/83/B complied with.

(1)

D 3 Evidence for the prosecution

F 59757 Pte Gallant A.U. having been duly sworn states

Pros. Can you identify the accused

Ans. Yes sir. I identify and recognize the accused.

~~What your exp~~

My duties are the same duty checking persons coming and going from camp. W.D. property that will not be taken out are blankets greatcoat battle dress and rations unless on leave and see that nobody goes out of camp without a pass.

On the 5 Aug approx 1530 hours I saw Pte Roberts heading toward lower gate. I checked him. I caught him at the lower gate facing the road. I saw that he had a blanket inside his trowsers. He was taken to the guardroom by another R.P. and myself. He was turned over to the Cpl in charge.

I produce the blanket to the court as exhibit "A"

When I saw the accused He was walking in the direction of the gate. He was at the gate when I checked him.

Question by court.

What is your authority for checking W.D. equipment leaving the barracks

Answer. The Prov Sgt.

(2) 6044

My duties on the 5th Aug were runner for the Provost Sgt and assisting

Court exhibit A is similar to the one taken from the accused

RP. 83/15 complied with

3rd witness for prosecution

B 63693 RQMS Newlands J A having ben duly sworn states

I am the RQMS of 1 Bn 1 CBRD and in charge of the department Court Exhibit A is a G.S. U.S.A. blanket issued to Can Army in lieu of regular issue. Personnel are issued with such blankets by me as laid down from time to time and are signed for by the person receiving the blanket. Every man carrying a Part III pay book has the entry shown in the book.

witness for defense.

Q. Can you point out to the court any proof that the blanket is the property of Can Army.

Answer There is none.

Question by court. What is the present scale.

Ans. The present scale of issue is 3 blankets per man

Q. Are soldiers in the unit checked for surplus blankets

Answer Yes sir. Once a week.

Q. Are soldiers allowed to keep surplus blankets.

Ans. No sir.

this unit. Also it has been shown that the unit has taken it upon itself to remove supplies equipment such as this blanket. It is to be noted that the government has an equipment need not be absolute property in order that it can deal with it as its own property. To clarify this.

The prosecution maintains that the government has at least special property rights in equipment such as exhibit A ref in special property. See 18 (pt note 8)

Defense submits

The witness for prosecution has admitted himself the convertability that the ~~unit~~ blanket is not being W.D. property. It is well known in this theatre of war that articles such as blankets are given to the civilian population. This fact brings another doubt in front of the court which neutralizes sec 18 (pt note 8)

RP 83/B complied with

D.S. Statement of accused F 401 05 Pte Roberts M.G. having been duly sworn states.

On the 5th of August I had an appointment with a girl. The reason I had the blanket wrapped around me was because I did not wish to be seen by the general public going out with a girl with a blanket over my arm. I had no intentions of getting rid of the blanket in any way

Cross examination by prosecution

answer. This blanket is mine and issued at 1 Bn 1CBRD

(over)

(1)

D 3 Evidence for the prosecution

F 59757 Pte Gallant A.A. having been duly sworn states

Pros. Can you identify the accused

Ans. Yes sir. I identify and recognize the accused.

~~Will you sign~~

My duties are the same daily checking persons coming and going from camp. W.D. property that will not be taken out are blankets greatcoat, battle dress and rations unless on leave and see that nobody goes out of camp without a pass.

On the 5 Aug approx 1550 hours I saw Pte Roberts heading toward lower gate. I checked him. I caught him at the lower gate facing the road. I saw that he had a blanket inside his trowsers. He was taken to the guardroom by another R.P. and myself. He was turned over to the Cpl in charge.

I produce the blanket to the court as exhibit "A"

Wh. I saw the accused He was walking in the direction of the gate. He was at the gate when I checked him

Question by court.

What is your authority for checking W.D. equipment leaving the barracks

Answer. The Prov. Sgt.

Question by defense through court

Are there any standing orders or written orders stating that blankets should not or will not be taken from camp

Answer Sir. I don't know.

RP 83/B complied with

2nd witness for prosecution

A49630 Pvt. Tickner L.A. having been duly sworn states

I recognize and identify the accused. I placed him under arrest and took him to 1 Bn Guard room. At approx 1555 hrs on the 5 Aug 44 I was notified by the fallout of a soldier heading towards the second gate of 1 CBRD. He went together to apprehend the accused. On arriving at the gate at 1 CBRD just outside of the barracks I placed the accused under arrest and took him to 1 Bn Guard room. As he was going out the gate I noticed his trousers were undone at the front and were falling to his knees therefore I could plainly see a blanket wrapped around the accused. My verbal instructions from the Sgt are that no blankets are to go outside the barracks without a chit from the offices

Question Are there any reason why you yourself cannot go out of the Bn camp with a blanket.

Answer Yes. The R.P. are checking everyone

Quest. How long has this been going on

Answers for the last five months

My duties on the 3rd Aug were rumsie for the Provost Sgt and assisting

Court exhibit A is similar to the one taken from the accused.

RP 83/B complied with

3rd witness for prosecution

B 63693 RQMS Mewlands I A having been duly sworn states

I am the R.Q.M.S of 1 Bn 1 CBRD and in charge of the department Court Exhibit I is a G.S. U.S.A. blanket issued to Cdn Army in lieu of regular issue. Personnel are issued with such blankets by me as laid down from time to time and are signed for by the person receiving the blanket. Every man carrying a Part II pay book has the entry shown in the book.

witness for defense.

Q. Can you point out to the court any proof that the blanket is the property of Cdn Army.

Answer There is none.

Question by court. What is the present scale.

Ans. The present scale of issue is 3 blankets per man

Q. Are soldiers in the unit checked for surplus blankets

Answer Yes sir. Once a week.

Q. Are soldiers allowed to keep surplus blankets.

Ans. No sir.

Reexamined by Defense

Ques. Are all soldiers checked once a week for their Kit.

Answer. They should be.

Q. Is it conceivable that a man can be in the unit 3 weeks and not be Kit inspected

Answer. It is

Question by court

Are there instructions as to Kit inspections and have you personal knowledge that Kit inspections as a matter of practice are carried out in your unit

Answer. There are written instructions from my department and ~~[illegible]~~ Standing orders. Also Kit inspections are carried out except where training interferes

R.P. 83/B/ complied with

D 4. Defending officer says there is no case for the following reasons.

Exhibit A produced before this court has no marking or label to prove the fact that it is W.D. property. The charge in the case of Pte Roberts reads as follows. "Was in improper possession of one blanket said blanket being W.D. property. ~~I have shown said blanket I court~~

Prosecution states

The submission of no case by Defense rests on the grounds that exhibit A is not public property. One witness for prosecution has shown that it is the type of blanket issued at the unit of the accused and blankets such as exhibit A are considered as part of Kit of a soldier at

Ca Fa.

this unit. Also it has been shown that the unit has taken it upon itself to remove supplies equipment such as this blanket. It is to be noted that the government has an equipment need not be absolute property in order that it can deal with it as its own property. To clarify this.

The prosecution maintains that the government has at least special property rights in equipment such as exhibit A ref in special property. See 18 (not note 8)

Defense submits

The witness for prosecution has admitted himself the conceivability that the ~~said~~ blanket is not being W.D. property. It is well known in this theatre of war that articles such as blankets are given to the civilian population. This fact brings another doubt in front of the court which neutralizes. See 18 (not note 8)

RP 83/B complied with

P.S. Statement of accused F 40105 Pte Roberts M.G. having been duly sworn states

On the 5th of August I had an appointment with a girl. The reason I had the blanket wrapped around me was because I did not wish to be seen by the general public going out with a girl with a blanket over my arm. I had no intentions of getting rid of the blanket in any way

Cross examination by prosecution

answers. This blanket is mine and issued at 1 Bn 1CBRD

(over)

I did not have permission to take the blanket from my living quarters. I have been in CSRD a month or more. I have not taken blankets out of the camp on other occasions. I did not resist when stopped by the R.P.

re-examined by Defence

Question by Defence Did you have any reason to ask for permission to take blanket out of camp

Ans. I did not. No sir

Q Did you see or notice or hear verbally anything about taking blankets out of camp

Ans. No sir

RP/83/B Complied with

Closing Address by Defence

I would like the court to take into consideration the following fact:- At time of arrest the accused did not make any sign of guilt. He has sworn to the fact that he took said blanket for the purpose of going on a picnic. I would like to bring to the attention of the court the fact that soldiers billeted in this area have no places to bring their women friends. It is known that barracks are out of bounds. By the order a soldier has no place whatsoever to go. The charge against Pte Roberts is that of ~~taking a blanket and being~~ in improper possession of a blanket. If the court feels that there is any offence in what the accused has done I would like to point out that the charge sheet is a very light and elastic one. It is also pointed out that the prosecution has failed to bring out any order to the fact that blankets should not be taken out of barracks.

RP 83/B Complied with

(4)

Closing address

The prosecution seems the evidence as follows. (1) First element proven is that exhibit A is public property.

(2) That the possession under the circumstances indicated was improper. It is not a question of the intention of accused where rights of dealing with trust proper is concerned. It has been proven that at this unit leaving the camp with a blanket is not permitted. It is wise to be noted that items of equipment have a use according to their nature and that as soon as a soldier goes beyond the intended use of property immediately he becomes in improper possession and his original right to said property is automatically vitiated. (The question then rests whether in matter of military practice the use of the blanket in the manner indicated by the evidence is improper.

RP 83/B complied with

Exhibit 24
Lond. Gaz. 1st Feb 1918 p. 1115.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
2 40305	Pte	Roberts, Murdoch Gordon	1 C.D.H.Bn., 1 C.D.H.D.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The omitted months mentioned should be produced to agree with the statement but not entered in the proceedings.

† See para. 627, K.R., 1940.

* The omitted months stated should agree with the number of months in the omitted years, the amount being given in the usual uniform manner of each offence and the any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec. 30	1 times	4 times.
For A.A. Sec. 27 (3)	2 times	5 times.
For A.A. Sec. 31	1 times	2 times.
For A.A. Sec. 40	0 times	2 times.
For C&S	times	times.

Number of instances of gallantry or distinguished conduct, C&S

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted. C&S

~~Previous convictions~~ of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 72 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for ~~imprisonment~~ beginning on the day of C&S

4. The accused has been in confinement, awaiting trial on the present charges, for NO days in civil custody, and 17 days in military custody, making a total of 17 days, of which NO. days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 21

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 3 Sept 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award *or* is in possession of *or* entitled to (*state any military decoration or reward*).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated , and in his regiment (*or* corps *or* department) the rank of dated

(41256) W.13832/144 125,000 6/41 A.&E.W.Ltd. Gp.498

~~Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.~~

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer dispensing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th day of August 1944.

[signature]

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

~~In the rank of~~ S.Sgt. ..... years.

~~In the rank of~~ S.Sgt. ..... years.

~~In the rank of~~ S.Sgt. ..... years.

~~In the rank of~~ .... years.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)*

No. [illegible]40105 Name Roberts M.G. Sqn, Battery, or Company Corps C.I.C. Date of enlistment [illegible] GC Badges Service or Proficiency Pay Exhibit A 10 [illegible] MFM 6/[illegible]

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No 2 Signature OC Company, etc Character Pr.ss.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 31-10-40		Pte		WOAS Drunk, Incapable of performing Sgt duty.	Cunningham	3 dz C.B.	1-11-40	S.Johnson	
Field 2-12-40		Pte		WOAS A.W.L. from 1800 hrs 3-12-40 until 2100 hrs 6-12-40 Sec 15(1)	CSM Shaffner	14 dz detn	2-12-40	Mjr Ernst	
Field 10-12-40		Pte		WOAS Smoking while undergoing a sentence of detention contrary to standing orders.	Sgt. Lupton	21 dz detn (concurrent)	10-12-40	Mjr Ernst	
Field. 31-1-41		Pte		WOAS A.W.L. from 2200 hrs 30-1-41 until 0810 hrs 31-1-41 Sec 15(1) A.A.	L/Cpl Simpson	10 dz C.B. 1 dz pay	31-1-41	Mjr Ernst	
Field. 1-12-40		Pte		WOAS Drunkness, Sec.19 A.A. [illegible]	Lt.Johnson	21 dz F.P. [illegible]	8-1-41	Mjr Ernst	

At [illegible]-3-0 without permission of the owner, [illegible] Dawson [illegible] Sgt [illegible]

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20-6-43	Pte	(3)	WOAS DRUNKENNESS SEC.19 A.A.	L/C Reid	Fined $10.00		Lt/Col [illegible]	
Field	4-6-42	Pte		WOAS A.W.L. from 2.30 hrs 4-6-42 until 2330 hrs 5-6-42 Sec 15(1) A.A.	L/C Peebles	7 ds C.B.		Lt. McNeil	
On Sep 3-41 this soldier completed 2 years service. the preceding entries were transferred from previous sheets which were then destroyed.									
Field	9 Mar 43	Pte		WOAS A.W.L. from 1330 hrs. 9 Mar 43 till 1420 hrs 9 Mar 43 (10 min)	L/C Sacarp	2 ds F.P. 2 ds pay		Colonel J.B. Calkin	
Field	10 Aug 43	Pte		WOAS A.W.L. 2300 hrs 10 Aug 43 to 1700 hrs 12 Aug 43	Sgt Barnes	28 ds pay		Lt Col Bogart	
Field	21 Feb 44	Pte	(4)	WOAS DRUNKENNESS A.A.SEC.19	Docum.	Admonished	29 Feb 44	Mjr Russell	
Field	17 Jul 43	Pte		AA Sec 15(1) WOAS AWL from 0800 hrs 17 Jul till 1600 hrs 19 Jul Total: 2 ds 8 hrs	Cpl Lynde	7 ds pay 14 ds C.B.	20 Jul 44	Lt Col V.McKenna	3 ds pay
Field	21 Jul 44	Pte	(1)	AA Sec.11 Neglect to obey Camp standing orders by being in possession of bottled wine. (1) AA Sec.15(1) WOAS AWL from 1300 hrs to 1510 hrs 21 Jul 44 (2Hrs 16 Min)	Documentary	7 ds pay 14 ds C.B.	22 Jul 44	Lt-Col V.McKenna	

CERTIFIED TRUE COPY

from Regt Books in my custody.
[illegible]
Officer i/c Regt Books

Summary of Evidence

in the case of

F40105 Pte. Roberts W. G. 1 Bn. 1 C.B.R.D. a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken under oath.

First Witness: F59757 Pte. Gallant A. A. No. 1 Bn. 1 CBRD having been duly sworn states:

I am F59757 Pte. Gallant A. A. R.P. No. 1 Bn. 1 CBRD. At approximately 1555 hrs. 5 Aug. 44 I saw a man later identified as Pte. Roberts W. G. heading towards the lower gate. His uniform seemed to be bulging in a suspicious way. Pte. Tickner another R.P. and I went after him and caught him as he was about to go out the gate. He had a Khaki (Hamlet) blanket concealed in his pants. We placed him under close arrest in the guard room. We handed the blanket to the Provost Sergeant. The blanket I herewith produce and identify and submit as exhibit A. and said blanket is public property.

F59757 Pte Gallant AA

The accused declines to cross-examine the witness

Second Witness: A 49630 Pte. Tickner L. A. No. 1 Bn. 1 C.B.R.D.

having been duly sworn states:

I am A 49630 Pte Tickner L. A. R. P. No. 1 Bn. 1 CBRD. At approximately 1555 hrs. 5 Aug. 44 Pte. Gallant summoned me to the Guard Room door. He, the there was a man getting ready to go out the

gate with a blanket. We ran towards the main gate where we saw the accused heading towards the second gate. We ran towards the second gate where we apprehend the accused. We placed him under arrest and brought him to the guard room. We then took the blanket from the accused which was wrapped around him under his clothing. We then found in the accused's pay book that the accused's name was 740105 Pte. Roberts M. G.

S. A. Tickner A.49630

The accused declines to cross-examine the witness

The accused was warned as follows:

Do you wish to make any statement or give evidence upon oath? You are not obliged to do so, but any statement you make or any evidence you give will be taken down in writing and may be given in evidence.

Answer by the accused.

I have nothing to say at this time.

M G Roberts

I certify that the foregoing Summary of Evidence was taken down by me in the presence of the accused and that Rules of Procedure 4(c)(d)(e)(f) and (g) have been complied with.

Wm O. Moir Lieut.
officer detailed to take Summary of Evidence

In the Field
11 July 44

Abstract of Evidence
In the Case of
740105 Pte. Roberts W. G. 1 Bn.
No. 1 C.B.R.D.

Lieut. D.B. Dickson, Quartermaster of 1 Bn. 1 C.B.R.D. will state that blanket referred to as exhibit A is W.D. issue, American pattern.

(D.B. DICKSON) LIEUT.

Taken down by me in the Field this fifteenth day of August 1944

Wm O. Muir Lieut.
Officer taking Abstract of Evidence.

In the Field
15 Aug 44.

Con. Ste.

L I S T O F W I T N E S S E S

In the the case of F 40105 Pte Roberts, W.G., 1 CMP Base AFT Bn., 1 CMP Base AFT Depot.

For the Prosecution.

F 50737 Pte Gallant, A.U. - 1 C.M.P.Bn., 1 C.M.P.D.

A 49630 Pte Tiedmer, L.L. - 1 C.M.P.Bn., 1 C.M.P.D.

For the Defence.

N I L

L I S T O F E X H I B I T S

Exhibit "A" - - - - 1 Blanket (Public Property)

STATEMENT BY THE ACCUSED.

I certify having received free of charge, a copy of the ~~summary of evidence and list of witnesses and exhibits~~ abstract of evidence.

I desire the services of an officer to represent me at the trial.

Date 15 August 44. [signature]

CHARGE SHEET

STATEMENT BY THE ACCUSED.

I certify having received free of charge, a copy of the Summary of Evidence, List of Witnesses, List of Exhibits and Charge Sheet.

I desire the services of an Officer to represent me at the trial.

Date 12 August 44

CHARGE SHEET

QQ-110 (AFRICA)
PTE ROBERTS M.G.

For Original AFA-3 See QQ-109
Pte MacDonald D.
QQ-110

Corresponds to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this TWENTY SEVENTH day of August, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 3 rd Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~

"LK Tisdale"
Major

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

~~*I am unable to appoint:—~~

~~*(1.—Three Officers to form the Court.)~~

~~*(2.—A Field Officer as President.)~~

~~*(3.—Three Officers having more than one year's service.)~~

~~for the following reasons, namely:—~~

"D. J. Caddy" Capt.
for 7 Oct 43

President.

Rank.	Name.	Regiment.
Major	P.K. Tisdale	9th Fd. Amb. R.C.A.M.C.

Members.

Rank.	Name.	Regiment.
Capt.	F.H. Burns	West. N.S.R.
Capt.	C.L. Dow	Carlt & York
Lieut.	F.J.L. Lafleche	R 22e R

* Must be signed personally by ~~the Officer~~ Writing Member actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed "M.H.S. Penhale" Brigadier

Commanding 3 Cdn Inf Bde

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
F 40105 Pte. Roberts, Murdoch Gordon, West.N.S.R.	First Charge A.A.Sec 15 (1)	Guilty	Guilty 28 days field punishment forfeiture of 28 days Pay "P.E.Tisdale" Maj. Aug 30 43	Confirmed "M.H.S.P."

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) "M.H.S.Penhale" Brigadier (Signed) "P.E.Tisdale" Major

Commanding 3 Cdn Inf Bde
Convening Officer (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (*if necessary*) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 28 day of August 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this 28 day of August 1943.

"P.E. Tisdale" Maj.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.C. 1929.

~~I certify that the terms of~~ *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the soldier named in the margin be not committed to prison until further Orders.~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

Signed this 30 day of Aug 1943.

"M.H.S.Penhale" Brig.
Confirming Officer.
Comd 3 Cdn Inf Bde

Promulgated and extracts taken in the case of F 40105 Pte Roberts M.G.

(*a*) (Dated) 31 Aug 43 (Signed) "C.B.Higgins" Capt. Adjt. Offic i/c Rest Records.

Promulgated and extracts taken in the case of W.H.S.P.

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(43729) Wt. 40015—825 200 to 1/46 P.St. G.6a

CHARGE SHEET

The accused F40105 Pte Roberts, Murdock Gordon, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, stationed in the field, is charged with:-

1st Charge
Sec 15 (1)
Army Act

When on Active Service, absenting himself without leave, in that he,
was absent from his coy area from 0530 hrs 23 Aug 43 until 1730 hrs 23 Aug 43.

In the Field
27 Aug. 43

(H.P. Bogert), Lt.-Col.,
Comd., West N.S.R.

To be tried by Field General Court Martial.

In the Field
27 Aug. 43

(R.H.S. Penhale), Brigadier,
Comd. 5 Cdn Inf Bde.

KNIGHTS OF COLUMBUS
CAH
WAR SERVICES

OVERSEAS SERVICE

26/8/43

Cl Roberts ~~M~~ M.G. R.40105

This is to certify that I have examined the apn medically today. He is fit to undergo trial of Court Martial.

A. Brandy Capt.
M.O. Lan. Sh

P.K. Tindale
M.G.

No. 40105 Roberts M. G. (C) 28/8/43

This is to certify that I have examined the apn medically this A.M. he is fit to undergo trial of Court martial.

[illegible] Govt.
Mo. [illegible]

P.K. [illegible]
[illegible]

Certificate in Accordance with R.P. 64.

Due to the exigencies of the service it is necessary that the trial of F40105 Pte Roberts, M.G. West 2 SR take place at 0800 hrs 28 Aug. 43.

(M.M.S.Penhale,) Brigadier
Commanding 5 Cdn Inf Div.

Field
27 Aug. 43

P.K. Lindale
maj.

Accused F 48105 Pte Roberts, Murdoch Gordon

Pleaded: Guilty

Plea in mitigation of sentence attached as exhibit (B)
Medical report attached as exhibit (C)
M.F.M.6 and statement as to character and particulars of
service of accused certified correct by H. Haines, E.A.
shown as exhibit (D)

J.H. Dunn, Capt.

P.K. Sindale
maj.

(B)

Plea of Mitigation
Pte. Roberts, Murdock Gordon

F40105

This man enlisted in January 1940, and arrived overseas, and was taken on strength of the Regiment in June 1940. He has fought through the Sicilian campaign since the start. He has had minor crimes since he has been with the unit, but not being of a serious nature. He is a married man, and has had to forfeit 28 days pay a short time ago.

C. K. Mullah, Lieut.
Defending Officer.

P.K. Tindall
Maj.

(B)

Plea of Mitigation

F40105 Pte. Roberts, Murdoch Gordon

This man enlisted in January 1940 and arrived overseas, and was taken on strength of the Regiment in June 1940. He has fought through the Sicilian campaign since the start. He has had minor crimes since he has been with the unit, but nothing of a serious nature. He is a married man, and has had to forfeit 28 days pay a short time ago.

C. K. Mullah, Lieut.
Defending Officer.

P. K. Tindale
Maj.

(A)

SUMMARY OF EVIDENCE in the case of F.40105, Pte. ROBERTS, Murdock, Gordon, a soldier of the West Nova Scotia Regiment, stationed in the Field, on Active Service.

BY ORDER of Lt.-Col. M.P. Bogert, Commanding Officer, West Nova Scotia Regiment, this Summary is taken on oath.

First witness for the prosecution.

F.39879. Sgt. Cunningham H.S. of the West Nova Scotia Regiment, having been duly sworn states:-

I am F.39879. Sgt. Cunningham H.S. Platoon Sergeant of No. 15 Platoon, C Coy., West Nova Scotia Regiment. At 0530 hrs. 23 Aug 43, when I held Reveille Roll Call of No. 15 Platoon, Pte. Roberts M.G. was absent. He reported in at 1730 hrs. 23 Aug 43.

H.S. Cunningham Sgt.

The accused declines to cross-examine this witness.

After being duly warned in accordance with RP 4 E the accused reserves his defence.

I certify that RP (4), (c), (d), (e), (f), and (g) have been complied with.

Taken down by me in the presence and hearing of the accused this 26th. day of August 43.

In the Field.
26 Aug 43.

R. A. McCarthy Lt.
Officer taking Summary of Evidence.

P.K. Tindale

LIST OF WITNESSES in the case of F40105 Pte ROBERTS, Murdock Gordan, West Nova Scotia Regiment.

PROSECUTION - F39879 Sgt Cunningham, H.S. - West NSR

DEFENCE - Nil

STATEMENT BY ACCUSED AS TO DEFENDING OFFICER

If I am to be tried by Court Martial on charges now pending against me

I wish to have no preference

act in my behalf.

Date 26 Aug 43 M G Roberts
(Signature of accused)

This is to certify that I have been given, free of charge, a copy of the charge sheet, summary of evidence and all documents relative to my trial.

Date 26 Aug 43 M G Roberts
(Signature of accused)

After being duly warned in accordance with RP 4 the accused reserves his defence.

I certify that RP 4 (c), (d), (e), (f) and (g) have been complied with.

Taken down by me in the presence and hearing of the accused this 26 day of Aug ust 1943.

In the Field
26 Aug 43

R W M Carthright
Officer taking Summary.

P.K. middle

M.F.M. 6
(A.F.B. 122)
40-P & S/136 (2637)

No. F40105 Name Roberts, M.G. Sqn., Battery, or Company Corps West NSR Date of enlistment 3-9-39 O.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31-10-40	Pte	1	WOAS, Drunkeness, incapable of performing duty.	Sgt Cunningham	3 days C.B.	1-11-40	C. Johnson	
Field	3-12-40	Pte		WOAS, A.W.L. from 1800 hrs 3-12-40 to 2100 hrs 6-12-40 Sec. 15 AA	CSM Shafner	14 days detn	7-12-40	Major Ernst	
Field	10-12-40	Pte		WOAS, Smoking while undergoing a sentence of detn contrary to standing orders.	Sgt Lupton	21 days detn	10-12-40	Major Ernst	
Field	31-1-41	Pte		WOAS, AWL from 2230 hrs 30-1-41 to 0810 hrs 31-1-41 Sec. 15 A.A.	L/C Simpson	1 days pay 10 days C.B.	31-1-41	Major Ernst	
Field	3-12-40	Pte	2	WOAS, Drunkeness, Sec 19 AA (2) Conduct to the prejudice etc. i.e. in that he did at Redhill Surrey on 3-12-40 consume liquor valued at £1.3.0 without permission from the owner Sir Hugh Dawson.	Lt.Johnson	21 days F.P. Stoppage £1.3.0 $5.00 fine (2)charge 21 days pay.	8-1-41	Major Ernst	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20-6-41	Pte	3	WOAS, Drunkeness Sec 19 AA	Cpl Gauther	Fined $10.		Lt.-Col. A.A. Ernst	
"	4-6-42	Pte		WOAS, A.W.L. from 2359 hrs 4-6-42 to 2330 hrs 5-6-42. Sec 15	L-C Pebbles	7 days C.B.	6-6-42	Lieut McNeil	
Field	9-3-43	Pte		WOAS, AWL 1230 hrs 9-3-43 to 1420 hrs 9-3-43 A.A. 15 (1)	Cpl Sassary	2 days F.P. 2 " pay	15-3-43	Col. R. Galkin	
Field	10-8-43	Pte		WOAS, AWL 2300 hrs 10 aug 43 to 1700 hrs 12 Aug 43.	Sgt Barnes	28 days pay	13-8-43	Lt.-Col. M.F. Rogert	
				Certified true Copy ..... C.B. Higgins ..... Capt. C.B. Higgins, Capt., Offr i/c Records, West NS"					

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-520
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F40105	Pte	Roberts, M.G.	West N.S.R.

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Sec 15 (1) A.A.	2 times	5	times
For	Sec 19 A.A.	~~NN~~ nil times	3	times
For	Sec 40 A.A.	times	1	times
For		times		times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and three days in military Air Force custody, making a total of three days in custody, of which none days were spent in hospital.

5. The present age of the accused according to his record of service is 31 yrs 1 month
attestation paper is 3 Sep 39

6. The date of his commission specified in his record of service is
attestation attestation paper

7. The service which the accused is allowed to reckon towards discharge is 3 yrs 11 months

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward.
military military military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of
Permanent Force
unit

..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number F40105 Rank Pte

Name Roberts, M.G. of West NSR Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26th day of August 1943

C. Bottigin Capt
[illegible] Regt Pmk
[illegible] NSR

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked (D) signed by the president, and annexed to the proceedings.

P.K. Tindale maj.

5 B 119

Pk Roberts N A

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B41924 Pte Martin Alfred ROBERTS 8 Cdn Inf Trg Regt

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 11	Guilty	Guilty	
2nd	AA 40	Guilty	Guilty	
3rd	AA 40	Guilty	Guilty	
4th				
5th				
6th				

(Note: As to Findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 403 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N.I. beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo Detention for Thirty (30) days and to forfeit under Stoppages to pay units he has made good the sum of £5-5-8½, a portion of the Cost to the public

16 Mar 45 (Sgd) John Mercer President. (RP 45, 50.) Major

(Sgd) Judge Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally, AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed GHH

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 18 Mar 45 (Sgd) Courtenay Brig.

Commanding 14 Cdn Inf Bde Comd Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B41924 Pte Martin Alfred ROBERTS	Promulgated 19 Mar 45 Published D.O. No. 47 d/20 Mar 45	(A.E. Wilby) Capt Adj, Dep Bn 8 Cdn Inf Trg Regt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 2 MAR 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPAmp (To lieu of APAS) 40/P & S/1698 (6/44) 4/38B

Convened by Comd 14 Cdn Inf Bde dated 28 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, 198, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B41924	Pte	Martin Alfred	ROBERTS	8 Cdn Inf Trg Regt

PROCEEDINGS REVIEWED

28 Mar 45 (Sgd) J.P. Gunter Capt.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 16 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs as how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 46, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At ..... hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ..... as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ~~Capt R Beaudoin~~ as shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.M. Mercer ED KC	8 Cdn Inf Trg Regt
Member	Capt	G.R. Rogers	8 Cdn Inf Trg Regt
Member	Lieut	J.A. Brown	8 Cdn Inf Trg Regt
Judge-Advocate			
Prosecutor	Capt	J.E. Bannister	8 Cdn Inf Trg Regt
Defending Offr	Major	A.B. Pallon	8 Cdn Inf Trg Regt

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (3)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form .....

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Forms C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 83(*B*); *duties of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ~~No~~.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ~~A~~ 1, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....Do you intend to call witnesses on your behalf ?
Ans.....Are they witnesses as to character only ? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Nothing to say myself or character witness
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ~~A~~ 2 and Ex ~~B~~ 3 respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Swiss record has record of the Case.....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B41924 Private Martin Alfred ROBERTS, Canadian Infantry Corps, on the strength of No 8 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHILE ON ACTIVE SERVICE, Neglecting to obey Camp Standing Orders,

Section 11
Army Act

in that he,

In the Field, on 25 February 1945, neglected to obey Paragraph 4 of 8 Cdn Inf Trg Regt Standing Orders by being in Brighton, Sussex, a distance greater than five miles from 8 Cdn Inf Trg Regt, contrary to Paragraph 4 of 8 Cdn Inf Trg Regt Camp Standing Orders.

SECOND CHARGE — WHILE ON ACTIVE SERVICE, Conduct to the Prejudice of Good Order and Military Discipline,

Section 40
Army Act

in that he,

In the Field, on 25 February 1945, improperly and without authority was concerned in taking and using Canadian Army Vehicle Number CM 4230994, thereby occasioning damage to the said vehicle to the extent of £8-0-7½ and a loss to the public of £0-1-6, the value of the petrol consumed.

THIRD CHARGE — WHILE ON ACTIVE SERVICE, Conduct to the Prejudice of Good Order and Military Discipline,

Section 40
Army Act

in that he,

In the Field, on 25 February 1945, improperly and without authority was concerned in taking and using Canadian Army Vehicle Number CM 4230994, thereby causing injuries to himself and to B131573 Pte Cookman, T.H. of 8 Cdn Inf Trg Regt, the said injuries resulting in hospitalization and ambulance services in the amount of £7-15-0.

(P.M. Mitchell) Lt Col
A/Commander
8 Cdn Inf Trg Regt.

IN THE FIELD
13 March 1945

To be tried by Field General Court Martial.

(J B Weir) Col
A/Comd
14 Cdn Inf Trg Bde

In the field
16 Mar 45

97

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
841094	Private		Ernest Alfred	Mace	6 Cdn Inf Trg Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 Dec 45 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; [and that it is not practicable to delay the trial for reference to a superior qualified offr.]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W H Miller	6 CIH

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by CO	6 CIH
Lieutenant	to be detailed by CO	6 CIH

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.) (Signed personally. RP 105 fn 2.) (Rank.)

Dat 16 Mar 45 Commanding W Mac Col

A/Comd Convening Officer.
HQ, 14 Cdn Inf Trg Bde

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA 95 (In lieu of AFA 3) 40/P & S/1607 (6143) (See overleaf for oaths and notes for use on trial.)

I certify that I have this morning examined No. B41924.....

....Pte Roberts, M.A.....of Cdn. Inf. Corps. 8 Cdn. Inf. Trg. Regt.

and in my opinion, he is..fit.....to undergo trial by Court Martial.

Station....In the Field.....

Date.....16 Mar 45.....(Sgd)...[signature].....
(Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3 para 27, d/6 Jan 42

CASE OF

E-1 B-41024 Private ROBERTS, M.A. 8 CITR

CHARACTER WITNESS
~~FIRST WITNESS~~

Capt GOFF, G.H., Transport Officer, 8 CITR, sworn, states:-

The accused has been working for me for some time, for approximately five or six months. I have always found him very efficient in his job and very reliable. To my knowledge, I had never had any trouble with him before.

I do not know any officer who knew him before he came to me.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RT 93 (B).

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B41924 Private Martin Alfred ROBERTS, Canadian Infantry Corps, on the strength of No 8 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary is taken on oath.

FIRST WITNESS — For the Prosecution

D131578 Pte Cockman, T.H., Cdn Inf Corps, on the strength of No 8 Cdn Inf Trg Regt, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am D131578 Pte Cockman, T.H. and am a Driver i/c on the strength of 8 Cdn Inf Trg Regt. On 25 Feb 45 after some discussion, Pte Roberts, M.A., the accused, whom I now recognize, Pte Quesnelle and myself left for Brighton at approximately 1500 hrs in a Military 5 Cwt No. CM 4230994. We spent the afternoon and evening in Brighton and left at approximately 2200 hrs for Horsham. About seven miles out of Brighton the accused mentioned a turn in the road to Pte Quesnelle, J., who was driving. The lights of an oncoming vehicle blinded Pte Quesnelle, J. and we were part way across the intersection before noticing it. We swung hard to the right in an effort to make the turn, but hit the curb on the left side of the road, ran up along the shoulder for some distance and finally ran into the ditch. The approximate speed of our vehicle was 35 miles per hour. I was taken by a civilian ambulance to Sussex County Hospital and removed next day to No 13 Canadian General Hospital and was discharged on 3 March 1945.

(D131578 Pte Cockman, T.H.)

The accused declines to cross-examine this witness.

SECOND WITNESS — For the Prosecution

B155138 Pte Quesnelle, J., Cdn Inf Corps, on the strength of No 8 Cdn Inf Trg Regt, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am B155138 Pte Quesnelle, J. and am a Driver i/c for 16 Cdn Inf Trg Bn, 8 Cdn Inf Trg Regt. On 25 February 1945, after some discussion, the accused, Pte Roberts, M.A., whom I now recognize, Pte Cockman, T.H. and myself proceeded to Brighton in a Military 5 Cwt Number CM 4230994. After spending the afternoon and part of the evening in Brighton we left at approximately 2200 hours for Horsham. About seven miles out of Brighton we were traveling at approximately 35 miles per hour when the accused mentioned a right turn ahead, so I immediately took my foot off the accelerator and slowly put on the brakes. Suddenly bright lights of an oncoming car flashed up and I could not see the road. I did not see the intersection until I was about half way across and I then made a sharp turn to the right. I hit the curb on the left side of the road, ran up along the shoulder of the road for some distance and then ran into the ditch. I noticed that the left front wheel of the vehicle was off and the left windshield was cracked. I helped the accused and Pte Cockman, T.H. into a nearby house and seeing that they were taken care of, I hitch hiked to the nearest phone, which was at Henfield. There I phoned

27

SECOND WITNESS (continued)

For the Prosecution

the Transport at 8 Cdn Inf Trg Regt and reported the accident. Then I got a ride from there into Denne Park.

J Quesnelle

(B165138 Pte Quesnelle,J.)

The accused declines to cross-examine this witness.

THIRD WITNESS

For the Prosecution

Major D.M. Yearwood, Cdn Inf Corps, on the strength of No 8 Cdn Inf Trg Regt, an Officer of the Canadian Army Overseas, having been duly sworn, states:

I am Major D.M. Yearwood, and am 2i/c of 16 Cdn Inf Trg Bn, No 8 Cdn Inf Trg Regt. Military Vehicle No. CM 4230994 is on charge to 16 Cdn Inf Trg Bn, 8 Cdn Inf Trg Regt, for the use of the 2 i/c. All authorized journeys for that vehicle were usually signed by myself, or by the Adjutant or Quarter Master if they were using it, but only with my permission. On 25 Feb 1945 during the afternoon and evening I was not using this vehicle and I did not authorize it to make a trip to Brighton or anywhere else, nor did any other person request the use of this vehicle from me.

M D Yearwood Lt/Col

(D.M. Yearwood) Major.

The accused declines to cross-examine this witness.

FOURTH WITNESS

For the Prosecution

Captain G.H. Goff, Royal Hamilton Light Infantry, on the strength of No 8 Cdn Inf Trg Regt, an Officer of the Canadian Army Overseas, having been duly sworn, states:

I am Captain G.H. Goff and am Transport Officer for No 8 Cdn Inf Trg Regt. B41924 Pte Roberts, M.A., the accused, whom I now recognize, is a Pte Motorcyclist with the Transport of 8 Cdn Inf Trg Regt. On 25 Feb 45 I did not issue any pass or grant any permission to the accused to proceed outside the Unit area.

G.H. Goff Capt

(G.H. Goff) Captain

The accused declines to cross-examine this witness.

FIFTH WITNESS

For the Prosecution

Lieut J.P. Gordon, RCEME, on the strength of #124 L.A.D. (RCEME), an Officer of the Canadian Army Overseas, having been duly sworn, states:

I am Lieut J.P.G. Gordon, and am OC of #124 L.A.D. (RCEME). I herewith present a statement, marked Exhibit "A" which shows the extent and value of damages to Military Vehicle No CL 4230994 Cars 5 Cwt, which were incurred on the Brighton-Horsham road on 25 Feb 45. The cost of repairs will be £8-0-7½. The statement also shows the amount and value, £0-1-6, of petrol used by this vehicle, while proceeding from Horsham to Brighton and return to the scene of the accident. It is approximately 30 miles from 8 Cdn Inf Trg Unit to Brighton.

(J.P.G. Gordon) Lieut

The accused declines to cross-examine this witness.

SIXTH WITNESS

For the Prosecution

Lieut D.M. Smith, North Nova Scotia Highlanders, on the strength of No 8 Cdn Inf Trg Regt, an Officer of the Canadian Army Overseas, having been duly sworn, states:

I am Lieut D.M. Smith, North Nova Scotia Highlanders, and am Assistant Administrative Officer of 8 Cdn Inf Trg Regt. I herewith present a statement, marked Exhibit "B" from the Royal Sussex County Hospital which shows the cost of hospitaligation for one day for treatment to B41924 Pte Roberts, M.A., £0-12-6. I herewith present a statement, marked Exhibit "C" from 13 Cdn Gen Hospital which shows the cost of hospitalization for five days for treatment to B41924 Pte Roberts, M.A., £2-10-0. I herewith present a statement, marked Exhibit "D" from the Royal County Sussex Hospital which shows the cost of hospitalization for one day for treatment to D131578 Pte Cockman, T., £0-12-6. I herewith present a statement, marked Exhibit "E" from 13 Cdn Gen Hospital which shows the cost of hospitalization for five days for treatment to D131578 Pte Cockman, T. £2-10-0. I herewith present, marked Exhibit "F", Certified True Copy of a bill presented by Henfield & District Ambulance Club for services in removing D131578 Pte Cockman, T. and B41924 Pte Roberts, M.A. from the scene of an accident at Paynings Crossroads to Royal Sussex County Hospital, Brighton on 25 Feb 1945, in the amount of £1-10-0. The total cost of hospitalization and amoulance services to Pte Roberts and Pte Cockman amounts to £7-15-0. I also produce the following document pursuant to Overseas RO 5352 which has been read over and shown to the accused, and which is attached hereto as Exhibit "G", Certified True Extract from 8 Cdn Inf Trg Regt Standing Orders, which defines the area "In Bounds" to other ranks of 8 Cdn Inf Trg Regt.

D.M. Smith

(D.M. Smith) Lieut

The accused declines to cross-examine this witness.

The accused was cautioned as follows: Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in wri ting and may be given in evidence.

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing summary of evidence consisting of THREE pages was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (c), (d), (e), and (f) have been complied with.

F.E. Scammell

(F.E. Scammell) Capt
Officer Detailed to take Summary

IN THE FIELD
13 March 1945

EXHIBIT "A"

NO.124 LIGHT AID DETACHMENT (RCEME)

LAD/833-4-4
c/o # 8 C .I.T.R.
12 Mar 45

TO WHOM IT MAY CONCERN:

Report re damage CL-4730994 Cars 5 cwt.

1. Herewith a report on the damage to the above cars 5 cwt sent to this Unit for repair.

Damaged Unit		Approx. Cost
A-809	Left Front Axle	2/10/ 0
A-1496	Brake Drum Assy.	2/ 6/ 0
A-612	Left Front Spring	1/ 3/ 0
A-2478	Left Windshield	0/15/ 7½
Total Cost of Replacement Parts		6/19/ 7½
Hours spent in repair	7	
Cost per hour	3 shillings	
Cost of labour		0/21/ 0
Total cost of Repair		8/ 0/ 7½

2.

Distance travelled approx. 23 miles
Gasoline used 1½ gals.
Approx. cost 18 pence

3. For your information.

JPGG/LG

(J.P.G. Gordon) Lieut.
O.C. #124 L.A.D. (RCEME)
Cdn Army Overseas

Exhibit "B"

Telephone: BRIGHTON 4281 (5 lines)
Telegraphic Address
"HEALTH," PHONE, BRIGHTON
L. L. W. LANCASTER-GAYE, F.C.C.S., F.H.A.
Secretary-Superintendent

The Royal
Sussex County Hospital,
Brighton 7.

MEMORANDUM.

12th March 1945

The Officer Commanding,
8 C.I.T.R.
Canadian Army.

	£	s.	d.
Contribution towards cost of treatment of			
No. D - 41924			
Pte. ROBERTS, MARTIN.			
from - to -			
being - weeks - days			
at the rate of - per week			
1 Day's Maintenance on the 26th February 1945.			
£		12	6

With the Secretary-Superintendent's Compliments.

Ursula Achilles.

EXHIBIT "C"

#13 CANADIAN GENERAL HOSPITAL
R. C. A. M. C.

281/1/9-1

12 MAR 45

Officer Commanding,
3 C.I.T.R.

D.41934 Pte. Roberts, M.A.

1. The marginally named soldier was admitted to 13 Can General Hospital on 26 Feb 45, and discharged on 3 Mar 45 making total hospital days 5.

2. Charge in military hospitals is 10/- per day. Total hospitalisation : 5 days @ 10/- per day making a total of £2:10:0.

Major-Registrar,
for Commanding Officer.

HFD/pb

Exhibit "D"

Telephone: BRIGHTON 4321 (5 lines)
Telegraphic Address
"HEALTH" PHONE, BRIGHTON.
L. L. W. LANCASTER-GAYE, F.C.C.S., F.H.A.
Secretary-Superintendent.

The Royal
Sussex County Hospital,
Brighton 7.

MEMORANDUM.

12th March 194 5

The Officer Commanding,

8 C.I.T.R.

Canadian Army.

	£	s.	d.
Contribution towards cost of treatment of			
No. D - 131578			
Pte. COCKRAM, T.H.R.A.			
from - to -			
being - weeks - days			
at the rate of - per week			
1 day's Maintenance on the 26th February 1945.			
	£	12	6

With the Secretary-Superintendent's Compliments.

Ursula Achilles

for ROYAL SUSSEX COUNTY HOSPITAL

"13 CANADIAN GENERAL HOSPITAL"
R. C. A. M. C.

EXHIBIT "E"

281/1/9-1

12 MAR 45

Officer Commanding,
8 C.I.T.R.

D.131578 Pte. Cockman, T.H.

1. The marginally named soldier was admitted to 13 Cdn General Hospital on 26 Feb 45, and discharged on 3 Mar 45 making total hospital days 5.

2. Charge in military hospitals is 10/- per day. Total hospitalisation : 5 days @ 10/- per day making a total of £2:10:0d.

Floyd Doyle
Major-Registrar,
for Commanding Officer.

HFD/pb

EXHIBIT "F"

Phone: Henfield 59

March 1st 1945

M...Commanding.Officer...
No 8 C.I.T.R. Transport
Canadian Army

HENFIELD & DISTRICT AMBULANCE CLUB

Brazier's Garage, Henfield.

H. Adams, Hon. Secretary

Hire of Ambulance for: D131578 Pte Cockman, T.H.
B419284 Pte Roberts, M.A.

From Paynings Crossroads

To Royal Sussex County Hospital, Brighton

Miles @ per mile £1-10-0

Accident at Paynings Crossroads at Midnight of Feb 25th,1945.

CERTIFIED TRUE COPY

(D.M. Smith) Lieut.
Officer having custody of Original Record.

57

EXHIBIT "G"

8 CANADIAN INFANTRY TRAINING REGIMENT, C.A.O.

STANDING ORDERS

ISSUED BY

COLONEL J.B. WEIR, O.B.E., E.D. 8D/1

4. BOUNDS

No other ranks will leave the Area within 5 miles of Camp without a properly signed pass.

Passes are not required by Other Ranks under command of this Unit when proceeding to places after duty, within bounds as laid down in the above paragraph. "After duty" is defined as the period between 1700 hrs and 2230 hrs each week day, and between 1200 hrs and 2230 hrs on Saturdays and Sundays. In the case of Sgts., S/Sgts., and Warrant Officers, 2359 hrs will apply.

Passes are essential at all other times outside of the Unit lines for all other ranks.

Nothing in this order is to be construed as granting permission for personnel to leave the Unit lines when required in the Unit lines for parades or other duties.

The NAAFIs are out of bounds to defaulters and other ranks under "open arrest" except between 2000 hrs and 2100 hrs. The NAAFIs are out of bounds for other ranks receiving medical treatment, i.e., "Excused", "Light" or "Medicine and Duty" during parade hours. Company Orderly Sergeant and the Provost Sergeant will see that the Canteen NCOs have a list of these people before the Canteen is opened.

All Orderly Rooms are out of bounds to all ranks unless on duty.

Plantations: All ranks will take particular care to avoid damage to trees and plantations. The practice of entering plantations (farms) with vehicles) of all types is forbidden.

(sgd) Howard S. Smith, Maj.

(J.B. Weir) Colonel
Commander
8 Cdn Inf Trg Regt.

CERTIFIED TRUE EXTRACT of 8 CDN INF TRG REGT STANDING ORDERS

(O.H. Smith) Lieut
Asst Admin Offr,
8 Cdn Inf Trg Regt.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B41924	Private	Martin Alfred ROBERTS,	Cdn Inf Corps, 8 Cdn Inf Trg Regt.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Section 15 (1) 2 times.

For _____ times.

For _____ times.

For _____ times.

Date of first entry in Field Conduct Sheet 30 May 44

Date of last entry in Field Conduct Sheet 8 Sep 44

2. ~~[illegible]~~ RS

*3. ~~[illegible]~~ RS

~~[illegible]~~ RS

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 12 days in military custody, *i.e.*, 12 days in open arrest, nil days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 21 yrs, 9 months.

6. The date of his attestation is 7 Jul 42 RS

7. The service which the accused is allowed to reckon is 2 yrs, 8 months.

8. The accused is in possession of‡ Nil

‡State the military decorations (if any) held by accused.

9. ~~[illegible]~~ RS

~~[illegible]~~ RS

~~[illegible]~~ RS

~~[illegible]~~ RS

~~[illegible]~~ RS

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*28072) Wt.30721/2101 32,000 9/44 A.&E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 16th day of March 1945

D B Smith

No. B41924 Name ROBERTS, Martin Alfred | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/136 (7010)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
2 Conv.Depot	30 May 44	Pte		AWL		Forfeits 9 days pay			
3 C.I.R.U.	8 Sep 44	Pte		AWL		Forfeits 6 days pay			

CERTIFIED TRUE COPY

Officer in custody of Original Record

(PTO)

LIST OF WITNESSES

In the case of B41924 Pte Roberts, M.A., Cdn Inf Corps, on the strength of No 8 Cdn Inf Trg Regt.

FOR THE PROSECUTION

1.	D131578 Pte Cockman, T.H.	8 Cdn Inf Trg Regt.
2.	B155138 Pte Quesnelle, J.	8 Cdn Inf Trg Regt.
3.	Major D.M. Yearwood	8 Cdn Inf Trg Regt.
4.	Capt G.H. Goff	8 Cdn Inf Trg Regt.
5.	Lt. J.P.G. Gordon	#124 L.A.D. (RCEME)
6.	Lt. D.M. Smith	8 Cdn Inf Trg Regt.

FOR THE DEFENCE N I L

LIST OF EXHIBITS

In the case of B41924 Pte Roberts, M.A., Cdn Inf Corps, on the strength of No 8 Cdn Inf Trg Regt.

EXHIBIT "A" - Statement of damages, repairs and petrol dated 12 Mar 45.

EXHIBIT "B" - Statement from Royal Sussex County Hospital dated 12 Mar 45.

EXHIBIT "C" - Statement from 13 Cdn Gen Hospital dated 12 Mar 45.

EXHIBIT "D" - Statement from Royal Sussex County Hospital dated 12 Mar 45.

EXHIBIT "E" - Certified True Copy of a bill presented by Henfield & District Ambulance Club dated 1 Mar 45.

EXHIBIT "F" - Statement from 13 Cdn Gen Hospital dated 12 Mar 45.

EXHIBIT "G" - Certified True Extract of [redacted] 8 Cdn Inf Trg Regt Standing Orders.

13 March 1945

This is to acknowledge that I have received free of charge, the following papers in connection with my forthcoming trial by F.G.C.M.

1 Copy of Charge Sheet
1 Copy of Summary of Evidence
1 List of Witnesses
1 List of Exhibits.

M A Roberts
.....
B41924 Pte Roberts, M.A.

8 CANADIAN INFANTRY TRAINING REGIMENT

I, No. B41924 Pte Roberts, M.A. .....wish to have
(Rank) (Name)
an officer defend me at my forthcoming trial by Court Martial.

I desire the services of Major D.B. Pollock.....
if he is available, or an officer detailed by C.O.

(Sgd) M A Roberts.....
B41924 Pte Roberts, M.A.

5 R-150
Pte. Roberts, N.G.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 8 (2)	Not guilty	Not guilty	
2nd	AA Sec 40 (alternative)	Not guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 4 days, of which nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo five months detention

(Sgd) ..... 6 Aug 45 (Sgd) .....
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) .....
Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

CONFIRMED

~~I direct that the accused be not committed to prison or detention barracks until further order.~~(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....
Date 17 Aug 45 (G.B. Kenison) Lt-col
Commanding 2nd Cdn Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B53236 Pte Roberts N.F.	20 Aug 45	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 1 SEP 1945 JAG BRANCH CMHQ

RECORDED AT CMHQ IN AB 160 as 5R-150

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt Col G.E.B. Kenison Comd 1 Cdn Inf Bde dated 31 Jul 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B53236	Pte	NORMAN FREDERICK	ROBERTS	48 Highlanders of Canada

PROCEEDINGS REVIEWED
R Lawrence Capt
REVIEWING OFFICER, JAG BRANCH CMHQ.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 3 Aug-4 Aug-6 Aug 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 36 133.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns in RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~is~~ are attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3) CAM

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1530 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to~~ ..... as interpreter ? Ans ~~The interpreter is sworn.(1)~~ Do you object to PTE/CPL/SGT TRAINER J.H. as shorthand writer ? Ans No CAM
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Maj	C.B. MINDEY	Hast and RER
Member	Capt	B.A. MORRISON	RCR
Member	Lt	J.C. CAIN	RMR
Judge-Advocate			
Prosecutor	Lt	I MACDONALD	48 Highlanders
Defending Offr	Capt	T.B. STREET	48 Highlanders

Questions by President : Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B53236 Pte (NORMAN FREDERICK ROBERTS) before arraignment make(s) (no) ~~a~~ pleas to the jurisdiction of the court or in bar of trial (1) DAM

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or as to one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule. DAM

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB Vol 12 p 1

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *securing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination, and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing at Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Letter Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The ~~Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the~~ ..... charge(s).(2) ~~The Court is re-opened, and the President announces that the~~ submission ~~is disallowed on the~~ ..... ~~charge(s), and allowed on the~~ ..... ~~charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(3)(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans give evidence myself. Do you intend to call witnesses on your behalf ?
Ans Yes. Are they witnesses as to character only ? Ans No
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~as~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the findings, if any, of Not Guilty, and states to the accused that the findings of the Court on the ~~accused~~ ~~aforesaid~~ ..... charge~~s~~, being subject to confirmation, will be promulgated later.(1) *Or,* ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (c), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. *MFB 355 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 60(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

48TH HIGHLANDERS OF CANADA

CHARGE SHEET

The accused B53236 Pte Norman Frederick ROBERTS, 48th Highlanders of Canada, a soldier of the Canadian Army Overseas, is charged with:

1st Charge
AA Sec 5 (2)

When on Active Service, striking a superior officer.

in that he

in the field, Holland, at approximately 2330 hrs 25th July 45, struck on the side of the head with his fist B73033 CSM Wigmore F. 48th Highlanders of Canada.

2nd Charge
AA Sec 40

When on Active Service, Conduct to the prejudice of good order and military discipline.

in that he

in the field, Holland, at approximately 2330 hrs 25 July 45, created a disturbance by being engaged in an affray outside "B" Coy Sergeants' Mess 48th Highlanders of Canada.

Counsell Lt. Col.
(J.R.O. COUNSELL) Lt-Col,
Commanding Officer,
48 Highrs.

To be tried by FGCM

In the FIELD
31 Jul '45

(G E B Renison) Lt Col
T/Comd 1 Can Inf Bde

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B53236	Private		Norman Frederick ROBERTS		48 Highlanders of Canada

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet~~(s)~~ attached and on (*date*) 31 Jul 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

4

PRESIDENT.

Maj	C G KINSEY	Hast & PER
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	B A MORRISON	R C R
Lt	J C BAIN	R M R
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Lt	R G MIDDLETON	R C R
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

(G E B Renison) (Signed personally. RP 105 fn 2.) Lt-col (Rank.)

Date 31 Jul 45

T/Commanding 1 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

CBK

MEDICAL OFFICER'S CERTIFICATE

3rd August 1945

I certify that No. B-53236 Pte. ROBERTS, N.F. .....

48th Highlanders of Canada is fit to undergo trial by Court-Martial.

Signature of Medical Officer.....

CAK

MEDICAL OFFICER'S CERTIFICATE

..Aug...4th.....1945

I certify that No.B53270.Pte. Roberts N.F.

48th Highlanders of Canada is...fit...to undergo trial by

Court-Martial.

Signature of Medical Officer.....

MEDICAL OFFICER'S CERTIFICATE

Aug. 6 1945

I certify that No. B53236 Pte. Roberts N. F.

48th Highlanders of Canada is fit to undergo trial by Court-Martial.

Signature of Medical Officer Sgt. Solway Cpt.

CBK

IN THE CASE OF B.53236 PRIVATE NORMAN FREDERICK ROBERTS 'B' Company, 48th Highlanders of Canada, asoldier of the Canadia n Army Overseas.

FIRST WITNESS
Prosecution

D.72298 Sergeant PIETRONIRO, J.A., "B" Company 48th Highlanders of Canada, having been duly sworn, states:

I am platoon Sgt of 12 Platoon, "B" Coy 48th Highlanders of Canada . On 25 July-a t approximately 2330 hrs I was getting into bed on the second floor "B" Coy Sgt's Mess. Sgt Johnson called me and said there were some men downsta irs raising a rumpus. I got up and got dressed, came down to investigate. Just as I stepped out the door a soldier made a grab for me. I put him down on the ground and found it was Pte Roberts of my platoon. I let him up and told him to go to bed. All he s aid was he wanted to fight. I got him a gain and t ried to t alk some sense and go home. Just then Sgt Major came out and I let him go. Next thing I knew he was wrestling with the Sgt Major. Shortly after we had some men ta ke the accused back to his billets.

Q1. What was the accused's condition?
A1. He had been drinking.

Q2. Could you elaborate?
A2. He could walk around although I could not say he staggered. He could jump around pretty well.

Q3. You say jump. What do you mean by that?
A3. He made a grab for me.

Q4. What was his speech like?
A4. Pretty well when he spoke to me.

Q5. What do you mean by that?
A5. He spoke clearly as I remember.

Q6. Do you know if the accused knew where "B" Coy Sgts Mess was?
A6. Yes. I saw him around the Mess sometimes myself.

Q7. When he was doing this jumping around what were his motions like? Like a man who was dead drunk?
A7. I could say he had been drinking to a certain extent. He was not that drunk.

The witness is cross-examined by the Defence.

Q8. How long have you been in the Regiment?
A8. For 18 months.

Q9. How long have you known the accused?
A9. One month.

Q10. Did you ever have any trouble with him before?
A10. No.

Q11. He was a good soldier before that?
A11. Yes. He was in my platoon and seemed to be.

Q12. As a matter of fact he was pretty drunk?
A12. He had been drinking.

Q13. He not only had been d rinking he was very drunk?
A13. He was moderately drunk.

C84

Q14. I have twelve men who will swear he was very drunk and passed out.
A14. Those twelve men did not see Roberts when he came to the Mess.

Q15. Is it fair to say he would be doing this if he were not drunk?
A15. I have seen sober soldiers trying to pick fights.

Q16. You were not wearing rank when you came out?
A16. That's right. I was not.

Q17. This was in the street or Sgts yard?
A17. In the Sgts yard.

Q18. Would he know you were a Sgt?
A18. He called me by name.

Q19. What time was this?
A19. 1130.

Q20. Were you having a party in the Mess?
A20. No. We were not.

Q21. Are you prepared to swear that 12 Sgts sat down and drank only 1 bottle of liquor?
A21. Yes I am. There was only one bottle gone. I got to the Mess at 1000 hrs from a show and they drank one bottle while I was there. I dont know what they drank before that.

Q22. How much did you drink?
A22. Two drinks.

Q23. During the scuffle you had with Roberts did you hit him?
A23. No. I just held him.

Q24. How did he get the bruise on his face?
A24. I do not know. RP 83(b) is complied with.

SECOND WITNESS
Prosecution

B54003 Sergeant JOHNSTON C.F., "B" Company, 48th Highlanders of Canada, having been duly sworn, states:

Q1. What is your position in the 48th Highlanders?
A1. Supernumerary in "B" Compa ny.

Q2. What is your memory of the disturbance?
A2. I was going to bed and I suppose that the light attracted the attention of someone who shouted something about fighting.

Q3. What did they shout?
A3. I do not remember perfectly but it was something about wanting to fight or come out and fight.

Q4. Do you remember any other remarks?
A4. No. Just the one invitation.

Q5. What did you do?
A5. I called Sgt Pietroniro.

Q6. What happened next?
A6. We went downstairs and out the front door. Sgt Pietroniro was the first out. I went out myself and saw this fight taking place. Sgt Pietroniro was wrestling around the yard. I did not know who he was wrestling with but found out later it was Roberts who is sitting right there. Sgt Pietroniro was trying to get the fellows back to their quarters. They did not comply with this order.

CBK

Q7. What happened next?
A7. I did not have a great deal to do with it. I remember the CSM yelling out the window to stop the noise. Then he came down himself. We were all out on the road in front of the house and the next thing the CSM and Pte Roberts were wrestling.

Q8. Did you hear any remarks by Roberts?
A8. Not exact words but to the effect that Sgts were yellow and afraid to fight. He called us yellow cock-suckers and bastards.

Q9. What was the condition of the accused?
A9. He had been drinking but could still take care of himself. His remarks were given in a clear manner not slurred. He was very belligerent.

The witness is cross-examined by the Defence.

Q10. Have you ever had any trouble with Roberts?
A10. No. I did not know Him before. That night he had been drinking but was quite capable of handling himself.

Q11. How drunk was he?
A11. A little better than a little drunk, moderately drunk. Not drunk enough to pass out, sufficiently drunk to be very belligerent.

Q12. You were not wea ring rank?
A12. It was 1130 and I was not.

Q13. Were you having a party?
A13. We had two new men come in the Mess. I was there alll evening. The rest were not. We drank the one bottle of liquor up to ten. We had started at 6.30. It was not a drinking party.

Q14. Sgt Pistroniro tells us about a bottle which was drunk after 10 o'clock.
A14. I do not know. I was on my way to bed and not to my knowledge was anymore consumed. We were sitting around the Mess. I think right now you could still find 11 bottles in the Mess.

Q15. How much did you drink?
A15. Five very short ones. I was the only one there all night. The CSM would be about the same as he was there all evening.

Q16. You said these soldiers challenged you to fight?
. Did you accept and go out?
A16. It was more on account of the noise and it was very loud and obscene language. We did not go out to fight. I called Sgt Pistroniro because his was the only other light on in the place. I believed we could get them home with no trouble.

Q17. You knew that the soldiers were drunk and that they had yelled for the Sgts to come out and fight so that when two Sgts did go out the soldiers would immediately think they had come out to fight them?
A17. It could be interpreted that way. I also hoped we could talk them out of it.

Q18. I suggest that you as an NCO are obliged to stay away from a soldier when he is drunk in case he might strike you, not knowing what he was doing?
A18. Yes in certain circumstances.

CSM

Q19. Why did not you call the provost or get some other men.
A19. It would be necessary to go out anyway to telephone but I guess it could have been done.

Q20. I suggest that since you are not allowed to touch a private soldier and vice versa that you should have got some men from the platoon billet next door to look after these drunken soldiers instead of doing it yourself.
A20. It is practically necessary to go outside at any rate.

Q21. Did you call the CSM to come out?
A21. No I did not;

Q22. Where did this fighting take place?
A22. Directly in front of the house and moved to the road.

The witness is re-examined by the Prosecution.

Q23. When you sit around your Mess do you keep touch of everything you do hour by hour?

A23. No.

Q24. Do you remember every detail on this particular night.

A24. No.

Q25. What bottles of whiskey did the Sgts Mess consume?
A25. One bottle as far as I know.

Q26. You say you still have 11 bottles left. Was there any reason forthis?
A26. Yes. A Sgts dance this Saturday night. It was supposed to be held last Friday but was postponed.

Q27. In other words there was a real reason why you saved 11 bottles?
A27. We hoped to get permission from the C.O. to hold a party in the Mess.

Q28. What would be your duty if there were a disturbance in your Coy area?
A28. To quiet it.

Q29. Do you think that you acted on that evening as a normal NCO?
A29. Yes. I have seen men under the influence of liquor before and they have been reasonable.

Q30. When you were in your room and you heard the noise did you know the people were drunk?
A30. I supposed them to be.

Q31. Did you actually know?
A31. No sir.

Q32. When you hear a disturbance what is your first normal reaction?
A32. I investigate it.

Q33. Did any of these alternatives suggested by Defence Counsel inter your mind?

A33. No sir.

Q34. Did Sgt Pietromiro suggest it?
A34. No sir.

Q35. How long have you been a Sergeant?
A35. Since March 1942.

Q36. Do you think you know the duties of an NCO?
A36. Yes.

Q37. When confronted with a disturbance to you think you act as an normal N.C.O?
A37. I think so, sir.

Q38. There was considerable shouting. If you joined in would the noise have stopped any sooner?
A38. I do not think so.
RF 86(b) is complied with.

THIRD WITNESS
Prosecution

B.73033 C.S.M. WIGMORE F., "B" Company, 48th Highlanders of Canada, having been duly sworn, states:

Q1. What is your position?
A1. Company Sergeant Major of "B" Company.

Q2. What do you remember about the disturbance?
A2. I was going to bed at 1130 and I heard a disturbance on the road outside. I could see people down there so I went down myself.

Q3. Did it occur to you to stay in your room?
A3. No.

Q4. Can you give us a reason?
A4. The idea was to go down and get the fellows moving.

Q5. When you went down do you think you acted normally?
A5. Yes.

Q6. Where did you think it was coming from?
A6. Just outside the Sgts Mess.

Q7. When you got down what happened?
A7. I could see two fellows from the Coy. I walked over to Roberts whom I recognised. He took a swing at me and I ducked but he hit me on the side of the head with his fist. I got hold of him and we both fell over.

Q8. How long has Roberts been in "B" Company?
A8. Two months approximately.

Q9. Did you have much to do with the men in "B" Coy.
A9. Normal duties and a drill period every morning.

Q10. Do you give the orders on drill parade?
A10. Yes.

Q11. What was the condition of Roberts after you had subdued him?
A11. He had been drinking and his speech was normal. Nothing unusual in it.

Q12. Do the men know where the Sgts Mess is?
A12. They should know. They have to come to the Mess for NAAFI issues but about three weeks ago we tried to cut out this practice.

Q13. Is there a phone in the Sgts Mess?
A13. No sir.

Q14. How long have you been an NCO?
A14. Since 26 Oct 1939.

Q15. In the more than 5 years you have been an NCO did any alternative as to wha t to do about such a disturbance occur to you?
A15. No sir.

Q16. Do you think you acted the way a normal N.C.O. would have?
A16. In this case, yes.

The witness is cross-examined by the Defence.

Q17. Haveyou had any trouble with Roberts before?
A17. No.

Q18. Did you say that he had been drinking that night?
A18. Yes.

Q19. As a matter of fact he was very drunk?
A19. Not that drunk.

Q20. How drunk do you think he was?
A20. This affair happened very quickly but he looked definitely like he was drinking but he was only a little drunk.

Q21. How drunk were you?
A21. I wasn't.

Q22. How much had you had?
A22. About 4 glasses of whiskey.

Q23. How many bottles were there drunk in the Mess?
A23. I think about two.

Q24. I suggest that he would not have done what he did if he were not drunk?
A24. I suppose not.

Q25. You were pretty mad and drunk and swearing?
A25. Not that I remember.

Q26. You said afterwards that you had hit him to overpower him?
A26. I do not remember.

Q27. He did not call you by name and you were not wearing any rank?
A27. Just my armband.

Q28. Did you hear these men when they first came along?
A28. No sir. It was later and all I wanted to do was get people going. I went out to clear the road.

Q29. I suggest that it is now your job to clear roads. You have 120 men under you.
A29. It was the only way I could do it quickly. Yelling takes a long time especially at night.

Q30. You know it is a serious offence for a private to strike an N.C.O. and vice versa . You know that a soldier when drunk is liable to do anything, so you have an obligation to stay away from a drunk?
A30. In this case the Sentry was up at the Sgts Mess and we would have had to go out anyway to get help.

Q31. I suggest that it would have been better if the Sgts and yourself had stayed in.
A31. I do not think so, as much as I know it had already happened. I think that if we had not gone out the fellows would have come inside. At a glance I could not see what was going on and by the time I found out it was too late.

The witness is re-examined by the Prosecution.

Q32. When you fell to the ground you cut your lip?
A32. Yes.

Q33. Could the accused have suffered a bruise on his face the same way as you?
A33. It is possible. I think it was an accident whatever it was.

Q34. When you looked out the window could you tell if anyone you new was drunk?
A34. Not from the window.
Q35. Who finally subdued Roberts?
A35. One of the Sgts or Ptes.
Q36. Did you leave with them for Roberts's billets?
A36. I went to the Orderly Room to phone for a truck with CSM Stock, E.
RP 83(b) is complied with.

FIRST WITNESS
Defence

B.98245 Private George Charles EDWARDS, "B" Company 48th Highlanders of Canada, having been duly sworn, states:

Q1. You are B.98245 Pte George Charles Edwards and you are in "B" Coy, 48th Highrs of Canada? Do you remember the night of 25 July, Edwards?
A1. Yes.
Q2. Will you tell the court everything you remember about the 25 July at approximately 7 p.m?
A2. Yes.
Q3. Who is Roberts? Will you point him out to me?
A3. He is in here. We had two bottles of cognac. One bottle we left in our billet and the other bottle we took down the road and sat on a bench and finished that bottle. We came back for the other one and then we drank some of it and that is the last I remember until we woke up in the guardhouse.
Q4. Did you drink the first bottle of cognac between the two of you?
A4. Yes.
Q5. Do you remember if you were drunk then?
A5. I was telling pretty good.
Q6. After that you said you started to drink the second bottle?
A6. Yes.
Q7. Do you know if the accused Pte Roberts has ever had any trouble with the CSM and NCOs in B Coy?
A7. Not as far as I know.
Q8. Have you ever had any trouble?
A8. No.
Q9. Are you in the same platoon as Roberts?
A9. Yes.
Q10. Do you know if Roberts dislikes any NCOs or has any grudge against them?
A10. No.
Q11. Have you any grudge against them?
A11. No. I have got along fine.
Q12. Do you drink very much?
A12. No I do not.
Q13. When you do drink do you find that you are affected by liquor very easy?
A13. I have never drank cognac before and I did not know how it affected me.
Q14. How did it affect you?
A14. It just hit me all of a sudden and I blacked out.
Q15. Do you know if Roberts drinks very much?
A15. Not that I know. I have just been with the company for about a month.

Q16. How did the cognac seem to affect him?
A16. I could not say, sir, I got drunk myself.

Q17. The accused Pte Roberts is being charged with having struck an NCO and is also being charged with creating a distrubance that evening. Do you know if he did that?
A17. I could not tell you. I do not remember.

The witness is cross-examined by the prosecution.

Q18. Edwards, you have just told us you do not remember anything about the night 25 July.
A18. I remember the first part before I drank some of the cognac after that I do not remember.

Q19. What you mean is that you do not remember the events.
A19. I do not remember.

Q20 Can you explain to us, Edwards, why it was, if you were so completely befuddled that you could recognise NCOs and said repeatedly that Sgts were yellow and afraid to fight?
A20 I do not remember.

Q21. Do you think a chap who is so dead drunk that he could not remember what happened could step over a fence?
A21. That is hard to say. I figure that a man could be drunk and not know what he was doing and still go about his work and walk around.

Q22. Still go about his work. Do you mean to say a man could appear drunk on parade and still go about his duties?
A22. No. He could still be drunk and still walk around.

Q23. How long have you known Roberts?
A23. Approximately a month.

Q24. You did not know him when he was in D Company?
A24. No.

Q25. You do not know anything about his record with D Coy?
A25. No.

Q26. Were you ever in D Coy?
A26. No. I transferred from QOHs to 48 Highrs and straight to B Coy. The only Coy I was ever in was B Coy.

The witness is examined by the President of the Court.

Q27. Did any one else have any drinks from the first bottle of cognac?
A27. No.

Q28. Did any one else have any drinks from the second bottle of cognac?
A28. I do not remember. After I drank the first bottle I could not tell you.

RP 83(b) is complied with.

SECOND WITNESS
Defence

B.55365 Private ROWLING D.H., "B" Company, 48th Highlanders of Canada, having been duly sworn, states:

Q1. You are B55365 Pte Rowling D.H. "B" Coy., 48th Highrs of Canada?
A1. Yes.

Q2. You are in 12 Platoon?
A2. Yes.

Q3. Do you recognise anyone in this court?
A3. I recognise Pte Roberts the accused.

Q4. Is Roberts in 12 platoon too?
A4. Yes.

Q5. Do you remember Roberts the evening of 25 July?
A5. Yes. I was at a civilian house and Roberts and Edwards came walking in with a bottle and the lady gave him a cup to pour it in and he dropped the cup and I thought we better get him out.

Q6. Why?
A6. Because he was pretty drunk. So I took him outside and came back to get my coat and I heard them going up the road singing.

Q7. Did you go home with him?
A7. No. I did not. They seemed alright. They sounded happy. About 20 minutes or half an hour later, I had to pass the Sgts mess and I saw Roberts. I took Edwards home and Roberts was in the house and came down the stairs.

Q8. In order to clear this up, you, Roberts and Edwards sleep in the same house?
A8. Edwards sleeps downstairs and Roberts upstairs.

Q9. Did you take Roberts home too?
A9. No. I just took Edwards home.

Q10. Now tell us all you know about Roberts.
A10. When I got in the house, Roberts came downstairs. Someone had taken him up and put him to bed and I tried to coax him to go back up. Finally, I got him up and I had to undress him. He passed out.

Q11. Was he very drunk at that time?
A11. He was stupid drunk.

Q12. Do you sleep in the same room as Roberts?
A12. Yes. I sleep with him. We have a big mattress.

Q13. What is the next thing that happened?
A13. The Provost came and said that Roberts had to go so we dressed him.

Q14. What was he doing then?
A14. He was very drunk and he was talking silly. He thought that he was driving a truck.

Q15. How many Provosts were there?
A15. There were two.

Q16. Anyone else with the Provost?
A16. The corporal of the hut came once and he came back down stairs.

Q17. You said we got Roberts dressed. What happened after that?
A17. We got him downstairs and out into the truck. When I was down the Sgt Major was downstairs.

Q18. Sgt Major Wigmore of "B" Company?
A18. Yes.

Q19. Now what was the condition of Sgt Major Wigmore?
A19. To my estimation, he was drunk.

Q20. What makes you think so?
A20. He staggered a little and you could smell it on his breath.

The witness is cross-examined by the Prosecution.

Q21. Do you know who is being tried here?
A21. Yes. Roberts and Edwards.

Q22. Do you know what Roberts is being tried for?
A22. Yes. For hitting an NCO.

Q23. In other words we are not trying today any NCO or anybody except Roberts?
A23. No.

Q24. No NCO is being accused of anything on this charge in this Court?
A24. No sir.

Q25. Have you got anything against Sgt Major Wigmore?
A25. No sir. Nothing.

Q26. How long have you been in D Coy?
A26. Since March.

Q27. Have you had any crimes since then?
A27. No.

Q28. How long have you known the accused?
A28. A little more than a month.

Q29. Did you know him when he was in D Coy?
A29. No.

Q30. Do you know anything about his record in D Coy?
A30. No.

Q31. When you first met Roberts on the evening of the 25th why is it you did not go home with him?
A31. I went to get my coat.

Q32. Why didn't you catch up to him?
A32. They were merry. I figured they would be alright.

Q33. In other words, you thought they were capable of going home on their own power?
A33. Yes. They were staggering but I thought they would get home alright.

Q34. In other words they were not blind dead drunk?
A34. No.

Q35. Are you a good friend of Roberts?
A35. I am a good friend of all soldiers.

Q36. When you go home at night to No. 12 platoon billet do you normally go past the Sgts Mess?
A36. No. I do not.

Q37. I am suggesting to you that when you go home to 12 platoon billet, you do not normally go by the Sgts Mess?
A37. Yes but everyone has his own mind.

Q38. In order words, if you were going back to 12 platoon billet could you instead go past the Sgts Mess. Would you be going out of your way?
A38. There are two routes and the way that does not go past the Sgts mess is the shortest.

Q39. Did you see anybody hit Roberts that night?
A39. No. I never.

Q40. When you woke him up when the provost came, you said that he was muttering about driving a truck, right?
A40. Yes.

Q41. He did not happen to say that it was the D Coy 15cwt did he? Was he talking in his sleep?
A41. No.

Q42. When did he say these words?
A42. When I woke him up when he was in a daze.

Q43. In other words, he spoke these words when he regained consciousness after being asleep?
A43. Yes. When he was in a daze.

The witness is re-examined by the Defence.

Q44. Will you describe the route frm the civilian house to your billet?
A44. When you come out of the house, you turn left and go straight up the road until you come to a "T" intersection. You turn left to go past the Sgts mess to go to 18 platoon or you can go right and to 18 platoon through the woods. At the end of the road is a house and the next house is the sergeants. To go right you pass fr m 80 to 85 feet from the Sgts house. This is the short way. The other way you pass right in front of it.

Q45. Describe both routes to me?
A45. The one I go, is the 11 and 10 platoon house, out the back through the woods and the other road you go, you turn right and go straight up the highway past the Sgts mess.

Q46. Do you walk the highway all the way home?
A46. You turn right again at the top at the intersection.

Q47. Do you walk the road, the highway?
A47. The bicycle path.

Q48. How much longer is this route by the bicycle track than the other?
A48. About 100 feet but it is the best way when it is raining.

Q49. Which is the better way when it is dark?
A49. The highway.

THIRD WITNESS
Defence

RP 83(b) is complied with.

B.31168 A/Cpl C.[illegible]LL G.A., "B" Coy., 48th Highlanders of Canada, having been duly sworn, states:

Q1. You are B31168 A/Cpl Campbell G.A. You are the Orderly Room Corporal of "B" Coy 48th Highlanders?
A1. Yes.

Q2. Do you recognise anybody in the court-room?
A2. I recognise Pte Roberts.

Q3. Do you remember Cpl Campbell the night of July 25-26?
A3. Yes.

Q4. Will you tell the court what happened during that night?
A4. I returned to camp about 10 to 11 and I sat down at my desk to do a few odd jobs that had to be done before parade next morning. Around 1130 a man whom I do not recognise came in, whom I gather is in B Coy

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as he said that he had been given a message from the Sgts mess that I was to phone for tpt and it happened that just then a L/Cpl from the tpt was in the room on other business. He told me that he was duty driver and that he would return as soon as he finished his other trip. He left then and I he heard nothing more about it for perhaps 10 or 20 minutes. Then CSM Wigmore, CSM Stock and someone else whom I don't know came in and at approximately the same time the tpt returned. CSM Stock sat down in the chair and said nothing and CSM Wigmore asked me if I had ordered the RPs. I told him that I had not been told to ask for the RPs, merely to ask for a truck which had then arrived. I said that if he wanted me to I would phone for the RPs then. He told me not to bother. He sat down by the telephone and phoned for the RPs. I could smell some sort of liquor on his breath as he was sitting quite close to me, and he seemed to be rather heavily under the influence of liquor. He finished his call to the RPs and then turned and started telling everyone in the room what had occurred. He said that there had been a fight with two men who were drunk causing a disturbance outside the Sgts mess, and that he had been fighting with Pte Roberts, the accused. He said that blows had been exchanged and at this point began using profane language.

Q6. Can you remember his exact words?
A6. He then started to recount the details of the fight and started pounding on the table. He said, as clear as I can remember, that this man had picked on the wrong man and that each time he struck the table, he said I hit him in the nuts like this. Shortly after this, Cpl Jearr of the RPs and one or two other RPs arrived and they went to 12 platoon and I know nothing further.

Q6. Was he talking loudly Cpl?
A6. Quite sir.

Q7. Did he say anything else?
A7. Nothing that I recall other than what I have told you. There was a great deal of talk about trivial matters one way or the other.

Q8. Did he mention any names of the soldiers?
A8. Yes. When I was telling my story I said that he said that he had been fighting with Pte Roberts and then he went on to describe how he had hit him in the nuts.

The witness is cross-examined by the prosecution.

Q9. Cpl. Do you know who is being tried and for what?
A9. Pte Roberts is being charged and I have an idea of what the charges are because I typed the charges for the Company Commander's orders.

Q10. In other words, this court is not investigating the conduct of any NCO in B Coy.

A10. No.

Q11. Cpl Campbell. You have told us that you heard CSM Wigmore talking over the phone. Can you remember as much as possible what he said?
A11. It is difficult. I did not pay much attention to what was being said. I believe he asked for a couple of RPs to come up.

Q12. Did you notice anything peculiar about his speech when he was talking over the phone?
A12. I have difficulty in understanding the CSM at any time due to his speech and that is when is perfectly sober.

Q13. Did he have any difficulty getting his idea across to the MPs when he was talking over the phone?
A13. No.
Q14. Have you any idea as to what his total service is in the Army?
A14. No. He wears a number of campaign ribbons.
Q15. Have you ever noticed the second ribbon he is wearing the second one from the right?
A15. I have. I do not know what it is.
Q16. This is the Mesopotamian medal. I just wanted to bring out that he has been in the Army for a long time.
Q17. I think you admit Cpl that alcoholics affect various people to agreater or less extent?
A17. Yes.
Q18. You have already stated that Wigmore had no difficulty talking over the phone?
A18. No.
Q19. You have stated that you were sitting in the Coy Orderly Room at your desk?
A19. Yes.
Q20. Let us suppose there were no phone in that Orderly Room.
A20. Yes.
Q21. You hear a disturbance outside what would you do?
A21. I would go out and investigate it.
Q22. Do you know whether the accused was ever treated for any injury to the testicles?
A22. No. I do not. He was out from the company from then on and I do not know.

The witness is re-examined by the Defence.

Q23. You made a statement that in your opinion Gnr Wigmore was under the influence of liquor?
A23. Yes.
Q24. On what do you base your opinion?
A24. On his general manner, his breath.
Q25. Was he staggering?
A25. No sir. He did not seem to be.
Q26. Was his speech not normal?
A26. Not entirely. Most of the time he seemed to be speaking fairly clearly but once or twice he slipped.
Q27. Was it his customary manner when excited?
A27. I cannot recall having seen him excited. I had known him only for a week.

R.P. 83(b) is complied with.

FOURTH WITNESS
Defence

B.96915 L/Cpl GARDINER D.S., having been duly sworn, states:

Q1. You are L/Cpl Gardner D.S. No. B96915 are you not?
A1. Yes.
Q2. You are in B Company?
A2. Yes sir.
Q3. Do you recognise anyone in this Courtroom?
A3. Yes.

Q4. Who?
A4. Roberts.

Q5. Do you remember the night of the 25th of July?
A5. Yes.

Q6. Will you tell the Court what happened on that night?
A6. On the night 25/26 July 1945 I was awakened by Rowling and Barone brining home Roberts who was very drunk.

Q7. Did they put him in bed?
A7. They took him upstairs and then he came back down and was then carried upstairs and he passed out.

Q8. Do you sleep in the same billet?
A8. Yes

Q9. What happened after what, if anything?
A9. I was awakened by CSM Wigmore and I went downstairs where Edwards was and the Sgt Major told me to go upstairs. I could not understand what he said the first time. His face was flushed and I could smell liquor from him. I understood him the second time he told me to get Roberts. He sent two provost to waken Roberts and get him dressed. Roberts was still "out" and the provosthad quite a time awakening him.

Q10. When they wakened Roberts could he dress himself?
A10. No.

Q11. What was the condition of CSM Wigmore?
A11. His face was flushed and when he told me to go up stairs I did not understand. He told me a second time. I could smell liquor on him.

Q12. When you say you could not understand him what do you mean?
A12. He did not seem to be able to speak straight.

The witness is cross-examined by the Prosecution.

Q13. You mentioned something about Roberts going up and then coming down stairs?
A13. After he was taken up the stairs he made his way down again.

Q14. Could he walk downstairs unaided?
A14. With the help of somebody else.

Q15. What did he come down for?
A15. To see if his friend was in bed.

Q16. Then he knew what he was doing and could walk and think?
A16. With the help of somebody else.

Q17. Have you ever noticed that CSM Wigmore has sort of a clipped accent, that he does not speak as you or I?
A17. I have never paid much attention to it.

Q18. Have you noticed that his accent is hard to understan
A18. I have always understood him before.

Q19. Have you ever noticed his accent?
A19. Not very much.

Q20. But he has a definite accent?
A 20.A little, yes.

Q21. When the provost came to get Roberts, was he asleep?
A21. Yes.

Q22. Sound asleep?
A22. Yes.
RP 83(b) is complied with.

FIFTH WITNESS
Defence

B612445 Private De Villiers J.J., 48th Highlanders of Canada, having been duly sworn, states:

Q1. You are B612445 Pte De Villiers J.J.?
A1. Yes.

Q2. You are a member of B Coy 48th Highrs of Canada?
A2. Yes.

Q3. Do you recognise anyone in this Court this morning?
A3. Pte Roberts, sir.

Q4. Do you remember the night of 25th July?
A4. Yes sir.

Q5. Will you tell the court what happened on that night?
A5. I wakened shortly after 11 o'clock by Rowling and Barone bringing in Roberts. He seemed to be very drunk as he walked around the room until Rowlings came and took him by the arm leading him to the stairs and up to his bed.

Q6. Do you sleep in the same billet as Roberts?
A 6.Yes. I sleep downstairs and he sleeps upstairs.

Q7. What happened after that?
A7. Shortly after that, about 20 minutes to half an hour later, the Sgt Major and provost came in and called Pte Roberts. There were two provost. At that time L/Cpl Gardiner came down and the Sgt Major told him to go upstairs with one of the provost and get Roberts ready as he was under arrest. The Sgt Major was standing by my bed and he dropped his cigarette. I smelt liquor on his breath. He was under the influence of liquor.

Q8. You smelled alcohol on him?
A8. Yes sir.

Q9. Tell me about hearing the Sgt Major speak. Was he speaking loudly or softly?
A9. When he told L/Cpl Gardiner to go upstairs his face was flushed and his tongue seemed to be thick.

Q10. Was he speaking loudly or softly?
A10. It was not exactly loud. He told L/Cpl twice before L/Cpl Gardiner moved. The L/Cpl did not seem to understand him the first time.

The witness is cross-examined by the Prosecution.

Q11. You are in the same platoon as the accused?
A11. Yes.

Q12. And when a member of your platoon goes home at night have you ever heard of anyone of them taking a short cut through the Sgts yard?
A12. No sir.

Q13. Have you ever tried to subdue a man?
A13. I do not know quite what you mean.

Q14. I mean to try to control him?
A14. Yes.

Q15. When you do so a struggle does result, of some sort?
A15. Yes.

Q16. Could call that struggle a fight?

The Defence, at this point, submits an objection to question 16 on the grounds that the Prosecution is treating the witness as an expert witness. The Court upholds this objection.

Q17. You stated that the Sgt Major had alcohol on his breath that evening?
A17. Yes.

Q18. In previous testimony CSM Wigmore stated that he had had 6 short whiskies. Would that account for his breath?
A18. Yes sir.

Q19. Have you ever noticed the Sgt Major's face while on parade or in going about his duties. Has he got a red face or a pale face?
A19. Quite a red face.

Q20. Do you always understand everything that is said to you the first time?
A20. No sir.

Q21. In other words there is nothing unusual in L/Cpl Gardiner not understanding what was said to him the first time?
A21. No sir.

Q22. Do you like your Sgt Major?
A22. Yes sir.

The witness is re-examined by the Defence.

Q23. Are you of French extraction?
A23. Yes sir.

Q24. Is that why you sometimes do not understand because you do not speak English very well.
A24. There is a little in that, sir.

RP 83(b) is complied with.

SIXTH WITNESS
Defence

B.623505 Private BARONE V., 48th Highlanders of Canada, having been duly sworn, states:

Q1. You are B623505 Pte Barone V.?
A1. Yes sir.

Q2. You are in B Company, 48th Highlanders of Canada?
A 2. Yes.

Q3. Do you recognise anyone in this Court?
A3. Yes, Pte Roberts.

Q4. Do you remember the night of 25 Jul 45?
A4. Yes sir.

Q5. Did you bring Roberts home that night?
A5. Yes sir.

Q6. I want you to just tell the court what his condition was.
A6. We were taking him home. He was hollering and making a great fuss. We took him in and upstairs and got some of the fellows to put him to bed.

Q7. Was he very drunk?
A7. Yes.

The witness is cross-examined by the Prosecution.

Q8. Are you a friend of the accused?
A8. Well, we are all friends in the Army and particularly when in the same Company. I have never been out with hi

Q9. You are in the same platoon?
A9. No.

Q10. When he was hollering when you were taking him home, do you remember what he was saying?
A10. I cannot remember actually.

Q11. Do you remember the gist of his remarks?
A11. Something about he had been in the Army a long time, that he had fought in Italy and was cursing.

Q12. Then he seemed mad about something?
A12. I guess he was too helpless to be mad.

Q13. Was he excited?
A13. Yes sir.

Q14. Can you remember any more of what he said?
A14. No sir.

HF 83(b) is complied with.

SEVENTH WITNESS
Defence — B629717 Private RODGERS H.F., 48th Highlanders of Canada, having been duly sworn, states:

Q1. You are No. B629717 Pte Rodgers H.F.?
A1. Yes.

Q2. You are in B Company 48th Highlanders of Canada?
A2. Yes.

Q3. Do you recognise anyone in the Court?
A3. Yes, Pte Roberts.

Q4. Do you remember the night of 25 Jul 45?
A4. Yes sir.

Q5. Did you bring Roberts home that night?
A5. Yes.

Q6. Will you tell the court about his condition?
A6. He was drunk enough that he could not go on his own and we had to practically carry him all the way.

Q7. Did you take him into his billet?
A7. Yes sir. Up the stairs to his room.

The witness is cross-examined by the Prosecution.

Q8. What platoon are you in?
A8. No. 10 platoon.

Q9. Since you took Roberts home, did you see anything of what occurred before they took him away?
A9. No sir.

Q10. What were the circumstances when you came?
A10. Sgt Pistrinire was holding Roberts down by the road and the Sgt Major and a Sergeant were holding Edwards.

Q11. Did you see the Sgt Major or the Sgts strike blows while holding Roberts?
A11. No.

Q12. Did Roberts say anything while he was on the ground?
A12. No.

HF 83(b) is complied with.

EIGHTH WITNESS
Defence — B134720 Private METCALFE R.R., 48th Highlanders of Canada, having been duly sworn, states:

Q1. You are B134720 Pte Metcalfe R.R., 48th Highlanders of Canada?
A1. Yes.

Q2. You are one of the Regimental Police of the 48th Highlanders?
A2. Yes.

Q5. Do you recognise anyone in this Courtroom?
A5. Pte Roberts.

Q4. Do you remember the night of 28/29 Jul 45?
A4. Yes sir.

Q5. Will you tell the Court what happened that evening?
A5. I received a call that night to go to B Company to pick up two men who were drunk and were in a fight. We went down and went to the Coy Sgts Mess to pick up a Sgt Major

Q6. Sgt Major who?
A6. Sgt Major Wigmore and another Sgt whom I do not know. We went to the billet where Roberts was and went in. Cpl Scarr of the RPs told a Cpl and myself to go upstairs, pick up Roberts and get him dressed. When we went to his room he was sound asleep and we had quite a time waking him. We got him awake and dressed him and took him downwairs.

Q7. What was his condition?
A7. He was still drunk.

Q8. What was the condition of Sgt Major Wigmore?
A8. He had been drinking. I smelled liquor on his breath.

Q9. Do you consider he was under the influence of alcohol?
A9. To a certain extent.

The witness is cross-examined by the Prosecution.

Q10. When you first saw the accused he was still sound asleep?
A10. Yes.

Q11. When you awakened him he was under the influence of alcohol?
A11. Yes.

Q12. He had been drinking?
A12. Yes

Q13. Sgt Major Wigmore. You could smell his breath?
A13. Yes.

Q14. Do you know how much he had been drinking?
A14. No sir.

Q15. Could you tell what he was talking about?
A15. His speech was a little thick.

Q16. Have you ever spoken to the OBM before?
A16. No.

Q17. You have never heard him speak before?
A17. No.

Q18. Did you know that he was English and had a clipped accent of his own?
A18. No sir.

The Defence addressed the Court as follows:

I have decided not to call any more witnesses as they would only repeat the testimony given before; but, before I call the accused I would like to get a ruling from the Court. The accused will give exactly the same evidence as Edwards, to wit, that he does not remember anything about the affair. I want to make sure that cross-examination will be confined to the facts of that evening and nothing else. I do not think the Prosecution has any business to ask question on character. I refer you to K.R. 80(d) on page 608 of the Manual of Military Law.

The Court grants the ruling on behalf of the accused. The accused will not be questioned as to his character.

FIFTH WITNESS
Defence

B.88856 PRIVATE NORMAN FREDERICK ROBERTS, 48th Highlanders of Canada, having duly sworn, states:

Q1. You are B88856 Pte Norman Frederick Roberts, 48th Highlanders of Canada?
A1. Yes sir.

Q2. And you are the accused in this case?
A2. Yes.

Q3. Do you remember the night of 25 Jul 45?
A3. Yes sir, the first part of it.

Q4. Will you tell the court everything you remember?
A4. At about 7 o'clock we took a bottle of cognac down to a bench at the side of the road, Edwards and I. We drank that and went back to the billets for the other bottle which we had left there. I remember both of us drinking about one half of the second bottle. I do not remember anything after that.

Q5. What sort of cognac was it?
A5. French, very strong.

Q6. Was it a sealed bottle?
A6. Yes sir, at the top.

Q7. Are you used to drinking cognac?
A7. No sir.

Q8. How did you find it affected you?
A8. It affected me very quickly. It hit me pretty hard.

Q9. What was its effect on you.
A9. It made me light-headed to start.

Q10. Do you remember anything after drinking the second bottle?
A10. No sir.

Q11. What was your next recollection?
A11. When I woke up in the guardroom next day.

Q12. Do you drink very much as a habit?
A12. No sir.

Q13. Have you any grudge against the MPs in your Coy?
A13. No sir. I always got along OK.

Q14. You like them alright?
A14. Yes sir.

Q15. You are charged with striking a Warrant Officer namely CSM Wigmore. Did you do that?
A15. I do not know whether I did or not. I had no intention of doing it.

Q16. You do not remember?
A16. No sir.

Q17. You are also charged with creating a disturbance under Section 40 of the Army Act. Did you do that?
A17. I do not know that either.

The witness is cross-examined by the Prosecution.

Q18. How long were you in Italy?
A18. From 20 to 21 months, sir.

Q19. You have drunk cognac there?
A19. Yes sir.

Q20. You have drunk cognac there several times?
A20. About once or twice.

Q21. You have had a certain amount of experience with cognac?
A21. It was not the first time.

Q22. You say you were so completely blacked out that you do not remember where you were, who you saw or what you did. Can you explain how in the

Q22. presence of these NCOs, and remember it was a dark night, you were able to say to them, you Sgts are a bunch of cocksuckers and yellow bastards?

A22. No sir.

Q23. You have been sworn on oath to tell the truck and you say you did not intend to strike CSM Wigmore?

A23. That's right sir.

The witness is examined by the Court.

Q24. What time did you first leave the billets?

A24. About 7 o'clock.

Q25. What time did you go back for the second bottle?

A25. I have no idea. It must have been around 8 o'clock.

Q26. Did anybody else get drinks from that bottle?

A26. They may have, sir.

The Prosecution makes the following statement:

Gentlemen, the accused is charged with the following two offences: 1. Under Army Act Section 8(2), When on active service striking a superior officer, in that he, in the field, at approximately 2330 hrs 25th July 45, struck on the side of the head with his fist B73033 CSM Wigmore F. 48th Highlanders of Canada.

and 2. Under Army Act Section 40, When on active service, Conduct to the prejudice of good order and military discipline, in that he, in the field, at approximately 2330 hrs 25 Jul 45, created a disturbance by being engaged in an affray outside "B" Coy Sergeants' Mess 48th Highlanders of Canada.

Let us consider these charges and the evidence that the prosecution has produced in support of them.

The first witness, you will remember, was Sgt Pietroniro. Sgt Pietroniro told us that about 2330 hrs 25 Jul 45, Sgt Johnston called saying there was a rumpus outside the Sgts Mess. Sgt Pietroniro immediately went downstairs to investigate as any proper NCO should. The moment he stepped out of the door of the Mess he was grabbed by the accused, Roberts, whom he recognised immediately. Roberts said that he wanted to fight. Sgt Pietroniro ordered him to go home and go to bed. Roberts, instead, tried to fight Sgt Johnston who had also come out.

Coming to the evidence of the second witness, Sgt Johnston, you will remember that Sgt Johnston said that he heard Pietroniro give definite orders to Roberts to go home to bed. Roberts, on his part, made absolutely no attempt to comply with this perfectly lawful command. Several times Johnston heard Roberts say, "You Sergeants are all a bunch of cocksuckers and yellow bastards", which constitutes absolute definite proof that Roberts knew he was dealing with non-commissioned officers, he knew their rank. Moreover Sgt Pietroniro informed us that he had once seen Roberts at the Sgts Mess before which means that the accused knew where he was at the time of the disturbance.

Now let us take the evidence of the third witness, CSM Wigmore. Within a few seconds of coming out of the Mess to investigate the rumpus and without the slightest provocation whatsoever, the accused struck the Sgt Major on the head with his fist. A perfectly glaring example of striking a superior officer. I suppose that a CSM is probably the best known man in a Company. He had repeatedly drilled the whole Coy on parade. He was wearing his badge of rank strapped on his arm. There is absolutely no question of Roberts not knowing whom he struck.

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Gentlemen on the evidence as produced by the prosecution, if any man ever struck a superior officer, that man was Roberts and, if any man ever created a disturbance by being in an affray, that man was Roberts. He was the aggressor throughout and without the slightest provocation. He attacks Pistromiro the moment he came out of the Mess, right in the Sergeants' own front yard. He yelled foul and obscene words directed towards his senior officers. He knew who they were and where he was.

Now let us examine some of the theories put forward by the Defence. It is alleged that these NCOs should have crawled, battle-drill style, as though they were facing the Hun, along the ground and over the fence to gain help from the nearest platoon. I submit that this is utter poppycock and everybody here knows it. There is not one responsible, trustworthy NCO in the Canadian Army who would not have done as B Coy Sergeants did that night and to suggest that their conduct was wrong is utter nonsense.

Now we will consider the principal defence put forward, that of drunkenness. I refer you to page 106 of the Manual of Military Law. We have the evidence of three very responsible NCOs, Gentlemen, that the accused had been drinking but that he could speak clearly and distinctly and that he did not stagger when he walked. In other words he was not drunk, and knew what he was doing. This is proved by his recognition of his superiors as Sergeants even though they were not wearing their badges of rank. Remember that the fact that a person is influenced by alcohol is not sufficient to absolve him from a crime he may commit. He must be so completely, so absolutely dead drunk that he is incapable of formulating any intent at all. No man who acted the way the accused did, who carried on so energetically the way the accused did, who spoke so clearly as the accused did, who recognised his superior officers as easily as the accused did could be described as dead drunk.

Gentlemen, this period of waiting through which all we in the Canadian Army Overseas are now going through is a very difficult one. The men are restless and resentful with rancied grievances and grudges. The burden of enforcing discipline in the Army now chiefly falls on the NCOs. They are the shock absorbers between order and chaos. They bear the brunt of maintaining elementary order in our Army overseas today. Gentlemen, Roberts has obtained a notoriety far more than he deserves. He is known throughout the 48th Highlanders today as the private who socked a Sgt Major. To some weak minds in this battalion he is already a hero.

You have heard many witnesses in this case. You have heard for the prosecution three NCOs without a blemish on their character. Their evidence is unimpeachable because of their record and because they have never had a grievance against the accused. When you make your decision you should not only weigh the straight-forward facts given by them, but also consider their quality as witnesses as against the quantity of those produced by the Defence.

The Defence makes the following statement:-

Mr President, and Members of the Court. First of all I would like to make it clear that I do not want what anything I shall say shall be considered by you as an admission of guilt or that the accused should be held responsible for my words.

As I see the circumstances, they are very, very simple indeed and amount to this. Two soldiers start out to drink two bottles of cognac which is quite normal. I mean it is normal for two soldiers to drink. They get drunk; and that, definitely, is normal. A great many soldiers get drunk every week, as do many officers. This drunkenness in itself is no real offence and no one objects. It is only after you get drunk that people object, and quite properly so. The accused and his friend get drunk and, as it appears they are not used to drinking, they get dead drunk and do not remember what happens during the rest of the evening. It is quite normal, when drunk, to forget what you have been doing. As to whether or not they were very drunk, I think there can be no doubt in your minds about that as we have had as many as ten witnesses to swear that they were dead drunk. Not only the accused and his friend but eight other unprejudiced, unbiased witnesses who testified they had to be carried home, undressed and put to bed and, even after having been asleep, they were wakened and were still so drunk they could not dress themselves. A soldier is pretty drunk when he cannot dress himself.

Another feature about this business is this, that it is common sense that when a soldier gets drunk and does not remember what he is doing he does things he, later, regrets and when he gets that way, officers and NCOs must be very careful indeed to keep out of his way. It is an obligation on the part of officers and NCOs not to have contact with drunks. In this regard I refer you to Page 25, Section 47 of The Manual of Military Law. Not only is it sound logic to keep out of their way but it is a regulation laid down in M.M.L.

Now what happened here is that these soldiers were coming down the street on their way home and we have Rowling's evidence that when they left the civilian house, which is only about 200 yards from the Sgts Mess, "They were singing and quite happy", and he thought they would home alright, as most drunken soldiers do. The next thing we know they are mixed up in some brawl outside the Mess. We do not know actually what happened or how it started but when Sgts Johnson and Pietroniro and CSM Wigmore knew there were two drunken soldiers outside the Mess and, as is alleged, Pte Roberts said, "Come out and fight", they should not have come out, but what happens? Immediately they rush out and the soldiers think they have come out to fight which is actually what they did. It is not very nice to be sitting in your room and have someone yelling outside to come out and fight but here we have a Sergeant Major, a Warrant Officer Class II, who should have some self-respect and pride, deciding to rush out and clear the road himself. He knew these soldiers were drunk and knew they were invited to come out and fight. They knew that the soldiers would think that they were accepting the invitation.

They should have got somebody else to clear the road. In the next house up from the Sgts Mess is a house with Platoons 10 and 11. The proper course is for the senior NCO to detail someone else to clear the road. The Sgt Major was drunk that night and admitted that he had 5 whiskies and may have had more which he does not remember. I have had five witnesses swear he was drunk. They were unprejudiced and unbiased, impartial witnesses. They have nothing to gain from Roberts or Edwards and have very much to lose by testifying against their Sgt Major, but they did testify to the truth.

I said to the Sgt Major, "You were drunk and swearing", and he stated, "Not that I remember". Now isn't that ridiculous? He remembers all the details of rushing out, the striking and the calling of the fire. Every little detail. If he remembers everything else, he would remember that.

When I said to the Sgt Major that he was pounding on the table and saying, with each blow, "I hit him in the nuts like this, and this, and this", he stated, "I don't remember". Now he must have remembered. You know he must have remembered. Cpl Campbell came and he has testified that the Sgt Major was drunk and he, again, is impartial. You have seen these witnesses, that they are honest and clean cut lads. You have seen that the Sergeant Major, a Warrant Officer Class II, is drunk and goes out to clear up a road and fights with Roberts who is, admittedly, drunk. But I submit, Gentlemen, that it is a greater offence for a W.O. to strike a Private soldier, than it is for a Private to strike a W.O. It was an obligation on these NCOs to avoid the fight particularly for the Sgt Major, who is the worst of all, and should have set a good example of conduct. The Prosecution has suggested that these witnesses came because they were friends of the accused but this is simply ridiculous as there is no reason for anyone to come to testify except in the cause of truth as perjury is a very serious crime.

On the question of drunkenness, I refer you to Page 85, para 48 of the Manual of Military Law. When you read paras 47 and 48 together you see that the gist of it is that drunkenness is not a very serious offence and, wherever possible, it should be charged as an offence in itself and not in conjunction with another offence. According to para 47 the offence should be dealt with summarily. It refers quite obviously to this case.

It is ridiculous to think that intention was there and we know these two men were so drunk that they did not know what they were doing. The offence comes under para 48 and I think that the proper procedure is to charge them with drunkenness as they cannot be held responsible for something of which they have no knowledge. In the case of Roberts it is his first offence for drunkenness and he would receive only a simple fine. I suggest it is far too much to punish him with imprisonment penal servitude as it will mean he will not go home with his Regiment, which is a serious matter and will lose his gratuity which is a very serious matter indeed. You should give consideration to the facts that this case should have been dealt with summarily but is one of those unfortunate matters which happens in the Army. If Roberts is let off now, even if he is acquitted, it will be a grave lesson for him as he has already served about two weeks. He has been honest in giving his evidence and has remained so under the grueling cross-examination of the Prosecutor who is an expert at these matters being a qualified Barrister-at-law.

The Court adjourns to consider the evidence presented.

The Court re-opened.

The Court finds the accused not guilty on the first charge but sentence is to be considered on the second charge.

The AFM 6 and Statement as to the Particulars of the Character of the accused are examined and handed to the Court.

The Court asks the Defence, "Do you wish to address the Court in mitigation of sentence?".

The Defence states that he does so wish.

In the question of mitigation of sentence, Gentlemen, there is not much more I can say except to reiterate that this affair is one of those unfortunate incidents which would have been better dealt with summarily, to keep this scandal from the public.

Roberts joined the army when he was 19 years of age and has four years service, making him 23 years of age at present. He came overseas in 1942 and immediately shipped to Sicily and Italy. He has been with the 48th Highlanders for 21 months and saw a great deal of action including two of the worst "shows" experienced by the Canadian Army. I think you gentlemen know them, Ortona and the Hitler Line. He joined the Army very young, has come overseas and done a man's job or work and is now anxious to go home as everyone else is.

He is not married fortunately. On his conduct sheet there is only a minor charge under AO 40 for being improperly dressed. It would be quite proper if the sentence is very small as he had had his lesson.

The Court is terminated in the case of Pte Roberts.
The Court announces that the sentence will be published subject to confirmation.

Ex "A" - C&R

ARMY FORM B.2091.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B-53236	Pte.	ROBERTS, H.F.	48th Highlanders of Canada

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The number entered in column 2 should be proved in court with this statement but not entered in the margin.

† See note, 67th, F.F., 1940.

* To include herein details of any awards to be proved in the manner set forth in the second column, and of any cases in which trial is to be asked for, or has been dispensed with, or in which the accused has absented himself without leave.

Instructions.—If the charge is dismissed, strike out the entries in the columns headed respectively and dated.

	*Within last 12 months.	*Since Enlistment.
For AA 15(1)	1 times	5 times.
For AA 40	4 times	7 times.
For AA 10 (4)	nil times	1 times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 76 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence to beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for 4 days in civil custody, and nil days in military custody, making a total of 4 days, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 22 yrs 8 months

6. The date of his attestation specified in his record of service is 21 Sept 1941

7. The service which the accused is about to recruit himself for discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of

9. And he is about to be

10. He is in possession of or entitled to no military decoration or military reward or is in possession of or entitled to the following military decoration or military reward:—

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of and in his regiment (*or corps or department*) the rank of

(*18230) W1/3852/144 125,000 6/41 A.A.H.Q.(1)c Gp.48

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-53236 Rank Pte. Name ROBERTS, N.F. of 48 Highrs of Canada (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 9th day of August, 1945.

D.C. WATSON Lt. & Adjt.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion.
To the rank of	
In the rank of	
In the rank of	

(CAUTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be inserted from such sources as are available and the paragraph numbering amended accordingly.)

Ex "B" CaK

NoB53236 Name ROBERTS, N.F. Sqn, Battery, or Company "C" Corps Q.O.R. of C. Date of enlistment 20 Sept 1941 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/PAS/130 (2413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Aug 42	Rfn	Nil	AA 40 con to the prej. etc. falsely reporting to MO that he had been ordered to take part in Coy Trng.	Lt. Sawyer	7 dys CB	7 Sep 42	Lt. Martin	
Field	30 Sep 42	Rfn	Nil	AA 15(1) AWL from 0830 hrs 30 Sep 42 to 0900 hrs. 30 Sep 42 (absent 1/2 hr)	Sgt. Giffen	7 dys CB	1 Oct 42	Major Lequene	
Field	30 Oct 42	Rfn	Nil	AA 15(1) AWL from 2359 hrs 29 Oct 42 to 1035 hrs 30 Oct 42 (absent 10 hrs 36 mins.)	S Sgt. Moore	forfeits 5 dys pay 5 dys CB	31 Oct 42	JG Spragge Lt. Col.	forfeits 1 dy pay 149(1) FR&I
Field	12 Nov 42	Rfn	Nil	AA40 WOAS con to the prej etc defacing public property.	Lt. Weir	forfeits 5 dys pay and 5 dys CB	13 Nov 42	JG Spragge Lt. Col.	

In accordance with KR&O 1524 previous sheet was destroyed on completion of 6 months services 20 Mar 42.
Above retil entries carried forward

(PTO)

Place	Date of Offence	Rank	Cases of Drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order convening trial	By whom awarded	Remarks
Field	28 Jan 43	Rfn		AA 15(1) A&L from 2359 hrs 28 Jan to 0918 hrs 29 Jan 43 overstaying priv. leave (9 hrs 19 mins)	Sgt. Melver Sgt. More, G.	5 dys CB 5 dys pay	4 Feb 43	36 Spragge Lt. Col	forfeits 1 dys pay FR&I 149(1)(a)
Field	5 Apr 43	Rfn	Nil	AA 40 Conduct to the prej etc had to be told several times to fill in a blank file of the pltn whilst on a coy route march.	Cpl Stanton	5 dys CB	6 Apr 43	OA Nickson Capt.	
Field	9 Jun 43	Pte		1st Charge AA sec 40 was improperly in possession of 2 Army blankets outside of camp area. 2nd charge Breaking out of barracks by way other than camp entrances (AA sec 10 (4))	Cpl. Chemlia L/Cpl. Moore	28 days FP 42 dys pay	10 June 43	Lt.Col. Vining	Total forf 42 dys pay.

CBK

No. B53236 Name ROBERTS, N.F. Sqn, Battery, or Company | Corps | Date of enlistment 20 Sep 41 | OC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/156 (54133)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	21 Dec 43	Pte.		AWL from 1800 hrs 21 Dec until 2145 hrs 11 Jan 44 (21 dys 3 hrs 45 mins) Sec 15(1)	Sgt. Ross Pte. Allan, A. Sgt. Ranney	90 dys detention	11 Mar 44	FGCM	forf 22 dys pay 149(1)a 90 dys 149(1)b
Released from the No. 7 Cdn Field Punishment Camp on 9 May 1944 sentence having expired. Remission earned under "Rules for Detention Barracks and Military Prisons" 30 Days. Comd initials PMD									
	BLOOD DONOR - VOLUNTARY Cdn Army CMF 15 May 44								
Field	5 Jul 44	Pte		AA 15(1) AWL from 0800 hrs 5 Jul 44 until 1230 hrs 5 Jul 44 (4 hrs 30 mins)	Sgt. Lea, A	7 dys CB and 1 dys forf of pay 149(1)a	7 Jul 44	Capt. LG Smith	

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Mar 45	Pte		AA Sec 40 Conduct to the prej etc, was in improper possession of army veh No CZ4209590 and did REMOVE THE SAID VEH FROM IT's parking lot.	Lt. RL GRAHAM Pte. DANIELS	28 dys FP with conjoint award of pay	21 Apr 45	Lt-Col. JRO COUNSELL	
Field	9 Feb 45	(2)		AA Sec 40 Conduct to the prej etc, discharged a firearm on the courtyard of the Polish Soldiers' Club, via Fanisperna.		GRANTED 4 DAYS REMISSION OF SENTENCE		15 May 45	
						Certified true entry		Signed WA COOKE Lt. Adm Offr 1 Cdn Disciplinary Centre.	

Certified true copy.

Lt. & Adjt.,
48 Highrs.

No B53236 Name Roberts N.F. Sqn, Battery, or Company CIC Corps Date of enlistment 20 Sep 42 GC Badges Service or Proficiency Pay

MFM 6 (AFB 122) 40/PAM/136 (3439)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11-6-45	Pte		W.O.A.S. Conduct to the prejudice of good order and military discipline in that he, at Edinburgh at about 1500 hrs 11 Jun 45 was improperly dressed. A.A. Sec 40	Documentry	7 days C.B.	3 Jul 45	Maj D.B.	Deeks

I certify that this is the true and exact copy of s/m MFM6 in my possession.

D C Wah Lt & Adjt,
Officer i/c Records 48 Highrs of Can.

(PTO)

Summary of Evidence in the case of No B55236 Pte ROBERTS, Norman Frederick, "B" Coy, 48th Highlanders of Canada, Canadian Army Overseas.

By direction of the Commanding Officer, Lt-Col. J.R.O. COUNSELL DSO 48th Highlanders of Canada, all evidence is taken on oath.

First Witness for the Prosecution — D73298 Sgt PIETRONIRO, J.A., 48th Highlanders of Canada, having been duly sworn states:

"I am Platoon Sergeant of No 12 Platoon, "B" Coy 48th Highlanders of Canada. At approximately 2330 hrs, 25 Jul 1945 I had just got into bed in my room on the second floor of "B" Coy Sgt's Mess when Sgt Johnston called me saying there were some men downstairs making a rumpus. I got out of bed put on my fatigue shoes and trousers and went downstairs to investigate. As soon as I stepped out of the door a soldier grabbed me. I put him down on the ground and recognized him as Pte Roberts of my Platoon. He said he wanted to fight. I ordered him to go home and go to bed. I then let him up off the ground and he tried to join a fight against Sgt Johnston which another soldier Pte Edwards had started. I held him and prevented him from attacking Sgt Johnston. While I was still holding Roberts, CSM Wigmore came out of the Mess and I let Roberts loose. I then turned towards Edwards and Sgt Johnston and when I looked around again I saw CSM Wigmore holding Pte Roberts on the Ground. Shortly thereafter the accused was removed to his billet on the CSM's orders."

J.A. Pietroniro

(D73298 Sgt PIETRONIRO J.A.)
"B" Coy 48 Highrs of Can

The accused declines to Cross-examine the witness.

Cross examination by the Officer taking the summary.

Q. What was the Accused's condition?

A. He had been drinking but he spoke coherently.

Q. Do you know whether the accused knew where the Sergeants' Mess was?

A. Yes, becau se he had been at the Sergeants' Mess before, I saw him there on one occasion.

Second Witness for the Prosecution — B54003 Sgt JOHNSTON, C.F., 48th Highlanders of Canada having been duly sworn states:

"I am a Sergeant in No 11 Platoon "B" Coy, 48th Highlanders of Canada. At approximately 2330 hrs, 25 July 1945 I was preparing to go to bed in my room in "B" Coy Sgts' Mess. My room is on the second floor facing the street. I heard a disturbance outside in front of the building. I called Sgt Pietroniro who sleeps in the room next to mine. We went downstairs, Sgt Pietroniro being the first one out. As soon as I got outside I saw Sgt Pietroniro wrestling with private soldier whom later on I found out to be the accused Pte Roberts of 12 Platoon "B" Coy. Immediately thereafter Pte Edwards came over the fence and I was more concerned with him. I heard Sgt Pietroniro, though, order both Roberts and Edwards to go home to bed. Roberts

made no attempt to comply with this order. At this moment CSM Wigmore came out of the Mess and Roberts grappled with him and they both fell to the ground. Shortly thereafter both Roberts and Edwards having been overpowered were taken off to their quarters. During the disturbance which I have just described I heard Roberts say several times "You Sergeants are all a bunch of cocksuckers and yellow basterds."

C.F. Johnston

(B54003 Sgt JOHNSTON C.F.)
"B" Coy 48 Highrs of Can.

The accused declines to cross-examine the witness.

Cross examination by the Officer taking the summary.

Q. What condition was the accused.

A. The accused had been drinking but he was quite capable of talking coherently.

Third Witness for the Prosecution

B.73033 C.S.M. WIGMORE F., 48th Highlanders of Canada, having been duly sworn states:

"I am CSM of "B" Coy, 48th Highlanders of Canada. At approximately 2330 hrs 26 July, 1945 I was going to bed in my room in "B" Coy Sgts' Mess. I heard a disturbance outside and I looked out and saw two 48th Highlanders arguing with a couple of Sergeants. I went downstairs and outside immediately. I walked over to one of the soldiers, whom I recognized as Pte Roberts, 12 Platoon, "B" Coy and he hit me on the side of the head with his fist. I grappled with him and we fell to the ground. Roberts was overpowered and I ordered him to be taken to his billet which was done. Roberts has been in "B" Coy two months.

F. Wigmore

(B73003 CSM WIGMORE F.)
"B" Coy 48 Highrs of Can.

The accused declines to cross-examine the witness.

Cross examination by the Officer taking the summary.

Q. What was the condition of the accused.

A. He had been drinking, his speech was coherent.

Q. Do the men in "B" Coy know where the Sgts' Mess is?

A. I feel quite confident that they do because the men used to line up at the window to get their EFI Issue from the Sergeants. There is also a Sergeants' Mess sign in the window. Two doors away is a big house with two Platoons in it.

The accused declines to call any witnesses in his defence.

The accused having been cautioned in accordance with R.P. 4(e) states:

C.F.J.

"I do not wish to make a statement."

Certified that Rules of Procedure 4 (C) , (d), (e) and (f) have been complied with.

Taken down before me in the presence and hearing of the accused, in the Field, this 27th day of July, 1945.

(I. MacDONALD) Lt.,
48 Highrs of Canada.

LIST OF WITNESSES FOR THE PROSECUTION

B.73033	WO II(CSM)	WIGMORE	F. "B" Coy 48 Highrs of Can
D.72298	SGT	PIETRONIRO	J.A."B" Coy 48 Highrs of Can
B.54003	SGT	JOHNSTON	C.F."B" Coy 48 Highrs of Can

LIST OF WITNESSES FOR THE DEFENCE

NIL

30th July, 1945.

I hereby certify that I desire the services of
Capt. J.C.N. CURRELLY, 48th Highlanders of Canada,
(Att. 1 Cdn Inf Div).

W A Roberts

(B-53236 Pte. ROBERTS, N.F.)

LIST OF EXHIBITS

NIL

Army Form B 116.

48th Highlanders of Canada REGIMENT

STATION In the Field, Holland Date 29 July 1945

Application for a Field General *Court-Martial.*

Sir,

I have the honour to submit two (2) charge against No. B.53236 Pte Norman Frederick ROBERTS of the Unit under my command, and request you will obtain the sanction of Higher Authority that a Field General Court-Martial may be assembled for his trial at in the Field, Holland

The Case was investigated by (a) Lt I. MacDONALD

A Court of Inquiry was held on (b) n/a (date) at n/a (Station).

President	n/a	Ranks, Names and Corps.
Members	n/a	
	n/a	

The accused is now at Unit Guard Room His General Character is (c) Bad

I enclose the following documents (d) :—

1. two (2) Charge Sheet (in duplicate) (e).
2. Summary of Evidence, original (f) and 2 ~~copy~~ copies.
3. ~~xxxxxxxxxxx~~ (g)
4. List of witnesses for the prosecution and defence (with their present stations or addresses) (g).
5. ~~xxxxxxxxxx~~ (h).
6. ~~xxxxxxxxxx~~ (g).
7. Statement as to character (A.F.B. 296) and regimental and company, etc., conduct sheets of accused (g).
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (h). [R.P. 14 (B)].

I have the honour to be,
Sir,
Your obedient Servant,

Signature of Commanding Officer } J Counsell Lt. Col

(J R.O. COUNSELL) lt-Col
Commanding Officer.
48 Highrs.

To Comd, 1 Cdn Inf Bde

(24581) Wt.12158/270 10,000 5/43 A.& E.W.Ltd. Gp.698 Forms/B116/17

MEDICAL OFFICER'S CERTIFICATE.

I CERTIFY that No. B.53236 Pte ROBERTS N.F. Regt.

*Insert "fit" or "unfit."

is* fit to undergo trial by Court-Martial.

Signature of the Medical Officer [illegible] Capt.,
M.O. 48 HighrBs.

(a) Here insert name of :—
(i) Officer who investigated the charges.
(ii) Officer who made preliminary enquiry into the case.
(iii) Company, etc., Commander who made the Summary of Evidence [R.P.19 (B) (iii)].
(iii) Officer who took down the Summary of Inquiry respecting any matters connected with the charges; otherwise to be struck out [R.P. 19 (B) (iii)].
(b) To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges; otherwise to be struck out [R.P. 19 (B) (iii)].
(c) To be filled in by the Commanding Officer.
(d) Any items not applicable to be struck out.
(e) One copy to be sent to the President; one copy to be filed with the application for trial.
(f) One copy to be sent to the President.
(g) Original summary of evidence to be sent to the President.
(h) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.
(h) 5 and 8 to be sent to the President.

If the accused has elected to be tried under A.A. 46 (8) the fact should be recorded at the top of this form.

Report by President:-

In the address in mitigation of punishment in the case of B53236 Pte ROBERTS N.F., the defending officer stated in good faith that the accused had only one previous conviction on a minor charge. This was based on a supplementary MFM 6. Subsequently a new certified true copy of the MFM 6 of the accused was produced and submitted to the defending officer. He did not wish to make a new plea.

C Capt Kinsey Maj.

III·55

PTE ROBERTS NF

RECORDED AT CMHQ IN AB 160
III-55

B-1

Edward Rawlings Maj

E 1/1

Correspondence to be PINNED here

Army Form A.3

CANADIAN SECTION
28 MAR 1944
G.H.Q.

Form for Assembly and Proceedings of Field General Court Martial on Active Service

PROCEEDINGS

A
Order convening the Court.

On Active Service, this Sixth day of March, 19 44

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Infantry Brigade on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial ; ~~*and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

~~*I am unable to appoint :—~~

~~*(1. Three Officers to form the Court)~~

~~*(2. A Field Officer as President.~~

~~*(3. Three Officers having more than one year's service.)~~

~~for the following reasons, namely :—~~

PROCEEDINGS REVIEWED
W. Crench Lieut
26 Apr 44 Rev 3
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

President

Rank	Name	Regiment
Major	E.C. Rawlings	48 Highrs

Members

Rank	Name	Regiment
Captain	D.C. Smith	Hast & PER
Lt.	C.G. Cooper	R.C.R.
Lt.	P.H.A. Hertzberg	R.C.R.

Waiting Member

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

D.C. Spry

*Signed (D.C. Spry) Brigadier
Commanding 1 Cdn Inf Bde.
Convening Officer.

3679/PMEO/50,000—5/43

E 107

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B 53236 PRIVATE ROBERTS, Norman Frederick, 48th Highlanders of Canada.	FIRST CHARGE A.A. Sec 15 (1)	Guilty	Guilty To Undergo Ninety Day Detention Edward Rawlings May	Confirmed D.C. Spry Brig 17 Mar 44

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (*to be recorded on separate sheet if necessary*):—

(Signed) D.C. Spry (D.C. Spry) Brigadier
Commanding 1 Cdn Inf Bde
Convening Officer (e)

(Signed) Edward Rawlings May (E.C. Rawlings) Major
48 Highrs.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here

B Certificate of President as to proceedings.

I certify that the above Court assembled on the 11th day of March 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
*(3. The interpreter) GR
*(4. The officers under instruction) GR

were duly sworn.

* Omit if not applicable

Signed this 11th day of March 1944

Edward Rawlings May
President of the Court Martial.

C Certificate in case of death sentences.

* See Instructs b) on page 762 M.M.L. 1928

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~ GR

~~Signed this day of 19~~

~~*President of the Court Martial.*~~

D Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the ~~margin be not committed to prison until further orders.~~) MS

* To be omitted unless penal servitude or imprisonment having been awarded the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

Signed this Seventeenth day of March 1944

D.C. Spry
Confirming Officer.
(D.C. Spry) Brigadier
Comd., 1 Cdn Inf Bde.

Promulgated and extracts taken in the case of B53236 Pte Roberts N.F. 48th Highrs.

(a) (Dated) March 20/44 (Signed) [illegible] Capt 48th Highrs.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

[a] When several cases are promulgated in one unit on the same day the Officer need only sign once.

11

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held ~~at~~ in the field on the 11th day of March 1944 by order of D.C. Spry Brigadier

Commanding 1 Cdn. Inf. Bde.
dated the 6th day of March 1944.

President.

Major E.C. Rawlings 48 Highrs

Members.

Captain D.C. Smith Has. PER.
Lt. C.G. Cooper R.C.R.

EDR
~~, Judge Advocate.~~

Trial of* B 53236 Pte. Roberts Norman Frederick 48th Highlanders of Canada.

EDR The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available~~ EDR ~~to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~ EDR

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Major J.G. McLaren, 48 Highrs

EDR ~~Counsel~~‡ or defending officer† Lt W.B. Robertson, 48 Highrs

At 1330 o'clock the Trial commences.

The order convening the Court is read, and is marked B1, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

30037 Wt.W41820/21 10,000 sets. 12/41. K. & H., Ltd. G657/11. Form A9/55.

B

The President, members and ~~judge-advocate~~ are duly sworn.

The ~~following officers under instruction are duly sworn~~.

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to the first charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

48th Highlanders of Canada

B-2
Edward Rawlings Roy

CHARGE SHEET

The Accused B.53236 Pte. Norman Fredrick ROBERTS "D" Coy 48th Highlanders of Canada, a soldier of the Canadian Army Overseas, CMF, is charged with:

1st CHARGE
A.A. Sec 15 (1)

When on Active Service, absent without leave,

in that he,
In the Field, ITALY absented himself without leave from 1800 hrs 21 Dec 43 until he surrendered himself to the C.M.P. at BARI, ITALY at about 2145 hrs 11 Jan 44. (time absent 21 days, 3 hrs, 45 mins)

In the Field, ITALY,
29 Feb 44.

(I.S.JOHNSTON) Lt-col,
Commanding Officer,
48th Highlanders of Canada.

To be tried by Field General Court Martial.

In the Field
6 Mar 44.

(D.C. Spry) Brigadier
Comd., 1 Cdn Inf Bde.

B-3. AR

MEDICAL OFFICER'S CERTIFICATE
(KR (Can) para 577)

I certify that I have this morning examined No. B.53236

Rank Pte. Name ROBERTS, R.F. of 48th Highlanders of Canada

and in my opinion he is fit/~~unfit~~ to undergo trial by Court-Martial.

Station In the Field, ITALY

Date 11 Mar 44

Umbyers Capt. RCAMC
(Medical Officer)

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been recorded with.

*~~[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]~~

The accused B33236 Pte Roberts W.F.
is found guilty of absenting himself without leave.

†The summary (or ~~abstract~~) of evidence is read, marked B6, signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:—

Yes.

[*or* hands in a written statement, which is read, marked C, signed by the President, and attached to the proceedings.]

Instructions.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No.

Answer.

Evidence as to character.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding~~ ER

~~The Court find that the accused~~ ER

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement with the schedule of convictions and of cases in which trial has been dispensed with is read, marked signed by the President, and annexed to the proceedings. ER

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

Statement as to character and particulars of service and MFM6 duly certified in accordance with CARO. 3131 were produced and marked as exhibit B4 and B5

(Interpretation.—If by reason of the nature of the service of the accused in a repentance [illegible] or otherwise the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the president must take the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.* NO.

The Court is closed for the consideration of the sentence.

F

Sentence.

Sentence.

The Court sentence the accused

To undergo 90 days detention.

Statement ~~of punishment~~ on mitigation by defending officer
Lt. W.B. Robertson 45 Hours.

Pte Roberts has been subjected to shell fire and as a result has developed a certain nervousness. On the day he went A.W.O.L. he was in a position that had been shelled.

G
Edward Rawlings
Maj

B64763 Pte L/Cpl. Brock. O.E.
Statement in mitigation

I am in the same platoon as the accused. under shell fire the accused becomes very jumpy. he has had numerous close ones. and

B73952 Pte Allan. A.D. Statement in mitigation

I am a S.B in D. Coy. I saw him on the same day he went absent. I was near a church the day we had some heavy shelling the accused would leave his slit trench and run over to me. he was very nervous I told him he should report to the R.A.P. after this he was missing and I found him hiding under some barrels. This is not the first time I have seen him jumpy.

The accused is about 23 years old. He joined the R.C.R. shortly after the landing in Sicily He has been with the R.C.R. since

CERTIFICATE OF SURRENDER UNDER A.A. 163 (1) (J). EXHIBIT "A"

I, Capt. [illegible] Certify that No. B 53236 Rank Pte. Name Roberts, N.F.

Unit 48th Highlanders of Canada. surrendered himself to No. 7685654 Rank Spl.

Name Marriner, D.J. Unit C.M. Police. at AARI at about 2145 hrs.

on the 11th day of January 1944, as a deserter (absentee without leave).

He was dressed in Uniform.
~~Civilian Clothes.~~

[illegible]

11th January 1944.

[illegible]
Captain.
Officer Commanding.
230 L of C Provost Company.
Commanding Officer of the person or portion of His Majesty's forces to whom surrender was made.

B-6 Edward Rawlings Mills

Summary of Evidence in the case of 18.53236 - Pte. Roberts R. Jr. "D" Coy 48th Highlanders of Canada.

By direction of the Commanding Officer Lt. Col. A. Johnston D.S.O. 48th Highlanders of Canada, all evidence is taken on oath.

1st Witness for prosecution

C 63003 A/Sgt. Ross J.A. ~~B 73492 - Cpl. Dox H.~~ having been duly sworn, states "I am Sergeant of #6 plu. "D" Coy 48th Highrs I made my rounds at 1800 hrs. Dec 21/23. Pte. Roberts was missing at the time. He was still absent on Dec. 26th when I was evacuated to hospital and on my return on Jan 6 he was still absent. I asked the platoon commander Lieut. Middleton if Roberts had returned and he said "No, he had not" I checked my platoon each day from the 21st to 26th of Dec. and Roberts was absent. 6th day A/Sgt Ross J.A.

C 63003 A/Sgt Ross J.A.

The accused declines to cross examine the witness.

2nd Witness for prosecution

B 73982 Pte. Allan A.D. having been duly sworn states" I am S.B. of #6 plu. "D" Coy 48th Highrs, I checked the plu on the afternoon of Dec 21st. Pte. Roberts was missing and continued absent from that day.

Cont

I have not seen Pte Roberts from Dec 21st until today (Feb 26th). In my capacity I check the men daily and consuear that Pte Roberts continued absent from the 21st of Dec. Had he returned ~~before~~ I would have known of it.

A. D. Allan.

The ~~wit~~ accused declines to cross examine the witness B73982 Pte Allan A.D.

3rd witness - B73532 Sgt. Ranney J.J. having been duly sworn states "In my capacity as Orderly Sgt. of the 48th Highrs. of Can. I wish to present as Exhibit "A" - certificate of surrender of Pte Roberts to the C.M.P. at Bari, Italy, on the 11th day of Jan/44, purporting to be signed by Capt. L.N. Kent, O.C. 230 Prov. Coy I recognize Pte Roberts as the man charged.

J. J. Ranney

B73553 Sgt Ranney J.J.

The accused declines to cross examine the witness

The accused declines to call any witness in his defence.

I certify that R. of P. 4, (c) (d) (e) & (f) have been complied with

Taken down by me in the presence of the accused. In the field - Feb 26 1944.

Hans S Gley Capt 48th Highrs of Can

B-5. Edward Rawlings Maj

No B53236 Name ROBERTS, N.F. Sqn., Battery, or Company Corps 48 Highrs. Date of enlistment 20 Sept 41 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F. B.122) 40/P & /B136 (2063)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28Aug 42			A.A. 40 Conduct to the prej. etc, falsely reporting to MO. that he had been orderded to take part in coy trg.	Lt. SAYER	7 dys C.B.	7 Sept 42	Lt. Martin	
Field	30 Sept 42			A.A. 15 (1) AWL from 0830 hrs 30 Sept 42 to 0900 hrs 0900 hrs 30 sept 42(absent ½ hr)	Sjt. Giffin	7 days C.B.	1 Oct 42	Major Lequene	
Field	30 Oct 42			A.A. 15 (1) AWL from 2359 hrs 29 Oct 42 until 1035 hrs 30 Oct 42 (absent 10 hrs 36 mins)	Sjt. Moore	Forf 5 dys pay five days CB	31 Oct 42.	Lt-col J.G. SPRAGUE	
Field	12 Nov 42			A.A. 40 WOAS con to the prej. etc. defacing public property	Lt Weir	Forf 5 days pay & 5 days CB	13 Nov 42	Lt-col J.G. SPRAGUE	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Jan 43			A.A. 15 (1) AWL from 2359 hrs 28 Jan 43 to 0918 hrs 29 Jan 43(9 hrs. 19 mins)	Sjt McIver Sjt More, C.	5 Days pay 5 days CB	4 Feb 43	Lt-col J.G. Sprague	Forf 1 dys pay FRI 149(1)a
Field	5 Apr 43			A.A. 40 conduct to the prej etc. had to be told several times to fall into blank file of the pl. whilst on a coy route march	Cpl Stanton	5 days CB	6 Apr 43	Capt O.A. NICKSON	
Field	9 Jun 43			1st Chg. AA 40 was improperly in possession of a army blanket outside of camp area. 2nd chg. 10(4) breaking out of barracks by way other than camp entrances	L/Cpl. Moore Cpl. Chenlea	28 days F.P.	10 Jun 43	Lt-col. Venning	Total forf 48 days pay

I as Officer i/c Regimental records hereby certify that this is a true and exact copy of the original

(BLAIR. S. EBY) Capt., & Adjt.,
48th Highlanders of Canada.

B-4
Edward Rawlings May

M.F.B. 355
2251—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.53236	Pte. ROBERTS, N.F.	48th Highlanders of Canada	

1. The following is a fair and true summary of the entries in the MFM, 6 Regimental ~~[illegible]~~ Conduct sheets ~~[illegible]~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months			Since enlistment or appointment	
For	A.A. Sec 10 (4)	One	times	One	times
For	A.A. Sec 40	Two	times	Four	times
For	A.A. Sec 15 (1)	Nil	times	Three	times
For	---		times	----	times

Number of instances of gallantry or distinguished conduct Nil

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.F.A. 73~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time. Not

or,

The accused at the present time is under sentence for N/A beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 1 month 17days ~~[illegible]~~ days in military custody, making a total of 1 month 29 days Has been in transit 1 month 12 days days in custody, of which None days were spent in hospital.

5. The present age of the accused according to his record of service is 21 yrs, 3 mos, 17 dys. ~~[illegible]~~

6. The date of his ~~[illegible]~~ attestation specified in his record of service is ~~[illegible]~~ 20 Sept 41

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon 2 yrs, 5 mos, 20 dys. service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward.
military military military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of
Permanent Force
unit
N/A dated , and in his regiment (or corps), the rank of
N/A dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A Date of promotion.

In the rank of N/A years,

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank
Unit
Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		This soldier has not been previously tried by Civil Court or Court Martial.		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 11 day of March, 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

(BLAIR. S. EBY) Capt,
Adjutant,
48th Highlanders of Canada.

5X-116

ON HIS MAJESTY'S SERVICE

FASTEN Envelope by gumming this Label across Flap.
OPEN by cutting Label instead of tearing Envelope.

Pte. Roberts, N.F.

1/14 CMHQ 40.1
40 P & S 52
(Strips of 4)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: 853236 Pte N.F. ROBERTS

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for 22 days beginning on (date) 16 Dec 45 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 22 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To forfeit 1 days Pay

(Sgd) N/A Judge-Advocate, if any. 4 January 46 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison on detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

Date 9 Jan 46. (Sgd) [signature] Lt Col Commanding T/Comd 2 C&BRD Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B53236 Pte Norman Frederick Roberts	9 Jan 46	[signature] Capt 1 CDA Coy, 13 LBR Bn (PS)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5X-116

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA31) 40/3/8 & 10/1000 (6744) 4/38B

Convened by Order of Lt Col L J Flynn Comd 2 C B R D dated 4 January 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
B53236	Pte	Norman Frederick	Roberts	13 LBR Bn

PROCEEDINGS REVIEWED

[signature] Capt 17 Jan 46

REVIEWING OFFICER, JAG BRANCH, G.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 4 January 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for paths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: Do you object to ..... as interpreter? Ans N/A

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans N/A

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	M.H. GARNETT	R.C.E. TF 13 Bn.
Member	Capt	D.H.E. Reid	RCRD 1 Mtn Trans Regt CIC TF 12 Bn.
Member	Capt	D.L. MacDonell	
Judge-Advocate			
Prosecutor	Lieut	D.R. Hoey	R.C.E. TF 12 Bn.
Defending Offr	Lieut	J.C. Hilard	C.I.C. TF 12 Bn.

Questions by President: Is the Prosecutor a lawyer? Ans N/K Is the Defending Offr a lawyer? Ans N/K (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1, p 3.)

A8. The accused ..... before arraignment make(s) (no) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (not) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

No 2 Con Base RPL Sp Vol II Page 2.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans..... Do you intend to call witnesses on your behalf? Ans..... Are they witnesses as to character only? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 80(C).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(7) (d). RP 45, 120(A).* 2. *AA 54(3). RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans.....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MSM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6). RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. Overseas RO 309, 2323. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 1, 2. When accused already under sentence of imprisonment or detention see AA 44(1)(B), (d)(i), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HEADQUARTERS 13 CANADIAN BASE REINFORCEMENT BATTALION

2 C. B. R. Gp.

MEDICAL CERTIFICATE

I certify that I have this day examined B-53236

Pte ROBERT, N.F. of 1 CBR Coy 13 Cdn Base

Rft Bn., 2 C.B.R. Gp. and find him ~~unfit~~ fit to undergo trial by Court Martial.

4 Jan 46

M.O. 13 C.B.R. Bn.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B 53236	Pte		Norman Frederick	ROBERTS	X4 List CIC 13 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet(s) attached and dated 27 Dec 45 endorsed by me, (~~xxxxxxxxxxxxxxxxxx~~), "To be tried by Field General Court-Martial";

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~xxxxxxxxxxxxxxxxx

CHARGE SHEET

The accused, B-53236 Pte Norman Frederick ROBERTS (X-4 List) Canadian Infantry Corps, on strength of 13 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas

FIRST CHARGE
Sec. 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, in Holland, at approximately 2045 hrs 24 Nov 1945, improperly and without authority took and used a Dutch civilian vehicle, the property of Bastian Marie Van Vaak of C 26 Resses, Bemmel, for private purposes.

M.A. Frank

In the Field
16 Dec 1945

(M.A. Frank) Major
T/Commander
13 CBRBn. 2 CBRGp.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

L J Flynn

In the Field
27 Dec 45

(L J FLYNN) Lt-Col
T/Comd - 2 Cdn Base Rft Gp

Statement of the accused Exhibit 4

B-53236 Pt Norman Frederick Roberts

X 4 List C.I.C. 13 C.B.R. Bn.

The reason for my plea of Guilty is that, I understand that all the Witnesses are in England and it will take a considerable time before I could stand trial if I plea not guilty, so in order to save time I am willing to plea Guilty and I do not wish to change my plea although the court has advised me

B 53236 Roberts N.F.

[illegible]

CANADIAN LEGION WAR SERVICES Inc.
CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES
ON ACTIVE SERVICE
CANADIAN Y.M.C.A. OVERSEAS
THE SALVATION ARMY CANADIAN WAR SERVICES

B-53236
Pte. Roberts N. F.

Plea for leniency

Saturday, Nov. 24/45 a friend & myself went to Utrecht to visit friends. While in Utrecht we obtained two bottles of gin. I flew drinking both bottles I remember very little that followed. When I sobered up, I found myself driving the vehicle. I then stopped & asked a civilian for the way to Nijmegen. It was at this time that I was apprehended by R. S. M. Giles, who took me to the town guard room in Nijmegen.

I don't remember taking the vehicle, but realize I had done wrong. There was no damage done to the vehicle &

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

returned in good condition.

I joined the army at the age of 18, came overseas April 1942. Served in Sicily, Italy & Holland as an infantryman. I beg of you to take this into consideration & be lenient with me. I have had very little education, as I left school to join the army. I intend to take an educational course as soon as possible. I would like to gain what I have lost & settle down.

Your faithful & obedient servant,

B53236 J.F. Roberts

4/71 CFA 170 PLEASE WRITE ON BOTH SIDES

Exhibit 44

SUMMARY OF EVIDENCE.

In the case of B-~~35236~~ 53236 Pte Norman Frederick ROBERTS (X-4 List) Canadian Infantry Corps, on strength of 13 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

First Witness Prosecution

H-32052 R.S.M. T.S. GILES, 13 Canadian Provost Coy.

A statement of the evidence of this witness purporting to be signed by him has been read to the accused and is included in this Summary of Evidence. Having regard to the expense and loss of time involved the attendance of this witness at this Summary of Evidence cannot, in my opinion, be readily procured.

The accused does not demand the attendance of this witness for cross examination.

(D.R. Abbey) Lieut.
Officer detailed to take
Summary of Evidence.

Second Witness Prosecution

Bastial Maria Van Baak, 626 Ressen, Bemmel, near Nijmegen.

A statement of the evidence if this witness purporting to be signed by him has been read to the accused and is included in this Summary of Evidence. Having regard to the expense and loss of time involved the attendance of this witness at this Summary of Evidence cannot, in my opinion, be readily procured.

The accused does not demand the attendance of this witness for cross examination.

(D.R. Abbey) Lieut.
Officer detailed to take
Summary of Evidence.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence upon oath. You are not obliged to say anything or give evidence unless you wish t o do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused reserves his defence.

Certified that all the provisions of R.P.4 (c)(d)(e) and (f) have been complied with. Taken down by me in the presence and hearing of the accused this 13 day of December 1945.

(D.R. Abbey) Lieut
Officer detailed to take
Summary of Evidence.

1 Coy

CHARGE

In lieu of Army Form B 252

13 SW R C.E.R.C. Regiment

Bty, Sqn, Tp or Coy

CHARGE AGAINST No B 53236 Rank PTE Name ROBERTS N.E.

Place FIELD Date of Offence 24 Nov 45

Offence ROADS: was improperly in possession of a 30 cwt Bedford Truck, Dutch Registration No. M-68808, the property of persons at present unknown.

No. 13 PROVOST CO. 25 NOV 1945 ORDERLY ROOM CDN PROVOST CORPS

OFFICER COMMANDING, No. 13 PROVOST COY. CDN PROVOST CORPS

Name of Witnesses: H 32052 RSM GILES T.S.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment awarded

By whom awarded

Adjutant

Statement of E V I D E N C E in the case of:
B 53236 Pte Roberts N.E.
13 Sn R C.E.R.C.

Sir:-

At approx. 2045 hrs. on the 24 Nov 45 I was proceeding from Arnhem to Nijmegen when I saw the a/m vehicle being driven in the direction of Nijmegen. Being suspicious of it as it had a Dutch Registration Plate as well as a WD No. on it, I followed it. The driver of this vehicle stopped after a while to talk with a passing civilian. I approached the driver who proved to be the a/m soldier and asked him to account for being in possession of the a/m vehicle, not being satisfied with his answers, I placed him under close arrest and escorted him to the Town Guard Room, Nijmegen. Later I warned him that a charge was being subaitted to his CO. Up to the present time the owner of the vehicle has not been located.

T.S. Giles

(H 32052 RSM Giles T.S.)
No. 13 Cdn Provost Company

REMARKS

I am, Bastian Mann Van Baak. On 24 Nov 45 I arrived at Arnhem at 1830 driving a Dutch Bedford 60 CWT M-68802. I parked this vehicle ~~at~~ on Sweer de Landasstr. and at 1840 I returned and found the vehicle gone.

At no time and under no circumstances did I give permission to any Canadian Soldier to use my vehicle.

Bastian Baak

LIST OF WITNESSES.

In the case of B-53236 Pte N.F. Roberts.

(For the Prosecution)

1. H-32052 R.S.M. T.S. GILES, 13 Cdn Provost Coy

2. Bastian Maria Van Baak, C26 Ressen, Bemmel.

(For the Defence)

None

STATEMENT OF ACCUSED.

I, B-53236 Pte N.F. Roberts, hereby acknowledge that I have received, free of charge, a copy of the Summary of Evidence and a copy of the Charge Sheet therein.

I also request that an Officer be appointed to act as my Defending Officer at my forthcoming Court Martial.

N F Roberts
(N.F. Roberts)

Exhibit B

ARMY FORM B 296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 53236	PTE	ROBERTS, N.F.	13 C.B.R. Bn.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	AA 15(1)	4 times.
For	AA 40	7 times.
For	AA Sec 10(4)	1 times.
For		times.

Date of first entry in Field Conduct Sheet 28 Aug 42

Date of last entry in Field Conduct Sheet 11 Jun 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. [illegible]

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for

days in civil custody : and for 22 days in military custody, i.e.,

days in open arrest, 22 days in close arrest : of

which NO. days were spent in hospital.

5. The present age of the accused is 20

6. The date of his attestation / calling up for military service is 20 Sep 41

7. [illegible]

8. The accused is in possession of** CVSM & Clasp; 1939-45 Star; Defence Medal; France, Germany Star; Italian Star.

**State the military decorations (if any) held by accused.

9. [illegible]

Date of Promotion

In the substantive rank of

In the war substantive rank of

In the acting rank of

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	11 Mar 44	AWL from 1800 hrs 21 Dec 43 until 2145 hrs 11 Jan 44 (21 days, 3 hrs, 45 mins) AA Sec 15(1)	90 days Detention	30 days remission

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 17 day of December 1945

R. Quintan / Capt

Ex Pte C Regt

M.F.M. 6
(A.F. B.122)
40/P & /B136 (2965)

No. B53236 Name ROBERTS, N.F. Sqn., Battery, or Company "C" Corps Q.O.R. of C. Date of enlistment 20 Sep 41 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. Capt Lemieux | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Aug 42	Rfn	Nil	AA40- con to the prej.. etc falsely reporting to MO that he had been ordered to take part in Coy Trn'g.	Lieut Sawyer	7 dys C.B.	7 Sep 42	Lieut Martin	
Field	30 Sep 42	Rfn	Nil	AA15(1)-AWL from 0830 hrs 30 Sep 42 to 0900 hrs 30 Sep 42 (Absent ½ hr)	Sjt Giffen	7 dys C.B.	1 Oct 42	Major Lagueane	
Field	30 Oct 42	Rfn	Nil	AA15(1)-AWL from 2359 hrs 29 Oct 42 to 1035 hrs 30 Oct 42(Absent 10 hrs 36 mins)	Sjt Moore	Forfts 5 dys pay and 5 dys C.B.	31 Oct 42	J.G. Spragge Lt.-Col.	Forft 1 dys pay FR&I 149(1)a
Field	12 Nov 42	Rfn	Nil	AA40- WOAS con to the prej., etc. defacing public property.	Lieut Weir	Forfts 5 dys pay and 5 dys C.B.	13 Nov 42	J.G.Spragge Lt.-Col.	

In accordance with K.R.&O. 1524 previous sheet was destroyed on completion of 6 mons service 20 Mar 42

Above Regt'l entries carried forward.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Jan 43	Rfn		AA15(1)-AWL from 2359 hrs 28 Jan to 0918 hrs 29 Jan 43 overstaying Priv Leave (9 hrs 19 mins absent)	Sgt McIver Sgt More, C.	5 days C.B.	4 Feb 43	J.G. Spragge Lt.-Col	Forfts 1 days pay FRAI 149(1)(a)
Field	5 Apr 43	Rfn	Nil	AA40-Conduct to the prej., etc. had to be told several times to fill ins blank file of the platoon whilst on coy route march	Cpl Stanton	5 days C.B.	6 Apr 43	O.A. Nickson Capt	
Field	9 Jun 43	Pte		1st Charge: AA Sec 40 was improperly in possession of 2 Army blankets outside of Camp Area 2nd Charge: AA Sec 10(4) walking out of barracks by way other than camp entrances.	Cpl Chemke L/Cpl Moore	28 days F.P. 42 days pay	10 Jun 43	Lt.-Col Vening	Total Forf 42 dys pay
Field	21 Dec 43	Pte		AWL from 1800 hrs 21 Dec until 2145 hrs 11 Jan 44 (21 dys, 3 hrs 45 mins) Sec 15(1)	Sit Ross Pte Allan, A. Sit Ranney	90 days detention	11 Mar 44	FGCM	Forf 22 dys pay 149(1)a. 59 dys 149(1)c(i). 90 dys 149(1)b.

M.F.M. 6
(A.F. B.122)
40/P & /8130 (2965)

No B53236 Name ROBERTS, Sqn., Battery, or Company Corps Date of enlistment 20 Sep 41 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet N.F. No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character BSS Cry Capt & Adjt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Released from the No. 7 Canadian Field Punishment Camp on 9 May 44 SENTENCE HAVING EXPIRED. Remission earned under "Rules for Detention Barracks and Military Prisons" 30 days. COMMANDANTS initials .P.M.D.					
				"Blood Donor - Voluntary - Cdn Army CMF - 15 May 44					
Field	5 Jul 44	Pte		AA15(1) AWL from 0800 hrs 5 Jul 44 until 1230 hrs 5 Jul 44(4 hrs 30 mins)	Sjt Lea A.	7 dys C.B.	7 Jul 44	Capt G	Forf 1 dys pay FR&I 149 (1)(a)

(P.T.O.)

Place	Date of offence	Rank	Cases of previous convictions	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	1 Mar 45	Pte		AASec40 Conduct to the prej.. etc. was in improper possession of army veh No CZ4209590 and did REMOVE THE SAID VEH FROM IT'S parking lot.	Lt R.L. Graham Pte Daniels	28 days F.P. with conjoint award of my	21 Apr	Lt.-Col. J.R.O. Counsell	
	9 Feb 45	Pte	(2)	AA Sec 40 Conduct to the prej.. etc.. discharged a firearm on the courtyardof the Polish Soldiers Club. via Panisperna	Lt J.M. Hunter				

GRANTED 4 DAYS REMISSION OF SENTENCE
15 May 45

CERTIFIED TRUE ENTRY
M.A. Coollett Admin Offr.
1 Cdn Discipline Centre

SUPPLEMENTARY

No B53236 Name ROBERTS, N.F. | Sqn., Battery, or Company | Corps CIC | Date of enlistment 20 Sep 41 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /8138 (1968)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11 Jun 45	Pte		WOAS Conduct to the prejudice of good order and military discipline in that he, at Edinburgh at about 1500 hrs 11 Jun 45 was improperly dressed. AA 40 RELEASED from the 1 Cdn Detn & FP Bks on 13 Nov 45 SENTENCE HAVING EXPIRED . Remission earned under "Rules for Detention Barracks and Military Prisons" 61 Days w.e.f. 13 Nov 1945 For COMMANDANTS initials ..A.J...	Documentary	7 dys C.B. (over)	3 Jul 45	Major D.B. Deeks	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED TRUE COPY OF ORIGINAL IN MY POSSESSION

(R.V. Swetnam) Capt

SH-14

Sgt. Roberts, R. J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B-76331 Sjt Robert James ROBERTS, 1 CACRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	Not Guilty	Not Guilty	
2nd AA Sec 40	Not Guilty	Guilty	
3rd AA Sec 40	Not Guilty	Guilty	
4th AA Sec 10(3)	Not Guilty	Guilty	
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lass of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be reduced to the ranks.

(Sgd) ..... Judge-Advocate, if any. 3 May 45 Date awarded. (Sgd) B Lt Colonel President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Finding and sentence confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) (1. AA 57A. Delete if not used.)

(Sgd) J J Rutherford Brig
E Gp C.R.U.

Date 4 May 45 Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B 76331 Sjt Roberts RJ	4 May 45	B Lieutenant Colonel Judge Advocate

Part II Order No 105 4/5 May 45.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN FILE 150 5-17-14

RECEIVED 22 MAY 1945 JAG BRANCH C.M.H.Q.

CPA/M (To Use of APA's) 40-P & B/1698 (E144) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig T J Rutherford Comd "E" Gp CRU dated 30 Apr 45.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-76331	Sjt	Robert James	ROBERTS	1 CACRU

PROCEEDINGS REVIEWED
14 May 45
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 3 MAY 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 45, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10 to 5 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused : ~~Do you object to~~ as interpreter ? Ans .....
~~The Interpreter is sworn.~~(1) Do you object to Sjt Smallwood as shorthand writer ? Ans No
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	The Rt Hon Earl Munster KBE	Lt Col	HQ CRU
Member	Capt D L McCord	Capt	2 CACRU
Member	Lieut A M Savoie	Lieut	2 CACRU
~~Judge-Advocate~~			
Prosecutor	W A Howard	Capt	1 CACRU
Defending Offr	R M Smith	Capt	1 CACRU

Questions by President : Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea ..... (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form I

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence,* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 25(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1) Copy filed.
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1, 2, 3, 4 & 5 charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 2, 3, 4 & 5 charge(s), and allowed on the 1 charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. Neither. Do you intend to call witnesses on your behalf ? Ans. No. Are they witnesses as to character only ? Ans. .....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 2, 3, 4 & 5 charge(s), being subject to confirmation, will be promulgated later.(1)
—*Or*, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith; and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(2) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No sir.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. MFB 355 or AFB 296. 2. AFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes sir. Bad boy.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566. Overseas AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused, B-76331 Sgt Robert James ROBERTS, a soldier of the Canadian Army Overseas on the strength of No 1 Canadian Armoured Corps Reinforcement Unit is charged with:-

1st Charge Army Act Section 40 — "WHILE ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE"

in that he,

In the Field, between 2200 hours and 2300 hours 15 Apr 45 did operate a WD Vehicle No CF 196225 in a reckless manner.

2nd Charge Army Act Section 40 — "WHILE ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE"

in that he,

In the Field, between 2200 hours and 2300 hours 15 Apr 45 did operate a WD Vehicle No CF 196225 without proper authority.

3rd Charge Army Act Section 40 — "WHILE ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE",

in that he,

In the Field, between2200 hours and 2300 hours 15 Apr 45, did use abusive, obscene and profane language by referring to L-52212 Sgt Meyer A.J. and E-97637 Sgt Degrow, M.C., both of No 9 Cdn Provost Coy as "Provost Bastards" or words to that effect and further that he did refer to the said NCOs of No 9 Cdn Provost Coy as "A couple of Zombies".

4th Charge Army Act Section 10(3) — "WHILE ON ACTIVE SERVICE, RESISTING AN ESCORT WHOSE DUTY IT WAS TO APPREHEND HIM"

in that he,

In the Field, between 2200 hours and 2300 hours 15 Apr 45, after having been told he was under close arrest, did refuse to get into a station wagon of the Cdn Provost Corps, and did physically and forcibly resist being placed in the station wagon.

In the Field
24 Apr 45

(W.B.K. GORDON) Colonel,
Commanding Officer,
No 1 Cdn Armd Corps
Reinforcement Unit.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(T J RUTHERFORD) Brig
Comd
"E" Op GRU

IN THE FD.,
30 APR 45.

97

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-76331	Sjt		Robert James	ROBERTS	1 CACRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 30 APR 45 endorsed by me, ~~[or by my authority for trial by]~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[and that it is not practicable that the accused should be tried by any]~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[I nominate as prosecutor _____ and as Defence Counsel _____ for the accused, and direct that they attend the court.]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~[I also appoint _____ Judge-Advocate for the trial, and direct him to attend.]~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj (Rank.)	E M Miller, ED (Must be named. RP 106.)	HQ CRU (Unit.)

MEMBERS.

Capt	to be detailed by OC 2 CACRU	2 CACRU
Lt (Rank.)	to be detailed by OC 2 CACRU (Named or detailed. RP 106.)	2 CACRU (Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

Date 30 APR 45

(Signed personally. RP 105 fn 2.)
(T J RUTHERFORD) Brig
Commanding "E" Gp CRU
Convening Officer

Brig (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE
K.R. (Can.) Para. 557

I certify that I have this morning examined No. B 76331

Name SGT. ROBERTS, R.T. of #1 C.A.C.R.U. and in my opinion he is fit/~~unfit~~ to undergo trial by Court-Martial.

Station Woking Surrey

Date 3 May 45

W. K. Macdonald Capt.
Medical officer.

CASE OF

D-3 B-76331 Sergeant ROBERTS, R.J. No. 1 C.A.C.R.U.

PRES OF THE COURT TO THE ACCUSED

Q. The Court is informed that the Prosecuting Officer is a solicitor. Are you aware of that?
A. Yes, Sir.

Q. Is your Defending Officer one of your own choice and are you satisfied to proceed?
A. Yes, Sir.

PROSECUTION

FIRST WITNESS

B-97637 Sgt DEGROW, H.E., 9 Cdn Prov Corps Coy, sworn, states:-

Q. How long have you been in the Prov Corps?
A. 4½ years, Sir.

Q. How long have you been working with vehicles?
A. All the time I've been in the Prov Corps, Sir.

Q. Do you recognize the accused?
A. Yes, Sir.

Q. Where did you see him on Apr 15?
A. At approx 2250 hours, on 15 Apr, I was in a stn wagon, driven by Sgt Meyer; we were driving along Highstreet, in Guildford, Surrey, when at some distance in front of us we noticed an army scout car swerving from one side of the road to the other. We gave chase and stopped this vehicle on the Plymouth Road, about a quarter of a mile from Guildford. Sgt Meyer first got out of our vehicle and asked the dvr for his work ticket, while I was getting out. The dvr, Sgt Robert, got out of the vehicle on the left-hand side and came around to the right-hand side in front of Sgt Meyer and myself. When he came around to the other side of the vehicle, he was asked again for the work ticket; then, he spoke to a soldier in the scout car and said, "A couple of zombies out here want to see my work ticket". I told him not to talk like that and he replied, "I will not for you Provost bastard". I told him he was under close arrest and escorted him to our own vehicle by taking him by the arm. He gave a little struggle. When he got near the vehicle, he put his right hand on the door-frame, trying to stop himself from being taken in the stn wagon. He got away from me that time. I took hold of him by the front of his tunic. Sgt Meyer opened the door to the stn wagon and I put the accused in the stn wagon where he fell on his back on the floor of the stn wagon. When I went to get in the stn wagon the accused kicked me in the stomach with his left foot. I held the accused on the floor of the stn wagon and proceeded to the civil police stn in Guildford.

Q. Did the accused ever produce a work ticket?
A. No, Sir.

Q. Did you notice any sign of drinking on any part of the crew?
A. I am sure Sgt Robert had been drinking and at least one of the other people in the scout car had been drinking because he was not able to get out of the car by himself; he had to be helped out; not Sgt Robert, Sir.

Q. Is there any doubt in your mind as to whom those words were addressed to when he used them?
A. No, Sir.

Q. How was the scout car being driven down Highstreet with reference to the white line in the center of the road?
A. It was zizagging down the street and the right-hand wheels of the scout car were over the centre line.

Q. You just said that the car was swerving from curb to curb?
A. No, Sir, I said from side to side.

Q. Did the left wheels of the scout car cross the centre line?
A. No, Sir, the left wheels did not cross the centre line.

Q. Then the car would not be swerving from one side of the road to the other?
A. Yes, the car was swerving from one side of the road to the other.

Q. You didn't see any work-ticket on this particular night?
A. No, Sir.

Q. Did you ask for the work-ticket after leaving the place where you had stopped them?
A. No, Sir.

Q. Are sure whether there was a work-ticket in the car or not?
A. Yes, I am sure that there was no work-ticket in the car.

Q. Did you look in the car?
A. No.

Q. How can you be sure then?
A. Because he couldn't produce any after the car came to the police stn. We also looked in it for a work ticket.

Q. Is it possible that there was a work-ticket in the car and that you couldn't find it?
A. No, Sir.

Q. If the accused was asked for his work ticket, what did he say in answer to your request?
A. He said, "A couple of zombies here want to see my work ticket".

Q. What did you do?
A. I told him not to talk like that and to that he answered, "I will not for you you Provost bastard".

Q. Then you grabbed him?
A. I told him not to talk like that, Sir.

Q. In other words you grabbed him before you told him he was under close arrest?
A. No, Sir.

Q. When you grabbed him and moved him towards the stn wagon, did Sgt Meyer help you?
A. No, Sir.

Q. Prior to the accused being put in the car, you claim that he broke away?
A. Yes, Sir.

Q. Did he try to leave the scene?
A. No, Sir, he just went six feet. He didn't try to get away.

Q. You said you took hold of the accused before the door was opened?
A. That's right, Sir.

Q. Then forced him in the car?
A. He resisted, Sir, and I pushed him inside.

Q. You didn't know if the accused would have gotten in the car willingly or not.
A. He would not have gotten in willingly, Sir.

RE-EXAMINED

Q. When you were taking the accused to the vehicle, did he place his hand on the side of the vehicle?
A. Yes, Sir.

QUESTIONS BY THE COURT

Q. Was there any traffic on High Street?
A. No, Sir.

Q. How far did you chase the scout car?
A. Approx half a mile, Sir.

Q. You said you stopped the scout car, how did you stop it?
A. I drove along side and waved my hand out of the window and shouted to the scout car to stop.

Q. Did the scout car stop?
A. Yes, Sir within a hundred yards.

Q. At what speed were you going at that time?
A. Between 20 and 25 miles an hour.

Q. Did you exceed that speed in chasing it?
A. No, Sir, the scout car was not going fast, Sir.

Q. Did you search the accused after he was placed under arrest?
A. No, Sir.

Q. How did the accused get out of the stn wagon upon arriving at the police stn with you?
A. When we arrived at the police stn, I asked Sgt Robert to get out of the stn wagon. He didn't move. I asked him again; he didn't move. I took him by the shoulders and his tunic and took him out of the stn wagon. He got up on his feet and walked with me in the police stn. He walked pretty good, Sir, he staggered very little if any. He went in the stn with me willingly.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

SECOND WITNESS

L-52212 Sgt MEYER, A.J., No. 9 Cdn Prov Coy, sworn, states:-

Q. How long have you been in the Prov Corps?
A. Three years and eleven months, Sir.

Q. How long have you been working with vehicles in the Provost Corps?
A. Three years, Sir.

Q. Do you recognize the accused?
A. Yes, Sir. I have seen him in Guildford on Apr 15 45, when I was patrolling around 2250 hrs I was driving down High Street, accompanied by Sgt Degrow, in a stn wagon, when I saw a vehicle being driven in a more or less reckless manner, swaying from side to side, from one side of the road to the other. I immediately took out after it.

After I got out of the dangerous area, I took after the car. There is a sharp turn to left about 20 yeards after I took after the accused; I waited to get by that turn before giving chase. I pulled along side and I blew the horn. I stopped the stn wagon right in front of their vehicle and walked out to the vehicle and I looked in and found the accused who was the dvr and I asked him for his work ticket. He didn't say anything and just came ~~xxxx~~ out of his vehicle. After he came out I asked him again to produce his work ticket; he didn't answer and yelled back towards his vehicle and said, "There are two zombies here who want to see my work ticket"; Sgt Degrow said, "You had better quiet down", and the accused replied, "I will not for you Provost bastard"; Sgt Degrow then said, "You are under arrest" and he grabbed hold of him and tried to place him in the stn wagon but he failed as Sgt Robert struggled away. I went over to the accused's vehicle and I asked the remainder to turn out. I then walked over to our stn wagon and opened the door for Sgt Degrow to put the accused in our stn wagon. As Sgt Degrow was putting the accused in the stn wagon, the accused fell on his back on the floor of the stn wagon. I went over to the other vehicle and I asked if one of the members in this vehicle could drive the scout car to the police stn and one of them said he could and I told him to follow which he did right to Guildford Police Stn. Sgt Degrow and Sgt Robert were in the back-seat of the stn wagon.

Q. What happened when you got to the police stn?
A. The accused was put in a cell.

How far of the scout car did you stop the stn wagon?
About 20 feet.

Q. When you opened the door of the stn wagon did you see any resistance on the part of the accused?
A. I didn't see the accused get out, Sir.

Q. Did you see any sign of drinking on any of the crew?
A. There was one of the soldiers in the vehicle who didn't get out; I don't know if he was drunk or not. I told him to get out but he stayed in the scout car. Two men came out and one stayed in the scout car. He drove back to the police stn in the scout car.

Q. Was there any doubt in your own mind as to whom those words were addressed to?
A. They were for us, Sir, as far as I know, Sir.

Q. ~~Do you say that you stopped the scout car within 400 yds after first spotting it?~~
A. ~~Yes, Sir.~~

CROSS-EXAMINED

Q. When you first saw the scout car, how far was he from you?
A. About 60 yds, Sir. We came on High Street and I had not noticed anything particular about a car that passed us but when it was about 60 yds down the road in front of us I noticed it swaying from side to side, that is when I took after the car, Sir.

Q. He crossed your front?
A. Yes, Sir.

Q. How far did you give chase?
A. I'd say about ¼ of a mile, Sir.

Q. You've said that from the time you noticed him weaving, it was 60 yds in front of you, and that you caught up with it and crossed it in the space of ¼ of a mile?
A. Yes, Sir.

Q. How fast did you drive your car in order to come up in front of him?
A. I wouldn't be sure about that; I wouldn't be going more than 10 to 15 miles an hour as he was travelling very slow, Sir.

Q. This whole transaction from the time you first noticed him at 60 yds in front of you until you came to a stop in front of the other car took place inside of 400 yards?
A. It was about ½ of a mile from the time I took chase, Sir.

Q. The whole thing took place inside of 400 yards?
A. 400 yds less 60, Sir.

Q. In what position was your car when you stopped in front of him?
A. Straight in front, Sir.

Q. The street by the bridge on Portsmouth is quite narrow?
A. Yes, Sir.

Q. There is a white line in the centre?
A. Yes, Sir, a centre line.

Q. Did the car have both its front wheels across that centre line?
A. I couldn't see if he had both front wheels on it. The left front wheel might have been about a foot from the left side of the line.

Q. This space in which this action took place would include the bridge on Portsmouth's road?
A. Yes, Sir.

Q. Were there any tps and people crossing the bridge into Portsmouth's Road?
A. I didn't see any, Sir. If there were it would cause the vehicle to go towards the centre line.

Q. When you came to the car you came to broad-side and blew your horn and Sgt Degrow waived them to the side?
A. Yes, Sir.

Q. You didn't have any trouble in passing the vehicle?
A. No, Sir.

Q. Had you seen a vehicle of this type the night previous to that?
A. Yes, Sir.

Q. Were you looking for it?
A. No, not at that time, Sir.

Q. Did you catch the vehicle that you were looking for the night before?
A. No, Sir.

Q. On leaving the police stn at Guildford you were talking in the stn wagon with regard about this vehicle the night before and you said at that time, "Had you not been looking for you would not have stopped them"?
A. I never said that, Sir.

Q. When you asked the accused for the work-ticket, did he intimate that it was in the scout car?
A. He came out of the vehicle and never said anything.

Q. Had you an idea at any time that the ticket was in the car?
A. I had no idea at all, Sir.

Q. Did you look in the car?
A. Yes, Sir, when we got to the police stn in Guildford. I looked through the car; I didn't see it and I did not go on looking for it as one of the soldiers in the car told me that the trip was not authorized.

Q. Would it have been possible to have had a ticket in the car and that you wouldn't have noticed it?
A. Yes, Sir.

Q. When you were in Guildford Police Stn, the accused was placed in a cell?
A. Yes, Sir.

Q. You wanted his Field Service Book?
A. Yes, Sir.

Q. Why was it necessary to get this service book from the accused?
A. I was taking down all the particulars for the four soldiers, Sir.

Q. Why did you have to help Sgt Degrow in getting the accused's service book?
A. I didn't, Sir.

Q. Were you in the cell with the accused?
A. No, Sir.

Q. You never saw anything in the cell?
A. No, Sir.

Q. When you asked the occupants of the scout car to come out, did they come out?
A. Two of them came out, Sir.

Q. When the accused was placed in the stn wagon the first time you opened the door?
A. Yes, Sir, the second time we attempted to him in.

Q. Sgt Robert fell on the floor?
A. Yes, Sir.

Q. Regarding the swearing, you claim you heard the words "bastard" and "zombies"?
A. Yes.

Q. Are you sure these words were addressed to you?
A. Yes, Sir.

Q. Have you heard of a tool called a bastard file?
A. No, Sir.

Q. Have you ever heard of a piece of eqpt that is called on account of its size, bastard size?
A. No, Sir.

RE/EXAMINED

Q. You said to the Def Offr that this took place in the space of 400 yds?
A. Yes, Sir.

Q. Did you see the vehicle sway before you took chase?
A. Yes, Sir.

Q. Where were you when you first saw the vehicle sway?
A. I was on High Street.

Q. How far from the canal and the bridge?
A. I was half way up High Street, Sir.

Q. How far after you rounded the corner at the foot of High Street did you follow the accused after you overtook him?
A. It was about 60 yds before the corner when I saw him.

Q. How far around the corner was it before you stopped him?
A. A little less than a quarter of a mile, Sir.

Q. Was there more than one sway?
A. I saw it sway just once, Sir.

QUESTIONS BY THE COURT

Q. When you said that you noticed the scout car swaying from side to side, did you mean that it crossed the whole road?
A. I can't say the whole road.
Q. If the left wheels of the scout car didn't cross to the right of the centre line, would the vehicle be swaying across the whole road?
A. I'd say yes, Sir.

Q. Did you search Sgt Robert when you got to the police stn?
A. No, Sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 53 (D).

THIRD WITNESS

B-137193 Cpl Lawson, J.R., No. 1 CASRU, sworn, states:-

PUBLIC OF THE COURT TO THE WITNESS

Q. Have you been charged in connection with driving in a scout car on the night of Apr 15?
A. Yes, Sir, and dealt with.

PROSECUTION

Q. Were you in a scout car on the night of Apr 15?
A. Yes, Sir.

Q. Do you recognize the accused?
A. Yes, Sir.

Q. Was there a work ticket authorizing this trip?
A. I don't know, Sir.

Q. Where were you going with the vehicle?
A. To East Grinstead?

Q. At what time did you leave camp?
A. At 1600 hrs.

Q. Where did you spend your time?
A. We went to East Grinstead and went into some pubs. Sgt Robert got a ring that he was after.

Q. How long were you in the first pub?
A. 1½ hours and we were in pubs all the time we were there.

CROSS-EXAMINED

Q. YOU were more or less a passenger in this scout car?
A. Yes, Sir.

Q. When the accused dropped you off at the pub, was he with you?
A. No, Sir.

Q. He didn't stay to drink with you at the pub?
A. No, Sir.

Q. You spent the biggest part of your time sleeping on the floor of the scout car?
A. Yes, Sir.

Q. Were you awakened up?
A. No, Sir.

Q. At any time?
A. Yes, at the Police Stn in Guildford when we got there.

Q. When you left the police stn, you left in a stn wagon?
A. No, Sir, in a Prov truck and we transferred to a stn wagon at Witley.

Q. During this trip did you hear any of the Prov Sgt saying that he had been looking for a vehicle of the same type that you were driving in?
A. At the Police Stn, Sir, I did. I heard one of the Prov Sgt say the reason why he had taken us to the police stn was that they had tried to stop a vehicle of the same type the night before and that they had failed.

Q. It was not for reckless driving?
A. No, Sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

FOURTH WITNESS

B-134681 Cpl Reid, G.W., No. 9 CDN PROV COY, sworn, states:-

PROS OF THE COURT TO THE WITNESS

Q. Have you been charged in connection with driving in a scout car on the night of 15 Apr?
A. Yes, Sir, and dealt with.

PROSECUTION

Q. On the night of 15 Apr 45 you were driving in an Army scout car?
A. Yes, Sir.

Q. What did you see when it was stopped by the Prov?
A. The Provost Sgt asked the accused for his work ticket; he said it was in the car so I started to look for the work ticket in the car; it was not under the seat and I couldn't find it.

Q. Did you see what happened when the Provost tried to put the accused under arrest?
A. They marched him along to the stn wagon, and I didn't see anything after that.

Q. You were the co-drvr in this vehicle?
A. Yes, Sir.

Q. When the stn wagon came up you didn't notice any scuffling?
A. No, Sir.

Q. You looked for the work ticket?
A. Yes, Sir, and then we saw the accused going towards the stn wagon.

Q. How long would it take you to do that?
A. A matter of seconds, Sir.

Q. Did youhear any swearing at the Provost?
A. No, Sir.

Q. Upon leaving the police stn did you ride with the Prov that had stopped you on the road?
A. Yes, Sir.

Q. Did you hear any conversation as to how andwhy they stopped your car that night?
A. Sgt Meyer said that the evening before he had seen that vehicle and had tried to catch it again.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

FIFTH WITNESS

PRES OF THE COURT TO THE WITNESS

Q. Have you been charged in connection with the trip that you made with the accused on the 15 Apr at night?
A. Yes, Sir, and dealt with.

B-139445 Tpr HOGG, A.N., 1 CACNU, sworn, states:-

Q. You were stopped by the Prov on the night of 15 Apr 45?
A. Yes, Sir.

Q. Did you hear the word "zombies" and how was it used?
A. I don't know.

Q. Did you see the accused being placed under arrest?
A. I saw a stout Prov Sgt pushing him in the stn wagon. He had a hold of him just in front of the vehicle.

Q. What was the accused doing?
A. Not much, Sir.

Q. How much of it did you see?
A. I didn't see very much. I saw them more or less grabbing with him right in front of the vehicle.

Q. Did you hear the Prov say he was under arrest?
A. Yes, Sir, I heard the word "arrest" being used.

Q. Where had you spent the last couple of hours?
A. We were returning from East Grinstead where we had stopped in a couple of pubs.

Q. You were in the tower of the scout car?
A. Yes, Sir.

Q. Approx how many miles had the dvr had made that night before reaching Guildford?
A. About 30 to 35 miles, Sir.

Q. You felt clear headed at the time?
A. Yes, Sir.

Q. You stooped down to wake up the lad that was sleeping on the floor?
A. Yes, Sir.

Q. During that period of time Sgt Robert left the car?
A. Yes,Sir, he was being escorted to the stn wagon.

Q. How long did it take you to wake up your friend?
A. 5 to 6 seconds, Sir.

Q. Did you hear the Prov make any statement regarding why you had been stopped that night upon leaving the Police Stn?
A. I heard one Prov Sgt saying that he had stopped us because a vehicle, I believe he intimated that it was the same vehicle that they had seen the night before, and that they had failed to stop.

Q. Did you thing that was the reason why you were stopped that night?
A. That is the way I took it, Sir.

Q. Did you have a work ticket?
A. No, Sir.

Q. Was there a work ticket?
A. Not as far as I knew, Sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SIXTH WITNESS

D-3805 SSM Emerson, S., 1 CACRU, sworn, states:-

Q. On the night of Apr 15 what was your employment?
A. I was acting as Gd Comd, "C" Sqn, Fd Trg Rgt, Sir.

Q. Did any vehcile leave the vehicle park without a park ticket that night?
A. ~~No~~, Sir.

Q. Was vehicle CF196225 one of the vehicles that you were guarding?
A. Yes, Sir.

Q. Was that vehicle in the park?
A. When I checked at 1645 hours, it was not there; it had been there earlier in the afternoon.

Q. Were vehicles permitted to be taken from that park without your permission?
A. No, Sir.

Q. Did you give permission?
A. No, Sir.

CROSS-EXAMINED

Q. You have one man on picquet duty there?
A. Yes, Sir.

Q. Would it be possible that he could be away from the vehicle line?
A. Yes, Sir.

Q. It would also be quite possible for a vehicle to leave the line without him noticing it?
A. Yes, Sir.

QUESTIONS BY THE COURT

Q. Is it required when a man is taking a vehicle with authority to report it anywhere?
A. I don't know if it is laid down but it is understood that way, Sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

PROS OFFR TO THE COURT

Capt Jamieson

The next witness is not in the summary but I have informed the Def Offr that I intend to have him.

PRES OF THE CT TO DEF OFFR

Q. Have you any objection?
A. No, Sir.

SEVENTH WITNESS

Capt D.A. JAMIESON, 3 CACRU, sworn, states:-

I was acting as Sqn Comd, "C" Sqn, Fd Trg Regt on 15 Apr 45. If a vehicle was to leave it would have to have my authority to leave the park.

Q. Did you sign any work ticket for a vehicle the No. of which is CF196225?
A. No, Sir.

Q. Did it belong to the sqn?
A. Yes, Sir.

CROSS-EXAMINED

Q. Would the vehicle guard accept a signature from the Sqn OC on a work ticket?
A. He would accept the major's; yes he would accept the signature of an officer.

Q. Is it possible that somebody else could have signed a work ticket?
A. Yes, Sir.

QUESTION BY THE COURT

Q. Was there any offr in the camp that day?
A. The duty offr, Sir, who does not have authority to sign work tickets.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

STATEMENT BY THE DEF OFFR ON THE FINDINGS

In regards to the 1st charge, I feel that the point has not been proven, that the vehicle was not driven in a reckless manner. It has not been proved that the dvr endangered any lives. Only one sway was noticed. On the 2nd charge, I don't think that the Pros Offr has proved that the vehicle was out without authority. Regarding the 3rd charge, the word "bastard" and "zombies" were used. Now again, it has not been proved that the words were used in an abusive or obscene way. This might have been one of the three not all of them. The word "bastard" may be used quite properly in many different ways... as a catch word which neither profane or obscene nor abusive. Regarding the 4th charge, Sir, it was brought out that after Sgt Debrow asked the accused for his work ticket, he thought that he had been called a "zombie, and that he grabbed him. It is quite normal; it is merely instinct to try and get released when you have no idea why you are grabbed. It is quite apparent that one sgt could have handled the accused. I think that the accused was manhandled. I don't think that anything has been proved against Sgt Robert.

PLEA IN MITIGATION OF SENTENCE

B-1 Sgt Robert joined the Cdn Army (Active) on 19 Nov 39. He joined the Toronto Scot Regt. On Dec 3 39, he came overseas with his regt. In Jun 40 he went into action with the same regt at Dunkirk. At that time, he was employed with the Recce Tp. After Dunkirk, he joined the 8 Cdn Recce Regt in Mar 41 and he has been with this unit up to the time of D-Day. He has spent 75 days in France with them since D-Day and was casualtied out. At this point, I'd like to bring out something about his severe reprimand in Jul 44. At that time, he was acting as Sec Sgt in a forward posn in France, for approx 2 weeks. He received his rep because he complained to the Tp Offr about not keeping contact in coming to the secs and seeing how his men were doing and getting along. When he came out of France he had injuries to his shoulders which were caused from being thrown from a motorcycle. On going to hospital, the accused was asked if he would mind letting the medical corps try a new form of treatment on him. He agreed to being used as a guinea-pig. He spent about four months in the hospital under treatment and during that time was paraded and put on show for other doctors to observe the reaction of his treatment xx and then was returned to 1 CACRU. While in France, he had received words from home by his mother that his family, his parents and his sisters, of which he has three, had been sick. During a short space of time two sisters had died and his father had died too. He applied for compassionate leave when he heard that. He also that his third sister had gone to the hospital and that there was not much hope for her.

His own hospitalization intervened and in coming back to CACNU was put on a light form of duty due to his cat, acting as permanent orderly sergeant. Now in the meantime, Sgt Robert, who has been 5½ years in England; who has been in France twice; he has had an excellent record; he has been a confirmed sgt for two years, his turn to go back to Canada came up three days ago. He would have left yesterday if it hadn't been for this CM. Now his turn will come up again in the near future but the sentence of this Court may interfere with that. I think Sir in that case that is all I have to say but to ask the Court once again to show all the mercy possible in this case.

OPENING ADDRESS

1st Charge Sec 40 - driving a veh in a reckless manner

A veh to be driven recklessly is one driven in a way in which e ther from the point of view of those in the vehicle or from those outside is being driven in a way without due care to the safetybof othersor their property. As to whether at any ne timea vehicle is being driven recklessly must be based on those who saw it from within ot watching the vehicle. In this case the prosecution will bring evidence of Provost Sgts, personnel trained in veh control and discipline in the army and within whose scope of duyt it was to watch for such things. There will be no evidence from those in the veh as to the rec less driving for reasons which will be pr duced.

2nd Charge Sec 40 driving a WD vehicle without prop r authority.

Evidence will be produced by the ## officer responsible for authorizing vehs in th s case that there was no authy and by the Provost that no ticket was produced, and by the personnel in the vehiccle, including one who specifically looked for it, that no ticket was produced at any time.

3rd Charge. Sec 40 - abusive, obscene and profane language

It is p inted out that languagein some circumstances may be abusiveand in others may not. In the case of a Sgt dealing with two Provost Sgts, suspected if not already accused of at leas one offence, would be one f those circumstances where words which by themselves have often been usedyet yet under #### such circumstan would be abusive. Other words are profane on the face f them used at any time. Evidence will be produced by the Prov st Sgts and by one of the members as to the use f s ch language. It is again noted that the reason that other members of the crew did not hear the same will be also brought out in the evidence.

page 59
MML

4th Charge. Sec 10(3) - resisting arrest.

When a manis susped d or resonably thought to ## have committe an offence it is the task ### Provost to to place him under arrest. A man resists when he physically , purposfullyattempts to prevent his arrest, whatever his m tive may have been. Evidence will be produced by the Provost, and by two of the crew that the accused actively and vigorously did so resist.

CLOSING ADDRESS

1st Charge -

On this charge we have the evidence of two Provost Sgts, trained in mov and veh control, out for the od checking veh discipline. The manner in which the veh was travelling was sufficient to draw their attention to it. Against that considered evidence of trained men experienced in this sort of thin , we have therather negative evidence that the other members of the crew did not see anything. It was brou ht out in evidence that a considerable period was spent in the Pub plus the fact thatone of the men despite all this goi g on actually never woke up till he got to the police station. Without going further into the c nditio of these ersonnel it is sug ested that p rhaps t ey were perfectly clear as t waht was said or done.

2nd Charge

On this charge there is no evidence of a work ticket ver having been in existence, any authority having been given, or even after a search b one ofthe crew

3rd Charge

The language used is of two types. The words Provost Bastards ar certainly abusive and profane on the face f them. As to the words " a couple of ZOMBIES" while it is true the expression has been much usedin newspapers and so forth yet this is one of these case where the words must be considered with the circumsta Here , used against the Prvost performing their duty it must be taken as a form of abuse and ridicule The evidence shwed that the Provost heard it and Tpr Hogg heard the word Zombie and nothing more. As stated before the reason why the others did not he is largely because the doubtful conditi n in which they w re together with the distance from the veh that a go d part of it took place

75

4th - Charge -

Here again we have the evidence of the Provost, of Tpr Hogg who saw them"hustling"the accused into the wagon Now hustling certa nly certainly implies a resistance on t the part of the accused. Now it is the duty of the Provost to apprehend the personnel breaking the law. Upon being told he was under arrest it was his duty to acc accede to their requ st, obey their instructions. Here the accused in addition to hurling profane language at the strenously objected and physically resisted to being escorted back to the station Whatever his motive may have been the fact is that he did resist and it is submitted that the proper functioning of law and discipline does not leave the choice as to how and when he should be placed un under arest up to the accused.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B-76331 Sgt ROBERTS, Robert James, a soldier of the Canadian Army Overseas, on the strength of No 1 Canadian Armoured Corps Reinforcement Unit.

THE COMMANDING OFFICER DIRECTS THAT ALL EVIDENCE BE TAKEN ON OATH

1st Witness for the Prosecution L-52212 Sgt MEYER, A.J., a soldier of the Canadian Army Overseas, on the strength of No 9 Provost Coy., having been duly sworn, states:-

"On the 15th day of April 45 I was on patrol check accompanied by Sgt Degrow of No 9 Provost Coy. I was proceeding down High St Guildford at 2250 hrs, when I observed a vehicle ahead of me being driven in a reckless manner, swaying from side to side. I gave chase and overtook him ¼ of a mile from Guildford on the Portsmouth road and halted him. After having halted I proceeded to the vehicle and asked the driver, who was Sgt Roberts, if I could see his work ticket. He said he had one, but he did not show it to me and came out of the vehicle. After he came out, I asked him again to produce his work ticket, he then said to a member of his vehicle that two "ZOMBIES" would like to see his work ticket. He was told by Sgt Degrow to quieten down; he then said I will not quieten down for you "PROVOST BASTARDS". He was then placed under close arrest by Sgt Degrow and ordered into our station wagon. He refused to get into our station wagon and Sgt Degrow then grabbed him and made an attempt to put him in. He did not get him in the first time. I then called the remainder of the personnel of Sgt Roberts' vehicle to leave their vehicle and get into our station wagon. There were two that came out and one remained inside. I then opened the door of our station wagon and Sgt Degrow forced Sgt Roberts into the station wagon. By doing so, Sgt Roberts fell to the floor of the station wagon. Sgt Degrow looked after Sgt Roberts and I told the following personnel of Sgt Roberts' vehicle: B-137193 Cpl Lawson, J.R., B-137445 Tpr Hogg, A.R., B-134681 Cpl Reid, G.W., to follow the station wagon to the Police Station."

The accused cross-examines this witness as follows:-

Q1 About this Zombie term, wasn't it "Come on you Zombies there's a couple of guys who want to see our work ticket."

A1 No.

Q2 Were we exceeding the speed limit?
A2 Definitely not.

Q3 Was it dark at the time?
A3 Yes.

Q4 How far away were you from us when you noticed our vehicle swaying?
A4 60 yards.
Q5 How far did you give chase?
A5 one quarter of a mile.

(L-55212 Sgt Meyer, A.J.)
No 9 Provost Coy.

2nd Witness for the Prosecution B-137193 Cpl LAWSON, J.R., a soldier of the Canadian Army Overseas on the strength of No 1 Canadian Armoured Corps Reinforcement Unit, having been duly sworn, states:-

"On the 15 Apr 45 I accompanied Sgt Roberts In a Humber Scout Car along with Tpr Hogg, A.R., and Cpl Reid G.W. I was asleep at the time the car was stopped by the Provost and did not

(Page two follows)

awaken until a Provost awoke me at the Police Station and told me to go inside."

The accused declines to cross-examine this witness.

J.R. Lawson

(B-137193 Cpl Lawson, J.R.)
No 1 C.A.C.R.U.

3rd Witness for the Prosecution — B-97637 Sgt DEGROW, M.C., a soldier of the Canadian Army Overseas, on the strength of No 9 Cdn Provost Coy, having been duly sworn, states:-

"On the 15th April 45 at approximately 2250 hrs, in company with Sgt Meyer of No 9 Cdn Provost Coy, while driving down High St, Guildford, Surrey, towards Portsmouth Road we noticed a Scout car being driven recklessly, weaving from side to side on the road. We gave chase and stopped the Scout car approx ½ of a mile along the Portsmouth road. The driver, who was Sgt Roberts was asked for his work ticket by Sgt Meyer. He failed to produce it, and got out of the vehicle. Sgt Meyer again asked him for his work ticket. Sgt Roberts, while speaking to some chap in the Scout car said, "A couple of Zombies out here want to see my work ticket". I told Sgt Roberts not to talk in that way and to be quiet. He replied, "I will not you Provost Bastard". I then placed Sgt Roberts under close arrest and ordered him to get into the waiting station wagon. He replied, "No, I won't get in." I tried to escort him by taking him by the arm to the wagon, he resisted and gave a struggle. At the wagon he put his right hand against the door frame and in the struggle got away from me. I again took hold of Sgt Roberts by the front of the tunic and pushed him backwards into the station wagon, the door being held open by Sgt Meyer. As Sgt Roberts lay in the station wagon on his back, he kicked me in the stomach. I held Sgt Roberts on the floor of the station wagon and we proceeded to Guildford Civil Police Station. From there he was escorted back to his own unit."

The accused cross-examines this witness as follows:-

Q1 Would you say both my front wheels crossed the centre white line?
A1 No.

Q2 How far were you away from us when you noticed us swaying?
A2 60 yards.

Q3 Are you sure I called you a Zombie?
A3 Yes.

Q4 Are you positive?
A4 Definitely.

Q5 Were you on the look-out for a Scout Car?
A5 No.

H.C. Degrow

(B 97637 Sgt Degrow, M.C.)
(No 9 Provost Coy)

4th Witness for the Prosecution — B-134681 Cpl Reid, G.W., a soldier of the Canadian Army Overseas, on the strength of No 1 Cdn Armd Corps Rft Unit, having been duly sworn, states:-

"On 15 Apr 45 at approx 2200 hrs we were stopped by a station wagon with two Provost Sgts in it. One of them asked for the

(Page three follows)

work ticket and Sgt Roberts got outside of the vehicle. Then he asked me to get the work ticket. I asked him where it was and he said under the seat. As I was looking under the seat, Sgt Roberts was put into the station wagon. The other Sgt asked if anyone could drive a vehicle. I said yes and drove to the Police Station at Guildford."

The accused cross-examines this witness as follows:-

Q1 Were you ordered out of the vehicle by the Provost?
A1 No

Q2 Did you hear me call the Provost Sgt a Zombie?
A2 No

Q3 Did you hear me say I would not show my work ticket to any "Provost Bastards"?
A3 No.

Q4 Did the Provost blow their horn to try and pass us?
A4 No. The only time I heard the horn was when they stopped us.

Q5 Would you say we were swaying from side to side on the road?
A5 No.

Q6 Did you hear me swearing at the Provost?
A6 No.

Q7 Did you hear any other conversation?
A7 No.

G W Reid

(B-134681 Cpl Reid, G.W.
No 1 C.A.C.R.U.

5th Witness for the Prosecution

B-137445 Tpr HOGG, A.R., a soldier of the Cdn Army Overseas, on the strength of No 1 Cdn Armd Corps Rft Unit, having been duly sworn, states:-

"On 15 Apr 45 at approx 2215 hrs we were stopped by two Provost Sgts in a station wagon just outside of Guildford. They asked Sgt Roberts for the work ticket and climbed out of the vehicle and asked Cpl Reid to look under the seat for it. I was, at the time, riding in the rear left hand seat of the vehicle with the hatch open and at the time of stopping, walked down to wake up Cpl Lawson without success. When I again looked up through the hatch, I saw Sgt Roberts being put into the station wagon by a Provost Sgt. The other Sgt asked us if any of us could drive the car, and Cpl Reid said he could. We followed the station wagon back to the Police Station."

Q1 Did you hear the horn of the station wagon blow as if trying to pass us?
A1 Definitely no.

Q2 Would you say we were zigzagging?
A2 No.

Q3 Did you hear me at any time swear at the Provost or call him a Zombie?
A3 I did not hear you swear at the Provost, but heard the word "Zombie" mentioned.

Q4 Did you hear any conversation in the station wagon on the way back to camp that suggested why the car was actually stopped?
A4 They intimated that the same car had been out the night before, and had been on the lookout for it.

(Page four follows)

Q5 Did you see me fighting with the Provost?
A5 Yes, but it was more of a shuffle than a fight.

Q6 Did you have your head up through the hatch until the vehicle was stopped by the Provost?
A6 Yes.

Q7 Did you see or hear the station wagon trying to pass you?
A7 No.

A.R. Hogg
(B-137445 Tpr Hogg, A.R.)
No 1 C.A.C.R.U.

6th Witness for the Prosecution — D-3805 SSM EMERSON S., a soldier of the Canadian Army Overseas, on the strength of No 1 Cdn Armd Corps Rft Unit, having been duly sworn, states:-

"On 15 Apr 45, I was acting as Guard Comd for "C" Sqn Fd Trg Regt. At approx 1645 hrs the guard reported to me that a Humber was missing which he had not seen leaving the vehicle lot. I reported this to Lieut Allan at approx 1715 hours."

The accused declines to cross-examine this witness.

S. Emmerson
(D-3805 SSM Emmerson, S.)
No 1 C.A.C.R.U.

7th Witness for the Prosecution — Lieut J.G. ALLAN, an officer of the Canadian Army Overseas, on the strength of No 1 Cdn Armd Corps Rft Unit, having been duly sworn, states:-

"On 15 Apr 45 I was Duty Officer for "C" Sqn of the Fd Trg Regt. While I was on duty at approximately 1715 hours, I was told by SSM Emmerson that a Humber Scout Car was missing from the lines. I reported to my 2 i/c ~~Lieut Gibbins~~ when he c. I contacted him at approx 2300 hours."

The accused declines to cross-examine this witness.

J.G. Allan Lt.
(J.G. Allan) Lieut.,
No 1 C.A.C.R.U.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given as evidence.

After the above caution, the accused elected to give evidence on Oath as follows:-

B-76331 Sgt ROBERTS, R.J., a soldier of the Canadian Army Overseas, on the strength of No 1 Cdn Armd Corps Rft Unit, having been duly sworn states:-

"On 15 Apr 45 at approx 2200 hrs I was proceeding down High St Guildford approaching the Canal Bridge. I observed troops crossing the road and slowed down to about approx 8 mph. On crossing the Bridge, I turned sharp left out on the Portsmouth Road. On hitting the Portsmouth road I proceeded about 50 yds when a station wagon with two Provost Sgts pulled up in front of me and waved for me to stop. Two Provost Sgts got out of the wagon and I climbed out of the car. Jumping off the right hand side of the road, one of the Provost came towards me and asked for my work ticket, which I thought might be under the seat. Walking around the front of the car I yelled into the right front hand port "Wake up you Zombies, there's a couple of guys who want to see our work ticket. Cpl Reid asked where it was and I said under the seat. With that one Provost Sgt Degrow grabbed me by the hair and said "Who the hell are you calling a Zombie", at the same time forcing me to the station wagon, knowing that they had not seen my work ticket; I not knowing what I was being put into the station wagon for, I resisted Sgt Degrow and asked him what was going on. He kept forcing me trying to open the door. The other Provost came back, opened the door, and they then threw me in. Falling on the floor of the car, Sgt Degrow jumped in on top of me and Sgt Meyer shut the door. I was taken to Guildford Police station and put into a cell where I remained for some time. On the way back to camp in the station wagon I heard Sgt Meyer say, "The only reason we stopped you guys tonight was that we saw this car out lastnight and were looking for it".

R.J. Roberts

(B-76331 Sgt Roberts, R.J.)
No 1 C.A.C.R.U.

The accused declines to call any witnesses for the defence.

I certify that the foregoing summary of Evidence consisting of five pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c) (d), (e), (f) and (g) have been complied with.

R.W. Mackie Capt

(R.W. MACKIE) Capt.,
Officer detailed to take
Summary of Evidence.

In the Field
24 Apr 45

ARMY FORM B 239 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-76331	Sgt	ROBERTS R.J.	No 1 CACRU

NOTE.—The Field Conduct Sheet is to be produced by Court with this statement but is not to be annexed to the proceedings. The numbers brought under each charge must agree with the number of Entries in the Field Conduct Sheet. Immediately being given for the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recorded special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 40 ..... 1 times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 17 July 44

Date of last entry in Field Conduct Sheet 17 July 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~3. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for ..... days in military custody, i.e., ... days in open arrest, ... days in close arrest; of which ..... days were spent in hospital.~~

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for 17 days in military custody, i.e., 12 days in open arrest, 5 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 33 yrs 11 months

6. The date of his attestation is 23 Nov 39

7. The service which the accused is allowed to reckon is 5 yrs 5 mos

8. The accused is in possession of† GVSM & Clasp

†State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of Sergeant	31 May 43
In the war substantive rank of	
In the acting rank of Sergeant	31 Aug 43

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*24072) W1.30721/5701 25,000 3/44 A.&E.W.,Ltd. Gp.679

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N I L		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 3rd day of May April 1942

J. M. Gillen Lt. A/Cy

No. B76331 Name Roberts, RJ. Sqn, Battery, or Company | Corps CAC | Date of enlistment 23 Nov 39 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/100 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17 Jul 44	Sgt	Nil	WOAS CONDUCT TO THE PREJUDICE causing a disturbance. AA Sec 40	Lieut. RGB Waylett	Severe Reprimand	22 July 44	Lt-Col B.M. Alway	

CERTIFIED TRUE COPY

[signature] [signature]

(P.F. KEIRSTEAD) Capt., Officer having custody of original document.
Adjutent,
No 1 C.A.C.R.U.

(PTO)

LIST OF WITNESSES

1st Witness — L-52212 Sgt Meyer, A.J. a soldier of the Canadian Army Overseas, on the strength of No 9 Cdn Provost Coy.

2nd Witness — B-137193 Cpl Lawson, J.R., a soldier of the Canadian Army Overseas, on the strength of No 1 Cdn Armd Corps Rft Unit. M.C.

3rd Witness — B-97637 Sgt Degrow, a soldier of the Cdn Army Overseas, on the strength of No 9 Cdn Provost Coy.

4th Witness — B-134681 Cpl Reid, G.W., a soldier of the Cdn Army Overseas, on the strength of No 9 Cdn Provost Coy.

5th Witness — B-137445 Tpr Hogg, A.R., a soldier of the Cdn Army Overseas, on the strength of No 1 Cdn Armd Corps Rft Unit.

6th Witness — D-3805 SSM Emerson, S., a soldier of the Cdn Army Overseas, on the strength of No 1 Cdn Armd Corps Rft Unit.

7th Witness — Lieut J.G. Allan, An officer of the Cdn Army Overseas, on the strength of No 1 Cdn Armd Corps Rft Unit.

SOLDIERS FRIEND

I, B-76331 Sgt Roberts, R.J. a soldier of the Cdn Army Overseas, on the strength of No 1 CACRU, do desire the services of an officer to defend me at my trial by Field-General Court Martial.

R.J. Roberts

(B-76331 Sgt Roberts, R.J.)

130 M.

Pte. ROBERTS, S.

O. H. M. S.

M. F. B. 270
1000M-12-40 (8668-69-70)
H.Q. 1772-39-67

130 M

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this TWENTY-FOURTH day of JULY 1942.

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Div, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer]~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~*[I am unable to appoint:~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~for the following reasons, namely:~~

* Omit if not applicable.

Proceedings Reviewed
[signature]
Reviewing Officer [illegible]
5 Aug 42

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	E.A.A. Doiron,	R 22e R

Members.

Rank.	Name.	Regiment.
Capt	L.A. Duplisea	Carlt & York R
Lieut	L.C. J. Benoit	R 22e R
Lieut	L.B. Groom	Carlt & York R

Waiting

*Signed [signature] Major-General

Commanding 1 Cdn Div

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F54886 Pte Roberts, S. West NSR	1st Charge Sec 18(4) A.A.	Guilty	Guilty Sixty days Detention Barracks Reduction	I confirm the finding & sentence of the Court. G.H. Stanley Maj. Gen. 1 Cdn Div
	Alternate Charge Sec 40 A. A.	Withdrawn by prosecution	Sixty days Detention Barracks Reduction	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— No

(Signed) G.H. Stanley Major-General (Signed) Eaddeiron Major
Commanding 1 Cdn Div *Convening Officer* (e) Royal 22e Regt *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Fifth day of August 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

* Omit if not applicable.

were duly sworn.

Signed this Fifth day of August 1942.

Eaddeiron Majr
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 782 M.M.L. 1929

I certify that ~~the~~ terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be undetained to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 14 day of August 1942.

G.H. Stanley Maj. Gen.
Confirming Officer, 1 Cdn Div

Promulgated and extracts taken in the case of F 54886 Pte Roberts, S.

(a) (Dated) 18 Aug 42 (Signed) Jos H Emmerson Lt
6/Adj Wpns NSR

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(84) Wt. 28092/1216 Pots 2/41 W. & Co., Ltd. Kp. 748-2

CHARGE SHEET

P.[illegible] Pte Roberts, E., West N.S.R., a soldier of the Canadian Army, Overseas, stationed in the Field, is charged with:-

1st CHARGE
Sec 24(1)
Army Act

When on Active Service, STEALING PUBLIC GOODS,

in that he,

In the Field, on 13 Jul 42, did steal from the combined cookhouse and storehouse of "A", "C" and "D" coys, West N.S.R., rations, namely 12½ pounds mutton and 4½ pounds beef, the same being public property.

ALTERNATIVE CHARGE
Sec 40
Army Act

When on Active Service, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

In the Field on 13 Jul 42 was improperly in possession of rations, namely, 12½ pounds mutton and 4½ pounds of beef, the same being public property.

In the Field
16 Jul 42

(G.A. Hebb), Major,
A/Comd. West N.S.R.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
24 Jul 42

(G.R. Pearkes) Major-General,
G.O.C., 1 Cdn Div.

E. Goodwin Major
President.

10

WEST NOVA SCOTIA REGIMENT

This is to certify that F 54886. Pte Roberts S.

of the West NSR, Gin Army (Overseas), has this day been examined by me, and found medically fit/~~unfit~~ to undergo trial by Court Martial.

Date Aug 5th 1942

Mrs

E. A. Dawson Major
President

J. M. Bourne Capt
Medical Officer
~~[illegible]~~ 5th Field Amb
RCAMC

5th August

F. 54886 Pte Roberts S.

+ J. R. Cameron
Rt I. H. Mac Intosh

Neil

No

First

Coadjutor Major
President

I wish to bring the attention of the Court that this soldier has been repeatedly committing petty offences. Technically speaking the accused did take good not belonging to him but such act was prompted by drunkness.
Realising that drunkness is not an excuse nevertheless the prompting factor in this case must appeal to the court for consideration.
Before this case came into Court I interviewed his company commander and C. S. M. - Both of them stated that the accused was an individual that when he was on the job was a good soldier but unfortunately frequently committed petty offences due to drunkeness.

D. J. R. Cameron

Pages 8 + 9

No

See page 7

Geo Wilson Major
President

SUMMARY of EVIDENCE

in the case of

Regt'l no. F-54886 Pte Roberts, S.,of the West Nova Scotia Regiment, a soldier of the Canadian Army (Overseas), stationed in the Field,

By Order of

Major J.A. Hebb, T/Comd
West Nova Scotia Regiment.

Evidence taken on Oath.

16 Jul 42.

First Witness for Prosecution. #F-43680 Pte LeBlanc, E.J., of the West N.S.R., having been duly sworn, states:-

I am and was at all times material hereto helper in the combined cookhouse of A, C,& D Coys. On the night of 13 Jul 42 I was on duty in the cookhouse. About 2300 hrs Pte Roberts, the accused, came in. He had been drinking. He talked with me for a minute then went out returning shortly with some meat, a front quarter of mutton with the ribs on it, and a little chunk of beef. He wanted me to roast the meat but I wouldn't do it for I didn't know where he had got it and he wouldn't tell me. The issue to our cookhouse that day had been beef and mutton, which had been placed in the shed near the cookhouse. Then Pte Skanes came in. Roberts took some stuff of the shelves and went outside. Skanes went after him, got the stuff and made Roberts bring it back. We put Roberts out and barred the door. He tried to get in and couldn't so he left the door, then we heard the crash of glass as a rock or brick was hurled through the window. Idid not see Roberts again but reported the matter to Sjt Lupton when he arrived. I cannot say if any of the tinned goods are still missing. The meat Roberts had was left on the table and turned over to Sjt Lupton.

The accused declines to cross-examine this witness.

E.J. LeBlanc

Second Witness for Prosecution. #F-43598 Pte Rhodenizer, H.C., of the West N.S.R., having been duly sworn, states:-

I am and was at all times material hereto a member of #18 Pln, "D" Coy, employed as fatigue man in A, C, &D Coys' cookhouse. Around 2300 hrs, 13 Jul Pte Roberts, the accused, came into the cookhouse. He had been drinking. He had a piece of meat, mutton, which he asked Pte LeBlanc to roast for him. He did not say where he had got this meat. We had to put him out and bar the door for he was causing a disturbance, just after that the window was broken.

The accused declines to cross-examine this witness.

H.C. Rhodenizer

Third Witness

Ed Dawson Major
President

Third Witness for Prosecution. #F- 54891 Pte Skanes, F., of the West N.S.R., having been duly sworn, states:-

I am and was at all times material hereto a Rifleman of "B" Coy. At about 2230 hrs, 13 Jul I was at my company grounds and I saw Pte Roberts, S., the accused, in a trench. He was drunk and he had an armful of some kind of meat. I talked to him for a few minutes and he started back to his tent, taking the meat with him. I can't say where he got this meat. After I left him I heard an argument around the cookhouse. I thought Roberts was up there and I wanted to keep him out of trouble so I went up. He was in the cookhouse and he was loading up with some stuff from the shelves. I told the cooks to do something about it but they just stood and watched. I got Roberts outside and took the stuff from him and took it back to the cookhouse. I then got Roberts back to his lines and put him to bed. I can't say who broke the window. I was inside and Roberts was outside at the time. The meat Roberts had was left in the cookhouse.

The accused declines to cross-examine this witness.

S.S. Ford Skanes

Fourth Witness for Prosecution. #F-39776 Sjt Lupton, W.B., of the West N.S.R., having been duly sworn, states:-

I am and was at all times material hereto Provost Sjt the West N.S.R. At app. 2300 hrs, 13 Jul 42, in answer to a complaint received I proceeded, in company with Sjt Freeman, to the combined cookhouse of A, C, & D Coys. On entering the cookhouse I received the complaint that a soldier had broken into the cookhouse with a dish of meat requesting that it be cooked for him, also a complaint that this same soldier had stolen some tinned food from the cookhouse. I investigated the complaint and as a result of my investigation I placed the accused, Pte Roberts, under arrest and had him put in the Unit guardroom. Pte LeBlanc identified the meat which Pte Roberts had as that on a table. I took possession of it and turned it over to the Orderly Officer at Bn Hq. The meat was given back to A, C, & D Coy cookhouse after investigations were completed where it was cooked and consumed to prevent wastage. The next morning in company with Sjt Potter and Pte Boutilier I went to the before-mentioned cookhouse. A checkup and weighing of the meat issued the day previous was made and it was found to be deficient over eleven pounds. The meat taken from the accused xxx was also xxxxxxxxxxx examined and found to correspond to the meat deficient in kind and weight. The tinned food the accused is alleged to have taken has not to my knowledge been recovered.

The accused declines to cross-examine this witness.

W.B. Lupton

Fifth Witness for Prosecution. #F-41613 Sjt Potter, V.R., of the West N.S.R., having been duly sworn, states:-

I am and was at all times material hereto Sjt Cook in charge of rations of the West N.S.R. I personally supervise the weighing and distribution of rations to the

Fifth Witness (cont'd)

Various cookhouses. On 13 Jul I issued two days rations to the combined cookhouse of A, B & D Coys. On the morning of the 14 Jul I was asked by the Adjutant if I could identify certain meat as the t which I had issued the previous day. I got My batman, Pte Scottilon, and we viewed the meat which was in the Orderly Room at Bn Hq. We both identified the meat as being the cutting of the previous day. We weighed the meat of which there were 12½ pounds mutton and 4½ pounds beef. We then checked the meat in A, B, D Coys cookhouse and found it to be short by 1½ pounds mutton and just weighed.

The accused declines to cross-examine this witness.

N. R. Potter.....

Sixth Witness for Prosecution.

Pte Scottilon, S.... of the West N.S.R., having been duly sworn, stated:-

I am and was at all times material hereto the batman of Lt [illegible] of the West N.S.R. I was detailed another beef to A, B & D Coys' cookhouse. On Tuesday morning I went with Lt Potter to the Bn Orderly Room to see if I could identify certain meat that was there. I found a front quarter of mutton which I recognized as New Zealand mutton corresponding to that which I had issued out. I can tell my own method of cutting, I had cut that piece. There was also a piece of beef. We weighed the meat and found 4½ pounds beef and 12½ pounds mutton. We checked at A, B & D Coys' cookhouse and weighed the mutton there and found it 1½ pounds less than issued. We couldn't weigh the beef as it had been cooked.

The accused declines to cross-examine this witness.

C. A. Scottilon.....

-- -- -- -- -- -- -- -- -- --

The accused having been duly warned in accordance with Rule of Procedure 4(e) elects to make a statement on oath.

Defence

4F-54886 Pte Roberts, S., of the West N.S.R., having been duly sworn, states:-

I am and was at all times material hereto a rifleman of #3 Pln "C" Coy, theWest N.S.R. I am the accused in this case. On 13 Jul 42, after supper, I dressed up and I went down the road to Washington Corner and entered the Pub where I started drinking. I don't remember coming out at all. I don't remember anything until next morning when I woke up and found myself in Hampton.

Roberts. S.....

-- -- -- -- -- -- -- -- --

Certified that R P 4(c),(d),(e),A(f) has been complied with.

Taken down in the presence and hearing of the accused in the Field this sixteenth day of July, A.D. 1942.

J. A. [illegible], Lieut.
Officer taking Summary of Evidence

Lt-Col Anderson Deputy President

No. F54886 Name ROBERTS, S. Sqn., Battery, or Company C Coy Corps West h S R. Date of enlistment 4/9/39 G.C. Badges 8 Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc | Character

MFM 6 APB 1221 Sheet 8-39 (17925) H.Q. 1777-45-18

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20/9/40	Pte	1	Woas. (1) Drunkenness. (2) Using obscene language to his Superior (3) Causing wilful damage to Public property	Sgt Lupton Hcpl Brown Pte Saccary	28 day Wetn pay damages. Admonished	23 Sept 40	A.G. Ernst	Major
Field	3/12/40	Pte	2	Woas (a) Conduct etc on 3 Dec 40 Consume liquor valued at £1-3-0 without permission of Owner Sir Hugh Dawson	Lieut S. Johnston	21 Day F.P. 500 fine Stoppages of Pay £1-3-0	8/1/41	A.G. Ernst	Major
Field	3/3/41	Pte		Woas - Failing to report in Camp at 22.30 hrs	Hcpl Hodges	3 day C.B.	7/3/41	A.G. Ernst	Major

(P.T.O.)

Place	Date of offence	Rank	Class of [illegible]	Offence	Name of Witnesses	Punishment awarded	Date of award or order [illegible]	By whom awarded	Remarks
Fried	28 Feb 41	Pte		W.O.A.S. (1) Awh from 1100 hrs 28/2/41 1300 hrs 28/1/41 (2) Failing to appear on Parade.	Cpl Perry	14 Day C.B. forfeits 1 day Pay	1/3/41	[illegible]	[illegible]
Holding Unit	27/6/41	Pte	3	W.O.A.S. Drunkenness & incapable	L/cpl Fraccum	Fined Hy 00	28/6/41	J. Coles	Capt.
Fried	5/6/42	Pte		W.O.A.S. Awh from 1230 hrs 5/6/42 until 23.30 hrs 5/6/42 hrs 1311	L/cpl [illegible]	7 day C.B. 1 day Pay	6/6/42	[illegible]	Capt.

Certified true copy
[illegible] Capt
[illegible]

F54886 Pt Roberts, S.

9

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED

(a) The accused has been in confinement awaiting trial on the present charges for ~~21~~ Nil days in Civil Custody and 21 days in Military Custody making a total of 21 days of which Nil days were spent in hospital.

(b) The present age of the accused according to his pay book is 28 yrs.

(c) The date of his attestation specified in his pay book is 4 Sept 39

(d) The accused is in possession of, or entitled to:

(i) No Military Decoration or Military Reward
or
(ii) Is in possession of or entitled to

Nil

I hereby certify that the foregoing particulars are true extracts from the PAY BOOK of the accused.

Cook Davison Major
President

[signature]
Capt & Govt
West Wash.

If I am to be tried by Court Martial on charges now pending against me I wish to have the undermentioned officer act in my behalf:-

Lieut I.H. MacIntosh
W.A.A.F.S.R.

Date - 21 Jul 42

Signature of Accused

333.144

SPR ROBERTS W

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-1560[illegible], Spr W.ROBERTS 1CBH

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A A 15(2)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

AU ~~present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for ninety (90) days.

(Sgd) ..... 3 Feb 44 (Sgd) F.D. Tweedie Lt Col

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and Sentence of the Court but mitigate the sentence to read "To undergo detention for sixty 60 days"

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) .....

Date 17 Feb 44 Commanding "B" Group Chiefs Unit Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

* Accused.	Date.	Signature of Offr.
7/2/44 [illegible] 32	17 Feb 44	[illegible] Capt.

D-1560[illegible] W Roberts ..... and OFFICER I/c RECORDS

ALL DELETIONS AND ALTERATIONS WILL BE INITIALED [illegible] C.A.

FIELD GENERAL COURT-MARTIAL

CPA/95 (1b Instr of AFA37) W.O.P.A.S./1808 (2804)

Convened by Order of F.D.Shields,Brigadier Comd "B" Gp-CBH dated 1 Feb.44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/ronk or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-1560[illegible]	Spr	William	ROBERTS	1 CBH

PROCEEDINGS REVIEWED [illegible] Capt. 16 Feb 44

REVIEWING OFFICER, JAG BRANCH [illegible] C.A.

PROCEEDINGS OF TRIAL.

Held in the Fd in (~~country~~) England on (date(s)) 3 Feb 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and inserts on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~&~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans. .....~~ ~~The Interpreter is sworn.~~(1) Do you object to Sgt.Rush, L.F. as shorthand writer? Ans. No The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt.-Col.	F.D. Tweedie	R.A. C.A.D.
Member	Capt.	N.R. Bain	1 C.B.B.U.
Member	Lieut.	D.F. McLean	1 C.B.B.U.
Judge-Advocate			
Prosecutor	Lieut.	J.M. Tedden	1 C.B.B.U.
Defending Offr	Lieut.	J.D. Siddons	1 C.B.B.U.

Questions by President: Is the Prosecutor a lawyer? Ans. No Is the Defending Offr a lawyer? Ans. No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~no~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and Finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *securing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No. (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

~~C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.~~(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: ~~Do you wish to apply for an adjournment on the ground that any of the rules~~ relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114. *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 112(*B*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using ~~Record Form E below~~.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copies~~ copy of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *AFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46. *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence(1). The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP* 76(*b*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1B), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, D.15604 Spr. Roberts, W., Royal Canadian Engineers, No. 1 Canadian Engineer Reinforcement Unit, a soldier of the Canadian Army (Overseas), is charged with:-

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

FIRST CHARGE

A.A. 15(1)

in the field, did absent himself without leave from 2200 hours 4 Dec 43 until 2200 hours 26 Jan 44. (Absent 55 days).

In the Field
26 Jan 44

(G.H. WHYTE)Colonel, R.C.E.,
Commanding Officer,
No. 1 Cdn. Engr. Reinf. Unit,
Canadian Army (Overseas).

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(P.R.Shields)Brigadier
Comd "B" Gp
Cdn Rft Units

1 Feb.44

FDT.

MEDICAL OFFICER'S CERTIFICATE

M.R. (Cap) PARA 557

I certify that I have this morning examined

No. D 15604 Spr. Roberts, W.

of No. 1 C.E.R.U. and in my opinion he

is fit ~~unfit~~ to undergo Trial by Court Martial.

Station Cove

Date 3 Feb. 1944

[signature]
Medical Officer.

[signature]

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/P&R/1697 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-15604	Spr		William	Roberts	L CERU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 1 Feb 44 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Must be named. RP 106.	Unit.
Lt-Col	F.D. Tweedie	HQ CRU

MEMBERS.

Rank.	Named or detailed. RP 106.	Unit.
A Captain	to be detailed by	1 C.D.R.U.
A Lieutenant	to be detailed by	1 C.S.R.U.

WAITING MEMBER.

Rank.	Named or detailed, if any. RP 106.	Unit.

JUDGE-ADVOCATE.

Rank.	Must be named, if any. RP 106.	Unit.

On Active Service in the Fd

in _____ (Country.) _____ (Signed personally. RP 105 fn 2.) P. R. Shields Brig (Rank.)

Date 1 Feb.44 Commanding "B" Gp-CRU (P.R.Shields)Brigadier Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

7 DT

1 CORPS GUARD ROOM

To D Coy A WING

SIG/ NO. RANK NAME

P 15604 PTE ROBERTSW

reported to the Guard Room at

2200 houre on the 26/1/44

He was sober, Properly

dressed

placed under

close arrest

B 5946 Lt Wells

Offr i/c Guard Room

X-X-X-

EXHIBIT - B

RECORD of the Declaration of a Court of Inquiry assembled at No.1.C.E.R.U. on the 29 x day of December 19 1943 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No. D-15604 Spr ROBERTS, W.

D E C L A R A T I O N

The Court declare that D-15604 Spr ROBERTS, W. illegally absented himself without leave from No.1.C.E.R.U. at 2200 hrs on the 4th day of Dec 19 43, that he is still so absent, and that on the 20 day of Dec 19 43 he was deficient, and that he is still deficient of the following articles to the value of $ 54.32 53.85 (75% of vocab rate. See list on reverse of this sheet)

Signed at No.1. C E R U this 29 day of December 19 43

J.B. Cummings Lt RCE PRESIDENT

E.P. Kerr Lt RCE MEMBER

E.J. Polthouse Lt RCE MEMBER

Signature of Commanding Officer (C.R. Whyte) Colo

Certified true copy

Signature of officer having custody original record

1 C. Eng. R.U.

SUB for MFB 375
S/165

Field General Court Martial of
D.15864 Spr. William ROBERTS, 1 C.R.U.
held on 3 Feb 44.

The accused pleaded guilty to charge sheet as read.

Plea of Mitigation by Defending Officer

Gentlemen of the Court. When I first spoke to the accused as his Defending Officer, almost his first words were "I don't mind the punishment, I expect that, but I want to find out what they intend to do with me, and whether I can get my nose fixed or not". We then went into his medical history, and I found that for some months he had been complaining of head pains, caused apparently by an old nose injury. Also a leg which was crushed when he was a boy, gave him considerable trouble. But, when he was supposed to have his nose operated upon, he was sent on a course. Consequently he still suffers from it. Apparently, while in 3rd Bn., a specialist had recommended an operation, but due to the course he missed it. He had been cooking for a year in 3rd Bn., without Trades Pay. He was proceeding on course, after a year of cooking (6 months of which he cooked for officers, and 6 for Sgts) in order to draw Trades Pay. He did not want to go because he knew he would most likely not get back to 3 Bn., which he badly wanted to. What worried him was the fact that his leg, after standing on it all day, bothered him considerably and he could get nothing done about it. However, he proceeded on Cooks Course, and came into C.R.U. where he was recommended for reboard. This did not materialize and having been handled in just the same desultory way several times before, he finally decided that attention might be drawn to his case. As I could find no particular facts to the case in the documents available here, I had him examined by specialists for both his nose and leg, and at the moment, he is undergoing treatment for his nose, and Xrays on his leg are being studied. It is a pity that such misunderstanding should prompt such an action. But his continued failure to obtain any treatment, after having served for a year drawing no trades pay, seemed rather poor treatment to him, and he took his own way out. It is up to you to decide how dearly he should pay for his foolish, if provoked and aggravated, mistake.

F.D.T.

RECORD of the Declaration of a Court of Inquiry assembled at No.1.C.E.R.U. on the 29 day of December 19 1943 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of

No. D-15604 Spr ROBERTS, W.

D E C L A R A T I O N

The Court declare that D-15604 Spr ROBERTS, W. illegally absented himself without leave from No.1.C.E.R.U. at 2200 hrs on the 4th day of Dec 19 43, that he is still so absent, and that on the 20 day of Dec 19 43 he was deficient, and that he is still deficient of the following articles to the value of $ 54.32 53.85 (75% of vocab rate. See list on reverse of this sheet)

Signed at No.1. C E R U this 29 day of December 19 43

J.B. Cummings Lt RCE PRESIDENT

H.P. Kerr Lt RCE MEMBER

R.J. Polthouski Lt RCE MEMBER

Signature of Commanding Officer (C.R. Whyte) Colo

Certified true copy

Signature of officer having custody original record 1 C. Eng. R.U.

SUB for MFB 375
S/165

KIT DEFICIENCIES OF D-15604 Spr ROBERTS, W.

			$	$
Anklets, web	prs	1	.77	.61
Badges, cap RCE		1	.09	.06
Badges, shoulder	prs	3	.15	.09
BD Blouses, serge		1	6.18	4.64
Trousers	prs	2	12.48	9.36
Boots, ankle	prs	2	9.62	7.22
Braces, dress	prs	1	.29	.22
Brasses, Button		1	.04	.03
Brushes, boot polishing		1	.17	.11
button		1	.15	.10
Cloth		1	.24	.18
Shaving		1	.30	.20
Tooth		1	.08	.05
Capt, comforter		1	.25	.17
Caps, f.s.		1	.82	.61
Combs, hair		1	.04	.03
Discs, identity		1	.01	.01
Drawers, woolen	prs	1	1.17	.88
Dressings, First Field		1	.24	.18
Forks, table		1	.09	.06
Gloves, woolen	prs	1	.59	.44
Holdalls		1	.17	.11
Housewife		1	.50	.37
Jacket Sweater		1	1.51	1.13
Knife, table		1	.18	.12
Denim blouse		1	2.85	2.13
Razors		1	.42	.33
Shirts, angola		1	2.05	1.54
Vests, woolen		1	1.11	0.86
Shoes, canvas	prs	1	.74	.55
Socks	prs	1	.37	.28
Spoon, table		1	.08	.05
Towels, hand		1	.21	.14
Capes, A/G		1	4.43	3.32
Respirator, Canister		1	1.60	1.20
Facepiece		1	2.60	1.95
Haversack		1	1.27	.95
Anti-dim		1	.03	.02
Ointment, A/G Boxes		2	.52	.38
Eyeshields, A/G	prs	6	1.04	.78
Nets, camouflage		1	.08	.05
Shorts, gym	prs	1	.43	.33
Vests, gym		1	.34	.25
Shorts cellu	prs	1	.46	.35
Brushes, hair		1	.24	.18
Bags, ration		1	.04	.03
Braces, w.s. left & right		1-1	.95	.71
Carriers, water bottle		1	.45	.34
Frogs, bayonet		1	.21	.16
Haversack, w.s.		1	2.14	1.61
Helmets, steel		1	2.39	1.79
Packs, w.s.		1	2.13	1.61
Slings, rifle		1	.24	.18
Straps, web supporting		2	.34	.26
Straps, shoulder		2	.90	.68
Sheets, ground		1	2.40	1.80
Bayonet, No.4. Mk 1		1	1.90	1.43
Scabbards, No.4 Mk.1.		1	.84	.63
			71.63	55.85
			100%	75%

ENTERED PART II ORDERS
DATE 12 Feb/44

Field General Court Martial of
D.15604 Spr. William ROBERTS, 1 C&RU
held on 3 Feb 44.

The accused pleaded guilty to charge sheet as read.

Plea of Mitigation by Defending Officer

Gentlemen of the Court. When I first spoke to the accused as his Defending Officer, almost his first words were "I don't mind the punishment, I expect that, but I want to find out what they intend to do with me, and whether I can get my nose fixed or not". We then went into his medical history, and I found that for some months he had been complaining of head pains, caused apparently by an old nose injury. Also a leg which was crushed when he was a boy, gave him considerable trouble. But, when he was supposed to have his nose operated upon, he was sent on a course. Consequently he still suffers from it. Apparently, while in 3rd Bn., a specialist had recommended an operation, but due to the course he missed it. He had been cooking for a year in 3rd Bn., without Trades Pay. He was proceeding on course, after a year of cooking (6 months of which he cooked for officers, and 6 for Sgts) in order to draw Trades Pay. He did not want to go because he knew he would most likely not get back to 3 Bn., which he badly wanted to. What worried him was the fact that his leg, after standing on it all day, bothered him considerably and he could get nothing done about it. However, he proceeded on Cooks Course, and came into C.L.R.U. where he was recommended for reboard. This did not materialise and having been handled in just the same desultary way several times before, he finally decided that attention might be drawn to his case. As I could find no particular facts to the case in the documents available here, I had him examined by specialists for both his nose and leg, and at the moment, he is undergoing treatment for his nose, and Xrays on his leg are being studied. It is a pity that such misunderstanding should prompt such an action. But his continued failure to obtain any treatment, after having served for a year drawing no trades pay, seemed rather poor treatment to him, and he took his own way out. It is up to you to decide how dearly he should pay for his foolish, if provoked and aggravated, mistake.

F.F.T.

(1)

SUMMARY OF EVIDENCE

Summary of evidence in the case of D.19604 Spr. Roberts, W., Royal Canadian Engineers, No. 1 Canadian Engineer Reinforcement Unit, a soldier of the Canadian Army (Overseas).

By direction of the commanding officer, the summary of evidence is taken under oath.

Documentary Evidence for the prosecution

Documentary certificate of surrender No. 1 Canadian Engineer Reinforcement Unit Guard Room, marked Exhibit "A".

Declaration of the Court of Inquiry held at No. 1 Canadian Engineer Reinforcement Unit, 29 Dec 43, marked Exhibit "B".

First Witness for the prosecution

B.5946 Spr. (A/L/Sgt.) Wilde, J., Royal Canadian Engineers, No. 1 Canadian Engineer Reinforcement Unit, having been duly sworn, states:-

I am B.5946 A/L/Sgt. Wilde, J., M.C.O. i/c Upper Guard Room of No. 1 Canadian Engineer Reinforcement Unit. D.19604 Spr. Roberts, W., voluntarily surrendered himself to me at the Upper Guard Room at 2200 hours 26 Jan 44. He was sober and properly dressed. I immediately placed him under close arrest.

B5946 A/L/Sgt. Wilde J.

Signature of Witness

The accused declines to cross-examine the witness.

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence.

Ex A
pol

I certify that the foregoing summary of evidence, consisting of two pages, was taken down by me in the presence and hearing of the accused and that the rules of procedure 4(C)(D)(E)(F) and (G) have been complied with.

(J.M. PADDEN) Lieut., R.C.E.,
Officer taking the summary of evidence.

701

STATEMENT BY THE ACCUSED

"I, D.19604 Spr. Roberts,W. of No. 1 C.E.R.U., wish to have Lieut. J.D. Simmons to represent me at my trial.

W M Roberts

D.19604 Spr. Roberts,W.

701.

LIST OF WITNESSES

List of witnesses in the case of D.1960 Spr. Roberts,W. on the strength of No. 1 C.E.R.U., a soldier of the Canadian Army (Overseas).

For the Prosecution:

(1) B.5946 Spr. (A/L/Sgt.)Wilde,J. of No. 1 C.E.R.U.

For the Defence:

Nil

LIST OF EXHIBITS

Exhibit 'A' - Certificate of Surrender to No. 1 C.E.R.U: Guard Room

Exhibit 'B' - Declaration of Court of Inquiry

29 January 1944

I have received from Lieut. J.M. Paddon one charge sheet and one copy of Summary of Evidence in the case of D.15604 Spr. Roberts, W. of No. 1 C.E.M.U.

Wm Roberts

M.F.M. 6
(A.F. B.122)
40/P & /8138 (2065)

No. D15604 Name ROBERTS, W. Sqn., Battery, or Company Corps R.C.E. Date of enlistment 27 Jun 41 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 4 Nov 41 (REG'L) No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. AE Chalmers Maj Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 14 Dec 43 Last Entry 4 Nov 41 Nil cases of drunkenness. AE Chalmers					1stsix months service.
Field	26 Jan 42	Spr		AA Sec 40 Refusing to obey an order given by his superior officer.	Sgt. Dore, G. ~~XXXXXXXXXX~~	Severely Reprimanded	26 Jan42	G.J.Cote Lieut.	
Field	15 Apr 42	Spr		AA Sec 15 AWL 4 days 21 hrs 45 min.	Spr. Labine	10 days summary forfeiture	21 Apr 42	Lieut. Lefvbre of	5 days forf. pay. FR&I 149 (1)(a)
Field	20 May 43	Spr.		AA Sec 15(1) AWL 23 hrs 45 mins	Cpl Ross Capt Michaud	Admonished	21 May 43	Lt.Col. GW Smith of	1 days forf. pay. FR&I 149(1)(a)

P.T.O.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31 Aug 43	Pte		AA Sec 15(1) AWL 6 days 1 hr 50 mins.	Documentary L/C.Miller,S. Sgt.Skilnick, M.	14 days detention	7 Sep 43	Col. G.W. Little	Forf 7 days pay FR&I 149 (1)(a)

CERTIFIED TRUE COPY:

Officer having the custody of the original document.

M.F.B. 355
2234—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-15604	Spr.	ROBERTS, W.	No. 1 C.E.R.U.

1. The following is a fair and true summary of the entries in the ~~(Service and General)~~ ~~(Regimental and Squadron, Battery)~~ ~~(Conduct sheets)~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~(Air Force Act)~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. 15(1)	two times	A.A. 15(1)	three times
For	Nil	times	A.A. 40	one times
For	Nil	times	Nil	times
For	Nil	times	Nil	times

~~(Number of instances of gallantry or distinguished conduct)~~

~~(or)~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~(or)~~

~~(Previous convictions of the accused by a court-martial or a civil court, of summary awards under)~~ ~~(A.A. 78)~~ ~~(Air Force Act)~~ ~~(Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule)~~ ~~(annexed to this statement)~~

3. The accused is not under sentence at the present time.

~~(or)~~

~~(The accused at the present time is under sentence for ..... beginning on the ..... day of .....)~~

4. The accused has been in confinement awaiting trial on the present charges, for ..... days in civil custody, and ..... days in military custody, making a total of ..... days in custody, of which ..... days were spent in hospital.

~~(Air Force)~~

5. The present age of the accused according to his ~~(record of service is)~~ Service and Casualty Form is 325/12 years ~~(attestation paper is)~~

6. The date of his ~~(commission)~~ attestation specified in his ~~(record of service is)~~ Service and Casualty Form is 27 Jun 41 ~~(attestation paper)~~

7. The service which the accused is allowed to reckon towards discharge is 2 5/12 years

8. The accused is entitled to reckon 2 5/12 ~~yrs~~ ~~Force~~ for the purpose of determining his pension, etc.

9. The accused is ~~(in possession of or)~~ entitled to ~~(no air force)~~ military decoration, or ~~(air force)~~ military reward ~~(or is in possession of or entitled to)~~ State any ~~(air force)~~ military decoration or reward. Cdn. Voluntary Service Medal and Clasp

10. ~~(If the accused is a warrant officer) The accused before he was made a warrant officer last held~~ ~~(Air Force)~~ ~~(the regimental rank of)~~

M.F.H. 355
225M—5-41 (572-5)
H.Q. 1772-39-620
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-15604	Spr.	ROBERTS,W.	No. 1 C.E.R.U.

1. The following is a fair and true summary of the entries in the (Service and Pay Book) (~~Regimental and Squadron, Battery~~) (~~Conduct sheets~~) of the accused, exclusive of convictions by a Court-Martial or a Civil Court, (~~the Force Act~~) of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.A. 15(1)	two	times	A.A. 15(1)	three times
For Nil		times	A.A. 40	one times
For Nil		times	Nil	times
For Nil		times	Nil	times

(~~Number, nature and dates of gallantry or distinguished conduct~~) (or) Nil.

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted (~~by a court-martial or in the last year of summary awards under (~~Air Force Act~~) (~~Section 47 of the Army Act, and dispensations duly made under it, or is not subject to discipline~~) (~~cannot be discovered~~)~~).

3. The accused is not under sentence at the present time. (or)

(~~The accused at the present time is undergoing sentence of ... beginning on the ... day of ...~~)

4. The accused has been in confinement awaiting trial on the present charges, for (~~days in~~) civil custody, and ..... days in military custody, making a total of ..... days in custody, of which ..... days were spent in hospital.

5. The present age of the accused according to his (~~record of service~~) Service and Casualty Form is 325/12 years (~~according to papers~~)

6. The date of his (~~enlistment~~) attestation specified in his (~~record of service~~) Service and Casualty Form is 27 Jun 41 (~~appointment~~)

7. The service which the accused is allowed to reckon towards discharge is 2 5/12 years

8. The accused is entitled to reckon 2 5/12 yrs service for the purpose of determining his pension, etc.

9. The accused is (~~in possession of~~) entitled to (~~the~~) military decoration, or (~~the~~) military reward (~~in possession of or entitled to~~). State any (~~in force~~) military decoration or reward. Cdn. Voluntary Service Medal and Clasp

10. (~~If the accused was a warrant officer—The accused is (or has been) a commissioned officer (Air Force—(the regiment) (corps)—)~~)

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force

unit

dated , and in his regiment (or corps), the rank of

dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number D-15604 Rank Spr. Unit

Name ROBERTS, W. of No. 1 C.E.R.U.

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which arrested	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3rd day of February 1944

1 C. Engr. R.U.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

4A-65

Pete Roberts W.P.A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A 67800 Pte Wilfred Archie Allen ROBERTS Nth NS Highrs - 4 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which NIL days were spent in hospital. (1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To undergo detention for a period of ~~Dix~~ Sixty (60) days.

(Sgd) ..... 9 Oct/44 ..... (Sgd) ..... President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pb 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) .....

Date 10 Oct 44

Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A 67800 Pte Wilfred Archie Allen ROBERTS	DO 259 dated 13 Oct 44 11 Oct 44	A. J. Geisler Lt. (A.J. Geisler) Lt., Asst Adj, 4 Cdn Inf Bde Unit.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 31 OCT 1944 JAG BRANCH O.M.H.Q.

RECORDED AT CMHQ IN AD 160 4465

FIELD GENERAL COURT-MARTIAL

CPA66 (To lieu of AFA81) 40/1/AG D/1698 16(44) 4/388

Convened by Order of Brigadier J.E.Ganong, ED Comd HQ "D" Gp CRU dated 7 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 67800	Pte	Wilfred Archie Allen	ROBERTS	Nth NS Highrs 4 CIRU

PROCEEDINGS REVIEWED BY

J.C. Campbell Major
23 Oct 44
REVIEWING OFFICER, JAG BRANCH, O.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 9 Oct '44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (if) attached thereto. (1) The Court is satisfied that it is properly convened and constituted (2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence. (2)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 46, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial. (1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter?~~ Ans .....
The Interpreter is sworn. (1) Do you object to SGT STRUTTON, JM as shorthand writer? Ans NO
The shorthand writer is sworn. (1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused. (1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO, SIR
(1. RP 110. 2. If no objection, waiting member retires. RP 68(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn. (1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L. PATTON	HQ, CRU
Member	Capt	G.W.S. MCINTOSH	4 CIRU
Member	Lt	R. DUNCAN	4 CIRU
~~Judge Advocate~~			
Prosecutor	Lt	C.R. WILSON	4 CIRU
Defending Offr	Lt	G.L. PALMER	4 CIRU

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans ~~NO~~ YES (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused ..... before arraignment make(s) (no) (a) plea (3)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP fn 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately on)~~ all charges in the charge sheet. (1) The accused does ~~(do)~~ not object to any charge. (2) There is no amendment to be made to the Charge Sheet. (3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103: *duty of Prosecutor see RP* 60(*A*) (ii); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92: *swearing and withdrawal of witnesses from Court see RP* 81, 82: *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85: *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116: *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6: *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO, SIR. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) to ..... charge(s). Part 1 of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF AF5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. TO GIVE evidence and call char wit. NOTES-AIT
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(*1. MFB 333 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. By 12 months NOTE-AIT (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, A 67800 Private Wilfred Archie Allen ROBERTS, North Nova Scotia Highlanders, on the strength of No 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHILE ON ACTIVE SERVICE, Absenting himself without leave,

Section 15(1) Army Act — in that he,

In the Field, absented himself without leave from 0900 hours 6 September 1944 until surrendering himself to the Civil Police at 1215 hours 30 September 1944 at Coventry, thereby incurring costs of apprehension and returning him to his Unit in the amount of £1:6:6. Total Absence 24 days, 3 hours, 15 minutes.

(J.B. Weir) Colonel,
Commanding Officer,
4 Cdn Inf Rft Unit.

IN THE FIELD
5 Oct 44.

To be tried by Field General Court Martial.

(J.E. Lanong) Brigadier
Commanding
"p" Group, Cdn Rft Units

In the Field
7 Oct 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 67600	Pte		Wilfred Archie Allen	ROBERTS	Nth NS Highrs 4 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 7 Oct 44 endorsed by me, (~~or upon oath by my staff for me~~), " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint an Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt.-Col	D.L. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
1 Captain	to be detailed by Commanding Officer	1 CARU
1 Lieutenant	to be detailed by Commanding Officer	2 CARU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.) (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Dat 7 Oct 44 Commanding HQ "D" Group, Cdn Art Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Medical Officer's Certificate. 4C/25
K.R. (Can.), para 557.

I certify that I have this morning examined No A.67800 ... Tel ...

P.L. Roberts W.A. ..... of ... 4 C.I.R.U. .....

and in my opinion, he is ... fit ..... to undergo trial by Court Martial.

Station Field .....

Date 9-10-44 ..... (Sgd.) J.D. Thompson Capt ....
(Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3, para 27, d/6 Jan 42)

Pleasing Mitigation

Sir Pte Wilfred Archie Allen Roberts the accused has proven himself to be a very good soldier in action. On Jun 9th he was recommended by the adjutant of the North Nova Scotia Regt. to be mentioned in despatches. He was told this in the presence of Major Kennedy and Sgt. Major Bishop both of the North Nova Scotia Regt. Also he was wounded on 2 occasions while in action and was evacuated to a hospital in England.

As has been testified by Sgt Roberts R.J. this accused has been a good soldier while he served with his unit.

Unfortunately Maj. Lieutenant of the North Nova Scotia Regt is not available as a character witness in this case although the accused was anxious that he gives evidence in this case.

E-3 MM

The accused is very desirous to return to his unit in France and if I may say so, sir, I am sure that this man who has distinguished himself before should be given the opportunity to return to action. He has proven the a credit and help to his comrades when it is most needed

CASE OF

A.67806 Pte ROBERTS W.R., 4 CIRU

STATEMENT BY ACCUSED
(UNDER OATH)

On the evening of 9 Jun this year I was recommended, Sir, by the Adjt of the North NS Highrs to be mentioned in despatches for a deed which I did that day and Maj Kennedy came over and congratulated me and said he was glad I had not let him down. Prior to going AWL I was in hospital after coming back from France where I was wounded twice.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

CHARACTER WITNESS

F.5016 SJT ALLEN, RJ, 4 CIRU, having been duly sworn, states

I've known the accused since he came to me in Jun 44 and he was with me in my pln until a week from D-Day. During the time he was with me I would say he was a very good soldier, attended all parades promptly and did everything he was told to do and never was AWL. I wasn't with him in France but I've heard reports on him that he was doing a good job there.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

PLEA IN MITIGATION
(NOTE ATT)

E-1
My

SUMMARY OF EVIDENCE

Summary of Evidence in the case of A 67800 Private Wilfred Archie Allan ROBERTS, North Nova Scotia Highlanders, on the strength of No 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By Direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS

For the Prosecution

Lt A.J. Geisler, Canadian Infantry Corps, on the strength of No 4 Canadian Infantry Reinforcement Unit, an Officer of the Canadian Army Overseas, having been duly sworn, states:

I am Lt A.J. Geisler, and am Assistant Adjutant, 4 Cdn Inf Rft Unit. I present herewith, marked Exhibit "A", Certified True Extract from 4 C.I.R.U. Part II Daily Order No 250 dated 3 October, 1944, which shows that A 67800 Pte Roberts, W.A.A., the accused, whom I now recognize, absented himself without leave from 0900 hours 6 September, 1944. I present, marked Exhibit "B", A.F. O.1617, purporting to be signed by Sgt F.E. Blakemore, Coventry City Police, which shows that the accused surrendered himself at Coventry at 1215 hours, 30 September 1944. I present, marked Exhibit "C", Expense Voucher, CMHQ 1000:55 which shows the expenses incurred in apprehending and returning the accused to his Unit, in the amount of £1:6:6.

A J Geisler Lt
(A.J. Geisler) Lt.

The accused declines to cross-examine this witness.

The accused was cautioned as follows: Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or given evidence, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence, consisting of ONE page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

E T Stewart
(E.T. Stewart) Capt.
Officer Detailed to Take Summary.

IN THE FIELD
5 October 44

EXA

LIST OF WITNESSES

The following is a list of Witnesses in the case of A 67800 Private Wilfred Archie Allan ROBERTS, North Nova Scotia Highlanders, on the strength of No 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

WITNESSES FOR THE DEFENCE

N I L

WITNESSES FOR THE PROSECUTION

1.	Lt A.J. Geisler	Canadian Infantry Corps, 4 Cdn Inf Rft Unit.

LIST OF EXHIBITS

The following is a list of Exhibits in the case of A 67800 Private Wilfred Archie Allan ROBERTS, North Nova Scotia Highlanders, on the strength of No 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

Exhibit "A"	Certified True Extract from 4 C.I.R.U. Part II Daily Order No 250 dated 3 Oct 44, which shows that A 67800 Pte Roberts, W.A.A. absented himself without leave from 0900 hours 6 Sep 44.
Exhibit "B"	A.F. O.1617, purporting to be signed by Sgt F.E. Blakemore, Coventry City Police, which shows that the accused surrendered himself at Coventry at 1215 hours, 30 Sep 44.
Exhibit "C"	Expense Voucher, CMHQ 1000:55, which shows the expenses incurred in apprehending and returning the accused to his Unit, in the amount of £1:6:6.

M.F.B. 355
22M—5-41 (872-0)
H.Q. 1772-99-620
A.F.B. 396

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A 67600	Pte	Roberts, W.A.A.	4 C.I.R.U.

1. The following is a fair and true summary of the entries in the ~~Service and General Regimental and Squadron, Battery~~ ~~Conduct sheets or~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	A.A. Sec 15(1) 1 times	A.A. Sec 15(1) 2 times
~~For~~	~~times~~	~~times~~
~~For~~	~~times~~	~~times~~
~~For~~	~~times~~	~~times~~

~~Number of instances of gallantry or distinguished conduct~~

~~or.~~

~~There are no entries in the conduct sheets of the accused.~~

~~Note.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~

2. ~~The accused has not been previously convicted~~

~~or.~~

Previous convictions of the accused by a court-martial or a civil court, ~~Air Force Act~~ ~~A.F.A. 73~~ summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and ~~Air Force~~ 9 days in military custody, making a total of 9 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is ~~attestation paper is~~ 27

6. The date of his ~~commission~~ attestation specified in his record of service is ~~attestation paper~~ 20 Mar 42

7. ~~The service which the accused is allowed to reckon towards discharge~~

8. ~~The accused is entitled to reckon~~ ~~service for the purpose of determining his pension, etc.~~

9. ~~The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward.~~ ~~military~~ ~~military~~ ~~military~~

10. ~~(If the accused is a warrant officer.)~~ The accused before he was made a warrant officer last held ~~Air Force~~ ~~the regimental rank of~~

EX B
RM

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the~~ ~~Permanent Force~~ ~~unit~~ ~~dated~~ ~~and in his regiment (or corps), the rank of~~ ~~dated~~

~~12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—~~

~~Date of promotion~~

~~In the rank of~~ ~~years~~

~~In the rank of~~ ~~years~~

~~In the rank of~~ ~~years~~

~~NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.~~

SCHEDULE

~~Air Force~~

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number Rank Unit Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	27 Aug 43 In the Field	A.A. Sec 15(1)	7 months detention and to repay cost of apprehension £1-12-2	70 days

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 9. Oct 44 day of A. J. Gesler Lt A/Adjt Officer having Custody of Regimental Books

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

No. A-67800 Name ROBERTS W. A. Sqn, Battery, or Company "A" Corps N. N. S. H. Date of enlistment GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/PAS/128 (5419)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	21-5-43	Pte.		AA SEC. 15(1) WOAS A.W.L. FROM 2200 HRS 21-5-43 UNTIL 1315 HRS 20-8-43 (TOTAL ABSENCE 90 DAYS 15 HRS 15 MIN)		7 MONTHS LET. FORFEITS 245 DAYS PAY + COST OF APP. $1-12-2	27-8-43	F.G.C.M.	GRANTED 10 DAYS REMISSION WITH PAY.
Field.	18-4-44	Pte.		AA SEC. 15(1) WOAS. A.W.L. (TWO DAYS 30 MIN.)		FORFEITS 3 DAYS PAY	8-5-44	FIELD.	

CERTIFIED TRUE COPY COMPILED FROM M.F.M.A.

Certified True Copy
A J Gaisler Lt
Officer Having Custody of Regimental Books

(P70)

Ex A

LAST ORDER
NO 249
2 OCT 44

NO 4 Canadian INFANTRY REINFORCEMENT UNIT
PART 11 DAILY ORDERS
Issued By

THIS ORDER
NO 280
3 OCT 44

A/COL J.B. WEIR, CBE, ED, COMMANDER

Page 5, Para 16 (x) ABSENT WITHOUT LEAVE:

AWL from 0900 hrs 6 Sept 44
A 67800 Pte ROBERTS, W.A.A. NNSH

Certified true extract of above Part 11 Order.

Officer having custody of original record.

Ex B
157

I CERTIFY that the man whose personal description is given below surrendered himself to* H.12. Upton at Aldershot at (hour) 12.15pm on the 30 day of September 1944 as being No. A. 6/500 (Rank and Name) Pte ROBERTS. W. AA. a deserter (or absentee without leave) from Aldershot. and it appears to me from his confession that he is a deserter or absentee without leave.

*After the word "to" to be inserted the name and rank of the police officer concerned.

Age 24 Height 5 Feet 4 Inches
Complexion Fresh Hair Black.
Eyes Green
Marks —
In uniform or plain clothes Uniform.

Probable Date and Place of Attestation	
Probable Date of Desertion or beginning of absence, and from what place	6 Sept 1944. Aldershot.

F. E. Lakemore Sgt
Signature of Officer of Police in charge of

30 SEP 1944
FOLKESTONE STATION

Station.

30.9.44 Date of Signature.

Army Form O 1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies *only* in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds

incurred by the ..... Police in the case

of No. .....

who surrendered to the Police at ..... on .....

Payable to .....

CERTIFIED that this statement of expenses is correct.

..... Superintendent or Officer in charge of Police Station at .....

..... Date of Signature.

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

---

* Stations of Units and Depots are shown in the Monthly Army List.

† NOTE.—Special instructions apply in war for the disposal of absentees and deserters from the Army, who surrender to the civil police; *e.g.*, such personnel will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops at the nearest military station. (A.C.I. 489/1940).

[illegible] Wt.45207/53 25,000 12/43 A & E.W.Ltd. Gp.698
[illegible] Wt.55969/1571 12,000 3/44 " " Forms/O.1617/15

Expense Voucher Re—: Ref: K.R. & O. (Can) 539 Ex C

Reg. No. A67800 Rank Pte Name Roberts, W.A. Unit 4 C I B O

The following expenses were incurred in apprehending and returning the M/N Soldier ~~to his Unit From~~ London from Coventry

Date	Particulars		Amount		
10 Oct 44	Escorts return fare from LONDON To	Coventry		14	5
	Prisoners single fare to LONDON From	Coventry		7	3
	Prisoners fare from	To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			4	10
		Total £	1	6	6

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] CAPT.

R. E. BIRCH, Capt.
ADMIN. OFFICER—D.P.M's BR.
C.M.H.Q.

Officer Issuing Railway Warrant and Expense Voucher
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/P & S/482(2287)

This is to certify that I have received one copy of each of the following documents:

Charge Sheet
Summary of Evidence
List of Witnesses
List of Exhibits

W. A. A. Roberts

(A 67800 Pte Roberts, W.A.A.)

#4 CANADIAN INFANTRY REINFORCEMENT UNIT, C.A.(C). 40/24

5 Oct 1944

I, No. A 67800 (Rank) Pte Roberts, W.A.A. (Name), wish to have an Officer defend me at my forthcoming trial by Court Martial.

I desire the services of Lt. Calkin if he is available.

(Sgd.) W. A. A. Roberts
(A 67800 Pte Roberts, W.A.A.)

OO-148
PTE ROBERTS W.A.A.

A-67800 Pte. ROBERTS, Wilfred, Archie, Allan,
Canadian Infantry Corps,
7 Cdn Infantry Reinforcement Unit.

00-148

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this twenty-seventh day of August, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ EWH

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* ~~[I am unable to appoint :—~~

~~*(1. Three Officers to form the Court.)~~ EWH

~~*(2. A Field Officer as President.)~~

~~for the following reasons, namely :—]~~

Proceedings Reviewed

E W Hadden Brig Cmdr

2 Oct 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	A. S. Pettapiece	H.Q. C.R.U.

Members.

Rank.	Name.	Regiment.
A Captain	to be detailed by C.O.	1 C.I.R.U.
A Lieutenant	to be detailed by C.O.	1 C.I.R.U.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed EWHadden Brigadier.

Commanding "D" Group, Cdn Rft Units.

Convening Officer.

Arthur S. Pettapiece Major

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
	First Charge ---------- A.A. Sec.15(1)	Guilty	Guilty Sentenced to undergo detention for a period of seven (7) months and to be put under stoppages of pay until he has made good the sum of £1-12-2 in respect of the costs of his apprehension and return. 27 Aug 43.	Confirmed 28 Aug 43 C W Haldenby Brig
A-67800 Pte. ROBERTS, Wilfred, Archie, Allan. Cdn Inf Corps, 7 C.I.R.U.	See Charge Sheet Attached.			

~~*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—~~
~~"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"~~
~~Answer (to be recorded on separate sheet if necessary):—~~

(Signed) C W Haldenby Brigadier (Signed) Arthur S. Pettapiece Major

Commanding "D" Group, C.R.U. President.
Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 27th day of August 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. ~~The witnesses~~
*~~(3. The Interpreter)~~
*~~(4. The officers under instruction)~~

were duly sworn.

*Omit if not applicable.

Signed this 27th day of August 1943.

Arthur S. Pettapiece Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 28 day of Aug 1943

C W Haldenby Brig
Confirming Officer.

Promulgated and extracts taken in the case of A67800 Pte W A.A. Roberts

(a) (Dated) 29 Aug 1943 (Signed) C H Prat Lt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(52066) Wt.28300/411 60,000 12/42 A.E.R.W.Ltd. Cp.498

CHARGE SHEET

The accused No. A 67800 Private Wilfred Archie Allen ROBERTS, Canadian Infantry Corps, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, on Active Service, is charged with:

FIRST CHARGE
SEC 15(1)
ARMY ACT

Absenting himself without leave, when on Active Service,
in that he,

at Camp 49A, Ewshott, Hants absented himself without leave from 2200 hrs 21 May 43 until apprehended by Corps of Military Police in Nottingham at 1315 hrs 20 Aug 43, thereby incurring a cost of apprehension in the amount of £1:12:2.

Total absence - 90 days, 15 hrs., 15 mins.

In the Field
24 Aug 43.

(J.R. Calkin) Colonel
Commander
7 Cdn Inf Rft Unit

To be tried by Field General Court Martial.

In the Field
26 Aug 43.

(E.W. Haldenby) Brigadier
Commander
"D" Group, Cdn. Rft. Units

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No. A 67800 Private, (Rank)
Roberts, W.A.A. (Name)
of 7 Cdn Inf Rft Unit and in my opinion he is fit to undergo
~~unfit~~
trial by Court Martial.

Station: In the Field

Date:--- 27 August 1943

Sgd. [signature] Capt.
(Medical Officer) 7 Cdn.Inf.Rft.Unit.

[signature] Maj'r

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT Commons Barracks, Aldershot, Hants.
ON THE 27th DAY OF August 1943

The accused A678.00 Pte Robert O.A.A. Unit 7 C.R.U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Maj. S. S. Pettapiece Unit H.Q.C.R.U.
Members Capt. J. C. Newlands Unit 1 C.R.U.
Lt. H. A. McClelland Unit 1 C.R.U.

~~The officers under instruction are duly sworn:-~~ AHP

~~Unit.~~ AHP

~~Unit.~~ AHP

Prosecutor Lt. G. W. Kham Unit 7 C.R.U.
Defending Officer Lt. H. R. Neish Unit 7 C.R.U.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge~~(s)~~ and R.P. 35(B) is complied with. AHP
The accused does not desire to make a statement in reference to the charge~~(s)~~. R.P. 37(B). AHP
The Summary of Evidence is read.
The Prosecutor produces MFD 355, ~~AFB 296~~ and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment. AHP
~~(b) Calls witnesses in character.~~
~~(c) Calls witnesses in mitigation of punishment.~~ AHP
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, ~~CHARACTER EVIDENCE and~~ ADDRESS OF ~~ACCUSED OR~~ HIS DEFENDING OFFICER. AHP AHP

attached hereto.

Arthur S. Pettapiece
Major

SUMMARY OF EVIDENCE

In the case of No. A 67800 Private Wilfred Archie Allan ROBERTS, Canadian Infantry Corps, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

Lt. G.W. Rahm, Cdn Inf Corps, on the strength of 7 Cdn Inf Rft Unit, having been sworn states:

I am Lt. G.W. Rahm, Cdn Inf Corps, on the strength of 7 Cdn Inf Rft Unit. I produce certified true copy of the Declaration of a Court of Inquiry M.F.B. 375 which relates to the accused, this document is marked exhibit "A". I also produce certificate in accordance with Army Act, Sec 163 (I)(jj) which relates to the accused, this document is marked exhibit "B". I also produce certificate of cost of apprehension C.M.H.Q. 1000:55 which relates to the accused, this document is marked exhibit "C". The above evidence relates to A 67800 Pte. Roberts, W.A.A. whom I now recognize.

Rahm ----------Lt.

(The accused declines to cross examine this witness)

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence, consisting of ONE page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with.

Rahm ----------Lt.
(Officer taking Summary)

In the Field
24 Aug 43.

Arthur S. Pettapiece
Major

Exhibit "A"

RECORD of the Declaration of a Court of Inquiry assembled [redacted] In the Field

on the 14 day of June 1943

for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No. A 67800 Pte. Roberts, W.A.A., Cdn Inf Corps 7 Cdn Inf Rft Unit

DECLARATION

The Court declare, that No. A67800 Pte. Roberts, W.A.A., Cdn Inf Corps 7 Cdn Inf Rft Unit illegally absented himself without leave from Camp 49A at 2200 hours on the 21 day of May 1943 and that on the 14th day of June 1943 he was deficient, and that he is still so deficient of the following articles to the value of £5:5:4½.

Article	Vocabulary Price £	S.	D.	Appraised Price £.	S.	D.
Battle Dress Blouse	1	7	8	1	0	9
Battle Dress Trousers	1	7	11	1	0	11½
Boots Ankle	1	1	6		16	1½
Brushes Boot Blakening			8			6
Combs Hair			2			1½
Fork			5			4
Holdall			9			7
Razor		1	10½		1	5
Shirt flannel khaki		9	2		6	10½
Vest Gym		1	6		1	1½
Belt Waist		4	4		3	3
Braces left		2	2½		1	8
Haversack		9	7		7	2½
Sheets Ground		10	9		8	½
Cape Anti-Gas		19	10		14	10
Veil Face		2	1		1	7
TOTAL £	7	0	5	£ 5	5	4½

Names of President and Members:

Lieut. A.J.W. Dwyer - West N.S.R.-7CIRU- President
G 18084 CSM Fogg, J.A.- Carlt & York R -7CIRU-Member

Signature of Commanding Officer J.R. Calkin - COL

Certified true copy [signature]
Signature of Officer having custody of original record.
(C.M.G. Arthurs) Capt & Adjt. - 7 C.I.R.U.

Exhibit "B"

Certificate in accordance with Army Act, Sect. 1[illegible] (1) (11) (and A.C.I. 1739 of 1941).

I certify that No. A-67800 Rank PRIVATE

Name ROBERTS W.A.A. Unit NORTH NOVA SCOTIA HIGHLANDERS, CANADIAN ARMY, ENGLAND

was arrested at NOTTINGHAM at 13:15 20th Aug. 1943 date

and at the time of his arrest he was wearing military uniform.

Signature of Provost Marshal, A.P.M., D.A.P.M., or other Officer into whose custody the above-named person was taken on arrest.

W. G. Bureton Lieut

CAPTAIN,

GARRISON ADJUTANT, NOTTINGHAM

Place.....

Date.....

CRP

Exhibit "C"

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. A67800 Rank Pte Name Roberts, W.A. Unit 7 C I R U

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Nottingham

Date	Particulars	Amount		
22 Aug 53	Escorts return fare from LONDON To Nottingham		19	0
	Prisoners single fare to LONDON From Nottingham		9	6
	Prisoners fare from To			
	Escorts ~~& Prisoners~~ expenses for ~~Bed~~, Meals, Bus fares		3	8
	Total £	1	12	2

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

CAPT
W. FERNI D.A.P.M.
LONDON AREA

C.M.H.Q. 1000:55
40/P & S/483(3287)

1/ (4 SHEETS) Aug. 26, 1943.

Statement in Defence of A67800 Pte. Roberts, W.A.A. – (Plea for Mitigation)

To Whom it May Concern:

I, A67800 Pte. W.A.A. Roberts, absented myself without leave from Camp 49A, on May 21st, 1943, for a period of 90 days, 15 hrs, 15 minutes, and I hereby give the following reason for my action:

On April 29, 1941, I met in Sarnia, Ontario, the girl who is now my wife, and who now lives with her parents in Soco, British Columbia.

On Sept. 3, 1941 we were married in Park & St. United Parsonage and looked forward to a long life of happiness, because were deeply in love and that love has grown until to-day, even though we are separated, our love is strong enough to carry us through.

On the night of Sept. 5, 1941, we attempted to practice relations, but we could not because Florence was hurt very badly – a circumstance about which I was completely ignorant. We sought medical advice and I was informed by a Dr. Gray of Sarnia that my wife had at some previous date suffered an injury to that part of the body which made sexual relationship inadvisable, if not entirely impossible. The question Florence at great length, but could get no information.

However, on October 10, 1941, we were successful, and through that relationship, my wife became pregnant. Previous to that date, I did not actually experience relations with Florence nor have I since that date.

During the period of pregnancy, my wife was attended by Dr. Harry Livingstone of Listowel Ontario, where my wife went to reside with my Mother & Father, as I was in the Army.

CHP

2

On July 13, 1942 Florence gave birth to a boy in the Victoria Memorial Hospital, but she will carry the terrible memory of that experience as long as she lives, and my son, Philip, is marked for life with a scar on the side of his head.

For weeks after, Florence suffered terribly and she often expressed the wish that she could die, rather than live and endure constant pain. Dr. Livingstone warned me that if we ever again attempted intercourse, that Florence would positively not survive the ordeal. Finally, after I pleaded with Florence to tell me about the injury she had received she told me the following story.

My wife, formerly Miss Florence Rudolph of Ioco, B.C. was born at Blackpool, England on Dec. 13, 1914. In 1916, she, accompanied by her parents came to Canada and moved to Ioco, B.C. where her father obtained work with the Imperial Oil Co. Ltd.

In June, 1934, at the age of 19, Florence and her Mother returned to England for a visit with relatives. In July, the same year, she met a man named Gilbert Mitchell, a distant cousin who was 24 years of age. They became engaged, with the understanding that Mitchell would come to Canada and there they were to be married, for a reason that Florence did not make quite clear to me, the engagement was broken in November 1934, and Florence and her Mother returned to Canada in December, the same year.

3/ From that time, until Florence moved from British Columbia, to Ontario in 1941, her mother was very strict, never allowing her to have any boy friends, or to go anywhere without her consent (or in some cases without being accompanied). Florence grew tired of this strict supervision and in March 1941, came to Sarnia, Ont. to live with a cousin, Mr Ross McAfee. She was then 26 years old.

Even though I love my wife very dearly, and believe in her, the one thing that stuck in my mind was the thought that she was hiding some part of her experience while in England in 1934, probably because she thought it was for my benefit. As time went on, I became firmly convinced that that terrible ordeal was caused by someone in England during her visit - probably Gallant Mitchell. When I arrived in England on March 18, 1943, I intended to find the cause of the trouble if possible. In the weeks that followed my arrival at No. 4 C.I.R.U., I suffered terribly mentally and locating Mitchell or some of his relations became an obsession until on May 21, I could stand it no longer. I even thought that my problem was too personal and fantastic to seek the help of someone in the Army who would probably help me — hence the absence without leave

4 I have travelled a good many miles, and visited many people by the name of Mitchell, until, when I visited a Mrs. Watson at Felling-on-Tyne, - Newcastle, I found out that Gilbert Mitchell was, as far as she knew, in the forces, somewhere abroad. (Mrs. Watson is an Aunt of my wife)

But I am now firmly convinced that the anguish my wife received was caused by Mitchell, and if I could only find that to be true, my wife could possibly be cured. - otherwise, (if I am lucky enough to go home again), I will be married to a girl who is injured for life, because she will never divulge the terrible secret to any living person - therefore the cause of her trouble will not be known.

I ask the Court to take into consideration the fact that I have been under a severe mental anxiety and it was only the love for my dear Wife and Son that prompted me to such an action against the regulations of the Army.

Gentlemen, I like the Army, and nobody is more proud to wear the Canadian uniform than I am, and all I ask is that the Court will grant me leniency, in view of the

27 Aug 43

Plea for Mitigation.
In the Case of
A67800 - Pte ROBERTS, W.A.A:

On 15 Jan 43, this man was reverted from Cpl to Pte. Five week later he was made a Sgt. That in itself as proof of this man's ability as a soldier.

As has already been explained by the accused, in his plea, his reasons for going absent were purely personal and it can be quite easily seen from his remarks that his mind was completely upset at the time of his going absent. He was suffering from a form of mental anxiety which was driving him crazy. He could, at the time of his going absent, see no alternative but to go and find out the circumstances surrounding his wifes illness.

This man has absolutely no grievances against the army. On the contrary he is a natural soldier. On the strength of the foregoing remarks, both by the accused, and myself, I ask the Court to go very lightly on the accused, when deciding on ~~their~~ his sentence, and by so doing keep the accused from becoming bitter against the army.

D. W. MacT. Neish
Lieut.

AAP

Witnesses in the case of A 67800 Pte Roberts W.A.A.

FOR THE PROSECUTION

Lt. G.W. Rahm, C.I.C. - 7 C.I.R.U.

FOR THE DEFENCE

NIL

4

I have travelled a good many miles, and visited many people by the name of Mitchell, until, when I visited a Mrs. Watson at Felling-on-Tyne, Newcastle, I found out that Gilbert Mitchell was, as far as she knew, in the forces, somewhere abroad. (Mrs. Watson is an Aunt of my wife)

But I am now firmly convinced that the injury my wife received was caused by Mitchell, and if I could only find that to be true, my wife could possibly be cured. — otherwise, (if I am lucky enough to go home again), I will be married to a girl who is injured for life, because she will never divulge the terrible secret to any living person — therefore the cause of her trouble will not be known.

I ask the Court to take into consideration the fact that I have been under a severe mental anxiety and it was only the love for my dear Wife and Son, that prompted me to seek an action against the regulations of the Army.

Gentlemen, I like the Army, and nobody is more proud to wear the Canadian uniform than I am, and all I ask is that the Court will grant me leniency, in view of the

story I have written. I swear the story to be true, and definite proof can be acquired if necessary.

I remain Sir,
your Obedient Servant
Pte. W. aa Roberts

27 Aug 43

Plea for Mitigation.
In the Case of
A67800 - Pte ROBERTS, W.A.A:

On 15 Jan 43, this man was reverted from Cpl to Pte. Five week later he was made a Sgt. That in itself is proof of this man's ability as a soldier.

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This man has absolutely no grievance against the army. On the contrary he is a natural soldier. On the strength of the foregoing remarks, both by the accused, and myself, I ask the Court to give very lightly on the accused, when deciding on his sentence, and by so doing keep the accused from becoming bitter against the army.

D. MacG. Meikle
Lieut.

Witnesses in the case of A 67800 Pte Roberts W.A.A.

FOR THE PROSECUTION

Lt. G.W. Rahm, C.I.C. - 7 C.I.R.U.

FOR THE DEFENCE

NIL

1. I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Leipzic Barracks, preliminary to my court-martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

Dated at
this 25 day of
August 1943

.....
(W.A.A. Roberts)

2. I hereby acknowledge that I have been served with a true copy of an additional Summary of Evidence taken at Leipzic Barracks, preliminary to my Court-Martial.

Dated at
this _____day of
_____194

.....

3. I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of _____
if he is available.

Dated at
this 25 day of
August 1943

.....
(W.A.A. Roberts)

No. 67800 Name Roberts, Wilfred Archie Allen | Sqn., Battery, or Company | Corps No 1 D.D. (A.F.) | Date of enlistment 20-3-42 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /S136 (2965)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature G.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Opperwach	7-12-42	Cpl		Absenting himself without leave in that he at Camp Opperwach absented himself without leave from 1200 hrs 1 Dec 42 until 1330 hrs 14 Dec 42. Total 7 days 1 hr 30 min A.A. 15 (1)	Cpl Wilson Dgt Stewart (Doc'ty)	Forfeits 7 days pay AA 46-2-D	16-12-42	E.M. Ansell Lt Col	JOP 8 days 149 1 (A)
Camp Opperwach	4-1-43	Cpl		AWL from 2359 hrs 4-1-43 to 1645 5-1-43. Total 16 hrs 46 min A.A. 15 (1)	Pte Krueger (Doc'ty)	Severely Reprimanded	6-1-43	E.M. Ansell Lt Col	Forf 1 day pay JRO 149 1 (A)
Camp Opperwach	15-1-43	Cpl		AWL from 2200 hrs 16-1-43 to 0600 hrs 18-1-43 Total 1 day 8 hrs A.A. Sec 15 (1)	Cpl Retzler	Reverted to the Rank of Pte	18-1-43	E.M. Ansell Lt Col	Forf 2 days pay JRO 149 1 (A)

Certified True Copy Officer having custody of original document.

(C.M.G. Arthurs) Capt & Adjt. - 7 CIRU (P.T.O.)

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A 67800	Private	ROBERTS, W.A.A.	C.I.C. - 7 CIRU

1. The following is a fair and true summary of the entries in the Regimental ~~Service and General~~ ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets of~~ the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act ~~Air Force Act~~ and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. Sec 15 (1)	3 times	A.A. Sec 15(1)	3 times
For		times		times
For		times		times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

~~or,~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or,~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act Air Force Act and dispensations with trial under A.A. 73 A.F.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time

~~or,~~

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for N/L days in civil custody, and 7 days in military Air Force custody, making a total of 7 days in custody, of which N/L days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 26 years

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 20 March 1942

7. The service which the accused is allowed to reckon towards discharge is 1 year 146 days

8. The accused is entitled to reckon 1 year 146 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~(or is in possession of or entitled to). State any air force decoration or reward.~~

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

Permanent Force
unit

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number A67800 Rank Private Name ROBERTS, W.A.A. of C.I.C.- 7 C.I.R.U. ~~Regiment~~ Unit

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27th day of Aug. 43 [signature] Asst Adjt 7 C.I.R.U.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

[signature], Major

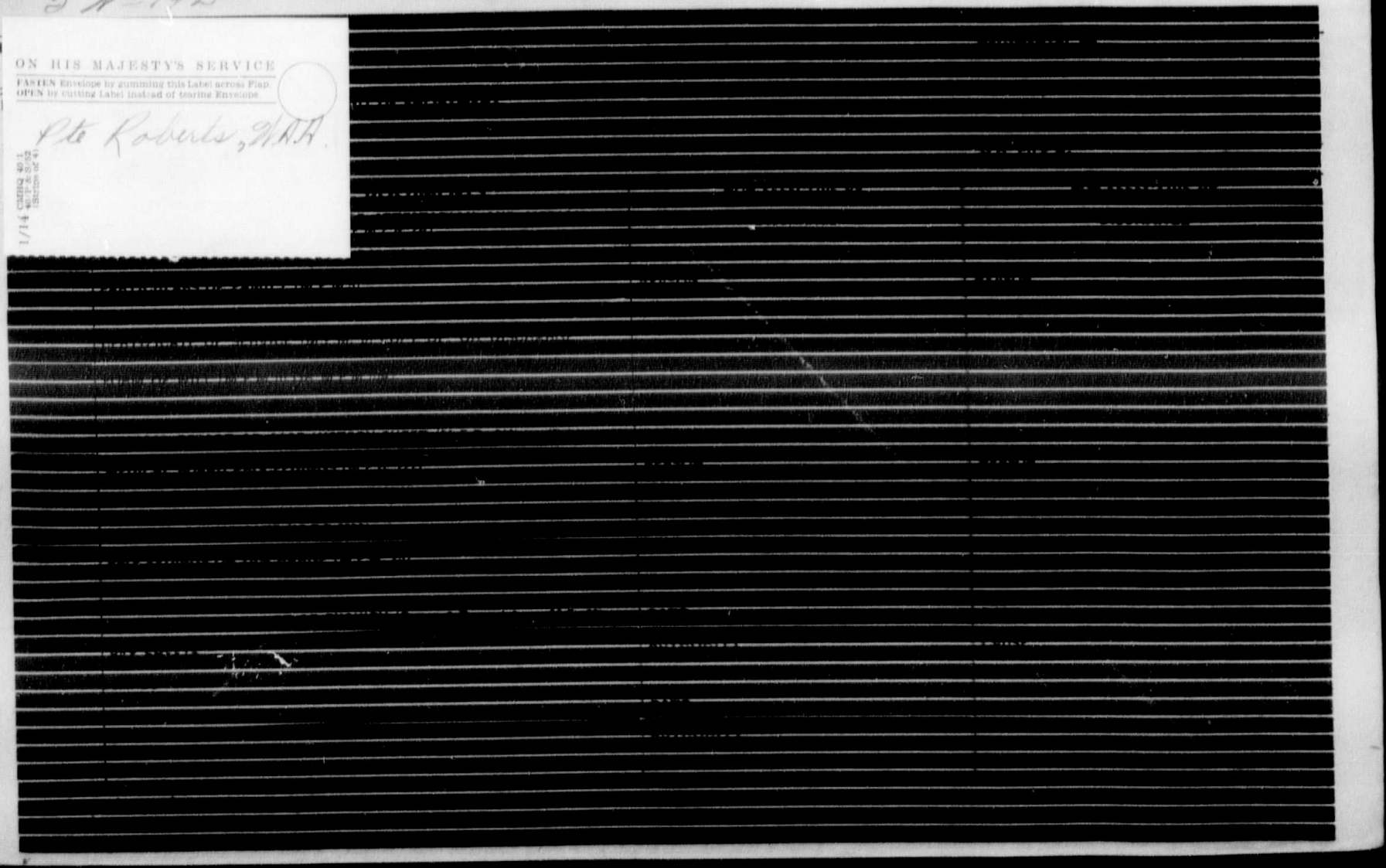
5 W-142

ON HIS MAJESTY'S SERVICE

FASTEN Envelope by gumming this Label across Flap.
OPEN by cutting Label instead of tearing Envelope.

Pte Roberts, W.A.A.

1/14 CMHQ 40.1
40/P & S/52
(Strips of 4)



SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : A 67800 Pte Wilfred Archie Allan ROBERTS

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec 15(1)AA	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 55 days, of which 63 days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To forfeit all ordinary Pay for a period of twenty Four (24) days.

(Sgd) Judge-Advocate, if any. 6 DEC 45 Date awarded. (Sgd) President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : KR Con 573. Duties and powers of reviewing offrs : AA 57, promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (~~1. AA 57A. Delete if not used.~~)

(Sgd) Comd

Date DEC - 8 1945 Commanding A Group CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A67800 Pte Roberts, W.A.A.	12 Dec 45	Cdg Unit Records

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 27 DEC 1945 HQ RAAF O.M.S.

RECORDED AT CMHQ IN AB 156 B 5-24-142

CPA96 (To lieu of AFA81) 40/3 & 80/1098 (6/44) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Col K S Bjorn Comd A Gp CRU dated 30 Nov 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 67800	Pte	Wilfred Archie Allan	ROBERTS	1 CGRU

PROCEEDINGS REVIEWED

28 Dec 45 K Brodrick

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 6 DEC 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (~~s~~) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2); accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1430 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to~~ as interpreter ? Ans

~~The Interpreter is sworn.~~(1) Do you object to MAJOR COL RIMSTAD as shorthand writer ? Ans NO SIR.

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	LT-COL	D.L. REDMAN VD	HQ CRU
Member	CAPT	H.R.E. TUPPER	1 CGRU
Member	LIEUT	G.A. BOOTH	1 CGRU
~~Judge-Advocate~~			
Prosecutor	LIEUT	H.E. HOGAN	1 CGRU
Defending Offr	LIEUT	C.B. GRAY	1 CGRU

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) (~~s~~) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 25(A), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) ~~separately~~ arraigned on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)*

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused : Do you wish to make a statement ? Ans. N-I-L-R [5]
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement~~ (1) The Court decides (not) to advise accused to change his (their) plea(s) of ~~Guilty~~ to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ~~A~~, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF ARS. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Yes Husband NOT-ATT
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ~~A~~ and Ex ~~C~~ respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Big D 14 Months NOT-ATT (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, A67800 Pte Wilfred Archie Allan ROBERTS, C.I.C., on the strength of No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE

WHEN ON ACTIVE SERVICE

SECTION 15 (1)

ARMY ACT

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, absented himself without leave from 2359 hrs 16 May 45 until apprehended by the Canadian Provost Corps in Binstead on the 9th day of September, 1945, at 0815 hrs.

Absent: ~~114~~ 115 days, 8 hrs, 16 mins.

Comd. No. 1 Canadian General Reinforcement Unit
Canadian Army Overseas

Field

17 Oct 45

To be Tried by Field General Court Martial

30 Nov 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 67800	Pte		Wilfred Archie Allan	ROBERTS	1 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (date) 30 Nov 45 endorsed by me, ~~[illegible]~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[illegible]~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. [illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~[illegible]~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Must be named. RP 106.	Unit.
Lt Col	D.L.Redman,ED	HQ CRU

MEMBERS.

Rank.	Named or detailed. RP 106.	Unit.
A Capt	to be detailed by CO 1 CGRU	
A Lt	to be detailed by CO 1 CGRU	

~~[illegible]~~

Rank.	Named or detailed, if any. RP 106.	Unit.

~~[illegible]~~

Rank.	Must be named, if any. RP 106.	Unit.

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 (a) 2.) (Rank.)

Date 30 Nov 45

Commanding (K S Bjorn)Col Comd A Gp CRU Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA95 (In lieu of AFA3) 40/P & S/1697 (4931)

MEDICAL OFFICER'S REPORT

I certify that No. A67800 ROBERTS, WA.

of #1 CHAU is in a fair state of health,

and fit to undergo Trial by Court martial.

[illegible] Capt

Medical Officer

Station FIELD

Date 6/12/45

M. F. B. 246

25M—6-41 (792)

H.Q. 1772-39 480

TRIAL OF

A.67800 Pte ROBERTS WAA -------- 1 C.C.R.W.

The accused sworn, states:-

I have just two points I would like to add to the plea in mitigation. The first is this: I ask not for a light sentence, I ask for my freedom because I intend as soon as I get my freedom to clear my name through Colonel Forbes for my wife and family in Canada.
The other reason is this if I am given a term of detention after being provoked to the extent that I couldn't stand the insults any longer from men who were my former buddies. I was subject to direct and indirect insults at the Reception depot and from boys I reallyknew as good friends. If I go or undergo a period of detention now it will only make my disgrace worse and it won't be very pleasant here if they knew I went AWL after being accused of being an S.I.W. which I am not. I was found Not Guilty but the boys found it very hard to take it from there. I am prepared to go home on repat but I want Colonel Forbes to send a written statement and I would like to have my name cleared before I go home. What I want to do is to get Col. Forbes to sign a letter that I was not guilty even though they found me guilty of negligence and to send it back to my people before I arrive home, and I think he would do it. A period of detention here under the staff if they knew about this is just going to make the mental strain that much harder. I have been suffering with this for over a year. They refuse to believe that I was not an S.I.W. I would like a fine if possible sir.

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A.67800 Pte ROBERTS WAA -------- 1 C.C.R.U.

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Plea of Mitigation in The Case of
A-67800 Pte-Roberts A.W.

This soldier came overseas as a Sgt in March 1943, and at that time was a very settled man with a wife and one son. While on the continent he received a wound in the foot, and was evacuated from his unit the North Nova Scotia Regt. Highlanders. When charged with S.I.W. he was found not guilty, but the fact that the charge sheet had been known about, the men in his unit belittled him as a soldier by talking of it.

Since then his wife and friends at home have heard of this talk of S.I.W. which is untrue to the fact that he was not found guilty. Knowing of this, and how they felt about it he has been under a mental strain to the extent he went absent to be away from accusers.

Since Pte Roberts has been waiting 87 days for trial, he has received letters continually from his wife, she too has become grieved by the talk and knowing he is waiting trial is cracking under the mental strain. It is very certain that she will be highly effected by the decision made on this soldier for his future, as she has been looking forward to seeing him soon.

This soldiers record up until the time of his wound was very satisfactory. His one ambition now is to get into a position to prove to his wife and parents that he did not commit a S.I.W. but that what they have heard is untrue. And to get back to his wife as soon as possible before it is too late and her life is affected also.

I wish to ask the court to be lenient with Pte Roberts and therefore make it possible that when he eventually returns to Canada, that his home will be the way he left it, ~~and~~ holding the respect of his friends by carrying on where he left off. As it is now he has the task of clearing his name, which talk ruined. A fine in pay would mean quite a hinderance to him but would do his character no damage

E-3

C.B. Grey. Lieut.
1 C.B.R.H.

Bill my Darling

I am always thinking of you dear

Kirtwell, Ont.
Nov 7. '40

Received your letter of Oct 28 yesterday. I hope by now you are back in camp and have received some of my mail, you certainly should. I know you worry dear but I can't help it. I sent a letter, registered airmail on Monday hoping and praying you get it before long, I'd like to have sent a cable but I just haven't got the money to do so. That part is pretty short these days, my check isn't back to normal yet, and though I dread the idea of going back to Merle's this Monday I'd miss that extra no matter how small. I shouldn't be writing tonight I am in a terrible mood, I am having quite a time keeping my eyes dry enough to see to write. I have an awful feeling inside, I am fighting against it so hard but sometimes it boils so hard, I am bound to break if you don't come to me soon. I felt so sick when I got your letter saying you were still in hospital, delaying your trial, I hope and pray now if you are back in camp they won't punish you. Your regiment starts moving in just two days, I shall go out of my mind if you aren't allowed to come with them, they couldn't be so cruel surely. Every night I have prayed so earnestly that you return with them, I don't know what I'll do if God doesn't answer my prayers this time. Each night this week I've had a terrible time trying to sleep, when I do it is fitful and you are in front of me always, I've wakened several times calling your name. Even if you aren't getting mail my thought waves should reach you, my nightmares have been pleading, begging for you to come to me before it is too late.

Why on earth are you kept in bed if you aren't sick, that doesn't help your morale any not being able to do anything, and you not getting mail, of course I haven't addressed any letters to the hospital, maybe you'll get a stack at camp. I feel my efforts are for nothing when you aren't getting them, but I am answering every letter I get and tried every way of sending them. Those war brides haven't any right to complain but they aren't thinking of our side of it here. I have heard some of them who have been here are wishing they were back in England, people aren't catering to them, handing them everything on a silver platter as they expected the Canadians would.

We have had some snow, but it melted almost as soon as it fell. The last two days it has been so warm, too unusually for this time of year, they have had some snow west of here, so I guess we can expect almost anything now. I don't mind the snow it is the blizzards or high wind that gets me down. I haven't put on the woolies yet, we hardly know how to dress, first it is cold then warm. All the kids are looking for snow now. Phil brought some in a jar the last we had he wanted to keep it in the house. He got out in a nice big puddle today, I've told him so many times he may walk in it but not to splash even if his new rubber boots are higher. I looked out of the window several times and he was going very well but the last time another boy had come along, he started

SUMMARY OF EVIDENCE

in the case of

A67800 Pte Wilfred Archie Allan ROBERTS, C.I.C., on the strength of No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas.

"I produce the following documents pursuant to Overseas Routine Order 5352, which have been read over and shown to the Accused, and which are attached hereto as Exhibits.

(1) Certified True Extract from the original MFM 4 concerning A67800 Pte Roberts W.A.A. which declares that A67800 Pte Roberts W.A.A. was absent without leave at 2359 hrs 16 May 45. (Marked Exhibit "A")

(2) Certificate in accordance with the Army Act Section 163 (1) (jj) dated at Aldershot 9 Sep 45 and signed by the Officer into whose custody the Accused, A67800 Pte Roberts W.A.A., was taken on arrest, which declares that A67800 Pte Roberts A.W. was arrested at 0815 hrs in Binstead on the 9 Sep 45. (Marked Exhibit "B")

J.F. Hodgins Capt
.....
(J.F. Hodgins) Capt
Officer detailed to take the Summary of Evidence.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The Accused reserves his defence.

The Accused does not call any witnesses.

"I certify that the above Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the Accused, and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with."

J.F. Hodgins Capt
.....
(J.F. Hodgins) Capt
Officer detailed to take the Summary of Evidence.

Field

19 Oct 45

E+A
117

Exhibit "F"

Certified true extract from
original MFM 4 concerning
A67800 Pte Wilfred Archie
Allan ROBERTS

UNIT	RECORD OF ALL CASUALTIES	PLACE OF CASUALTY	DATE OF CASUALTY	ARMY RANK	AUTHORITY
1 Rec Depot	AWL 2359 hrs 16 May 45	UK	16 May 45	Pte	99 /45

I certify the above entry to be a true extract
from the original MFM 4 held in my possession
concerning A67800 Pte Wilfred Archie Allan
ROBERTS.

19 Oct 45

J. Hodgins Capt Legal Officer 1 Cdn RU
(J.F. Hodgins) Capt
Officer having custody
of original document

Exhibit "B"

Certificate in accordance with the Army Act
Section 163 (i) (ii)

I certify that No. [illegible] Rank PTE. Name [illegible]
No. 1 Reception Depot Hyl. Canadian Nova Scotia Highland Regt.
Company.....Unit.....

was arrested at(Time) [illegible] hrs. in (place) [illegible]

on the 9th day of September 1945, as a deserter

(or absentee without leave).

He was dressed in Uniform.....

[illegible] LIEUTENANT
[illegible]

Aldershot.
9/9/1945.

OFFICER

Major,
Assistant Provost Marshal,
158 H.Q. Provost Company,
A.P.M. into whose custody
the above named person was
taken on arrest.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A67800	Pte	ROBERTS W.A.A.	No. 1 Cdn Gen Rft Unit

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15 (1) 2 times.

For _____ times.

For _____ times.

For _____ times.

Date of first entry in Field Conduct Sheet 27 Aug 43

Date of last entry in Field Conduct Sheet 29 Dec 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

[redacted]

*Strike out is not applicable.

4. The accused has been awaiting trial on the present charges for 0 days in civil custody; and for 88 days in military custody, *i.e.*, 0 days in open arrest, 88 days in close arrest; of which 65 days were spent in hospital.

5. The present age of the accused is 28 yrs

6. The date of his attestation is 20 Mar 42

7. The service which the accused is allowed to reckon is _____

8. The accused is in possession of‡ CVSM & Clasp

‡State the military decorations (if any) held by accused.

[redacted]

EX B

MM

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*28072) W1.30721/3701 32,000 9-44 A.& E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	27 Aug 45	AA Sec 15 (1)	7 months detention Stoppage £1-12-2	70 days remission
FGCM	9 Oct 44	(1) AA Sec 15 (1) (2) AA Sec 15 (1)	60 days detention Stoppage £1-6-6	20 days remission

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 6 day of ~~October~~ Dec 1945

J H Hodgins Capt.
Legal Officer
1 C of RU.

No. A67800 Name ROBERTS W A A Sqn, Battery, or Company | Corps CIC | Date of enlistment 20 Mar 42 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/138 (7010)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	21 May 43	Pte		AA Sec 15 (1) AWL from 21 May 43 to 20 Aug 43.	Documentary	7 months detention costs £1-12-2	27 Aug 43	FGCM	Remission: 70 days
Field	18 Apr 44	Pte		AA Sec 15 (1) AWL		forf 6 days pay			
Field	6 Sep 44	Pte		(1) AA Sec 15 (1) 0900 hrs 6 Sep 45 (2) AA Sec 15 (1) AWL 30 Sep 44		60 days detention	9Oct44	FGCM	Forf 3 d.p. Stoppage £1-6-6 Remission 20 days

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3 Dec 44	Pte		AASec 15 (1) AWL 3 Dec 44 to 20 Dec 44		28 days FP Cost of appre	29 Dec 44		54 d.p. cost of appre.
				CERTIFIED TRUE EXTRACTS FROM MFM 4					
				J F Hodgins Capt (J.F.Hodgins) Capt Officer having custody of original document	Legal Officer 1 C.G.R.				

EXC

CASE OF A67800 Pte Wilfred Archie Allan ROBERTS

(i) LIST OF WITNESSES FOR PROSECUTION

Nil

(ii) LIST OF WITNESSES FOR DEFENCE

Nil

(iii) LIST OF EXHIBITS FOR PROSECUTION

(a) Certified True Extract from original MFM 4 concerning A67800 Pte Roberts W.A.A., showing the Accused absent at 2359 hrs 16 May 45. (Marked Exhibit "A")

(b) Certificate in accordance with the Army Act Sec 163 (1) (jj) dated at Aldershot, 9 Sep 45 showing A67800 Pte Roberts W.A.A. as having been arrested at 0815 hrs 9 Sep 45. (Marked Exhibit "B")

(iv) LIST OF EXHIBITS FOR DEFENCE

Nil

(v) RECEIPT BY ACCUSED FOR COPY OF CHARGE SHEET AND SUMMARY OF EVIDENCE

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken in the Field, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

W. A. Roberts
(A67800 Pte Roberts W.A.A.)

(vi) APPLICATION BY ACCUSED FOR DEFENDING OFFICER

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Any English Speaking Offr. if he is available.

W. A. Roberts
(A67800 Pte Roberts W.A.A.)

Signed in the Field

this 28 day of ~~Oct~~ Nov 45

5W-143

ON HIS MAJESTY'S SERVICE

FASTEN Envelope by gumming this Label across Flap.
OPEN by cutting Label instead of tearing Envelope.

Ipr Roberts, W.E.

1/14 CMHQ 40-1
40 P & S/52
(Strips of 4)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 63163 Tpr Walter Thomas Edwin Roberts 27 CAR (Sherbrooke Fusiliers)

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 40	Guilty	Guilty	
2nd CA 58(2)	Not Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of thirty (30) days.

(Sgd) [illegible] Maj 6 Dec 45 (Sgd) [illegible] Major President (RP 45, 50.)
Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

NA

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I DIRECT QUOTA ALLOWED BY AIR CLEARANCE TO DATE OF DISCHARGE BASIS AND DATES LISTED.~~ (1. AA 57A. Delete if not used.)

Date 8 Dec 45 (Sgd) (C.D. de S. Wotherspoon) Lt-Col
Commanding 4 Cdn Armd Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B63136 TPR W.E ROBERTS.	10 Dec. 45	[illegible] Capt. Adj. 27 CAR (Sher Fus R)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AS EXHIBIT P1 AB 160 5 A-143

CFA96 (To prov of AFA31) 40-P.S.C.-1608 (38064)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col G.D. de S. Wotherspoon Comd 4 C A B dated 4 Dec 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 63163	Tpr.	Walter Edwin	Roberts	27 Can Armd Regt.

PROCEEDINGS REVIEWED

27 Dec 45 A.J. Brody Maj
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 6 Dec 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 32, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences. Lwc.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~Lt Col G.D. de S. Wotherspoon~~ as interpreter? Ans No

The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer? Ans .....~~ ~~The shorthand writer is sworn.(1)~~ Lwc.

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major C.W. Lawson	21 Can Armd Regt.
Member	Capt. M.S. McGuinness	22 Can Armd Regt
Member	Capt. A. Campbell	28 Can Armd Regt.
Judge-Advocate	Major E.C. Wasson DSO, A/Brig & CJA	
Prosecutor	Lieut W.H. Lewis	27 Can Armd Regt
Defending Offr	Major N.A. Dann	27 Can Armd Regt.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea. Lwc.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. Lwc.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 27

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ 4 CAD AB 160 Col II P150

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ~~3~~ 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans N.D. (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.~~(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the first charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s).~~ Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans N.D. (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 2nd charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 2nd charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed ~~on the former~~, but the accused is (are) found ~~Not~~ Guilty ~~on the latter charge(s)~~.(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans [illegible] Do you intend to call witnesses on your behalf ? Ans Yes Are they witnesses as to character only ? Ans Yes
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedur for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the 2nd charge(s), being subject to confirmation, will be promulgated later.(1)
Or, ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans N.D.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans I'd like my wife called evidence on my behalf. (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 89, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 544. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

COURTS-MARTIAL

CHARGE SHEET

The accused, B-63163 Trooper Walter Thomas Edwin ROBERTS, 27 CANADIAN ARMOURED REGIMENT (Sher Fus Regt) a soldier of the CANADIAN ARMY OVERSEAS, is charged with:-

FIRST CHARGE
Army Act
Sec 15 (1)

WHEN ON ACTIVE SERVICE ABSENCE WITHOUT LEAVE

in that he

In the Field, on 27 Nov 45, Absented Himself Without Leave from his Regiment, 27 CANADIAN ARMOURED REGIMENT (Sher Fus Regt) from 1530 hours 27 Nov 45 until he surrendered himself at 1545 hours 28 Nov 45.
Absent 1 day 2 hours and 15 minutes.
Open arrest. Close arrest from 1130 hrs 29 Nov 45

SECOND CHARGE
Army Act
Sec 9 (2)

WHEN ON ACTIVE SERVICE ~~STRIKING AND~~ USING INSUBORDINATE LANGUAGE TO A SUPERIOR OFFICER

in that he

In the Field, on 28 Nov 45, when given an order by B-41669 Sgt SKINNER, G. G., ~~struck and~~ used insubordinate language to said Sergeant.
Open arrest. Close arrest from 1130 hrs 29 Nov 45

3 Dec 45.

(S. F. Radley-Walters) A/Lt-Col.,
Commanding Officer,
27 CDN ARMD REGT (Sher Fus Regt)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

IN the Field
4 Dec 45

(G D deS Wotherspoon) Lt Col
Comd 4 Cdn Armd Bde

Lwr Pvt

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) ~~Appmt, A/R or A/Appmt~~	Full Christian Names.	Surname.	Unit.
B 63163	Tpr		Walter Thomas Edwin	ROBERTS	27 Cdn Armd Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 4 Dec 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reason I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Name	Unit.
Major	C W CONLIN	21 Cdn Armd Regt

(Must be named. RP 106.)

MEMBERS.

Rank.	Name	Unit.
Captain	M S McKINNON	22 Cdn Armd Regt
Captain	J CAMPBELL	28 Cdn Armd Regt

(Named or detailed. RP 106.)

WAITING MEMBER.

Rank.	Name	Unit.
Lieut	J H H NICHOLSON	Lake Sup R (Mot)

(Named or detailed, if any. RP 106.)

JUDGE-ADVOCATE.

Rank.	Name	Unit.
Major	E E WASSON	HQ 4 Cdn Armd Div

(Must be named, if any. RP 106.)

On Active Service in the Fd

in HOLLAND *(Country.)*

G D Wotherspoon *(Signed personally. RP 105 fn 2.)* Lt Col *(Rank.)*

(G D deS Wotherspoon)

Dat 4 Dec 45

Commanding 4 Cdn Armd Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (6148)

(See overleaf for oaths and notes for use on trial.)

COURTS-MARTIAL

CASE OF B-63163 Trooper Walter Thomas Edwin ROBERTS, 27 CANADIAN ARMOURED REGIMENT(Sher Fus R)

MEDICAL CERTIFICATE

I CERTIFY that I have this morning examined B-63163 Trooper Walter Thomas Edwin ROBERTS, 27 CANADIAN ARMOURED REGIMENT(Sher Fus R) and find him FIT to under go trail by Court Martial.

J.O. Hunt Letellier, capt

.....

Medical Officer

Rec. Nov 6 Dec 45

1

EEW

First Witness for the Prosecution

D 36750 A/SSM Anton L.S. C Squ.

27 Edu Armd Regt having been duly sworn stores,-

29 Nov 45 at 1115 hrs I was I/C accused escort and we arrived at RHQ. I disembarked from front of truck and went to rear of truck. The 2 escorts got out followed by Tpr. Roberts the accused and Sgt. Skinner. I noticed the expression on Tpr. Roberts face and thought something was going to happen.

Immediately Sgt Skinner got out of truck Tpr. Roberts turned towards him. I rushed up and seized Tpr. Roberts arm. He became violent and swore at Sgt. Skinner. I ordered one of the escorts to seize his other arm and help me take him to the bldg. On entering the bldg he became quiet and no more was said. That is all.

I am unable to repeat ~~and~~ actual words used by Tpr. Roberts towards Sgt Skinner.

X- examination.

I did not hear insubordinate language used by accused towards Skinner on 28 Nov 45.

I have noticed friction between Sgt. Skinner and Tpr. Roberts-

Sgt Skinner asked at one time if Tpr. Roberts could be removed from the mess.

I personally objected to Mrs. Vossler being around the mess - sided some of the

Ind.

other Sgts. Sgts Skinner & Jones used to be good friends – that relationship has deteriorated. Sgt. Skinner has become alienated from his fellow Sgts. recently.

By the Court –

Sgt. Skinner was wearing chevrons of rank at time of trouble in the orbit.

(R. P. 83B complied with)

Second Witness for the Prosecution

B 41669 Sgt Skinner G. G. 27 Cdn Armd Regt. having been duly sworn states; –

28 Nov 45 – I was sitting in Sgts mess in C. Squ with miss Ann Voorker – who is a friend of mine. At approx. 8.45 P.M. the front door of the mess was opened. I went to the hallway to investigate. There I found Tpr. Roberts the accused. I asked him what he was doing there. He replied he was there to see his friend Tpr Bradshaw. I told him that the mess was out of bounds so would he mind getting out. Tpr. Bradshaw is one of waiters in Sgts. mess. Tpr. Roberts used to be employed in Sgts mess but was not on 28 Nov 45. Tpr. Roberts said when Sgt major tells me that this place is out of bounds to me. That is when I will get out. I replied that it was a Sgts mess and out of bounds to Tprs. so get out. At that I turned and went back into the

sitting room and sat down. In a few minutes the door of the Sgts mess was opened by Tpr. Roberts who looked all around. (He was) not about to leave when I sd - this is going a little bit too far. I told you a minute ago that this was the Sgts mess and out of bounds - now get out. At this he became quite enraged - flung open the door and stepped inside. and sd. "now look here - you little no good cock sucking son of a bitch. I have taken enough shit from you and I'm not going to take any more." At this he stepped forward and struck me with his hand on the shoulder, knocking me back about 2 ft. At this I repeated - I have told you before that this is a Sgts mess and out of bounds to Tprs - now get out.

At this he threw down the uniform he had slung over his shoulder and knocked me half way across the room with both hands this time - his open hands hitting me on each shoulder. He followed me into the other room. We had a quieter conversation there. He then left the mess. We were both sober. The accused ceased employment in the Sgts mess about 1 das before this incident.

X - examination -

I ~~have~~ had a minor run in with accused on a prior occasion.

Miss Vossler as I were sitting Sgts mess. Tpr Bradshaw entered the room and

asked us if we would like a cup of coffee.
We accepted and went into the kitchen
to have a cup of coffee.
There was quite a bit of swearing there.
I was swearing, Tyr. Roberts was
swearing and Pte Carr. I decided to call
a halt to the swearing. Tyr. Roberts replied
he was speaking to his friend, would speak
as he wished and if I didn't like it there
was the door. I sd no more. We left the
kitchen.
Accused always did what I asked him to do.
He was never in my troops.
I had been drinking beer 28 Nov 45.
I know that other Tryers come to visit
friends in Sgts. mess.
Miss Vossler is a friend of mine.
None other than myself have been taking
her out.
I sleep upstairs in Sgts mess C Agn.
I was sloppily dressed - walking out
dress at time of incident.
I was first hit on left shoulder.
He broke one glass.
At taking of original summary I didn't
tell officer that Miss Vossler was in mess.
I didn't know you would bring in
civilians.
Miss Vossler sd nothing. She was
drinking that evening. She may have
been smoking.
Miss Vossler and I had entered mess at 6.30
She left the room on one occasion.

She left ½ hr after the incident.
I was aware Sgt. Maj. did not approve of me bringing my girlfriend to the mess but he sd I could bring her in for a little while.
I did not place the accused under arrest immediately.
I believe I did say - the mess was out of bounds to him. I meant to say the sitting - room - not my room on the summary.
My ~~words~~ report of conversation word for word may vary between summary and evidence I give today - ~~if~~ they may vary a bit as I find it difficult to recall exactly.
By the Court -
I was wearing my chevrons of rank at time of incident in Sgts. mess.
I've been a Sgt for 8 mos. The accused has known for the last five months.
(R.P. 83B complied with)

Third Witness for the Prosecution

Miss Ann Vosler, Baarn, Holland
having been duly sworn states:-
28 Nov 45 I was in Sgts mess with Sgt. Skinner. I identify the accused. He came into the room. Sgt Skinner told him to get out. He didn't get out. Sgt Skinner sd again - don't you hear me you have to get out of here. Fgr Roberts got very mad and threw his uniform on the table and then wanted to start a fight.

6
E.W.

He was saying I'll kill you and swearing. Sgt. Skinner walked away from him to the table. Took a broken glass in his hand and send to him. So what you have done. Roberts got made and went after Sgt. Skinner again. Sgt. took the glass into the other room. After that Roberts left. They were in the other room but I couldn't see them there.
Roberts said maybe many times to Skinner I'll kill you. He called him a son of a bitch. Many things I could remember.
It was so sorken too fast - I couldn't understand all.
X - examination -
I heard Sgt. Skinner say to someone in hall - it is out of bounds. I didn't see Roberts at that time.
I have known both Roberts & Sgt. Skinner about 5 mos.
I first met Sgt. Skinner, Doetinchem, near Zutphen -
I followed Sgt. Skinner from Doetinchem to Baarn.
I have been a friend of Sgt. Skinner all the time.
I was married, have one child, child is in Amsterdam.
I am not working at present.
I don't go out with anyone other than Sgt. Skinner - with no other Canadian.
Sgt. Skinner was not hit in face but

Ewd

about chest level - not hard - it did not knock him down.
I have heard the words Roberts used before from Can soldiers.
I think Sgt Skinner had fell uniform on. Dont know about anklets - was wearing tunic.
Roberts was wearing uniform.
When he came in I am sure he had his hereto on.
Ewd
I did not speak while this was going on.
I had had 2 glasses of beer that nite.
I didn't help pick up broken glass. ~~one~~ only one broken.
I came to mess about 6 or 6.30 P.m.
I went home not long after the incident.
Sgt Skinner told Roberts that he would regret what he had done.
I was 1st called last nite to give evidence.
I remember an even in Sgt's mess kit chin.
Roberts was swearing - Skinner told him to stop it. Roberts said there is the door you can go out. Roberts said you were swearing. ~~Roberts~~ Skinner was made at ~~Skinner~~ Roberts.
Ewd
Re-examination -
I was working until about 2 wks ago in Amsterdam.
I stopped because I had to get up at 6 A.M. Work till 5.30 P.m., get a train at 6.30 P.m. It was too much. I'll stay here till Sgt Skinner leaves then go back to Amsterdam (R.P. 8313 compshed with)

8
EEW

Prosecution must Prove
1- Language itself was insubordinate
2- circumstances were insubordinate

A- EVIDENCE WORDS 1- No specific words in the charge have been corroborated except the words "son-of-a-bitch". Common coarse words.
2- Are these words in se insubordinate? 3- Does Miss Voster know what insubordinate language is?

EVIDENCE CIRCUMSTANCES - (1) Skinner did not like Roberts (2) he had placed himself on a 1pr's level & must accept the consequences. (3) Roberts was in the Mess as a servant until L Squ Mess was regimented and he was surplus. (4) Roberts was to leave 2nd time and yet it was Skinner who prolonged the encounter and gave the incident its birth.

CREDIBILITY - 1- Skinner subject of abuse & he initiated the charge.
2- Skinner call in Miss V as evidence
3- She is an intimate friend of his and on his side. SSM did not approve of Miss V's character
4 - Miss V is not familiar with language.

PERSECUTION Skinner persecuted Roberts because

1 He promised Roberts he would regret things
2 He picked Roberts out of a grou and told him the mess was out of Bounds TO HIM. He never threw anyone else out.
3 He did no t place Roberts under arrest until later.
4 He only called a civ witness when he realized that in a word-against-word statement h e would not convict the accused

The defense admits that the accused is not blameless and states that he was HUMAN and was provoked under circumstances created by skinner.

9
Ebd

First Witness for the Defence.

Miss Meyer Prouk, Oranjestad. 5
Baarn having been duly sworn stalks;—
18 Nov 45 I was in Sgt. Mess Kitchen.
Tpr. Roberts was in conversation with
Bradshaw. Sgt. Skinner was sitting
there with his girl friend. I was there too.
He had a conversation with his girl
friend and then he was swearing at large.
Tpr. Roberts was speaking to Bradshaw who
was writing a letter. And then Roberts
was swearing. Sgt. Skinner began to
get mad and he ordered him to stops
swearing. Roberts got pale with anger. He
said if you don't like to hear it there is
the door. That is all. Sgt. Skinner left
the Kitchen. His girl friend told Skinner that
she didn't like his swearing and Skinner said
next time I swear I'll give you 10 guilders.
X. examination.
I am a friend of Tpr. Roberts. I've known
him since October. I met him in
Ebd. Baarn here. I've ~~gone~~ not out with him at
~~Lot~~ all. I didn't like the swearing either.

(RP 83B complied with)

Second Witness for the Defence

B148077 Tpr. Bradshaw J F. 27 CAR, C Squ
having been duly sworn states;—
One time Sgt. Skinner went on parade with
rifles shortly after they had been issued
and left bolt behind. He also saluted to

forehead when holding rifle at slope. Tpr. Roberts kidded him about this when he came off parade. Sgt Skinner got angry. I remember incident in Kitchen about swearing. Sgt Skinner and Tpr. Roberts got in an argument. Sgt told Roberts he would be sorry for it someday. Skinner & Roberts have not got on well for last 4 or 5 mos.

28 Nov 15 mtr - Tpr. Roberts picked up ~~my~~ his uniform from ~~for~~ ~~me~~ at the mess and later spoke 4 me.

X - examination.

We use any entrance to Sgts mess bldg.

We, the staff sleep in Kitchen unless we have occasion to go into mess.

I'll admit that Sgt Skinner's and Tpr. Roberts language in Kitchen was not proper to use around women.

There was hard feeling between them.

There has not always been friction between these two.

By the Court -

Tpr. Roberts had his uniform in the mess - that is all I know of.

I've known Sgt Skinner since a year ago last aug or Sept back in France.

I think he was a corporal then.

(R.P. 83 B complete with)

STATEMENT OF THE ACCUSED B-63163 TPR ROBERTS W T E

"I am B-63163 Tpr Roberts W T E 2/ Cdn Armd Regt. On the night of 28 Nov 45 , a Wednesday, at about 2030 hrs I had just come out of the movies. I went to the Sgts Mess of C Squadron to get my uniform which I had left with Trooper Bradshaw to dry because it had got all wet on Monday. Trooper Bradshaw is in charge of the canteen in the Sergeants Mess and I had worked with him when I was employed in the Sergeants Mess in Doetichem. I opened the door and went down the hall past the sitting room door which was closed. I went towards the kitchen door to see if Trooper Bradshaw was there. When I got as far as the kitchen door Sgt Skinner put his head out of the sitting room door and informed me that the place was out of bounds to me and ordered me out. He spoke in what I felt was a very sarcastic tone of voice. Because I had had specific permission to enter the mess, given to me by SSM Anton I turned and questioned Sgt Skinner's authority. He indicated that he had sufficient authority to order me out and again ordered me out. As I had just explained to him that I had the SSM's permission to visit my friends in the Mess I went into the kitchen and left Sgt Skinner. Tpr Bradshaw was in the kitchen and I arranged with him to go upstairs to his room in order to get my uniform. I went upstairs , got my uniform and came down. I looked in the kitchen and saw Bradshaw again to whom I bid goodnight. I went down the hall toward the front door intending to go out and press my uniform in my billet. I had my uniform on a coathanger slung over my right shoulder and held with my right hand. I had my beret in my left hand because I was in the Sgts Mess . As I passed the sitting room door I decided to look into the sitting room to see if the SSM was there to confirm for me that fact that I had permission to be in the Sgts Mess. I Opened the door and looked in,I merely poked my head around the door. I saw Sgt Skinner sitting opposite the door behind a table. Before I had time to speak or look around he spoke. He indicated that things had gone far enough and ordered me to get out. I started to withdraw my head from the open doorway and leave. He ordered me to return. As my hands were full I pushed the door right open with my foot and walked right into the room. He stood up and came to meet me and we stood about arms length apart near the centre of the room. He spoke angrily and as I was irritated by this time I replied in an emphatic manner to which I have become accustomed in the army. He indicated that I would regret my words and for some reason he grabbed my beret with his right hand. I yanked at my beret three times to free it but he would not let go. Instinctively I took a step toward him to give a better yank . He let go and backed away across the room. I also backed up about three feet. I spoke again to him because by this time he had provoked me to anger and he replied to me in an angry tone. I then left the room and shut the door behind me. I did not see Sgt Skinner again until the next day. At no time on that day the 28 Nov 45 did I strike Sgt Skinner nor did I have any intention of striking him or of offering violence. When I spoke to him I had no intention of being insubordinate because I knew I had permission to be in the sgts mess, the language I used is common talk in the army where I learned it . I fist began to work in the Sgts Mess in Doetinchem June 45 and was there until the end of October 45, I have always been in trouble with Sgt. Skinner since one day in July he got angry when I laughed at him for going on parade with the bolt out of his rifle and giving a salute to his forehead when he had his rifle at the slope. Tpr Bradshaw and Tpr Guthro were there at the time. Since then I have had several disagreements with him. In September there was a Sqn dance at Doetinchem and Sgt. Skinner's girl friend came into a room in the Sgts Mess where I was combing my hair alone. A few minutes later Sgt. Skinner looked into the room and ordered her to go with him and he looked peeved.

In August I w as going to Amsterdam with my girl friend who is a friend of Sgt. Skinner's girl friend. We went to visit Sgt. Skinner's girl friend's husband. Sgt. Skinner's girl friend afterwards wanted to know if I liked her husband . I gave her to understand that I liked her husband and that she was foolish to leave her husband and child. This may have made Sgt. Skinner resentful.

On the 18th November 1945 I was sitting writing letters in the kitchen of C Sqn Sgts' mess. Tpr Bradshaw was also there and another civilian girl named Miss Miep Fronk of Oranjestraat 5 BAARN. Sgt Skinner and his girl friend came in and sat down. He was swearing in the course of his conversation and his girl friend resented it. He offered to pay her 10 guilders for every time her swore. We all laughed as though it were a joke. A few minutes later while I was talking to Bradshaw and I also began to swear and Sgt Skinner ordered me to stop. As I had taken my leave from him I spoke to him and indicated the door if he did not like it. Pte Karr the cook came in at that moment and also swore about something. I began to laugh at the situation and Sgt Skinner banged at the table with his hands, became exasprated and left. Because of these and other experiences I believe that Sgt. Skinner does not like me and as a natural reaction I do not like him.

E&D.

The defense submits that a prima facie case has not been established on the second charge. In order to prove the second charge it is incumbent upon the prosecution to prove conclusively and with no shadow of doubt that insubordinate language was used. Proof of which may be drawn from the evidence of reliable, unprejudiced eyewitnesses. And it must also be shown that either the words themselves were insubordinate or that the circumstances under which they were used were insubordinate.

The prosecution has failed to prove this. A net of doubtful, prejudiced and unreliable evidence has been presented which proves nothing other than that there was always bad feeling between Tpr Roberts and Sgt Skinner.

Let us take the evidence of Sgt Skinner and Miss Voster. It is submitted that both are unreliable witnesses and their credulity doubtful. The first because he has been prejudiced against the accused for some time, the second because she has been on friendly and perhaps even intimate terms with Skinner for a period of time and is not likely to give evidence out-of-favour to a charge which has been initiated by her close friend Sgt Skinner. Further to this, will the Court consider the fact that we have in Miss Voster a civilian, a foreign civilian giving evidence as to what constitutes military insubordination.

Let us take the evidence itself. Was insubordinate language used? The defense submits that In Themselves the words which are claimed to have been used are NOT insubordinate, they are words which every one of us has heard used many times in the army and used by people who suffered much less annoyance than the accused and who were considered to be a lot more cultured than he. Again, the circumstances under which the words were used were not insubordinate because the accused KNEW he had permission to be in the sergeants mess and therefore he could not have had any INTENTION of being insubordinate. They are the words of a soldier accustomed to coarse language from all sides.

The entire case of the prosecution has an element of doubt and in fact may as well indicate that the accused was provoked to anger by this sergeant. Therefore no prima facie case has been proven and the defense submits that the charge be dismissed against Tpr Roberts.

J. A. Sumes vs.

1. Function of Court
2. Function of J. A.
3. Accused innocent until proven guilty. Onus on prosecution thru out. Onus defined.
4. Doctrine of reasonable doubt.
5. On second charge following must be proven
   (a) That Mr CO was a superior officer
   (b) That accused new Mr CO was a superior officer.
   (c) That accused used insubordinate language to his superior officer.
6. In addition to oral evidence, members of Court may as army officers pursuant to R P 74 take judicial notice of matters notorious to them by reason of their military service.

Exhibit "A"
Evidence May
Mun.

Summary of evidence in the case of B-63163 Tpr Walter Thomas Edwin Roberts, 27 Cdn Armd Regt (Sher Fus R) Canadian Army Overseas, charged with Absence without leave, and striking and using insubordinate language to a superior Officer.

The Commanding Officer directs the evidence be taken on oath.

FIRST WITNESS D-136750 A/S.S.M. Anton, L.S. SSM "C" Sqn, 27 Cdn Armd Regt (Sher Fus R) being duly sworn states:

I D-136750 A/SSM Anton L.S. of "C" Sqn 27 Cdn Armd Regt (Sher Fus R), on forming up "C" Sqn parade at 1330A hrs on the 27th Nov 1945, noticed that Tpr Roberts was absent from parade. I had B-114819 Sgt Jones J.G., enquire as to his whereabouts. On failing to find him, I assumed that he was A.W.C.L. I also told the Orderly Room runner, B-147680 Tpr Harling H.S. that if he saw Tpr Roberts, to have him report to me. When I formed up the parade at 0830A hrs on 28th Nov 45, Tpr Roberts was still absent from roll call and also from 1330A hrs parade of the 28th Nov 45. At about 1600A hrs on the 28th Nov 45, D-141098 Cpl Hull J., the Orderly Room clerk informed me that Tpr Roberts had reported to the Orderly Room at 1545A hrs. At 2230A hrs that evening I saw Tpr Roberts and told him he was on charge.

The accused declines to cross examine this witness.

(D-136750 A/SSM Anton L.S.)

SECOND WITNESS B-41669 Sgt Skinner G.G. 27 Cdn Armd Regt (Sher Fus R) being duly sworn states:

I, B-41669 Sgt Skinner G.G. of "C" Sqn 27 Cdn Armd Regt (Sher Fus R) was sitting in the Sgt's Mess on the night of the 28th Nov 45 when the front door was opened and I went to the hall way to see who it was. There I found Tpr Roberts. I questioned him as to what he was doing here and he replied that he was here to see his friend B-148077 Tpr Bradshaw J.F. I informed him that this being the Sgt's Mess it was out of bounds to him so would he mind getting out. He replied, "when the SSM tells me that this place is out of bounds to me that is when I'll get out". I replied that I was a Sgt and this is a Sgt's Mess and that is authority enough - now get out. At that I turned and went back into my room and sat down. In a very few minutes the door of my room was opened by Tpr Roberts who looked all around the place. I said, "now what do you want?" He appeared about to leave and I said, "I told you before that this is a Sgt's Mess and is out of bounds to you. Now get out". At this he flung open the door, entered the room and replied, "now look here, you little no good cock-sucking son of a bitch, I have taken enough shit from you and I am not going to take any fucking more. I'll kill you, you no good bastard." At this I was struck on the left shoulder and knocked back about two feet. I repeated what I had said before that this was still a Sgt's Mess, you are a Trooper, now get out. At this he threw down some clothes he had in his hand and knocked me halfway across the room. I enquired of him, "do you realize what you have done?" His reply was, "I don't give a fuck." A few minutes of quieter conversation, then Tpr Roberts left the mess.

Cross examination by the accused.

SECOND WITNESS (Cont'd)

Q.1. Did I actually hit you?
A.1. Yes, of course.

G. G. Skinner
(B-41660 Sgt Skinner G.G.)

THIRD WITNESS

B-114819 Sgt Jones J.G., Sgt "C" Sqn, 27 Cdn Armd Regt (Sher Fus R) being duly sworn states:

I, B-114819 Sgt Jones J.G., of "C" Sqn 27 Cdn Armd Regt (Sher Fus R), attended the parade at 1330A hrs 27 Nov 45, and when A/SSM Anton L.S., noticed that Tpr Roberts was not present he detailed me to look for him. I went to his room searched the building and also the Sgt's Mess quarters but could not find him which I reported to the SSM.

The accused declines to cross examine the witness at this time.

J. Jones
(B-114819 Sgt Jones J.G.)

FOURTH WITNESS

B-147680 Tpr Harling H.S., "C" Sqn, 27 Cdn Armd Regt (Sher Fus R) being duly sworn states:

I, B-147680 Tpr Harling H.S. of "C" Sqn 27 Cdn Armd Regt (Sher Fus Regt), am Orderly Room runner and on the morning of 27th Nov 45, A/SSM Anton L.S., told me to go out and look for Tpr Roberts. I searched the building and asked a few fellows but he was nowhere to be found. I reported this to A/SSM Anton.

The accused declines to cross examine the witness at this time.

H. S. Harling
(B-147680 Tpr Harling H.S.)

The accused was warned as follows:

Do you wish to make any statement or to give evidence upon oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you may give will be taken down in writing, and may be given in evidence.

The accused: I desire to make no statement at this time.

W. T. C. Roberts
Signature of Accused

I certify that RP 4(c) (d) (e) and (f) has been complied with.
Taken by me in the field in the presence and hearing of the accused on the 30th and 1st day of Dec 1945.
Signed in the field this 1st day of Dec 1945.

W. Harold Lewis
Signature of Offr taking Summary
William Harold Lewis Lieut
27 Cdn Armd Regt (Sher Fus R)
Officer detailed to take this Summary of Evidence.

Evidence to be brought forward by the prosecution in the case of D-03103 Tpr Walter Edwin Roberts, 27 Cdn Armd Regt(Shor Fus R) Canadian Army Overseas, who h d oes not appear in the summary of evidence.

WITNESS Miss Ann Vester, 5 Nornoos traat, Baarn, Holland.

I was sitting in the sitting room of the Sgt's Mess with Sgt Skinner when Tpr Roberts came in. Sgt Skinner told him to get out and he did not do so Sgt Skinner said did you not hear me-get out., Roberts got mad, threw his uniform on the table and hit Skinner, using bad language. Sgt Skinner went to the table and picked up some glasses that had been knocked over and broken by the uniform and said now do you see what you have done, then Tpr Roberts came after Sgt Skinner again, saying I'll kill you and swearing, then he left the room.

WITNESS D-136750 SSM Anton, L.S. 27 Cdn Armd Regt(Shor Fus R)

I was in charge of the escort party for Tpr Roberts when he was paraded to the C.O. On arrival at HQ I dismbarked from the front of the truck and went around to the back. The escorts got out followed by Tpr Roberts and then ~~Tpr Roberts~~ Sgt Skinner. Tpr Roberts immediately turned ~~Tpr Roberts~~ on Sgt Skinner and was about to attack him, I saw what was going to happen and rushed forward , seized him and held him back . He then began swearing at Sgt Skinner but I as unable to say what he said as I was speaking to him trying to quite him down. He became violent so that I ordered one of the escorts to take his other arm and help me escort him into the building. On entering the building he became quite and no more was said.

WITNESS B147880 Tpr Harling, H.S. 27 Cdn Armd Armd Regt(Shor Fus R)

I was escorting Tpr Roberts when he was being paraded before the C.O. When the truck halted the other escort and I got out and Trooper Roberts followed us and then Sgt Skinner Tpr Roberts then turned and said something to Sgt Skinner and SSM Anton grabbed one arm and the other escort the other and took him into the building.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
B-63163	Tpr	Walter Thomas Edwin ROBERTS,	27 CDN ARMD REGT (Sher Fus Regt)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For AWL	One times	One times
For Conduct to the Prejudice	One times	Six times
For	times	times
For	times	times
For	times	times

~~Number of summary punishments awarded~~ Nil

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, ~~as~~

~~particulars of previous convictions of the accused by a court martial or summary punishment under section 47 of the Army~~ Act, and dispositions with trial under section 47 of the Army Act, not noted in the sheets produced to the court.

3. The accused is not under sentence at the present time, ~~The sentence of the present case is not under sentence~~

~~[illegible]~~

4. The accused has been in confinement, awaiting trial on the present charges, for ~~Nil~~ days in civil custody, and ~~Nil~~ 7 days in military custody, making a total of ~~Nil~~ 7 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ attestation paper is 21 yrs 9 mos

6. The date of his ~~attestation~~ specified in his ~~attestation~~ attestation paper is 28 Jul 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is Nil

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon Nil service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of or entitled to (*state any military decoration or reward*).

11. (~~If the accused is an officer~~) The accused is ~~not~~ a ~~member~~ of the ~~regimental~~ ~~mess~~

12. (~~In the case of an officer~~) The accused is ~~not~~ ~~[illegible]~~ and ~~his~~ regimental ~~mess~~ ~~[illegible]~~

Wt.5937/1519 20M. 5/44. P. Ltd. TS-3.

Exhibit X
Lieutenant Major
Pros.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... *Rank* ..... Name ..... of ..... Regiment (or as the case may be).

(*INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 6th day of December, 1945

S W Wood Capt

(S. W. Wood) Captn A/Adjt

No B-63163 Name Roberts, Walter Thomas Edwin | Sqn, Battery, or Company | Corps CAC | Date of enlistment 28-7-42 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet NA | No and date of last drunk NA | Period not reckoning towards freedom from extra fine NA | Sheet No 1. | Signature OC Company, etc [signature] Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	SHEET DESTROYED 28-1-43; LAST ENTRY ON 1-1-43; NO CASES OF DRUNKENNESS:-								
Camp Borden	23-3-43	Tpr		AA Sec 40 Conduct to the Prejudice, ie. slept in late.	Sgt Stunden	4 days CB	23-3-43	Major Wilson	
Field	21-7-43	Tpr		AA Sec 40 Neglect to Prejudice	L/Sgt Hewson	3 days CB	21-7-43	Major Wilson	
Field	1-12-43	Tpr		AA Sec 40 Conduct to the Prejudice, ie. failed to appear on CO's parade on time	Sgt WE Howarth	5 days CB	2-12-43	Capt L.W. Bovaird	
Field	11-12-43	Tpr		AA Sec 40 Neglect to the Prejudice, ie. found in bed at 0650 hrs.	Lt. NHV Brown	7 days CB	11-12-43	Capt S.A. Nicol	
Field	16-12-43	Tpr		AA 40 WOAS Conduct to the Prejudice etc. that he was found in bed after reveille.	Sgt. Cox SSM Holiday Sgt Olsen	3 days pay AA 46 (2)C	17-12-43	Col J.H. Perry	
Field	28-1-44	Tpr		AA 40 WOAS failed to comply with CRURO in that he was found in the town of Aldershot without authority.	Doc.	Forf 1 days pay AA Sec 46(2)c	2-2-44	Major D.C O'Brien	Forf 1 days pay FR I 149(2) (PTO)

Exhibit
[illegible]
Pres.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25-8-45	Tpr		Voluntary Blood Donor					
Field	31-8-45	Tpr		AA 15(1) AWL from 1500 hrs 31 Aug 45 until 1900 hrs 3 Sept 45. Total absence 3 days & 6 hrs.	SSM L.S.Anton	14 days CB	6 Sept 45	A/Major J.P. Brennan,MC	Auto forfs 4 days pay.

CERTIFIED TO BE A TRUE COPY TAKEN FROM REGIMENTAL BOOKS AND DOCUMENTS HELD IN MY CUSTODY

S.W.Wood Capt

(S.W.Wood) Capt & A/Adjt
27 Cdn Armd Regt(Sher Fus R)

B-63163 TPR ROBERTS, W T E

PLEA IN MITIGATION OF PUNISHMENT

The accused is 21 years of age. He is unmarried. He has been to Public School as far as Grade 8 in Ontario. His father, a Great War Veteran, died in 1932 and Roberts has been raised by his widowed mother along with 3 other children . His mother raised this family on an allowance of $45 per month and whatever additional money Roberts could make as a delivery boy at a store. One child ,Robert's sister, died in 1936 of a brain tumor caused through infection. At present Roberts younger brother,16,is attending school in Toronto. His sister ,16, is working at a menial job in the same city. Roberts contributes to the support of his mother from a voluntary assignment of pay and her financial straits have warranted the Dependents Allowance board giving her an additional $35. per month. Immediately prior to enlistment Roberts wasearning as much as $175. per month at Builders and Flooring Coy in Toronto. This all indicates that his upbringing although adequate has not always been easy and certainly never free from hard work and worry.

Roberts joined the army in 1942 at the age of 18,trained at Bradford,Camp Borden Canada, and came to the United Kingdom in June 43. He was posted to the Grey and Simcoe Foresters and when they were broken up he was sent to #2 CACRU. If any members of the Court can recall the training and administration of #2 CACRU at that time you will all realize why it was that Roberts was pegged about five times on petty offences under AA Sec 40. His record shows that he was punished several times for being in bed after reveille, which will indicate to anyone who has gone through #2 CACRU that he must have been a common-sense soldier who, unfortunately, got caught.

He finally came to this unit as a Driver I/C Tank and on the 15 June 44 was posted to C Sqn in Normandy France. He fought with C Sqn in the battles of Buron,LaPtlie,Chateau de Franqueville,the Assault on Caen,the Crossing of the Orne,the capture of Fleury sur Orne and Ifs. During an attack on St Andre sur Orne his tank was knocked out and he was wounded by mortar fire after he had bailed out. He was evacuated to UK and received a low category because of deafness. There he remained until March or April 45. Finally he rejoined the regiment at Toldijk Holland in May 45 and has been with us since that time. His record in battle and on active service is good. His record of crimes has been negligible. He has never been in any serious trouble with any other NCO in the regiment until now. He has a repat score of 86 points and is scheduled to return to Canada with this unit by what is hoped the end of January 46.

Even his awl charge is due to the fact that he resented the way he was ordered to report on a certain parade by this same NCO but nevertheless he does not attempt to deny that he was wrong in deliberately going away without permission. It would seem that this trooper has acted this way because he has been under stress for some time past and finally could not contain himself any longer because he felt that he had reached the limit of a normal man's endurance. If he receives a dire punishment he will ~~respectfully~~ consider that the army is not taking his home and his past record into consideration . I therefore ask ~~xxx~~ the Court to be lenient with this man who has been Court Martialled on a charge ~~xiii~~ under which his Commanding Officer had not the powers to award punishment.

N.A.Dann (Maj)
27 CAR CAO

6 Dec 45

B-63163 TPR

PLEA IN MITIGATION OF PUNISHMEN

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6 Dec 45

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N.A.Dann (Maj)
27 CAR CAC

6 Dec 45

BBB-72

PTE ROBERTSHAW L.E.

(49)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B39563 Pte Robertshaw L.M. 30 Edn. Fd. Coy. RCE

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 463 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and as loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which 0 days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo Detention for a period of ~~3 months~~ 150 Days.

(Sgd) ..... 17 Jan. 44 (Sgd) K E Morris Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 58.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 12(2)(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 32(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks (for ..... months unless).~~ (1)

(1. AA 57A. Delete if not used.)

Date 18 JAN 44 (Sgd) W Blackwell, Lieut.

Commanding HQ RCE 2 Corps C Tps

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 578, 579.)

Accused.	Date.	Signature of Offr.
B39563 Pte Robertshaw L.M.	22 Jan. 44	W. Blackwell Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA32) 40-P.W.H. 1608 (2464)

Convened by Order of Lt Col. G.K. BLACK Comd RCE 2 Corps C Tps dated 14 JAN 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number. (a) Permt R.	(b) Appmt. A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B39563 Pte	Sjt.	Leslie Ernest	Robertshaw	30 Coln Fd Coy RCE

PROCEEDINGS REVIEWED 15 FEB 44 REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS REVIEWED DATE 16 FEB 44 JAG FIRST CDN ARMY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 17 Jan. 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RQs. For guidance on procedure when a variation in this form arises, see fmn for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number, having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1055 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans .....~~
~~The Interpreter is sworn (1). Do you object to ..... as shorthand writer? Ans .....~~
~~The shorthand writer is sworn (1).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	K.E. Morris	46 Edn. Fd. Coy RCE
Member	Capt.	J.P. Findlay	95 LAD
Member	Capt.	J.W. Smith	HQ RCE 2 Edn C Tps.
Judge-Advocate			
Prosecutor	Capt	R.A. Nunn	30 Coln Fd Coy.
Defending Offr	The accused requests the services of the Officer assigned to defend		

Questions by President: Is the Prosecutor a lawyer? Ans No ~~Is the Defending Offr a lawyer? Ans No~~ (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no ~~no~~) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and findings are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~severally~~ on all charges in the charge sheet.(1). The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3). The President records the pleas in Part I of the Schedule.

(1. RP 31-, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ~~3~~ 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A)* (*ii*)*; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; securing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. ~~The~~ President ~~or JA if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge~~s~~(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge~~s~~ ~~and~~ call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para L3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) re-informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge~~s~~ to which the plea(s) of Guilty is ~~were~~ not changed the President records findings of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 35(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans..... Do you intend to call witnesses on your behalf? Ans..... Are they witnesses as to character only? Ans.....

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans No

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces ~~a~~ statement~~s~~ as to Character and Particulars of Service(1), and certified true copy ~~extracts~~ of Conduct Sheet~~s~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier~~s~~ having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement~~s~~ and Conduct Sheet~~s~~, and in mitigation of punishment?(1) Ans Yes Sir (2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 120. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B39563 Pte. Leslie Ernest ROBERTSHAW, RCASC on strength of 30 Cdn Fd Coy, R.C.E., a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15(1) A.A.

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

in the field on 26 Dec 43, absented himself without leave from his Company, 30 Cdn Fd Coy, from 0900 hrs 26 Dec 43 until he surrendered himself at his Unit Orderly Room to B89287 CSM West, W.S. at 1500 hrs 11 Jan 44. (Total absence 16 days 6 hrs)

In the Field
13 Jan 44

(R.J. Smallian) Major RCE
Commanding
30 Cdn Fd Coy

To be tried by F.G.C.M
In the field
14 Jan 44

.....Lt. Col.
H.Q. R.C.E. 2 Cdn. Corps Tps.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40)PAM/1697 (2008)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 39563	Pte		Leslie Ernest	Robertshaw	30 Con Fd Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 JAN 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not relying for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs as form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 104(E). Delete, if not appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	K. E. MORRIS	46 Con Coy Tps Coy

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	F. W. SMITH	HQ R.C.E. 2 Con C Tps
Capt	F. P. FINDLAY	95 L.A.D.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	A. L. MOORE	2 Con Hvy A.A. Regt RE

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.)

(Rank.)

Date 14 Jan 44

Commanding H.Q. R.C.E. 2 Con. Corps Tps. Lt. Col.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

3

MEDICAL OFFICER'S REPORT

I certify that No. B39563 Spr Robertshaw W.E.
of 30 Cdn Fd Coy is in a good state of health,
and is fit to undergo Trial by Court martial.

Medical Officer

Station Field

Date 17 Jan 44

M. F. B. 246
25M—9-40 (7130-1)
H.Q. 1779-39-480

B-39563 PTE. ROBERTSHAW, L.M. - 30 CBH FD COY, RCE.

Accused

Plea in mitigation of sentence:

Sir, I was disappointed in being sent out to a Field Unit instead of abroad. Arrived 23 Dec 43. Asked for a pass on 25 Dec 43, overnight. I was drinking and did not return within the limit of the pass. I was drinking off and on and was afraid of the consequences on returning, and did not return until 1500 hrs, 11 Jan 44.

SUMMARY OF EVIDENCE in the case of B39563 Pte. Robertshaw,L.E., on the strength of 30 Can Fd Coy, a soldier of the Can Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS for the prosecution

No. B89287 CSM West,W.S., on the strength of 30 Can Fd Coy, a soldier of the Can Army Overseas, having been duly sworn states:
"I am CSM of the 30 Can Fd Coy, of which Pte. Robertshaw is a member. At approx. 1400 hrs on 25 DEC 43 I issued a pass to B39563 Pte. Robertshaw, L.E. The pass was signed by Lt. H.C. Lane of this Unit and terminated at 0900 hrs on 26 DEC 43. I checked the kitchen where Robertshaw was to report at 0900 hrs on 26 DEC 43 and he was not there. I left orders with the NCO i/c guard to have Robertshaw report to me as soon as he returned to camp. He returned and reported to me at 1500 hrs on 11 JAN 44. At that time I questioned him re his absence, to which he replied, he had been drunk. I placed him under close arrest at approx. 1500 hrs 11 JAN 44 and informed the Adjutant of this action immediately. I have personally made a daily inspection of the Unit lines during the time Robertshaw was alleged to have been AWL and he has not been in the lines."

W.S. West CSM.

The accused declines to cross-examine this witness.

The accused was warned as follows:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused: I have nothing to say at this time.

L.E. Robertshaw

I certify that R.P. 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this 12th day of January 1944.

H.C. Lane Lt.

(Signature of Officer taking Summary

6.

I do not desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General court-martial.

Pte. L.E. Robertshaw. B39563.

(B39563 Pte. Robertshaw,L.E.)

I desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General court-martial.

(B39563 Pte. Robertshaw,L.E.)

7.

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-99-4-20
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B39563	Pte	Leslie Ernest ROBERTSHAW	30 Cdn Fd Coy

1. The following is a fair and true summary of the entries in the ~~Regimental Conduct~~ Service Record
~~Conduct Sheets~~ Regimental Pay and Service Book
or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~
of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Sec. 15(1) A.A. AWL	4 times	Seven (7) times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions as mentioned by a court martial or a civil court of summary conviction under~~ Air Force Act,
Section 40 of the Army Act, and dispensations with trial under ~~Sec. 72~~ A.A. 74 ~~are as set out in the schedule~~
~~annexed to this return.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence of~~ beginning on the
day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and Six days in ~~military~~ Air Force custody, making a total of Six days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ Regimental Pay & Service Book is Attestation paper 25

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 9 Jun 40

7. ~~Deficiencies which the accused is liable to reckon towards discharge~~

8. ~~The accused is entitled to reckon~~ service for the purpose of determining his pension, etc.

9. The accused is in possession of ~~or entitled to~~ no air force decoration, or air force reward (or is in military military possession of or entitled to). State any air force decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force

dated ....., and in his regiment (or corps), the rank of ..... unit

dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

In the rank of ..... Date of promotion. years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank ..... Air Force

Name ..... of ..... Unit ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Thirteenth day of January 1944 W. [illegible] Capt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

No B39563 Name ROBERTSHAW | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 8 JUN 40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet L.E. N.A. | No and date of last drunk N.A. | Period not reckoning towards freedom from extra fine N.A. | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20SEP 41	Spr.		A.A.Sec.15(1) AWL 13 hrs	Cpl Roblin Cpl MacLaughlan	Forfeits 1 day pay Sec46	22-9-41	Major S.W. Archibald	Forfeits 1 days pay FR&I
Field	2-1-42	Spr		Sec.15(1)A.A. WOAS AWL from 2300 hrs 2-1-42 till 2300 hrs 3-1-42	Cpl Coleman L/Cpl Bowes	14 days C.B.	5-1-42	N.B. SUTHERLAND Capt	Forfeits 1 days pay FR&I
Field	12-5042	Spr		AWL A.A. Sec.15(1) 15 days 13 hrs. 0600 hrs 12-5-42 until 1900 hrs 27-5-42	L/Cpl Shropshire Cpl Arsenault	Stoppage 10/27 days Detention	29-5-42	W.B. Graham Capt	Forfeits 16 days pay FR&I
Field	10JAN 43	Spr		A.A.15(1)AWL from 2400 hrs 10 JAN 43 to 1900 hrs 13 JAN 43 (2 days 19 hrs)	Sgt Jacobs	7 days C.B.	21 JAN 43	--------	Forfeits 3 days pay FR&I 149(1)(a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 APR 43	Spr		A.A.15(1)AWL 2 days 19 hrs 45 mins.	Doc.	6 days pay FR&I 149(2)	22APR 43	Lt.-Col. Thompson	3 days pay FR&I 149(1)(a)
Field	7 JUL 43	Spr		A.A.15(1)AWL 34 days 18 hrs 15 mins.	Doc.	28 dys det.	27 AUG 43	Col.G.H. Whyte	Forf.35 days pay FR&I 149(1)(a) Forf. 28 days pay FR&I 149(1)(b)
Field	29-11 43	Pte		WOAS AWL From 1200 hrs 29 NOV 43 to 1535 hrs 2 DEC 43 TTA 3 days 3 hrs 35 min	Documentary	4 days pay 14 days CB	4 DEC 43	L.C. Parkinson, Major.	

Certified True Copy of M.F.M. 6 held in my Possession

W. Ate. Emmett Capt. 2/c

4R-45

Gov. Robertson D.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G-5248 Gnr ROBERTSON, David Ralph - 2 CARU

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd AA Sec 40	Guilty	Guilty	
~~3rd~~			
~~4th~~			
~~5th~~	M		
~~6th~~			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of Kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for Eighty (80) days.

(Sgd) ..... Judge-Advocate, if any. 25 Jan 45 Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further order~~ (1)

(1. AA 57A. Delete if not used.)

Date 4 Feb 45 (Sgd) ..... Commanding 5 Fd Regt. Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr
G 5248 Gnr Robertson D.R.	5 Feb 45	Lt Col Capt
Bde 33	6/2/45	Adjt 4 Fd Regt RA

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4R-45

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA81 40/P & B/1688 (8144)) 4/38B

Convened by Order of Brig HCN Brownfield CBE MC Comd "C" Gp, CRU dated 29 Jan 45

16 FEB 1945 RECEIVED PROCEEDINGS MILITARY OFFICER, JAG BRANCH CMHQ

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-5248	Gnr	David Ralph	ROBERTSON	2 CARU

J. Rutherford Capt. 19 Feb 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 21 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JAs, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted;(2) accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1430 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ..... as interpreter? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to Capt K.C.N. Darey as shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JAs, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.H. Mieu ED RC	HQ CRU
Member	Capt	K.C.N. Darey ED	1 CARU
Member	Lieut	W.C. Cameron	1 CARU
Judge-Advocate			
Prosecutor	Lieut	R.N. Quinton	2 CARU
Defending Offr			

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans .....(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~an~~ plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; securing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)
(1. RP 27(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans..... (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans .....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No, on both (1)
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM p. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans ..... (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on each anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused G-5248 Gunner David Ralph ROBERTSON, of "P" Training Wing, No 2 Cdn Arty Rft Unit, a soldier of the Cdn Army Overseas, is charged with:

1st Charge
Section 15(1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

In that he,

in the field, absented himself without leave from 0630 hrs 6 Dec 44 until being apprehended at 2115 hrs 20 Jan 45. Absent 45 days 14 hours and 45 minutes.

2nd Charge
Section 40
Army Act

WHEN ON ACTIVE SERVICE
AN ACT TO THE PREJUDICE OF
GOOD ORDER AND MILITARY DISCIPLINE

In that he,

at London on 20 Jan 45 was in possession of a document purporting to be a genuine pass signed by Lt-col R.J. Ware, well knowing that it was not genuine.

Huron Camp
Bramshott, Hants
23 Jan 45

(Mackenzie Waters) Colonel RCA
Commanding Officer
No 2 Cdn Arty Rft Unit
Cdn Army (Overseas)

To be tried by Field General Court Martial

Brigadier
Commanding "C" Gp, Cdn Reinforcement Units
(Convening Officer)

Bordon, Hants

29 Jan 45

FIELD GENERAL COURT-MARTIAL

CFAAO (In lieu of AFAO) 40/P&N/1097 [2nd Ed]

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 320, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-5248	Gnr		David Ralph	ROBERTSON	2 CARU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) this date endorsed by me, "To be tried by Field General Court-Martial". 1/3

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible] 1/3

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible] 1/3

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible] 1/3

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	E.M. Miller ED	HQ CMU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by CO	1 CARU
Lt	to be detailed by CO	1 CARU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Jim Brownfield (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 29 Jan 45

Commanding "C" Gp, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

1/3

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined C-5248 Gnr Robertson, D.R.
of 2 CARU and in my opinion he is ~~fit~~ unfit to undergo trial
by Court Martial.

2 CARU
31 Jan 45

.....
(Medical Officer)

CASE OF

E-1

G-5848 Gunner ROBERTSON, D.R. "D" Trg Wing, No. 2 CARU

The accused, sworn, states:-

Q. You heard your age being mentioned as 22, is that correct?
A. No, Sir, I was born on 3 May 1925; I am 19 now.

Q. Were you ever with the 7 LAA Regt?
A. Yes.

Q. When did you leave the regt?
A. In Jul 43.

Q. Why were you sent away from the regt?
A. For being under age, Sir.

Q. Did they tell you that?
A. Yes, I was 17.

Q. What is your attitude going to be in the future about soldiering?
A. I'll do my best to soldier, Sir.

Q. Why did you go absent?
A. I did not seem to be able to stay around and I could not get down to it.

Q. Will you tell the Court quite approximately what change has happened in your attitude between the time you joined and the present date?
A. I don't seem to be able to soldier any more.

Q. Why do you feel you can't soldier now?
A. I don't know. I just get fed up.

Q. Why are you fed up?
A. I don't know what the reason is.

Q. When did you enlist in the Cdn Army?
A. 20 Jun 41.

Q. How old were you then?
A. 16, Sir.

Q. Where did you do your trg?
A. I had 8 months' basic trg in NB, Canada, and advanced trg at Petawawa, Ont.

Q. What did you do after?
A. I volunteered for overseas' draft.

Q. When did you go overseas?
A. In Nov 41 with the 7 LAA Regt.

Q. Where were you sent from this regt?
A. To No. 3 CARU.

Q. When did you leave 3 CARU?
A. Sep 43.

Q. Where did you go?

A. To the 1st LAA.

Q. Where did you go with them?
A. Italy. I landed with them in Sicily.

Q. How long did you stay with them?

A. March 1944.

Q. What happened then?
A. I got yellow jaundice and was sent to hospital where I was found to be under age, and I was sent to England.

Q. When did you come back to 8 CARU?
A. Around the 1 Aug where I have been ever since.

Q. Did you have occasion to speak to the SPO?
A. Yes, Sir. I volunteered for inf draft. He told me that they did not need men for the inf. I was told they were sending many out.

Q. With what battery were you?
A. "A" bty, a basic bty.

Q. What kind of work have you been doing?
A. I started to do basic trg.

Q. How did you feel about arty?
A. I did not like it.

Q. Did you like your previous work?
A. No Sir. It was not active enough.

Q. How did you feel about this basic trg in A Sty?
A. I did not like it at all as I have done it three or four times in 2 or 3 years, as well as serving in Italy.

Q. That is why you went AWL?
A. Yes, Sir.

QUESTIONS BY PROSECUTOR

Q. Did you know on your documents that your age was 22?
A. Yes, Sir.

Q. Why was it not changed?
A. I don't know, Sir.

QUESTIONS BY THE COURT

Q. What were you doing before you went absent?
A. I was undergoing basic trg.

Q. Have you completed it?
A. Yes, Sir.

Q. What is your category?
A. A-1, Sir.

Q. How did you live while you were away?
A. I don't care to answer that, Sir.

Pleas in Mitigation Gnr. Robertson, D.R.

The accused was born in Tabusintac, N.B., the son of a poor laborer. He went to school till the age of 14 and then he went out & worked for 2 years as a sawyer in a lumber camp. He earned $50 per month, $20 of which he sent home to help support his family. In June 1941, one month after his 16th birthday, he enlisted for active service.

He did his basic training and 2 months advanced training at Petawawa and then volunteered for an overseas draft. He came to England in Nov. 41 with the 7 LAA Regt. But in July 42 he was sent from the Regiment to 3 CARU because they had discovered somehow that he was underage. In Sept. 43 he was sent out to the 1st LAA Regt. and in Oct. 43 he landed with them in Sicily. He stayed with the Regt. till March 44 when he developed a case of jaundice and was sent to the hospital. He stayed in the hospital till about May and again they discovered that he was underage and he was sent to X-8. By Aug. 44 he was back in 2 CARU. He immediately went before the SPO & demanded to be sent to the Infantry, but this was not done. At the time the accused felt that he was better suited for the Infantry & could do a more important job than. With the 7 LAA he had been a DR which job he had liked. But with the 1st LAA he had been merely an ammunition numbe & that made him feel very insignificant. He didn't like the job & he developed a distaste for the

My

Artillery generally. It wasn't suited to his nature + temperament.

Since he has been in 2 CARU he has been made to take foot drill + rifle drill + TOET's. Doing this work after 3½ years of soldiering aggravates the accused's condition of boredom + restlessness. He tries to stick it for awhile + then finds it unpossible. That is why he has been going AWL from time to time.

The truth is that this soldier, at an immature age has shouldered a greater burden than his country expected of him. He took on this burden + responsibility before he was psychologically prepared for it. He is only 19 years old now + has already soldiered 3½ years + seen action. Can we blame him then, for having acted at times in a slightly irresponsible manner? I submit, sir that it is our duty to appreciate the feelings of an immature person under the impact of a strenuous life, + we must not forget that this person has already made a contribution to given greater service than his country asked of him. To say he is browned off is to put it crudely. He has reached a state where he finds it difficult to continue soldiering. I suggest, sir that the accused is suffering from mental fatigue now that he has been placed in the confines of a holding unit + made to do work which seems to him, at this stage of the game, a phase waste of time. I respectfully submit that this case be judged + determined from this point of view.

Alfred Zimmerman, Lt RCA

Summary of Evidence in the case of G-5248 Gunner David Ralph ROBERTSON of "P" Training Wing, No 2 Cdn Arty Rft Unit, a soldier of the Cdn Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st Witness for the Prosecution

Lt C.W. Currie, A/Administrative Officer "P" Training Wing, No 2 Cdn Arty Rft Unit, an officer of the Cdn Army Overseas, having been duly sworn, states:

"I produce:
(a) A Certified True Copy of Record of Declaration of a Court of Inquiry purporting to be signed by Major R.D. Mulholland, Administrative Officer No 2 Cdn Arty Rft Unit, relating to the accused whom I now recognize. This document is marked Exhibit "A" and is annexed to the Summary of Evidence.
(b) CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42, purporting to be signed by Capt R.B. Birch, DAPM,CMHS, relating to the accused whom I now recognize, this document is marked Exhibit "B" and annexed to the Summary of Evidence."

The accused declines to cross-examine this witness.

2nd Witness for the Prosecution

D-142518 L/Cpl Popiel, P., 615 Cdn Provost Corps, a soldier of the Cdn Army Overseas having been duly sworn, states:

"At about 2030 hrs 20 Jan 45, acting on information received I proceeded to Paddington Area in company with L/Cpl Taylor, where I saw the accused and requested to see his leave pass. This soldier produced a pass made out in the particulars of H-16900 Pte Bale, D.F., which subsequently proved to be false. I thereupon took this soldier into military custody at 2115 hrs 20 Jan 45 and escorted him to No 6 Cdn (Area) Provost Coy Detention Room, where he was handed over to the NCO IC cells." I now produce three (3) leave passes that were in the accused's possession and are now marked Exhibit "C". P Popiel

The accused declines to cross-examine this witness.

The accused was cautioned as follows. "Do you wish to make a statement or to give evidence on oath ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c), (d),(e) and (f) have been complied with.

C.W. McCurdy Lt
(C.W. McCurdy) Lt., CA
"A" Bty - 2 C.A.R.U.

Officer detailed to take the Summary of Evidence.

Huron Camp
Bramshott Hants
23 Jan 45.

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at No 2 C.A.R.U. on the 29th day of December 19 44, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. G 5248 Gnr ROBERTSON, D.R.

DECLARATION.

The Court declare, that G 5248 Gnr ROBERTSON, D.R. absented himself without leave from 0630 hrs 6 Dec 44 and is still absent on 2 Jan 45 and is deficient in kit to the value of Four Pounds Fourteen shillings and Three and One Half Pence, (£4-14-3½), as listed below:

DEFICIENCIES OF KIT OF G 5248 Gnr ROBERTSON, D.R.

ARTICLE	QUANTITY	100% VALUE £	s	d	75% VALUE £	s	d
Blouses S.D.	1	1	3	6	0	17	7½
Trousers S.D.	1	1	4	1½	0	18	1
Drawers woollen prs	1	0	5	4½	0	4	0
Badges Cap Arty	1	0	0	4½	0	0	3½
Bags kit	1	0	4	7	0	3	5
Gloves knitted prs	1	0	2	1	0	1	7
Jersey pullover	1	0	6	0	0	6	0
Cap F.D.	1	0	2	6	0	1	10½
Socks worsted prs	1	0	1	8	0	1	3
Shorts gym prs	2	0	3	10	0	2	10½
Ointment A/G tins	1	0	0	8	0	0	6
Mug drinking	1	0	0	7	0	0	5
Bottle water	1	0	3	0	0	2	9
Dressing F.F.	1	0	1	1	0	0	10½
Spoon table	1	0	0	4	0	0	3
Braces K & L	1	0	1	4	0	1	0
Pack	1	0	8	3	0	6	2
Straps shoulder SE	2	0	2	10	0	2	1½
Straps web supporting W.E.	2	0	1	2	0	0	10½
Boots ankle prs	1	1	4	5	0	18	4
Vests woollen prs	1	0	5	4½	0	4	0
		£ 6	5	9	£ 4	14	3½

President : Capt P.L. Johnston

Members : Lt J.G. Normandin

Lt F. Melhuish

Names of President and Members

Signature of Commanding Officer Mackenzie Waters

CERTIFIED TRUE COPY.

R.D. Mulholland

Signature of Officer having custody of the Original Record.

(R D Mulholland) Major RCA
Administrative Officer
No 2 Cdn Arty Rft Unit
Cdn Army (Overseas).

121200 Wt 10082/191 150,000 4/42 A & E.W.Ltd Gp.533
122199 Wt 20082/1800 100,000 10/42 " " Form/B.1128

CANADIAN ARMY OVERSEAS

LEAVE PASS

Pass No. 37 Date 21 - 12 - 44

No. J 5248 Rank Gnr. Name ROBERTSON D.

has permission to be absent from his unit from 1200 hrs 21 - 12 - 44

to 2359 hrs 24 - 12 - 44 for the purpose of proceeding to

LONDON

Stamp not available. Maj. R. J. Hanson

Orderly Room Stamp (Unit Signature Stamp)

CANADIAN ARMY OVERSEAS

LEAVE PASS

Pass No. 17 Date 15 - 1 - 45

No. J.5248 Rank Gnr. Name ROBERTSON D.

has permission to be absent from his unit from 1200 hrs 15 1 - 45

to 2359 hrs 22 1 - 45 for the purpose of proceeding to

LONDON.

J. R. Ware

Orderly Room Stamp (Unit Signature Stamp)

CANADIAN ARMY OVERSEAS

LEAVE PASS

Pass No. 37 Date 20 - 1 - 45

No. H14700 Rank Pte. Name BALE. E. J.

has permission to be absent from his unit from 1200 hrs 20 - 1 - 45

to 1200 hrs 22 - 1 - 45 for the purpose of proceeding to

LONDON

R. J. Ware

Orderly Room Stamp (Unit Signature Stamp)

ENDORSEMENTS

Sec. 18(d)	R.T.O.—Station Master—Local Police

INSTRUCTIONS

1. If you are travelling with free warrant have this pass stamped or endorsed in the space provided above by the R.T.O. station-master or local police at the place where you spend your leave. If you are unable to return to your unit due to interruption of transportation facilities have it endorsed to that effect by one of these officials.

2. Arms and equipment will not be checked at railway stations except during a wait-over between trains.

3. Carry this pass and your pay book (M.B.M. 1) at all times while on leave.

4. **Illness on leave.**
(a) Apply to the nearest unit of the Canadian Army, or
(b) If none in the area, apply to the nearest unit of the British Army. Request necessary treatment and that the O.C. communicate the facts to your unit. If unable to return your unit before the end of your leave obtain a written report from the M.O. and hand to your C.O. on rejoining, or
(c) If no military unit in the area, apply to a civilian doctor or the nearest Emergency Medical Service Hospital. Obtain a letter certifying the facts and send to your C.O. at once. If unable to rejoin your unit before the end of your leave obtain a certificate and hand to your C.O. on rejoining.

5. Turn this pass in on rejoining your unit.

4/13 CFA-24
40-P-63/1309
(In pads of 100)

ENDORSEMENTS

Sec. 18(d)	R.T.O.—Station Master—Local Police

INSTRUCTIONS

1. If you are travelling with free warrant have this pass stamped or endorsed in the space provided above by the R.T.O. station-master or local police at the place where you spend your leave. If you are unable to return to your unit due to interruption of transportation facilities have it endorsed to that effect by one of these officials.

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(c) If no military unit in the area, apply to a civilian doctor or the nearest Emergency Medical Service Hospital. Obtain a letter certifying the facts and send to your C.O. at once. If unable to rejoin your unit before the end of your leave obtain a certificate and hand to your C.O. on rejoining.

5. Turn this pass in on rejoining your unit.

CERTIFICATE IN ACCORDANCE WITH D.S. 2597 of 19 Apr 42.

I certify that No. G-5248 Rank Gnr. Name Robertson.D.R.

Unit No.2.C.A.R.U. (C.R.U.) was arrested at London. Place

at 2115 hrs. (Hour) on 20-Jan-45. (date) and that at the time of his arrest he was wearing (Military Uniform) xxxxxxxxxxxxxxxxxxxxxxx, Signature of Provost Marshal, Assistant Provost-Marshal, or other Officer or the Commanding Officer of the portion of His Majesty's Forces or the Officer, Warrant Officer, or non-commissioned Officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

R.E. Birch

(R.E. Birch), Capt.
D.A. .M. - C.R.U.

21-Jan-45.

ARMY FORM B 296

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
G-5248	Gnr	ROBERTSON, D.R.	2 CARU

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months		* Since Enlistment	
For	A.A.Sec.15(1)	FOUR times	SEVEN	times
For	A.A.Sec 40	ONE times	EIGHT	times
For	A.A.Sec 25	ONE times	ONE	times
For	A.A.Sec 33	ONE times	ONE	times
For	A.A.Sec9(2)	ONE times	ONE	times

Number of instances of gallantry or distinguished conduct

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 75 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or The accused at the present time is under sentence for beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for days in civil custody and 11 days in military custody, making a total of 11 days, of which days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 22 years 273 days

6. The date of his commission / attestation specified in his record of service / attestation paper is 20 Jun 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 yrs 225 days

8. The accused is entitled to deferred pay or gratuity in respect of 3 yrs 225 days service

9. The accused is entitled to reckon 3 yrs 225 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award, or is in possession of, or entitled to (state any military decoration or reward). CVSM & CLASP

11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the [illegible] of

12. (In the case of an officer.) The accused holds in the army the rank of [illegible] and in his regiment (or corps or department) the rank of [illegible]

Wt.57637/1519 30M. 5/44. P. Ltd. TSI-3.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C-5248 Rank Gnr Name ROBERTSON, E.R. of 2 CARU Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 31 day of Jan 45

Adjt.

"P" Trng. Wing 2 C.A.R.U.

(3) The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of ..... Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be copied from the regimental books the paragraph must be struck through except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph retained amended accordingly.*)

No. G-5248 Name ROBERTSON, DR | Sqn, Battery, or Company | Corps RCA | Date of enlistment 20Jun 41 gc | Badges | Service or Proficiency Pay | 3/17 MFM 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4 Mar 42	Gnr		Sec 40 A.A.Conduct etc, in that he took an M.T. vehicle without regard for MT Standing Orders	Sjt Judd Lt Hussy	frts 5 days pay FRI 149(2)	23Mar42	Lt col Inns	
Field	18May 42	Gnr		Sec 40 A.A.Conduct etc in that was asleep when supposed to be on MT Picquet duties	Lt Archer Lt Massey	7 days detn	19May42	Mj McKenzie A/OC 7 LAA Regt	
Field	10Jun 42	Gnr		Sec 40 A.A.Neglect etc in that he did not keep M/C in serviceable condition.	Gnr Coleman	7 days CB	15Jun42	Mj Petrie	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2 7 May 43	Gnr		1. WOAS AWL from place of instruction from 1330 hrs to 1630 hrs Absent 3 hrs. 2. Failing to comply with an order given by an NCO. 3. Failing to parade at Regt HQ when ordered to do so.	BSM WardTJ Sjt Carter Sjt Clayton	14 days CB Deprived of 7 days pay.	29May43	Maj J.H. Thorp, Middlesex Regt.	

No. G-5248 Name Robertson, DR | Sqn, Battery, or Company | Corps RCA | Date of enlistment 20Jun41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/126 (5418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17 Jun 43	Gnr		1st Charge: Sec 15(1)AA WOAS, did absent himself without leave in that he did absent himself without leave from 0800 hrs of the 17 Jun43 until 1640 hrs of 21 Jun 43(Total absence 4 days 8 hrs 40 mins. 2nd Charge: Sec 40AA An act to the prejudice of good order and military discipline, in that he in the field on the 21st day of Jun 43, was in possession of a document purporting to be a genuine leave pass, well knowing it not to be genuine.	BSM Newell H.D. S/Sjt Lamarre, J.B. Bdr Savage, S.H. Documentary	21 days FP with conjoint award of 21 days ft're FRI 149(1)b	22 Jun 43	Lt-col Taylor OC "P" Wing 3 CARU	

(PTO)

Place	Date of offence	Rank	Date of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11 Oct 43	Gnr		Sec 40 AA Neglect to scrub web eqpt. A.A.Sec.15(1)AWL 2 days 5 hrs 45 minutes.	Bdr Johnson Sjt Heffernan	???? 7 days CB 21 days FP,21 days pay FRI 149(2)	30Oct43 19Oct43	????????? F.J.Thorne	Auto forf of 3 days pay FRI 149(1)a
Field	15 Oct 43	Gnr							
Field	11Feb 44	Gnr		Sec 40 AA Prejudice to the G.O. & M.D.	Capt F.W. Baker	7 days cb	11 Feb44	Maj Wright	
Field	3Sep 44	Gnr		(1)AASec.15(1)WOAS,AWL from 0945 hrs 3 Sep 44 until 1045 hrs 7 Sep 44. Absent 4 days 1 hour (2)AASec 25 WOAS,producing a false leave pass. (3)AASec 33 WOAS, making a false statement to an NCO of the Cdn Provost Corps.	Documentary	28 days FP	9 Sep44	WHTaylor Lt-col	Forf 5 days pay FRI 149(1)(a)Forf 28 days pay FRI 149(2)Total forf 33 days pay(3 charges)

No.G-5248 Name Robertson, D.R. | Sqn, Battery, or Company | Corps RCA | Date of enlistment 20 Jun41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 400P&S/100 (5412)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16Jul 44	Gnr		A.A.Sec.15(1)WOAS,AWL from 2300 hrs 16 Jul 44 until 0800 hrs 19 Jul 44.(2 days 9 hrs)	Sjt Morse, SE	7 days CB 7 daysforf FRI 149(2)	21 Jul44	Lt-col R.H.Back	3 days pay FRI 149(1)a
Field	8 Aug 44	Gnr		A.A.Sec.15(1)WOAS,AWL from 1200 hrs 8 Aug 44 to 1500 hrs 11 Aug 44. Total absencee 3 days 3 hrs.	Documentary	21 days FP	13Aug 44	WH Taylor Lt-col	Forf 4 d.p. FRI 149(1)(a) Forf 21 days pay FRI 149 (2)Total forf 25 d.p.
Field	23Aug 44	Gnr		A.A.Sec 9(2)WOAS,disobeying a lawful command given by his superior officer.	L/B Carpenter L/B Tutten	10 days CB	24Aug44		

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of leave expiring with trial	By whom awarded	Remarks
Field	10 Nov 44	Gnr		A.A.Sec.15(1)WCAS,AWL from 1400 hrs 10 Nov 44 until 0025 hrs 16 Nov 44. Absent 5 days 8 hrs 25 mins.	Documentary	14 days CB	4Dec 44	OC Hyatt Lt-col RCA	Forf 6 dys pay FRI 149(1)(a) To forf 14 dys pay 149(2)

CERTIFIED TRUE COPY OF ORIGINAL AFM 6

(G.W. Currie) Lt RCA
A/Administrative Officer
"P" Training Wing
No 2 Con Arty Rft Unit

Officer having custody of Original AFM 6.

HQ TRAINING WING
NO 2 CARU

PW/5-A-5
24 Jan 45

Commanding Officer
No 2 C.A.R.U.

1. It is respectfully requested that an officer be appointed to defend me at my forthcoming trial by Field General Court Martial.

D.R. Robertson
G-5248 Gnr Robertson, D.R.

"P" TRAINING WING
NO 2 CARU

Commanding Officer
No 2 C.A.R.U.

PW/5-4-5
24 Jan 45

1. I acknowledge having duly received a copy of the Charge Sheet and a copy of the Summary of Evidence concerning my forthcoming trial by Field General Court Martial.

D.R. Robertson
G-5248 Gnr Robertson, D.R.

LIST OF WITNESSES

FOR THE PROSECUTION: (1)Lt G.W. Currie A/Adm Offr "P" Trg Wing 2 CARU
(2)D-142518 L/Cpl Popiel, P. SIS Cdn Provost Corps

FOR THE DEFENCE: N I L

LIST OF EXHIBITS

Exhibit "A" Certified True Copy of Record of Declaration of a Court of Inquiry.

Exhibit "B" CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42.

Exhibit "C" THREE LEAVE PASSES.

QL-128
PTE ROBERTSON J.L.

A-224 Pte John Lloyd Robertson,
No.1 Cdn Adm Tpt Coy, RCASC.

22-128

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this TWENTY-FOURTH day of SEPTEMBER, 19 FORTY-THREE

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *{and that it is not practicable to delay the trial for reference to a superior qualified officer.}

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*{I am unable to appoint :—
*(1. Three Officers to form the Court.)
*(2. A Field Officer as President.)
for the following reasons, namely :—}

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may also be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
LT-COL.	D.L. MCNAIR, V.D.	Hq CRU.

Members.

Rank.	Name.	Regiment.
A CAPTAIN	FROM	1 CSRU
A CAPTAIN	FROM	1 CERU.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

24 Sep 43

*Signed (W.H. Roberts) Maj-Gen.,
Commanding Cdn Rft Units,
Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A224 Pte John Lloyd Robertson, No.1 Con. Adm.Spt.Coy.RCASC.	FIRST CHARGE Sec 15(1) A.A.	Guilty	Guilty	
	SECOND CHARGE Sec 15(1) A.A.	Guilty	Guilty	
	THIRD CHARGE Sec 40 A.A.	Not Guilty	Not Guilty.	Confirmed J.A.R.
	Sentence To undergo detention for a period of Sixty (60) Days and to be put under stoppages of pay until the loss made good (1) R.2-3-2 and (2) R.1-3-11 the expenses of this return. 20th Sept/43 MM			
	See Charge Sheet Attached.			

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ? "Answer - No
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) J.H. Roberts (Signed) [illegible]
Commanding Con Rft Units.
Convening Officer (*a*) President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 30th day of September 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
*Omit if not applicable. ~~2. The witnesses~~
MM ~~(3. The Interpreter)~~
~~(4. The officers under instruction)~~
were duly sworn.

Signed this 30th day of September 1943.

[signature]
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (2) on page 16, W.M.L. 1929. I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

MM Signed this ——— day of ——— 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barracks until further orders.~~)

J.A.R.

Signed this 1 day of Oct 1943.

J.H. Roberts
J. H. ROBERTS, Maj-Gen,
Confirming Officer
Comd. Con. Rft. Units.

Promulgated and extracts taken in the case of A224 Pte John Lloyd Robertson

(*a*) (Dated) 2 Oct 43 (Signed) [illegible] Capt & Adjt
No. 1 CON. ADM. SPT. COY. R.C.A.S.C.

Promulgated and extracts taken in the case of

(Dated) ——— (Signed) ———

Promulgated and extracts taken in the case of

(Dated) ——— (Signed) ———

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(18076) W1339/611 60,000 12/42 A & E.W.Ltd. Cp.998

CHARGE SHEET

The accused, A-224 Pte. John Lloyd Robertson, No. 1 Cdn . Admn. Tpt. Coy., R.C.A.S.C., a soldier of the Cdn. Army Overseas, is charged with;

1st Charge
A.A.Sec.15(1)

WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he,

absented himself without leave from the expiration of his privilege leave pass at 2359 hrs 31 Aug 43 until surrendering himself to the Civil Police at Chudleigh, Devon at 2100 hrs 4 Sep 43. (Total time absent - 3 days, 21 hrs, 1 minute) Cost of apprehension £2.3.2.

2nd Charge
A.A.Sec.15(1)

WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he,

at Lille Barracks, Farnborough, Hants., did absent himself without leave while under open arrest, from 2200 hrs 8 Sep 43 until surrendering himself to the Civil Police at Warwick at 2310 hrs 11 Sep 43. (Total time absent - 3 days, 1 hours 10 minutes). Cost of apprehension £1.3.11.

3rd Charge
A.A.Sec.40

WHILE ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,

at Bishopsteignton, Devon, between 28 Aug 43 and 29 Aug 43 did bring the Canadian Army into disrepute while a guest of Mr. B.M. Ayres under hospitality arrangements for Canadian troops, by being under the influence of alcoholic stimulants and by borrowing the sum of one Pound from the said Mr. Ayres, which sum he has not repaid.

G. C. McArthur
(G.C. McArthur) Lt-Col.,
Commanding Officer,
No. 1 Cdn. Adm. Tpt. Coy.,
R.C.A.S.C. C.A.(O).

Farnborough,
Hampshire
22 Sep 43.

To be tried by Field General Court Martial.

J. L. Roberts
(J.R. Roberts) Maj-Gen.,
Comd, Cdn Rft Units.

In the Field,
24 Sep 43.

[illegible]

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No. A-224 Pte Robertson J.L.
(Rank) (Name)

of #1 Cdn. Adm. Tpt and in my opinion he is fit to undergo
Coy., R.C.A.S.C.
trial by Court Martial.

Station Farnborough, Hants

Date 30 Sept.-43 Sgd. Capt. R.A.M.C.
(Medical Officer)

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT Delheim Barracks
ON THE DAY OF September 1943

The accused A.224. Pte Robertson J.L. Unit 1 Cdn Adm Spt Coy R.C.A.S.C.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lt. Col. D.L. Redman Unit Calg. Highrs
Members Capt. G.D. Kellam Unit 1 C.E.R.U.
Capt. W.D. Mills Unit 1 C.S.R.U.

The officers under instruction are duly sworn:-
Lieut. D.L. Mumford 1 C.S.R.U.
Lieut. P.L. Saunders Unit 1 C.S.R.U.
Lieut. F.S. Clendenning Unit 1 C.E.R.U.

Prosecutor Lieut. D.R.C. Dedson Unit 1 Cdn Adm Spt Coy, R.C.A.S.C.
Defending Officer Capt. S.J. Paterson Unit 1 Cdn Adm Spt Coy, R.C.A.S.C.

The charge sheet is signed by the President and the accused is arraigned. 1st and 2nd. PMJ
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with. insert XX B below PM
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
PMJ The Prosecutor produces ~~MFB 365~~, AFB 296 and MFH 6.
The Court complies with R.P. 36(B).

Pursuant to R.P. 37 THE ACCUSED:-

PM ~~(a) Makes a statement in mitigation of punishment.~~
PM ~~(b) Calls witnesses as to character.~~
PM ~~(c) Calls witnesses in mitigation of punishment.~~
PM (d) Addresses the Court by his Defending Officer. attached

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER.

XX. The accused when arraigned pled not guilty to the 3rd charge
The question under R P 39A was asked
The answer "no" was recorded
The prosecutor stated that he had no evidence to tender on the 3rd charge.
The Def Officer made a submission under note 1 [illegible]

R P 40 that the Prosecution had not made a
Prima Facie case.

The Court is closed. The Court is reopened
The President announced that the Court found
the Accused not Guilty on the 3rd charge
The Court Proceeds with the 1st and 2nd charges.

End of XX

FWJ

Court Martial of Pte Robertson of 1 Can. Admin Troops Coy.
held Farnborough Hants 30 Sept 43

Plea in Mitigation of Sentence.

The prisoner has pled guilty to the two charges but I would submit that more than ordinary consideration be given to his case. It is admitted that most AWL cases receive little consideration inasmuch as those against whom proceedings are taken for this crime are prevented to indulge in it by motives well known to us all and quite inexcusable. Concerning Robertson none of the familiar motives can be discerned. We does not know why he gave AWL but has stated to me that when he does commit this offence he is in a state of mental depression. I have had various conversations with him and it is my conviction that he is sincere and I might inform the court that on the 24 Sept he underwent an examination by an army psychiatrist. Robertson is 43 years old and at an age when it is not easy for a man to orient himself to army life or to mix with young men very much his junior in years. On joining the army a middle aged man might expect because of his considerable experience, some recognition and promotion. When he discovers that a military life is essentially a young mans game (at least serving in the ranks) and that young men are likely to achieve promotion more quickly than he then his reaction might very well be one of the utmost disappointment leading to a sense of inferiority and thus to frustration. This, I am sure, has been Robertson's experience. And the cause of his many offences is an inherent if unhealthy sense of his own inferiority which I submit is not so reprehensible a cause as the usual ones i.e. women. In fact I do think that it does say

something in Robertson's favour when he will take his situation in the army seriously enough to become humble.

Therefore I would plead with the court to treat this case as one out of the ordinary and to consider it in the light of the foregoing remarks.

Punishment must not be vindictive but corrective, and in sentencing a man it must not be forgotten that the serving of his sentence should deter the average soldier from further wrongdoing and result in his becoming a more reliable soldier. I am doubtful if this desirable result would be achieved if Robertson was sent to a detention camp. I would ask the Court to seriously consider the possibility of sending this man before a Rehabilitation Board.

S. T. Dawson, Capt.

EXHIBIT 'A'

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army Lists.

(15990) Wt.27439/757 25,000 9/40 A.& R.W.Ltd. Gp.498 Forms/O.1617/13

I CERTIFY that the man whose personal description is given below surrendered himself to* Constable 140 Victor L. Hixson at Chudleigh at (hour) 9 p.m. on the 14th day of September, 1943 as being No. A-224 (Rank and Name) Private John Lloyd ROBERTSON a deserter (or absentee without leave) from Farnborough, Nr. Aldershot and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 39	Height 5' Feet 7" Inches
Complexion Fresh	Hair Brown greying Eyes Blue
Marks Scar right of chin.	
In uniform or plain clothes	In Uniform - battle-dress.

Probable Date and Place of Attestation	October 1939 - Place unknown.
Probable Date of Desertion or beginning of absence, and from what place	1. 9. 43 From 1 Canadian Administrative Transport Company, R.C.A.S.C. Farnborough, Nr. Aldershot.

W. T. Brewer. Sergt.
Signature of Officer of Police in charge of Chudleigh Station.
Devon.
23rd Sept 1943 Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.
(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of

No. .....

who surrendered to the Police at ..... on .....

Payable to .....

CERTIFIED that this statement of expenses is correct.

..... Superintendent or Officer in charge of Police Station at .....

..... Date of Signature.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No A 224 Rank Pte Name Robertson, J L Unit 1 Cdn. Admn. Tpt. Coy.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Exeter

Date	Particulars		Amount		
7 Sept 43	Escorts return fare from LONDON To	Exeter	1	6	4
	Prisoners single fare to LONDON From	Exeter		13	2
	Prisoners fare from	To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares			3	8
		Total £	2	3	2

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/P & S/483(3287)

CANADIAN ARMY OVERSEAS

LEAVE PASS

Pass No. 59 Date 24 Aug 43

No. A224. Rank Pte Name Robertson J. L.

has permission to be absent from his unit from 0900 hrs. 24 Aug

to 2359 hrs. 31 Aug 43 for the purpose of proceeding to

Beignmont

No. 1 CDN. ADM. TPT. COY.
R.C.A.S.C.

24 AUG 43

ORDERLY ROOM
Orderly Room Stamp

D. R. C. Bedard Lieut.
No. 1 CDN. ADM. TPT. COY. R.C.A.S.C.
(Unit Signature Stamp)

I CERTIFY that the man whose personal description is given below surrendered himself to* T/Sergt. 178 S. Bates.

at Haseley Nr. Warwick. at (hour) 2310.hrs on the 11th. day of Sept. 1943 as being No. A.224

(Rank and Name) Pte. John Lloyd Robertson

~~a deserter or~~ absentee without leave) from No.1. Administrative Dept. Mechanical Transport, R.C.A.S.C. Farnborough, Ozon. and it appears to me from his confession that he is a ~~deserter or~~ absentee without leave.

* After the word " to " to be inserted the name and rank of the police officer concerned.

Age 30 yrs	Height 5 Feet 7 Inches
Complexion fresh	Hair Brown.T'g Eyes blue grey.
Marks Scar right side of chin.	
In uniform or plain clothes	Uniform.
Probable Date and Place of Attestation	11/9/39 at London, Ontario.
Probable Date of Desertion or beginning of absence, and from what place	1/9/43 from Farnborough,

A Woodward Supt.

Signature of Officer of Police in charge of Barrack Street Station, WARWICK.

12th. September, 1943 Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of

No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

(16871) Wt.16874/186 15,000 6/41 A.&E.W.Ltd. Gp.698 Forms/O.1617/12

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No A 224 Rank Pte. Name Robertson, J.L. Unit 1 Admn. Trans Coy RCHSC

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Warwick

Date	Particulars		Amount		
16 Sept 43	Escorts return fare from LONDON To	Warwick		13	10
	Prisoners single fare to LONDON From	Warwick		6	11
	Prisoners fare from	To			
	Escorts & Prisoners expenses for ~~Bed,~~ Meals, Bus fares			3	2
		Total £	1	3	11

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] MY Capt.

Officer Issuing Railway Warrant and Expense Invoices
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:55
40/P & E/483(5287)

STATEMENT OF **EVIDENCE** IN THE CASE OF:-

No A224 PTE. ROBERTSON, J. L.
No. 1 CDN. ADM. T.P.T. COY.
R.C.A.S.C.
FARNBOROUGH.
NR ALDERSHOT.

Sir,

At CHUDLEIGH on the 5TH SEPT. 1943 at about 00.25 HRS. I was on duty at the CIVIL POLICE STATION where I saw the above named soldier, who was handed over to me as a surrender absentee.

I conducted him to WATERBEER CIVIL POLICE STATION, EXETER, to be detained pending the arrival of escort.

EXETER
5TH SEPT/43

7688678 S. H. Burgess Cpl.
163 HQ PROVOST COY (HC)

Sir,

I have read over and corroborate the above statement.

EXETER
5TH SEPT/43

2920066 J. Fraser L/CPL
163 HQ PROVOST COY (HC)

REMARKS

CHARGE

Army Form B 252
(See King's Regulations)

THE ROYAL CANADIAN ARMY SERVICE CORPS Regiment
" "
No 1 CDN ADM T.P.T. ~~Battery~~ ~~Squadron~~ ~~Troop or~~ Company

CHARGE against No. A 224 Rank PTE

Name ROBERTSON J.L.

Place ? Date of Offence ?

OFFENCE W.O.A.S. ABSENT FROM ? UNTIL SURRENDERING TO THE CIVIL POLICE AT CHUDLEIGH, DEVON ON THE 4TH SEPTEMBER 1943 AT ABOUT 21.00 HRS

Names of Witnesses :— 7688678 CPL S.F. BURGESS } 163 HQ PROVOST COY
2820066 L/CPL J. FRASER }
SGT. F. HARRIS EXETER CITY POLICE

A Goord Lt. FOR A.P.M. 163 HQ PROVOST COY (HC)

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

STATEMENT ATTACHED

TO BE FORWARDED AFTER DISPOSAL TO O.C. NEXT HIGHER FORMATION

5238

31-8-43

"Hazeldene"
Bishopsteignton
Devon.

Dear Madam.

Re. Pte. Robertson A224 R.C.A.S.C.
No 1 Transport Coy.

I am very sorry to feel obliged to report to you on this mans behaviour, but think that in view of the following you should draw your own conclusions in the interests of other lads.

His first appearance at my house was at 6.15 a.m. on Saturday morning smelling very strongly of Whiskey & not 'altogether' master of himself, & almost his first request was as to whether I had any spirits in the house - obviously the reply was 'no' (though this was incorrect) he declined an offer of breakfast but went to bed until 10 o'c when he arose, didn't trouble to wash, asked to be lent a £1 note as he had lost his money & wanted to telegraph for more, got it & went out.

Returning early in the afternoon fairly reeking of spirits he declined food & again went to bed. Later in the afternoon Mrs Ayre prepared a bath for him which I believe he took, going out again immediately afterwards, returning again at 9 p.m. obviously "tipsy".

After some persuasion I managed to get him to have some supper after which off he went to bed.

During the night he explored the dining room for a glass & repairing to his

room drank more beer which he had evidently brought in.

I called him on Sunday morning took him in some tea at about 9 o/c he stayed in bed until 10/30 then got up declining breakfast but wanted another 10/- until tomorrow" the request was not complied with, so out he went coming back after closing time still well "soused" was persuaded to eat then once again he went to his room to drink more.

He left the house at about 5 p.m & to the time of writing (10 p.m 30th) has been seen no more; whether he will come again remains to be seen.

We feel very very disappointed at our luck but feel that you have been misled as to his desirability but I am sure you will agree that it is galling to me to have my home regarded as merely a sort of hostel by a service man whom we had wanted to help & to whom to give a really nice holiday.

News & gossip travel if anything faster than lightning in Villages in Rural areas & talk is well on the go - this does not worry me in the least as far as I am concerned but the unfortunate part is that Robertson

behaviour will probably have the effect of detering others from proffering their hospitality on others, even though they may be all deserving, lest perchance they too get 'let down'

I do assure you that my observations are quite unbiassed for I cannot claim to be a teetotaler myself; I fully appreciate your kindly efforts on behalf of these men, but feel as you no doubt do that it is these few who spoil things for so many, that being so I think you should decline in future to do any more for this man.

Yours sincerely

T McAyre

Mrs Conrad Lee
c/o R.C.A.F.
4 Lyndhurst Rd
Exeter

N.B. Further to the foregoing, Pte Robertson has not been seen since ~~the~~ Sunday 29th, his leave I understood expired on the 1st inst but he has left his haversack here, & I should be favoured if you will advise me as to what to do with it.

1/9/46

EXHIBIT 'B'

File No.

DEVON CONSTABULARY.

Chudleigh Knighton. Station. 'H' Division.

7th, September, 194 3.

Subject Absentee from Royal Canadian Army Service Copp; apprehended at 9p.m. 4/9/43 at The Square, Chudleigh.

Sir,

I beg to report that on Saturday the 4th, September, 1943, at 8-45p.m. I was on duty at Chudleigh Police Station, when I received information that a soldier with the word 'CANADA' on a tab attached near each shoulder seam of his tunic was walking about the town and it appeared that he had no idea of his whereabouts.

I at once proceeded to Fore Street, Chudleigh, where I made enquiries to ascertain if this man had been seen in licenced premises, etc, but without result. At 9p.m. I was in the Square when I saw a soldier dressed in Khaki battle dress, cross the street and walk towards the White Hart Hotel. It was dark and I was unable to see details of his uniform. I overtook him as he was about to enter the public bar and on turning my torch light onto him I saw that he had the word 'CANADA' at the top of each sleeve. I asked him for what reason he was in Chudleigh. He said:-"I'm on leave, I have my Pass here". I asked him to produce his Leave Pass and he then said:-"I was going to come along to you fellows after I had had a drink. I want to give myself up". I asked him for what reason and he stated he had been absent without leave from his unit since 31st, August, 1943.

I took him to Chudleigh Police Station where he produced his Army Identity Card with his photograph thereon and facimile of his signature and Pay Book, No. A, 1 particulars of which I noted and are as follows:-

IDENTITY CARD:-Name-Private No.A-294, John Lloyd ROBERTSON of No.1, Canadian Administrative Transport Company, A.C.A.S.C. Born 1904. Ht; 5'7". Brown hair-greying. Eyes blue. Scar right of chin.

ARMY PAY BOOK A.B.64.1. In name of Pte. No.A-294. John Lloyd ROBERTSON, of No.1, Canadian Administrative Transport Co. A.C.A.S.C.

LEAVE PASS:-Issued to Pte. A-294. John Lloyd ROBERTSON, of No.1.C.A.T.C. to be granted absence from his unit 0900hrs 24/8/43 to 2359hrs 31/8/43. To proceed to Teignmouth.

I searched him and in his possession were the following articles:-Small electric hand torch, Comb, Pencil, Cash:-5½d, Book of Matches, Nail file, Handkerchief, 1-Note of Introduction from Knights of Columbus War Service recommending Pte John Lloyd Robertson on leave pass to Mrs. Ayres, 'Hazeldene' Bishopsteignton, Nr. Teignmouth.

I interrogated ROBERTSON and by his replies and the fact that he had nothing of any value in his possession, I was satisfied that he had not committed any crime. He stated that he had become depressed on the termination of his leave and that he had bought and drank a bottle of Methylated Spirit just to

P.T.O.

Supt. COPPIN,

H. Division.

Chief Constable's Remarks.

continued from overpage/

get drunk cheaply. At the time, he smelt strongly of the Spirit and was to some extent in a comatose condition.

I communicated with The Military Police, Exeter, and at 12-25a.m. Sunday 5th, inst; Corporal 7688678. S.R. BURGESS, of 163 H.Q. Provost Company, took ROBERTSON into Military custody and signed the appropriate column in Chudleigh Occurrence Book.

Victor F. Huson.

Constable. 140.

Supt. COPPIN.
E. Division.
NEWTON ABBOT.

DEVON CONSTABULARY
E. DIVISION
23 SEP 1943
CHUDLEIGH
SERGEANTS OFFICE

Submitted.
For information of Adjutant,
1st Canadian Administrative Inspt. Coy.
R.C.A.S.C.

W. Brown
Sergt.

No. 1 CAN. ADM. INT. COY.
R.C.A.S.C.
5 SEP 1943
ORDERLY ROOM

Summary of Evidence in the Case of No. A-224 Pte. Robertson, J. L., on strength of No. 1 Cdn. Admn. Tpt. Coy., R.C.A.S.C., a soldier of the Canadian Army Overseas.

FIRST WITNESS: B-83965 Cpl. Wiles, R. J., on strength of No. 1 Cdn. Admn. Tpt. Coy., R.C.A.S.C., a soldier of the Canadian Army Overseas, having been duly sworn states as follows:

I am N.C.O. in charge of regimental police of No. 1 Cdn. Admn. Tpt. Coy. R.C.A.S.C. On the 1 Sep 43. I was notified by Provost that A-224 Pte. Robertson, J. L. had not returned from his privilege leave which ended at 2359 hrs. 31 Aug 43. At 1420 hrs 7 Sep 43 Pte. Robertson, J. L. was returned to this unit by the Canadian Provost Corps. I herewith submit as evidence the following documents in connection with the case: (Marked as Exhibit "A")

I. Charge framed under Sec. 15 (1) of the Army Act stating that Pte. Robertson surrendered himself to the Civil Police at Chudleigh, Devon at about 2100 hrs on 4 Sep 43. This document is signed by 7688678 Cpl. Burgess, L. and 2820066 L/Cpl Fraser, J., both of 163 H.Q. Provost Coy. (H.C.).

II A statement of expenses incurred in returning Pte Robertson to his unit, signed by Capt W. Fern, D.A.P.M., C.M.H.Q., and dated 7 Sep 43.

III The original of the leave pass issued to Pte. Robertson from 0900 hrs 24 Aug 43 to 2359 hrs. 31 Aug 43, and signed by Lieut. R.C. Fidson.

On the instructions of Capt Fidson, the adjutant of this unit, I placed Pte Robertson under open arrest immediately.

On 9 Sep 43, it was reported to me by R.S.M. that Pte. Robertson had been absent from tattoo roll call (2200 hrs.) on 8 Sep 43. At 1350 hrs. 16 Sep 43, I received Pte. Robertson from the Canadian Provost Corps at the unit guard room. In accordance with previous instructions from the R.S.M., I placed Pte Robertson under close arrest. I herewith submit as evidence, the following documents: (Marked as Exhibit "B")

I Army Form O. 1617, A Certificate of Surrender to the Civil Police of a Deserter or Absentee without Leave, with regard to A-224 Pte Robertson, J. L., signed by Superintendant A. Woodward of Barrack Street Police Station, Warwick, and dated 12 Sep 43, stating that Pte Robertson surrendered himself to T/Sgt. 178 S. Bates at Haseley, Near Warwick, at 2310 hrs. on 11 Sep 43.

II A statement of expenses incurred in returning Pte Robertson to his unit, signed by Capt W. Vern, D.A.P.M., C.M.H.Q., and dated 16 Sep 43.

That is all I have to say in this matter

The accused declines to cross-examine this witness.

Cpl. Wiles R. J.

SECOND WITNESS: L-7928 Cpl. Mattison, H., on strength of No. 1 Cdn. Admn. Tpt. Coy., R.C.A.S.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

At 2200 hrs. 8 Sep 43, I was duty N.C.O. of H.Q. Platoon, No. 1 Cdn. Admn. Tpt. Coy., R.C.A.S.C. At that time I took tattoo roll call, and found A-224 Pte Robertson, J. L. absent. I did not see Pte Robertson again from that time until after he was returned to this unit by Canadian Provost Corps. That is all I know of the matter.

The accused declines to cross-examine this witness.

CPl. Mattison H.

THIRD WITNESS: MR B. M. AYRES, of "Hazeldene", Bishopsteignton, Devon. A written statement of this witnesse's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence and marked Appendix "A".

Having regard to the expense and the loss of time involved, the attendance of this witness cannot in my opinion be readily procured.

MY

D. R. C. Bedson Lieut.
Officer detailed to take the summary of Evidence.

The accused does not demand the presence of this witness for cross-examination.

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The accused elects to make a statement.

The Accused, No. A-224 Pte. Robertson J. L., on strength of No. 1 Cdn. Adms. Tpt. Coy, R.C.A.S.C. a soldier of the Canadian Army Overseas, states as follows:

With regard to the written statement of evidence of the third witness in this summary of evidence, I desire to state that I find myself to be subject to mental disturbances at infrequent intervals, and I should like to be examined by a competent medical officer to determine whether this is the case.

Pte. Robertson J. L.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused, and that the Rules of Procedure 4 (C)(D)(E)(F) and (G) have been complied with.

D. R. C. Pedson Lieut.
No. 1 Cdn. Adms. Tpt. Coy,
R.C.A.S.C. C.A. (C).

Farnborough, Hampshire,
22 Sep 43.

Supplementary Summary of Evidence in the case of No. A-224 Pte. Robertson, J. L., on strength of No. 1 Cdn. Admn. Tpt. Coy., R.C.A.S.C., a soldier of the Canadian Army Overseas.

FIRST WITNESS: Captain A. B. Hudson, No. 1 Cdn. Admn. Tpt. Coy, R.C.A.S.C;

I produce Army Form C. 1617 dated 23 Sep 43, relating to the surrender to the Civil Police at Chudleigh, Devon, of A-224, Pte. John Lloyd Robertson, purporting to be signed by Sgt. W. Brewer, in charge of Chudleigh Police Station. (Certificate marked as Exhibit 'A')

I also produce a certificate dated 7 Sep 43, relating to the apprehension of A-224 Pte. John Lloyd Robertson by Constable Victor F. Huson of the Devon Constabulary. (Certificate marked as Exhibit 'B')

A B Hudson Capt

The accused was cautioned as follows: Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing, and may be given in evidence.

The accused declines to make a statement.

I certify that the foregoing summary of Evidence consisting of one page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 14 (C)(D)(E)(F) and (G) have been complied with.

D. M. C. Hudson Lieut.,
No. 1 Cdn. Admn. Tpt. Coy,
R.C.A.S.C.

Farnborough,
Hampshire
27 Sep 43

Officer detailed to take the Summary of Evidence.

M.F.M. 6
(A.F. B.122)
40/P & /B136 (9065)

No. A224 Name ROBERTSON, J.L. Sqn., Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 11-9-39 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet Nil | No. and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				This soldier having completed six months service, no entries from previous sheet destroyed 12-Mar.-40.					
Field	30-4-40	Pte		Sec. 15(1) A.A. A.W.L. from 30-Apr.-40 to 1 May-40.		14 days C.B.	2 May 40	O.C.	Forfeits 2 days pay FR&I 149(1)(a).
Field	2-11-40.	Pte		Sec. 15(1) A.A. A.W.L. from 2200 hrs. 2 Nov.40 to 2200 hrs. 4 Nov.40.	Sgt. D.W. Hagerty	7 days F.P. Forfeits 7 days pay FR&I 149(1)(b)	9-11-40	Major Dean	Forfeits 2 days pay FR&I 149(1)(a)
Field	19-12-41	Pte		Sec. 15(1)A.A. A.W.L. from 2300 hrs. 19 Dec. 41 to 1500 hrs. 22 Dec. 41.	Sgt. Ticknor Sgt. Luke	Forfeits 8 days pay FR&I 149(2)	23 Dec41	Major Hastie	Forfeits 3 days pay FR&I 149(1)(a)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18-5-42.	Pte		Sec. 15(1) A.A. A.W.L. from 0600 hrs 18 May 42 until being apprehended in Chichester at 0730 hrs 19 May42.	Sgt. Luke	Forfeits 3 days pay FR&I 149(2)	19 May42	Major W.A. McArthur	Forfeits 2 days pay FR&I 149 (1)(a)
Field	6-6-42	Pte		Sec. 15(1) A.A. A.W.L. from 2300 hrs 6 June 42 to 0730 hrs 12 June 42.	Cpl. Huntley	28 days F.P. Forfeits 28 days pay F&I149(1)(b)	12 June42	Major W.A. McArthur	Forfeits 6 days pay FR&I 149(1)(a)
Field	10-7-42	Pte		Sec. 15(1)A.A. A.W.L. from 2300 hrs 10 Jul.42 until apprehended by Lieut. G.T. Witt, R.A. at 2330 hrs. 13 Jul.-42	Cpl. W.J. Watchorn Documentary	Forfeits 7 days pay FR&I 149(2)	14-7-42	Major W.A. McArthur	Forfeits 4 days pay FR&I 149(1)(a
Field	20-3-43.	Pte		Sec. 15(1)A.A. A.W.L. from 1200 hrs. 20 Mar.43 until apprehended at 1430 hrs. 25 Mar.43. T.T.A. 5 days 2 hrs.30 mins. Cost of apprehension £1-5-5.	Documentary	Forfeits 14 days pay FR&I 149(2) Cost of apprehension £1-5-5.	29-3-43.	Major R. Gibb	Forfeits 6 days pay FR&I 149(1)(a) Total Forfeiture 20 days pay.

No. A-224 Name ROBERTSON, J. Regt., Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 11-9-39 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /5136 (2065)

Date of last entry in Company Conduct Sheet: N11 | No. and date of last drunk: N11 | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29-4-43.	Pte		A.W.L. from 2245 hrs 29 Apr.43 until he reported to #3 Provost Coy. at 1930 hrs. 30 Apr.43. Total Absence 20 hrs. 45 mins.	M30614 A/Cpl. Ballantyne	7 days F.F. Forfeits 7 days pay FR&I 149 (1)(b)	1-5-43	Major R. Gibb.	Forfeits 1 days pay FR&I 149 (1)(a)
Field	10-6-43.	Pte		Sec.15(1) W.O.A.S. A.W.L. from 1100 hrs. 10-6-43 until surrendering himself to the Military Police Nottingham at 0600 hrs. 23-6-43. T.T.A.(12 days 19 hours.)	Cpl. S.H. Nelson Documentary	27 days Det'n 27 days forf. of pay. Stoppage of pay to cover cost of apprehension £1-14-6. Forf. 3 days pay FR&I 149(1)			

RELEASED from CANADIAN DETENTION BARRACKS on JUL 28 1943 SENTENCE HAVING EXPIRED
COMMANDANTS Initials .....

(PTO)

Place	Date of Offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified True Copy: A.S. Hudson Capt. & Adj.
No. 1 Cdn. Adm. Tpt. Coy., R.C.A.S.C. C.A. (O)

Officer having custody of original documents:

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

A-224 Pte. JOHN LLOYD ROBERTSON of the No.1 Cdn. Administrative Transport Company, R.C.A.S.C.

1. The following is a fair and true summary of the entries in the Regimental ~~xxxxxxxxxxxxxxxxxxxxxxxx~~ Conduct sheets* of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.	*Since Enlistment.
For A.W.L.	3 times	9 times.
For	times	times.
For	times	times.
For	times	times.

~~xxxxxxxxxxxxxxxxxxxx

3. The accused is not under sentence at the present time,

~~or~~

~~[illegible]~~

4. The accused has been in confinement, awaiting trial on the present charges

for Nil days in Civil Custody,

and 19 days in Military Custody.

Total 19 days.

Of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 39

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper is 11 Sep 39

7. ~~[illegible]~~

8. ~~[illegible]~~

9. ~~[illegible]~~

10. The accused is in possession of, or entitled to, no military decoration or military reward ~~[illegible]~~

11. ~~[illegible]~~

12. ~~[illegible]~~

13. ~~[illegible]~~

~~[illegible]~~

~~[illegible]~~ ~~[illegible]~~

~~[illegible]~~ ~~[illegible]~~

~~[illegible]~~ ~~[illegible]~~

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ....., signed by the president, and annexed to the proceedings.

~~Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in~~ which Trial has been dispensed with.

Army Number, Rank and Name ..... of the .....

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(*Continued overleaf.*)

I, A-224 Private John Lloyd Robertson, desire to have an officer to represent me at my trial by Court-Martial.

A-224 John Robertson JR

22 Sep 43

Trial of A-224 Pte. John Lloyd Robertson,
No.1 Cdn. Administrative Transport Coy.,
R.C.A.S.C.

List of Witnesses for the Prosecution

B-83965 Corporal R.J. Wiles,
No.1 Cdn. Admn. Tpt. Coy., R.C.A.S.C.

L-7928 Corporal H. Mattison,
No.1 Cdn. Admn. Tpt. Coy., R.C.A.S.C.

Mr. B.M. Ayres,
"Hazeldene", Bishopsteignton, Devon.

Farnborough
Hampshire
22 Sep 43

CC-40

GNR ROBERTSON R.J.

CC-410

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this Fourth day of April, 1943.

Whereas it appears to me, the undersigned, an officer in Command of , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[xxxx

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M-2147 Gunner Robert James ROBERTSON 8 Cdn Army Fd Regt	First Charge While on active Service, absent without leave Sec 15 (1) A.A.	Guilty	Guilty. To undergo detention for a period of 60 days 6/4/43 S Howitt Maj President	Confirmed R.O.G.M.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (*to be recorded on separate sheet if necessary*):—

(Signed) R.O.G. Morton (R.O.G. Morton) Brig
Commanding 5 Cdn Armd Div Arty
Convening Officer (e)

(Signed) S Howitt Major (G.C. Howitt) Major
5 Cdn Lt AA Regt
President.

Emmellorrison Capt. J.A.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 6 day of April 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses + Northern Wing Cdn
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 6 day of June 19 43

Emmellorrison Capt. Judge Advocate

S Howitt Major
President of the Court Martial.

C. Certificate in case of death sentences

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~President of the Court Martial.~~

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further order.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 7th day of April 1943

R.O.G. Morton Brig
Confirming Officer.

CRA 5 CDN ARMD DIV

Promulgated and extracts taken in the case of M 2147 Gnr. Robert James Robertson

(a) (Dated) 9 Apr 43 (Signed) [signature] Lt Col, 8 Cdn A Fd Regt R.C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(11739) Wt. 40115—983 100 m 1/40 P. St. G. 620

CHARGE SHEET

The accused, M-2147 Gunner Robert, James, ROBERTSON, of the 61st Field Battery, 8th Army Field Regiment, R.C.A., a soldier of the Canadian Army Overseas, is charged with:-

CHARGE SHE
A. A.
Sec 15 (1)

While on Active Service,
Absent without leave,

in that he,

in the field, absented himself without leave from 2300 hrs. 21 March 1943 until 2250 hours 29 March 1943. Absent 7 days, 23 hours, 50 minutes.

(L. A. Jones) Lieut-Col RCA
Cmdg., 8th Army Field Regiment, RCA.
Canadian Army Overseas.

In the Field.
2 April 43.

To be tried by Field General Court Martial.

R. O. G. Morton
(R.O.G. Morton) Brig. RCA
5th Cdn Armd Div.
Canadian Army Overseas.

In the Field
3 April 43.

This is to certify that I have to-day examined

M-2147 Gnr. Robertson R.J., and find him fit

to undergo Court Martial.

Dated 6 Apr 1943.

In the Field

W.J. Ewen

(W.J. Ewen) Capt. RCAMC
Medical Officer
8 Cdn Army Field Regt RCA

Trial of M2147 Gnr ROBERTSON, Robert, James, 61 Army Fd Bty, 8 Cdn Army Fd Regt RCA.

Held in the Field in England on this 6th day of April, 1943.

PRESIDENT
Major G.C. Howitt — 5 Cdn LAA Regt RCA

MEMBERS
Captain J.F. Jensen — 11 Cdn Inf Bde Coy RCASC
Lieutenant L.A. Gambe — 1 Cdn Fd Sqn RCE

JUDGE ADVOCATE
Captain G.M. Morrison — HQ 5 Cdn Armd Div

OFFICERS UNDER INSTRUCTION
Major A. T. Stephenson — 4 Cdn A Tk Regt RCA
Lieutenant E.M. Evans — 17 Cdn Fd Regt RCA

PROSECUTING OFFICER
Lieutenant F.A. Reid

DEFENDING OFFICER
Lieutenant I. Cristall

The President produced the Convening Order, Charge Sheet and Summary of Evidence.

The president, in closed Court, reads the Convening Order and the Charge Sheet to the Members, and the Court satisfy themselves that it is properly convened and constituted, that the accused is amenable to Military Law, and that each charge discloses an offence.

The accused is brought before the Court and at 1100 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can) 557 that the accused is fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

President to accused

Q. 1 Do you object to A57385 Cpl B.W. Henheffer, CMSC HQ 5 Cdn Armd Div acting as shorthand writer?
A. 1 No, sir.

The shorthand writer is duly sworn.

The Convening Order is read in the hearing of the accused.

The names of the President and Members of the Court are read to the accused.

President to accused

Q. 2 Do you object to be tried by me as President or by any of the Officers whose names you have heard read over?
A. 2 No, sir.

The President, Members, Judge Advocate and Officers under Instruction are duly sworn.

The Charge Sheet is signed by the President.

Also another fact, that when the woman was better he returned to his unit immediately is another point in his favour. I think this should be taken into consideration by the court in awarding punishment."

The Court is closed to consider sentence.

CERTIFIED A TRUE RECORD OF THIS TRIAL, this 6th day of April, 1943.

Captain
Judge Advocate
5 Cdn Armd Div

Trial of M32147 Gnr ROBERTSON, Robert, James, 61 Army Fd Bty, 8 Cdn Army Fd Regt RCA.

Held in the Field in England on this 6th day of April, 1943.

PRESIDENT
Major G.C. Howitt — 5 Cdn LAA Regt RCA

MEMBERS
Captain J.F. Jensen — 11 Cdn Inf Bde Coy RCASC
Lieutenant L.A. Gambe — 1 Cdn Fd Sqn RCE

JUDGE ADVOCATE
Captain G.M. Morrison — HQ 5 Cdn Armd Div

OFFICERS UNDER INSTRUCTION
Major A. T. Stephenson — 4 Cdn A Tk Regt RCA
Lieutenant E.M. Evans — 17 Cdn Fd Regt RCA

PROSECUTING OFFICER
Lieutenant F.A. Reid

DEFENDING OFFICER
Lieutenant I. Cristall

The President produced the Convening Order, Charge Sheet and Summary of Evidence.

The president, in closed Court, reads the Convening Order and the Charge Sheet to the Members, and the Court satisfy themselves that it is properly convened and constituted, that the accused is amenable to Military Law, and that each charge discloses an offence.

The accused is brought before the Court and at 1100 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can) 557 that the accused is fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

President to accused

Q. 1 Do you object to A57385 Cpl B.W. Henheffer, CMSC HQ 5 Cdn Armd Div acting as shorthand writer?
A. 1 No, sir.

The shorthand writer is duly sworn.

The Convening Order is read in the hearing of the accused.

The names of the President and Members of the Court are read to the accused.

President to accused

Q. 2 Do you object to be tried by me as President or by any of the Officers whose names you have heard read over?
A. 2 No, sir.

The President, Members, Judge Advocate and Officers under Instruction are duly sworn.

The Charge Sheet is signed by the President.

The Charge Sheet is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty. He pleads as follows:

First Charge - Guilty.

R.P. 35 (B) is complied w'th, by the President ascertaining that accused understands the nature of the charge and his plea thereto, explaining the difference in procedure by the plea and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

President to accused

Q. 3 Do you desire to make any statement of the circumstances, in reference to the charge?
A. 3 No, sir.

Summary of Evidence is read aloud, in the presence of the accused, signed by the President and attached to the Proceedings.

President to accused

Q. 4 Do you wish to make any statement in mitigation of punishment?
A. 4 Yes, sir.

The accused makes the following statement in mitigation:

"From when I returned from Spartan scheme, I got a 48 hour pass and proceeded to London and went to see the girl friend. She told me that she was pregnant and said that we had better see a doctor. I knew that we could not see a doctor on Saturday afternoon and so I along with the girl friend, went to the doctor on Monday. He declared she was pregnant and gave her some dope. She is a married woman. I knew I was doing wrong but had to decide whether to come back or stay with her until she was better. When I knew she was better I returned."

President to accused

Q. 5 Do you wish to give evidence yourself or call any witnesses as to character?
A. 5 No, sir.

Statement of Character and Service and Field Conduct Sheet signed in the manner required by A.A. 163(1)(h) and purporting to refer to the accused by his number, rank, name and Corps, are produced by the Prosecution, read, signed by the President and attached to the proceedings.

President to accused

Q. 6 Do you wish to address the Court on your Statements of Character Service and Conduct in further mitigation of punishment?
A. 6 Yes, sir.

The Defending Officer makes the following plea in mitigation of punishment:

"The fact that when he found out that this woman was pregnant and also that she was living alone and was married is a very difficult situation. It was a matter of him staying w'th the woman until she was better or leaving her alone and it 's quite hard to say which course was right. He decided to stay with her.

Also another fact, that when the woman was better he returned to his unit immediately is another point in his favour. I think this should be taken into consideration by the court in awarding punishment."

The Court is closed to consider sentence.

CERTIFIED A TRUE RECORD OF THIS TRIAL, this 6th day of April, 1943.

Captain
Judge Advocate
5 Cdn Armd Div

SUMMARY OF EVIDENCE in the case of W-2147 Gnr. Robert James, ROBERTSON, of the 61 Field Battery, 8th Army Field Regiment, R.C.A., Canadian Army Overseas.

By direction of the Commanding Officer the summary of evidence is taken on oath.

1st Witness for the Prosecution

W-2178 Bdr. Kelly, J., of the 61st Field Battery, 8th Army Field Regiment, R.C.A., having been duly sworn, states:-

In the field on 21 Mar 43 I was in charge of Hut number 47, where Gnr. Robertson sleeps. At 0300 hours I checked the Hut, at which time Gnr. Robertson was not in bed. I reported the absence of the accused to Sgt. Hack, who was acting R.S.M. the following morning. I next saw the accused at 0300 hours 29 Mar 43. I was on every parade during the period 21 - 29 Mar 43 and Gnr. Robertson did not answer to his name on any of the parades.

The accused declines to cross-examine the witness.

J. Kelly
(J. Kelly, Bdr. W-2178
61st Fd Bty, R.C.A.
8th Army Field Regt., RCA

2nd Witness for the Prosecution

H-5044 T/Sgt. Chalmers, G.R., of the 61st Field Battery, RCA., 8th Army Field Regiment, R.C.A., having been duly sworn, states:-

In the field on 29 Mar 43 while on duty as Battery Orderly Sergeant, Gnr. Robertson reported to me. The time then was 2250 hours. I placed him under open arrest and reported his return to R.S.M. Woodhouse, F. in the morning.

The accused declines to cross-examine this witness.

G R Chalmers
(Chalmers, G.R.) T/Sgt.
61st Field Battery, RCA
8th Army Field Regiment RCA

The accused having been duly cautioned in accordance with Rule of Procedure 4(E), reserves his defence.

Certified that Rules of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

Taken down by me in the presence and hearing of the accused this 31 day of March 1943. In the field.

J. A. Cooper, Capt.
(J. A. Cooper, Capt. RCA
61st Fd Battery, R.C.A.
8th Army Fd Regt., R.C.A.
Officer ordered to take summary of evidence.

PROSECUTING OFFICER

Lieut. F.A. Reid, 8 Cdn Army Field Regiment R.C.A., has been selected as prosecuting officer in the case of M-2147 Gnr. Robertson R.J.

368

HQ 8CA

4 APR 1943

6 CDN ARMD DIV

I, Gunner Robert James ROBERTSON, of the 61st Field Battery, 8th Army Field Regiment, R.C.A., desire that Lieut. I Cristall, of H.Q., R.C.A., 5 Cdn Armd Div. be appointed to represent me at my trial, if available.

In the Field
2 April 43.

Robertson R.J.
(Robertson, R.J.) Gnr M-2147
61st Field Battery, R.C.A.
8th Army Field Regt., R.C.A.

LIST OF WITNESS FOR THE PROSECUTION

In the case of M-2147 Gnr. Robert Jones, ROBERTSON of the 61st Field Battery, 8th Army Field Regiment, R.C.A., Canadian Army Overseas.

First Witness for the Prosecution

M-2178 Gnr. Kelly, J.
61st Field Battery, R.C.A.
8th Army Field Regiment, R.C.A.
Canadian Army Overseas.

Second Witness for the Prosecution

M-5044 L/Bdr. Chalmers, C.R.
61st Field Battery, R.C.A.
8th Army Field Regiment, R.C.A.
Canadian Army Overseas.

LIST OF WITNESSES FOR THE DEFENCE

NIL.

No. M-2147 Name Robertson R.J. Sqn., Battery, or Company Corps 61 Field Battery R.C.A. Date of enlistment G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) (1251-7-41 (1215-20) H.Q. 1772-35-1652)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 3 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	21 Mar 1943	Gnr.		Sec., 15 (1) A.A., absent without leave from 2300 hrs 21 Mar 43 to 2250 hrs 29 Mar 43 (absent 7 days 23 hrs 50 minutes)	K-5044 L/Sgt. Chalmers C.R M-2178 Bdr. Kelly J.	60 days detention	6 April 1943	F.G.C.M. 6 Apr 43.	Forfeits 8 days pay FR&I 149 (1) (a). Forfeits 60 days pay FR&I 149 (1) (b)

(P.T.O.)

No. L-214 Name Robertson R.J. Sqn., Battery, or Company 61 Field Battery RCA Corps C.A.S.F. Date of enlistment 22-11-39 G.C. Badges

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Service or Proficiency Pay | Character

M.F.M.G. 1

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if order dissenting with O/C	By whom awarded	Remarks
Bordon	4/4/40			(1) A.W.L. from 0805 hrs 1/4/40 to 1500 hrs 1/4/40 Sec 15 A.A.					
			(1)	(2) "Drunkeness" in that he on 1/4/40, when he should have bee on Battery Parade was, "Drunk" Sec 19 A.A.		Admonished	5/4/40	Major F.S. Ford.	
Larkhill	31/8/40			Neglect to the Prejudice of Good Order and Military Discipline, in that he, neglected to obey a lawful command of a Superior Officer Sec 40 A.A.	Capt. W.S Belgier NCM Watt J.	7 days C.B.	1/9/40	Major F.A. Ford.	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dissenting with trial	By whom awarded	Remarks
Field	21/1/42	Gnr.		W.O.A.A.S. Sec 40 A.A. Contrary to the prejudice of good order and military discipline in that he neglected to obey an order given by a superior officer, in that he did go on a public highway after being ordered by 1/Sgt. Gates A. not to do so.	1/Sgt Gates A. 1/Bdr Dale N.L.	14 days C.B. Extra fatigues	22/1/42	Major F.P. Haggard.	
Field	30 Mar 42	Gnr.		WO/AS Sec 15 (1) A.A. A.W.L. from 2359 hrs 30 Mar 42 until 2330 hrs 1 Apr 42 (Absent 1 day 23 Hrs 31 min).	Cuthbertson W.H.	27 days F.P.	3 Apr 42	Lieut-Col L.M Jones	Forf. 2 days pay F.R.A I 149 (1) (a)
		Gnr.		Wa on 17 Apr 42 granted 13 days remission of 27 days Fd Punishment.				A.M. Jones Lt-Col.	
Field	28 Jun 42	Gnr.		W.O.A.A.S. Sec 15 (1) AWL 10 days 22 hrs 46 min.	Cuthbertson W.	7 days C.B.	13 Jul 42	L.M Jones Lt/col.	Forf 11 days pay

No. M-2147 Name Robertson R.J. Sqn., Battery, or Company 61/107 Field Battery RCA Corps C.A.S.F. Date of enlistment 22-11-39 G.C. Badges Service or Proficiency Pay

M.F.M. 5 (A.F.B. 122) 175M—7-41 (1215-20) H.Q. 1772-33-1652

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23/12 42.	Gnr.		(1) WOAS, Sec 40 A.A. Conduct to the prejudice of good order & Military discipline in that he, at 1400 hrs 23 Dec 42, did cause a disturbance in the ranks. (2) WOAS, Sec 22 A.A. attempting to escape when in lawful custody 23 Dec 42, when under open arrest, left the fatigue party until apprehended by Regt'l police 1730 hrs, (Ab sent 3 hrs and 5 mins	BSM Cuthbertson W.M.	5 Days F.P.	24 Dec 42	Lt-Col L.M. Jones	Forf 5 days pay F.R. I 149 (2)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED TRUE COPY J.E. Thompson Capt.

(J.E. Thompson) Capt., R.C.A.
Adjt., 8 Cdn Army Field Regt., R.C.A.

M.F.B. 355
40/F & 2/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M-2147	Gunner	Robert, James, ROBERTSON	8th A Fd Regt., R.C.A.

1. The following is a fair and true summary of the entries in the ~~[illegible]~~ Regimental and Squadron, Battery Field Conduct sheets ~~[illegible]~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~[illegible]~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months			Since enlistment		
For	A.A. Sec 15(1)	1	times	A.A. Sec 15(1)	3	times
For	A.A. Sec 40	1	times	A.A. Sec 40	3	times
For	A.A. Sec 22	1	times	A.A. Sec 22	1	times
For			times	A.A. Sec 19	1	times

Number of instances of gallantry or distinguished conduct Nil

or,

~~[illegible]~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately. N.A.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~[illegible]~~ Army Act and dispensations with trial under ~~[illegible]~~ A.A. 73 are set out in the Schedule annexed to this statement. N.A.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for Nothing beginning on the N.A. day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 6 days in military custody, making a total of 6 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 23

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper 22/11/39

7. The service which the accused is allowed to reckon towards discharge is N.A.

8. The accused is entitled to reckon N.A. service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~[illegible]~~ military decoration, or ~~[illegible]~~ military reward (or is in possession of or entitled to). State any ~~[illegible]~~ military decoration or reward. Nil

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N.A.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N.A. dated N.A., and in his regiment (or corps), the rank of

N.A. dated N.A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N.A. Date of promotion.

In the rank of N.A. years.

In the rank of N.A. years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
N.A.	N.A.	N.A.	N.A.	N.A.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26 day of April

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

4R-63

Pt Robertson R. S.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F.82268 Pte L/Cpl Reginald Simpson ROBERTSON, WNSR

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge 1	Guilty	Guilty	Court advised - plea of Not Guilty
2nd	changed to	Not Guilty		The accused changed plea to Not Guilty
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 463 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~Beginning on (date)~~ "Nil" (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which No days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo imprisonment for a period of two (2) years.

(Sgd) ..... 10 Jan 45 (Sgd) "WR Pell Major"

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~(1) "PEB"

(1. AA 57A. Delete if not used.)

(Sgd) "P E Bernatches Brig"

Date 12 Jan 45 Commanding 3 Cdn Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F.82268 Pte ROBERTSON R S West N S R	14 Jan 45	"A J W Dyer Capt" Adjt West N S R

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY

4R-63.

(D R Cowell) Capt
Cdn Sec 2nd Ech AFHQ

CFA66 (1b [rev.] of AF 22)
40-P-8-6 16/60 (3864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of ~~Convening Officer~~ Brigadier J P E Bernatches 3rd Cdn Inf Bde dated 6 Jan 45

(Convening Order No 42)

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.82268	Pte	L/Cpl	Reginald Simpson	ROBERTSON	WNSR

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 10 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~Waiting Member~~ JA, if any, and Offrs under instr, if any, assemble, and the Court is closed. (~~LT BLACK the waiting member replaces Lieut LAMOIX, evacuated~~)

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDL. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

~~The Interpreter is sworn.~~(1) ~~Do you object to~~ ..... as shorthand writer? Ans "NAT"

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 58(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W R PELL	C & Y Regt
Member	Capt	R E CAMPBELL	W N S R
Member	Lieut	F G J BLACK	C & Y Regt
Judge-Advocate			
Prosecutor	Lieut	G N SUDRESKI	W N S R
Defending Offr	Lieut	P A H ARCHIBALD	W N S R

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See D1 p 3.)

A8. The accused F.82268 Pte L/Cpl R S ROBERTSON before arraignment make(s) (no) (~~a~~) plea. "NAP" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*ii*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*); *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3.* *2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)

(*1. RP 27(B).* *2. RP 37(D) fn 6.* *3. RP 35(B) fn 5 para 3, MML p 54 para 47.* *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing at Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No .....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the "NIL" charge(s).(2) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)

(*1. Delete remainder of this para, if submission not made.* *2. Arguments on submission, answer and reply are recorded per Notes.* *3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. Neither. Do you intend to call witnesses on your behalf ? Ans. No. Are they witnesses as to character only ? Ans. N/A.

(*1. RP 155.* *2. RP 40(A), see 80(D).* *3. RP 40 fn 10.* *4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule.* *2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of "NIL" of a Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith ; and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (6), RP 45, 120(A).* *2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. No.

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para.* *RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. P1 and Ex. P2 respectively.(3)

(*1. MFB 355 or AFB 296.* *2. MFM 6.* *3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes.(2)

(*1. RP 37(C), 46(D).* *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty.* *2. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, RP 48. As to sentences see AA 41(5), MML p 130. When accused MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* *2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

COPY

WRP

CHARGE SHEET

The accused,
F82268 Pte (L/Cpl) Reginald Simpson ROBERTSON, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, ¢ CMF, when on Active Service, is charged with:

1st Charge
Sec 12(1)(a)
Army Act

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE,

in that he,

In the Field, in Italy at approximately 1900 hrs 11 Dec 44, when a member of No 8 Platoon "A" Coy, West NSR, after he had been warned that his said platoon would move forward in the line against the enemy on the evening of the said 11 Dec 44, with intent to avoid such service, absented himself without leave from his said platoon from approximately 1900 h s 11 Dec 44 and remained absent until being arrested in FANO by the Military Police at approximately 1045 hrs 27 Dec 44 (Total time absent 15 days 15 hrs 45 mins).

In the Field
30 Dec 44.

Sgd "F E Hiltz"
(F E Hiltz) Major
A/Comd West N S R

"TO BE TRIED BY FIELD GENERAL COURT MARTIAL"

In the Field
8 Jan 45

Sgd "P E Bernatchez," Brig
Commanding 3 Cdn Inf Bde.

Certified true copy

[signature] Capt
Officer i/c Regt Records

'L.J.B.'
8 Jan 45

"WRP"

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1097 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

"WRP"

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F82268	Pte	L/Cpl	Regenald Simpson	ROBERTSON	WNSR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 6 Jan 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial". "PEB"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.) "PEB"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto. "PEB" "PEB"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder. "PEB"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Must be named. RP 106.	Unit.
Major	W R PELL	CYR

MEMBERS.

Rank.	Named or detailed. RP 106.	Unit.
Capt	R E CAMPBELL	WNSR
Lieut	O M LACROIX	R22R

WAITING MEMBER.

Rank.	Named or detailed, if any. RP 106.	Unit.
Lieut	F G J BLACK	CYR

JUDGE-ADVOCATE.

Rank.	Must be named, if any. RP 106.	Unit.

On Active Service in the Fd

in Italy (Country.) "P E Bernatchez" (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 8 Jan 45 Commanding 3 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE "WRP"

KR (CAN) PARA 557

I certify that I have this morning examined:
No F82268 L/Cpl Robertson R S of the West Nova Scotia Regiment and in my opinion is fit to undergo trial by Court Martial.

Stationed Field (undecipherable) Capt
Date 10 Jan 43 Medical Officer

Page 1. "WRP"

The Court opens at approximately 1100 hrs 10 Jan 45, Lieut F G J Black, Waiting Member, replacing Lieut O M Lacroix, who has been evacuated.

The accused pleads Guilty of the 1st Charge.
Court closed to consider the plea..
Court re-opens and advises the accused to plead Not Guilty and the case is continued on Record Form D. "WRP"

Prosecution

First Witness for Prosecution — F.40231 Sgt Ennis E S, WNSR, having been duly sworn states:

I am F.40231 Sgt Ennis E S, WNSRegt, Pl Sgt A Coy. On 11 Dec 44 at approximately 1600 hrs the sec cmdrs and myself were called to an Orders Gp. At this Orders Gp we were told to warn our men to be prepared to move forward to meet the enemy. At 1845 hrs the pl cmdr told me to get the pl ready to move. I called for my sec cmdrs and found that L/Cpl Robertson was not present. I asked the men in his section if they had seen him anywhere and on being told they had not I decided to look for him.
I searched the immediate vicinity and on being unable to find him reported to my platoon cmds. He asked me if I had searched the vicinity to which I answered "Yes Sir."

Page 2. "WRP"

We were forced to move off without him.

Q. Was L/Cpl Robertson one of your Section Cmdrs.
A. Yes, Sir.
Q. was he present at the Pl Cmdrs Orders Gp at 1600 hrs.
A. Yes Sir.
Defence declines to examine the witness.
RP 83(b) complied with.

2nd Witness for Prosecution — Lieut G N Budreski, W N S Regt, having been duly sworn, states:

~~I am Lieut G N Budreski, W N S Regt, having been duly sworn, states:~~

I am Lieut G N Budreski, W N S Regt. I produce as evidence in the case of the accused B.82268 L/Cpl Robertson R S, a certificate of arrest showing the accused as being arrested by the Military Police in Fano at approximately 1045 hrs 27 Dec 44 and marked as Exhibit A.

Prosecution is closed.

The Defence calls no evidence.
The Pros and Def Offr decline to make a closing address.

Page 3 "WRP"

Plea for Mitigation of Punishment

In mitigation of Punishment, I ask that the Court take into consideration the good conduct of accused during his army career to date. The accused is a young man of 20 years of age and not of the same stability of mind as a mature person when under action, should have due consideration given to this fact. The accused has seen approximately seven months of action in Italy, some of which was of the toughest nature.

Ex "A" Ex "A" "WRP"

Certificate of Arrest

I certify that F82268 Rank L/Cpl Name ROBERTSON R S unit WEST NOVA SCOTIA REGIMENT was arrested at FANO at 1045 hours on the 27, December, 1944.
He was dressed in uniform.
Signature of PM, APM or other officer into whose custody the a/m was taken on arrest.) "W E (undecipherable)
Rank - Capt
Appointment (if any) C.C.
Dated 28th Dec 44.

P.O.W.Y.

"WRP" E 1

ARMY FORM B.286.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F82268	L/Cpl	Regenald Simpson ROBERTSON	West NSR

1. The following is a fair and true summary of the entries in the regimental and squadron (battery or company) conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The summary herein stated should cover, under each heading, the number of times in the conduct sheet, pre-referred being given to the most recent offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	Sec 15(1) AA 1 times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, Nil

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

[illegible] of the accused [illegible] under section [illegible] of the Army Act [illegible] in the statement.

3. The accused is not under sentence at the present time, *or* [illegible]

4. The accused has been in confinement, awaiting trial on the present charges, for NO days in civil custody, and 14 days in military custody, making a total of 14 days, of which NO days were spent in hospital.

5. The present age of the accused according to his attestation paper is 20

6. The date of his attestation specified in his attestation paper 23 Feb 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award [illegible] CVSM and clasp.

11. *(If the accused is a warrant officer.)* The accused before he was made a warrant officer last held the regimental rank of N/A

12. *(In the case of an officer.)* The accused holds in the army the rank of N/A dated and in his regiment (or corps or department) the rank of N/A dated

(*19230) W1.13852/141 125,000 6/41 A.A.E.W.Ltd. Gp.a/55

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. F82268 Rank Pte Name Robertson E G of West NSR Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day of Jan 45

Sgd "AJW Dyer," Capt & Adjt
West Nova Scotia Regiment

17. The accused has served as a non-commissioned officer continously without reduction, to the present date,

In the rank of ..... years,
Date of Promotion.

In the rank of ..... years,

In the rank of ..... years,

(INSTRUCTION—If any entries in any of the above paragraphs cannot be supplied from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs completed accordingly.)

COPY

No F82266 Name ROBERTSON RS | Sqn, Battery, or Company | Corps CIC | Date of enlistment | OC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/F&S/106 (3488)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				Certified true copy Old sheet destroyed 25-10-43 no entries.					
Field	11 Mar	rr	Pte	WOAS AWL in that he at Chobham Camp did absent himself without leave from 2215 hrs 11 Mar 44 till 0140 hrs 12 Mar 44 Time absent 3 hrs 25 mins. AA Sec 15(1)	Sjt Ward Cpl Matherson	Forf 2 days pay FR&I 149(2)	13 Mar 44	L H Watson Lt col.	
				BLOOD DONOR VOLUNTARY CDN ARMY CMF 18 MAY 44.					

(OVER)

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with Trial	By whom awarded	Remarks
Certified	true	copy	from	the Regimental Books in my custody 2 Jan 45					
					Signed	A J W Dyer, Officer I-C	Capt Regtl Records,	West NSR.	

COPY

SUMMARY OF EVIDENCE in the case of F62268 L/Cpl Reginald Simpson ROBERTSON, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, CMF, when on Active Service.

By order of Major F E Hiltz, A/Comd, West N S R.

Evidence taken upon oath.

First Witness for Prosecution F40231 Sjt Ennis E S, West Nova Scotia Regiment, having been duly sworn states:-

At approximately 1845 hrs 11 Dec 44 "A" Coy West NSR was given an order to move off. I checked No 6 Platoon and found that L/Cpl Robertson was absent. I reported this to my platoon commander and proceeded to make a check of the area to see if I could locate him but I was unable to find him so we moved off at 1900 hrs without him and his absence was reported from that time.

Question by the officer taking Summary:

1Q Was he warned that he would be moving off towards the enemy on the night of 11 Dec 44?

1A Yes, Sir and the whole company was on a stand too from approximately 1630 hrs.

Signed E S Ennis.

The accused declines to cross examine this witness.

Second Witness for Prosecution Capt A J W Dyer, West Nova Scotia Regiment, having been duly sworn states:-

I am Capt A J W Dyer, Adjt and officer incharge of Regimental Records for the West NSR. I produce as evidence in the case of the accused F62268 L/Cpl Robertson R S a certificate of arrest showing the accused as being arrested by the Military Police in FANO at approximately 1045 hrs 27 Dec 44. Marked Exhibit "A".

Signed A J W Dyer, Capt.

The accused declines to cross examine this witness.

The accused having been duly cautioned as follows:- "Do you wish to make any statement or to give evidence upon oath ? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence that you give will be taken down in writing and may be given in evidence", declines to make a statement or to give evidence upon oath.

Certified that Rule of Procedure 4 (a)(d)(e) and (f) have been complied with.

Taken down by me in the Field in the presence and hearing of the accused this 30th day of Dec 1944.

In the Field
30 Dec 44.

Sgd R E Campbell, Capt
Officer taking Summary.

42-83

Pt Robertson S.W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L-107352 Pte S W Robertson.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty.	Guilty.	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence of~~ [illegible] beginning on (date) [illegible] (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for ninety days

(Sgd) [illegible] Lt/Col (Judge-Advocate, if any.) 7 Feb 45 (Date awarded.) (Sgd) [illegible] (President. RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (~~A/Sec Comm for not to~~)

(Sgd) [illegible] Brig.

Date 7 Feb 45 Commanding DDMS FIRST CDN ARMY Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
L109352 Pte S.W. Robertson 1 CDN ARMY CAR COY RCASC	9 Feb 45	[illegible] A/O.C., 1 Cdn. Army Car Coy., R.C.A.S.C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 42-83

CF A96 (To face of AF A2) 41-P-A1-B-1808 (2804)

FIELD GENERAL COURT-MARTIAL

Convened by Order of BRIGADIER H.M. ELDER DDMS Comd FIRST CDN ARMY dated 3 FEB 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Regimental No.	(a) Permt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-107352	Pte	STANLEY WILLIS	ROBERTSON	1 CDN ARMY CAR COY RCASC

RECEIVED 17 FEB 1945 JAG BRANCH HQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) N.W. EUROPE on (date(s)) 6 & 7 FEB 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 22|27

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours 6 Feb 45 trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being tried summarily by the CO~~.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to 2/LT SSA DEMOOR, as interpreter? Ans No.

The Interpreter is sworn.(1) ~~Do you object to as shorthand writer? Ans~~ ~~The shorthand writer is sworn~~.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~Interp and Offrs under instr if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJ	R.R. MACDOUGALL	CAC (6 HUSSARS) CA BRANCH HQ FIRST CDN ARMY
Member	CAPT	R.A. WICKWARE	RCA BRA BRANCH HQ FIRST CDN ARMY
Member	LIEUT	R.F.K. ANTHONY	RCASC 5 DT BRANCH HQ FIRST CDN ARMY
Judge-Advocate	LT-COL	G.E. TRITSCHLER	ASAW ADJM HQ FIRST CDN ARMY
Prosecutor	LIEUT	H.D. HORWOOD	RCASC. 1 CDN ARMY CAR COY RCASC
Defending Offr	LIEUT	D.G. STRATBRIDGE	RCASC 1 CDN ARMY CAR COY RCASC

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment makes(s) (no) (~~an~~) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) ~~not~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D to E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative: (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (no) opening address.(1)
(1. RP 39(B). 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is reopened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on grounds of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Yes give evidence as a witness Do you intend to call witnesses on your behalf? Ans. No. Are they witnesses as to character only? Ans. NA
(1. RP 155. 2. RP 40(1), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the findings, if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement of as to Character and Particulars of Service(1), and certified true copy (extract) of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)
(1. MFB 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement of and Conduct Sheet of, and in mitigation of punishment?(1) Ans. Yes by way of D.O.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its purview, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, L-107352 Pte STANLEY WILLS ROBERTSON, "B" Platoon, 1 Cdn Army Car Coy, RCASC, a soldier of the Cdn Army Overseas is charged with:

FIRST CHARGE
Army Act
Sec 41

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY RECEIVING STOLEN GOODS

in that he

In the field, in Holland, on 18 Jan 45 did receive a packet of 25 gulden notes, amounting to between 500 and 1000 gulden, the property of Gerardus Klerx knowing the same to have been stolen.

In the Field
1 Feb 45

D E Warren Capt
A/Officer Commanding
1 Cdn Army Car Coy, RCASC

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
3 Feb 45

H M Elder
(H.M.Elder) Brigadier
DDMS First Cdn Army

approved
G E Tuttle Lt Col
AJAG

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-107352	Pte		Stanley Wills	ROBERTSON	1 Cdn Army Car Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) this date endorsed by me, (~~or by someone acting by my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to defer the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons~~ have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	R. R. MACDOUGALL	6 Hussars, CA Branch, HQ First Cdn Army

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	R. A. WICKWARE	RCA, BRA Branch, HQ First Cdn Army
Lieut	R. F. K. ANTHONY	RCASC, S & T Branch, HQ First Cdn Army

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	E. BUGLASS	RCA, CA Branch, HQ First Cdn Army

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Lt-Col	G.E.TRITSCHLER	AJAG, Adm HQ First Army

On Active Service in the Fd

in Holland (Country.)

H.M. Elder (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Dat 3 Feb 45

(H.M. Elder)
Commanding DDMS First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

I certify that I have this morning examined No L-107352 Pte Stanley Wills ROBERTSON, 1 Cdn Army Car Coy RCASC, and that he is fit to undergo trial by court-martial.

J C Middlebro Capt.

(J C Middlebro) Capt
Medical Offr

6 Feb 45

7 Feb 45

1 Cdn Army Car Coy RCASC

This is to certify that F 87055 Pte Thompson, G.R.
L 107352 Pte Robertson, S.W.

have been medically examined by me and found to be fit to undergo trial by court-martial.

.....Capt
RCAMC

Robertson

adjournment

at 1000 hours the Court adjourns until 1430 hours on the 7 Feb 45.
on the 7 Feb 45 at 1430 hours the Court reassemble pursuant to adjournment present the same members as on the 6 Feb 45

medical cut produced by Pros. for 7 Feb 45.

1 P.W. Geradus Leeuw Laagerende 120 Waalwijk Holland Sworn. (Testified in English)

I am the administrator of "Algemeen Zieldenfonds Geertruidenberg en Omstreken" Waalwijk. On 18 Jan 45 I brought 30000 Gulden from Waalwijk to Tilburg to pay to another sickfund in Tilburg by which we are reinsured. On arrival at the office in Tilburg I saw my brief case which contained the money and papers was lost from the handle bar of my bicycle where I had been carrying it. I reported the loss and went back over part of the way I had come. Then I retd to Tilburg. As a result of information received there I went to a can army billet on the Spoorlaan. There I saw Mr Hamers a civilian and a civilian policeman. I reported my loss to Capt Rowlands who sent for mil. police. I had got the 30000 G. from the bank in Waalwijk. and put it in brief case

I identify the brief case and the papers and documents in it and the £9000 Gt. as part of the property lost by me.

Brief case, papers & documents and £9000 Gt. marked. EX 1

Documents in EX 1 bear my signature. (Illustrates signature. Court examines documents in case)

When I lost it the case contained

115 x 100 Gt.	notes	11500
157 x 50 Gt.	"	7850
414 x 25 Gt.	"	10350
15 x 20 Gt.	"	300
		30000 Gt.

The notes now in the case EX 1 are part of the same notes I lost. I identify them by reason of the paper bands and writing thereon and my recollection of same.

No cross EX.

R.P. 83(6) complied with.

2 B.W. Lieut A.M. Johnston 1 Can SIS sworn

On 18 Jan 45 about 1530 hrs I went to "B" Pl 1 Can Army Car Coy and there I met Gerardus Klerk (identified) Mr Homes (identified) and Capt Rowland. I was informed that Klerk had lost 30000 Gt. and it had been found by Homes and turned into "B" Pl by a soldier. Enquiries revealed that gate guard was the accused. He was off duty and away. He had been on guard from 1230 - 1400 hrs that day. About 1600 hrs

He retd to 'B' Pl and I interviewed him. He had been shopping and had purchased a few trinkets and toilet articles. He was searched and the following articles found which I now produce.

~~Ex 191.50 G in notes~~

EX 2 190.50 Guilders in notes

EX 3 1.01 " in coins

EX 4 1 500 Belgian Franc Note.

EX 5 4 toilet articles (Hair cream, Shaving Powder + tooth paste)

EX 6 1 cigarette lighter (used)

EX 7 1 brass broach

EX 8 1 Money wallet (New)

EX 9 1 " folder (new)

acc. attitude seemed evasive. I gave him the usual caution and took a statement from him in writing.

D. O. I have no objection to admission of statement.

Ct. No threats, persuasion, inducements were used. It was a voluntary statement

Ex 10. Statement by accused is signed by acc. in 2 places.

When statement partially completed Capt Rowland handed me 525 G. which is in 25 G notes. I now produce them

Ex 11 21 x 25 G notes

I then completed the statement. Outside the billet I searched in the yard of car park. Just inside gate

I found a bottle of cognac which I produce.

EX 12 Bottle of cognac.

accused told me that and EX 3 1.01 G.

EX 2 190.50 G. was the result of change from spending or changing the 25 G. notes received from Pte G.E. Thompson and his own money of which he intimated that he had had a very small amount. He also told me that

EX 4 the 500 Belgian Franc note he had purchased from a bar touquette for 50 G.

No cross examination.

Ct. The accused said he had got EX 5, EX 7, EX 8, EX 9 by going from one shop to another and purchasing articles and tendering 25 G notes in order to obtain smaller currency.

RP 83(b) complied with.

3 PW. Franciscus Petrus Hamers, Pieter Post Plein 21 Tilburg Smoon.
(Thru Interpreter)

On 18 Jan 45 I came from direction of station and arrived 25 metres before Ambghacht School (about 1245 pm) where I found the brief case on the highway. A soldier (Identifies Pte GE Thompson) came to me and signed to me that I had to give it to the guard. Identifies accused as guard. Accused asked me what was in case but we did not understood each other. We opened the brief case and found out there was money in it. At that moment (Thompson) the other soldier came back and took the brief case from me and took it with him into the building. 2 mins later the soldier (Thompson) came [illegible]

out without brief case and walked in direction of station. I went for lunch and after lunch went to police office and told whole story to police. When soldier (Thompson) who had taken case into bldg came out without it he did not speak to guard (accused). Guard (accused) was still there and saw soldier (Thompson) going out.

EX 1 is brief case.

accused saw there was money in brief case. reason I gave case to Thompson instead of to accused was because Thompson was so quick.

No Cross X.

R.P. 83(b) complied with.

4. P.W. A 58566 Pte Hergatt E.J. sworn on 18 Jan 45 about 2-4 pm I was on guard at gate at camp, A & B Pl Army Car Coy. I was instructed that when acc. came in to send him to office. When he came I told acc. (identified) he was wanted, this was shortly before 4 pm. He wanted me to hold some money for him. I refused. Pte Duquette drove in in a HUP and accused passed money on to him. acc. then proceeded into bldg. Duquette asked me what it was all about I told him apparently some kind of trouble and Duquette then put the money on the water truck; on the back by the tank. Shortly after L/Cpl Todd came in I told him about it and he went to water truck got money and took it into bldg.

gg1

Acc. also had a bottle of cognac which he also gave to Duquette. Duquette threw it in bkground.

No X-ex.

Lt. Beldy is by station in Tilbury. The money acc wanted me bkacd was just a roll of bills.

R.P. 83(b) complied with.

5 PW/ C 19566 Gnr Duquette L.G. Sworn

on 18 Jan 45 about 1630 hrs I was driving into gate at car coy. I opened door of my truck to give my name bkward when accused threw in money and a bottle of cognac into my veh. I then placed my veh in parking lot and went over to the guard and asked him what was wrong with accused. He said some trouble so I did not want to have anything to do with money or bottle so I threw bottle by fence and put money on water wagon which was in parking lot. It was kind of reddish bills - Dutch money - in a roll.

No X ex

R.P. 83(b) complied with.

6 PW B 86194 L/Cpl Todd G.J. Sworn

on 18 Jan 45 about 1645 hours I was entering gate at car coy billets at Spoorlaan. Pte Norgett & Guard told me some money on water wagon. I went bkwards got money and took it to Capt Rowland. They were all brand new

7

25 £ notes about 500/580 £ total.

No x-ex

R.P. 83(b) complied with

7 P.W. Capt Rowland J.P. O/C "B" Pl Army Car Coy. Sworn.

on 18 Jan 45 about 1800 hrs accused was being questioned by Lt Johnston SIS, L/Cpl Dodd asked how me I went to him and he handed me a number of bills. I immediately turned the same money over to Lieut Johnston.

No Cross-X

R.P. 83(b) complied with.

8 P.W. Pte Thompson G.S. Sworn.

on 18 Jan 45 about 1.30 12 pm I was coming out of army Car Coy bldg. I saw this brief case beside road. Mr Homes picked it up. He mumbled something and went up to accused. I went back, Homes was holding out this case, indicating for me to take it. I takes case up to my room put it under pillow which was on floor at head of mattress. I then went for hair cut. When I came back I went to room and looked in brief case. Thats first time I was looked in it. On my way out of room I met Robertson accused. He said he was going down town [illegible]

By that time I told him there was money in brief case and I gave him a small package of 25 £. notes. Then I went down on duty. After supper I was coming up to my room and found an investigation. Lieut Johnson SIS searched my kit and found the brief case. I did not tell him how it got there. I was excited and nervous at that time. 5 or 10 mins later I picks up the papers which had been in brief case and went down to Lieut Johnston and gave myself up.

No cross X
ct.
accused did not come to see me. I just happened to run into him in hall. He asked me what did I do with brief case. I told him I had it under my bed and there was money in it. He said how much. I said I don't know. Then I gave him some money. Only money that was taken from case was what I gave to accused.

R.P. 83(b) complied with.

Prosecution closed.

441

9 Defence

1. DW L107352 Pte S.H. Robertson Sworn

I went on guard from 1230 - 1400 hrs 18 Jan 45 about 1 - 115 pm Mr Homers came up to gate with dark leather bag. He started talking to me in Dutch which I did not understand. Just at that time a sch was coming out gate. I checked sch out. When I was finished Pte Thompson was talking to Homers. Homers gave Thompson the bag and he went upstairs with it. I went off duty at 1400 hrs. I went up to my room and came out in hall and met Thompson. He told me there was money in the bag and he gave me a package of 25 £ notes. He went on duty at that time. I went down town and done some shopping. I come back to camp about 4 pm and Pte Hergott told me that Johnston was looking for me. I had not realized what I had done at that time. I was frightened and wanted to give money to Hergott but he would not take it so I gave it to Duquette. I went up to Lieut Johnston and gave him a statement.

No cross x.

To Court. I did not see what was in bag when civilian had it. Mr Homers is mistaken there. I first knew this when I met Thompson in Hall. He just told me some

Ex 1

money in bag. I do not think I asked him how much. I saw him take money from bag when he gave it home. I did not think about it being right or wrong. I was short of money. When I got down town I got scared and started to try to get rid of the 25 £ notes. I had only about 15 £ of my own before Thompson gave me the package of 25 £ notes.

EX 2 190.50 £ in notes
EX 3 1.01 " " coins
EX 4 1 500 Belg. Franc. Note
~~EX~~
all come from money handed me by Thompson

EX 11 21 x 25 £ notes were part of actual notes given me by Thompson.

EX 5 4 Toilet articles
EX 6 Cig. lighter
EX 7 Brooch
EX 8 Money ~~Holder~~ Wallet with all purchased with money I got from Thompson.
EX 9 I had bought previously.
EX 12 Cognac I paid 90 £ for. I used money given me by Thompson.

R.P. 53(b) complied with.

441

Pros. No. summing up.

D/O ~~D~~ Accused did not realize what he had done was wrong. When questioned by police made full statement. Has frankly admitted all that occurred. Nearly all money has been accounted for.

JA

Function of J.A. and Court.

Analysis of charge. Necessity of proof of Larceny; receiving; guilty knowledge:

Evidence of Thief (Thompson) to be received with caution. Archbold 722.

Stealing MML 118, 119

" by finding MML 119; Archbold 506.

ownership MML 51; Archbold 513.

Receiving MML 124; Archbold 718, 719, 722, 723

Guilty knowledge Archbold 726-727. at time of receipt.

onus in respect of guilty knowledge Archbold 728.

Receiver evidence.

onus on Prosecution

Presumption of Innocence

Benefit of Doubt.

Pros, D.O, and Court on question by J.A. advise no further points required to be dealt with by him.

467

DO In Mitigation

accused Enlisted 1943; then my 20yrs page.
Farmer in civilian life. Single
When questioned by SIS he was honest
enough to admit what he had done.
When he took money from Thompson
he did not think much of it. When
he got downtown he started to worry
like all people who have done something
which is not honest and tried to get rid of money.
I admit it is not good that he
tried to get rid of money when he
heard SIS were investigating i.e. by giving
notes to Duquette.
He has a clear conduct sheet.
He is not a criminal.
I urge the court to be lenient.
Nearly all money has been accounted for.

Gg7

EXHIBIT 10

EXHIBIT A.

18 Jan. 1945

I have been duly warned by Lieut Johnston, A.M. of the S.I.S. that I do not need to say anything but that anything I do say will be taken down in writing & may be given in evidence.

I hereby sign my name to show that I understand the above warning.

L107352 Pte Robertson S.W.

I No L 107352 Pte. Robertson Stanley Wills, of 1 Canadian Army Car Company, R.C.A.S.C. I have been with this unit for about 6 years. Lately I have been doing gate duty, started yesterday, on guard in the day time. The other man who is on with me is A 58566, Pte Hergott, E.J. also of Car Coy. We take different shifts & today I was on & duty at our gate at 1250 hrs till 1400 hrs. checking vehicles in and out of the gate. At about 1245 hrs a ~~civilian~~ civilian came along, an elo oldish man in a black coat & started talking in dutch. He had a bag, a dark leather case under his arms.

A cook or helper took the case from the civilian & brought it in through the gate about 10 minutes later he came back & said there was money in the bag.

When I was going out at about 2 o'clock 1400 hrs, he took me up to his room, he saw me passing down the hall & called me in his room & took a case from the front of his bed & took a packet of 25 guilders notes out & gave them to me.

I went down town & did some shopping, bought money wallet, tooth paste powder & a bottle of hair cream.

I bought a bottle of cognac for 90 gulders also the Ensa theatre & also a cigarette lighter.

I gave the bottle of cognac to a lad from 2 Corps & the rest of the money & told him to keep it for me.

I had been going from one stone to another changing 25 gulder notes that's why I had so much money on me.

I have read over the above statement & it is the truth. S W Robertson

Witnessed
A M Johnston Lieut.

I further state that the man who took the case had the fingers taped up.

5' 10½" 150 lbs. fair

A M Johnston. Lieut
S.W. Robertson

Exhibit X

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L-107352	Pte	ROBERTSON, S.W.	1 Cdn Army Car Coy, RCASC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For Nil ..... times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet Nil

Date of last entry in Field Conduct Sheet Nil

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for ---

beginning on the -- day of --

4. The accused has been awaiting trial on the present charges for X -- days in civil custody; and for 7 days in military custody, *i.e.*, -- days in open arrest, 7 days in close arrest; of which -- days were spent in hospital.

5. The present age of the accused is 22

6. The date of his attestation / enlisting or for military service is 20 Oct 43

7. The service which the accused is allowed to reckon is 1 yr 3 mos

†State the military decorations (if any) held by accused.

8. The accused is in possession of† --

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of N/A	
In the war substantive rank of N/A	
In the acting rank of N/A	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W1 A8900/1602 20,000 3/44 51-4751. Forms/B.296/War/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 24 th day of Jan 45

(G.D.E. Warner) Capt
AO 1 Cdn Army Car Coy, RCASC

EXHIBIT Y

No L-1073 Name ROBERTSON S. Bqn. Battery or Company | Corps R.C.A.S.C. | Date of enlistment 20Oct43 | Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/138 (3438)

Date of last entry in Company Conduct Sheet 18Jan44 | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc ????? | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed on completion of six months service 20 Apr 44 Date of last entry 18 Jan 44 No. and date of last case of drunkeness NIL					

CERTIFIED TRUE COPY

(G.D.E. Warner) Capt
AO 1 Cdn Army Car C y, RCASC

(PTO)

5-4-72

Pte. Robertson, H

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : A 68167 Pte William Robertson

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge	Guilty	Guilty	
2nd	Charge	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 36, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

"WHB"

Accused ~~was ordered to undergo~~ ~~XXXX

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 80, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No Sir (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ..... , initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans..... .(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Sir
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4. 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes Sir, by my Defending Officer (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

EXHIBIT C WHB

No. A68167 Name Robertson W. Sqn, Battery, or Company RCASC Corps Army Tps Date of enlistment 20-1-42 GC Badges Service or Proficiency Pay 1.50 3/17 MFM 6 (AFB 122) 40/PAS/156 (5418)

Date of last entry in Company Conduct Sheet No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No 1 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Copy made up from MF M14, 17 Aug 45					
				Awarded CVSM & C wef 15-1-44					
				Awarded one Good Conduct Badge wef 20-1-44 D.O. 2/44					
Field	1-7-44	Pte	nil	AWL from 2300 hrs 1-7-44 to 0800 2-7-44 (TTA 9 hrs)		1 days pay FR&I 149(1)(a)	3-7-44		
Field	30-10-44		nil	AA Sec 40		28 days pay FR&I 149(2)	30-10-44		
Field	10-12	Pte	nil	AWL from 2300 hrs 10-12-44 to 0930 hrs 11-12-44 (TTA 10 hrs 30 mins)		1 days pay under FR&I 149(1)(a) & 7 days pay under FR&I 149(2) total 8 days pay	13-12-44		

Certified to be a true copy from Regimental docs held in the custody of the Adjt.

"D.D.Darling" Capt.
(D.D.DARLING) Capt. & Adjt. 36 Cdn A Tps Comp Coy RCASC

(PTO)

36 CDN A TPS COMP COY RCASC

A 68167 PTE ROBERTSON W

The m/n has been medically examined and found free from infectious and parasitic disease and fit to undergo trial by Court Martial.

Date 1 Oct 45

"W.L.C. Dickson" Capt.
Medical Officer.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-68167	Pte.	William	ROBERTSON	36 Cdn A Tps Comp Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 1 Oct 45 endorsed by me, (~~or by my staff for me~~)" To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable that the trial be deferred until a superior authority can be consulted~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I/We hereby appoint (A) the Offr to act as the Court, (B) a FD Offr as President, for the reasons I have / we have stated hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I/We appoint as Judge Advocate the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W.H. Baker	1 Cdn M A C RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	M.A. PIPER	63 Cdn A Tpt Coy RCASC
Capt	K.H. BUDNEY	64 Cdn A Tps Coy RCASC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	N.S. SAMUELS	1 Cdn M A C RCASC

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
	- N I L -	

On Active Service in the Fd

in HOLLAND (Country.)

"P H Savard" (Signed personally. RP 105 fn 2.) Lt COL (Rank.)

Date 28 Sep 45

Commanding HQ RCASC First Cdn A Tps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (PAM 5 (1st Impl of AFAS) 40/P & S/1807 14491)

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused, A68167 Pte William Robertson 36 Cdn A Tps Comp Coy, a soldier of the Cdn Army Overseas is charged with:

FIRST CHARGE

AA 15(1) WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field did absent himself without leave from 1630 hrs 20 Dec 44 until 0001 hrs 8 Jan 45. (Total Absence: 18 days 7 hrs 31 minutes)

SECOND CHARGE

AA 15(1) WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field did absent himself without leave from 2300 hrs 26 Jan 45 until surrendering himself to CMP at 1515 hrs 23 Jul 45. (Total Absence: 177 days 16 hrs 15 minutes)

in the Field
27 Sep 45

"J A Morgan" Major
(J.A. Morgan) Major,
Officer Commanding,
36 Cdn A Tps Comp Coy

To be tried by Field General Court Martial in the Field 1 Oct 45.

" P H Savard"
(P H Savard) Lt Col
HQ RCASC First Cdn A Tps

Time of Signature...1300 A hrs

"W.H.B."

DEFENDING OFFICER'S

PLEA OF MITIGATION

Sir:

The accused has pleaded Guilty but before the Court considers sentence there are two or three points I would like to make on behalf of the accused.

I. About the middle of November 1944 the accused began receiving letters from relatives in Canada regarding the behaviour of his wife in Canada. At the time she was living with another man. This plus the fact that the accused was in a foreign country with strange customs & different moral standards caused such mental strain as to change an efficient soldier (see MFM 6) to an irresponsible person.

II. The accused surrendered himself to the Provost. He was not apprehended.

III. The accused has had to wait over two months for trial through no fault of his own. This has meant two months of mental anguish, two months of confinement without trial. Surely the term "due process of law" cannot be applied to this undue period of suspense.

I ask Sir, that the Court sincerely consider these points when deliberating sentence.

Ex. A.
"WHB"

SUMMARY OF EVIDENCE in the case of "68167 PTE ROBERTSON, W., 36 Cdn A Tps Comp Coy., a soldier of the Cdn Army Overseas, charged with:

(1) While on Active Service, Absenting Himself without Leave (AA Sec 15(1)

(2) While on Active Service, Absenting Himself Without Leave (AA Sec 15(1)

By direction of the Commanding Officer, the evidence is taken on Oath.

FIRST WITNESS — Capt D.D. Darling, 36 Cdn A Tps Comp Coy, having been duly sworn, states:

I am Capt D.D. DARLING, Adjt., of 36 Cdn Army Troops Composite Company. I produce the following documents:

(1) Certified true copy of Part II Order No. 3 of 36 Cdn A Tps Comp Coy., dated 20 Jan 45.
(2) Certified true copy of Part II Order No. 34, of 36 Cdn A Tps Comp Coy., dated 13 Sep 45.
(3) Certificate of Surrender signed by Officer Commanding 1 Cdn L of C Provost Coy.

The accused declines to cross-examine this witness.

"D.D. Darling" Capt.
(D.D. DARLING) Capt.

The above mentioned documents were read over to the accused, marked Exhibit "A", "B" and "C" respectively, signed by me, and are attached hereto.

"W.G. Dennis" Capt
(W.G. DENNIS) Capt.

QUESTION TO THE ACCUSED — The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

ANSWER BY THE ACCUSED — I do not wish to make any statement

" W. Robertson"
(A68167 Pte ROBERTSON, W.)

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f), and (g) have been complied with.

"W. G. Dennis" Capt.
(W.G. DENNIS) Capt.
36 Cdn A Tps Comp Coy

Field
27 Sep 45

" J.A. Morgan" Major
(J.A. MORGAN) Major,
Officer Commanding,
36 Cdn A Tps Comp Coy

EXHIBIT "A" ".W.G.Dennis" Capt.

EXTRACT OF PART II ORDER No.3 dated
36 Cdn A Tps Composite Coy RCASC 20 Jan 45

4. ABSENT WITHOUT LEAVE

(b) AWL from 1630 hrs 20 Dec 44 Ceases to be AWL on adm to hosp cool hrs 8 Jan 45.

A68167 Pte ROBERTSON W.

EXHIBIT "B"

EXTRACT OF PART II ORDER No. 34 dated
36 Cdn A Tps Composite Coy RCASC 13 Sep 45

1. STRENGTH INCREASE

(c) TOS from X3 List RCASC wef 26 Jan 45
Auth: EA//2153 d/31 Jan 45

A68167 Pte ROBERTSON W.

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5. ABSENT WITHOUT LEAVE

(a) AWL from 2300 hrs 26 Jan 45 Ceases AWL on surrender to 1 Cdn L of C Pro Coy wef 1515 hrs 23 Jul 45 (absent 177 days 16 hrs 15 minutes)

A68167 Pte ROBERTSON W.

I certify that No. A.68167 Pte. ROBERTSON W. surrendered himself
of 36 Composite Coy RCASC xxxxxxxxxxxxx
to No. F.77107 Cpl. SMITH W.G. (place) at 1515 hrs on 23 Jul 45
(date). He was dressed in uniform/plain clothes.

Date.....

"J Moon" Capt.
(J Moon) Capt.
Officer Commanding
1 Cdn L of C Provost
Company.

EXHIBIT "C"

"W.G. Dennis" Capt.

"WHB"

STATEMENT OF ACCUSED

I desire to have an Officer represent
me at my forthcoming trial

"W. Robertson"
(A68167 Pte ROBERTSON, W.)

Ex B "WHS"

M.F.B. 353
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A68167	Pte	ROBERTSON William	36 Cdn A Tps Comp Coy RCASC

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	AA Sec 15(1)	1 times	2	times
For	AA, Sec 40	1 times	1	times
For		times		times
For		times		times

~~[illegible]~~ "DDD"

or,

~~[illegible]~~ "DDD"

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~[illegible]~~ "DDD" "DDD" "DDD"

3. The accused is not under sentence at the present time.

or,

~~[illegible]~~ "DDD"

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 20 days in military custody, making a total of 20 days in custody, of which NIL days were spent in hospital. (open arrest 51 days) "DDD" (close arrest 20 days) "DDD"

5. The present age of the accused according to his record of service is ~~[illegible]~~

6. The date of his attestation specified in his record of service is ~~[illegible]~~ "DDD" "DDD"

7. The service which the accused is allowed to reckon towards discharge is 3 yrs 8 mos

8. ~~[illegible]~~ "DDD"

9. The accused is in possession of or entitled to no military military ~~[illegible]~~ "DDD" "DDD" "DDD"

10. ~~[illegible]~~ "DDD" "DDD" "DDD"

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of "D.D.D." Permanent Force "D.D.D." unit

dated , and in his regiment (or corps), the rank of "D.D.D."

dated "D.D.D."

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date — "D.D.D."

"D.D.D." Date of promotion.

In the rank of N/A years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

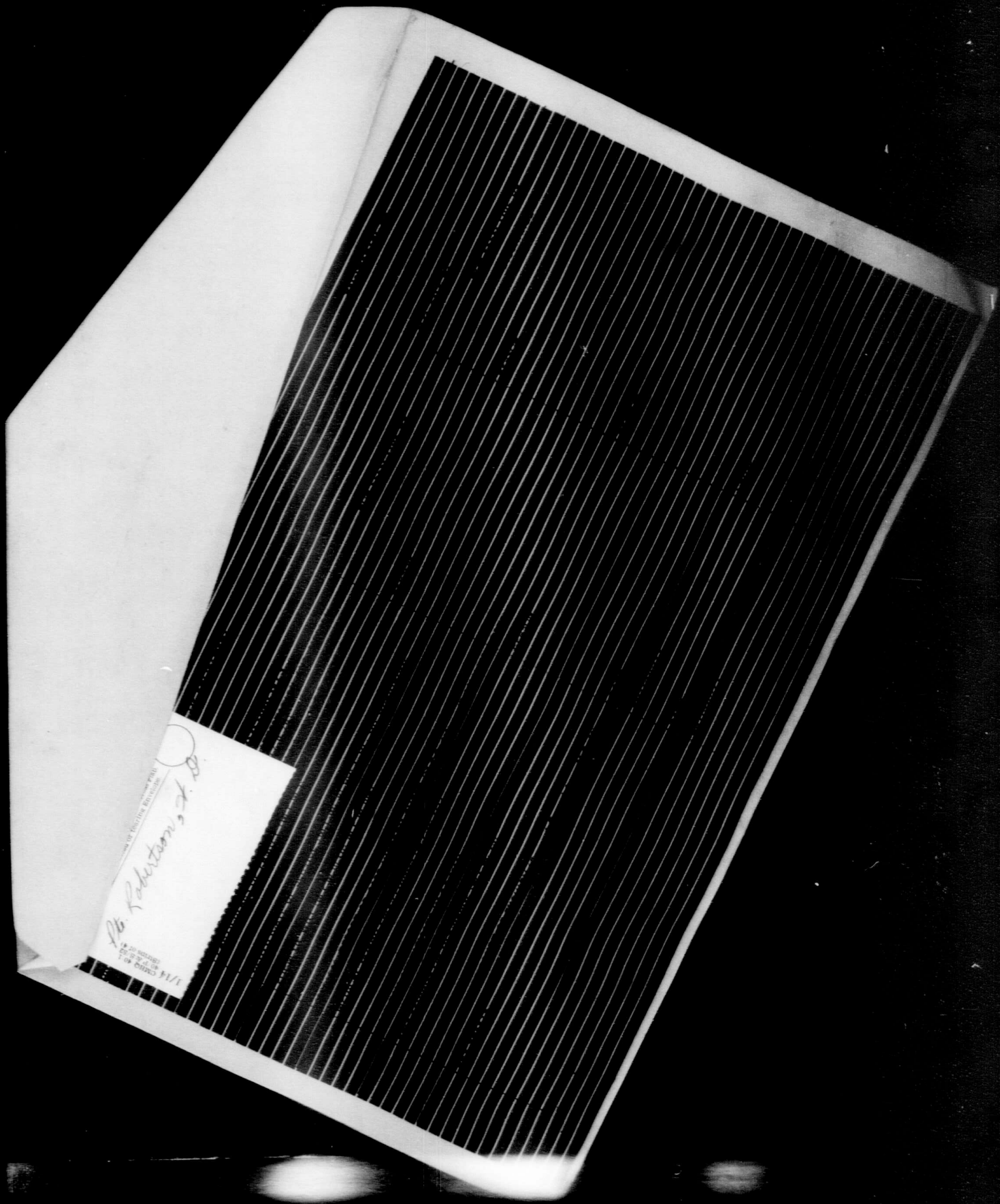
Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
"D.D.D." N/A	"D.D.D." N/A	"D.D.D." N/A	"D.D.D." N/A	"D.D.D." N/A

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this First day of ~~September~~ October 1945

"D.D.Darling" Capt. Adj.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.



C.A.O. 7-1-72

ON HIS MAJESTY'S SERVICE

FASTEN Envelope by gumming this Label across Flap.
OPEN by cutting Label instead of tearing Envelope.

Pte. Robertson, W. D.

1/14 CMHQ 40.1
40 P & S 32
(Strips of 4)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15 (2) Cruelty	Guilty		
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for Sixty days

(Sgd) ..... Judge-Advocate, if any. Date awarded. (Sgd) D. J. Tack Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 (n 1.))

My decision on the finding(s) and sentence set forth in Part I is :

confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 30 Nov 45 (Sgd) H A SPARLING Brig

Commanding CRA 3 Cdn Inf Div CAOF

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H3266 Pte William Duncan Robertson	5 Dec 45	[illegible] Maj

~~To Cut.~~

Comd. 2/13 Cdn Fd Regt RCA (COF)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CAOF-1-72

(CFA96 (in lieu of AFA2) G.P.S. R 1606-2004)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier H. A. Sparling Comd 3 Cdn Inf dated 22 Nov 45

Div CAOF

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H.3266	Pte	William Duncan	ROBERTSON	2/13 Cdn Fd Regt RCA CAOF

PROCEEDINGS REVIEWED

Date 1 DEC 45

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

22 Dec 45 at Brockhurst R Lumsden Capt

Held in the Fd in (country) GERMANY on (date(s)) 22 Nov 45

RQ 3 Cdn Inf Div (CA

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to ..... as shorthand writer ? Ans No, sir

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No, sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	D. J. Tack	2/13 Cdn Fd Regt RCA
Member	Capt	M. B. Keatly	2/3 Cdn A Tk Regt RCA
Member	Lieut	C. F. Lewis	2/14 Cdn Fd Regt RCA
Judge-Advocate	Capt	M. F. Haycraft	3 Indr B (CAOF) Cdn JAG Overseas
Prosecutor	Lieut	A. R. Ralfs	2/13 Cdn Fd Regt RCA
Defending Offr	Lieut	J. S. Crabtree	2/13 Cdn Fd Regt RCA

Questions by President : Is the Prosecutor a lawyer ? Ans No. Is the Defending Offr a lawyer ? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused H.3266 Pte Robertson, W. D. before arraignment make(s) (no) (~~a~~) plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 132, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form S & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CAOF 71

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans ..... (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) pleas) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making on appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 80(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans .....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, M3266 Pte William Duncan ROBERTSON, RCASC on strength 2/13 Cdn Fd Regt RCA(CAOF), a soldier of the Canadian Occupational Force, is charged with:

First Charge
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, at 0800 hrs, 28 Sep 45, absented himself without leave until surrendering to Main Gate Guard Room, JEVER CAMP, at approx 1015 hrs, 7 Nov 45.(Absent 40 days, 2 hrs, 15 mins).

In the Field

Date.- 22 Nov 45

R Telford Lt Col
(R DTELFORD)LT COL RCA
Commanding Officer
2/13 Cdn Fd Regt RCA(CAOF)

To be tried by F.G.C.M.

Date..22 Nov..45

H A Sparling
(H.A. SPARLING)Brig RCA
CRA 3 Cdn Inf Div (CAOF)

DJT.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M3266	Pte		Willaim Duncan	ROBERTSON	2/13 Cdn Fd Regt RCA

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 Nov 45 endorsed by me, (or by an offr of my staff acting), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I hereby appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D J Teek	2/12 Cdn Fd Regt RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	M B Wheatley	2/3 Cdn A Tk Regt RCA
Lieut	C J Lewis	2/14 Cdn Fd Regt RCA

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	M G Brooks	2/12 Cdn Fd Regt RCA

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	M F Reycraft	3 Incr "B" Cdn JAG Overseas

On Active Service in the Fd

in Germany (Country.)

(Signed personally. RP 105 fn 2.) Rank (Rank.)

(H A SPARLING) Brig

Dat 22 Nov 45 Commanding CRA 3 Cdn Inf Div CAOF

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

No. 3266 Name Robertson W.D. Sqn., Battery, or Company Corps RCA Date of enlistment 21-6-40 G.C. Badges Service or Proficiency Pay N/A

M.F.M. 6
(A.F.B. 122)
500M—11-40 (9025)
H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet No. and date of last drunk N/A Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				On the 21st December 1940 this soldier completed six months service and according to R.O. 319 (Canadian Army Overseas) a new sheet was issued and the old one destroyed. There were no [illegible] entries					
Field	13-12-41	Gnr		AWL 2200 hrs-2315 hrs 13-12-41	Documentary	7 days CB	Lt AC MacWilliams		
Field	20 Oct 42	Gnr		AWL in that at Hedgecroft on 20 Oct 42 at 1330 hrs he was absent from parade until reporting to Sgt Cook at 1340 hrs 20 Oct 42. Absent 10 mins. A.A. Sec 15(2)	G-7184 Sgt Cook, S.F.F.	5 days C.B.	21/10/42	JB Hart Maj	
Field	31-5-43		Gnr	A.A. Sec 15-1 AWL, WOAS absent from 2300 hrs 29 May 43 until 0800 hrs 31 May 43 (absent 1 day 8 hrs)	Sgt Carter S J	7 days C.B. 3 days pay FR&I 149 (2)	31/5/43	J.M. Cape Major	Forf 2 days FR&I 14 S-1 (a) Tot forf 5 dys pay

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10 Sep 43	Pte		A.A. Sec 15(1) AWL in that WOAS attFairmile Camp he did absent himself from 2300 hrs 10 Sep 43 and was absent until reporting on at 0700 hrs 11 Sep 43.	BSM Gardiner Bdr Lacey	Admonished	20-9-43	Major G.W. Johnston	Forf 1 days Pay
Field	12 Jun 45	Bdr		AA Sec 15(1) WOAS AWL from 0700 hrs 12 Jun 45 until reporting at 0700 hrs 13 Jun 45. (Absent 24 hours)	Sit King R.D.	28 days A.P. 28 days Pay	13 Jun 45	Lt-Col Stewart-Jones.	Forf 28 days pay Forf 1 days pay

Certified true copy of the original

Dated: 22 Nov 45

(R. Anderson) A/Capt.,
Adjutant,
2/13 Cdn Fd Regt RCA (CAOF)

MEDICAL OFFICER'S REPORT

I certify that No. M3266 Pte ROBERTSON, William Duncan

rcasc on strength

of 2/13 Fd Regt RCA is in a good state of health,

and fit to undergo Trial by Court Martial.

this day.

R Favreau capt

Medical Officer

(R Favreau) Capt RCAMC
Medical Officer
2/13 Cdn Fd Regt RCA(CAOF)

Station Jever Airport, Germany

Date 27 Nov 45

3/59A MFB 246
40/P & S/572 (5197)

1st Character Witness, P.5631 RQMS Weir, J., 2/13 Cdn F. Regt RCA (CAOF)
having been duly sworn is examined by the Defending Officer

Q. 1 - S/M Will you give the Court your number, rank and name?
A. 1 - P.5631 RQMS Weir, J., 2/13 Cdn Fd Regt RCA
Q. 2 - Now, will you tell the court please what you know about Pte Robertson?
A. 2 - Sirs, I am the RQMS of the 2/13 Cdn Fd Regt. Pte Robertson was a cook employed under my jurisdiction since the formation of CAOF. During that period of time the man has managed the kitchen for me and I have had no cause to chastise him or in no way has he caused me any trouble. The man has been exceptionally good as a cook, an exceptionally good manager and a good caterer. To the best of my knowledge this is the first crime he has had to CAOF.
Q. 3 - Has he conducted his duties with a responsible bearing?
A. 3 - Yes, sir, he was caterer in the Sergeants Mess

PROSECUTOR DECLINES TO CROSS-EXAMINE THE WITNESS

IN THE OPINION OF THE COURT AND THE JUDGE-ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.93(2)

THE WITNESS WITHDRAWS

2nd Character Witness, M.4100 BSM Richardson, 2/13 Cdn Fd Regt RCA (CAOF),
having been duly sworn is examined by the Defending Officer

Q. 4 - S/M Will you give the court your number, rank and name please?
A. 4 - M.4100 BSM Richardson
Q. 5 - Now, will you tell the court what you know about Pte Robertson?
A. 5 - Well, Pte Robertson joined the Regiment on the 15 Aug and during that time I have had considerable contact with him carrying out my regimental duties and have always found him to be reliable, honest and efficient in his duties. He has never given me any trouble whatsoever during that time and I believe that it was through circumstances not under his control that he absented himself this time
Q. 6 - He has shown no qualities which would lead you to believe that he would go on such a stretch of a.w.o.l.?
A. 6 - No, sir, I have in the past twice authorized passes for him and he has always returned at the time stated

PROSECUTOR DECLINES TO CROSS-EXAMINE THE WITNESS

QUESTIONS BY THE COURT

Q. 7 - He was under your command for roughly one or one and half months since he came under your command?
A. 7 - Yes, sir and he was on leave to Holland and also the UK and he turned up when he was detailed to
Q. 8 - How long has he worked for you?
A. 8 - From the 15 Aug until he absented himself on 20 Sep sir
Q. 9 - S/M, you said that he had reasons for being a.w.o.l. by something to that effect. Can you give them to me?
A. 9 - Well, the prisoner has asked me not to divulge that, sir

IN THE OPINION OF THE COURT AND THE JUDGE-ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.93(2)

THE WITNESS WITHDRAWS

PLEA IN MITIGATION

Mr. President and members of the court in pleading for some mitigation of the sentence of Pte Robertson I have this to say in his interests. The court has heard RQMS Weir and BSM Richardson testify as to the good qualities of the man and from my own investigation (I have not known him myself or come in contact with him in the past) but I have found out that he

is an excellent worker and an excellent craftsman in his trade. There are several difficulties in connection with this case and I think you should know of them.

In the first place Pte Robertson has had no letter, telegram or communication from his wife in three years. He expects to return to Canada and try and pick up the threads of a broken marriage that had started to go to pieces when he left Canada. Also Robertson has seen a great deal of action in this War with very little respite. From a period six months before he went into action in Cicily he had no leave. He went through Italy up to Germany and in Holland had one privilege leave, one leave during that entire series of campaigns. These factors plus the fact that the man is worrying about his marriage are a bit too much for anybody which I think should be taken into account.

There is something further. During the seventy-two hour leave which Pte Robertson was granted in September he found himself in a position which would be found extremely difficult for any man with any honour. He went to Amsterdam and found that a very young person whom he had known and for whom he bears the highest regard was in trouble. When he got to Amsterdam he found that his friend was in greater or unusual trouble owing to complications. Robertson decided to stay and see his friend through. In doing that he fully realized all the time that he would be charged immediately he got back and was prepared to pay the penalty. His friend was in what I might say was a critical condition - in fact it was a case of life or death. He decided to stay and see his friend through for better or worse. He realized what he was doing and that he was doing wrong. Now, from the Army point of view he did the wrong thing. From a human standpoint I think he did something any man would do, perhaps not, but I think he did the honourable thing, the decent thing. I think he has qualities which are worthy of some consideration from this court.

Certified to be a true transcript
of the shorthand notes taken by
me at the trial described on p. 1

(F. J. Motherout) S/Sgt
Court Reporter
28 Nov 45 HQ 1 Can Inf Div (CACF)

"A"

Summary of Evidence

In the case of

M3266 Pte William Duncan ROBERTSON, RCASC on strength 2/13 Cdn Fd Regt RCA (CAOF), charged with (1) Deserting His Majesty's Service (AA Sec 12(1)(a), (2) Attempting to Desert His Majesty's Service (AA Sec 12(1)(a), (3) Absenting himself without leave (AA Sec 15 (1).

By the direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS - K606515 Pte Johnson, S. RCASC on strength 2/13 Cdn Fd Regt RCA (CAOF) having been duly sworn states:-

"I, K606515 Pte Johnson, S. of the 2/13 Cdn Fd Regt RCA (CAOF) have been employed as a cook in the Sgts' Mess since I joined this Regiment about four months ago. Pte Robertson has been working with me in the same kitchen during that time. At JEVER AIRPORT CAMP, GERMANY, on the 24 Sep 45, I was aware of the fact that Pte Robertson was going on a 72 hour pass the next day. I have been on duty daily in the Sgts' Mess Kitchen since the 24 Sep 45, and this morning is the first time I have seen Pte Robertson since that time."

The accused declines to cross-examine this witness.

S Johnson
(K606515 Pte Johnson, S.)

SECOND WITNESS - K76653 Sgt Carson, L.E. 2/22 Bty, 2/13 Cdn Fd Regt RCA (CAOF) having been duly sworn states:-

"I, K76653 Sgt Carson, L.E., was the Guard Commander at the Main Gate of JEVER AIRPORT Camp, on the 7 Nov 45. At about 1015 hours on that date Pte Robertson came into the Guard House, and gave himself up as having been absent without leave. I called the RHQ Office and reported this. The C.O. answered the phone, and ordered me to put the man under close arrest."

The accused declines to cross-examine this witness.

L M Carson
(K76653 Sgt Carson, L.E.)

THIRD WITNESS - M4100 RSM Richardson, H.L. RHQ 2/13 Cdn Fd Regt RCA (CAOF) having been duly sworn states:-

"I, M4100 RSM Richardson, H.L. am acting RSM of the 2/13 Cdn Fd Regt RCA (CAOF). On the 24 Sep 45 at JEVER AIRPORT Camp, GERMANY I approved a pass for M3266 Pte Robertson, W.D., authorizing him to proceed to AMSTERDAM between 0600 hrs 25 Sep 45 and 0600 hrs 28 Sep 45. This pass was presented to Capt V.C. Morrison of the 2/22 Bty for signature. Capt Morrison was the senior officer available, as the balance of the Regiment was away on Operational Duty. He signed the pass, and it was given to Pte Robertson."

THIRD WITNESS(Cont'd)

"Pte Robertson was a cook in the Sgts' Mess. He was given this pass, because he was off duty for the period, and was very anxious to investigate some personal matters in AMSTERDAM I believe he was going to the following address:

Janevert Senstraat 129.

The pass included travelling time, and he was due to return to duty at 0800 hrs on the 28 Sep 45. I visited the Sgts' Mess kitchen on the 29 Sep 45 and found that Pte Robertson was not there.

I did not hear anything further of Pte Robertson, until I had been informed that he reported to the Guard Room, JEVER AIRPORT Camp at 1015 hours, 7 Nov 45. I immediately informed the Guard Commander to place him under Close arrest and in a cell in the Guard Room."

The accused declines to cross-examine the witness.

H L Richardson
(M4100 Mem Richardson H.L)

The accused was cautioned as follows:-

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence.

A. I do not wish to make a statement.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence of the accused and that RP 4(C),(D),(E) and (F) have been complied with.

M D Geraghty Lt

JEVER AIRPORT
GERMANY
9 Nov 45

(M.D. GERAGHTY) LT RCA
2/13 Cdn Fd Regt RCA (CAOF)
Officer detailed to take the Summary

TO WHOM IT MAY CONCERN

I the undersigned hereby request that the convening authority appoint an Officer to conduct my defence at my forthcoming F.G.C.M.

W R Robertson

(M5266 Pte Robertson, W.R.)
2/13 Cdn Fd Regt RCA (CAOF)

LIST OF WITNESSES FOR THE PROSECUTION

First Witness K606515 PCe Johnson, S. 2/13 Cdn Fd Regt RCA (CAOF)

Second Witness K76653 Sgt Gerson, L.R. 2/13 Cdn Fd Regt RCA (CAOF)

Third Witness M4100 MSU Richardson M.E. 2/13 Cdn Fd Regt RCA (CAOF)

LIST OF WITNESSES FOR THE DEFENCE

N I L

M.F.B. 358
MM—9-42 (3902)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H.3266	Pte	ROBERTSON, William Duncan	2/13 Cdn Fd Regt RCA (CAOF)

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets / Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act, and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	AWL One	times	AWL Five	times
For		times		times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct

or,

~~[illegible]~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act / Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for~~ ..... ~~beginning on the~~ ..... ~~day of~~ .....

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and ..... days in ~~Air Force~~ military custody, making a total of ..... days in custody, of which ..... days were spent in hospital.

5. The present age of the accused according to his record of service is / attestation paper is 32 yrs, 5 mos, 14 days

6. The date of his ~~[illegible]~~ attestation specified in his record of service is / attestation paper 21 Jun 40

7. The service which the accused is allowed to reckon towards discharge is 5 yrs, 4 mos, 3 days

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force / military decoration, or air force / military reward (or is in possession of or entitled to). State any air force / military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the Air Force / regimental rank of .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of
Permanent Force
unit
..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....
Unit
Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

(R. D. Telford) Lt-Col.,
Commanding Officer
2/13 Cdn Fd Regt RCA (CAOF)

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22 day of November 45

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

LIST OF OFFICERS UNDER INSTRUCTION

Major W. A. Platt, 4 Cdn LAA Regt RCA

Major G. C. L. Goss, 2/13 Cdn Fd Regt RCA (CAOF)

Major C. E. Murdock, 2/3 Cdn A Tk Regt RCA

Captain F. J. Schwab, 2/14 Cdn Fd Regt RCA

Captain F. C. Judd, 4 Cdn LAA Regt RCA

Captain D. W. Francis, 2/12 Cdn Fd Regt RCA

Captain G. K. Heacock, 2/14 Cdn F. Regt RCA

Captain W. J. Faber, 2/13 Cdn F. Regt RCA

KK-117
CPL ROBERTSON W.G.

KK-117

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this 12 day of August, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Corps R.C.A.M.C., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*(and that it is not practicable to delay the trial for reference to a superior qualified officer.)~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

~~*(I am unable to appoint:—~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~*(3. Three Officers having more than one year's service.)~~

~~for the following reasons, namely:—)~~

E K McDougall, Capt
for
8 Sep 43.

President.

Rank.	Name.	Regiment.
Major	D. J. HALFHIDE ~~D.H. Jorgenson~~	7 Cdn ~~Lt Ad~~ A/Tk Regt RCA

Members.

Rank.	Name.	Regiment.
Captain	To be detailed by OC 47 Cdn Gen Tpt Coy RCASC	
Lieutenant	To be detailed by OC 13 Cdn A Fd Coy RCE	

D J Halfhide Major

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed E. A. McCusker
(E.A. McCusker) Brigadier
D.D.M.S. 1 Cdn Corps.

Commanding Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
G-7346 Corporal Warren Grant ROBERTSON 45 Cdn Gen Tpt Coy RCASC.	First Charge Section 11 Army Act. (For particulars of the above charge see charge sheet attached)	not guilty	not guilty 10 August 1943 D. J. Halfhide Major	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(*Signed*) E. A. McCusker (E.A. McCusker) Brigadier
Commanding D.D.M.S. 1 Cdn Corps.
Convening Officer (*c*)

(*Signed*) D. J. Halfhide Major
1st Cdn. A/Tk. Regt RCA
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 9th day of August 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~ D.J.H.
~~*(4. The officers under instruction)~~ D.J.H.
were duly sworn.

* Omit if not applicable.

Signed this 10th day of August 1943.

D. J. Halfhide Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L., 1929.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this day of 19 .

Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] Wt. 40115—29] [illegible] P. St. G. [illegible]

CHARGE SHEET

The accused, G.7346 Corporal Warren Grant ROBERTSON, of the No 45 Cdn Gen Tpt Coy RCASC is charged with:-

First Charge
Sec 11
Army Act

WHEN ON ACTIVE SERVICE, NEGLECTING TO OBEY COMPANY ORDERS

in that he,

in the field, on 30 Jun 43 at about 1500 hours did improperly authorize A-9989 Pte Currie, G.A. to use Cdn Army vehicle No. CC 1038180 without a work ticket properly authorized by an officer. (Contrary to Unit Part I Order No. 120, dated 4th June, 1943. (Para. 5)

J.H. MacLaren .....Captain
(J.H. MacLaren)
No 45 Cdn Gen Tpt Coy RCASC.

Field
31 Jul 43

To be tried by Field General Court Martial.

E.A. McCusker
(E.A. McCusker) Brigadier
D.D.M.S. 1 Cdn Corps.

In the Field
6 Aug 43.

B 2.
D.J. Halfhide Major

MEDICAL CERTIFICATE (K.R.(Can) 557)

I certify that I have this Morning examined No. G-7346 Corporal Warren Grant ROBERTSON of 45 Cdn Gen Tpt Coy., RCASC and, in my opinion he is fit to undergo trial by Court-Martial

Station Field

Date 9 Aug 43

E J Hayhurst Major

M. Kirman Capt
Medical Officer

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at 9th In the field on the 9th day of August 1943 by order of

Commanding Brigadier E. A. McCusker D.D. M.S. 1 Cdn Corps

dated the ~~9~~ 6th day of August 1943

President.

Major D. J. Halfhide 1st Cdn A/Tk Regt R.C.O.

Members.

Captain V. L. Marshall 41 Cdn Gen Transport Coy R.C.A.S.C.

Lieut. R. G. Whatmough 18 Cdn Army Field Coy R.C.E.

, Judge Advocate.

Trial of* G-7346 Corporal Warren Grant Robertson 45 Cdn Gen Tpt Coy R.C.A.S.C.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut P. M. Boultbee 45 Cdn Gen Tpt Coy R.C.A.S.C.

Counsel‡ or defending officer† Lieut J. C. Hanson 45 Cdn Gen Tpt Coy R.C.A.S.C.

At 1700 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q1360. Wt.W4809/967. 40,000 sets. 2/45. K. & P. Ltd. G627/11. Forms A 9/35.

B

~~The President, members and judge-advocate are duly sworn.~~ [illegible]
The President, members are duly sworn. [illegible]

~~The following officers under instruction are duly sworn.~~ [illegible]

Charge-Sheet.

Instruction.—If the accused has elected to be tried under Army Art. 104, the election should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.

Answer. Not guilty

~~Are you guilty or not guilty of the second charge against you, which you have heard read~~? [illegible]

~~Question~~ [illegible]

~~Answer~~ [illegible]

~~Are you guilty or not guilty of the third charge against you, which you have heard read~~? [illegible]

~~Question~~ [illegible]

~~Answer~~ [illegible]

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read~~? [illegible]

~~Question~~ [illegible]

~~Answer~~ [illegible]

~~The accused having pleaded Guilty to _____ charge, the provisions of Rule of Procedure 35 (B) are here complied with.~~ [illegible]

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Instruction.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No Sir

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution.

being duly sworn, is examined by the prosecutor.

FIRST WITNESS FOR PROSECUTION.

A9989 PTE CURRIE G.A. OF 45 Coln Gun Tpt Coy R.C.A.S.C having been duly sworn states.

I am A9989 PTE CURRIE G.A. of 45 Coln Gun Tpt. Coy R.C.A.S.C. on 30 July 1943 about 1200 hours I asked Cpl ROBERTSON the accused which I now recognize if I could have permission to take his motor bike to dinner the mess hall being ½ half a mile from our Pl. H.Q. Cpl ROBERTSON had not questioned me as whether I had a work ticket I took the motor bike and I did not have a work ticket authorizing the trip.

PROSECUTING COUNCIL

Quest 1. What was Cpl Robertson doing when you approached him for permission to use his motorcycle.

Ans 1. Cpl Robertson was working in the Orderly Room.

Quest 2. Did you state the purpose for using the motorcycle.

Ans. 2. Yes.

FIRST WITNESS FOR PROSECUTION (OATH)

Quest. 3 Had you at the date in question taken a course in instruction or operation of a mk?

Ans. 3. Yes. sir?

Quest. 4 Did Cpl Robertson make any comment on your request for the use of the mk, other than giving permission?

Ans. 4. No. sir.

Y/F

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes.

Question. Do you intend to call any other witness in your defence?

Answer. Yes

Question. Is he a witness as to character only? *Answer.* ~~Yes~~ 8/11 /10

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked , signed by the President and attached to the proceedings.]

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

THE ACCUSED

G 7396 Cpl Warren Grant ROBERTSON.

45th Coln Gen Tpt Coy R.C.A.S.C. having been duly sworn states

I am G 7396 Cpl Warren Grant ROBERTSON
45th Coln Gen Tpt Coy R.C.A.S.C.

Quest By Defence Council.

Quest 1. Where were you 4 June 1943

Ans. 1 I was on leave

Quest 2. Read to the Court the date this order was published?

Ans 2 4 June 1943.

Quest 3. When did you return to your unit.

Ans 3. At 0400 hrs on 10 June 1943

Quest. 4. Did you ever see that Order dated 4 June 1943.

Ans 4. Yes, on the day I was brought up for trial on the 28 July 1943.

Quest. 5. Were you on the scheme Kurby Kale

Ans 5. Yes

Quest. 6 Will you tell the Court how work tickets were used on that scheme and when

Questions by Defence. ~~Cpl Warren~~ THE ACCUSED.
Cpl ROBERTSON

Other schemes.

Ans. 6. One Kurly Kale scheme I was issued with one work ticket signed for one day. During the scheme I had nothing to be used as a work ticket. The scheme lasted for approx three weeks. There were no markings on the M/C to state that I was on a scheme.

Quest. 7. What were you & your pl doing at BURGISS HILL?

Ans 7. Approx half of my pl was at BURGISS HILL, the remainder stayed at GRABBET PARK. At Burgiss Hill we were attached to the R.E. & pioneer coy. We were hauling rubble and building equipment. There were two sections attached out, one at Sutton Hall the STANMER PARK. These were also attached to English troops.

Quest 8. Can you properly authorize a Cdn W.D. vehicle either verbally or in writing.

Ans 8. No, sir.

Quest. 9 ~~Did you have a M/C on charge to you on the~~ Was Cdn Army Vehicle No CC 1038180 on charge to you on 30 June 1943

THE ACCUSED.

Quest by Defence ~~Cpl Warren~~ Cpl ROBERTSON

~~Quest~~
Ans 9. — No.

Questioned by Prosecutor.

Quest 1. Did you know that Pte Currie was not a trained M/C rider

Ans 1 No sir.

Quest 2. What reason had you to believe Pte Currie was a trained rider?

Ans 2. He has his standing orders — driven licence

Quest 3. Do you not understand that ~~formation~~ permission or an order issued by a Cpl carries weight with the men in his section

Ans 3. Consent was given, but not permission

Quest 4. Cpl Robertson I suggest that you ~~were~~ fully aware that Pte Currie was taking this M/C with no authority beyond your own. Is that so true?

Ans. 4 I wasn't aware of the fact

Quest 5. Did you take any step to find that the trip was properly authorized.

Ans. 5. No sir.

~~Quest 6~~.

DJH

Cpl Robertson.

Cross Re-Examined by Defence THE ACCUSED.

Quest 1. Is it not correct to say that you presumed that Pte Currie would not take a Calm W D vehicle without proper authorization by an officer.

Ans. 1 That is right, sir.

Question by the Court.

Quest 1 Are you on the understanding that you can lend your M/C

Ans 1 In A Pl yes sir.

Quest 2. How do know that you can't authorize the use of a vehicle.

Ans 2. By Routine Orders which I had read in Canada.

FIRST WITNESS. QUESTIONS BY DEFENCE.

Quest 1. Did you have a work ticket when you took the m/c out?

Ans 1. No sir.

Quest 2. Where were you on 4 Jun 43?

Ans 2. I was on leave.

Quest 3. Do you know of Pt I Order d/4 Jun 43 para 5 sec (e)?

Ans. 3. I was aware of some order but not this particular order.

Quest 4 Who can authorize the use of a m/c?

Ans 4 An officer.

Quest 4(a). An officer only?

Ans 4(a) An officer only

Quest 5. Could Cpl Robertson according to the order authorize or give permission for you to use his m/c?

Ans 5. No sir.

Quest 6. Have you ben punished for taking the m/c without permission?

Ans 6. Yes sir

Quest 6(a) What was your punishment?

Ans 6(a). 14 days pay

Quest 7. What job were you on, on 30 June 1943?

Ans 7. I was working in our pl orderly room.

FIRST WITNESS Questions by Defence (cont'd)

Quest 8. Would it have been possible for you to have obtained a work ticket for M/C CC 103 8180 without the knowledge of Cpl Roberts from Mr Rudney.

Ans 8. Yes sir I think I could have got permission from Lieut Rudney

Quest 9. Hasn't it happened on schemes and in the area that the actual D.R. riding the mc has not been in possession of a work ticket

Ans. 9. Yes. sir

Second Witness for the Defence

F45069 Cpl. SUTHERLAND. J W 45 Gen Tpt Coy R.C.A.S.C. having been duly sworn states

I am F45069 Cpl Sutherland J W 45 Cdn Gen Tpt Coy R.C.A.S.C.

Quest 1. When you were at BURGISS HILL on the rubble haul for the R.E. about 30 Jun 43 Was Cpl Robertson permitted to authorize vehicles to leave the compound.

Ans 1. Yes it appeared in Pl orders stating that vehicles could not leave the compound without either Lieut Pudney's or Cpl Robertson's permission

[illegible]

SECOND WITNESS FOR THE PROSECUTION.

Lieut K.H. PUDNEY 7/45 Coln Gpn Tpt Coy R.C.A.S.C. having been duly sworn states:-

I am Lieut. K.H. PUDNEY 7/45 Coln Gpn Tpt Coy R.C.A.S.C. On the 30 June 1943 It was reported to me that there had been an accident on the BRIGHTON ROAD involving one of my M/C motorcycles driven by Pte Mills also of my Pl. I investigated the case and found that the M/C involved was in the charge of Cpl Robertson. I questioned Cpl Robertson how he had arrived at that particular point and how Pte Mills had obtained the M/C. He told me that Pte Currie had asked his Cpl Robertson permission to take the M/C to lunch and that he had allowed it. Pte Currie returned to the orderly room and again asked his permission to go for a short visit. He received permission & proceeded to STANMER PARK.

SECOND WITNESS FOR THE PROSECUTION
Cont'd

Pte Currie on arrival parked the M/C and entered the latrines a short distance away. Upon his return to the parking place of the M/C he found that Pte Mills had taken the M/C. I told Cpl Roberts that since he last verbally authorized the use of the vehicle he had violated the policy of the Pl and company.

Question by Prosecutor

Quest 1. Was a copy of Coy daily orders left on the Pl notice board.

Ans 1. Yes they were.

Quest 2. Have you on occasions pointed out to your N.C.O's that M/C assigned to them are their sole charge & responsibility unless taken for use by an officer.

Ans 2. Yes I have.

Quest 3. Have you any reason for believing Cpl Roberts was unaware of this order.

Ans 3 No. sir.

Quest 4. Is Pte Currie employed as a Motorcyclist or DR in your Pl.

Ans 4 No.

SECOND WITNESS - DEFENCE QUESTIONS.

Quest 1. Is it correct that on or about 30 Aug both Cpl Roberts and Pte Currie were employed in your orderly room at BURGESS HILL.

Ans. 1. Yes

Quest 2. Did one of them have to be there during dinner hours.

Ans 2. Yes one of the always had to be there.

Quest 3. Is it not a fact that your Pl notice board at CRABBET PARK is inside your Pl orderly room and are Pte Orders posted on it.

Ans 3. Yes, that is correct.

Quest 4. ~~What happens to these orders after a few days.~~

~~days.~~ What ~~happens to~~ How long do the orders stay on the notice Board and what happens to them.

Ans. 4 They stay on the board for at least two or three days - possibly for a week. They are removed from the board & filed

SECOND WITNESS E. DEFENCE QUESTIONS

Quest 5. Is it not a fact that there a notice on your pl officer door saying "quote "A Pl. Orderly Room – Out of Bounds – Except on Business."

Ans 5. Yes that is true.

Quest 6. Has it been the practise in 45 Coy to interchange M/C on schemes in order to give D.Rs a rest?

Ans. 6. Yes.

Quest. 7. Would the Work Tickets be always interchanged ~~on schemes~~.

Ans. 7. Yes.

Quest 8. In all circumstances?

Ans 8. No.

Quest. 9. In A. Pl can Cpls authorize the use of Cdn. Army vehicles.

Ans 9. No.

Quest 10. ~~Was Pte Mills. What punishment did Pte Mills take receive for~~ What punishment did Pte Mills receive for smashing the M.C.

~~Ans 10.~~

Second Witness Defense Questions cont'd

Ans. 10. He was assessed those pounds for damages done.

Quest 11 Do drivers always sign for vehicles?

Ans 11. Yes

Second Witness - Questioned by the Court

Quest 1. Is the orders file available for Opls to see?

Ans 1. Yes, they will be produced upon request.

1)

Summing up Prosecution

I regret that owing to insinuations of the defense it has been made to appear that Cpl Robertson had excuse for ignorance of Coy orders and also ~~that~~ the defense has confused the court as to the consent or authority for use of an m/c:

a) Cpl Robertson stated he could give consent but no permission

b) Cpl Robertson says he thought pte Currie not so poor a soldier as to come to him requesting the use of a m/c without authority. Currie has stated his purpose was to use the bike for lunch or pleasure. Would Cpl Robertson believe that was the type of trip his officer would authorize. The evidence shows he took no steps to satisfy himself ~~on the point~~

that pte Currie had any authority from his officer for the use of the m/c

c) the defense brings out the evidence of Cpl Sutherland to effect that Cpl Robertson had authority to authorize movement of any of the vehicles on or about 30 June the date in question.

These statements are all in most contradictory. The court will surely not be able to believe them all. ~~The~~ defense has produced no documentary ~~evidence~~ that Cpl Robertson had authority to sign work tickets necessary for any movement of vehicles and I don't think the court will believe for a moment that Lieut Audrey so delegated his authority. Cpl Robertson, in saying he ~~had~~ could consent but not give permission for the use of a m/c has at least admitted that, in fact he had no such authority.

[illegible]

2)

2) Defense has attempted to declare that Cpl Robertson is financially but not criminally responsible, in connection with this incident. I submit he is jointly responsible with Pte Currie for disobedience to Coy orders and especially in view of his position of authority as an N.C.O. and the weight that his word carries.

Orders are only effective so long as they are carried out, obeyed and respected by those in authority and this includes every N.C.O. and officer. For example, if an order or training syllabus states that the duties shall be carried on and a corporal in command of a group changes the duty or training, or tells his men they can take a spare period, with that they question his decision? No, ~~that~~ ... written order or training syllabus ~~syllabus~~ has lost its effect owing to disobedience of the N.C.O. That is precisely the situation with which we are dealing here.

According to the evidence:
Cpl Robertson was on duty
He took no steps to satisfy himself Currie had a work ticket
He was aware pte Currie had never been employed for M/C or despatch duty in the platoon
He made no comment on the request for a motorcycle - to use his own words he merely "consented".

I suggest that that consent carries with it a ~~the lack~~ wants of respect or disobedience to a company order ~~under which no order~~ on the part of an N.C.O. in a manner that nullifies that order in the eyes of any private soldier. Does the Court agree that that consent led to the use of the M/C by pte Currie?

3) ~~The defense has stated that Cpl Robertson did not consider so~~

The defense has endeavoured at some length to excuse the ~~reading of orders~~ failure to read orders by Cpl Robertson on the grounds of his absence on leave at the time of this particular order, 4 June, and the general inaccessibility of orders. Now I dont think the Court will listen to this insinuation that "A" Platoon, any more than any other unit in the Canadian Army can proffer a valid excuse for failure to read daily orders. As to being absent at the time, any ~~[illegible]~~ good soldier will immediatly read over daily orders that have been published in his absence, immediatly he gets settled back in his platoon lines. Cpl Robertson's duty was as admin. N.C.O. in his platoon orderly room.

In fact, as the second witness brought out in his evidence all ranks in that platoon are ~~expected~~ permitted and expected to enter the orderly room for the business of studying orders.

Ignorance of orders is no excuse (M.M.L. P436)

4) I would ask the Court to read over this Part 1 D.O. of 4 June 1943 (para 5) and note that it is designed for the "protection" of motorcyclists.

The charge for which the accused has been brought before this court martial is "neglect to obey a company order". ~~But~~ the question before the Court is simply: did the accused or did he not, display neglect in regard to Coy Part 1 order 4 June 1943 when he as a Cpl gave his "consent" to the use of his motorcycle by Pte Currie?

The prosecution closes.

[illegible]

Defence – Closing address

Accused to receive benefit of doubt because –

1. (1) misapprehension re work to docks on schemes and other operations.
   (2) Accused never saw this particular part I Order until 28 July/43.
   (3) Cpl. Robertson did not know that Pte Carbis was taking the W/C without authorization from an Officer.
2. Inference from part I Order of 7 Aug/43 that this instruction needed corrections
3. Accused is being held criminally responsible for improper use of W/C. According to M.T. Dirs. Regs. he is only responsible financially.
4. M.M.L. Ch VI, page 72, para 12
5. M.M.L., Ch. V, page 58 para 67 & 68
6. A transcript of proceedings of this N.C.O. is convicted.
7. Accused is being tried on Part I order of June 14/43.
8. A.A. 11, Note – No neglect proved. He is charged with "neglecting to obey an order" which was never seen by him until 28 June/43. He should have been tried under Sec 9 AA.

AJH

9. The prosecution failed to establish that Pte Currie was not qual. as a motorcyclist.

10. Pte Currie was receiving D/R trng. at any time he took M/C out.

11. The charge reads "in the field" implying that the alleged act of neglect was committed on a scheme.

D.J.H.

EXHIB A

DJ Holyhead Major

APPENDIX "A"

7. STANDING ORDERS continued

3. [illegible]

From 2000 hrs to [illegible] hrs prisoners boots, tunics, gre[illegible] and headgear will be removed from the prisoners and returned in the morning.

4. DUTY OFFICER

All detention rooms will be visited at least once a day by the Duty Officer. The Duty Officer when visiting the detention rooms, will each time make a thorough inspection of these rooms in order to determine whether the doors or windows have in anyway been tampered with or become unsafe.

5. N.C.O. I/C Regimental Police

The duties of the N.C.O. I/c Regimental Police are herewith detailed:

(i) He will be responsible for the custody of any S.O.S. or prisoners committed to his charge.

(ii) He will be responsible for the safe-guarding and the security of the Regimental Guard Room.

(iii) He will be responsible [illegible] to [illegible] Order [illegible] the [illegible] of [illegible] responsible for any breach of these Orders.

(iv) He will [illegible] in the safeguarding of the prisoners.

(v) He will be responsible for the training and the conduct of the R.P's.

6. HAND CUFFS

If the N.C.O. I/c Regimental Police deems it necessary to the safeguarding of any prisoner, he will apply to the Admin Offr. for permission to use handcuffs.

7. MEALS

Prisoners meals will be taken to Detention Room and will be consumed there. Guards will not eat at the same time as the prisoners.

8. HOURS

Prisoners will arise at 0600 hrs. Room will be cleaned and equipment laid out by 0600 hrs.

9. VISITORS

Prisoners will not be allowed any visitors. Disciplinary action will be taken against any O.R. holding conversation with the prisoners.

10. PROTECTION

When prisoners are absent from detention room they will be under close escort at all times. R.P's. will maintain close vigilance over prisoners at all times.

8. LEAVE DURING WHITSUN PERIOD, 1943
Restrictions on Rail Travel

No outward privilege leave by rail will be permitted between Friday 11 Jun 43 and Tuesday 15 Jun inclusive; inward travel will not be permitted on Sunday and Tuesday, 14 and 15 Jun. Personnel despatched on Friday 4 Jun will return on Friday 11 Jun.

Personnel despatched on Monday 7 Jun, Tuesday 8 Jun and Wednesday 9 Jun will be given 9 days leave and will return on Wednesday 16 Jun, Thursday 17 Jun and Friday 18 Jun respectively.

No leave on short pass will be permitted between Friday 11 Jun and Tuesday 15 Jun where the distance exceeds 20 miles.

During the restricted period, possession of a Leave Pass will be accepted at Booking Offices as authority for travel by rail up to 20 miles at concession rates.

Restrictions do not apply to leave other than privilege or 48 hour short pass. Restrictions will not be applied to personnel of training or similar establishments where leave periods are governed by a curriculum, nor to leave travel from Northern Ireland and the Islands around Great Britain, other than the Isle of Wight.

DISTRIBUTION

CACASC	1
War Diary	3
File	1
C.S.M.	1
Mail Clerk	1
House	1
A	1
B	1
C	1
D	1
..	1

R.K. Thomson .....Capt.
(R.K. Thomson)
for O.C. No 43 Cdn Gen Tpt Coy R.C.A.S.C.

EXHIB A

D J Holyhede major

APPENDIX "A"

[illegible]

OFFICE [illegible]

No 3 CDN [illegible] COY [illegible]

6 Jun 43 ORDER No 120 Field

(Last Part I Order No 119 d/3 Jun 43)

1. DUTIES from 0600 hrs 5 Jun 43 to 0700 hrs 6 Jun 43

DUTY OFFICER	Lt. S.R. Landell
NEXT FOR DUTY	Lt. J.Y.[illegible] Buchanan
DUTY N.C.O.	L/C [illegible]
DUTY CLERK	Sgt. [illegible], F.D.

2. PARADES Saturday 5 Jun 43

Reveille	0600 hrs	Dinner	1200 hrs
Roll Call	0600 hrs	Afternoon Parade	1350 hrs
P.T. Parade	0610 hrs	Supper	1700 hrs
Brass Fast	0700 hrs	Blackout	2[illegible]30 hrs
Sick Parade	0730 hrs	[illegible]	[illegible]
Blitzen Parade	[illegible] hrs	[illegible]	[illegible]

3. ATTENTION

Para 4 of Part I Order No 118 dated [illegible] Jun 43 insofar as it concerns the O/M is cancelled in its entirety.

CMSC Course No 801 - No 3 (Battle Drill) [illegible] CTS
Ser 14 R - Assembling 2[illegible] Jun - 17 Jul 43
A.9978 L/Cpl. Hanson, D.

4. ATTACHED

Lt. B.R. Boultbee	Attached from No 1 CASC(RU) as Rear Party w.e.f. 4 Jun 43.
L.7637 C.[illegible] Leslie, J.A.	Attached from No 1 CASC(RU) as Rear Party w.e.f. 4 Jun 43.

5. REGULATIONS REGARDING [illegible] OF MOTORCYCLES

The following regulations are laid down for the protection of motorcyclists and D.Rs. and the safeguarding of their vehicles. Any breach of these rules will be met with disciplinary action.

(1) M/Cs must not exceed 15 m.p.h. in Camp area, 30 m.p.h. in "built-up" areas and 40 m.p.h. on the open road. D.Rs. will not regard 40 m.p.h. as a [illegible] speed.

(2) The unauthorized use of any Government vehicle is strictly forbidden - every motorcyclist must be in possession of a work-ticket properly authorized by an officer, no matter how small the journey.

(3) All M/Cs. when not in operation will be kept in H.Q. M/C compound (H.Q., A, B, D and Maps Pl's) and at Burstow in the M/C sheds.

(a) At H.Q. the C.S.M. will be responsible for the maintenance of a Guard on H.Q. M/C compound.

(b) At Burstow, "C" and Adm Pl will be responsible that M/C shed is properly guarded.

(4) M/Cs. will NOT be ridden in the lines - M/C traffic will be restricted to authorized roads within company area.

6. CANADIAN ARMY (OVERSEAS) ORDERS

Attention is directed to Overseas R.O. Nos. 3494 dated 2 Jun 43 attached as appendix A for general information.

7. STANDING ORDERS FOR SOLDIERS UNDER SENTENCE OPEN IN CLOSE ARREST

1. DETENTION ROOM

Detention room will at all times be locked and guarded when prisoners are therein. A regimental policeman will be stationed outside the door. He will investigate the room at least once an hour.

2. CIGARETTES AND PARCELS

Soldiers in detention and under close arrest will not be allowed cigarettes or parcels. They will not be allowed access to the canteen.

7. Orders and Routine continued

3. [illegible] to Para 2.

From 2000 hrs to 0600 hrs prisoners under escort, to and from work, may be moved from one place to another in the morning and evening.

4. DUTY OFFICER

All detention rooms will be visited at least once a day by the duty officer. The duty officer when visiting the detention rooms, will each time make a thorough inspection of these rooms in order to determine whether the doors or windows in anyway been tampered with or become unsafe.

5. R.C.S. I/C Regimental Police

The duties of the R.C.S. I/c Regimental Police are herewith detailed:

(i) He will be responsible for the custody of any S.W.D. of prisoners committed to his charge.

(ii) He will be responsible for the safe-keeping and the security of the Regimental Guard Room.

(iii) He will be responsible for the discipline to be maintained by officers and the discipline of private of the R.C. are responsible for any breach of these Orders.

(iv) He will visit, at least [illegible] to be satisfactory of the prisoners.

(v) He will be responsible for the training and turnout of the R.P's.

6. [illegible]

If the R.C.S. I/c Regimental Police deems it necessary to the safeguarding of any prisoner, he will apply to the Admin Offr. for permission to use handcuffs.

7. [illegible]

Prisoners meals will be taken to Detention Room and will be consumed there. Guards will not eat at the same time as the prisoners.

8. [illegible]

Prisoners will arise at 0600 hrs. Room will be cleaned and equipment laid out by 0800 hrs.

9. [illegible]

Prisoners will not be allowed any visitors. Disciplinary action will be taken against any O.R. holding conversation with the prisoners.

10. [illegible]

When prisoners are absent from detention room they will be under close escort at all times. R.P's. will maintain close vigilance over prisoners at all times.

8. Leave during Summer Period, 1943

Restrictions on Rail Travel

No outward privilege leave by rail will be permitted between Friday 11 Jun 43 and Tuesday 15 Jun inclusive; inward travel will not be permitted on Monday and Tuesday, 14 and 15 Jun. Personnel despatched on Friday 4 Jun will return on Friday 11 Jun.

Personnel despatched on Monday 7 Jun, Tuesday 8 Jun and Wednesday 9 Jun will be given 9 days leave and will return on Wednesday 16 Jun, Thursday 17 Jun and Friday 18 Jun respectively.

No leave on short pass will be granted between Friday 11 Jun and Tuesday 15 Jun where the distance exceeds 40 miles.

During the restricted period, possession of a Leave Pass will be accepted at Booking Offices as authority for travel by rail up to 40 miles at concession rates.

Restrictions do not apply to leave other than privilege or 48 hour short pass. Restrictions will not be applied to personnel of training or similar establishments where leave periods are governed by a curriculum, nor to leave travel from Northern Ireland via the Republic ground Great Britain, other than the Isle of Wight.

DISTRIBUTION

C.O.&C	1
War Diary	1
File	1
O.C.	1
Mail Clerk	1
House	1
A	1
B	1
C	1
D	1

R.E. Thomson Capt.
(R.E. Thomson)
for O.C. No 45 Can Gen Tpt Coy R.C.A.S.C.

Area [illegible] 1

9. PROMOTIONS

Confirmed in the rank of SERGEANT w.e.f. dates shown

R.84709	A/Sjt. Bergshaw, E.L.	26 Jul 43
C.31095	A/Sjt. Fraser, J.W.	26 Jul 43
F.89815	A/Sjt. Reid, L.G.	26 Jul 43

Confirmed in the rank of CORPORAL w.e.f. dates shown

R.87305	A/Cpl. Parnum, L.V.	26 Jul 43
L.8359	A/Cpl. Pierce, J.E.	26 Jul 43
L.41585	A/Cpl. Gunderson, E.A.	15 Jul 43
R.87382	A/Cpl. Webster, J.P.	15 Jul 43.

10. COURSES - RESULTS

(a) 1 Cdn Corps Tpt Coln NCOs School - Ser 6

G.7346	Cpl. Robertson, W.G.	Passed
A.59646	Pte. Morper, R.G.	Failed
A.9991	L/Cpl. McIntyre, N.L.	Passed
G.125797	L/Cpl. Stinson, A.C.F.	Failed
G.10112	L/Cpl. Blake, A.J.	Passed
A.10008	L/Cpl. Alton, F.A.	Passed
G.77923	Pte. Lawrence, N.E.	Failed
G.58383	Pte. Harvill, G.F.	Failed
R.58648	Pte. Buttars, F.A.	Passed

(b) NCO Field Refresher - Serial 10

R.87171 Cpl. Medorak, T. 81% "B"

11. CDN ARMY VEHICLES - INSTRUCTIONS REGARDING THE USE OF

Persons with a Cdn Army Vehicle on charge to them shall NOT knowingly permit or allow same to be taken or used without demanding the production of a work ticket signed by an officer authorizing the use of such vehicle.

EXHIB "B"

W. J. Hatchett Major

DISTRIBUTIONS

War Diary	1
C.S.M.	1
File	1
M.I.R.	1
Mail	1
Mouse	1
A	1
B	1
C	1
D	1
[illegible]	1
[illegible]	1
Spare	1

.....Lt.
(B.I. Bolster)
for O.C. No 45 Cdn Gen Tpt Coy RCASC

PART I ORDERS

by

CAPT J.H. MACLAREN

A/OFFICER COMMANDING

NO 45 CON GEN TPT COY RCASC

Field

7 Aug 43

ORDER NO 173

(Last Part I Order No 172 d/5 Aug 43)

1. DUTIES from 0700 hrs 8 Aug 43 to 0600 hrs 9 Aug 43.

DUTY OFFICER	Lt. B.I. Bolster
NEXT FOR DUTY	Lt. G.M. Andruchuk
DUTY N.C.O.	L/Cpl. Albert, M.
DUTY CLERK	Sjt. Ayrheart, F.S.
DUTY BATMAN	Pte. Davidson, D.C.
DUTY DRIVER	Pte. Runions, H.

Sunday 8 Aug 43

2. PARADES

Reveille	0700 hrs	Dinner	1200 hrs
Roll Call	0705 hrs	Supper	1630 hrs
Breakfast	0800 hrs	Tattoo	2230 hrs
Sick Parade	0830 hrs	Blackout	2230 hrs
		Lights Out	2300 hrs

3. DUTIES from 0600 hrs 9 Aug 43 to 0600 hrs 10 Aug 43

DUTY OFFICER	Lt. G.M. Andruchuk
NEXT FOR DUTY	Lt. R.J.C. Dansmore
DUTY N.C.O.	L/Cpl. Albert, M.
DUTY CLERK	Sjt. Zon, M.
DUTY BATMAN	Pte. Lakin, T.
DUTY DRIVER	Pte. Drager, R.C.

Monday 9 Aug 43

4. PARADES

Reveille	0600 hrs	Dinner	1200 hrs
Roll Call	0605 hrs	Afternoon Parade	1330 hrs
P.T. Parade	0615 hrs	Supper	1700 hrs
Breakfast	0700 hrs	Tattoo	2230 hrs
Sick Parade	0730 hrs	Blackout	2230 hrs
Platoon Parade	0800 hrs	Lights Out	2300 hrs

5. CANADIAN ARMY (O) ROUTINE ORDERS

Attention is directed to C.A.(O) R.O. #3685-3702. All Officers will read and sign book to signify same.

Attention is re-directed to CAORO #2364 dealing with Fires among crops, plantations and woodlands.

Attention is directed to 1 Cdn Corps R.O. #749-755. All Officers will read and sign book to signify same.

6. STRENGTH INCREASE

M.67211 Pte. Pederson, E. TOS w.e.f. 6 Aug 43 and posted to Wksps pl.

C.58144 Pte. Willbond, W.H. TOS w.e.f. 6 Aug 43 and posted to "D" pl.

7. STRENGTH DECREASE

B.81883 Pte. Talbot, H.R. SOS to 5 COS w.e.f. 6 Aug 43.

C.37327 Pte. McEwen, R.J. S OS to 5 COS w.e.f. 6 Aug 43.

8. APPOINTMENTS

C.57600 A/L/Cpl. Hampson, A.J. Appointed A/Cpl w.e.f. 22 Jul 43.

K.70462 AL/Sjt Wheeler, R.E. To be Lance Sergeant w.e.f. 26 Jul 43.

L.74332 A/L/Cpl. Fenson, J.A. To be Lance Corporal w.e.f. 15 Jul 43.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused G. 7346

Corporal Warren Grant Robertson
45th Cdn Gen. Lpt. Coy RCASC
Not guilty
(10 August 1943
W. Halfhide
Maj. 43

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before Sentence.*

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

SUMMARY OF EVIDENCE

In the case of

G-7346 Corporal Warren Grant ROBERTSON, of the No 45 Cdn Gen Tpt Coy RCASC

The Commanding Officer directs that all evidence be taken under oath.

The accused, having had his rights upon the taking of a summary explained to him in accordance with the Rules of Procedure, the evidence is taken in his presence:

First Witness: A-9989 Private G.A. Currie, of the No 45 Cdn Gen Tpt Coy RCASC, having been duly called and sworn, states:

"I am A-9989 Private G.A. Currie of the No 45 Cdn Gen Tpt Coy RCASC. On the 30th June, 1943, at or about 1200 hours, I asked the accused, G-7346 Cpl W.G. Robertson, whom I now recognize, for permission to ride his motorcycle, Cdn Army vehicle No. CC 1038180 to lunch. He gave me permission to ride the vehicle. Cpl Robertson did not question the fact as to whether I had a work ticket. I then took it to the mess hall which is about half a mile from the billets. I was not in possession of a work ticket signed by an officer authorizing me to make the journey. At that time I was aware of some order which laid down that a motorcyclist must be in possession of a work ticket signed by an officer authorizing a journey to be made.

..... Pte
(G.A. Currie)
#45 Cdn Gen Tpt Coy RCASC

The accused declines to cross examine the witness.

Second Witness Lt K.H. Pudney, of the No 45 Cdn Gen Tpt Coy RCASC having been duly called and sworn, states:

"I am Lt K.H. Pudney, of the No 45 Cdn Gen Tpt Coy RCASC. G-7346 Cpl Robertson, W.G., the accused whom I now recognize, is a section corporal in my platoon. On the 30th June, 1943, Cdn Army vehicle No. CC 1038180 was involved in an accident when ridden by G-64415 Pte Mills, G.H. also of my platoon. Upon investigation I discovered that the aforementioned vehicle, a motorcycle in Cpl Robertson's charge had been lent to A-9989 Pte Currie, G.A. by Cpl Robertson and subsequently borrowed without authority by Pte Mills. It was further discovered that neither Pte Mills or Pte Currie had been in possession of a work ticket authorizing them to make a journey signed by myself or any other officer. The whole situation was extremely irregular, and contrary to orders published by Coy H.Q. and my own instructions re-iterated again and again. I have frequently warned my platoon against driving Government vehicles without proper authority. I herewith produce Company Part I Order No. 120 dated 4 Jun 43 in which it states in para 5, "The unauthorized use of any Government vehicle is strictly forbidden, every motorcyclist must be in possession of a work ticket properly authorized by an officer; no matter how small the journey." This order was placed on my platoon notice board and was available for the information of all ranks of my platoon. Cpl Robertson's action in permitting Pte Currie to ride his motorcycle was definitely contrary to my instructions and to the provisions of the aforementioned Company Part I Order."

D. Halfhide
Major

..... Lt
(K.H. Pudney)
#45 Cdn Gen Tpt Coy RCASC

accused declines to cross examine the witness.

QUESTION TO THE ACCUSED: "Do you wish to make any statement or to give any evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence."

ANSWER BY THE ACCUSED: "I have nothing to say, sir."

The accused declines to call witnesses in his own behalf.

I certify that Rules of Procedure 4 (c)(d)(e)(f) and (g) have been complied with.

Taken down by me in the presence of the accused, in the field, this 28th day of July, 1943.

.....Captain
(R.K. Thomson)
No 45 Cdn Gen Tpt Coy RCASC

217.b. Pte. Robertson, C.Jr. (E 14529)

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

On Active Service, this 16th day of May, 1941.

A. Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[illegible]

*(1. [illegible])

*(2. [illegible])

*(3. [illegible])

[illegible]

President.

Rank.	Name.	Regiment.
Lt-Col	D.L. Redman V.D.	No.3 Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	J.P. Taylor	No.2 Cdn Inf Hldg Unit
Lieutenant	W.G. Brown	No.2 Det. R.C.O.C.
Lieutenant	E.J. Rider	No.1 Cdn Inf Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed L. F. Page, Brigadier

Commanding Cdn Base Units, Cdn Army.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
E-14529 PTE. ROBERTSON,C.J. No.1 R.C.A.S.C. Hldg Unit.	First Charge A.A. Sec 12(1)(a) as per charge sheet	NOT GUILTY	GUILTY TO UNDERGO DETENTION FOR A PERIOD OF NINETY DAYS. FINDING AS REVISED 27TH MAY, 1941: Guilty as charged except that the accused was arrested at the railway Depot, Campbellton, N.B. and not at his home.	Confirmed L

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— NO.

(Signed) L. T. Rye. Brigadier (Signed) [signature]
Commanding Cdn Base Units,Cdn Army. *President.*
Convening Officer (e)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 20th day of May, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~) Court Stenographer
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 20th day of May 19 41.

[signature]
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 764 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19

~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison until further orders.~~ L

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 28th day of May 19 41

L. T. Rye. Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of E 14529 Pte Robertson C J.

(*a*) (Dated) 2 June 1941 (Signed) [signature]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(41736) Wt. 40113—893 100 M 3/40 P. St. G. 12.

Field General Court Martial

E-14529 Pte. Robertson, C.J.
No.1 R.C.A.S.C. Hldg Unit, Cdn Army (Overseas)

Revision

At Witley, Surrey on the 27th day of May 1941 at 10.45 hrs the court reassembled by order of Brigadier L.E. Page, D.S.O. for the purpose of reconsidering their finding.

Present the same members as at the previous assembly of the court.

The letter directing the re-assembly of the court for revision, and giving the reasons of the confirming officer for requiring a revision of the finding is read, signed by the president and attached to the proceedings.

The court having attentively considered the observations of the confirming authority, and the whole of the proceedings, do now revoke their finding and record the following finding:

> Guilty as charged except that the accused was arrested at the railway Depot, Campbellton N.B. and not at his home.

The court does not revise its previous sentence.

Signed at Witley, Surrey, this 27th day of May, 1941

[signature]
Lieut-Col
(D.L. Redman) President.

C H A R G E S H E E T

The accused, E-14529 Pte. Robertson, C.J.
No.1 R.C.A.S.C. Holding Unit, C.A.(O.), is
charged with W.O.A.S.

Charge Sheet 120/A Army Act

Deserting His Majesty's Service

In that he, at Halifax, N.S., on 12 Feb 41
absented himself without leave from 7 Draft
R.C.A.S.C. while under orders to embark for
Overseas service, until apprehended ~~at his~~
~~home~~ in Campbellton, N.B., by the Military
Police at 1150 hrs on 15 Feb 41.

.....
(J.M.Pocock) Lt. Col.
Commanding
No.1 R.C.A.S.C.Holding Unit
Canadian Army (Overseas)

Bordon, Hants
6 May 41

To be tried by Field General Court Martial

.....Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This 16th day of May 41.

20/5/41

Date 20/5/41

This is to certify that :-

No. E 14529 Name ROBERTSON. C. J.

is fit to undrgo Court Martial.

M. I. ROOM
R.C.A.S.C.
HOLDING UNIT
19 MAY 1941

Signed. [illegible]

Medical Officer.

MY

E-14529, Pte. Robertson, C.J., No. 1 R.C.A.S.C. Holding Unit, tried by Field General Court-Martial at Bordon, Hants., on the 20th day of May, 1941.

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

Prosecutor - Lieut. W.D.S. Careless
Defending Officer - Lieut. L. Ruddell

At 1000 hours the Trial commences.

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

It is discovered that Lieut. W.G. Brown, No. 2 Det. R.C.O.C., has not held his commission for a period of one year and the President of the Court makes the following announcement:

President - You are not eligible to sit as a member of this court-martial, however I wish you would remain for instruction. We are still left with three qualified members of the Court and under R.P. 18 I rule that this Court is of the opinion that in the interests of justice, and for the good of the service, it is inexpedient to adjourn this Court and that this Court will proceed accordingly.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No, sir.

The President and members are duly sworn.

Q2 -Do you object to M-15577 Sgt. Stanley Fidler, The Edmonton Regiment, C.M.H.Q., acting as Court Stenographer?
A2 - No, sir.

The Court Stenographer is duly sworn.

The charge-sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon the charge in the above mentioned charge-sheet

Q3 - Are you guilty or not guilty of the charge against you, which you have heard read?
A3 - Not guilty, sir.

Prosecutor - If the Court please, on the charge-sheet, where it says the accused was apprehended at home, that is a typographical error and the words "at his home" should not appear. If the Court agrees, I believe the defence will have no objection to those words being struck from the charge.
President - The Court has the power to strike any inconsistent thing out but we cannot increase a charge. We can make it read "In Campbellton, N.B."
Defending Officer - I have no objection.

Prosecutor - The evidence for the prosecution in the case of Pte. Robertson is documentary evidence. I have here a letter signed by L/Cpl. Mann of the military police and marked on the summary of evidence as an exhibit.

The prosecutor reads the statement of evidence of L/Cpl. Mann, No. 17 Provost Company, and the same is accepted in evidence by the Court and marked Exhibit 1.

Prosecutor - I have further documentary evidence to produce in the form of a letter from Capt. W.J. Ryan, D.A.P.M., M.D. 7.

The prosecutor reads the letter referred to and it is accepted in evidence by the Court and marked Exhibit 2.

Defending Officer - The Court will note that the accused has been classified as a deserter.

Prosecutor - The prosecution understands that the defence is willing to admit the time of absence and the date of absence as in the accused's own statement. I also understand that that is all they are willing to admit in that statement -- merely the time of the man absenting himself.

Defending Officer - The defence admits the time of absence without leave mentioned in the charge; also the place and nature of his apprehension.

Prosecutor - The case for the prosecution is closed.

Q4 - Do you apply to give evidence yourself as a witness?
A4 - Yes, sir.
Q5 - Do you intend to call any other witness in your defence?
A5 - No, sir.

First witness for the defence, E-14529, Pte. Robertson, C.J., No. 1 R.C.A.S.C. Holding Unit, being duly sworn, is examined by the defending officer.

Q6 - On the date in question you were part of a draft which was proceeding overseas from Canada from Camp Borden, is that so?
A6 - Yes, sir.
Q7 - On February 12th you were part of a draft proceeding to England?
A7 - Yes, sir.
Q8 - You had been on board at Halifax waiting to proceed for some days; seven I think?
A8 - Yes, sir.
Q9 - On the 12th February the boat was brought back to the dock and a certain amount of the troops on board were given passes until midnight?
A9 - Yes, sir.
Q10 - You in company with two other boys, Caissy and Ross, went together into Halifax and visited a number of taverns?
A10 - Yes, sir.
Q11 - While there did you meet any of the sailors from the ship?
A11 - Yes, sir.
Q12 - What did you ask them?
A12 - How long the boat would be there.
Q13 - What did they reply?
A13 - Six or seven days.
Q14 - Had you had any embarkation leave?
A14 - No, sir.
Q15 - You have a wife and two children?
A15 - Yes, sir.
Q16 - They live near Campbelltown?
A16 - Yes, sir.
Q17 - Did you then decide you had time to run home and see them?
A17 - Yes, sir.
Q18 - You came to the conclusion you would do that?
A18 - Yes, sir.
Q19 - Tell me what you did when you got to Campbelltown?
A19 - As soon as I arrived in Campbelltown I took a branch train and went to New Mills to see my wife and kids before I came across. I stayed there for a day and the next morning came back to Campbelltown.
Q20 - Why?
A20 - To meet the other two boys.
Q21 - Had you previously arranged to meet them?
A21 - Yes, sir.
Q22 - For what purpose?
A22 - To get back in time.
Q23 - To get your boat; is that what you meant?
A23 - Yes, sir.
Q24 - What happened there?
A24 - As soon as I arrived in Campbelltown a military police was waiting for me at the station and when I got off the train he asked for my pass and when I gave it he told me it was due and he put me in the civvy jail with the two other boys.
Q25 - Did you have any conversation with the policeman?
A25 - No, sir. He just asked me for the pass and took me down there.

Q26 - Did you tell him what you were trying to do?
A26 - Yes, sir.
Q27 - What was that?
A27 - That we were trying to get back to Halifax. The three of us talked it over and we handed him money to send a telegram to Halifax.
Q28 - Why was that?
A28 - To try and get there.
Q29 - Who were you sending it to?
A29 - Captain Grant.
Q30 - With a view to acquainting him with your predicament?
A30 - Yes, sir.
Q31 - Did he do it?
A31 - No, sir. We didn't hear anything after that so we concluded it hadn't been sent.
Q32 - What happened then?
A32 - They put me in jail until Sunday and then brought me to St. John and put me in there in detention for two days and two days after they brought me to Fredericton and I was there in detention.
Q33 - When you left the boat, or Halifax, had you any intention of coming back?
A33 - Yes, sir.
Q34 - Why did you join the army?
A34 - To fight for my king and country.
Q35 - Don't be afraid to mention sentimental things, those are things we respect in this court. You joined up to fight for your king and country. You have been in detention ever since?
A35 - Yes, sir.
Q36 - Did you think you had done everything in your power to get back under the circumstances?
A36 - Yes, sir.

Cross-examination by the prosecutor.

Q37 - On the 12th February, 1941, you received a pass?
A37 - Yes, sir.
Q38 - For how long was that pass good?
A38 - 2359, sir.
Q39 - And at 2359 did you report back?
A39 - No, sir.
Q40 - And you were apprehended by the military police in Campbelltown?
A40 - Yes, sir.
Q41 - And on what date was that?
A41 - The 15th.
Q42 - The same date as mentioned in the charge-sheet?
A42 - Yes, sir, I got home on the 14th and it was the next day.

Defending Officer - I think the evidence before the Court will, although we made a prima facie case of this by admitting the a.w.l., I think the prosecution has been quite inadequate in proving desertion. By that I mean there is no intention shown on the part of the accused. On the evidence on oath by the accused he shows his conduct to be that of an unthinking soldier who, on proceeding overseas, wished to see his wife and family. He had had no embarkation leave and, although he had no justification in going, he did it with the intention of saying goodbye. The fact that he had returned to keep the assignation with his friends and was picked up in Campbelltown proves he had every intention of returning to his unit. Also he endeavoured to get in touch with the officer in charge of his draft to acquaint him with his predicament and to get back before the draft went. I think we are right in assuming that had he not understood the boat would not be leaving for a week he would not have gone. The case may rest there, sir.

The Court is closed for the consideration of the finding.

President - Counsel for the accused has handed to me two return tickets from Moncton to Truro. He said one was given to him by the accused, Robertson, and the other by Ross. If counsel for the prosecution and accused in both cases agree that they will waive any irregularities I propose to re-open each case on this basis. We will take the Ross case again and the same with the Robertson case, but as we are on the Robertson case now we will take it first.

E-14529, Pte. Robertson, C.J., No. 1 R.C.A.S.C. Holding Unit, being duly sworn, is examined by the defending officer.

Q43 - Do you recognize this? (Shows accused ticket)
A43 - Yes, sir.
Q44 - Can you tell us what it is?
A44 - It is my return ticket, sir.
Q45 - From.....?
A45 - Moncton to Truro.
Q46 - When did you buy it?
A46 - The 13th February.
Q47 - For what purpose?
A47 - To go home.
Q48 - But this is a ticket from Moncton to Truro, this is not towards home.
A48 - To go back to Truro again.
Q49 - Where were you going?
A49 - To Halifax, sir.
Q50 - That was your intention?
A50 - Yes, sir.
Q51 - How did you get from Halifax to Truro?
A51 - By taxi, sir.
Q52 - And how did you get from Moncton to Campbelltown?
A52 - I bought a one-way ticket.
Q53 - Why a one-way ticket?
A53 - I couldn't buy one on the train and I got on right away and they don't sell return tickets on the train.
Q54 - How far is it from Halifax to Truro?
A54 - Sixty miles.
Q55 - And you bought, or hired, a taxi?
A55 - Yes, sir, between the three of us.
Q56 - You say you purchased this ticket on the 13th February. Would you read to the Court what date is inscribed on the back?
A56 - February 13, 1941.

Defending Officer - I produce in evidence a return railroad ticket Moncton to Truro and a single ticket, Moncton to Campbelltown.

The tickets are accepted by the Court in evidence, the return ticket being marked Exhibit 3 and the single ticket Exhibit 4.

Q57 - This is marked a furlough ticket that is a concession given to troops on the railways in Canada. Is there any difference between the single fare and the furlough return fare? If you had bought a one way ticket would it have cost you any more? Is the furlough return fare the same or more than an ordinary xxxxxxxxxxxx soldier's single fare, do you know that?
A57 - No, sir.
Q58 - If you had bought a single ticket from Truro to Moncton without return, not a soldier's ticket, would you have got it cheaper than you had to pay for this soldier's ticket there and back?
A58 - No, sir.
Q59 - Would you have to pay more for a double than a single?
A59 - No, sir.

Cross-examination by the prosecutor

Q60 - You say that you went by taxi from Halifax to Truro, a matter of sixty miles?
A60 - Yes, sir.
Q61 - How many were in the taxi?
A61 - Four; us three and the taxi driver.
Q62 - How much did you pay?
A62 - Ten dollars.
Q63 - To be divided between you, or each?
A63 - Between us. He had to come that way anyway so he said he would bring us for ten dollars.

Lieut. W.D.S. Careless, No. 1 R.C.A.S.C. Holding Unit, is duly sworn.

Q64 - Have you any evidence to produce as to the character and particulars of service of the accused?
A64 - A.F.B. 296 and M.F.M. 6.

E-14529, pte. Robertson, C.J., No. 1 R.C.A.S.C. Holding Unit, being duly sworn, is examined by the defending officer.

Q43 - Do you recognize this? (Shows accused ticket)
A43 - Yes, sir.
Q44 - Can you tell us what it is?
A44 - It is my return ticket, sir.
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Q47 - For what purpose?
A47 - To go home.
Q48 - But this is a ticket from Moncton to Truro, this is not towards home.
A48 - To go back to Truro again.
Q49 - Where were you going?
A49 - To Halifax, sir.
Q50 - That was your intention?
A50 - Yes, sir.
Q51 - How did you get from Halifax to Truro?
A51 - By taxi, sir.
Q52 - And how did you get from Moncton to Campbelltown?
A52 - I bought a one-way ticket.
Q53 - Why a one-way ticket?
A53 - I couldn't buy one on the train and I got on right away and they don't sell return tickets on the train.
Q54 - How far is it from Halifax to Truro?
A54 - Sixty miles.
Q55 - And you bought, or hired, a taxi?
A55 - Yes, sir, between the three of us.
Q56 - You say you purchased this ticket on the 13th February. Would you read to the Court what date is inscribed on the back?
A56 - February 13, 1941.
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A57 - No, sir.
Q58 - If you had bought a single ticket from Truro to Moncton without return, not a soldier's ticket, would you have got it cheaper than you had to pay for this soldier's ticket there and back?
A58 - No, sir.
Q59 - Would you have to pay more for a double than a single?
A59 - No, sir.

Cross-examination by the prosecutor

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A60 - Yes, sir.
Q61 - How many were in the taxi?
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A62 - Ten dollars.
Q63 - To be divided between you, or each?
A63 - Between us. He had to come that way anyway so he said he would bring us for ten dollars.

Lieut. W.D.S. Careless, No. 1 R.C.A.S.C. Holding Unit, is duly sworn.

Q64 - Have you any evidence to produce as to the character and particulars of service of the accused?
A64 - A.F.B. 296 and M.F.M. 6.

Q65 - Is the accused the person named in the statement which you have heard read?
A65 - Yes, sir.
Q66 - Have you compared the contents of the above statement with the regimental books?
A66 - Yes, sir.
Q67 - Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A67 - Yes, sir.

The accused declines to cross-examine.

Q68 - Do you wish to address the Court?
A68 -(Defending Officer) We have in the accused a soldier who joined up as everybody else did, to do his bit for his country, and on the way to England he was part of a draft. He, like all others, had a desire to bid adieu to his family and he had not been given that privilege. He took that privilege and carried out that intent, but with every intention of returning and carrying on with the job he originally joined for. I would like the Court in considering sentence to take into consideration the character of the accused. He has a clean conduct sheet and has never been in any trouble and as far as that document shows he had, until that time, been a perfectly good soldier. I would ask the Court to take that fact into consideration of sentence.

The Court is closed for the consideration of the sentence.

Q65 - Is the accused the person named in the statement which you have heard read?
A65 - Yes, sir.
Q66 - Have you compared the contents of the above statement with the regimental books?
A66 - Yes, sir.
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The Court is closed for the consideration of the sentence.

SUMMARY OF EVIDENCE IN THE CASE OF E-14529 Pte. ROBERTSON?J.
#1 R.C.A.S.C. HOLDING UNIT, CANADIAN ARMY OVERSEAS.

THE COMMANDING OFFICER DIRECTS THAT THE EVIDENCE SHALL BE TAKEN ON OATH.

1st Witness: Lieut. T.G. Watt, No.1 R.C.A.S.C. Holding Unit, C.A.(O.) having been duly sworn states:

On May 6th, 1941, I interviewed the accused E-14529 Pte. Robertson, whom I now recognize. He wished to make a free confession. I warned him in accordance with the provisions of R.P.4(e). I also explained to him that his confession must be free and voluntary and that he could expect no favour or other advantage to be consequent upon his confession. He stated that he fully understood. He then made a confession which I took down in writing. He signed this statement which I witnessed.

I produce the confession of the accused in evidence.

T Watt Lieut
.....
(T.G. Watt) Lieut.

The accused declines to cross-examine this witness.

2nd Witness: Capt. W.J. Ryan, D.A.P.M., M.D.#1

3rd Witness: L/Cpl. Mann, H.A., No.7 Provost Corps, (A.F.)

I hereby certify that in my opinion the attendance of Capt. W.J. Ryan and L/Cpl. Mann, H.A., owing to the expense and loss of time involved, are not readily procurable and a written statement of their evidence signed by them has been read to the accused and is attached thereto.

W.D.S. Careless
.....
(W.D.S. Careless) Lieut.

I do not require the attendance of these witnesses for the purpose of cross-examination.

Alexander Robertson
E-14529 Pte. Robertson, C.J.

4th Witness: Lieut. J.R. Wilson, Officer i/c Records, No.1 R.C.A.S.C. Holding Unit, C.A.(O.), having been duly sworn states:

I hereby produce the following documents relative to this case.

#1 Certified ~~true copy of~~ statement by G-48716 L/Cpl. Mann, H.A.
#2 Certified true copy of letter signed by Capt. Ryan, W.J.
#3 Certified true copy of Court of Inquiry assembled at Embarkation Pier, Halifax, Nova Scotia, on February 14th, 1941.

.....
(J.R.Wilson) Lieut.
~~xxxxxxx~~
Officer i/c Records
No.1 R.C.A.S.C. Holding Unit, C.A.(O.)

I hereby certify that the foregoing Summary of Evidence consisting of 2 pages, was taken down ~~by~~ by me in writing in the presence of the accused and that Rules of Procedure 4 (~~a~~c) (d) (e) and (f) have been complied with.

...W.D.S. Careless...
(W.D.S. Careless) Lieut.
Officer taking down Summary.

Bordon, Hants.
6 May 41.

I, E-14529 Pte. Robertson, C.J., having been duly cautioned R.P. 4 (e), wish to make the following confession under oath.

I enlisted on October 15, 1940, in Quebec City, Quebec, with 2nd Div. Amn. Coy, R.C.A.S.C. I was sent to Camp Borden, Ontario, where I remained until February 2, 1941, when I was put on draft to proceed overseas. I remained on board ship in Halifax harbour for nine days and then was given a pass until 2359 hours the same day to go ashore in the city of Halifax. I went to New Mills, N.B. to see my wife and children. When returning to the ship at Halifax, three days later, I was arrested by an M.P. at Moncton, N.B. I was taken to Saint John, N.B. for one day and then to Fredericton N.B., where I was held for 48 days. I was then placed aboard a ship at Halifax and brought to Bordon Camp, England. I have been in detention from the time I was placed aboard ship at Halifax until the present time.

C. Hector Robertson
E-14529 Pte. Robertson, C.J.

This is the confession of E-14529 Pte. Robertson, C.J. as referred to in my evidence.

J. Watt Lieut
(T.G. Watt) Lieut.

Bordon, Hants
6 May 41

SUMMARY OF EVIDENCE IN THE CASE OF E-14589 Pte. ROBERTSON, C.J. NO.1 R.C.A.S.C. HOLDING UNIT, CANADIAN ARMY (OVERSEAS).

THE COMMANDING OFFICER DIRECTS THAT THE EVIDENCE SHALL BE TAKEN ON OATH.

WITNESS: Lieut. A.T. Gardiner, No.1 RCASC H.U. (C.A.O.) having been duly sworn, states:

On 13th February, 1941, at 0900 hrs, I was informed that E-14589 Pte. Robertson, C.J., had not returned from pass granted until 2200 hrs 12 Feb 41. I immediately made a search of the ship and found no trace of him. It was the 7th Draft R.C.A.S.C. that Pte Robertson absented himself from [illegible]

A.T. Gardiner Lieut
(A.T. Gardiner) Lieut.

The accused declines to cross-examine this witness.

I certify that the foregoing Summary of Evidence was taken down by me in writing in the presence of the accused and that Rules of Procedure 4 (c)(d)(e) and (f) have been complied with.

W.D.S. Careless
(W.D.S.Careless) Lieut.
Officer taking Summary

Bordon, Hants
13 May 41

SUMMARY OF EVIDENCE IN THE CASE OF E14529, Pte Robertson, C.J. of the No. 1. R. C. S. C. HOLDING UNIT, C. A. (OVERSEAS).

THE COMMANDING OFFICER DIRECTS THAT THE EVIDENCE SHALL BE TAKEN ON OATH.

WITNESS. Cpl: Core, L.F. No.C30190, No. 1. R. C. A. S. C. Holding Unit, C. A. (O) - having been duly sworn, states:-

"I, Cpl: Core, No. C30190, L.F., acting in the capacity of Sergeant of No. 11 Section, 7th Draft, R.C.A.S.C. at approximately 2215 Hrs , 12-2-41., did call the roll of my section and found E.14529, Pte Robertson, C. J. absent without leave from 2200 Hrs - 12-2-41. Since the time of calling the Roll I have no knowledge as to the whereabouts of E14529, Pte Robertson, C.J. That is all, sir:"

.....
(Cpl: Core, L.F. No.C30910).

The accused declines to cross-examine the witness.

I certify that the foregoing Summary of evidence was taken down by me in writing in the presence of the accused and the R.P. 4(c) (d),(e) and (f) have been complied with.

.....
(W. D. Careless) Lieut:
Officer taking down summary).

Bordon, Hants,
14th May, 1941.

I, E-14529 Pte. Robertson, C.J., desire the assignment of an Officer to represent me at my Court Martial.

C. Lester Robertson
E-14529 Pte. Robertson, C.J.

LIST OF WITNESSES

FOR THE PROSECUTION

Lieut. T.G. Watt, No.1 R.C.A.S.C. Holding Unit
Capt. W.J. Ryan, D.A.P.M., M.D.7
L/Cpl. Mann, H.A.
Lieut. J.R. Wilson, No.1 R.C.A.S.C.Holding Unit.
G-30190 Cpl. Core L.F. #1 R.C.A.S.C. N.S.

FOR THE DEFENCE

None.

LIST OF EXHIBITS

#1 Certified ~~true copy of~~ statement by G-48716 L/Cpl Mann H.A.
#2 Certified true copy of letter signed by Captain Ryan, W.J.
#3 Certified true copy of Court of Inquiry assembled at Embarkation Pier, Halifax, Nova Scotia, on February 14th, 1941.

Exhibit 1 Robertson

SAINT JOHN, N. B., 17th. February, 1941.

STATEMENT OF EVIDENCE IN THE CASE OF E 14529 PTE. ROBERTSON, C. J., of the R.C.A.S.C., (AF)., CAMP BORDEN, ONTARIO, (OVERSEAS)

From the information I received, I proceeded to the Depot at CAMPBELLTON, N. B., at 1150 hrs., 15-2-41, where I approached E 14529 Pte. Robertson, C. J., of the R.C.A.S.C., (AF), CAMP BORDEN, ONTARIO, (OVERSEAS), for his Pass and found him to be a Deserter, as he deserted his Draft at HALIFAX, N. S. I placed him under arrest, and placed him in the City Police Station, and held him there until I escorted him to SAINT JOHN, N. B., where I turned him over to the Sergeant of the Armoury Guard, SAINT JOHN, N. B.

.....M.P.,
G 48716 (Mann, H. A.), L/Cpl.,
No. 17 Provost Company, (AF)

Witness:

.....M.P.,
G 48729 (Cook, G. E.), Cpl.,
No. 17 Provost Company, (AF)

This is the statement as referred to in my evidence.

.....
(J.R.Wilson) Lieut.
Officer i/c Records, 1 RCASC HU

CRIME

R.C.A.S.C., (AF)

SQUADRON, BATTERY OR COMPANY

CHARGE against No. E 14529 Pte. Robertson, C. J.

Place	Date of Offence	OFFENCE	Name of Witness	Punishment Awarded	By whom Awarded
CAMPBELLTON, N. B.	1150 hrs. 15-2-41	DESERTION	L/Cpl. Mann, H. A. Cpl. Cook, G. E. (M.P.'S)		

Service years

Number of good conduct badges

Date of last entry in company conduct book

Character

Date of last entry for an act of drunkenness

Number of cases of drunkenness within the last 12 months

Thos. E. Guy ..... Captain, Commanding

(Thos. E. Guy), Captain,
O.C. No. 17 Provost Company, (AF)

M. F. B. 264
HSM—11-40 (8202-56)
D. Q. 1772—59—99

COPY

Exhibit 2
Robertson

IN REPLY PLEASE QUOTE

No.J/45-1-10.....

DEPARTMENT OF NATIONAL DEFENSE

Saint John, N.B. 17th February, 1941.

O.C. No.7 District Depot,
FREDERICTON, N.B.

E-14478 Pte. Ross, B.
E-14479 Pte. Casey, L.
E-14529 Pte. Robertson, C.J. R.C.A.S.C.

1. The marginally noted were arrested at Campbellton N.B. as deserters. They left their unit which was proceeding to Halifax from Camp Borden. They will be kept in close arrest until further information is supplied. N.D.H.Q. is being written with reference to this.

(W.J. Ryan) Captain,
D.A.P.M., M.D. No.7

/AH

This is the statement as referred to in my evidence.

CERTIFIED TRUE COPY

.....
(J.R. Wilson) Lieut.
Officer i/c Records
No.1 R.C.A.S.C.Holding Unit
Canadian Army (Overseas)



CANADIAN NATIONAL RAILWAYS

CONDUCTOR'S CASH FARE TICKET.—Passenger's Receipt

T. E. HOWARD Conductor

FULL AMOUNT PAID INDICATED BY MARGINAL INDENTATION.
THREE INDENTATIONS ARE ABSOLUTELY NECESSARY ON EACH TICKET.
When only Half Fare is collected Passengers' Receipt and Auditor's Stub must be endorsed "Child."
Baggage will be transported subject to tariff regulations.

Form C1

R 196459

Form 368

Canadian National Railways

FURLOUGH

Good for One Passage IN COACHES, also in Tourist Sleeping Cars (where operated) on extra payment of Berth charges.

From MONCTON, N.B.

To TRURO, N.S.

GOOD FOR 30 DAYS
IN ADDITION TO DATE OF SALE

RETURN COUPON—NO STOP-OVER

NOT TRANSFERABLE

48900

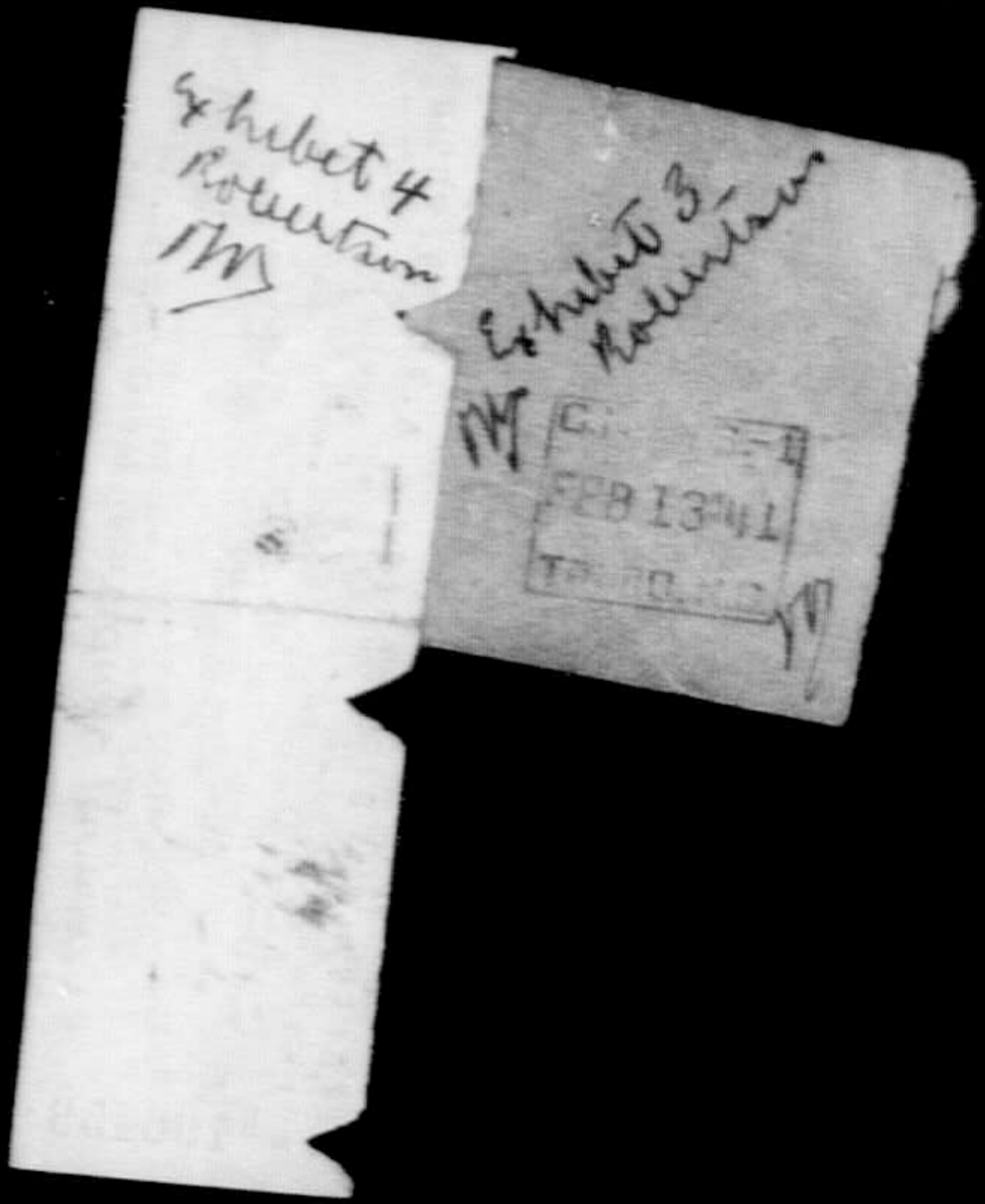
Exhibit 4
Exhibit 3
FEB 13 41



CANADIAN NATIONAL RAILWAYS

CONDUCTOR'S CASH FARE TICKET.—Passenger's Receipt

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Form C1

R 196459

CENTS 9 8 7 6 5 4 3 2 1 0

Canadian National Railways

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From MONCTON, N.B.

To TRURO, N.S.

GOOD FOR 30 DAYS
IN ADDITION TO DATE OF SALE
RETURN COUPON—NO STOP-OVER
NOT TRANSFERABLE

Form 366

18910

Exhibit 4
Robertson
[illegible]

Exhibit 3
Robertson
[illegible]

C[illegible]-1
FEB 13 '41
T[illegible]

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority	Punishment remitted

UDSC

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 20th day of May 1941

UDS Cambers Lieut

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

E 14529 Pte Robertson C.T. of the No 1 N & S.C. Holding Unit L.O.C.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Para. 664, K.R., 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	*Within last 12 months.	*Since Enlistment.
For ~~none available~~ UDSC	times	times.
For none UDSC.	times	times.
For	times	times.
For	times	times.

Num~~ber of instances of gallantry or distinguished~~ UDSC

or,

There are no entries in the Conduct sheets of the accused.

2. ~~The accused has not been previously convicted~~ UDSC

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement. UDSC

W3 43648/904 50,000 2/40 W. S. Ltd. 51—6004

MB

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges

for ..... days in Civil Custody,

and ..... 79 71 days in Military Custody,

Total ..... 81 83 ..... days.

Of which ..... none ..... days were spent in hospital.

5. The present age of the accused according to his $\frac{\text{record of service}}{\text{attestation paper}}$ is 27y 6 7 Days

6. The date of his $\frac{\text{commission}}{\text{attestation}}$ specified in his $\frac{\text{record of service}}{\text{attestation paper}}$ is 15/10/40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .....

8. The accused is entitled to deferred pay or gratuity in respect of ..... years' service.

9. The accused is entitled to reckon ..... years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to .....]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of .....

12. (*In the case of an officer.*) The accused holds in the army the rank of ....., dated ....., and in his regiment (*or* corps *or* department) the rank of ..... dated .....

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of ....., ... years, ...

In the rank of ....., ... years, ...

In the rank of ....., ... years, ...

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ....., signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name ..... of the .....

NOTE.—*A verbatim extract from the regimental books, stating three convictions and dispensings with trial, must be inserted.*

Description of Court by which tried, or name of officer dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

Continued overleaf

No. E-14529. Name Robertson, C.J. Squ., Batty., or Company Corps R. C. A. S. C. Date of enlistment 15/10/40 Sheet No.

Date of last entry in Company Conduct Sheet No. and date of last drunk G.C. Badges Long Service and G.C. Pay Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Army Form B.122

M H Carlen Lieut

for Certified true copy.
Lt. J. R. Wilson, Officer i/c Records,
No. 1. R. C. A. S. C. Holding Unit,
N. Martinique Barracks.

(P.T.O.)

No. E-14529 Name Robertson, C.J. Sqn., Batty., or Company } Corps R. C. A. S. C. Date of enlistment } 15/10/40 Sheet No.

Date of last entry in Company Conduct Sheet } No. and date of last drunk } G.C. Badges } Long Service and G.C. Pay } Signature O.C. Company, etc. }

Place	Date of offence	Rank	Cases of Drunk entered	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

A.B. Coulter Lieut

Certified true copy.
for Lt. J. R. Wilson, Officer i/c Records,
No. 1. R. C. A. S. C. Holding Unit,
N. Martinique Barracks.

* Army Form B.122

P.T.O.

H.Q. Cdn Base Units CBU 5-H-CH-26

26 May 41.

Lt-Col D.L. Redman V.D.
No.3 Cdn Inf Hldg Unit.

F.G.C.M.
E-18529 Pte. Robertson,C.J.
No.1 R.C.A.S.C. Hldg Unit

1. You were President of a F.G.C.M. convened to try the m/n soldier at Bordon,Hants on 20 May 41:

2. It appears in the proceedings therein that the court purported to amend the charge upon which the accused was arraigned. It is within the power of a court to amend a charge only insofar as it applies to the description of the accused: R.P. 73A. This amendment, therefore, must be considered a nullity.

3. The patent error here may be cured by the court recording a special finding under R.P. 84n.

4. For these reasons you are now directed to re-assemble your court for the purpose of revising the finding in this case.

5. Attention of the court is drawn to A.A. sec 54(2) and R.P. 52, outlining procedure and powers of a court on revision.

L. F. Page.

(L.F. Page)Brigadier
Confirming Authority

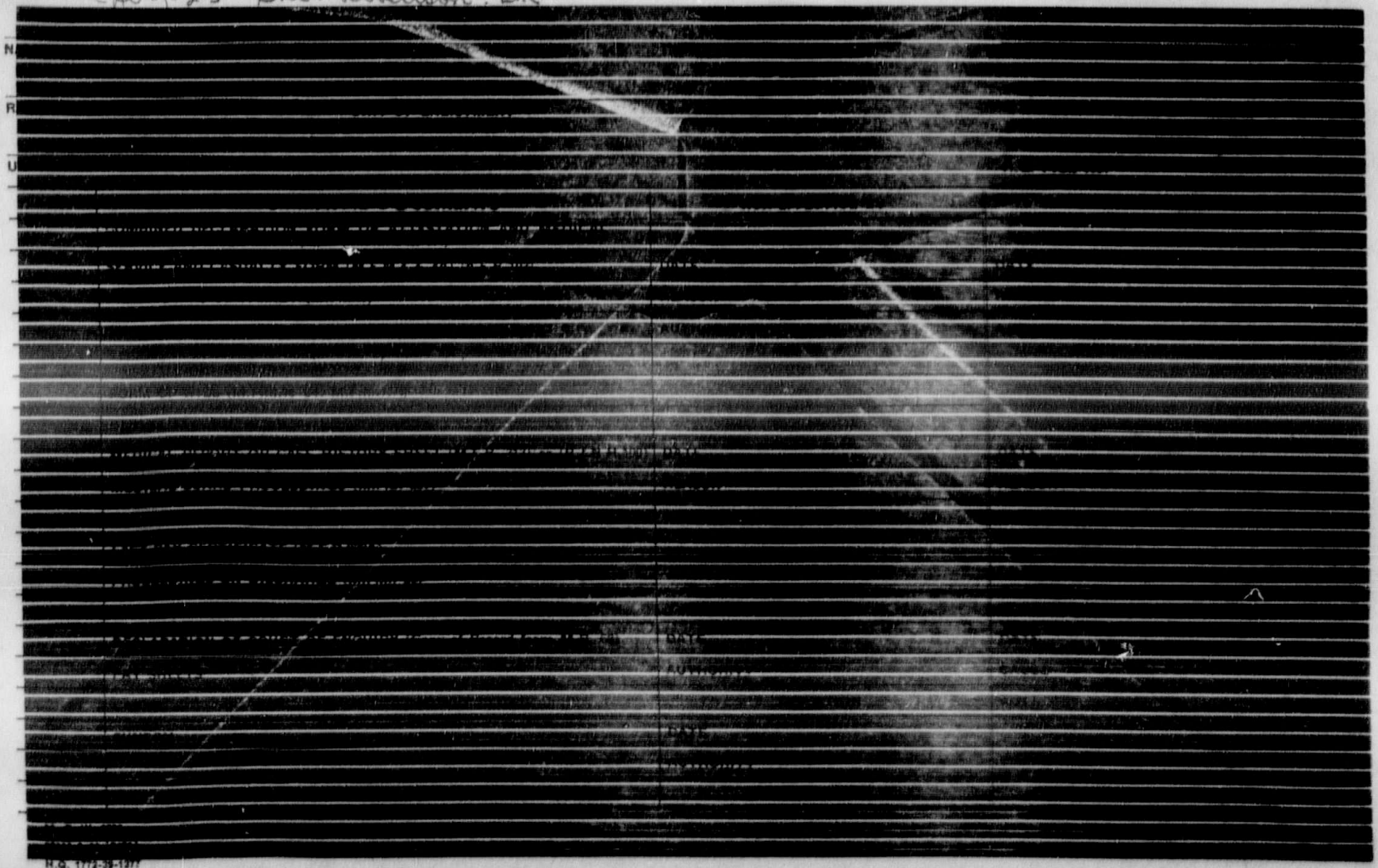
FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

CAO-1-23 Bruce Robertson, D.R.



SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : C.5848 Gnr David Ralph ROBERTSON

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(2)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of six (6) months.

(Sgd) ..... Judge-Advocate, if any. 31 MAY 46 Date awarded. (Sgd) J. Woodard President. (RP 45, 50.) Lt Col.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56. 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I mitigate the sentence to read To undergo detention for a period of four hundred days and I confirm the findings and the sentence as so mitigated DJR

I direct that the accused be not committed to prison or detention barracks until further orders (1) DJR
(1. AA 57A. Delete if not used.)

(Sgd) J.J. Rutherford Brig

Date 6 June 46 Commanding ERU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C.5248 Gnr ROBERTSON D.R.	14 Jun 46	J.W. Ellenson Lt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED JUL 2 JAG BRANCH CMHQ

RECORDED AT CMHQ IN AR 150 CAO-1-23

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA93) 40/P & R/1698 (0144) 4/38B

Convened by Order of Brig. T.J. Rutherford CRE ED Cond CRU dated 30 May 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmts, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.5848	Gnr		David Ralph	ROBERTSON	4 (Gen Rft) Wing, 1 Can Repat Depot

PROCEEDINGS REVIEWED

3 Jun 46 C.H. Taylor Maj

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date(s)) 31 May 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting ~~Member~~, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 45, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1105 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused : Do you object to ..... as interpreter ? Ans .....
~~The Interpreter is sworn.~~(1) Do you object to No 20158 Set Rinstad, RA as shorthand writer ? Ans NO SIR
~~The shorthand writer is sworn.~~(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans NO SIR(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt-Col	G.E. BROOKS CBE ED	R. CAN
Member	Capt	G.W. ADAMS	1 Can Rep Dep
Member	Lieut	M.V. AYOOB	1 Can Rep Dep
~~Judge-Advocate~~			
Prosecutor	MAJOR	D.H.C. ROSE	1 Can Rep Dep
Defending Offr	LIEUT	F.A. WEBSTER	1 Can Rep Dep

Questions by President : Is the Prosecutor a lawyer ? Ans NIL Is the Defending Offr a lawyer ? Ans NIL (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea ..... (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s); call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO - I.P. .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf 485. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding one dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Defending Officer's plea in mitigation + marked(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 320, 563-566, Overseas RD 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 44(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, G.5948 Gnr David Ralph ROBERTSON, RCA., on strength No 4 (Gen Rft) Wing, No 1 Cdn Repatriation Depot, a soldier of the Cdn Army Overseas, is charged with:

FIRST CHARGE

SECTION 15(1)

ARMY ACT

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, absented himself without leave from 2359 hrs 7 Aug 45 until arrested at Hamilton Terrace, N.W. 8 at 0037 hrs 23 Oct 45, by Civil Police.

Absent: 75 days 36 mins.

A/Officer Commanding
No 4 (Gen Rft) Wing,
No 1 Cdn Repat Depot,
(Lorne Scots)
Cdn Army Overseas.

Field
28 MAY 46

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

T.S. Rutherford Brigadier
Comd
Cdn Repat Units

In the Field
30 May 46

Ad

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1607 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-5248	Gnr		David Ralph	ROBERTSON	4 (Gen Rft) Wing, 1 Cdn Repat Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 30 May 46 endorsed by me, ~~[illegible]~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[illegible]~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~[illegible]~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Must be named. RP 106.	Unit.
Lt-col	C.E. Woodrow, OBE, ED	HQ CRU

MEMBERS.

Rank.	Named or detailed. RP 106.	Unit.
Capt	To be detailed from	1 Cdn Repat Depot
Lt	To be detailed from	1 Cdn Repat Depot

~~[illegible]~~ [illegible]

Rank.	Named or detailed, if any. RP 106.	Unit.

~~[illegible]~~ [illegible]

Rank.	Must be named, if any. RP 106.	Unit.

On Active Service in the Fd

in England (Country.)

T J Rutherford (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(T.J. Rutherford)
Commanding Canadian Repatriation Units
Convening Officer.

Date 30 May 46

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS REPORT
(KR (Can) 557)

This is to certify that I have this morning medically examined

No G-5248 RANK GNR. Name ROBERTSON, D.R.

and that in my opinion he is (fit) ~~(unfit)~~

to undergo trial by Court-Martial.

Station 31 MAY 40 No 3 C.M.P. & D.B.

Date

J.R. Farish Capt.
(J.R. FARISH) RCAMC
Medical Officer
No 3 Cdn Mil Pris & Detn Bks.

PLEA OF MITIGATION
IN THE CASE OF

Plea attached, as E
Chas

G.5248 Gnr David Ralph ROBERTSON -- 4 (Gen Rft) Wing, 1 Cdn
Repat Depot

BY THE DEFENDING OFFICER

The accused volunteered for Active Service as soon as he was able to get away with it. He was only 15 years of age. He was sent to Sicily in Oct 43 and went into action in Jan 44 near Ortona. He came out of action in March 44 after nearly 4 months continuous action when he had been laid low with yellow jaundice. While he was hospitalized was when the army found his proper ageand he was returned to England considered too young to be in an Active theatre of operations. During the following 15 months which he spent in England he was continually trying to be sent to France and it was a result of being over disgruntled by revised and revoked promises of being put on draft to the continent that he went first A.W.L. which is his first Court Martial previous to the present offence. The accused has spent three months doing absolutely nothing in a holding unit. We all know the result of such inactivity and here is another case of it. He was on leave and I believe that he on that leave he didn't feel up to it to come back to the inactivity and no-one seemed to require his services in camp. He didn't intend to stay as long as he did. As to this civilian charge it occured while he and three of his friends were drinking. They made an illegal entry, he had money in his pocket and he can't understand why he did it or why his friends discussed it with him, however in view of the fact that the only damage that was sustained by anybody was one small window being broken. I feel that 9 months was an extreme penalty for that offence. I ask the court to consider those 9 months spent behind bars and the months of voluntary service under fire when sentencing this young man.

Exhibit A

SUMMARY OF EVIDENCE

in the case of

G.5248 Gnr David Ralph ROBERTSON, RCA., on strength No 4 (Gen Rft) Wing, No 1 Can Repatriation Depot, a soldier of the Cdn Army Overseas:

"I produce the following documents pursuant to Overseas Routine Order No 5358, which have been read over and shown to the Accused, and are attached hereto as Exhibits:"

(1) Certified True Extract from original MFM 4 of G.5248 Gnr Robertson D R, which declares that the Accused absented himself without leave from 2359 hrs 8 Aug 45.
(Marked Exhibit "A")

(2) Certificate in Accordance with Section 163(1)(m) of the Army Act dated 27 Oct 45, signed by Officer in charge of St. Johns Wood Police Station which declares that G.5248 Pte Robertson D R was arrested at Hamilton Terrace, N W 8 at 0037 hrs 23 Oct 45.
(Marked Exhibit "B")

....C.E. Ennis....
(C.E. Ennis) Lieut RCA.,
Officer detailed to take the Summary of Evidence.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give any evidence, unless you wish to do so, but anything you say or any evidence you give will be taken down in writing and may be given in evidence."

The Accused reserves his defence.

The Accused does not call any witnesses.

"I certify that the above Summary of Evidence, consisting of one(1) page, was taken down by me in the presence and hearing of the Accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with."

....C.E. Ennis....
(C.E. Ennis) Lieut RCA.,
Officer detailed to take the Summary of Evidence.

Field

27 MAY 46

Exhibit "A"

SERVICE AND CASUALTY FORM

3/14B

(PART II)

Regiment or Corps: R.C.A. Regimental Number: G.524[illegible]

Substantive Rank: Gnr Surname: Robertson Christian Names: David Ralph

Acting Temporary or Local Rank
(To be entered in pencil to facilitate alteration)

(a) Report: Date	(a) Report: Cross whom received	(b) Code	(c) Record of all casualties regarding promotions (acting, temporary, local or substantive), appointments, transfers, mailings, attachments, &c. Reference of sick, wounds, accidents, admission to and discharge from Hospital, Casualty Clearing Stations, &c. Date of disembarkation and embarkation from a theatre of war (including furlough, &c.) in accordance with para. 2 of Note to Table I of Appendix III of Field Service Regulations, Volume I	(d) Place of Casualty	(e) Date of Casualty	(f) Other rank as at (c)	(g) Army Form or other authority for entry to be shown
		2 CGRU	AWL from 2359 8 Aug 45	U.K.	8Aug45	Gnr	38 - 6 Sep 45
			CERTIFIED TRUE EXTRACT FROM ORIGINAL MFM 4 HELD IN MY POSSESSION.				
			C. E. Ennis (C.E. Ennis) Lieut RCA., Officer having custody of original documents.				
			27 MAY 46				

(a) Report		(b)	(c)	(d)	(e)	(f)	(g)
Date	Paper which received	Unit	Record of all casualties regarding promotions (acting, temporary, local or substantive), appointments, transfers, postings, attachments, &c., forfeiture of pay, wounds, accidents, admission to and discharge from Hospital, Casualty Clearing Stations, &c. Date of disembarkation and embarkation from a theatre of war (including furlough, &c.) in accordance with para. 4 of Note to Table I of Appendix III of Field Service Regulations, Volume I	Place of Casualty	Date of Casualty	Army rank as at (c)	Army, Form, or other authority for entry to be shown

Exhibit B

(7)

METROPOLITAN POLICE

St. Johns Wood Station,
"D" Division.
27th. October, 1945.

CRO No. 38391/44.

CERTIFICATE IN ACCORDANCE WITH SECTION 163(1)(m) OF THE ARMY ACT.

I certify that the person whose description is given below was arrested at Hamilton Terrace, N.W.8, at 12.37 am. on the 23rd. day of October, 1945, and he was then wearing plain clothes.

Regimental particulars of soldier referred to above.

No. G. 5248
Rank Private
Name David Ralph ROBERTSON
Unit 2nd. C.G.R.G.

Description.

Age 23
Height 5ft. 8½ inches
Complexion fresh
Hair light brown
Eyes blue
Marks tattooed both arms

Signature of Officer of Police in charge of Police station to which the above named person was taken on arrest.

[signature] Judge PS 35

(In charge of Police Station.)

Exhibit "B"

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
G.5248	Gnr	Robertson D R	1 CAn Repat Depot

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

~~* Within last 12 months~~

* Since Enlistment.

For	A.A. 15(1)	times	6	times
For	A.A. 11	times	1	times
For	A.A. 25(1)	times	1	times
For	A.A. 40	times	1	times
For	A.A. 9(2)	times	1	times

~~Number of instances of gallantry or distinguished conduct~~

or

~~There are no entries on the conduct sheets of the accused~~

2. ~~The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under [illegible] for beginning on the day~~

4. The accused has been in confinement, awaiting trial on the present charges, for N/A days in civil custody, and ~~Nil~~ 1st days in military custody, making a total of 1st days, of which N/A days were spent in hospital.

5. The present age of the accused according to his record of service is 21 yrs ~~attestation paper~~

6. The date of his ~~commission~~ attestation specified in his record of service is 3 May 41 ~~attestation paper~~

7. ~~The service which the accused is allowed to reckon towards discharge or transfer to the reserve~~

8. ~~The accused is entitled to deferred pay or gratuity in respect of~~ ~~current~~

9. ~~The accused is entitled to reckon~~ ~~service for the purpose of determining his pension~~

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*). CVSM & CLASP Defence Stal Star 39-45 Star

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held [illegible] regimental rank~~

12. ~~(In the case of an officer.) The accused holds in the army [illegible] rank of~~ ~~and in his regiment (or corps or department) the rank~~ ~~date~~

W1.50137/1519 20M. 5/44. P. Ltd. TS1-3.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. G.5248 Rank Gnr Name Robertson D R of 1 Cdn Repat Depot Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
CIVIL COURT	16-11-44	CIVIL CHARGE	14 days H L	
F.G.C.M.	31-1-45	A.A. 15(1), A.A. 40	80 days detn	2 days remission released
F.G.C.M.	19-5-45	A.A. 15(1)	60 days detn	26-6-45 released
County of London Qtr Sessions,	14-11-45	CIV IL CHARGE	9 mos H L.	17 MAY 46

CSE

CSE

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 31st day of May 1946

C. E. Ennis Lieut RCA
Regt Officer
4 Wing 1 Cdn Repat Depot

~~Sgt. The accused has served as a non-commissioned officer (Sgt) previously, without reduction, to the present date.~~

Date of Promotion.

In the rank of years,

In the rank of years,

In the rank of years,

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph converted amended accordingly.)

CSE

Appendix "C"

No G.5248 Name Robertson D R | Sqn. Battery or Company | Corps R.C.A. | Date of enlistment 3 May 41 | QC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3438)

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Gnr		A.A. 15(1)		3 d p forf	28-3-44		
"		"		A.A. 11		5-d p forf	4-4-44		
"		"		A.A. 15(1)		21 D P F.P.	13-5-44		26 d p tot.
"		"		A.A. 15(1)		7 days C B	21-7-44		10 d p forf.
"		"		A.A. 15(1); A.A. 25(1); A.A. 40		28 d p F P	9-8-44		33 D P FORF.
"		"		A.A. 15(1)		14 days C B	4-10-44		20 d p forf.
"		"		CIVIL CHARGE		14 days H L	16-11-44		14 d p tot
"		"		A.A. 15(1) , A.A. 40		60 days detn	31-1-45	F.G.C.M.	136 d p tot.
						GRANTED 2 DAYS REMISSION 24-5-45			
"		"		A.A. 15(1)		60 days detn	19-5-45	F.G.C.M.	89 d p tot
						RELEASED 26-6-45			
"		"		A.A. 15(1); 9(2)		7 days F P	27-6-45		9 d p tot
"		"		CIVIL CHARGE		9 mos H.L.	14-11-45	County of London Qtr Sessions	295 d p tot.

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Gnr		RELEASED FROM H.M. PRISON, WANDSWORTH, 17 MAY 46.					

CERTIFIED TRUE EXTRACT FROM ORIGINAL MFM 4 HELD IN MY POSSESSION,

C.E. Ennis

(C.E. Ennis) Lieut. RCA.,
Officer having custody
of original documents.

17 MAY 46

5-A-116

Inv. Robertson D.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G-5248 Gnr ROBERTSON, David Ralph - 2 CARU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 403 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for sixty (60) days

(Sgd) ..... Judge-Advocate, if any. 9 May 45 Date awarded. (Sgd) E.H. Brien President. (RP 45, 50) Major

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further (if AA 57A Delete if not used.) notice.

Date 21 May 45 (Sgd) W.H. Brownfield Brig Commanding "C" Group, Can Reinforcement Units. Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKED. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
G-5248 Gnr Robertson, D.R.	22 May 45	J.H. McCurdy Lt.
Do # 121	24 May 45	Actg Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 28 MAY 1945 C.M.H.Q.

RECORDED AT CMHQ IN AB 160 52-116

FIELD GENERAL COURT-MARTIAL

MADE (TO CONFORM AS FAR AS 40/FA/1000-8-1-41) 4/38B

Convened by Order of Brig HON Brownfield CBE MC Comd "C" Gp, CRU dated 17 May 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G-5248	Gnr	David Ralph	ROBERTSON	2 CARU

PROCEEDINGS REVIEWED 28 May 1945 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 10 May 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2) accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, ~~RP 106~~ 107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1230 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.H. Brien EDRS	HQ CRU
Member	Capt	H.A. Winter	2 CARU
Member	Lieut	C. McCracken	1 CARU
~~Judge-Advocate~~			
Prosecutor	Lieut	L.A. Kaufman	2 CARU
Defending Offr	Lieut	W. Pick	2 CARU

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (b) and fn 2 were not followed. See Dr p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea .....(3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP Cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 90(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or ~~JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans.....Do you intend to call witnesses on your behalf ? Ans.....Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans.....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans.....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused G-5248 Gunner David Ralph ROBERTSON, "p" Training Wing, No 2 Cdn Arty Rft Unit, a soldier of the Cdn Army, Overseas, is charged with:

1st Charge
Section 15(1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

In that he,

in the field absented himself without leave from 1330 hrs 20 Apr 45 until surrendering himself at 1430 hrs 11 May 45. Absent 21 days, 1 hr.

S. Dobell

(S.H. Dobell)Colonel RCA
Commanding Officer
No 2 Cdn Arty Rft Unit
Cdn Army (Overseas)

14 May 45
Morval Bks
Cove, Hants

To be tried by Field General Court Martial

H.W. Brownfield Brigadier
Commanding 90th Group, Cdn Reinforcement Units

17 May 45
Bordon, Hants.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(5).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
G-5248	Gnr		David Ralph	ROBERTSON	2 CARU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (*date*) this date endorsed by me, (~~or by my predecessor in command~~), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial; (~~and that it would not be practicable to delay action until after reference to a superior military authy~~)

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. ~~A Court composed of three officers, being the senior officer present, shall be convened.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~A competent judge advocate to act as the officer mentioned hereunder.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.M. Miller, MD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by CO	2 CARU
Lieutenant	C.H. Clarkson	1 CARU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Dat 17 May 45

Commanding "C" Group, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 98 (In lieu of AFA 3) 40/P & S/1697 (6143)

(*See overleaf for oaths and notes for use on trial.*)

Medical Officer's Certificate
F.R. (Can) Para 557

I certify that I have this morning examined G-5248 Gnr Robertson, D.R. of No 2 CARU and in my opinion he is fit / unfit to undergo trial by Court Martial.

2 CARU

19 May 45

R. Wood Capt
(Medical Officer)

Plea of Mitigation
Case of Gnr. Robertson V.R.
G 5248
#2 C.H.R.W.

H/M Joined the army at the age of sixteen, misstating his age. He has served with his Maj. Forces four years (June 20) and has been overseas three years seven mos. Army routine has been hard on him as a youngster where he has lived with older men, and his character has been formed away from the influence of parents who during other times would have been able to advise him. He was in Italy at the age of eighteen and because of this fact was returned the last of July, 44. It is my impression that the period of active service, nine months in action, has done much to make him unstable because he wants to soldier, yet at times he feels he wants to get away. We

account for this because much of his youth, rather than being spent like other boys in civil street has been spent serving his country overseas.

W. H. Pike Lt. R.C.H.
No 2 C.H.R.D.

SUMMARY OF EVIDENCE IN THE CASE OF G-5248 Gunner David Ralph ROBERTSON, "P" Training Wing, No 2 Cdn Arty Rft Unit, a soldier of the Cdn Army, Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

"I Produce the following documents pursuant to Overseas RO 5352 which have been read over and shown to the accused and which are attached hereto as Exhibits "A" & "B".

Certified True Copy of Record of Declaration of Court of Inquiry. Exhibit "A"

Certificate under the A.A. Section 163(i)(j) Exhibit "B"

(G.W. Currie) Capt RCA
Administrative Officer
"P" Training Wing
No 2 Cdn Arty Rft Unit.

Officer detailed to take the Summary of Evidence.

The accused was cautioned as follows: "Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c),(d),(e) and (f) have been complied with.

(G.W. Currie) Capt RCA
Administrative Officer
"P" Training Wing
No 2 Cdn Arty Rft Unit

Officer detailed to take the Summary of Evidence.

Morval Bks
Cove, Hants
14 May 45

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

Norval Barracks
Aldershot Comd

RECORD of the Declaration of a Court of Inquiry assembled at

on the 12th day of May 19 45, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. G 5248 Gnr ROBERTSON D.R.

DECLARATION.

The Court declare that No G 5248 Gnr ROBERTSON, D.R. illegally absented himself without leave at 1330 hrs 20 Apr 45, and is still so absent, that on the 11 May 45 he was deficient, and that he is still deficient of the following articles:-

ARTICLE	QUANTITY	100% VALUE £ s d	75% VALUE £ s d
Anklets Web	1	0 4 5	0 3 4
Blouses, BD	1	1 9 1	1 1 10
Trousers, BD	1	1 9 3½	1 1 11
Badges, Cap Arty	1	0 0 5	0 0 4
Cap, FS	1	0 2 6	0 1 10½
Socks, Worsted, prs	1	0 2 0	0 1 6
Oint A/Gas, Tins	1	0 0 8	0 0 6
Dressing, FF	1	0 1 1	0 0 10½
Boots, prs	1	1 6 0	0 19 6
Comb, Hair	1	0 0 2	0 0 1½
Razor, set	1	0 0 3	0 0 2
		£ 4 19 10½	£ 3 11 11

President : Capt W.C. COOLEN

Members : Lieut H.C. FRIZZELL
Lieut Z. HLADKI

Names of President and Members

Signature of Commanding Officer (S.H. Dobell) Colonel

CERTIFIED TRUE COPY

R.D. Mulholland

(R.D. Mulholland) Major
Administrative Officer
No 2 [illegible] Army Rft Unit
Cdn Army (Overseas)

Signature of Officer having custody of the original record

(100000) Wt.38982/1955 120,000 1/41 A.&E.W.Ltd. Gp.598 Forms/B115/57.

B

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (i) (j)

I Capt. R.W.Kyle D.A.P.M. C.M.H.Q. certify that

Regt. No. G-5248 RANK Gnr. NAME Robertson, D.

REGIMENT

UNIT #2 C.A.R.U. (CRU)

STATIONED AT

Surrendered himself to No. B-124594 Rank L/C Name A.I.McDonald

of the #6(Area) Provost Coy. Cdn. Provost Corps.

on the 11 day of May 1945 at London Hours 1430

AS AN ABSENTEE WITHOUT LEAVE

At the time of his surrender he was wearing (Military Uniform) or

~~xxxxxxxxxxxxxxxxxx~~

Signature of Provost-Marshal, Assistant Provost-Marshal or other Officer or Commanding Officer of the Portion of His Majesty's Forces or the Officer, Warrant Officer, or the non-commissioned Officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on surrendering. (Strike out part inapplicable).

.....Capt.
(R.W.Kyle)
D.A.P.M. C.M.H.Q.

London
12 May 45.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
G-5248	Gnr	ROBERTSON, D.R.	No 2 Cdn Arty Rft Unit.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	A.A.Sec 40	NONE times	EIGHT	times.
For	A.A.Sec.15(1)	FOUR times	SEVEN	times.
For	A.A.Sec.25	ONE times	ONE	times.
For	A.A.Sec.33	ONE times	ONE	times.
For	A.A.Sec.9(2)	ONE times	ONE	times.

[redacted]

or

[redacted]

[redacted]

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 9 days in military custody, making a total of 9 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 23 yrs 11 days

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 20 Jun 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 yrs days

8. The accused is entitled to deferred pay or gratuity in respect of 3 yrs 328 days service.

9. The accused is entitled to reckon 3 yrs 328 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, [redacted] state any military decoration or reward)). CVSM & CLASP

11. [redacted]

12. [redacted]

[redacted]

(*25000) Wt.34898/1730 20,000 10/43 A.& E.W.Ltd. Gp.698
(20000) Wt.55934/1499 12,000 3/44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. G-5248 Rank Gnr Name ROBERTSON, D.R. of No 2 CARU Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	31 Jan 45	A.A.Sec.15(1) A.A.Sec.40	80 days detn	26 days

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17 day of May 45

Capt

No. 3-5248 Name ROBERTSON, DR | Sqn, Battery, or Company | Corps RCA | Date of enlistment 20 JUN 41 | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/139 (7010)

Badges | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature OC Company, etc | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4 Mar 42	Gnr		Sec 40 A.A. Conduct etc, in that he took an M.T. vehicle without regard for MT Standing Orders	Cpl Judd Lt Hussy	Ffte 5 days pay FR&I 149(2)	23 Mar 42	Lt col Inns	
Field	16 May 42	Gnr		Sec 40 A.A. Conduct etc in that was asleep when supposed to be on MT Picquet duties	Lt Archer Lt Massey	7 days detn	19 May 42	Mj McKenzie A/OC 7 LAA Regt	
Field	10 Jun 42	Gnr		Sec 40 A.A. Neglect etc in that he did not keep M/C in serviceable condition.	Gnr Coleman	7 days C.B.	15 Jun 42	Mj Petrie	

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	27 May 43	G nr		1. WOAS, AWL from place of instruction from 1330 hrs to 1630 hrs. Absent 3 hrs. 2. Failing to comply with an order given by an NCO. 3. Failing to parade at Rest HQ when ordered to do so.	BSM Ward, T.J. Sgt Carter Sgt Clayton	14 days CB Deprived of 7 days pay.	29 May 43	Maj J.H. Thorp Middlesex Rest	

3/17 MFM 6
(AFB 122)
40/P&S/134 (7010)

No. 3-5248 Name Robertson, DR Sqn, Battery, or Company — Corps RCA — Date of enlistment 20 Jun 40 — Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 2 — Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17 Jun 43	Gnr		1st Charge: Sec 15(1) AA WOAS, did absent himself without leave in that he did absent himself without leave from 0800 hrs of the 17 Jun 43 until 1640 hrs of 21 Jun 43. (Total absence 4 days, 8 hrs, 40 mins.) 2nd Charge: Sec 40 AA An act to the prejudice of good order and military discipline in that he in the field on the 21st day of Jun 43 was in possession of a document purporting to be a genuine leave pass, well knowing it not to be genuine.	BSM Newell S/Sgt Lamarre, J.B. Bdr Savage, S.H. Documentary	HD 21 days FP with conjoint award of 21 days ft're FR&I 149(1)b	22 Jun 43	Lt-col Taylor OC "P" Wing, 3 CARU	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order thereof along with trial	By whom awarded	Remarks
Field	11 Oct 43	Gnr		Sec 40 AA Neglect to scrub web eqpt.	Lt G.E.??? Bdr Johnson Sgt Hefferman	7 days CB 21 days FP, 21 days pay FRI 149(2)	13 Oct43 19 Oct 43	???????? F.J.Thorne	Auto forf of 3 days pay FR&I 149(1)a
Field	15 Oct 43	Gnr		AA Sec 15(1) AWL 2 days 5 hrs 45 minutes					
Field	11 Feb 44	Gnr		Sec 40 AA Prejudice to the G.O. & M.D.	Capt F.W. Baker	7 days CB	11 Feb 44	Maj Wright	
Field	3 Sep 44	Gnr		(1) AA Sec 15(1) WOAS AWL from 0945 hrs 3 Sep 44 until 1645 hrs 7 Sep 44. Absent 4 days 1 hour. (2) AA Sec 25 WOAS, producing a false leave pass. (3) AA Sec 33 WOAS, Making a false statement to an NCO of the Cdn Provost Corps.	Documentary	28 days FP	9 Sep 44	WHTaylor Lt-col	Forf 5 days pay FR&I 149(1)(a) Forf 28 days pay FRI 149(2) Total forf 33 days pay (3 charges)

No. 3-5248 Name Robertson, D.R. | Sqn, Battery, or Company | Corps RCA | Date of enlistment 20 Jun41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/134 (7010)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16Jul 44	Gnr		A.A.Sec15(1) WOAS, AWL from 2300 hrs 16 Jul 44 until 0800 hrs 19 Jul 44. (2 days 9 hrs)	Sgt Morse, GE	7 days CB 7 days forf FRI 149(2)	21 Jul44	Lt-col R.H.Beck	3 days pay FRI 149(1)a
Field	8 Aug 44	Gnr		A.A.Sec15(1) WOAS, AWL from 1200 hrs 8 Aug 44 to 1500 hrs 11 Aug 44. Total absence 3 days 3 hrs.	Documentary	21 days FP	13 Aug 44	WH Taylor Lt-col.	Forf 4 dp FRI 149(1)(a) Forf 21 days pay FRI 149 (2)Total forf 25 d.p.
Field	23Aug 44	Gnr		A.A.Sec 9(2),WOAS, disobeying a lawful command given by his superior officer.	L/B Carpenter L/B Totten	10 days CB	24 Aug 44		
Field	10 Nov 44	Gnr		A.A.Sec15(1) WOAS, AWL from 1400 hrs 10 Nov 44 until 0025 hrs 16 Nov 44. Absent 5 days,8 hrs,25 mins.	Documentary	14 days CB	4 Dec 44	W.G.Myatt Lt-col RCA	Forf 6 dys pay FRI 149(1)(a) To forf 14 days pay 149 (2)

OF703

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6 Dec 44	Gnr		(1) A.A. Sec 15(1) WOAS, AWL from 0630 hrs 6 Dec 44 to 2115 hrs 20 Jan 45. Absent 45 days, 14 hrs, 45 mins. (2) A.A. Sec 40 Act to the prej etc is poss of pass knowing it was not genuine.		80 days detn	31 Jan 45	FGCM	Forf 46 d.p. FRI 149 (1)(a) Forf 10 d.p. FRI 149(1)(c) (i) Forf 80 days pay FRI 149(1) (b) 12 d.p. to run concurrent. Total forf 124 days pay.
						RELEASED FROM THE DETENTION BARRACK ???????ON 24 MAR 1945 SENTENCE HAVING EXPIRED. Remission earned under Rules for Detention Barracks and Military Prisons 26 days. Commandants Initials		????	

CERTIFIED TRUE COPY OF ORIGINAL MFM 6

G.W. Currie Capt

(G.W. Currie) Capt RCA,
Administrative Officer,
"P" Training Wing,
No 2 Cdn Arty Rft Unit.

Officer having custody of Original MFM 6.

LIST OF WITNESSES

FOR THE PROSECUTION — N I L

FOR THE DEFENCE — N I L

LIST OF EXHIBITS

EXHIBIT "A" — Certified True Copy of Record of Declaration of Court of Inquiry.

EXHIBIT "B" — Certificate under the A.A. Sec 163(1)(j)

"P" TRAINING WING
NO 2 CARU

Commanding Officer
No 2 C.A.R.U.

PW/5-4-5
14 May 45

G-5248 Gnr ROBERTSON, D.R.

1. I acknowledge having duly received a copy of the Charge Sheet and a copy of the Summary of Evidence concerning my forthcoming trial by Field General Court Martial.

D.R. Robertson,
.....
G-5248 Gnr Robertson, D.R.

"P" NO | TRAINING 2 | WING CARU

Commanding Officer
No 2 C.A.R.U.

PW/5-4-5
14 May 45

G-5248 Gnr ROBERTSON, D.R.

1. It is respectfully requested that an officer be appointed to defend me at my forthcoming trial by Field General Court Martial.

D.R. Robertson

G-5248 Gnr Robertson, D.R.

59 R.

Sgt. ROBERTSON, E.P

O. H. M. S.

M. F. B. 270
1000M-12-40 (8068-09-70)
H.Q. 1772-80-67

Correspondence to be PINNED here.

B.

Form for Assembly and Proce[illegible]
General Court Martial or [illegible]

PROCEEDIN[illegible]

On Active Service, this 7 of October, 1942.

Whereas it appears to me, the undersigned, an office[illegible] Command of R.C.A. 1 Cdn Div, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

*~~[I am unable to appoint:~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

*~~(3. Three Officers having more than one year's service.)~~

~~for the following reasons, namely:~~]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

PROCEEDINGS REVIEWED

Mr. Cafe

24 Nov 42

Johanson may

114

President.

Rank.	Name.	Regiment.
Major	J.W. Johanson	1 Cdn Div Sigs

Members.

Rank.	Name.	Regiment.
Capt.	W.W. Mair	Sask LI (MG)
Capt.	W.G. Winters	Sask LI (MG)
Waiting Capt.	J.F. Andrews ~~R. Cole Tabilero~~	1 Cdn Div Sigs

*Signed (A.E.D. Tremain) Brigadier

Commanding R.C.A. 1 Cdn Div

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

5 PR.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 7 day of October, 1942.

Whereas it appears to me, the undersigned, an officer in Command of R.C.A. 1 Cdn Div, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~(and that it is not practicable to delay the trial for reference to a superior qualified officer.)~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*~~I am unable to appoint—~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

*~~(3. Three Officers having more than one year's service.)~~

~~for the following reasons, namely:—~~

PROCEEDINGS REVIEWED

President.

Rank.	Name.	Regiment.
Major	J.W. Johanson	1 Cdn Div Sigs

Members.

Rank.	Name.	Regiment.
Capt.	W.W. Mair	Sask LI (MG)
Capt.	W.G. Winters	Sask LI (MG)
~~Capt.~~ Waiting Capt.	~~J.F. Andrews~~ ~~R. Cdn Engineers~~	1 Cdn Div Sigs

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (A.E.D. Tremain) Brigadier
Commanding R.C.A. 1 Cdn Div
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.28109 Spr. ROBERTSON, E.P. 2 Cdn Fd Pk Coy	1st charge A.A. 18(4)	not Guilty	not Guilty RP 45(c) and RP 117(b) complied with	Given from the finding and sentence of the Court.
	2nd charge Alternative A.A. 40	not Guilty	Guilty	
			40 days detention J. Johanson Maj 23 Oct 42	[illegible] Brigadier

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— no.

(Signed) [signature] (A.E.D. Tremain) Brigadier
Commanding R.C.A. 1 Cdn Div
Convening Officer (e)

(Signed) J. Johanson Major
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23rd day of October 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~ [initials]
*(4. ~~The officers under instruction~~ [initials]
were duly sworn.

* Omit if not applicable.

Signed this 23rd day of October 1942

J. Johanson Maj
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this~~ [initials] ~~day of~~ 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison until further orders.~~)

Signed this 27 day of Oct 1942

[signature]
Confirming Officer Brigadier

Promulgated and extracts taken in the case of

(a) (Dated) 30/10/42. (Signed) R.B. Fraser Major RCE.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(12759) Wt. 40115—893 200 L 1/40 P. St. G. 640

Exhibit "D" (cap)
in custody of J.A.G. Rw
Rhinemore
cpl
25/11/42

CHARGE AGAINST

B-28109 Sapper Robertson, E. P., 2nd. Cdn. Fd. Park Coy., R.C.E., being a soldier of the Canadian Army Overseas is charge with, whilst on active service -

First Charge
A.A. Sec. 18(4)

Stealing Public Property

in that he

in the field on or about 17 Sep 42 did steal 19 prs socks, 2 doz drawers, shorts and 5 towels bath (P.A.D.) on charge to the Q.M.stores of the 2nd. Cdn.Fd.Park Coy R.C.E.

ALTERNATIVE CHARGE

A.A. Sec. 40

Conduct to the prejudice of good order and military discipline

in that he

in the field on or about 17 Sep 42 was in improper possession of W.D. property on charge to the Q.M. stores of the 2nd. Cdn.Fd.Park Coy., R.C.E., as listed -

19 prs socks
2 doz drawers, shorts
5 towels, bath (P.A.D.)

R.B. Fraser

(R.B.Fraser) Major
O.C., 2nd.Cdn.Fd.Park Coy., R.C.E.

To be tried by Field General Court Martial.

A.E.D. Tremain

2 Oct 42

(A.E.D. Tremain)
Brigadier
C.R.A. 1 Cdn Div

MEDICAL OFFICER'S REPORT

I certify that No. B-28109 Spr. Robertson, E.P.

of 2nd.Cdn.Fd.Pk.Coy.RCEs *in a* well *state of health,*

and fit *to undergo Trial by Court Martial.*

V. J. McKenty Capt
Medical Officer

Station Field

Date ~~21~~ 23rd Oct 42

please change date if O.K.

M.F.B. 246
40 F & S/572

[illegible]

PROCEEDINGS OF A FIELD GENERAL COURT
MARTIAL HELD IN THE FIELD ON THE
23 DAY OF Oct 1942

Trial of B 28109 Spr Roberts on EP
Prosecutor Lt. McInnes 2 Cdn Fd Pk Coy
Defending Offr Capt Pace. HQ RCE
~~Offrs under Instruction~~ -

1. The order convening the Court is read in the presence of the accused.

The accused is asked the following question - "Do you object to be tried by the President or any members of the Court whose names you have heard read over?"
Answer : No Sir.

3. The President, Members, ~~Judge Advocate~~, ~~Officers under Instruction~~, ~~Shorthand Writer~~ and ~~Interpreter~~ are duly sworn.

4. (a) The accused answers his name and number and is duly arraigned.
(b) The accused having pleaded guilty to the NIL charge(s) R.P. 35(B) is complied with.

5. The accused is asked the question at the foot of page 2 of A.F.A.3 and his answer is recorded beneath the question.

6. The prosecutor makes ~~no~~ the following opening address :-
See page 1 of Proceedings

DEFENCE

The accused is informed of his rights in accordance with RP 40(a) and Note 2 on page 644 MML.
The accused is asked the following questions :
Q. Do you wish to give evidence as a witness?
A. Yes
Q. Do you intend to call any other witnesses on your behalf?
A. YES
Q. Are they witnesses as to character only?
A. No. Some for facts.
See R.P. 41

AFTER FINDING

Lt McInnes is duly sworn and states :

"I produce a certified copy of MFM 6 relating to the accused". The said copy is marked " ", signed by the President and attached to the proceedings.
also short statement of particulars of service

Question to the accused
Do you wish to address the Court or to call evidence as to character?
Answer : No

The ~~accused~~/Defending Officer makes the following plea in mitigation of sentence. See page 5 of Proceedings

[signature]

PROCEEDINGS OF A FIELD GENERAL
COURT MARTIAL HELD IN THE FIELD
ON THE 23 rd day of October 1942

The President and members assemble at 1000 hours.

The Court is convened in accordance with RP 22, 23 and 106.

The Court is opened at 1010 hours and the Defending Officer, Prosecuting Officer, accused and escort and witnesses appear.

The medical certificate is submitted to the Court by Prosecutor

OPENING ADDRESS BY PROSECUTOR

" As the exhibits as shown in the Summary are not available, the Prosecution will produce witnesses to prove that such exhibits did exist but are not now available. I also submit to the Court a field service cap as exbibit "D" "

1st witness for Prosecution- B-88057 QMS Banks T.E. is sworn- This witness established identity of articles found on 17 Sep as W.D. property and belonging to unit P.A.D. stores. One parcel of underwear had been marked "for return to DADOS" and that notation was on the parcel shown to the witness.

The Defending Officer declines to cross examine this witness and accepts the proof of exhibits and identity.

2nd witness for Prosecution- Lieut. H.R.B. McInnes is sworn- Stated that he was in possession of the exhibits on the 24 and 25 Sep when the Summary was taken and again saw them on 6 Oct when questioned by Major Fraser regarding them being in the room where unit G 1098 stores were kept. On 6 Oct further evidence became available and after taking an addendum to the Summary went to put another exhibit with the others and found them to be missing.

3rd witness for Prosecution- Lieut. R.G. Green is sworn- This witness gave evidense of finding the articles in a tin shack on the premises and of detailing S/Sgt Hesk and Sgt. Long to watch the shack from a barn opposite. About 1800 hours S/Sgt Hesk brought the accused to witness who placed accused under open arrest.

Q. by Defense:
" How long have you been with the unit ?"
A. " Since 9 Aug 42 "

Q. by Court:
" What articles did accused have in his possesion when brought to you ?"
A. " Some large towels"

4th witness for Prosecution-B-28152 Sgt. Long T.W. is sworn- Stated that he joined S/Sgt. Hesk at the barn at 1750 hours and that at 1810 hours a Spr Soper was seen to go into the shack and select some articles. He was then joined by Spr. Robertson who was carrying a bundle wrapped in an army shirt. Soper and Robertson were joined by Spr. Stephenson and the three strted towards the road and were then stopped by S/Sgt Hesk. Witness then joined Hesk and they took the three men to the guard room where they were placed under open arrest by Lt. Green.

Q. by Defense:
" Where does the road to which you refer lead ?"
A. " It leads out of the camp and also to the main bldg"

5th witness for Prosecution- B-28059 S/Sgt. Hesk G. is sworn-
This witness confirms the evidence of Lt. Green and Sgt Long up to point of apprehension. Here witness asked the accused what he had in the bundle that the accused was carrying and was told that it was laundry. The witness examined the bundle at the guard room and found it to contain five W.D. Hospital towels.

Q. "How long have you been in the w/shop section ?"
A. " Since Dec 1939. I have been senior NCO since Aug 1940"
Q. " How long have you known the accused ?"
A. " Since I joined the army "
Q. " Can you tell if the accused carried the same bundle when apprehended as he did when he joined Soper at the tin shack ?"
A. " I did not see it change hands "

The Defense again brings out the point in cross examination that the road on which the accused was apprehended led to the main bldg as well as out of camp.

6th witness for Prosecution-B-29399 Spr. Stephenson W.F. is sworn-
" On 17 Sep I left my hut to go to the village and when walking along the path I was called to a tin shack by Spr Soper and asked for the loan of a shirt to wrap some things in. I went back and got the shirt, gave it to Soper with a reminder that I wanted it back and started up the path with Robertson. We were stopped by S/Sgt Hesk who asked Robertson what he had in the parcel. After finding out what was in the parcel we were taken to the guard room and placed under arrest.
Q. " What did Robertson reply to the Q by S/Sgt Hesk?"
A. " That it was laundry "

Q. by defense:
" Will you repeat any conversation that you had with the accused before you went to the tin shack?"
A. " Before leaving the Misson hut Spr Robertson told me that he had found some stuff and that he and Soper were returning it to the QM Stores. I was asked if I would give them a hand and I refused.
Q "Are you quite sure they said they were taking them to the QM Stores ?"
A. "Yes"

7th witness for Prosecution-B-28121 Cpl. Feldcamp G.F. is sworn-
This witness gave evidence of finding a cap in the PAD stores about three weeks after the accused was placed under arrest. He identified the cap in possesion of the Court as it was marked with the regimental number and initials of the accused on the inside flap.

The Defense brings out in cross examination the exact location of the hat in the stores i.e. the hat was in a large tin and fell with it when the door was opened.

The Court adjourned at 1210 hours

The Court opens again at 1335 hours.

8th witness for the Prosecution-B-28096 Spr. MacAtamney J is sworn-
This witness confirms statement of Cpl. Feldcamp as to the finding and identification of the cap but gives the date of finding as 9 Oct 42.

Q. by Defense:
"Are you sure of the date ?"
A. "Yes"

9th witness for the Prosecution-B-28057 CQMS Banks T.E. is warned that he is still on oath before the Court-
This witness describes layout of QM and PAD Stores and that by locking the QM Stores it closed off the PAD Stores. The date of finding the cap is given as 10 Oct 42. Gives reason for Cpl. Feldcamp going to the PAD Stores.

Q. by Defense:
"What did the CRE say about the Stores on his inspection?"

A. " They were the worst he had ever seen "

The Prosecution is closed.

Opening Address by Defending Officer

" I propose to show that the case against the accused is built up not by adverse facts but by the adverse interpretation of an act of minor stupidity. The witnesses can offer an acceptable explanation of not too brilliant conduct but never the less was honest in intention. The accused can confirm his motivation by the evidence of witnesses who are credible and whose evidence must bear weight. It will be shown that there is nothing in this man's record to indicate dishonest trends of character.

1st witness for the Defense-B-28109 Spr. Robertson E.P. is sworn- The accused takes his stand at the place at which other witnesses give their evidence.

" About 0730 hours on 17 Sep I went to the shack to get some straw when I found the articles mentioned. As I was leaving on an early trip I only saw one HOO at the time. At supper I was talking to a chum and he said he wanted to see it. He said that we had better return it to the stores. I did not want a yone to see us carrying it to the stores. We were stopped by S/Sgt Hesk and he asked me what was in the bundle I was carrying. I told him it was laundry. I did not tell him about it. At the guard room I told them that I had found the stuff and I was placed under arrest.

Q. "Why did you not tell an officer ?"
A. " He was a new officer and I did not know what he would do about it so I decided to take the articles to the QM stores"
Q. " Will you explain the matter of the hat ?"
A. " About 10 days before moving to this area I left my cap in the mess hall and when I went to get it, it was gone. I reported it to the CSM "

Q by Prosecution:
" How long have you been in the army ?"
A. " Since Sep 1939"
Q. " Did you carry a bundle out of your hut ?"
A. " Yes "
Q. " What was in the bundle ?"
A. " Towels "
Q. " Where did you get them ?"
A. " The shack. I had them in my hut from 1630 hours "
Q. " What time did you return from the trip you made early in the morning of 17 Sep ?"
A. " At 1400 hours. I helped unload the trucks and then went to the shack and got the towels at 1630 hours. They were on top of the pile. I took them to my hut, wrapped them in a shirt and left them on my bed. I went to the mess hall for supper and then back to my hut."
Q. " Why did you not take all the articles to the Stores ?"
A. " It was too much"

2nd witness dor the Defense- B-28501 Spr. Hayward F.K. is sworn- This witness confirms fact that accused lost his cap in the mess hall before moving to present area.

The Prosecution declines to cross examine this witness.

3rd witness for the Defense- B-28080 Spr. Carey V. is sworn- This witness states that he asked accused for the loan of his cap in their old area and was told that the accused had lost it. Witness identifies cap in possesion of the Court as one that he used to borrow from the accused to attend pay parades.

Character witness- Capt. E.A. Ballantyne is sworn-

Q. "Will you please tell the Court whether or not, to the best of your knowledge and belief, the accused has ever been found guilty of or charged with an act of dishonesty ?"

A. "To the best of my knowledge and belief-none that I know of"

CLOSING ADDRESS BY DEFENDING OFFICER

" The defense admits that no evidence has been produced to prove the offense of stealing. With regard to the fact of possesion, it is felt that no evidence has been produced which directly or even by implication would show dishonest intention. Rather, the evidence of the accused supported by the spontaneous corroboration of Spr. Stephenson indicates good intention i.e. that the accused, even though in a dilatory and bungling fashion, had in hand the return of W.D. property which he had accidentally found to its place of proper repository.

" Thus interpretation becomes the decisive factor in this case and not the proof or refutation of facts. And in interpretation the principle of reasonable doubt should, in my opinion, be afforded its usual free exercise.

" Though it is not within my compass to weigh the importance of circumstantial evidence, it might reasonably appear from the evidence of the accused and that of Sprs. Hayward and Carey that exhibit "D" i.e.the cap, and the circumstances of its discovery are things of little relevancy and of no importance.

" The Defending Officer feels that due to several factors, this man has been brought to trial under misapprehension. It is admitted that he was dilatory in returning the articles but in his own statement excuse can be found i.e. he was called on duty soon after his discovery and further, with whatever poor reason, he was afraid to report his find to his senior NCOs and unacquainted with the character of a strange officer.

" It is my hope that the Court will believe that this man was at worst slovenly in his actions or neglects, probably himself ill advised, certainly a little stupid. That a charge was laid at all must be attributed to these little personal shortcomings rather than to any improper intent on his part; and this I believe the evidence to show.

" I would refer the Court to the provisions of M.M.L. Chap III para 33 and 37 which defines the elements necessary to constitute an offense of stealing.

" As to his general character for honesty, may I refer the Court to Chap VI para 19 page 75 lines 6 and 7. There has been only positive evidence submitted as to character for honesty and my recollection tells me that the Court will find no documentary evidence to the contrary.

" To summarize, there is no evidence to prove stealing and every reasonable doubt that his possession of the articles was improper "

ADDRESS IN REPLY BY PROSECUTION

" A few points have arisen worthy of mention. The articles were found at 0730 hours, were forgotten all day until prior to supper when the accused removed the towels.

" The accused would not tell his NCOs about the articles for fear of getting into trouble. His NCOs, especially S/Sgt. Heck are men who have been in the ranks with the accused and if he does'nt trust them, he has something to hide.

hut
" When he left the ~~xxxx~~ with the towels wrapped in a shirt on a well meaning mission to return them, he was stopped by S/Sgt. Nesk and in spite of his good intentions, lied to that NCO.

" I would like to bring up a point regarding the weight of those articles. Robertson is a perfectly normal, healthy person and though the distance is only a matter of 300 yards, he could still only stagger up with five towels.

" There are some amazing coincidences about the loss of the cap. But the most amazing one, if we believe the evidence, is that the cap was lost in Horam and never turned up until found in the P.A.D. Stores in Mountfield. These stores are like barrack stores and are held within the unit and no one goes near them.

" Yet the accused had five towels from these stores in his possession. In my mind that constitutes evidence that Spr. Robertson stole those stores by entering the P.A.D. stores to get them. I need not dwell on the seriousness of such offenses in the army and there is only one way to stop such offenses "

The Court is closed to consider a Finding.

The Court is opened again and a finding of NOT GUILTY on the 1st charg is read in the presence of the accused.

The Defending Officer in his PLEA IN MITIGATION OF SENTENCE brings out the facts that the accused did neglect to tell an officer or NCO about the property of the PAD stores that he found for reasons as given by the accused in his evidence, and that the accused had not been charged with or found guilty of a similar offense.

The Court is closed to consider sentence.

The accused is warned that he will remain in close arrest pending promulgation of sentence.

The Court deal also with the sentence on a soldier tried by the same Court two days previous on the same charge.

SUMMARY OF EVIDENCE IN THE CASE OF

R-28109 Spr. Robertson, E.E. 2nd.Cdn.Fd.Pk.Coy.RCE.

By direction of the Officer Commanding the Summary of Evidence is taken on oath.

First Witness for the Prosecution.

Lieut. H.G.Green, 2nd. Cdn. Fd.Park Coy., R.C.E. having been duly sworn, states;-

"I am Lieut. H.G.Green, an Officer of the 2nd. Cdn. Fd.Park Coy., R.C.E. I was in charge of the rear party when the Company was away on Exercise "Spinach". At about 1530 hrs on the 17 Sep 42 we were beginning to run short of cement on a job that was in progress. After having obtained the permission of the Head Gardener I went down to a shack where I knew there were four or five bags of cement. On removing one bag of cement I found some socks and paper parcels containing underwear. After my find, I placed the articles in the truck and drove up to the gate where I sent for Sgt. Long and S/Sgt Hesk. On their arrival I showed them what I had found. We returned to the shack and I replaced the articles back in the same spot I had found them. I had the Head Gardener come over and with his permission obtained the use of a barn opposite the entrance of the shack. I instructed Sgt. Long and S/Sgt. Hesk to keep and eye on the shack from the barn from 1700 hrs on. At about 1815 hrs I was out at the cookhouse when Sgt. Long, S/Sgt. Hesk, Sappers Soper, Robertson and Stephenson walked up to me and said they wished to speak to me at once. I followed them into the guard room and they told me what had happened. After I examined the goods I identified them as the goods I had placed in the shack earlier in the afternoon."

Questioned by the Court.

"Can you identify this property as the property you found in the shack?"
"Yes, Sir, it is the same."

Signed H.G.Green
(H.G.Green) Lieut.
2nd.Cdn.Fd.Park Coy., R.C.E.

Continued on page two.

Second Witness for the Prosecution.

B-28152 Sgt. Long, T.W., 2nd. Cdn. Fd. Park Coy., R.C.E., having been duly sworn, states;-

"I am B-28152 Sgt. Long, T.W. of the 2nd. Cdn. Fd. Park Coy., R.C.E. In the afternoon of 17 Sep 42 Lieut. Green told us he had found some articles that were hidden. We went down to the shack with him but decided that we would leave them there and watch who came to pick them up. Spr. Soper was seen to go and take several articles from the hiding place and left the rest. Spr. Robertson came along and they talked for awhile. Spr. Stephenson came along and was asked by Spr. Soper to loan them a shirt. We then brought them up before Lieut. Green who placed them under open arrest."

Signed T.W. Long

The accused declines to question the witness

Continued on Page three

Third Witness for the Prosecution.

B-28059 S/Sgt. Hesk, G., 2nd. Cdn. Fd. Park Coy., R.C.E. having been duly sworn, states:-

"At about 1400 hrs on the 17 Sep 42, Lieut. Green told Sgt. Long and myself that he had discovered some W.D. articles hidden in a small shack. We went with him down to the shack and decided to leave the articles hidden. We obtained permission from the Head Gardener to use a near-by barn as a look-out post. I entered the barn at 1645 hrs and was joined by Sgt. Long at 1750 hrs. At approx 1810 hrs Spr. Soper came to the shack and turned back the cement and the straw under which these articles were hidden and made a selection. He was joined by Spr. Robertson who ~~picked up~~ a bundle with an army shirt wrapped around it. Spr. Stephenson came along and Spr. Soper borrowed a shirt from him and wrapped some articles in it. I left the barn and intercepted them as they were headed for the road. On examining the parcels the one carried by Robertson was found to contain 5 W.D. hospital towels and the one carried by Spr. Soper contained a bundle of W.D.socks and 2 bundles of W.D.Underwear. I was joined by Sgt. Long and ordered the three men to accompany us to billets. We reported to Mr. Green and the three men were placed under open arrest. The remaining stores in the shack were brought into the Q.M.stores and contained another bundle of socks and one of underwear."

Signed W Gordon Hesk

The accused declines to question the witness

Fourth Witness for the Prosecution.

B-28153 L/Cpl. Muggeridge, A., 2nd. Cdn. Fd. Park Coy., R.C.E. having been duly sworn states;-

"I am B-28153 L/Cpl. Muggeridge, A. a storeman in the Q.M.stores of the 2nd. Cdn. Fd. Park Coy., R.C.E. We missed some articles in the stores as we had them ready to send out. We missed the underwear first then Sapper McAtamney said it looked as though there were quiet a few pairs of socks missing.

Questioned by the Court

"Can you positively identify these articles as belonging to the Q.M.Stores?"
"Yes Sir."

"Do these towels belong to the P.A.D. stores?"
"Yes, Sir."

The accused declines to question the witness.

Signed A E Muggeridge L/Cpl

Continued on Page four

Fifth Witness for the Prosecution.

B-28096 Spr. McAtamney, J. 2nd. Cdn. Fd. Park Coy., R.C.E. having been duly sworn, states;-

"I am B-28096 Spr. McAtamney, J. a storesman in the Q.M.stores of the 2nd. Cdn.Fd.Park Coy., R.C.E. I do not know anything about these articles but we do have the same type of articles in the stores."

Questioned by the Court

"Can you identify these articles?"
"Yes, Sir, that is my writing on the parcels."

Signed J. J. McAtamney Spr.

The accused declines to question the witness

Sixth Witness for the Prosecution.

B-28057 C.Q.M.S.Banks, T.E. 2nd. Cdn.Fd.Park Coy., RCE having been duly sworn, states;-

"I am B-28057 C.Q.M.S. Banks, T.E. C.Q.M.S. of the 2nd Cdn. Fd. Park Coy., R.C.E. On my return from operations with the unit I was shown certain articles that had been removed from the Q.M.stores in the absence of the largest part of the unit. The stores concerned were very definitely part of the Company's clothing. The woollen socks were an exchange issue recently received from Ordnance. The Cellular shorts were bundled and ready for return to Ordnance as access clothing which had previously been replaced as outsize. The bath towels are part of the P.A.D. stores which are awaiting shipment to Ordnance and duly recorded on an issue voucher. The two flannel shirts with this clothing do not form part of the Q.M.stores, also the haversack and kit bag are not recognized as being stores property."

Questioned by the accused

"We have been charged with stealing from the Q.M.stores. Can the C.Q.M.S. absolutely identify these stores as being taken from the Q.M.stores of the 2nd. Cdn.Fd.Park Coy?"
"Yes, definitely."

T. E. Banks C.Q.M.S.

Continued on page five

Seventh Witness for the Prosecution.

B-29399 Spr. Stephenson, W.F., 2nd. Cdn. Fd. Park Coy., R.C.E. having been duly sworn, states;-

"I am B-29399 Spr. Stephenson, W.F. of the 2nd. Cdn. Fd. Park Coy., R.C.E. I came out of my hut at approx 1810 hrs and I was on my way to town. These chaps were at the little hut. They had some bundles of clothes with them and they asked me for a loan of a shirt. I got one for them and they dropped some bundles in the shirt and we started toward the road. I told them not to forget to return my shirt. We were then stopped by the senior N.C.O.s."

Questioned by the Court.

"Did you recognize the goods as W.D.property?"
"I saw that the socks were W.D."

"Where were the three of you going?"
"I was going to town, but I don't know where they were going I wasn't with them at all. ~~I had heard~~ They told me that some W.D.goods had been found by them and was being returned to the R.M.stores."

"Then what were they going towards the road for?"
"I don't know where they were going, I wasn't with them at all."

Signed W.F. Stephenson

The accused declines to question the witness.

Certified that the above Summary of Evidence was taken down by me on oath in the presence and hearing of the accused.

Certified that Rule of Procedure 4 (b)(c)(d)(e) and (f) has been followed.

H.R.B. MacInnes Lieut

(H.R.B.MacInnes) Lieut.
2nd.Cdn.Fd.Park Coy., R.C.E.

B. Johnson

ADDENDUM TO THE SUMMARY OF EVIDENCE IN THE CASE OF

B-28109 Spr. Robertson, E.P.
~~B-28030 Spr. Soper, R.~~

On the finding of further evidence, the Officer Commanding orders the following statements to be taken on oath and added to the Summary of Evidence.

Witness for the Prosecution.

B28121 Cpl. Feldcamp, G.F. 2nd.Cdn.Fd.Pk.Coy., R.C.E. having been duly sworn, states;-

"I am B-28121 Cpl. Feldcamp, G.F. a member of the 2nd. Cdn. Fd. Park Coy., R.C.E. The C.Q.M.S. gave me a bycicle to fix and told me there were two or three others in the stores that I could take parts from. I got MacAtamney to open the door for me and as he did so a tin and a hat fell on the floor. He gave it to me to give to Robertson. I took it and turned it over to S/Sgt. Hesk."

Questioned by the Court.

"Is that the hat?"
"Yes, Sir."

The accused does not question the witness.

George F Feldcamp Cpl.

Witness for the Prosecution.

B28096 Spr. MacAtamney, J. 2nd.Cdn.Fd.Pk.Coy., R.C.E. having been duly sworn, states;-

"I am B28096 Spr. MacAtamney, J. a member of the Q.M. stores of the 2nd.Cdn.Fd.Pk.Coy., R.C.E. I was in the stores with Spr. Gillespie and Cpl. Feldcamp as I opened the door a tin fell on the floor and I stepped on a hat."

Questioned by the Court.

"Is that the same hat?"
"It looks the same, Sir."

"Can you identify the hat as the same?"
"It has the same number and initials, Sir."

The accused does not question the witness.

J.J. McAtamney Spr.

Witness for the Prosecution.

B-28063 Spr. Gillespie, J.F. 2nd. Cdn.Fd.Pk.Coy., R.C.E. having been duly sworn, is questioned by the Court;-

"Do you re cognize this hat?"
"No, Sir."

"Were you in the P.A.D. stores?"
"Yes, Sir."

"Did you see a hat?"
"~~No~~ Yes, Sir." but I do not recognize it
AHRBM

The accused does not question the witness.

Spr. J F Gillespie

[illegible]

The accused having been duly warned, desires to make a statement on oath.

The accused B-28109 Spr. Robertson, E.P. having been duly sworn, states:-

"While we were stationed in Horam, about two days after Lieut. Green had taken over the duties of Messing Officer, he laid down that we had to take our hats off in the mess hall and as there were no pegs or anything to hang our hats on, I had to put mine on the window sill. When I left I forgot it and when I went back to get it, it was gone. I reported this to the C.S.M."

E P Robertson

Certified that Rule of Procedure 4 (b), (c), (d), (e), and (f) have been complied with.
Certified that the above evidence was taken on oath in the presence and hearing of the accused.

H R B MacInnes Lieut

(H.R.B.MacInnes) Lieut.
2nd.Cdn.Fd.Pk.Coy., R.C.E.

E P Robertson

No. B28109 Rank Spr Name Robertson.E.P | Sqn., Battery, or Company: 2nd Fld Park Coy | Corps: R.C.E | Date of enlistment: 8/9/39 | C.C. Badges | Service or Proficiency Pay | M.F.M. 5

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	SHEETS NO 1 AND 2 DESTROYED NOTED 6 MONTHS SERVICE 2/3/40 OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial with trial	By whom awarded	Remarks
In the Field	22/II/40	Spr		A.A 40 W.O.A.S. Conduct to the prejdice of good order and military dicipline in that he at 0330 hrs 22 Dec 40 did not carry out his piquet duties as befits a Soldier,as he left his post and was found asleep in bed	L/cpl Hollands Spr Muggeridge	I68 hrs field punishment Forfeits 7 days pay	28/II/40	E.W.Oddleifson Capt	
In the Field	8/4/41	Spr		A.A.Sect I5 (I) W.O.A.S. A.W.L in that he was absent from 2230 hrs 5 April 41 to 2359 hrs 5 April 41 Absent I hour 29 min	Sgt Sacks Sgt Hesk	I4 days field Punishment Forfeits I4 days pay Total I4 Days pay		G.E.Smith Capt	

Place	Date of offence	Rank	Cause of detention	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dissenting with trial	By whom awarded	Remarks
In the Field	9 Oct 41	Spr		A.A.I5 (I) W.O.A.S A.W.L 2230 hrs 90ct 4I till 0745 hrs I0 Oct 4I Absent I0 hrs I5 min	L/cpl Hollands Sgt McCollum CSM Weedmark	Forfeits 3 days pay Total Forfeiture 4 days pay	I0 Oct 4I	G.E.Smith Capt	
In the Field	I7 Oct 41			A.A.I5 (I) W.O.A.S. A.W.L. 2230 hrs I7 Oct 41 till I800 hrs 4 Nov 4I Absent I7 da ys I9 hrs 30 min	Sgt Hesk L/cpl Hollands L/cpl Walker	2I days field punishment Total forfeiture 39 days pay	I2 Nov 4I	C.B.Conelly Lt.Col C.R.E I Can Div	
Core Hants	24/3/42	Spr		A.A. I5 (I) A.W.L I3 hrs	Documentry	Admonished Forfeits I Days pay	25/3/42	A.L.Tregillus Lt.Col	

21. 10.42.

Certified true copy:—
RB Fraser, Major RCS

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED

B-28109 Spr. Robertson, E.P.

(a) The accused has been in confinement awaiting trial on the present charges for nil days in civil custody and 30 days in military custody making a total of 30 days of which nil days were spent in hospital.

(b) The present age of the accused according to his attestation paper is 27 years.

(c) The date of his attestation specified in his attestation paper is 12 Sep 39

(d) The accused is in possession of, or entitled to no military decoration of military reward, [or is in possession of or entitled to

nil

I hereby certify that the foregoing particulars are true extracts from the Regimental Books in my custody.

R.B. Fraser

(Signature) (R.B.Fraser) Major
2nd.Cdn.Fd.Pk.Coy., R.C.E.

EXHIBIT "D"

Robertson G. P. H-16536
67 10-R-69

10-R-69

67

67

67

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialed by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a District Court-Martial held at Aldershot on the 21st day of June 1940 by order of Major General H.D.G. Crear D.S.O.

Commanding C M Hq London England

dated the 18 day of June 1940

President.

Major A W Bennett
1 Cdn Gen Base Depot CASF

Members.

Capt A G Sangster
1 Cdn Gen. Base Depot CASF

Capt H E Snider
~~1 Cdn~~ Seaforth Highlanders of Canada CASF

, Judge Advocate.

Trial of* H16536 Pte Robertson G.P.
PPCLI CASF

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt L R McDonald Essex Scottish

Counsel‡ or defending officer† Major Murphy P.P.C.L.I.

At 1030 o'clock the Trial commences.

The order convening the Court is read, and is marked , signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q1361. [illegible] 40,000 sets. 2/40. K. & H. [illegible] Forms A 9/35

B

The President, members and judge-advocate are duly sworn.

Cwb

The following officers under instruction are duly sworn.

M 15577 Cpl. Stanley Fidler Hq. Cdn troops Aldershot Area
duly sworn as court Stenographer

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 16 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [~~first~~ 2nd] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Cwb *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Cwb *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Cwb *Answer.*

The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Cwb

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

Proceedings on Plea of Not Guilty.

Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer.

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. B-76210, Cpl. J. Gow, Toronto Scottish Regiment (MG).

being duly sworn, is examined by the prosecutor.

Q - You are B-76210, Cpl. J. Gow, Toronto Scottish Regiment (MG).
A - Yes, sir.
Q - We are now concerned with the charge against Pte. Robertson of committing acts, conduct and disorder, to the prejudice of good order and military discipline in that he did, on or about 24th May, 1940, at or about 01:00 hrs, hinder and obstruct the arrest of H.16519 Pte. Thomson, R.A., P.P.C.L.I, CASF. Would you please just repeat the evidence you gave this morning, so much as has to do with the charge against Robertson.
A - I didn't see Robertson, sir.
Q - You don't know what Robertson was doing?
A - My back was turned to him.
Q - So far as you were concerned, Robertson didn't strike you or take part in the struggle at all.
A - No, sir.

Defence Counsel declines to cross-examine witness.

Second Witness for the Prosecution } Mr. Samuel Davis, night booking clerk, Union Jack Club, Waterloo Road, London, being duly sworn is examined by the prosecutor.

Q - You are Mr. Samuel Davis, night booking clerk, Union Jack Club, Waterloo Road, London?
A - Yes, sir.
Q - We are now concerned with the charge against Pte. Robertson of committing acts, conduct and disorder, to the prejudice of good order and military discipline in that he did, on or about 24th May, 1940, at or about 01:00 hrs, hinder and obstruct the arrest of H.16519 Pte. Thomson, R.A., P.P.C.L.I. Will you tell us briefly exactly what occurred in relation to Robertson without the story of the others.

A - After I went to the assistance of Cpl. Gow, Robertson came behind me and jumped on my back and pulled me off twice.
Q - You say he pulled you off twice while you were attempting to assist Cpl. Gow. Are you sure in your own mind it was Robertson?
A - Definitely.
Q - There is no doubt in your mind?
A - No doubt, sir.
Q - Did anything else occur? Did he say anything?
A - Not two onto one.
Q - What happened then?
A - Cpl. Gow cautioned him to get away and asked me to assist him.
Q - You are absolutely sure of that.
A - Yes, sir.

Cross-examination of witness by Defence Counsel.

Q - You identify this man, I understand, because you recognized him by his hair. You said it has a touch of auburn in it.
A - Yes, sir, it has a touch of auburn in it.
Q - You wouldn't be prepared to say that there wasn't another man in the club with auburn in his hair?
A - No, I wouldn't say that.

Third witness for the Prosecution) Mr. Charles C. Smith, night superintendent, Union Jack Club, Waterloo Road, London, being duly sworn, is examined by the prosecutor.

Q - You are Mr. Charles C. Smith, night superintendent, Union Jack Club, Waterloo Road, London?
A - Yes, sir.
Q - We are now concerned with the charge against Pte. Robertson of committing acts, conduct and disorder, to the prejudice of good order and military discipline in that he did, on or about 24th May, 1940, at or about 1:oo hrs, hinder and obstruct the arrest of H.16519 Pte. Thomson, R.A., R.A.O.C.I. I want you to tell us the story in so far as it concerns Robertson.
A - Mr. Davis went to assist Cpl. Gow and Robertson got hold of him around the waist and through him on one side.
Q - You saw that?
A - Yes, it was in front of the bar.
Q - Mr. Davis then went to Cpl. Gow's assistance again?
A - Yes, sir.
Q - What happened?
A - He jumped on Mr. Davis's back.
Q - There is some doubt as to whether that was Robertson. Are you prepared to swear on oath?
A - I am satisfied that he is the man I identified on Waterloo Station.

Cross-examination of witness by Defence Counsel.

Q - You want to be fair in this matter, don't you?
A - Yes, sir.
Q - We can all make mistakes?
A - I suppose so, sir.
Q - You would say that as far as your recognition went, that was the man.
A - Yes, sir.
Q - If, as in these present circumstances, a man is charged with one offence and admits he is the party who did the job possibly he would be the man who would jump on the back of Mr. Davis?
A - I know this man and the other came to the bar when they first came in. The other man I didn't see at all myself.
Q - There were a number of other soldiers in the room?
A - Yes, sir.
Q - The two men came in together. What sticks in your mind is two men were at the bar. You saw them, you recognized this man as the man you saw at the bar.

A - That is the man whom I recognized.
Q - You identify this man now and were certain of an entirely different man this morning.
A - I had just come in out of the sun. My eyes are none too good. I can recognize him now allright, that is the man.
Q - This occurred about a month ago, the 24th of May. There is a possibility of your having seen this man on three or four occasions.
A - I don't think so, sir.
Q - If the other man had been there this morning, would you have pointed out the right one?
A - I am pretty well certain.

Defence Counsel - This man is charged with hindering the arrest of Pte. Thomson and is accused of jumping on Mr. Davis's back. Cpl. Gow, the first Crown witness, says he didn't see Robertson as he was fighting with Thomson. Davis gives an identification that would never be accepted by any Court in the land. There may be anyone of a number of men who might have jumped on his back. Martin, you heard this morning admit he pointed out an entirely wrong man and was certain that was the man. Again no court is going to accept that evidence. He finally ended up by saying he was pretty well certain. There is no definite sworn evidence. That is not good enough. He must be absolutely definite and swear to it. There is no evidence against this man whatsoever, and I therefore request dismissal on the grounds that no evidence has been produced.

Prosecutor - I think it is stretching one's imagination a little too far to suggest that no case is made out. There is very definite evidence, definite identification, that Robertson jumped on Davis's back and is the man who prevented Davis from assisting Cpl. Gow. Davis is absolutely certain. He saw him. He said: "I am sure that is the man". Martin is just as certain, in fact he didn't even see Woods. How could he possibly make a mistake if he didn't see Woods? There certainly is a case for the Crown.

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. yes

Question. Do you intend to call any other witness in your defence?

Answer. yes

Question. Is he a witness as to character only? *Answer.* no

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked
signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

First Witness for the Defence — H-85302, Pte. Woods, F.C., Princess Patricia's Canadian Light Infantry, C.A.S.F.

Q - Woods, you were at the Union Jack Club on night of the 24th May, 1940.
A - Yes, sir.
Q - There was a struggle there between this man Thomson and Cpl. Gow?
A - Yes, sir.
Q - Would you tell us exactly what part the accused, Pte. Robertson, took in that struggle.
A - All I saw of him was in his place behind the table and I didn't see him until later outside of the club.
Q - Evidence was given that someb dy jumped on Mr. Davis's back.
A - Yes, sir, it was me.
Q - Have you anything to gain?
A - No, sir.
Q - How often did you jump on Mr. Davis's back?
A - About two or three times.
Q - You pulled him off?
A - Yes, sir.
Q - Did you say anything to him?
A - Where we come from, it's one to one instead of two to one.

Prosecution declines to cross-examine witness.

Second Witness for the Defence — H-16519 Pte. Thomson, E.A., Princess Patricia's Canadian Light Infantry, C.A.S.F.

Q - You remember this incident in the Union Jack?
A - Yes, sir.
Q - Will you tell the court what part the accused, Pte. Robertson, took.
A - Yes, sir. I came in company with Pte. Robertson and we were having soup together in front of the bar, and Robertson was with me went we were asked to produce the passes.
Q - Did Robertson take any part in the struggle?
A - No part at all, sir.
Q - There is some evidence that someone jumped on Mr. Davis's back.
A - That was Pte. Woods.
Q - Two or three times?
A - Yes, sir.
Q - But Robertson took no part?
A - No part, sir.

Prosecutor proceeds to cross-examine witness.

Q - Mr. Davis was on your back?
A - Yes, sir.
Q - Were you able to see what was going on behind you?
A - Not very far, but enough to be able to glimpse Mr. Davis.
Q - All the while you were battling with Cpl. Gow?
A - While we were struggling.
Q - You and Robertson came in together and Woods came in in time to jump on Mr. Davis's back?
A - No, previous to that, sir. Just when Cpl. Gow and I got to struggling.
Q - Where was Robertson while this was going on?
A - Robertson was behind the table standing by.
Q - Between the bar and the table?
A - It was a table running at right angle through the bar. He was on the left of it.
Q - You are quite sure in your own mind that Robertson took no part in the struggle.
A - No part whatsoever.

Fourth Witness for the Defence } H-16536 Pte. Robertson, G.R.,
Princess Patricia's Canadian Light Infantry, CASF.

Q - You were present at this affray on the 24th May?
A - Yes, sir.
Q - What part did you take in the struggle?
A - None at all, sir.
Q - You have heard evidence given as to who climbed on Davis's back.
A - That was Pte. Woods, sir. I saw him pull Mr. Davis off.
Q - Where did the struggle take place?
A - The struggle took place on one side of the table, I was on the other.
Q - What did you do while the struggle was going on?
A - I stayed until the struggle went across to the bar.
Q - What did you do then?
A - I walked around and took Wodds by the arm and took him out of the club.
Q - You say Woods was definitely in the struggle?
A - He pulled Mr. Davis off Thomson's back.

Counsel for Defence - I don't think I can much more. I feel strongly about the evidence given. There has been no evidence from Cpl. Gow. Davis can say all he wants:" That is the man", he must give some reason, his statement is not enough. He identifies him for such and such a reason, a touch of auburn in his hair. Martin has said he was pretty well certain. That cannot be accepted. The Crown must prove its case. The Court's mind should be sure. I specifically asked Woods, my friend brought out from Mr. Davis, and Mr. Davis said the words 'not two for one' had been used, and so I specifically asked him what he had said and he used exactly the same words. He hadn't heard Mr. Davis make that statement. I suggest on the evidence before you that the case be dismissed. Three men swear positively it was Woods. There is going to be another charge against him, and this evidence will be used against him in a few minutes. I can't see why he would say I am the guilty party to save Robertson. No doubt, my friend, has some reasonable suggestion. On the question of identification and on this question of the statement made by Woods on Davis's back, I would say Robertson is not guilty of the charge placed against him.

Prosecution - I want to be fair and impartial in this thing as possible. I don't know which one of the men it was. I don't suggest anyone is telling what is untrue. It is certain that it was one of the men there. Personally, I am inclined to believe that Davis is more accurate than Woods or Robertson. It is a difficult thing to answer. I would hesitate to suggest to the Court which one it was. I have my own opinion, perhaps I am incline to take the evidence of the others. Perhaps the charge under Section 40 is less than under Section 8. I leave it entirely to the Court.

Defence Counsel - In view of that very fair statement, there is a reasonable doubt in my friend's mind. I must, therefore, ask that the charge be dismissed.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused Not Guilty

Proceedings on Conviction *before* Sentence.

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

[Convicted.—As to status of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that exceptional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused Not Guilty

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

(Instructions. If the answer of the witness is the accused or a [illegible] the finding of the Court [illegible] any [illegible] in addition to that to be awarded by the Court the proceedings must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused

Sentence.

Aw Bennett major
W S Langster Capt
H E Quinn
Capt.

No. 1 Canadian Infantry Base Depot
(Lorne Scots)

2A

Guillemont Barracks,
Cove. Hants.
28 Jun 40

H16519 Pte. Thompson E.A.
H16536 Pte. Robertson A.P.
K86202 Pte. Woods F.C.

On June 21st, 1940, I examined the a/m men, and certified them fit to undergo trial by Court Martial.

H. C. Higgs, Capt,
R.C.A.M.C.
No. 1 Can. Inf. Base Depot, (Lorne Scots)

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Not Guilty

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

(Interpretation.—If by reason of the nature of the service of the accused in a departmental office, or concerns, the finding of the Court involves non-value or any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused

Sentence.

A W Bennett major
A S Langotte Capt
[illegible]
Capt.

Fourth Witness for the Defence } M-16836 Pte. Robertson, G.A., Princess Patricia's Canadian Light Infantry, CASF.

Q - You were present at this affray on the 24th May?
A - Yes, sir.
Q - What part did you take in the struggle?
A - None at all, sir.
Q - You have heard evidence given as to who climbed on Davis's back.
A - That was Pte. Woods, sir. I saw him pull Mr. Davis off.
Q - Where did the struggle take place?
A - The struggle took place on one side of the table, I was on the other.
Q - What did you do while the struggle was going on?
A - I stayed until the struggle went across to the bar.
Q - What did you do then?
A - I walked around and took Wodds by the arm and took him out of the club.
Q - You say Woods was definitely in the struggle?
A - He pulled Mr. Davis off Thomson's back.

Counsel for Defence - I don't think I can much more. I feel strongly about the evidence given. There has been no evidence from Cpl. Gow. Davis can say all he wants:" That is the man', he must give some reason, his statement is not enough. He identifies him for such and such a reason, a touch of auburn in his hair. Martin has said he was pretty well certain. That cannot be accepted. The Crown must prove its case. The Court's mind should be sure. I specifically asked Woods, my friend brought out from Mr. Davis, and Mr. Davis said the words 'not two for one' had been used, and so I specifically asked him what he had said and he used exactly the same words. He hadn't heard Mr. Davis make that statement. I suggest on the evidence before you that the case be dismissed. Three men swear positively it was Woods. There is going to be another charge against him, and this evidence will be used against him in a few minutes. I can't see why he would say I am the guilty party to save Robertson. No doubt, my friend, has some reasonable suggestion. On the question of identification and on this question of the statement made by Woods on Davis's back, I would say Robertson is not guilty of the charge placed against him.

as
Prosecution - I want to be fair and impartial in this thing as possible. I don't know which one of the men it was. I don't suggest anyone is telling what is untrue. It is certain that it was one of the men there. Personally, I am inclined to believe that Davis is more accurate than Woods or Robertson. It is a difficult thing to answer. I would hesitate to suggest to the Court which one it was. I have my own opinion, perhaps I am incline to take the evidence of the others. Perhaps the charge under Section 40 is less than under Section 8. I leave it entirely to the Court.

Defence Counsel - In view of that very fair statement, there is a reasonable doubt in my friend's mind. I must, therefore, ask that the charge be dismissed.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

Army Form A 9.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a District Court-Martial held at Aldershot on the 21st day of June 1940 by order of Major General H. D. G. Crerar D.S.O.

Commanding C.M.H.Q. London Eng.
dated the 18 day of June 1940

President.

Major A.W. Bennett
1 Cdn Gen Base Depot C.A.S.F.

Members.

Capt A.G. Sangster
1 Cdn Gen Base Depot C.A.S.F.
Capt H.F. Snider
Seaforth Highlanders of Canada C.A.S.F.

Trial of* H16536 Pte Robertson G.P. P.P.C.L.I. C.A.S.F., Judge Advocate.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that is not available to serve owing to , waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. L.R. McDonald, Essex Scottish

Counsel‡ or defending officer† Major Murphy, P.P.C.L.I.

At 10.30 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* NO.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q1261. W1.W95326/987. 40,000 sets. 2/40. K. & H. Ltd. G627/11. Forms A 9/22.

B

The President, members and judge-advocate are duly sworn. AWB

The following officers under instruction are duly sworn.

M 15577 Cpl Fidler, Stanley Hq Cdn Tps Aldershot Area duly sworn as Court Stenographer

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 16 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet. AWB

Question to the accused.

Are you guilty or not guilty of the [~~first~~ AWB] charge against you, which you have heard read?

Answer.

Not Guilty

Question.

Are you guilty or not guilty of the second charge against you, which you have heard read?

Answer.

Question.

Are you guilty or not guilty of the third charge against you, which you have heard read? AWB

Answer.

Question.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? AWB

Answer.

The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with. AWB

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

CHARGE B2 Encl 1A Army Form B 252
(See King's Regulations)

P.P.C.L.I. Regiment

Battery
Squadron
Troop or
Company

CHARGE against No. H-16536 Rank Private

Name Robertson, G.P.

Place Aldershot Date of Offence 24 May 40

OFFENCE Acts, conduct and disorder to the prejudice of good order and military discipline in that he did on or about 24 May 1940 at or about 0100 hrs hinder and obstruct the arrest of H-16519, Pte. Thomson, E.A., P.P.C.L.I., by Cpl. I. Cow, Can. M.P. at Union Jack Club, London, A.A. Sec. 40.

Names of Witnesses :—

Major Ad Bennett

Signature of O.C. Battery, Squadron, Troop or Company R.A. Starke Major P.P.C.L.I.
13 Jun 40

Punishment Awarded Remanded for trial by Court Martial.

By whom Awarded Louis Deane Lt Col

Adjutant.

P.T.O.

19009 [illegible] 19009 K. & H., Ltd. G657/47 Form B 252/50

No. 1 Canadian Infantry Base Depot
(Lorne Scots)

2A

Guillemont Barracks,
Cove. Hants.
28 Jun 40

A65
End 2A.

10/T/55
10/R/69
10/W/93

H16519 Pte. Thompson Ea
H16536 Pte. Robertson G.P.
K85202 Pte. Woods H.C.

On June 21st, 1940, I examined the a/m men, and certified them fit to undergo trial by Court Martial.

D. C. Heggie

D. C. Heggie, Capt,
R.C.A.M.C.
No. 1 Cdn. Inf. Base Depot, (Lorne Sc

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No.

The prosecutor makes an opening address [hands in a written address which is read, marked C, signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. } B-76810, Cpl. J. Gow, Toronto Scottish Regiment (MG).

being duly sworn, is examined by the prosecutor.

Q - You are B-76810, Cpl. J. Gow, Toronto Scottish Regiment (MG).
A - Yes, sir.
Q - We are now concerned with the charge against Pte. Robertson of committing acts, conduct and disorder, to the prejudice of good order and military discipline in that he did, on or about 24th May, 1940, at or about 01:00 hrs, hinder and obstruct the arrest of H.16819 Pte. Thomson, R.A., P.P.C.L.I., C.A.S.F. Would you please just repeat the evidence you gave this morning, so much as has to do with the charge against Robertson.
A - I didn't see Robertson, sir.
Q - You don't know what Robertson was doing?
A - My back was turned to him.
Q - So far as you were concerned, Robertson didn't strike you or take part in the struggle at all.
A - No, sir.
Q -

Defence Counsel declines to cross-examine witness.

Second Witness for the Prosecution } Mr. Samuel Davis, night booking clerk, Union Jack Club, Waterloo Road, London, being duly sworn is examined by the prosecutor.

Q - You are Mr. Samuel Davis, night booking clerk, Union Jack Club, Waterloo Road, London?
A - Yes, sir.
Q - We are now concerned with the charge against Pte. Robertson of committing acts, conduct and disorder, to the prejudice of good order and military discipline in that he did, on or about 24th May, 1940, at or about 01:00 hrs, hinder and obstruct the arrest of H.16819 Pte. Thomson, R.A., P.P.C.L.I. Will you tell us briefly exactly what occurred in relation to Robertson without the story of the others.

A - After I went to the assistance of Cpl. Gow, Robertson came behind me and jumped on my back and pulled me off twice.
Q - You say he pulled you off twice while you were attempting to assist Cpl. Gow. Are you sure in your own mind it was Robertson?
A - Definitely.
Q - There is no doubt in your mind?
A - No doubt, sir.
Q - Did anything else occur? Did he say anything?
A - Not two onto one.
Q - What happened then?
A - Cpl. Gow cautioned him to get away and asked me to assist him.
Q - You are absolutely sure of that.
A - Yes, sir.

Cross-examination of witness by Defence Counsel.

Q - You identify this man, I understand, because you recognized him by his hair. You said it has a touch of auburn in it.
A - Yes, sir, it has a touch of auburn in it.
Q - You wouldn't be prepared to say that there wasn't another man in the club with auburn in his hair?
A - No, I wouldn't say that.

Third witness for the Prosecution) Mr. Charles C. Smith, night superintendent, Union Jack Club, Waterloo Road, London, being duly sworn, is examined by the prosecutor.

Q - You are Mr. Charles C. Smith, night superintendent, Union Jack Club, Waterloo Road, London?
A - Yes, sir.
Q - We are now concerned with the charge against Pte. Robertson of committing acts, conduct and disorder, to the prejudice of good order and military discipline in that he did, on or about 24th May, 1940, at or about 1:00 hrs, hinder and obstruct the arrest of H.16519 Pte. Thomson, E.A., P.P.C.L.I. I want you to tell us the story in so far as it concerns Robertson.
A - Mr. Davis went to assist Cpl. Gow and Robertson got hold of him around the waist and through him on one side.
Q - You saw that?
A - Yes, it was in front of the bar.
Q - Mr. Davis then went to Cpl. Gow's assistance again?
A - Yes, sir.
Q - What happened?
A - He jumped on Mr. Davis's back.
Q - There is some doubt as to whether that was Robertson. Are you prepared to swear on oath?
A - I am satisfied that he is the man I identified on Waterloo Station.

Cross-examination of witness by Defence Counsel.

Q - You want to be fair in this matter, don't you?
A - Yes, sir.
Q - We can all make mistakes?
A - I suppose so, sir.
Q - You would say that as far as your recognition went, that was the man.
A - Yes, sir.
Q - If, as in these present circumstances, a man is charged with one offence and admits he is the party who did the job possibly he would be the man who would jump on the back of Mr. Davis?
A - I know this man and the other came to the bar when they first came in. The other man I didn't see at all myself.
Q - There were a number of other soldiers in the room?
A - Yes, sir.
Q - The two men came in together. What sticks in your mind is two men were at the bar. You saw them, you recognized this man as the man you saw at the bar.

A - That is the man whom I recognised.
Q - You identify this man now and were certain of an entirely different man this morning.
A - I had just come in out of the sun. My eyes are none too good. I can recognize him now allright, that is the man.
Q - This occurred about a month ago, the 26th of May. There is a possibility of your having seen this man on three or four occasions.
A - I don't think so, sir.
Q - If the other man had been there this morning, would you have pointed out the right one?
A - I am pretty well certain.

Defence Counsel - This man is charged with hindering the arrest of Pte. Thomson and is accused of jumping on Mr. Davis's back. Cpl. Gow, the first Crown witness, says he didn't see Robertson as he was fighting with Thomson. Davis gives an identification that would never be accepted by any Court in the land. There may be anyone of a number of men who might have jumped on his back. Martin, you heard this morning admit he pointed out an entirely wrong man and was certain that was the man. Again no Court is going to accept that evidence. He finally ended up by saying he was pretty well certain. There is no definite sworn evidence. What is not good enough. He must be absolutely definite and swear to it. There is no evidence against this man whatsoever, and I therefore request dismissal on the grounds that no evidence has been produced.

Prosecutor - I think it is stretching one's imagination a little too far to suggest that no case is made out. There is very definite evidence, definite identification, that Robertson jumped on Davis's back and is the man who prevented Davis from assisting Cpl. Gow. Davis is absolutely certain. He saw him. He said: "I am sure that is the man". Martin is just as certain, in fact he didn't even see Woods. How could he possibly make a mistake if he didn't see Woods? There certainly is a case for the Crown.

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes

Question. Do you intend to call any other witness in your defence?

Answer. Yes

Question. Is he a witness as to character only? *Answer.* No.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked

signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they gave evidence.

First Witness for the Defence } K-88802, Pte. Woods, F.C. Princess Patricia's Canadian Light Infantry, C.A.S.F.

Q - Woods, you were at the Union Jack Club on night of the 24th May, 1940.
A - Yes, sir.
Q - There was a struggle there between this man Thomson and Cpl. Gow?
A - Yes, sir.
Q - Would you tell us exactly what part the accused, Pte. Robertson, took in that struggle.
A - All I saw of him was in his place behind the table and I didn't see him until later outside of the club.
Q - Evidence was given that somebody jumped on Mr. Davis's back.
A - Yes, sir, it was me.
Q - Have you anything to gain?
A - No, sir.
Q - How often did you jump on Mr. Davis's back?
A - About two or three times.
Q - You pulled him off?
A - Yes, sir.
Q - Did you say anything to him?
A - Where we come from, it's one to one instead of two to one.

Prosecution declines to cross-examine witness.

Second Witness for the Defence } H-16619 Pte. Thomson, E.A. Princess Patricia's Canadian Light Infantry, C.A.S.F.

Q - You remember this incident in the Union Jack?
A - Yes, sir.
Q - Will you tell the court what part the accused, Pte. Robertson, took.
A - Yes, sir. I came in company with Pte. Robertson and we were having soup together in front of the bar, and Robertson was with me went we were asked to produce the passes.
Q - Did Robertson take any part in the struggle?
A - No part at all, sir.
Q - There is some evidence that someone jumped on Mr. Davis's back.
A - That was Pte. Woods.
Q - Two or three times?
A - Yes, sir.
Q - But Robertson took no part?
A - No part, sir.

Prosecutor proceeds to cross-examine witness.

Q - Mr. Davis was on your back?
A - Yes, sir.
Q - Were you able to see what was going on behind you?
A - Not very far, but enough to be able to glimpse Mr. Davis.
Q - All the while you were battling with Cpl. Gow?
A - While we were struggling.
Q - You and Robertson came in together and Woods came in in time to jump on Mr. Davis's back?
A - No, previous to that, sir. Just when Cpl. Gow and I got to struggling.
Q - Where was Robertson while this was going on?
A - Robertson was behind the table standing by.
Q - Between the bar and the table?
A - It was a table running at right angle through the bar. He was on the left of it.
Q - You are quite sure in your own mind that Robertson took no part in the struggle.
A - No part whatsoever.

Fourth Witness for the Defence } H-16836 Pte. Robertson, G.S.
Princess Patricia's Canadian Light Infantry, CASF.

Q - You were present at this affray on the 24th May?
A - Yes, sir.
Q - What part did you take in the struggle?
A - None at all, sir.
Q - You have heard evidence given as to who climbed on Davis's back.
A - That was Pte. Woods, sir. I saw him pull Mr. Davis off.
Q - Where did the struggle take place?
A - The struggle took place on one side of the table, I was on the other.
Q - What did you do while the struggle was going on?
A - I stayed until the struggle went across to the bar.
Q - What did you do then?
A - I walked around and took Woods by the arm and took him out of the club.
Q - You say Woods was definitely in the struggle?
A - He pulled Mr. Davis off Thomson's back.

Counsel for Defence - I don't think I can say much more. I feel strongly about the evidence given. There has been no evidence from Cpl. Gow. Davis can say all he wants:" That is the man", he must give some reason, his statement is not enough. He identifies him for such and such a reason, a tousle of auburn in his hair. Martin has said he was pretty well certain. That cannot be accepted. The Crown must prove its case. The Court's mind should be sure. I specifically asked Woods, my friend brought out from Mr. Davis, and Mr. Davis said the words 'not two for one' had been used, and so I specifically asked him what he had said and he used exactly the same words. He hadn't heard Mr. Davis make that statement. I suggest on the evidence before you that the case be dismissed. Three men swear positively it was Woods. There is going to be another charge against him, and this evidence will be used against him in a few minutes. I can't see why he would say I am the guilty party to save Robertson. No doubt, my friend, has some reasonable suggestion. On the question of identification and on this question of the statement made by Woods on Davis's back, I would say Robertson is not guilty of the charge placed against him.

Prosecution - I want to be fair and impartial in this thing as possible. I don't know which one of the men it was. I don't suggest anyone is telling what is untrue. It is certain that it was one of the men there. Personally, I am inclined to believe that Davis is more accurate than Woods or Robertson. It is a difficult thing to answer. I would hesitate to suggest to the Court which one it was. I have my own opinion, perhaps I am incline to take the evidence of the others. Perhaps the charge under Section 40 is less than under Section 8. I leave it entirely to the Court.

Defence Counsel - In view of that very fair statement, there is a reasonable doubt in my friend's mind. I must, therefore, ask that the charge be dismissed.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused Not Guilty

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

(Instruction.—If the answer is the answer of the witness is the witness in a departmental [illegible] or otherwise, the finding of the Court requires [illegible] to any [illegible] punishment [illegible] addition to that to be awarded by the Court the prisoner must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused

Sentence.

A W Bennett Major
A S Langster Capt
J E Quiden
Capt

Army Form A 47

COURTS-MARTIAL

Form of Order for the assembly of a General or District Court Martial.

C.M.H.Q. ORDERS BY Major-General H.D.G. Crerar, D.S.O.

Commanding the Canadian Military Headquarters,

(Place and Date) London, England. 18th Jun 40.

The detail of officers as mentioned below will assemble at HQ. Cdn.Troops,Aldershot on the 21 day of Jun 40 at 1030 hrs. for the purpose of trying by a District court-martial the accused person [persons] named in the margin [and such other person or persons as may be brought before them].*

No.H.16536. Pte. ROBERTSON, G.P. P.P.C.L.I.

PRESIDENT. Major A.W. Bennett, 1 Cdn. General Base Depot. is appointed president.†

MEMBERS.

Captain A.G. Sangster. 1 Cdn. General Base Depot.

Captain H.E. Snider. Seaforth Highrs.of Canada.

Note.—The president must be named. The members and the waiting members may be mentioned by name, or the number and rank and the unit to which they belong may alone be stated.

WAITING MEMBERS.

Captain H.W. McManus, Can.Sec. G.H.Q. 2nd Echelon.

JUDGE-ADVOCATE.

Major Advocate

has been [*or where the convening officer has the appointment of a judge-advocate,* is hereby] appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to Canadian Military Headquarters, London.

Signed this 18th day of Jun 19 40

P.J. Montague Brigadier,
Deputy Adjutant-General,
Canadian Corps Troops

for Senior Officer, C.M.H.Q.

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* *Any opinion of the convening officer with respect to the composition of the Court (see Army Act, s. 48 (10) and Rules of Procedure 20 and 21) should be added here; thus, where a Court-Martial is ordered to assemble, composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry, the following should be added:—*

"In the opinion of the convening officer, other officers are not, having due regard to the public service, available," (*or as the case may be*).

† *Add here, in the case of either a General or District Court-Martial where a captain is appointed president and the officer convening the court is not under the rank of field officer,* "In the opinion of the convening officer a field officer is not, having due regard to the public service, available." *Where it is necessary for an officer under the rank of captain to be appointed president of a District Court-Martial, add,* "In the opinion of the convening officer a field officer or captain is not, having due regard to the public service, available." (*See Army Act, s. 48 (9).*)

‡ *The "unit," in the case of Royal Artillery, is a Brigade, where such organisation exists.*

(12409) Wt.35694/1891 10,000 11/39 A.& E.W.Ltd. Op.698
(13500) Wt.11917/28 10,000 1/40 Forms/A47/62

List of Witnesses.

TRIAL OF H.16536, Pte. ROBERTSON, G.P.

For the Prosecution:-

B.76210 Cpl. J. Gow. Can. M.P.

Samuel Davis - Union Jack Club, London.

Charles C. Smith - Union Jack Club, London.

R. A. Martin. - Union Jack Club, London.

L/Cpl. D.G. Campbell, C.M.P. London.

B33.143
TPR ROBERTSON G.E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 26129 Tpr Swanford Eddy Robertson

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 153, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial: a total of 1 days, of which days were spent in hospital.(1)~~

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for sixty days and to be put under stoppages of pay until he has made good the amount of ten pounds (£10-0-0) in respect of damage to the vehicle LZ-4209824

(Sgd) RA Lawbley Capt — 23 Dec 43 — (Sgd) EW Oddie Major — President. (RP 45, 50.)

Judge-Advocate, if any — Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 373. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence

~~I direct that the accused be not promoted to rank of detention barrack corporal.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) FF Worthington Maj-Gen

Date 27 Dec 43 — Commanding 4 Can Armd Div

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKED. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D 26129 Tpr Robertson SE	29 Dec 43	JM Kendall Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFA96 (To Issue of AFA32) 40-1-P & R (1608—2604)

Convened by Order of Maj Gen F F Worthington CBE Comd 4 Can Armd Div dated 21 Dec 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D 26129	Tpr.	Swanford Eddy	Robertson	HQ Sqn 4 Cdn Armd Div

PROCEEDINGS REVIEWED
J Ruttiguillon Capt
17 Feb 44
REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

DEC 23 1943 — JUDGE ADVOCATE GENERAL — Can. Armd. Div.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 23 Dec 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 109, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0930 hours trial commences. Sat

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ Sat

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to as interpreter?~~ Ans ~~.....~~ Sat

~~The Interpreter is sworn.(1)~~ Do you object to M/11496 S/Sgt Elliott as shorthand writer? Ans No

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	EW Oddie[illegible]	6 Can Inf Bde Sqn RCE
Member	Capt	GOW Beckett	4 Cdn Armd Div Sigs
Member	Capt	JJ Grant	1 H & RCASC 4 Cdn Armd Div
Judge-Advocate	Capt	RA Lawbley	1 H & 1st Cdn Army
Prosecutor	Capt	F A Phillips	HQ Sqn 4 Cdn Armd Div
Defending Offr	Capt	J A Gordon	HQ Sqn 4 Cdn Armd Div

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (3)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused Tpr Swanford Eddy Robertson before arraignment make(s) (no) (~~a~~) plea Sat (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. Sat

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 66(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No Sir .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (or) (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. Yes Sir, call character witnesses
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 2 and Ex 4 respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes through my defending Offr See document "A"(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 1323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused D-26129 Trooper Gwenford Eddy ROBERTSON, HQ Sqn 4 Cdn Armd Div a soldier of the Canadian Army Overseas when on Active Service is charged with:

First Charge
Sec 40, A.A.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

in the field on 3 Dec 43 improperly and without authority took and used a Canadian Army Vehicle:

WD CZ-4209324

thereby occasioning damage to the said vehicle to the extent of £12-10-0.

In the Field
17 December 1943

(T E Nash) Major
Officer Commanding
HQ Sqn 4 Cdn Armd Div

HQ 4 Cdn Armd Div

In the Field
21 Dec 43

To be tried by F.G.C.M.

(F.F.WORTHINGTON) Maj-Gen
GOC 4 Cdn Armd Div

FIELD GENERAL COURT-MARTIAL

CFA93 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D 26129	Tpr		Gwenford Eddy	ROBERTSON	
			HQ Sqn 4 Cdn Armd Div		

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 21 Dec 43 endorsed by me, ~~(or by an offr of my staff for me)~~ ~~(s)~~ to be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ FW

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ FW

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.W. ODDLEIFSON 6 Cdn Fd Pk Sqn RCE	

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	G.D.W. BECKETT 4 Cdn Armd Div Sigs	
Capt	J.J. GRANT HQ RCASC 4 Cdn Armd Div	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	J.R. CHISHOLM 4 Cdn Armd Div Tps Coy RCASC	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	R.K. LAISHLEY HQ First Cdn Army	

On Active Service in the Fd

in England (Country.)

F. F. Worthington (Signed personally. RP 105 fn 2.) (Rank.)

Date 21 Dec 43

Commanding (F.F. WORTHINGTON) Maj-Gen 4 Cdn Armd Div

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

GWD

MEDICAL OFFICERS CERTIFICATE

23 Dec 43

I certify that D26129 Tpr Robertson GE, HQ Sqn 4 Cdn Armd Div, is fit to undergo trial by Court-Martial.

K Chrucer Capt.

First Witness for the Defence (Character Evidence)

Lieut E.G. Phillips, 21 Cdn Armd Regt being duly sworn is examined by the Defence.

Q.1 Will you identify yourself to the court?
A.1 Lieut E.G. Phillips, 21 Cdn Armd Regt,
Q.2 Prior to your going to the 21 Cdn Armd Regt were you with this Sqn?
A.2 Yes I was sir.
Q.3 When did you leave this Sqn?
A.3 It was approximately 26 Nov 43.
Q.4 When did you come to HQ Sqn in the first place?
A.4 Nov 7, 1942.
Q.5 So in all you have had nearly a years service with this Sqn?
A.5 That is correct.
Q.6 During the time with Sqn what was your assignment?
A.6 From Nov to Feb I was tpt officer, and then until I left I was Recce Tp officer.
Q.7 Was Tpr Robertson in your Recce Tp?
A.7 Yes he was.
Q.8 Would you tell us how long?
A.8 I brought him with me into the Recce tp from the Tpt tp, and he was with me all the time.
Q.9 What induced you to bring him with you to the Recce Tp?
A.9 Well I liked the cut of the man, he struck me as the type I would like to have serve under me.
Q.10 In your Recce tp it was difficult to get driver operators and a course was held for your personnel?
A.10 That is correct.
Q.11 Nearly all your personnel attended this course?
A.11 That is right, all the members with the exception of one attended.
Q.12 Of these men who attended how many were finally selected?
A.12 There were five.
Q.13 Was Robertson one of them?
A.13 He was.
Q.14 In a few general words would you tell us your opinion of Tpr Robertson as a soldier and as a member of your tp having worked with him in tpt and with the Recce tp?
A.14 Well sir, as a tpt officer I always found him to be a good man. I never had any trouble with him whatsoever, he was intelligent, quick to learn and quick to carry out orders and he impressed me from the first that he was the type of man I wished to have serving under me. He was always on the job.

The Prosecution declines to cross examine

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Second Witness for the Defence

B 78509 Sgt Mellon, M.R., HQ Sqn 4 Cdn Armd Div being duly sworn is examined by the Defence

Q.1 Will you identify yourself to the court, giving your number, rank, name and unit?
A.1 B 78509 Sgt Mellon, M.R., Recce Tp HQ Sqn 4 Cdn Armd Div.
Q.2 Do you recognize the accused?
A.2 Yes sir (Identifies the accused)
Q.3 How long have you been in charge of the Recce tp?
A.3 I have been in the tp since first of Feb 43 sir.
Q.4 Would you tell the court in a few words your opinion of Tpr Robertson as a soldier, from the point of view of conduct and in general his cooperation with you as a Sgt.

A.4 During the time he has been under me I have always found him a very good soldier, quick to obey orders and he carried them out very well and I would be pleased to have him serve under me at any time.
Q.5 Would you be prepared despite this case at present to have him with you again?
A.5 I would be very glad to have him again sir.

The Prosecution declines to cross examine

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Third Witness for the Defence

K 37479 Cpl Blackwell, K., HQ Sqn 4 Can Armd Div being duly sworn is examined by the Defence.

Q.1 Will you identify yourself to the court?
A.1 Cpl Blackwell, K., K 37479.
Q.2 What is your position in the Sqn?
A.2 I am in charge of maintenance of vehs in the Recce tp sir.
Q.3 Have you a general disciplinary job?
A.3 I am in charge of the barracks and the men sir.
Q.4 How long have you been with the tp?
A.4 Ever since it was formed up sir.
Q.5 You will remember Tpr Robertson coming into the tp?
A.5 Yes sir.
Q.6 Will you give your opinion of Tpr Robertson as a man and a soldier and in terms of his cooperation with you as a Cpl?
A.6 Sir, with Tpr Robertson in barracks and around I have never had any trouble with him. Any jobs we jobs we gave him were done and done well.
Q.7 Would you be prepared to have him back with you?
A.7 I would be very glad to have him back sir.

The Prosecution declines to cross examine

In the opinion of the court and the judge advocate it is not necessary to comply withthe provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Address in Mitigation by the Defending Officer

Tpr Robertson is charged with and has pleaded guilty to this charge of taking a veh without authorization. In mitigation I would remind you of the statements of his officer, his Sgt and his Cpl. These are only a cross section of the statements we could have obtained. It is found in general that he is thought of very highly and is respected as a soldier. Further in mitigation I would point out that evening, and on his evidence and evidence of the witnesses in the summary he had a great deal to drink. A veh contrary to regulations was left outside H mess, which is very close to the Cat Inn, and was not immobilized. I suggest that the temptation was very strong indeed and that some of the responsibility for this crime could equally well be shared by the dvr or offr in charge of this veh, particularly since the veh was not immobilized. He is a young man and a volunteer and has been in the army for 3 yrs and 6 months and during that time he has been charged only four times and only once since coming to England. The point I am trying to make is that Robertson is not a habitual offender, he is not a criminal from

a military point of view, he made a mistake any soldier is likely to make by yielding to temptation. I submit that the punishment in this case should be as lenient as possible and it will serve its purpose as far as Robertson is concerned quite effectively. He is a good soldier who has slipped once and I think should be given a second opportunity to prove his worth.

C.A.P.J.A.N. PROVOST CORPS.

DATE. 8 Dec 43.

SUBJECT:-

STATEMENT OF Regt. No. D. 26129 Pte. ROBERTSON. G. E.

OF:- H.Q. Sq. 4 Div. TAKEN AT:- Field.

" I have been warned that I am not obliged to say anything unless I wish to do so, but that anything I now say will be taken down in writing and may be given in evidence.

To show that I understand the above warning, I make this statement voluntarily and sign my name herewith".

Signed. G.E. Robertson

STATES:- I left camp at about 1900 hrs 2 Dec 43 and started walking towards "Cat" pub. I was picked up by a D.R. who brought me almost to the ~~camp~~ "Cat" pub. I went into the "Cat" and had a few drinks, then after finding out there was no bus for East Grinstead I went to "B" Mess and took a vehicle. 8 cwt. I drove to East Grinstead and parked the truck on some side street, went to a pub and had a few more drinks. I left the pub and met some of the boys on the street. One of the boys and I went back into the pub and had a few more drinks. We both left the pub and went to the hospital where there was a dance. We stayed at the dance, had a few dances and some more beer. The boys I met ~~at the party and on the street~~ were Birch, Shirt, ~~and~~ Ferguson and Royle. When I left the dance I went and got the truck and took Birch Shirt and Ferguson and started for home. Shortly after leaving the dance I smashed up. I think I must have had too much to drink and may have been travelling faster than I realized and could not make the corner. As a result of the accident I got a bump on the left forehead and skinned the left leg. I was a bit dazed with the knock on the head. ~~After the accident I walked back to the camp with Shirt arriving there early next the morning.~~ III - I have read over the above statement and it is true.

G.E. Robertson

Witnessed by. G. 45436 Sgt Ladds. R. R.
A 55251 Sgt Harrison J. T.

A.F.G. 3518 (Revised 1943)
40/P&S/409 (1744)

TRANSPORT WORK TICKET

No.

MAKE OF VEHICLE: Ford | CLASS: 9 Cwt | UNIT: H.Q. 3rd S.A.D. | SECTION: Mt | DRIVER'S NAME: Bowlin Bissell | W.D. No. [illegible] | MONTH & YEAR: [illegible]

DATE (1)		FOR WHICH JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Place (9)	FUEL GALLONS At Starts (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Run (17)	SPEEDOMETER Day (18)
	A			Brought forward from Work Ticket No. A77														
25	B	Lt Spalony	Passgr	R.A.P.	12 3rd A.D.	S & R.X.	[illegible]									[illegible]		
27	C	Lt Phillips		Mess										0745	1100	9961		
	D	[illegible]		[illegible]	[illegible]	[illegible]								1430	1620	7785		
27		Capt Quast	1 officer	C. Mess	3rd Div Hdqtrs	Div area	[illegible]				11			0900	1200	[illegible]		
28		Lt Saunders		Pawsuro	Pontoniquelle		A.D. Adler Sgt.							0745	1745	9589		
29	G	Lt Prosser	Sgt.	Mt Div	W/S.	Return								0745	1245	9591		
29	H	Lt Shuer	1 officer	R.A.P.	12 A.D.S.	A.D.S.	[illegible]							1045	1315	7784		
29		S.S.M. Ray	Packing of	mail	M.T. Lines	Signal Off.	[illegible]							1430	1700	9903		
29		4th Sgt	Lt Rooke	M.T. Lines			[illegible]							1745	1900	9917		
30	I	J. McArthur		M.T. Lines	Squadron	Area								0815	1200	[illegible]		
[illegible]	H	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]							0745	1630	10021		
														—	—			

M.P.G. for week _____ or tons's carried over.

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Starts (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Runs (17)	SPEEDOMETER Day (18)
			Brought forward from Reverse														
	N																
	O																
	P																
	Q																
	R																
	S																
	T																
	U																
	V																
	W																
	X																
	Y																

M.P.G. for week _____ or totals carried to Work Ticker No. _____

LINE	SPECIAL INSTRUCTIONS TO DRIVER	DATE	DRIVER'S REPORT OF BREAKDOWNS, ACCIDENTS AND DEFECTS	SIGNATURE OF DRIVER	COUNTERSIGNATURE
					Rank

NO. 13 PROVOST COMPANY
CANADIAN PROVOST CORPS

5-9-5
4 Dec 43.

TO: Officer Commanding,
No 13 Cdn Provost Coy.,
Cdn Provost Corps

FROM: W.C.O. i/c East Grinstead Detach't.
No 13 Cdn Provost Coy.,
Cdn Provost Corps.

RE: ACCIDENT ON 3 DEC 43 AT EAST GRINSTEAD INVOLVING W.D. VEHICLE NO CZ-4209324, FORD V-8, 8 Cwt., SERIAL NO 40. WHITE ON BLACK. FORMATION SIGN, GREEN & DARK WITH GOLD MAPLE LEAF. ON CHARGE TO H.T. SECTION, 4 CDN ARM'D DIV., H.Q.

Sir:

1. On 3 Dec 43 at approximately 0410 hours a telephone call was received at this office from East Grinstead Civil Police Station. The call was to the effect that a Cdn Vehicle had been involved in an accident at the junction of SHIP STREET and DUNNINGS ROAD, EAST GRINSTEAD, and the vehicle was left unattended and in a dangerous position. The civil police asked for assistance in having the vehicle removed to a safer position. In view of this request I detailed K.97751 Cpl. AVERY, D.S. to proceed to the scene and ascertain whether or not the vehicle could be moved. On his arrival he learned that the vehicle could only be moved by an L.A.D. Breakdown Lorry as the front wheel and spring was broken and the vehicle would have to be hoisted. As the vehicle could not be moved, traffic lamps were placed around it to warn traffic and pedestrians.

2. At approximately 0 400 hours, 3 Dec 43 I proceeded to the scene of the accident and after inspecting the vehicle, I phoned the H.T. Section, 4 Cdn Arm'd Div and made enquiries concerning the m/n vehicle and learned from C.92035 C.S.M. ROY, H.S. that the vehicle was on charge to his unit. I informed him of the condition and location of the vehicle and requested that he call for the vehicle at the earliest possible time. I then returned to the scene of the accident with a view of ascertaining how the accident had occurred.

3. Judging from the position of the vehicle and the tracks on the road, apparently it had been proceeding down SHIP STREET at a terrific rate of speed and when it approached the intersection of DUNNINGS ROAD it failed to make the curve and collided into a brick wall approximately 3 feet in height and 2 feet in width. It ran along the wall for a distance of approximately 15 feet, then about turned and slide across the road, finally resting on the sidewalk 30 feet from the point of impact and facing in the direction it had come from.

4. The tracks mentioned above were not skid marks but that of a tire gripping into a frost road in making a curve. To the best of my knowledge, judging the road, the driver did not apply brakes. The road at this point is approximately 18 feet wide, and the surface is first class. The brick wall had several blocks of concrete knocked out and for a distance of

10 feet and the hedging on top of the brick wall was also damaged. The truck sustained damage in that the right rear tire was blown, left portion of windshield broke, left petrol tank and frame torn completely off, left front spring detached from frame, left portion of bumper bent, left fender and headlamp severly damaged.

6. As it would be some time before the evacuation of the vehicle would take place I returned to my section H.Q. and waited until approximately 1100 hours when I again patrolled to the scene of the accident. On my arrival there I found C.S.M. HOY, 1/c Transport, 4 Cdn Arm'd Div, Capt. Philips, A/Adjutant, H.Q. Squadron, 4 C.A.D., and a group of personnel from the M.T. Section. I interviewed C.S.M. Hoy and learned that the driver of the vehicle concerned, Tpr. DASTI No B.118241, Batman-Driver for Major O'NEILL, R.C. Padre, had left his vehicle parked in a mobile condition in front of the CAT INN, WEST HOATHLEY at 2100 hours, 2 Dec 43 and when he came out for his vehicle at approximately 2145 hours, he found same gone. C.S.M. Hoy further stated that the driver had reported the loss of his vehicle at approximately 2200 hours and a search of unit lines failed to find the vehicle.

8. I then interviewed Capt. Philips who stated that he knew nothing of the vehicle until it was reported to him by the M.T. Section and that he was present at the scene to obtain the necessary particulars of the accident.

7. As no one present knew the name of the person who had driven the truck and had been involved in the accident, I decided to search the vehicle. In the cab I found a black beret cap but there were no markings on it at all. Also a pair of drivers gauntletswith the number 264 on the inside of each cuff. I then inspected the rear of the vehicle and found blood marks right at the end of the tail gate and on the sidewalk. The position of the blood marks would make one think that someone had been riding in the back of the truck. The log book and work ticket were found and S/T showed the vehicle was not authorized to be on the road.

8. Whilst I was examining the vehicle, Capt. Philips made enquiries as to the ownership of the brick wall that was damaged and learned that same was the property of Mr. WRIGHT, A.C., 'The Croft', Dunnings Road, East Grinstead. Capt. Philips obtained a statement from Mr. Wright but there was nothing in the statement that would point out who had been driving the vehicle or how the accident occurred. Mr. Wright stated that he heard a crash, came outside, saw the vehicle and then returned inside.

9. I detailed K.97781 Cpl. AVERY, D.S. to patrol to the Civil Police Station and phone all hospitals and F.D.S in the area with a view of learning if anyone had been admitted or treated for cuts and abrasions. Cpl. Avery returned and reported that all hospitals and F.D.S. had been contacted and they stated that no one had been admitted or treated during the night.

10. As there was little or nothing more that we could do in this connection, I informed Capt. Philips that I would submit a report stating what information I had obtained and returned to my section H.Q. I also informed Capt. Philips to notify the claims office at once.

G.R. Bazley.....Sgt
C.1576 Sgt. BAZLEY, R.C.
No 13 Cdn Provost Company,
Canadian Provost Corps

OVER

Summary of Evidence
in the case of

D 26129 Pvt L. E. Robertson
HQ Sqn 4 C.A.D.

The Commanding Officer has directed that the evidence be taken on oath.

"A"

15 feet and the hedging on top of the brick wall was also damaged. The truck sustained damage in that the right rear tire was blown, left portion of windshield broke, left petrol tank and frame torn completely off, left front spring detached from frame, left portion of bumper bent, left fender and headlamp severly damaged.

5. As it would be some time before the evacuation of the vehicle would take place I returned to my section H.Q. and waited until approximately 1100 hours when I again patrolled to the scene of the accident. On my arrival there I found C.S.M. ROY, i/c Transport, 4 Cdn Arm'd Div, Capt. Philips, A/Adjutant, H.Q. Squadron, 4 C.A.D., and a group of personnel from the M.T. Section. I interviewed C.S.M. Roy and learned that the driver of the vehicle concerned, Tpr. DASTI No B.112241, Batman-Driver for Major O'NEILL, R.C. Padre, had left his vehicle parked in a mobile condition in front of the CAT INN, WEST HOATHLEY at 2100 hours, 2 Dec 43 and when he came out for his vehicle at approximately 2145 hours, he found same gone. C.S.M. Roy further stated that the driver had reported the loss of his vehicle at approximately 2200 hours and a search of unit lines failed to find the vehicle.

6. I then interviewed Capt. Philips who stated that he knew nothing of the vehicle until it was reported to him by the M.T. Section and that he was present at the scene to obtain the necessary particulars of the accident.

7. As no one present knew the name of the person who had driven the truck and had been involved in the accident, I decided to search the vehicle. In the cab I found a black beret cap but there were no markings on it at all. Also a pair of drivers gauntletswith the number 264 on the inside of each cuff. I then inspected the rear of the vehicle and found blood marks right at the end of the tail gate and on the sidewalk. The position of the blood marks would make one think that someone had been riding in the back of the truck. The log book and work ticket were found and W/T showed the vehicle was not authorized to be on the road.

8. Whilst I was examining the vehicle, Capt. Philips made enquiries as to the ownership of the brick wall that was damaged and learned that same was the property of Mr. WRIGHT, A.C., 'The Croft', Dunnings Road, East Grinstead. Capt. Philips obtained a statement from Mr. Wright but there was nothing in the statement that would point out who had been driving the vehicle or how the accident occurred. Mr. Wright stated that he heard a crash, came outside, saw the vehicle and then returned inside.

9. I detailed K.97751 Cpl. AVERY, D.S. to patrol to the Civil Police Station and phone all hospitals and F.D.S in the area with a view of learning if anyone had been admitted or treated for cuts and abrasions. Cpl. Avery returned and reported that all hospitals and F.D.S. had been contacted and they stated that no one had been admitted or treated during the night.

10. As there was little or nothing more that we could do in this connection, I informed Capt. Philips that I would submit a report stating what information I had obtained and returned to my section H.Q. I also informed Capt. Philips to notify the claims office at once.

R.G. Baizley .....Sgt
U.1576 Sgt. BAIZLEY, R.C.
No 13 Cdn Provost Company,
Canadian Provost Corps

O V E R

D.A.P.M.
2. Cdn Corps

1. Forwarded. The W.D. vehicle in question was handed over to Capt. Philips, 4 Cdn Arm'd Div on 3 Dec 43.

2. The A.P.M. 4 Cdn Arm'd Div has requested that a copy of this report be forwarded to him.

(D.H. Kerr) Capt.
Officer Commanding,
No 15 Can Provost Coy

6 Dec 43
HMc/MGP
Time of signature 1730 hrs

PM 2-5

APM, 4 Cdn Armd Div.

Fwd in duplicate for your infm, please.

Chas F. Wilson Capt.
(C.F. Wilson)
DAPM, 2 Cdn Corps

N.G. Yes.
Furnish report from #15
Pro. Coy. as requested.

DEC 15 1943

A.P.M. 4TH CDN. ARMD. DIV.

Summary of Evidence
in the case of

D 26129 Pte. J. E. Robertson
112 Sqn 4 C.A.D.

The Commanding Officer has directed that the evidence be taken on oath.

"A"
Evid.

H.Q. Sqn 4 C.A.D.

Lieut J. K. Wickett having been duly sworn states,

I am acting Tech Adj of this unit - H.Q. Sqn 4 C.A.D. On 31 Dec 43 W.D. vehicle No. CL 4209324 was on the charge of this unit.

The evidence having been read to him the witness desires to make no alteration.

The accused declines to cross examine the witness.

J. K. Wickett Lt

Capt J. W. Clandeman, O.C. 4 L.A.D. attached to HQ Sqn 4 C.A.D., having been duly sworn states,

On 6 Dec 43 I examined 8 cwt Ford CZ 4209324 and found that it had been damaged due to an accident to the following extent:

Front Axle to be replaced,
Left front Windshield to be replaced,
Left front Head light damaged beyond repair,
Left front Fender badly buckled,
Bumper Bent,
Approximately 20 hrs labour at 1/- an hour necessary to repair vehicle.
Total estimated cost £12-10-0.

On his evidence being read to him the witness desires to make no alteration or amendment

The accused declines to cross examine the witness.

Jas C Clandeman Capt
OC 4 L.A.D att HQ Sqn 4 C.A.D.

B112241 Pvt J. F. Dasley HQ Sqn 4CAD. having been duly sworn states,

I am the driver of W. D. veh No C24209324 and I act as batman driver for H/Major O'Neil. After I come in from a trip driving H/Major O'Neil I park my vehicle outside "B" mess. On 3 Dec/43 I parked my vehicle outside "B" mess at approximately 1700 hrs and I made no more trips that day. The last time I saw my truck on 3 Dec 43 was at 2030 hrs and it was in the place I had parked it. At approximately 2130 hrs 3 Dec 43 I returned to "B" Mess from the "Cat" Inn and I noticed my truck was not in the proper place. I immediately reported the case to Major Stevenson, the A P M.

On his evidence being read to him the witness does not desire to make any alteration.

The accused declines to cross examine the witness.

J F Dasley Pvt

C 92088 S. S. M Roy, B. S. HQ Sqn 4 C.A.D. having been duly sworn states,

I am the W.O II responsible for tpt in HQ Sqn 4 C.A.D. On Sat 4 Dec I was advised by the Cdn Provost Detachment at East Grinstead that one of our vehicles — # C 2 4209324, Ford, 8 cwt — had met with an accident and was in a severely damaged state just outside of the town. I left here with a tow-truck to bring the vehicle back to unit lines. This I did and turned the damaged vehicle over to our unit workshop.

On his evidence being read to him the witness desires to make no alteration.

The accused declines to cross examine the witness

S S M B. Roy.

C58308 Tpr M. H. Ferguson, HQ Sqn 4. C.A.D. having been duly sworn states,

On 3 Dec 43 at approximately 2030 hrs I arrived in East Grinstead in company with R37765 Tpr C.D. Birch and R37641 Tpr M. L. Shenk. We went to a pub where we had quite a few drinks. From there we went to the hospital dance where we arrived about 2200 hrs. We met D26129 Tpr G. C. Robertson and in company with him had quite a few more drinks. When we decided to go home, Tpr Robertson offered us a ride in the truck he had outside. We got into the truck: Tpr Robertson was driving, Tpr Shenk sat in front with him, and Tpr Birch and I got in the back. By this time we were all pretty drunk.

We hadn't gone far when we had an accident. I was thrown out of the back of the truck and badly shaken & dazed. Then we all started walking home together until Tpr Shenk and Tpr Birch decided to go one way and we went another.

On his evidence being read to him the witness does not desire to make any alteration.

The accused declines to cross examine the witness.

Tpr M.H. Ferguson

K37763 Tpr C.D Birch, HQ Sqn 4 C.A.D. having been duly sworn states;

On 3 Dec 43 I arrived in East Grinstead with C58308 Tpr M.H Ferguson, and K37641 Tpr M.L Sherk at about 1930 hrs. The three of us went to a pub and had several drinks and became feeling good. Then we walked to the dance and there met D20129 Tpr J.C Robertson. He also appeared to be under the influence of liquor. We then tried to enjoy ourselves at the dance but we got fed up. During this time we had several more drinks. Then we all agreed to go home and Tpr Robertson said he would give us a ride home in the truck he had outside. We went outside and Tpr Ferguson and myself got in the back, Tpr Robertson and Tpr Sherk got in the front; Tpr Robertson drove. We had'nt gone far before I felt the truck begin to sway. The next thing I knew I felt myself coming out of a daze caused by an accident to the vehicle. I then got out of the truck to see if anyone was seriously hurt but no one was. Then Tpr Sherk and I proceeded to walk back to camp where we arrived early in the morning.

The evidence having been read to him the witness does not desire to make any alteration.

The accused declines to cross-examine the witness.

C.D. Birch Tpr.

K37641 Tpr M.L. Shenk, HQ Sqn 4 C.A.D., having been duly sworn states,

On 3 Dec 43 I was at a dance at East Grinstead in company with K37765 Tpr Birch, E.D and C58308 Tpr M.H. Ferguson. At approximately 2200 hrs we arrived at the dance from the pub after having had quite a few drinks. There we met D26129 Tpr J.E. Robertson, and had a few more drinks with him in the dance hall. After a little while we decided to go home as the party was pretty dull. D26129 Tpr J.E. Robertson then said he had a car outside and would take us home. I sat in front and Tpr Birch and Tpr Ferguson sat in the back of the truck which was an 8 cwt. On the way home we had an accident but no one appeared to be hurt other than being shaken. At the time I was fairly drunk and shaken and was not very observant. I lost my hat in the accident. Then Tpr Birch and I walked home.

On his evidence being read to him the witness does not desire to make any alteration.

The accused declines to cross-examine the witness.

H Tpr. M.L. Shenk

G 45426 Sgt Lallo, R.R. S.I.S. 2 Cdn Corps
A 55231 Sgt Harrison, J.T. S.I.S. 2 Cdn Corps.

I certify that in my opinion the attendance of these witnesses is, owing to special duties, not readily procurable, and a written statement of their evidence signed by them has been read to the accused and is attached hereto as Exhibit "A".

F.A. Phillips, Capt.
(Officer detailed to take summary).

I do not require the attendance of these witnesses for cross-examination.

G.E. Robertson (accused)

I produce the vehicle work ticket "A" which shows that D 26129 Pte Robertson, G.E. was not the assigned driver of W.S. vehicle # C 24209324 at the time of the accident, which is marked Exhibit "B" and attached to the summary.

F.A. Phillips, Capt.
(Officer detailed to take summary)

I produce the report of the 13 Cdn Prov Coy on the accident which is marked Exhibit "C" and attached to the summary.

F.A. Phillips, Capt
(Officer detailed to take summary).

The accused was cautioned as follows:-

Do you wish to make any statement or give evidence on oath? You are not obliged to ~~say~~ anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused ~~elected to give evidence~~ declined to make a statement or to give evidence.

G.E. Robertson

The accused does not call any witnesses for the defence.

I certify that the foregoing summary of evidence consisting of ~~fourteen~~ pages was taken down by me in the presence of the accused and that Rules of Procedure 4(c), (d), (f) and 5 have been complied with.

F.A. Phillips, Capt
HQ Sqn 4 Can Armd Div
Officer detailed to take summary

In the field.
15 Dec 43.

No. D-26129 Name ROBERTSON GE Sqn., Battery, or Company Corps C.A.C. Date of enlistment 14-6-40 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F. B.137) 40/P & /B436 (2965)

Date of last entry in Company Conduct Sheet No. and date of last drunk NIL Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
ST JOHN NB	15-11-41	Gdsm		AWL from 2200 hrs 15 Nov until 0700 hrs 16 Nov(9 hrs)	L/C Ruiter	7 days CB	16-11-41	Lt Harwood	1 dys pay FR&I
DEBERT NS	18-5-42	Gdsm		AWL from 0600 hrs til 1230 hrs 18 May 42	Sjt Warr L/C Ruiter	Award 2 dys Py	21 May	Maj Griffith	Forf 1 dys py FR&I
DEBERT NS	14-9-42	Gdsm		AA SEC 40 - using insubordinate language	A/Sjt Jarvis CH	27 dys det	14-9-42	Maj Griffith	forf 27 dys pay FR&I
					Remission of sentence w.e.f. 21-9-42				
FIELD	16-2-43	Tpr		AA SEC 40 Neglect in handling veh causing damage to extent £12:0:0	Documentary	14 dys F.P.	22-2-43	Maj Punchard	Forf 14 dys Pay FR&I

P.T.O.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED TRUE COPY ..... T B Nash major ..... Major
(T B Nash)
OC HQ Sqn 4 Cdn Armd Division

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-26129	Trooper	Gwenford Eddy ROBERTSON	H. Sqn 4 Cdn Armd Div

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

† The conduct sheet(s) mentioned should be produced in court with this statement but not attached to the proceedings.

‡ See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, permission being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA 40 (negligently handling a MD Veh)	One time	One time
For	times	times
For AA 40 (insubordinate Language)	Nil times	One times
For AA Sec 15(1) (A.W.L.)	Nil times	Two times
For ----------	times	----- times

~~XXXX

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D-26129 Rank Trooper Name Gwenford Eddy ROBERTSON H. Sqn of 4 Cdn Armd Div ~~[illegible]~~ (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
N/A	N/A	Nil	N/A	N/A

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23 day of December 1943

F. A. Phillips, Capt.
2/c HQ Sqn 4 C.A.D.

13. ~~The accused has served as a non-commissioned officer continuously without reduction, to the present date.~~ F.O.P.

		Date of Promotion.
In the rank of	years,	
In the rank of	N/A years	
In the rank of	years,	

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

HHH-54 (case #2)

TPR ROBERTSON G.E.

In BSB-143 for let case.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-26129 Tpr Gwenford Eddy ROBERTSON, 3 CACRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To undergo detention for a period of sixty (60) days.

(Sgd) ..... 31 Mar/44 (Sgd) [signature] Lt Col
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed.

~~I direct that the accused be not committed to prison or detention barracks, only custody ordered.~~ (1)
(1. AA 57A. Delete if not used.)

Date 3 Apr 44 (Sgd) [signature] Brig
Commanding 'E' Group C.R.U.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D 26129 Tpr. Robertson G.E. 3 CACRU	3 Apr. 44	H.C. Lax. Lieut Capt. A/Adjt 3 CACRU

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF C.M. HHH 54

FIELD GENERAL COURT-MARTIAL

CPA89 (1b (rev) of AFA3) A.C.I. R. & R./1908 (2004)

Convened by Order of N. A. Gianelli, Brig Comd "E" Gp, CRU dated 30 Mar 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-26129	Tpr	Gwenford Eddy	ROBERTSON	3 CACRU

PROCEEDINGS REVIEWED
[signature] Lieut
3
17 Apr 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 30 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (Offr).~~
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans .....~~
~~The Interpreter is sworn (1). Do you object to ..... as shorthand writer? Ans .....~~
~~The shorthand writer is sworn (1).~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No, Sir
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt. Col.	A.H.D. Richman	HQ CRU.
Member	Capt.	A.H.D. Swan R.C.	1 CAC RU.
Member	Lieut.	R.J. Boadway	2 CAC RU.
~~Judge-Advocate~~			
Prosecutor	Lieut.	G.H.C. Fenton	3 CAC RU.
Defending Offr	Lieut.	A.R. Jessup	3 CAC RU.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (not) (a) plea ..... (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(severally)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the instrs on procedure after Arraignment at top of p 2. The proceedings are continued on Record Form

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, or to attempt etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO - SIR (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) to charge(s). Part 1 of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part 1 of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part 1 of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part 1 of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO - SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans NO - NOT AT ALL (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part 1 of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 80, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused, No. D26129 Tpr. Gwenford Eddy ROBERTSON, No. 3 Canadian Armoured Corps Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
A.A. SEC. 15 (1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field on 6 Mar 44 absented himself without leave from No. 3 C.A.C.R.U. from 0800 hours 6 Mar 44 until he surrendered himself at 2130 hours 26 Mar 44. (Total time absent - 20 days, 13 hours, 30 minutes).

In the Field
28 Mar 44

"G.W.LITTLE" Colonel
Commanding
No. 3 C.A.C.R.U.

To be tried by F.G.C.M.

(N. A. Gianelli) Brig
Comd

In the Field,
30 Mar 44

"E" Gp, CMU

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3)
40/PAM/1497 (2008)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apprnt, A/R or A/Apprnt	Full Christian Names.	Surname.	Unit.
D 26129	Tpr		Gwenford Eddy	ROBERTSON	3 CACHU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has ~~(a)~~ committed the offence(s) set forth in the Charge Sheet attached and on (date) 30 Mar 44 endorsed by me, (~~a copy of which is annexed hereto~~) To be tried by Field General Court-Martial ";

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~[and that by reason of urgent military exigency the trial cannot be postponed]~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s) and to consist of the Offrs appointed or detailed hereunder.

4. ~~And I direct that the said Court shall sit at the following place or places within the following limits of time :~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint the following officer to be Convening Officer :~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt.-col	D. L. Redman, VD	Hq. CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 1 CACHU	1 CACHU
Lt	to be detailed by OC 2 CACHU	2 CACHU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

(Signed personally, RP 106 fn 2.)
(N. A. Gianelli) Brig
(Rank.)

Date 30 Mar 44

Commanding "E" Gp. CRU

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S REPORT

I HEREBY CERTIFY that No. D26129 Tpr. Robertson G.E.

of H 3C.A.C.R.U has this day been

examined by me and that he is in a good state of health and

fit to undergo trial by Court Martial.

Station Field

Date March 31/44

J. D. Gibson
Medical Officer
No. 3 C.A.C.R.U.

Statement E-3.

In Mitigation of Sentence.

I D 26124 Trooper Lynwood Eddy Robertson states as follows:-

I came to 3 C.A.C.R.U. Jan 31st 44. I had last had a leave on 8 Nov 43 and I applied for a leave to commence March 15th as a young lady in the A.T.S. whom I expect to marry was getting her leave on that date. In the meantime I was employed on a gunnery course.

About March 2nd I received a letter from a woman I had once known accusing me of causing her pregnancy. I was positive that I was not responsible and I was most anxious that no knowledge of the situation come to the notice of my fiancée in the A.T.S. I therefore arranged for a friend of mine to do maintenance on my guns on Saturday morning and tried to obtain a 48 hour leave for the weekend. I found that I was unable to get leave because I was on course and it was not possible to get away Sunday because our squadron had a compulsory church parade

on that Sunday. I had been in the C.A.C.R.O. only a few weeks and I did not know any officer well enough to approach about this situation. I therefore decided to go to London without leave in order to see this woman.

I went to London and was able to convince the woman who had written me, that I was not responsible. My situation then was that if I returned to the C.A.C.R.O. I could expect that I would not be granted leave on March 15th. I was most anxious to have this leave with my fiancé and felt that I could not carry on unless I saw her. I therefore remained away until my fiancés leave was ended when I returned to the C.A.C. R.O. and surrendered myself.

I enlisted in June 1940 and came overseas with the Grenadier Guards in October 1942, employed as a Driver Mechanic. In December 1942 I was transferred to H.Q. Sqn. 4 C.A. Div. and while employed

Have obtained the trade qualification of Operator C.A.C.

In respect to my crime sheet I would like to say that my last previous offense, of taking a car, occured while I was under the influence of liquor.

I am very anxious to return to a field squadron and feel, with the trade qualification I have obtained, that I can have a good future in the army.

I am twenty-one years of age.

Signed.

G.E. Robertson

P 26124 Tpr. G.E. Robertson.

Exhibit "A"

3 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT

PART II ORDERS

BY

Last Order No 55 Dated 7 Mar 44 — Colonel G.W. LITTLE, M.V.O., M.C. Commanding Officer — This order No. 56 Dated 8 Mar 44

Sheet 5

20. ABSENT WITHOUT LEAVE:

(b) The u/m ORs are AWL from times and dates shown.

D-26129 Tpr. ROBERTSON, G.E. 0800 hrs, 6 Mar 44

(H.C. Laxson) Capt.
Adjutant
No. 3 C.A.C.R.U.

Certified true extract from No. 3 C.A.C.R.U. Regt'l D.O. Part II No 56 d/8 Mar 44, as taken from original document held in my custody.

(H.C. Laxson) Capt.
Adjutant
No. 3 C.A.C.R.U.

LIST OF EXHIBITS IN THE CASE OF
D26129 Gdsm. Robertson, G.E.

For the Prosecution

1. Exhibit "A" Extract from Regtl Part II Order No. 56 para. 20(b) d/8 Mar 44.

For the Defence

Nil

LIST OF WITNESSES IN THE CASE OF
D2612P Gdsm. Robertson, G.E.

For the Prosecution

1. Documentary: Extract from Regtl Part II Order No. 56 para. 20(b) d/8 Mar 44.

2. M65640 A/Cpl. Miller, S.G. - No. 3 CACRU

For the Defence

Nil

I, DX6129 Tpr. Robertson, G.E. do desire
~~do not desire~~

the services of an officer to defend me at my trial by Court Martial.

I desire the services of Capt J H Gordon, H.Q. 4th B.A.D. if this officer is available.

G E Robertson

DX6129 Tpr. Robertson, G.E.

Summary of Evidence in the case of No. D86129 Tpr. Robertson, G.E., No. 3 C.A.C.R.U., a soldier of the Canadian Army Overseas.

The Commanding Officer directs that evidence be taken on oath.

First Witness for The Prosecution

Documentary: Extract from No. 3 CACRU Regtl D.O. Part II, number 56, para 20 (b), d/6 Mar 44. This extract has been shown to the accused, marked by me as Exhibit "A" for the prosecution and attached to the Summary of Evidence.

(C.L.Nelson) Capt.
Officer detailed to take
The Summary of Evidence

Second Witness for The Prosecution

M65640 A/Cpl. Miller, S.G. on strength No. 3 C.A.C.R.U., a soldier of the Canadian Army Overseas, having been duly sworn, states:-

I am M65640 A/Cpl. Miller, S.G. on strength Regtl Police, No. 3 C.A.C.R.U.. On the night 26 Mar 44 I was on duty as N.C.O. i/c of the Guard Room, 3 C.A.C.R.U.. Tpr. Robertson, whom I now recognize, reported to me at 2130 hours and stated he was AWL. I had record of his absence so obtained his Pay Book, verified particulars and found him to be the same man so I placed him under close arrest.

The accused declines to cross-examine the witness.

M65640 A/Cpl. Miller, S.G.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to give evidence on oath or to make a statement.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (C), (D), (E), and (F) have been complied with.

(C.L.Nelson) Capt.
Officer Detailed to take
The Summary of Evidence

In the Field
28 Mar 44

EXA
MW

MFM 6 (AFB 122) 40/PAY/130 (3438)

No D26129 Name Robertson, GE | Sqn, Battery, or Company | Corps C.A.C. | Date of enlistment 14 Jun 40 | GC Badges | Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc C.H. Punchard Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
St. John N.B.	15 Nov 41	Gdsm.		AWL from 2200 hrs. 15 Nov 41 until 0700 hrs. 16 Nov 41 (9 hrs.)	L/Cpl. Ruiter	7 days C.B.	16 Nov 41	Lt-Harwood	Forfeits 1 days pay FR&I
Debert	18 May 42	Gdsm.		AWL from 0600 hrs. till 1230 hrs 18 May 42	Sjt L E Warr Cpl H E Ruiter	Fined 2 days pay	21 May 42	Major H C Griffith	Forf 1 dys pay
Debert	14 Sep 42	Gdsm.		A.A.Sec. 40 Using insubordinate language.	A/Sjt Jarvis C H	27 days detn.	14 Sep 42	Major H C Griffith	
						Remission of sentence w.e.f. 29 Sep 42			
U.K.	16 Feb 43	Tpr.		A.A.Sec.40 In that he negligently handled W.D. No. CM-4230630 causing damage to the extent of £12:0:0.	Documentary	14 days F.P.	22 Feb 43	C.H. Punchard Major	Forf 14 days pay FR&I
Field	23 Dec 43			On 23 Dec 43 Tried by FGCM and found guilty for an offence under	Documentary	60 days Detn. stoppages of pay £6:0:0	23 Dec 43	GOC 4 CAD	Forf 60 days pay under FR& I (TW)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				Sec.40 AA. Findings confirmed by GOC 4 Cdn Armd Div.					149(1)(b)
					RELEASED From the DETENTION BARRACK on 31 Jan 44 SENTENCE HAVING EXPIRED Remission earned under "Rules for Detention Barracks and Military Prisons" 20 days. DUE ARDANTS Initials H.W.D.			H. Dawns	
				CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY. (W.D'A. Dolan) Capt. Adjt. Training Wing No. 3 C.A.O. R.C.A.				

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D.26129	Tpr.	Robertson, G.E.	No. 3 C.A.C.R.U.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 15 (1) — 2 times.

For A.A. Sec. 40 — 3 times.

For ____ — ____ times.

For ____ — ____ times.

Date of first entry in Field Conduct Sheet 15 Nov 41

Date of last entry in Field Conduct Sheet 23 Dec 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*~~3. The accused has been awarded the following punishments by a court martial or a civil court, viz.:—~~

~~4. The accused has been awaiting trial on the present charges for~~ N11 ~~days in civil custody; and for~~ 25 days in military custody, *i.e.*, N11 days in open arrest, 25 days in close arrest; of which N11 days were spent in hospital.

5. The present age of the accused is 22 yrs

6. The date of his ~~calling up for military service~~ attestation is 14 Jan 40

7. The service which the accused is allowed to reckon is 3 yrs 9 mos. 15 days

[State the military decoration (if any) held by accused.

~~8. The accused was appointed to the rank of~~ ~~on the~~ ~~day of~~ ~~19~~

~~9. The accused was promoted to the rank of~~ ~~on the~~ ~~day of~~ ~~19~~

~~10. The accused was reduced to the rank of~~ ~~on the~~ ~~day of~~ ~~19~~

Date of Promotion.

EX B
AM

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21134) W.L.8670/668 100,000 4/42 A. & E.W.Ltd. Gp.698
(23459) W1.29256/1873 60,000 9/42 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	In the Field 23 Dec 43	A.A. Sec. 40	60 days detention and stoppages of £6-0-0	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ~~29th~~ 3rd day of March, 1944

H.C. Larson

(H.C. Laxson) Capt.
Adjt. 3 C.A.C.R.U.

II-86
GNR ROBERTSON G J

II-86 3-4

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this third day of July, 19 43

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery, Second Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ PCR

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~*[I am unable to appoint :—~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~ PCR.

~~for the following reasons, namely :—]~~

* Omit if not applicable.

"X" (57)

A.G. Raue major

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	A.G. Raue	6 Cdn Fd Regt RCA

Members.

Rank.	Name.	Regiment.
Capt.	D.M. Pegg	2 Cdn A Tk Regt RCA
Lieut.	G.A. VanVliet	5 Cdn Fd Regt RCA
Lieut. (waiting member)	R.N. McKay	6 Cdn Fd Regt RCA

*Signed PCRees (P.C. Rees) Brigadier

Commanding CRA 2 Cdn Div

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
G 8158 Gnr. GUY JOHN ROBERTSON 5 Cdn Fd Regt, RCA	First Charge Sec. 15 A.A.	not guilty	The court find that the accused G8158 Gnr Guy John Robertson of 5th Cdn Fd Regt is not guilty of all the charges and acquit of same. The findings are read in open court and the accused is released. Signed in the field this 7th day of July 1943. [signature] Rane major	Noted [signature]
	Second Charge Sec. 8 (1) A.A.	not guilty		
	Third Charge Sec. 40 A.A.	not guilty		

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):— NO.

(Signed) [signature] (Signed) [signature] Rane major.
(P.C. Tone) Brigadier
Commanding CRA 2 Cdn Div
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 7th day of July, 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and ~~sentence~~ acquittal [initials] in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~ [initials]
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 7th day of July 1943

[signature] Rane major
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

~~*President of the Court Martial.*~~ [initials]

* See footnote (b) on page 762 M.M.L. 1929.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this day of 19 .

Confirming Officer.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Promulgated and extracts taken in the case of G8158 Gnr Robertson G. J.

(a) (Dated) 9 Jul 43. (Signed) [signature] Lt Col

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible]

Exhibit "B2"
7th July 1943
[signature]
Major

CHARGE SHEET

The accused G-8158 Gnr. GUY JOHN ROBERTSON of 73 Battery, 5 Cdn Field Regt., R.C.A. a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
A.A. Sec 153A

not guilty

W.O.A.S. Wilfully impeding a representative of the Provost Marshall in the execution of his duties, in that he at Petworth on 14 Jun 43 did strike B-67202 Cpl McKee, T.R. 2 Cdn Provost Coy, 2 Cdn Div. while the latter was attempting to help H-29040 L/Cpl Reeves, J.J. 2 Cdn Provost Coy, 2 Cdn Div.

SECOND CHARGE
A.A.Sec 8(1)

not guilty

W.O.A.S. Striking his superior officer, being in the execution of his office in that he at Petworth on 14 Jun 43 struck B-67202 Cpl McKee, T.R. 2 Cdn Provost Coy, 2 Cdn Div who was in charge Provost patrol in Petworth.

THIRD CHARGE
A.A.Sec 40

not guilty

W.O.A.S. Conduct to the prejudice of good order and military discipline in that he, at Petworth, on 14 Jun 43 attempted to strike H-29040 L/Cpl Reeves, J.J. 2 Cdn Provost Coy, 2 Cdn Div who was on Provost patrol duty in petworth.

[signature]
(E.D. NIGHSWANDER) LT-COL R.C.A.
Comd., 5 Cdn Field Regt., R.C.A.

In the Field
7 Jul 43

To be tried by F.C.C.M.
In the Field
5 day of Jul 43

[signature]
(F.C. Tees) Brigadier
CRA 2 Cdn Div

Exhibit "E"
7th July 1943
[illegible] Lane
major

MEDICAL OFFICER'S REPORT

I certify that No. G-8158 Gnr ROBERTSON, G.J.
73 Battery,
of 5 Cdn Fd Regt RCA is in a FIT state of health,
and able to undergo Trial by Court martial.

[illegible] Capt
~~(J.M. FLEMING) CAPT., R.C.A.M.C.~~
Medical Officer
5 Cdn Field Regt., R.C.A.

Station In the Field

Date 7 Jul 43

M. F. B. 246
2856—3-40 (4283)
H.Q. 1772-39 460

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a ~~Field General~~ Court-Martial held ~~at~~ in the field
on the 7th day of July 1943 by order of
Brigadier R. C. Lee Commanding the 2 Cdn ~~Inf~~ Army
dated the 3rd day of July 1943

President.
Major A. F. Race 6 Cdn Inf Regt RCA

Members.
Capt D.M. Pegg, 2 A/T Regt RCA
Lieut G.A. Van Vliet, 5 Cdn Inf Regt RCA

~~Judge-Advocate~~

Trial of* G8158 Gnr Guy John Robertson, 5 Cdn Inf Regt RCA.

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

~~(or abstract)~~

~~The Court satisfy themselves that~~ ~~is not available~~
~~is prevented~~

, ~~waiting member takes his place as a member of the Court~~.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Capt C.F. Harrington, 5 Cdn Inf Regt RCA (Lawyer)

~~Counsel for~~ defending officer† Capt W.C. Newman, 5 Cdn Inf Regt RCA (Lawyer)

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked X signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No, Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
10M—3-41 (9670)
H.Q. 1772-39-224

Exhibit "B"
7th July 1943
[illegible] Major.

CHARGE SHEET

The accused C-8158 Gnr. GUY JOHN ROBERTSON of 73 Battery, 5 Cdn Field Regt., R.C.A. a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
A.A. Sec 153A

W.O.A.S. Wilfully impeding a representative of the Provost Marshall in the execution of his duties, in that he at Petworth on 14 Jun 43 did strike B-67202 Cpl McKee, T.R. 2 Cdn Provost Coy, 2 Cdn Div. while the latter was attempting to help M-29040 L/Cpl Reeves, J.J. 2 Cdn Provost Coy, 2 Cdn Div.

SECOND CHARGE
A.A.Sec 8(1)

W.O.A.S. Striking his superior officer, being in the execution of his office in that he at Petworth on 14 Jun 43 struck B-67202 Cpl McKee, T.R. 2 Cdn Provost Coy, 2 Cdn Div who was in charge Provost patrol in Petworth.

THIRD CHARGE
A.A.Sec 40

W.O.A.S. Conduct to the prejudice of good order and military discipline in that he, at Petworth, on 14 Jun 43 attempted to strike M-29040 L/Cpl Reeves, J.J. 2 Cdn Provost Coy, 2 Cdn Div who was on Provost patrol duty in petworth.

(A.D. NICHOLSWANDER) LT-COL R.C.A.
Comd., 5 Cdn Field Regt., R.C.A.

In the Field
5 Jul 43

To be tried by F.G.C.M.
In the Field
5 day of Jul 43

(F.C. Tees) Brigadier
CRA 2 Cdn Div

Statement of accused as to whether he desires to have an officer assigned by the convening officer to represent him at trial (R.P. 14 (B)

"I wish a defending officer."
"I desire the services of - A/Capt W.C. Newman if he is available.

In the Field

Date- 2 Jul 43

D J Robertson
G-8161 Gnr. Robertson, D.J.

Exhibit "E"
7th July 1943
[illegible]

MEDICAL OFFICER'S REPORT

I certify that No. G-8158 Gnr ROBERTSON, G.J.
of 73 Battery, 5 Cdn Fd Regt RCA is in a FIT state of health,
and able to undergo Trial by Court martial.

[illegible] Capt
~~J.M. FLEMING, CAPT., C.A.M.C.~~
Medical Officer
5 Cdn Field Regt., R.C.A.

Station In the Field

Date 7 Jul 43

M. F. B. 246
26M—5-40 (4393)
H.Q. 1772-29 480

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a ~~Field General~~ Court-Martial held ~~at~~ in the field on the 7th day of July 1943 by order of Brigadier R. C. Lees Commanding the 2 Cdn ~~Inf~~ Div dated the 3rd day of July 1943.

President.
Major A. F. Race 6 Cdn Fd Regt RCA

Members.
Capt D M Pegg, 2 A/T Regt RCA
Lieut G A Van Vliet, 5 Cdn Fd Regt RCA

Trial of* G8158 Gnr Guy John Robertson, ~~Judge Advocate~~ 5 Cdn Fd Regt RCA.

The order convening the Court, the charge-sheet and the summary (~~of abstract~~) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available~~ ~~is ready and willing to~~

, ~~waiting member takes his place as a member of the Court~~.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Capt C.F. Harrington, 5 Cdn Fd Regt RCA (Lawyer)

~~Counsel for~~ defending officer† Capt W.C. Newman, 5 Cdn Fd Regt RCA (Lawyer)

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked X signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No, Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
10M—3-41 (9670)
H.Q. 1772-39-224

The President, members ~~and other officers~~ are duly sworn.

The following officers under instruction are duly sworn.

Lieut. R.N. McKay, 6 Cdn. Inf. Regt. RCA.

Charge-Sheet

Instruction. If the accused has elected to be tried under Army Act, sec. 45 (8) the fact should be here recorded.

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not guilty

Answer.

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not guilty

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Not guilty

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.~~

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

Proceedings on Plea of Not Guilty

Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No, Sir.

The prosecutor makes no opening address [~~hands in a written address, which is read, marked , signed by the President, and attached to the proceedings~~].

The prosecutor proceeds to call witnesses.

First witness for prosecution. See attached pages.

being duly sworn, is examined by the prosecutor.

Exhibit "G"

Trial of G 8158 Gnr. Guy John [illegible]
13 Bty 5 Can Fd Regt RCA

First Charge - Plea Not Guilty
Second Charge:- Plea Not Guilty
Third Charge - Plea Not Guilty

R.P. 39(A) Complied with. (At adjournment)
1st Witness
T3.67202 Cpl. McKee T.R.

At about 2300 Hrs. 14 Jun 43 I was going to the assistance of L/Opl. Reves who was being attacked by three soldiers. While I was endeavouring to take the men off his back I received several blows from behind. I turned around and defended myself against the accused I did not see the accused again until 1645 hours 17 Jun 43 when I picked him out on an identification parade. He had scratches on his face on the left side and a slightly puffed lip. I took his particulars then and informed him charges would be laid against him.

Ques. - Do you recognize the accused in the court room

Ans. Yes.

Cpl. McKie 1/c Patrol Petworth -
attack outside Iron Hall Petworth -
I had checked accused four.
Standing in road with 4 soldiers
arguing. All had been drinking but
when they saw me come towards them
3 of them went towards the dance
followed by Gnr Robertson and another
soldier. I paid no further attention
to them. At about 2100 hrs.
Had good look at accused.
Accused right behind at time of row.
2/ Did accused strike you?
Not sure felt several blows.
Examination concluded.

Cross Examination:- by Capt Newman.
Witness cannot swear accused struck
him nor that face was marked up at the
time. About 25 men in melée. All except
2 or 3 men were within 5 feet of me.
Questioned as to whether
Identification Parade - checked for men
with scratches and puffed lips. Identified
man but. Cannot swear to identity
but morally certain he was man.
Knocked ~~him~~ accused down.
Re Examined
2 or 3 men near when struck - accused closest.

K 8104 - L/Cpl. Warren C.F.
(2 Provost Coy.) Sworn states -

On 14 Jun 43 I was on duty in Petworth. At about 2300 Hrs. one of the Provost came in and called Cpl. McKee and myself out saying that one of the Provost was lying on the ground and some soldiers were beating him. Cpl. McKee and myself rushed out and helped clear the fellows away from L/Cpl. Reeves. I then saw Gnr. Robertson, the accused, strike Cpl. McKee. I then saw Cpl. McKee strike Gnr. Robertson in self defence. A few seconds later I was standing beside L/Cpl. Reeves. I saw Gnr. Robertson attempt to strike him. I warded off the blow with my arm. I was then surrounded by a crowd of soldiers.

Quest 2300 Hrs. - Inn Hall Petworth - Light was fairly good. Could see faces well. Within arms length of Cpl. McKee

Cross Examined: -
Fighting on right side of Cpl. McKee hit behind him. Saw one blow aimed at Cpl McKee within arms length.
Accused hit Cpl McKee in body face to face - saw only one blow

registered face to face

3 Witness -

D 76443 L/Cpl Blum S.
2 Coy - Cdn Provost Corps -
On 14 Jun 43 - 2315 hrs - I saw the accused Gnr. Robertson whom I recognize in the court strike Cpl McKee while he was being held by some other soldiers. After that I didn't see the accused any more.

Quest. was outside of circle of men. - 10 or 15 feet from accused. - Identified by face memory. Saw only one blow struck. At that distance I could not very well mistake the accused. Cpl McKee being held by three men. accused struck Cpl McKee one blow. Could see not of the Provost on a/c crowd.

Cross Examine

saw McKee struggling with 3 men. Struck from behind. Identified by scratched face and puffed lips. One blow only struck.

H 29040 L/Cpl Reese J. J. 4th Witness
2 Coy Cdn Provost Corps.
Duty 14 Jun 43 at 2300 Hrs at Iron Hill Fortwork. About 5 minutes

later I came out of the dance hall. L/Cpl. Blum and myself were jumped on from behind. I could not identify any of my assailants. I could not identify any of my assailants. I could see no other Provost and did not see the accused.

The Prosecution is closed.

Defence on next page

R P 40 complied with

~~Defence~~ 1st Witness Page 6

B 6214 - Gnr. Crowe C.W.

73 Bty. 5 FD Regt (sworn.)

At about 2310 Hrs. on June 43 I was coming out of the Dance Hall at Petworth and saw Gnr Robertson knocked down. There were about 15 people gathered around. I went over to Gnr. Robertson and said to him "Lets get out of here!" I then spoke to Gpl. McKee ~~that [illegible]~~ to the effect that his men were too rough. Gnr. Robertson Gnr. Reynolds and I then proceeded home

---

Statement by Accused (NOT ON OATH)
The accused was duly warned by the court under R.P. 40.

G 8158 - Gnr. Robertson G. J. - not sworn states:-

When I came out of the dance hall there was a brawl on the outside and I walked out towards it and stood and watched it a while. While I was standing there I got struck. The blow knocked me down and I got up and asked those standing around who it was that hit me. I stood there for a little while looking on and then came home with Gnr Crowe and Gnr Reynolds.

Certified an accurate record of the proceedings in this case
7th July 1943 [illegible] Lane major
President

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused not guilty of all charges.

Court re-opened, decision announced and accused is released.

[illegible] major,
President.

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

~~*The Court being re-opened, the accused is again brought before it.~~

Evidence of character, &c.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

(Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Cross-examined by the accused.

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

Exhibit "H"
7th July 1943
[illegible]

SUMMARY OF EVIDENCE

in the case of

G8158 Gnr Guy John Robertson, 5 Cdn Fd Regt R.C.A.,

a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The C.O. directs that the evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION

B67202, Cpl McKee, T.R. 2 Pro Coy, 2 Cdn Div., sworn, states:

"About 2300 hrs outside Iron Hall, Petworth, whilst I was attempting to help L/Cpl Reeves I received several blows from behind. I turned round and I saw the accused there and defended myself. I was unable to take further action owing to a general free-for-all and because my patrols needed my assistance. I did not see this man again until 1645 hrs 17 Jun 43, where I picked him out on an identification parade. He stated then that he knew nothing. He was placed under open arrest by R.S.M. of 5 Fd Regt RCA. I was i/c patrol in Petworth. I had hold of another fellow who was getting as many blows as I was. The blows weren't very hard. The accused had abrasions on left side of face and puffed lip. He had been drinking; I had checked him previously. I had a good look at him. His conduct wasn't bad."

Cross examined by the accused:-

Q.1 - If you were struck from behind, how did you know I did it?
A.1 - I turned around and you were the man standing directly where I thought the blows were coming from. I could not swear that you were the man.
Q.2 - You said you saw me before and my condition was good. What time was that?
A.2. - It was about 2100 hrs.
Q.3 - Where was that?
A.3 - You were coming either from the pub or urinal, standing in the middle of the street arguing with 4 other soldiers.
Q.4 - What did you say?
A.4 - I didn't have to say anything; as I approached you, 2 of the men looked at me and entered the dance hall, and the rest of them including you followed them in the direction of the dance hall. I paid no further attention to you.

T.R. McKee
(B67202, Cpl McKee, T.R.)

SECOND WITNESS FOR THE PROSECUTION

K8104 L/Cpl Warren, C.F., 2 Pro Coy, 2 Cdn Div., sworn, states:

"On 14 Jun 43 I was on duty in Petworth at the dance hall. At approx 2300 hrs one of the Provost came in and called Cpl McKee and myself out, saying that one of our Provost was lying on the ground and was being beaten by some soldiers. Cpl McKee and I rushed out and helped to clear the soldiers away from L/Cpl Reeves. I then saw the accused, Gnr Robertson, strike Cpl McKee; I then saw Cpl McKee strike the accused in self-defence. A few seconds later I was standing beside L/Cpl Reeves when I saw the accused Gnr Robertson attempt to strike L/Cpl Reeves. I warded off the blow with my arm. I was then surrounded by a crowd of soldiers. L/Cpl Reeves was on duty on the patrol. I don't know if accused was sober or not."

Exhibit "H"
9th July 1943
[illegible] Major

SUMMARY OF EVIDENCE

in the case of

G6158 Gnr Guy John Robertson, 5 Cdn Fd Regt R.C.A.,

a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The C.O. directs that the evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION

B67202, Cpl McKee, T.R. 2 Pro Coy, 2 Cdn Div., sworn, states:

"About 2300 hrs outside Iron Hall, Petworth, whilst I was attempting to help L/Cpl Reeves I received several blows from behind. I turned round and I saw the accused there and defended myself. I was unable to take further action owing to a general free-for-all and because my patrols needed my assistance. I did not see this man again until 1645 hrs 17 Jun 43, where I picked him out on an identification parade. He stated then that he knew nothing. He was placed under open arrest by R.S.M. of 5 Fd Regt RCA. I was i/c patrol in Petworth. I had hold of another fellow who was getting as many blows as I was. The blows weren't very hard. The accused had abrasions on left side of face and puffed lip. He had been drinking; I had checked him previously. I had a good look at him. His conduct wasn't bad."

Cross examined by the accused:-

Q.1 - If you were struck from behind, how did you know I did it?
A.1 - I turned around and you were the man standing directly where I thought the blows were coming from. I could not swear that you were the man.
Q.2 - You said you saw me before and my condition was good. What time was that?
A.2. - It was about 2100 hrs.
Q.3 - Where was that?
A.3 - You were coming either from the pub or urinal, standing in the middle of the street arguing with 4 other soldiers.
Q.4 - What did you say?
A.4 - I didn't have to say anything; as I approached you, 2 of the men looked at me and entered the dance hall, and the rest of them including you followed them in the direction of the dance hall. I paid no further attention to you.

T.R. McKee
(B67202, Cpl McKee, T.R.)

SECOND WITNESS FOR THE PROSECUTION

K8104 L/Cpl Warren, C.F., 2 Pro Coy, 2 Cdn Div., sworn, states:

"On 14 Jun 43 I was on duty in Petworth at the dance hall. At approx 2300 hrs one of the Provost came in and called Cpl McKee and myself out, saying that one of our Provost was lying on the ground and was being beaten by some soldiers. Cpl McKee and I rushed out and helped to clear the soldiers away from L/Cpl Reeves. I then saw the accused, Gnr Robertson, strike Cpl McKee; I then saw Cpl McKee strike the accused in self-defence. A few seconds later I was standing beside L/Cpl Reeves when I saw the accused Gnr Robertson attempt to strike L/Cpl Reeves. I warded off the blow with my arm. I was then surrounded by a crowd of soldiers. L/Cpl Reeves was on duty on the patrol. I don't know if accused was sober or not."

Cross examined by the accused:-

Q.1 - Was Cpl McKee fighting with someone when I am supposed to have struck him?
A.1 - Yes; we were clearing chaps away from L/Cpl Reeves.
Q.2 - How many times was I supposed to have struck Cpl McKee?
A.2 - I only saw you strike him once.
Q.3 - How did you identify it was me?
A.3 - By abrasions on your face at identity parade, and also I recognized your features on that parade.
Q.4 - Were those marks on my face when I was supposed to have struck the Corporal?
A.4 - No.
Q.5 - Was the crowd all around the Cpl and myself?
A.5 - There were some soldiers around; I can't say there was a crowd right around you.
Q.6 - He just turned around and struck me?
A.6 - After you struck him, Yes.
Q.7 - Was the crowd hard to handle that night?
A.7 - The soldiers were very good in dress and discipline until they got outside the dance after it was over.

L. J. Warren
(K8104, L/Cpl Warren, C.P.)

THIRD WITNESS FOR THE PROSECUTION

D76443, L/Cpl Bloom, S, 2 Pro Coy, 2 Cdn Div., sworn, states:

"On 14 Jun 43 at approx 2300 hrs in Petworth I saw the accused whom I now identify as G8158 Gnr Robertson, G.J., strike Cpl McKee while he was defending himself from some other soldiers who were attacking the Provost patrol."

Cross examined by accused:-

Q.1 - How do you identify me as the one who struck Cpl McKee?
A.1 - I saw you at the time and picked you out at identification parade. Each of us picked you out at different times at that parade. I identify you by your face.
Q.2 - Where did I strike him?
A.2 - He had his back to you and you punched him. I can't say whether you hurt him or not.
Q.3 - How many times did I hit him?
A.3 - I only saw you hit him once. Then I lost sight of you completely because I was being attacked by others.
Q.4 - What was the last time you saw me?
A.4 - Approx 2315 or 2320 hrs.
Q.5 - Did you see any scars on me at any time?
A.5 - At the identity parade you had a scar.
Q.6 - What kind of scars?
A.6 - A kind of cut on chin and abrasion on the eye.

S. Bloom
(D76443 L/Cpl Bloom, S.)

The accused, having been duly cautioned in accordance with R.P. 4(E) says:-

"I don't wish to make a statement now."

FOURTH WITNESS FOR THE PROSECUTION:

H29040, L/Cpl Reeve, J.J. No.2 Cdn Pro Coy, sworn, states:

On 14 June 43 at approx 2305 hrs in the exercise of my duties, there was a row outside the Iron Hall at Petworth, in the course of which I was knocked down. I could not identify Gnr Robertson,G.J. as having been one of those involved or as having struck me.

H29040 L/Cpl J.J.Reeve
(H29040, L/Cpl Reeve,J.J.)

The accused declines to cross examine.

FIRST WITNESS FOR Defence:

B6214 Gnr Crowe,C.W., 73rd Fd Bty,5 Fd Regt RCA, sworn,states:

"When I came out of the dance hall in Petworth on 14 Jun 43 there was a bit of a brawl going on outside, and I walked up towards Gnr Robertson, and just as I got beside him I saw a Provost hit him. Robertson went down on the road,and that's all I know about it."

Examined by Officer taking the Summary:-

Q.1 - Would you recognize the Provost if you saw him again?
A.1 - No, I'm doubtful about that.
Q.2 - Was it light or dark?
A.2 - It was getting dark.
Q.3 - How many people would you say were involved in the brawl?
A.4 - It was compact - I wouldn't imagine more than 15 people.

Cross examined by accused:-

Q.1 - Were you there when I left after the brawl?
A.1 - Yes; I came home with you.

C.W. Crowe
(B6214 Gnr Crowe,C.W.)

SECOND WITNESS FOR DEFENCE:
M56214, Gnr Carlson,G.M. 73rd Fd Bty, 5 Fd Regt R.C.A., sworn, states:

"I was coming out of the dance hall with Gnr McLennan, and I saw a rumpus going on, so I stood back and watched and I saw Gnr Robertson standing there, and it looked like he was trying to stop the argument. Then I saw one of the Provost hit him. I was standing watching it the whole time, and Robertson never hit anybody; he never raised a hand.",

Examined by Officer taking the Summary:-

Q.1 - How far away from the rumpus were you?
A.1 - About 20 yds, or something like that.
Q.2 - How many people would you say were in the row?
A.2 - I don't know - I couldn't make any estimate.
Q.3 - For how long did you watch the row?
A.3 - It was breaking up when I left; not more than 5 minutes.

Cross examined by the accused:-
Q.1 - Wasn't it longer than 5 or 10 minutes?
A.1 - It might have been,but it just seemed it to me.
Q.2 - Did I come home ahead of you?
A.2 - Yes, you had already left.

G.M. Carlson
(M56214, Gnr Carlson,G.M.)

Certified that R.P.4 complied with.
In the field.
26 June 43.

C.F. Harrington Capt RCA
(C.F.Harrington)Capt R.C.A.
Officer detailed to take the Summary.

130-U

Pte ROBERTSON, JA

F/5-4-7
C-16713 Pte. Robertson, J.A.
1 C.O.R.U.

130-U

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this twenty eighth day of December, 19 42

Whereas it appears to me, the undersigned, an officer in Command of "P" GROUP, CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial: *~~xxxx

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C-16713 PTE.ROBERTSON, JAMES ANDREW. 1 C.O.R.U.	FIRST CHARGE. Sec. 15 (1) Army Act.	Not guilty	Not guilty E.C. Peckham Major	
	(See Charge Sheet attached.)			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer *(to be recorded on separate sheet if necessary)* :—

(Signed) H.F. ARCHAMBAULT Brigadier, *Commanding "F" Group, C.R.U.* — *Convening Officer (e)*

(Signed) E.C. Peckham Major
Lieut-Colonel R. C.T.S. — *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the day of , and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 30th day of December 1942.

E.C. Peckham, Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*) on page 782 M.M.L. 1920.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this day of 19 .

Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W3, 47561/1057 35 M. 5/41 E.J.S.&S.(G) Gp. 698.3
W3, 47561/1057 35 M. 5/41 E.J.S.&S.(G) Gp. 698.3

The accused has elected to be
tried by Court Martial under
A.A. sec. 46(8)

CHARGE SHEET

The accused No. C-16713 Pte. Robertson J.A., of No.1. Canadian Ordnance Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with, while on Active Service:-

1st Charge
Sec. 15 (1) "Absenting himself without leave"

A.A.

in that he at Bordon, Hants, absented himself from Martinique, Barracks, from 2200 hours 15 Dec. 42, till 1000 hours 16 Dec. 42.

H. J. Styles

Bordon, Hants.
19 Dec. 42.

(H.J. Styles) Lieut.-Col.,
A/O.C. No.1 Cdn. Ord. Reinf. Unit.

To be tried by Field General Court Martial,

(J. P. BERNATCHEZ) Brigadier,
Commanding "F" Group, C.R.U.,
CONVENING OFFICER.

Bordon, Hants.,
28 Dec 42.

No.1 Cdn Ord. Reinforcement Unit

F.A.P.
30.12.42 1942

Medical Officer's Certificate.

I certify that I have this morning examined No. G-16713..
..Robertson..J.B..... of No.1 Cdn. Ord. Reinforcement Unit
and in my opinion he is fit ~~unfit~~ to under go trial by court martial.

Station. New Martinque Barracks
Bordon, Hants,

Sgd. W. MacIsaac Capt. R.C.A.M.C.
~~(R.E. Brown)~~ M.O. #1 C.O.R.U.

Date..30-12-42..... 1942

B.C. Peckham
Major

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT BORDON, HANTS ON THE 30TH DAY OF DECEMBER 1942.

TRIAL OF: No. C.16715 Pte. ROBERTSON, J.A. No. 1 Canadian Ordnance Reinforcement Unit.

The order convening the Court, Charge Sheet, Summary of Evidence and Medical Certificate are laid before the Court.
The Court satisfy themselves as provided by R.P. 22 and 23.
The accused is brought before the Court.
Prosecutor: Capt. J.M. GIFFORD, No. 1 C.O.R.U.
Defending Officer: Capt. W.E. BAWDEN, No. 1 C.O.R.U.
At 1345 hours the trial commences.
The order convening the Court, is read, signed by the President and attached to the proceedings, marked "A".
The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q. 1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over?
A. 1 No sir.
The President, Members ~~and Judge Advocate~~ are sworn.
The following constitute the Court:

PRESIDENT: Major E.C. PECKHAM, Line. & Weld. R./C.T.S.
MEMBERS: Lieut. G.H. ROBERTS, No. 1 C.B.O.W.
Lieut. K.C. ROSE, 1 Tpt. Coy. R.C.A.S.C.

The Officers under instruction are duly sworn.
Q. 2 Do you object to B.3878 Sgt. Bentley, J., acting as Shorthand writer?
A. 2 No.
The Shorthand writer is duly sworn.

The Charge Sheet is signed by the President, marked "B" and annexed to the proceedings.
The accused is arraigned upon each charge in the above-mentioned charge sheet.
Q. 3 Are you guilty or not guilty of the charge against you which you have heard read?
A. 3 Not guilty.
Q. 4 Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A. 4 No sir.
The prosecutor makes no opening address.
The prosecutor proceeds to call witnesses.

1st Witness: D.23274 Cpl. Sevigny, W.E., No. 1 C.O.R.U., was duly sworn.

PROSECUTOR:
Q. 5 Will you tell the Court your name, rank and regimental number?
A. 5 W.E. Sevigny, Cpl., D.23274.
Q. 6 And your unit?
A. 6 No. 1 C.O.R.U.
Q. 7 Will you tell the Court in your own words the events of the evening Tuesday 15 Dec. 42?
A. 7 On the evening of 15th December which had been pay day, at tatoo I did my usual routine of calling the hut orderly into my cubicle to make the usual alterations in the roll call of the departures and new arrivals and then as usual I took a stroll up and down the hut to make sure that everybody was present. Pte. Robertson's bed was not even made down ready for sleeping in and his equipment was still piled on his bed

and I assumed that he had a late pass and I did not check up any further. I went to the orderly room to turn in my report and in checking up on the passes, found out that he hadn't any, so thinking he might be around somewhere, I turned in my report without reporting him absent. The moment I got back to the hut I checked all over and he was not around, so I made the hut orderly notice that he was absent and the next morning I took it up with the Sgt. Major and he told me to report him absent from the time I was sure he was. That morning I got up very early and I noticed that Pte. Robertson's bed had not been slept in and the equipment still laid out as it was the evening before and I brought this to the attention of the hut orderly. The next time I saw Pte. Robertson was about 1000 hours the 16th December. As I walked into the hut, he was just coming back from the washroom with a towel in his hand. When I asked him what he had been doing, he answered me, "How did I know I was going to get drunk", and then I told him I was going back to the orderly room to report him present. Both reports of absence and presence were made to Sgt. Formos."

PROSECUTOR:

Q. 8 Do you recognize the accused Pte. Robertson in this room?
A. 8 Yes sir, pointing to accused.

DEFENDING OFFICER:

Q. 9 When did you check ~~the~~ to find out if Pte. Robertson had a pass?
A. 9 Between 10 and quarter past ten when I turned in my Tattoo Report.
Q. 10 Did you still turn in a report showing him present?
A. 10 Yes sir.
Q. 11 Did you look anywhere other than in that hut?
A. 11 No sir, not that evening.

_____ Cpl.
(W.E. SEVIGNY)

2nd Witness D.128545 Pte. Perrault, A., No. 1 C.O.H.U. was duly sworn.

(C.Q.M.S. Rochette was duly sworn as interpreter as Pte., Perrault could not speak English)

PROSECUTOR:

Q. 12 What is your number, name, and rank?
A. 12 A. Perrault, D.128545, Private.
Q. 13 Ask him to tell the Court anything he knows concerning this case?
A. 13 I am in room 29 and I take a report of all men who come in and go out and hand it into the Corporal at 2200 hours each night, and that night the corporal pointed out that the bed of Pte. Robertson had not been slept in. The next morning the Corporal indicated to me that the bed had still not been slept in and I saw this to be so."
Q. 14 Ask him what time in the morning he saw the bed was still made up?
A. 14 Between 0630 and 0645 hours.

DEFENDING OFFICER:

Q. 15 Will you ask him ~~whether he w~~ where he was at 2200 hours on the night in question?
A. 15 He was in the same hut.
Q. 16 You were right in the hut?
A. 16 Yes.
Q. 17 Will you have him tell the Court where he was in the hut at that time?
A. 17 I do not remember where I was in the hut but the Corporal brought me over to show me that the bed was not made down.

_____ Pte.
(A. PERRAULT)

DEFENDING OFFICER:
At this point I submit that the prosecution have not made out a case against this man as charged. He is charged on the Charge Sheet as absenting himself without leave from Martinique Barracks and we have no evidence to show that he absented himself from Martinique Barracks.

PROSECUTOR:
The circumstances surrounding this case are such that I don't know whether they should be brought to the attention of the Court, but the man wouldn't take the Colonel's punishment as he had been with the Colonel's unit. As such the point brought up by the defence must stand.

PRESIDENT:
In that case we are prepared to acquit the accused under R.P. 40 in that the charge as laid has not been proven.

THE COURT CLOSED AT 1530 HOURS.

C C Belcher Major

SUMMARY OF EVIDENCE in the case of C-16713 Pte. Robertson J.A. No. 1 Canadian Ordnance Reinforcement Unit.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st Witness for the Prosecution D-23274 Cpl. Savigny W.E., having been duly sworn states:
"I am hut corporal of hut 29-E. On the evening of Tuesday 15 Dec. 42 at 2200 hours, I checked the beds of hut No. 29-E accompanied by Pte. Perreault and found the bed assigned to Pte. Robertson J. A. empty. I expected that he might have a late leave pass so checked the pass book at the orderly room, there was no pass shown. Instead of showing him absent I handed in a report of present thinking him about somewhere. I went back to the hut and checked but did not find him, I then spoke to the hut orderly Pte. Perreault. At 0645 hours, 16 Dec. 42, I checked Pte. Robertson's bed and found that it had not been slept in. At 0800 hours I went back to the hut and watched with Pte. Perreault until the main No. 2 Company parade had [illegible] and there was no sign of the accused. Next I reported the absence to S.M. McAdam after morning parade at approximately 0900 hours and then reported the absence to Sgt. Formoe, orderly room Sgt. of No. 2 Company.
About 1000 hours in course of my duties I returned to hut 29-E and found that Pte. Robertson had returned. I asked Pte. Robertson why he had not come back in time and he replied "Did I know I was going to get drunk."
I then reported Pte. Robertson's return to Sgt. Formoe at the Company Orderly Room.
On Thursday, 17 Dec. 42, Pte. Robertson was paraded before Capt. McColm, his Company Commander and at this time he stated in this connection "True I have not slept in my bed but I was on the parade at 0800 hours."

The accused does not wish to cross-examine the witness at this time.

W E Savigny

D-23274 Savigny W.E., Cpl.

2nd Witness for the Prosecution D-102545 Pte. Perreault A., having been duly sworn states:
"I am hut orderly at hut No. 29-E, every morning and every evening I check the men going out and coming into the hut. I check this alone, and give a list to the Hut Corporal. On Tuesday night 15 Dec. 42, I gave this list to Cpl. Savigny and he checked the beds, I stayed with him while this was being done and saw Pte. Robertson was not in his bed.
I got up at 0630 hours on Wednesday 16 Dec. 42, and Pte. Robertson was not in his bed at that time.

Question by the accused: Q.1. "Where were you at 2200 hours Tuesday 15 Dec, 42."

A.1. "I was in the hut"

A. Parrault

D-128545 Parrault A., Pte.

3rd Witness for the Prosecution M-40909 Sgt. Formos G., having been duly sworn states:
"I am Sgt. in charge of No. 2 Company orderly room and as such receive the Company parade states.
On the morning of Wednesday 16 Dec. 42, Cpl. Savigny came to me at the Orderly room with a slip setting out the absence of Pte. Robertson and Pte. O'Brian. I had the usual check made to see if these men were on fatigues or otherwise on duty but they were still marked absent.
Later Cpl. Savigny brought in another slip setting out thatthe two a/m soldiers had returned and from this I caused a charge sheet to be made up."

The accused did not wish to cross-examine the witness at this time.

G. Formos

M-40909 Formos G., Sgt.

4th Witness for the Prosecution D-43331 Sgt. Gordon R.N., having been duly sworn stated:-
"I am working in the Orderly room of No. 2 Company at No. 1 C.O.R.U. On the morning of Thursday 17 Dec. 42, I acted as Orderly Sgt. for the Company Orderly Room and as such was present when Pte. Robertson was brought before Capt. McColm the Company Commander.
At that time the accused stated that although his bed had not been slept in he had been on the 0000 hours parade on the morning of 16 Dec. 42.

The accused did not wish to cross-examine the witness at this time.

R.N. Gordon

D-43331 Gordon R.N., Sgt.

The accused having been duly cautioned in accordance with R.P. 4 (E).

"Reserved his Defence"

Certified that R.P. 4 (C) (D) (E) (F) and (G) have been complied with.

Taken down by me in the presence and hearing of the accused this 16th day of December, 1942, at Bordon, Hants.

R. G. Burrows Lt.

R. G. Burrows

I desire a defending Officer.

J. A. Robertson

Robertson, J.A.

93 J

REGIMENTAL DOCUMENTS

H.Q. FILE No. .....

NAME Lyman ROBERTSON, J.S. ..... REGIMENTAL No. .....

UNIT OF ENLISTMENT ..... RANK .....

	CONTENTS	NON-EFFECTIVE BY
	COMBINED DECLARATION FORM OR ATTESTATION AND MEDICAL HISTORY (M.F.M.1 & 1A) OR (M.F.M.2 & 2A)	DEATH
	SERVICE AND CASUALTY FORM (M.F.M.4 & 4A) (A.F.B.103)	DATE
	PARTICULARS OF FAMILY (M.F.M.5)	CAUSE
	FIELD CONDUCT SHEET (M.F.M.6) (A.F.B.122)	AUTHORITY
	CERTIFICATE OF SERVICE (M.F.M.8) COPY OF, OR DISCHARGE CERTIFICATE (M.F.M.7) COPY OF	
	FORM OF WILL (M.F.M.10 OR M.F.M.10A)	
	DENTAL HISTORY SHEET	DISCHARGE
	MEDICAL REPORT OR CASE HISTORY SHEET	DATE
	MEDICAL EXAMINATION ON LEAVING THE SERVICE	REASON
	TRANSFER CLOTHING STATEMENT	AUTHORITY
	LAST PAY CERTIFICATE (M.F.D.930A)	
	PROCEEDINGS ON DISCHARGE	
	PROCEEDINGS COURT OF ENQUIRY	DESERTION
	DECLARATIONS COURT OF ENQUIRY	DATE
	PAY SHEETS	AUTHORITY
	CARDS	
	SUNDRY	

M.F.W.2589
40/P & S/1115

93J

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 9 day of June, 1942.

Whereas it appears to me, the undersigned, an officer in Command of Canadian Corps Artillery, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint :—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reasons, namely :—]

PROCEEDINGS REVIEWED.

John Costance - Capt
Community officer
14 Jul 42

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	H. C. Shephard	No. 63 Cdn Gen Tpt Coy, RCASC

Members.

Rank.	Name.	Regiment.
Capt	J. H. C. Clarry	Corps Tpts Pet Coy RCASC
Lieut	G. J. Johanson	Corps Tps Amn Coy RCASC

*Signed H. N. Brownfield
(H.C.N. Brownfield) Brigadier
Commanding C.C.R.A. 1 Cdn Corps.
Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B 33265 Sigmn Robertson J.S 1 Cdn Corps Signals	1st Charge Sec 15 (1)	Guilty	Guilty	
	2nd Charge Sec 24 (2)	Guilty	Guilty	
			To undergo detention for a period of ninety days (90)	Confirmed (H.C.N. Brownfield) Brigadier C.C.R.A. 1 Cdn Corps
			To be dismissed from His Majesty's Service	
			To be imprisoned with hard labour for a period of ninety days (90)	
			To be dismissed from His Majesty's Service	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) H.C.N. Brownfield Brigadier (Signed) W Shepard Major
Commanding C.C.R.A. 1 Cdn Corps *Convening Officer (e)* *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 16th day of June 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~
~~*(4. The officers under instruction)~~

were duly sworn.

* Omit if not applicable.

Signed this 16th day of June 1942.

W Shepard Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 25th day of June 1942.

H.C.N. Brownfield
(H. C. N. Brownfield) Brigadier
~~C.C.R.A.~~ - 1 Cdn Corps.
Confirming Officer.

Promulgated and extracts taken in the case of B33265 (SIGMN) ROBERTSON J.S

(a) (Dated) 29th June 1942 (Signed) [illegible] LIEUT-COL
COMMANDING
H.C.C.S. TRAINING WING,
NO. 1 CDN. SIGS. REIN. UNIT.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W.C. 47782/1937 .35 M. 5/41 KJL/526/42 Gp. 698.3

CHARGE SHEET

The accused - B-33265 Sigmn Robertson, J.S.
1 Cdn Corps Signals,
Canadian Army, Overseas,

is charged with -

First Charge
A.A. 15 (1)

When on active service, absenting himself without leave, in that he, in the field, absented himself without leave from 1700 hrs on 17 Jan 42 until surrendering himself to the Military Police at Nottingham at about 1200 hrs 28 Jan 42, thereby incurring expenses of apprehension of £4.16.9½.

Second Charge
A.A. 24 (2)

Losing by neglect his equipment, clothing, and regimental necessaries in that he, in the field, on or about 31 Jan 42 was deficient of the following articles: -

1 Cap Badge	1.1½d	1 Brushes Shoe Blacking	0.6d
1 Comb Hair	0.1½d	1 Oil Bottle	0.7d
1 Fork Table	0.3½d	1 Pullthrough	0.2d
1 Knife Table	0.7½d	1 Tin Mess	2.1½d
1 Spoon Table	0.3½d	1 Shirt Flannel	7.1½d
1 Strap Web Supporting.	0.5d		

to the value of .13/4½ (as provided by CAORO 1398)

(A.E. Wrinch) Lt-Col.,
Commanding, 1 Cdn Corps Signals.

THE IN FIELD
2 JUN 42

ON ACTIVE SERVICE

CANADIAN LEGION

WAR SERVICES

June 16th 194

B.33265. Robertson, J.S. Pte.

The M/n private has been medically examined and found fit to undergo court martial.

A.R. Bazin
Capt
B.C.A.M.C.

(E)

[illegible]

PLEASE USE BOTH SIDES

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field

on the 16th day of June 1942 by order of

Brigadier H. O. N. Brownfield

Commanding Canadian ~~Royal~~ Corps Artillery

dated the 9th day of June 1942

President.

Major H. G. Shepard 63 Cdn Gen Tpt Coy RCASC

Members.

Capt J. H. C. Clary Corps Tps Pet Coy RCASC

Lieut G. J. Johanson Corps Tps Amn Coy RCASC

~~, Judge Advocate.~~

Trial of*

B 33265 Signmr Robertson J. S.

1 Cdn Corps Signals

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ is not available to serve owing to

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court,

Prosecutor,† Capt P. R. Sayard 1 Cdn Corps Sigs

Counsel‡ or defending officer† Lieut G. A. Cooper 1 Cdn Corps Sigs

At 100 ¢ o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings. Z

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q1263 Wt.W4020/6/967 40,000 mts. 2/40 K. & H. Ltd. G602/11. Form A 9/35

CHARGE SHEET

The accused - B-33265 Sigmn Robertson, J.S.
1 Cdn Corps Signals,
Canadian Army, Overseas,

is charged with -

First Charge
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A.A. 24 (2)

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1	Cap Badge	1.1½d	1	Brushes Shoe Blacking	0.6d
1	Comb Hair	0.1½d	1	Oil Bottle	0.7d
1	Fork Table	0.3½d	1	Pullthrough	0.2d
1	Knife Table	0.7½d	1	Tin Mess	2.1½d
1	Spoon Table	0.3½d	1	Shirt Flannel	7.1½d
1	Strap Web Supporting.	0.5d			

to the value of .13/4½ (as provided by CAORO 1398)

(A.E. Wrinch) Lt-Col.,
Commanding, 1 Cdn Corps Signals.

THE IN FIELD

2 JUN 42

To be tried by Field General Court Martial

9 Jun42

(H.C.N. Brownfield) Brigadier
C.C.R.A. - 1 Cdn Corps

ON ACTIVE SERVICE

CANADIAN LEGION

WAR SERVICES

June 16th 194

B.33265. Robertson, J.S. Pte.

The m/n private has been medically examined and found fit to undergo court martial

A.R. Bazin
Capt
B.C.A.M.C.

(E)

[illegible] major

PLEASE USE BOTH SIDES

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialed by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field on the 16th day of June 1942 by order of Brigadier H. O. M. Brownfield Commanding Canadian ~~Royal~~ Corps Artillery dated the 9th day of June 1942

President.

Major H. S. Shepard 63 Cdn Gen Tpt Coy RCASC

Members.

Capt J. H. C. Clancy Corps Tps Pet Coy RCASC

Lieut G. J. Johanson Corps Tps Amn Coy RCASC

, Judge Advocate.

Trial of*

B 33265 Signmn Robertson J. S.
1 Cdn Corps Signals

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court,

Prosecutor,† Capt P. R. Layard 1 Cdn Corps Sigs

Counsel‡ or defending officer† Lieut G. A. Cooper 1 Cdn Corps Sigs

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings. Z

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q[illegible] [illegible] 2/43 K. & H. [illegible] [illegible]

B

and.

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly~~ sworn.

Charge-Sheet.

Instructions. If the accused has elected to be tried under Army Act, sec. 18 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty *Answer.*

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to both charges, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty.

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charges to which he has pleaded "Guilty" are read to him again.]

The accused B 33265 Signm Robertson J. S. is found guilty of both charges

†The summary (or abstract) of evidence is read, marked signed by the President, and attached to the proceedings.

I

Question to the accused.

Do you wish to make any statement in mitigation of punishment?

yes

Answer.

The accused in mitigation of punishment ~~says~~ :—

~~as~~ hands in a written statement, which is read, marked H L, signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character ?

Question to the accused.

Answer.

No.

Evidence as to character

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

— Capt. P. R. Layard 1 Edn. Corps Sigs is duly sworn —

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked (J) (K), signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* yes

Cross-examined by the accused.

no.

[illegible]

Question to the accused.

Do you wish to address the Court? *Answer.* no

The Court is closed for the consideration of the sentence.

(I)

SUMMARY OF EVIDENCE

in the case of B33265 Sigmn. Robertson J.S. 1 Cdn Corps Signals.

Charged with Absence without leave from 1700 hrs 17 Jan 42 until surrendering to the Military Police at NOTTINGHAM at about 1200 hrs 28 Jan 42. (AA 15-1)

FIRST WITNESS FOR PROSECUTION having been duly sworn states:-- D21048 L/Sgt. Birss T.W.

"I am D21048 L/Sgt. Birss T.W. of No. 1 Operating Section 1 Cdn Corps Signals. At 1700 hrs 17 Jan 42 while despatching the Signal Office Shift from 1 Operating Section billets to Cdn Corps H.Q. Signal Office I found that B33265 Sigmn. Robertson J.S., although warned for duty was not present. Sigmn. Robertson was accordingly marked as absent without leave. I did not see Sigmn. Robertson again until I was ordered to proceed to NOTTINGHAM in the company of D21036 Sigmn. Phillips A. to escort him back to the Unit which I so did.

I was duty N.C.O. on the 17th and was responsible that all the Signal Office Shift were ready for duty. There is a duty roster on the blackboard in the Common room where is posted the names of personnel of the various shifts. Sigmn. Robertson's name appeared on that list which had been posted since the beginning of the week.

J.W. Birss

(D21048 T.W. Birss) L/Sgt.

THE ACCUSED DECLINED TO CROSS-EXAMINE THIS WITNESS.

THE FOLLOWING CERTIFICATES WERE THEN READ TO THE ACCUSED AND ARE ATTACHED HERETO.

(a) Certificate of expenses incurred in the apprehension of the accused.

(b) Certificate of surrender under A.A. 163 (1)(j) of Army Act.

THE ACCUSED HAD NO QUESTIONS REGARDING THE ABOVE.

THE ACCUSED HAVING BEEN WARNED AS PER R.P. 4 (e) DECLINED TO MAKE ANY STATEMENT.

The above evidence was taken before me in the presence of the accused this 11th day of May 1942 in accordance with Rules of Proceedure 4 (c) (d) (e) & (f).

L.R. Douglas

(L.R. Douglas) Lieut.

IN THE FIELD
11 MAY 42.

SUMMARY OF EVIDENCE

in the case of B33265 Sigmn. Robertson J. S.

Charged under Section 24(2) Losing by neglect his equipment as follows:--

1 Cap Badge	1/1½
1 Brushes shoe Blacking	0/6
1 Comb Hair	0/1½
1 Fork	0/3½
1 Knife Table	0/7½
1 Spoon	0/3½
1 Shirt Flannel	7/1½
1 Straps Web Supporting	0/5
1 Oil Bottle	0/7
1 Pull through	0/2
1 Tin mess	2/1½
Total	13/4½

(Priced at 75% of original value as per C.A.R.O. 1398)

FIRST WITNESS FOR PROSECUTION having been duly sworn states:-- B33098 C.Q.M.S. Worsfold S.

"I am B33098 C.Q.M.S. Worsfold S., C.Q.M.S. of #2 Coy 1 Cdn Corps Signals. On 31 Jan 42 I checked the kit of B33265 Sigmn. Robertson J.S. and found his kit deficient the following items as per Form B253 signed by myself and initialed by Sigmn. Robertson.

1 Cap Badge	1/1½
1 Brushes Shoe Blacking	0/6
1 Comb Hair	0/1½
1 Fork	0/3½
1 Knife Table	0/7½
1 Spoon	0/3½
1 Shirt Flannel	7/1½
1 Straps Web Supporting	0/5
1 Oil Bottle	0/7
1 Pull through	0/2
1 Tin mess	2/1½
Total	13/4½

The above prices are 75% of original value as per C.A.R.O. 1398.

S. Worsfold

(S. Worsfold) C.Q.M.S.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS. THE ACCUSED HAVING BEEN CAUTIONED AS PER R.P. 4 (e) DECLINED TO MAKE ANY STATEMENT.

The above evidence was taken before me in the presence of the accused this 11th day of May 1942 in accordance with Rules of Proceedure 4 (c) (d) (e) & (f).

L.R. Douglas Lieut.

(L.R. Douglas) Lieut.

IN THE FIELD
11 MAY 42.

DUPLICATE.

Certificate in accordance with Army Act, Sect. 163 (1)(ii). (and A.C.I. 1730 of 1941).

I certify that No. B.33265. Rank Sgm.

Name ROBERTSON, J.S. Unit 2nd Coy., Royal Canadian Corps of Signals.

was arrested at Nottingham. at 1200 hrs. 28/1/42 date.

and at the time of his arrest he was wearing military uniform.

Signature of Provost Marshal, A.P.M. D.A.P.M., or other Officer into whose custody the above-named person was taken on arrest.

Cooper Lieut

Place Nottingham.

Date 28/2/42.

GARRISON ADJUTANT PRISON

(G) [illegible] Shepard Major

(F) Shepherd corps

Certificate of expenses incurred in the apprehension of B-33265 Sigmn. Robertson, J.S., as required by C.A.R.O. 1359, para. 3.

I hereby certify that on 29 Jan 42, in the field, I issued to D-21048 L/Sgt. Birss, T.W. and D-21036 Sigmn. Phillips, A., 1 Cdn Corps Signals, two duty warrants (No. 92/876778, two third class return tickets from Three Bridges, Sussex to Nottingham, Derbyshire, and No. 92/876779, third class single ticket, Nottingham to Three Bridges for Sigmn. Robertson). On inquiry to the Southern Railway I was informed that the cost at Military rates for two return tickets was 47/2 and the single ticket 12/10.

Signed in the field, this third day of February, 1942.

P Layard

(P.R. Layard) Lieut.
Adjutant, 1 Cdn Corps Signals.

I hereby certify that we incurred the following expenses while acting as escort returning Sigmn. Robertson to his Unit from Nottingham:-

D-21048 L/Sgt. Birss, T.

1-1/2 days @ 2.75 per day - $4.12
(Travelling Allowance - Art 90, P. & A. Regs)

D-21036 Sigmn. Phillips, A.

1-1/2 days @ 2.75 per day - $4.12
(Travelling Allowance - Art 90, P. & A. Regs)

Signed in the field, this 4th day of February, 1942.

T.W. Birss

.....
(D-21048 L/Sgt. Birss, T.)

Statement in reference to the charge and in Mitigation
o f Punishment in the trial of B33249 Sigmn Robertson, J.S.

Sir.

I wish to make to the court a few statements in reference to the charge and in mitigation of punishment. Although I have known the accused only since May 8th, as his Section Officer, I have x, at his request investigated fairly deeply into his personal problems, and for my own satisfaction, sounded out several men and NCO's of his Unit in order to get a broad view of his conduct, and difficulties.

The whole story is so complicated that I can touch on only a few salient features. One fact however prevades every aspect of the story, namely that Signalman Robertson was x before the time xxxx of his going AWL and has been since, up to the present time under a strain of worry brought about by his social relations, financial relations, and by the personalities involved, which is sufficient to crack down the judgement and the will xx of a strong man. It is not our position here to judge his social conduct, and we do not know how strongly he may have been lead astray, but we must consider the force of these circumstances upon his actions, and the weight of his worries upon his reason. Further we must consider the effects upon the personalities involved, of a severe punishment and of a loss of xxx.pay.

Signalman R. is a married man with a wife in Canada, and a baby daughter whom he has never seen. To be harshly brief, his troubles involve a second woman in London England. Robertson has been AWL more than once to go to London to see this xxxxx girl. Previously to the final time for which he is now on charge, his absences without leave were at first short, and taken more or less deliberately at the cost of minor punishment. Later as he became more involved, they were longer, and punishments more severe. It was before the last time of AWL however that he learned from this girl that as a result of their xxxxxxx relations she was going to have a baby. In her distress, the girl sent R. urgent phone calls and letters requesting him to come to London. At the same time he got letters from home stating that his mother was not well and was greatly worried over his relations with this London girl. Robertson's record being none to good and always held against him, he was unable to get many passes to go to London. Money was required, and more would be required to pay doctor and hospital bills. The girl who lives with her sister and mother is not well off. Furthermore she was forced to stop work on account of her condition. At this time, Robertson was in a state of great mental stress. Ordinarily, the fact that ax man comes from a good family does not have much bearing on a case of AWL, but in this case YES for it added to his worry to think of the shock to his mother, and it magnified the gravity of his plight in his own mind. I submit reference of character written fo r and as directed by Capt Otter, Senior Officer Canadian YMCA Overseas xxxxxx by W.J.D. Macdiarmid in the absence of the formen due to sickness. Capt Otter was quite thoroughly familiar with the case.

(read the reference)

(H)

Signalman Ris father was a minister and well known to Capt Banfster the Padre of Canadian Corps Signals.

Through Capt Otter of the YMCA Robertson received money from home, which he kept for a considerable length of tiem. F nally he went AWL with the intention of giving xxxx the money to the girl. Actually in his distress, he merely wandered about London, in a xxxxxx depressed state, and ended up in Nottingham where he surrendered himself.

This was away back on the 28th of January when he gave himself up. In the four months which follow his record has been clean. This four months has been spent in and out of hospitals for a bewildering number of ailments, and in open and close arrest. Once he was sent to a Neurological hospital, for advice as well as examination, and for a time he was in the 1 Cdn Signals Reinforcement Unit From these various hospitals and from the Reinforcement Unit he was granted several passes, after explaining his troubles to the Officers concerned. The fact that he got the passes bears witness to the fact that other officers appreciated the stress under which he laboured and the value to be gained by giving him this priviledge.

Naturally I can not submit proof of all these statements without going into ax great details, and I merely submit them as the story as I know it having a bearing on the charge.

I have talked to Capt Bannister our Padre, who is acquainted with the case, and who knew Robertsons Father, I have talked to Mr Macdiarmid. I have had a private interview with the Sister of the girl, and I have it dierctly from her that she and her sister and mother are in financial difficulties even now before the baby has been borh, and that they expect Robertson to hel p. Already the sister is behind some twenty pounds xx with her income tax.

What ever the punishment awarded to Robertson today, he is left with these problems to solve. I would urge however that the punishment be made as light as possible from a financial point of view, nad from a human and enlightened point of view.

Finally I wish to make a recommendation that Signalman Robertson be transferred to 1 Cdn Signals Holding Unit as an instructor in wireless and operating. While at the holding unit he was used as such and so far as I know proved [illegible]

I certify that the above is correct to the best of my knowledge

J A Cooper Capt

To Col. A. E. Wrinch
1 Cars Corps Signals

Dear Art

The attached medical history of B 33262 Sigmn. Robertson J S who is being posted to you this week. It may assist you in understanding the man's past. I understand that there is a charge pending against him when he arrives.

Please forward the documents to Records to go with his documents when you have finished with them.

[illegible]

5 May 42.

A & D# C-1470-42

M.O

HOSPITAL DISCHARGE NOTIFICATION

To: Officer Commanding #1 R.C.C.S. Reinf Unit (Unit)
(#1 Cdn Corps Sigs, R.C.C.S.) transferred

It is notified for your information that the undermentioned was ~~discharged~~ from No.14 Cdn General Hospital R.C.A.M.C., ~~Stationed~~ (Admitted 28 Mar 1942) on 16th April, 1942. He has been instructed to go on the first Unit Sick Parade after reporting to your Unit and to hand this form to the Medical Officer.

Name ROBERTSON, J.S. No. B-33265 Rank Sgmn

Diagnosis Impetigo. M.O. i/c Case F.M. Bourne (Capt)

Precis Case History

Patient was sent back from his unit with impetigo and scabies, and also with a recommandation that he be put under Neurological observation.
He was seen at No.1 Neurological Hosp., but referred here 28th March, 1942 for treatment of his skin condition.
The latter has now been cleared.
The request for a Neurological opinion from his Unit is prompted by his long crime sheet and is certainly warranted by his history, Which includes Neurological investigation in Civilian life.
History as obtained here is forwarded with him.

Recommendation

Transferred to No.1 Cdn Neurological Hospital, R.C.A.M.C.

Major, RCAMC

For: Colonel,
Officer Commanding

No.14 Cdn General Hospital,
R.C.A.M.C.

Distribution:

One Copy to Unit of patient
" " to Officer i/c Records, Acton.
" " to A.M.D.2., C.M.H.Q.
" " for File.

This form is also to be used when a patient is transferred from a hospital to No. 1 Convalescent Depot R.C.A.M.C.

AMD2...1
40/F & 5/2
3M...12-9-40

AMD 77/42

HOSPITAL DISCHARGE NOTIFICATION

To: Officer Commanding ..... #1 N.C.A.G. ..... (Unit)

It is notified for your information that the undermentioned was discharged from ..... #1 Neurological

General Hospital R.C.A.M.C., Stationed ..... C.A. (O.S.) ..... on

..... 29 April 42 ..... 194 . He has been instructed to go on the first Unit

Sick Parade after reporting to your Unit and to hand this form to the Medical Officer.

Name ..... [illegible] ..... No. ..... [illegible] ..... Rank ..... [illegible] .....

Diagnosis ..... [illegible] ..... M.O. i/c Case ..... [illegible] ..... RCAMC

Precis Case History

Nothing further can be done to help this man in his present predicament. His lack of judgment has been explained to him, but with what result is problematical. A letter will be written to the personnel Selection Board (copy to unit) re. transfer.

He is being returned to the Holding Unit, and it is suggested that he be given a day or two of leave from the holding unit to give him a chance to try and straighten out some of his tangled affairs, as he is returning to a charge in his unit.

Recommendation

RECORDS OFFICE
No. 1 CDN.
30 APR 1942
SIGS.
REIN. UNIT

Discharged to: Unit.

[signature] ..... Registrar.

for Lt. Colonel,
Officer Commanding
#1 Neurological Hospital.
RCAMC C.A. (O.S.)

L G Brayley
#1 RCCA RH
29.4.42
LCMCTWL Brayley

1 CDN. MED. CENTRE
29 APR 1942
R. C. A. M. C.

Distribution

One copy to Unit of patient.
" " to Officer i/c Records, Acton
" " to A.M.D.2., C.M.H.Q.
" " for File.

This form is also to be used when a patient is transferred from a hospital to No. 1 Convalescent Depot R.C.A.M.C.

30-4-42
Capt.
Medical Officer
1 Cdn. Signals Holding Unit

AMD2—1
40/P & S/2

A&D #577/42

#1 Cdn. Neurological C.A. (O.S.)

No. R-33265 Rank-Sgmn. Name- ROBERTSON J.S. Age- 27

Unit #1 RCCS N.U.

Date of admiss. 16 April 42 Date of discharge-

Diagnosis- N.A.D. (Psychiatric)

Complaint- Referred for investigation.

Past History--(1) Mastoidectomy--age 13.

(2) Infected leg--age 17, followed by varicose veins, for which he had injections at the time and later, and ligature in 1939, and both legs were ligatured in 1942 at #15 Gen. Hosp.

(3) Mumps --1942.

Family History-Mother alive--age 66-varicose veins and losing her vision, "Brights Disease". Father dead-53--(1930)--"heart failure". Siblings-1 dead in infancy.

No family history of Tbc., Cancer, or allergic disease. Says that his mother has been hospitalized several times for "nervous breakdown". Insanity in one grand uncle, with alcoholism. No history of jail records or fits.

Personal History--Born Toronto Ont. 1915, of Scotch Canadian parentage.

School-Completed High School ate age 19, and one year later took one year of Shaws Business Course. In elementary school was an average student, mixed well and played games. In 4th year high school he "got in with a faster crowd" started going out nights and playing hockey from school. Just managed to pass the grade, and similary in his fifth year of high school . On leaving high school he went, by his own desire to Manlins Military College, Syracuse, a training school for West Point and universities. Passed the academic subjects, but had Walter Hagen's son for a roo-mate as a result of which "discipline didn't mean a thing"--just like a one year vacation?

Returned to Toronto and went to Shaw Business College, passed out with a good grade, then went to work in Toronto General Trusts for 1yrs. saw no future in it, started a Commercial Radio Course, one year, passed ou with a good grade, 1938.

Work-First job was with the Toronto General Trust, did well there, but saw no future in it and quit at the end of a year and a half, with a good recommendation. Following the radio course there was an interval of about 2-3 monthsduring which time he looked around for a suitable opening, rejected by the Air Force because of his legs,and finally enlisted in the Signals in Sept. 39.

States that when he enlisted he was well qualified for wireless and liked it very well. Given the choice of line work or wireless work in the corps, he chose wireless, but was put on line work, and kept on it ever since. He finds the work very monotonous, being mor interested in wireless, and has not had enough work to keep him busy--estimated one week of real work in two months. He has repratedly tried to transfer to wireless work, but unsuccessfully. Has always been credited as being a operator, and recently worked as an instructor in the holding unit.

Crime sheet was clear for the first 6 months in the army. Since then he has had 10 crimes, all A.W.L., from 1 -11 days. States that every time he has gone A.W.L. he has asked for leave first and only went A.W.L. when it has not been granted. He has had only 2 or 3 A.W.L.'s in the last year. He has done detention twice--10 and 28 days. At present he is possibly facing a court-martial for his last A.W.L.

Marital-Married 1939, age 24, to a girl age 21, that he had known for 12yrs., against the wishes of both familys. Wife alive and well,. one child age 2. Married three months before coming overseas, and has never seen his child. States that his marriage was a happy one, but that one year ago he met an English girl with whom he went steadily, and about three months ago she notified him that she was pregnant. States that he does not intend to doge his responsibilities, and the situation, therefor, has given him a lot of worry lately.

Social-Has always been a good mixer--sometimes "too good"--has smoked moderately, heavier recently. Drinks very little, and none of his A.W.L.'s have been associated with alcohol. His hobby is radio, had an amateur station that he built in Canada.

Family-Mother has not been well for last 12 yrs., since his father died. She has had Brights Disease and failing vision. Prior to that she was i n good health, and was not nervous. His father was an Ed- M.D. and D.D. taught treology at McGill, and when he died he was the General Secretary of the Board of Religious Education of Canada. He was one of the founders of the United Church. (Rev. Dr. J.C. Robertson).

Pt. states that his father was his ideal, and left nothing to be desired as a parent. His home life was a very happy one up till the time of his father's death 12 yrs. ago, since then it has been somewhat strained as he has been"on the loose" more than his mother liked, although his ties with his mother still hold.

Functional His tory

Eyes--some blurring at the movies recently.

ENT--neg. Resp-neg. Cv.-neg. G.I.- neg. G.U.-neg.G.C. 1936-otherwise negative. CNS--In the last month has had severe right sided headaches, assoc. with "little coloured spots" before his eyes, and followed by vomiting. Usually start in the evening and keep him awake all night.

Skin-neg. (Impetigo and scabis 2 weeks ago).

On examination this patient seemed of higher than average in intelligence. His general appearance, motor activity, speech and thought content appeared normal. He has an open and frank personality, and has good insight.

Routing physical examination revealed dental carus x2. The head and neck thorax and abdomen were otherwise negative. There is a fresh healed linear scar in back injuial area (venous ligation) with satisfactory thrombosis in the superfical veins of both legs, extending down to the lower third of the leg on each side. There is moderate tenderness overlying the thrombosed veins in the region of the knee. Physical examination otherwise negative.

Neurological exam -was negative.

Summary: --A 27 year old man whose hereditry and environmental background are fair. At about high school age he showed tendencies of an agressive and impulsive nature, but was otherwise stable, and successfully completed his education in business college and wireless work.

Since enlistment his ambitions and capacity for work have consistantly met frustration, mainly due to the experiences of the service. For the first six months in the army his crime sheet remained blank, but since that time he had had ten A.W.L.s unassociated with alcohol or with other crimes. It is noted that in the last year he has had only two A.W.L.s

At the present time he has the additional worry of an impending illegitimate offspring, and he has been for some time deeply dissatisfied with his work. His insight is good, and he serves the blame for his present situation on no one but himself.

He also presents, as minor complaints, a history of recent headaches that are fairly typical of migraine, and some vague visual disturbances and both of these would appear to have been precipated in part at least, by his recent worries.

It is my impression that this patient's present situation is the result of maladjustment in an aggressive and impulsive personality. I believe that he can be used to good purpose, but that is not likely in his present position station. He is anxious to transfer to the merchant navy, as a wireless operator, for which he is best suited by training, and it is my impression that nothing short of this or equivalent transfer will settle this problem.

Capt. C.E. Gould

Impression- (1) Mental Instability. (2). Migraine.

17 April 42 -Agree with above. This man's agressive determined, and restless characteristics are mild and within an average range, so that I do not think he should be designated as psychopathic. Transfer and careful rehabilitation are very necessary. Suggest that he be interviewed by a member of the Portsmouth Selection Board re. details of possible transfer.

J.C.R.

By Col. H.M. Hyland
20/4/42 -Pt. states that the real reason he went A.W.L. so much was to see the English girl. Although the work he was doing was not his preference yet he denies that it upset him in any way. He now regrets that he has such a bad crime sheet but at the times he went A.W.L. it seemed worth while to do so. He has been in a vicious circle recently because he can't get leave having been A.W.L., so goes A.W.L. etc. The past record does not indicate any anticsicial tendencies and I agree we cannot diagnoise a psychotic personality. His judgement is rather poor however and he is impulsive in his behaviour. It will certainly be helpful if a transfer can be arranged but his previous record is likely to interfere. He apparantly went over the head of an officer in his unit in requesting transfer and has made his position more difficult as a consequence.

I think we will have to send him back to face punishment as N.A.D. (psychiatric).

Lt. Col.H.M. Hyland.

20 April 42--In the summer of 1935 for a period of about two months, while acting as M.O. at Y.M.C.A. camp in Ontario I knew this man, who who was of the boys at the camp acting as a Junior leader. As I remember him he was a pleasant, impulsive, unreliable sort of youth, who had a good deal of ability in many directions, but never utilized it because of lack of ambition or fixity of interest. He frequently go into mild "scrapes" due largely to his impulsiveness, and had at least one episode of the same as a military A.W.L. He was a good worker when available but seemed completely unreliable unless under mor or less continuous-surviliance, as he might disappear to pursue some idea or pleasure of his own on completion of the immediate taid rather than follow the routine , ~~rather than~~ of the camp which the other boys did. To my knowledge he was never harmful or a bad influence in any way other than by his unreliability, impetuousness,and thoughtless independence.

A.C.R. M'Conigle Capt.

Final Note:
27 April 42-Nothing further can be done here to help this man in his present predicament. His lack of judgment has been explained to him, but with what result is problematical. A letter will be written to the Personnel Selection Board (Copy to Unit) re. transfer.

He is being returned to the Holding Unit, and it is suggested that he be given a day or two of leave from the Holding Unit to give him a chance to try and straighten out some of his tangled affairs, as he is returning to a charge in his unit.

Final Diagnosis --N.A.D. (Psychiatric)

C.E.R. Gould

Capt. C.E.R. Gould
#1 Neurological Hospital
RCAMC C.A. (O.S.)

Army Form 13212.
R.N. Form M45.
R.A.F. Form 3212.
(Books of 100.)

SENDER'S No. _____ LAB. REPORT No. 2283

REQUEST FOR LABORATORY EXAMINATION.

Name and Initials (in block capitals) Robertson J Official No. & Rank / Rating Sgmn B 33265 Age

Ship or Unit RCoR Hospital _____ Ward _____

To Officer i/c Laboratory at _____

Accompanying Specimen of Urine

Examination required:— Routine

Points requiring special investigation:— _____

Diagnosis—Short statement of case, including treatment and progress, and references to any previous laboratory reports:—

Station _____

Date and hour of collection 17.4.42 Capt Gould M.O. i/c Case

LABORATORY REPORT.

yellow
acid
sp 1027
albumin } negative
sugar }
micro }

LABORATORY
17 APR 1942
No. 1 NEURO HOSP.
R.C.A.M.C. CA(AF)

Date Specimen received _____ E Zeller Bte for O. i/c Laboratory.

Date Report despatched _____ Station _____

In R.A.F. cases a synopsis of results must be entered on Forms 41 and 39.

(5/790) Wt. 53566/1167. 6,000 Pads. 1/41. B. & S. Ltd. 51-4471. Form 13212.

Army Form 13212.
R.N. Form M45.
R.A.F. Form 3212.
(Books of 100.)

SENDER'S No. ..... LAB. REPORT No. .....

REQUEST FOR LABORATORY EXAMINATION.

Name and Initials (in block capitals) Robertson C.R. Official No. & Rank / Rating PH 1352281 Age .....

Ship or Unit Lorne Scots Hospital ..... Ward .....

To Officer i/c Laboratory at .....

Accompanying Specimen of Urine.

Examination required:—

Points requiring special investigation:—

Diagnosis—Short statement of case, including treatment and progress, and references to any previous laboratory reports:—

Station .....

Date and hour of collection ..... Capt Gould M.O. i/c Case

LABORATORY REPORT.

yellow
acid.
sg. 1026
alb sug - neg
excess mucus.

LABORATORY
19 APR 1942
No. 1 NEURO HOSP.
R.C.A.M.C. CA(AF)

Date Specimen received ..... [signature] O. i/c Laboratory.

Date Report despatched ..... Station .....

In R.A.F. cases a synopsis of results must be entered on Forms 41 and 39.

(5/190) Wt. 55565/1187. 4,000 Pads. 1/41. B. & S. Ltd. 51-8473. Form 13212

No. B-33268 Name Robertson, J. S. | Sqn., Battery, or Company | Corps 1 Cdn Corps Sig Regt | Date of Enlistment | 21Sep39. | G.C. Badges | | Service or Proficiency Pay | M.F.M. 6 A.F.B. 1321 Sept. 1939 (Issue) H.Q. 1777-46-13

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cause of desertion here	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17Jul41	Sigmn.		A.A.15(1)WOAS was AWL from 2359 hrs 17 Jul 41 to 0700 hrs 18 Jul 41. (Absent 7 hrs 1 min.)	Cpl Abrey	Forf. 5 dys pay.FR&I.149(1)(e).	21Jul41.	W.L.Laurie Lt-Col.	Forf. 1 dys pay FR&I.149(1)(a) "D.A.E."
Field	13Sep41	"		(AA15(1)WOAS AWL from 2359 hrs 31 Aug 41 till 0610 hrs 1 Sep 41. (Absent 6 hrs 11 min).	L/Sgt Birss Sgt Saunders	Forf. 1 dys py FR&I.149(1)(a) Forf. 7 dys py FR&I.149(1)(e)	5Sep41.	Lt-Col Laurie.	
Field	5Sep41	"		(A.A.40)WOAS Cond to pred etc., failed to awaken duty NCO at reveille.	L/Cpl Powell	5 dys CB	6Sep41	Capt Brenneman.	
Field	18Sep41	"		A.A.15(1)AWL from 1140 hrs 18 Sep 41 till 0830 hrs 3 Oct 41(Absent 14 days 20 hrs 50 min)(inclose arrest 5 days)	Cpl Halliday Sgt Saunders	10 dys F.P. For. 10 dys py.149(1)(b) Forf. 5 dys py FR&I.149(1)(e)	6 Oct 41	W.L. Laurie Lt-Col.	Forf. 15 dys pay. FR&I.149 (1)(a).
Field	18Sep41	"		AA15(1)AWL from 0800 to 0845 hrs 18 Sep 41,(absent 45 min).	L/Cpl Powell				

Place	Date of Offence 1941	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20Oct	Sigmn		WOAS was AWL from 1230 hrs 20 Oct 41 to 1300 hrs 3 Nov 41.(Absent 14 dys 30 min.)A.A.15(1).	CSM Best. Sgt Byron	28 dys F.P.	6 Nov41	W.L. Laurie Lt-Col.	28 dys pay.FR&I 149(1)(b).15 dys py FR&I.149(1)(a). 2 dys py.FR&I.149(1)(c).
Field	20Oct	41 "		WOAS.Cond to the pred, etc. failed to report to 1 Cdn Corps Sigs after being released from Corps Reception Camp. (A.A.40).	CSM Best	Concurrent with above.	6 Nov 41.	W.L. Laurie Lt-Col.	

CERTIFIED TRUE COPY OF M.F.M. 6.

P R Layard Capt

(A.E. Winch) Lt-Col.,
Commanding, 1 Cdn Corps Signals.

K

No. B-33265 Name Robertson, J.S. Sqn., Battery, or Company 1 Cdn Corps Sigs Corps R.C. Sigs CASF Date of enlistment 21Sep39 G.C. Badges Service or Proficiency Pay

M.F.M. 6 A.F.B. 122. MOBS. 4-37 (1703) H.Q. 1772-48-18

Date of last entry in Company Conduct Sheet 7 Jan 1940 No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. "F.F.Fulton" Character Capt.

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot, Eng.	1940 28Mar	Sigmn		Sheet destroyed 21 Mar 40..."F.F. Fulton" Capt. Conduct to the prejudice etc., in that he absented himself from ablution fatigue. (A.A.40)	Cpl Malcolm	3 dys CB	29Mar40	Lt G.C. Leech.	"F.F.F."
Aldershot	10May	"		Neglected to sew respirator.AA40	Sgt Milligan	7 dys CB	11May40	J.T.North Capt.	"F.F.F."
Field	28Jun	"		Neglected to scrape earth pins. (A.A.40)	L/Cpl Powell	Fined 1 dys pay.FR&I.	1Jul40	CO 1st Cdn Div Sigs.	"F.F.F."
Field	15Jul	"		AWL from 1845 hrs 13 Jul 40 to 1100 hrs 15 Jul 40. Absent 1 day 16 hrs 15 min. (AASec 15(1)).	Sgt Saunders	Forf. 2 dys pay FR&I 149 1(a).Forf. 4 days pay AA46	16Jul40	Capt J.T. North.	"F.F.F."
Field	24Aug	"		AWL 10 hrs. Forfeits 4 dys pay	(A.A.15-1)Sgt Schultz.	A.A.15-1 Forf. 4 dys pay.	27Aug40	W.P. Shirreff, Capt.	"FFF"

(P.T.O.)

Place	Date of 1940	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if order dispensing with trial	By whom awarded	Remarks
Field	28Aug	Sigmn		AWL 15 hrs. Forf. 4 dys pay.AA15-1.	L/Cpl Boivin.	Forf. 4 dys pay(AA15-1)	27Aug40	W.F.Shirreff,Capt.	"F.F.F."
Field	3Aug	"		AWL 2 dys 2 hrs. Forf. 7 dys pay & 3 dys pay, total 10 dys pay. A.A.15(1).	Sgt Grant	Forf. 10 days pay.	5 Aug 40	Capt W.F. Shirreff.	"F.F.F."
Field	2Sep	"		AWL from 1500 hrs 2 Sep 40 to 1730 hrs 2 Sep 40. (A.A.15-1)	Sgt Grant	3 dys C.B.	3 Sep 40	Capt J.T. North.	"F.F.F."
Field	30Nov	"		WOAS was AWL from 2230 hrs 30 Nov 40 until 0700 hrs 1 Dec 40. Absent 8 hrs 30 min. A.A. 15(1).	L/Cpl Boivin.	7 dys CB. Forf. 1 dys pay FR&I 149 (1)(a).	3 Dec 40	W.W.Lockhart Major.	"W.D.W."
Field	11Dec	"		WOAS was AWL from 2230 hrs 11 Dec 40 until 0630 hrs 12 Dec 40. Absent 8 hrs. A.A.15(1).	L/Cpl Boivin	7 dys CB. Forf. 1 dys pay. FR&I 149 (1)(a).	12Dec40	"J.E.Cummings" Capt.	"W.D.W."
Field	4Jul41	"		A.A.15(1) WOAS AWL from 2359 hrs 4 Jul 41.(Absent 3 dys, 6 hrs 31 min.(A.A.15(1))	L/Cpl Cooper	7 dys CB.	10Jul41	F.A.Burgess Major.	Forf. 4 dys pay FR&I.149(1)(a).

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-33265	Sigman	Robertson, J.S.	1 Cdn Corps Signals.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishments being given in the most serious offence in each entry, and in any recognized special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Absent without leave	Seven times	Thirteen times. PRL
For Conduct to the pred.	Twice times	Five times. PRL
For	times	times. PRL
For	times	times. PRL
For	times	times. PRL

Number of ~~instances of~~ good conduct or distinguished service. PRL (1)

~~or~~

~~The recommendation to the~~ Non-commissioned rank ~~accused~~: PRL

2. The accused has not been previously convicted, ~~as~~ PRL

~~otherwise than by a court martial or by a civil court, of any offence under section 47 of the~~ PRL

~~Army Act, and no such punishment as is mentioned in that section has been awarded to him~~ PRL

3. The accused is not under sentence at the present time, ~~from the date of the present conviction~~ PRL

~~to the~~ ~~day of~~ PRL

4. The accused has been in confinement, awaiting trial on the present charges, ~~as follows~~ PRL

~~from~~ 19 days in military custody, making a total of 19 days, PRL

of which One days were spent in hospital. PRL

5. The present age of the accused according to his ~~record of service~~ attestation paper, is 27 PRL

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 21 Sep 39 PRL

~~On the accused's last conviction by court martial or civil court, or last award for an offence~~ PRL

~~specified in paragraph 2 above, he was sentenced to~~ PRL

~~He has forfeited~~ ~~days of his service for the purpose of~~ PRL

~~for the purpose of~~ PRL

~~He has forfeited~~ ~~days of his service for the purpose of~~ PRL

PRL

~~He has forfeited~~ ~~days of his service for the purpose of~~ PRL

PRL

~~He has forfeited~~ ~~days of his service for the purpose of~~ PRL

(*)16648) WL.30240/602 75,000 12/40 A.& E.W.,Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-33265 Rank Sigmn Name Robertson, J.S. of 1 Cdn Corps Signals. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this second day of June 1942.

P.R. Layard
(P.R. Layard) Capt.,
Adjutant, 1 Cdn Corps Signals.

[illegible]

[illegible]

[illegible]

[illegible]

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

Thursday, June 5, 1942.

Convening Officer
re Court Martial
for Signalman J. S. Robertson, B. 33265
No. 2 Operating Section
1st Canadian Corps Signals

Sir:

My representative at the coming Court Martial will be Lieut. G. A. Cooper, No. 2 Operating Section, 1st Can Corps Signals

I Remain, Sir, your obedient servant

Sgnm J. S. Robertson. (B.33265)

From the above, the accused does not wish an officer to be detailed for his defense.

(A.E. Wrinch) Lt-Col.,
Commanding, 1 Can Corps Signals.

56-147.

bfw. Robertson, L. C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M100919 Cfn Leslie Charles ROBERTSON 2 Cdn Adv B Wksp RC ME att 1 Cdn Disciplinary Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 403 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for a period of two years.

(Sgd) ..... Judge-Advocate, if any. 31 Mar 45 Date awarded. (Sgd) " George B H Cox " Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: CONFIRMED

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) GSNG

(1. AA 57A. Delete if not used.)

Date 2 Apr 45 (Sgd) " G S N Gostling " (G S N Gostling) Brig Commanding 2 CDN BASE RFT GP Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
M100919 Cfn Robetson L C	19 Apr 45	" J Medhurst " Lt Col Comdg, 1 Cdn Disciplinary Centre

CR 24
1 - last
d/5 Apr 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5G-144

FIELD GENERAL COURT-MARTIAL

CPADS (To take the place of AFAM 40/F & H/1000 (6144)) 4/38B

Convened by Order of Lt Col J Runcie MC A/Comd 2 CBRG dated 30 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M100919	Cfn	Leslie Charles	ROBERTSON	2 Cdn Adv B Wksp RCEME att 1 Cdn Disciplinary Centre

CERTIFIED TRUE COPY

D. J. A.,
Cdn. Sec, 2 Can. HQ. 9

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date) 31 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 29/59

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed. GBC

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (if) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3) GBC

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1510 hours trial commences. GBC

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ GBC

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused:~~ Do you object to ..... as interpreter? Ans .....
~~The Interpreter is sworn.(1)~~ Do you object to ..... as shorthand writer? Ans .....
~~The shorthand writer is sworn.(1)~~ GBC

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 31, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and ~~Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc: GBC

President	Major	G B H Cox	CAC att 1 Cdn Disciplinary Centre
Member	Major	A E Lefroy	Seaforth Highrs att 1 Cdn Dis Centre
Member	Captain	J D Pollock	Can Fus att 1 Cdn Disc Centre
Judge-Advocate			
Prosecutor	Captain	J H Labrie	R de Mais att 1 Cdn Dis Centre
Defending Offr	Captain	G B Cartmel	R de Mais att 1 Cdn Dis Centre

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused M100919 Cfn Leslie Charles ROBERTSON ~~stood~~ arraignment make(s) (no) plea GBC
..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. GBC

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B GBC

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG VOL 5 P 152

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 78-79, 80, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans ..... (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 335 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182. RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Exhibit "P" CBC
MFB 246

MEDICAL OFFICER'S CERTIFICATE (KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined M 100919 (No.)

Cfm. Robertson L C (Rank) (Name) and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station 1 Cdn Disciplinary Centre

Date 31 Mar 45

"A A Toma" Capt (Sgd)
Medical Officer
1 Cdn Disciplinary Centre
Unit

GBC

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptnt, A/rank or A/apptnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptnt, A/R or A/Apptnt.	Full Christian Names.	Surname.	Unit.
M-100919	Cfn		Leslie Charles	ROBERTSON	2 Cdn Adv B Wksp RCEME att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 20 Mar 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	*(Must be named. RP 106.)*	(Unit.)
Major	G B H COX	CAC att 1 Cdn Disciplinary Centre

MEMBERS.

(Rank.)	*(Named or detailed. RP 106.)*	(Unit.)
Major	A E LEFROY	Seaforth Highrs att 1 Cdn Disciplinary Centre
Capt	J D POLLOCK	Can Pus att 1 Cdn Disciplinary Centre

WAITING MEMBER.

(Rank.)	*(Named or detailed, if any. RP 106.)*	(Unit.)

~~XXXXXXXXXXXXXXX~~

(Rank.)	*(Must be named, if any. RP 106.)*	(Unit.)

On Active Service in the Fd

in BELGIUM *(Country.)*

"J Runcie" *(Signed personally. RP 105 fn 2.)* Lt Col *(Rank.)*

(J Runcie)

Dat: 30 Mar 45 A/Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA S) 40-7 & 8/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused M100919 Cdn Leslie Charles ROBERTSON, 2 Cdn Adv B Wksp RCEME, attached to 1 Cdn Disciplinary Centre, a soldier of the Cdn Army overseas, is charged with:-

FIRST CHARGE - WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE
Sec 15 (1)
Army Act

in that he

In the Field, absented himself without leave from 2300 hrs 2 Jan 45 until apprehended at ANTWERP, Belgium at 1200 hrs 16 Mar 45. (Total absence: 72 days 13 hrs)

In the Field
28 Mar 45

" A O Hood "

(A O Hood) Lt Col
Commanding
1 Cdn Disc Centre

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

IN THE FIELD
30 Mar 45

" J RUNCIE "

(G S N GOSTLING) Brigadier
A/COMD
2 Cdn Base Rft Gp

Summary of Evidence in the case of M-100919 Cfn ROBERTSON L C , 2 Cdn Adv B Wksp RCEME, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadain Army Overseas.

Charge - Absence without leave.

By directions of the CO the evidence is taken on oath.

The following documentsare read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 2 dated 14 Jan 45.

Exhibit "B" - Certificate of apprehension dated 16 Mar 45.

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you sa y or any evidence you give will be taken down in writing and may be given in evidence.

A.. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

"Maurice Rousseau" Capt
(Maurice Rousseau) Capt
Officer detailed to take Summary of Evidence.

Dated in the Field
28 Mar 45.

Exhibit "A"
"M Rousseau" Capt

EXTRACTS FROM: UNIT...2 CDN ADV B WKSP RCEME

Part II Order No.....2.....dated 14 JAN 45

ABSENT WITHOUT LEAVE

AWL from 2300 hrs 2 JAN 45
M100919 Cfn ROBERTSON L C

"G E Marin" Lt

23 Mar 45

Exhibit "B" "M Roussea u" Capt

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT SECTION 108(1)(i)

I certify that No. M-100919 Rank Cfn Name Robertson I C

of RCEME HQ 2 Cdn Adv Base WDsap unit was arrested at Antwerp

(place) at 1200 hrs on 16 March 1945

(date). He was dressed in uniform xxxxxxxxxxxxxxxx

Date 16th March 45 Signature of Provost Marshal, APM, or other officer into whose custody the S/n person was taken on arrest.

Signature & rank "W T Mallard" CMDG

Unit or appointment 244 HQ PROVOST COY CMP

NOTES

1. This certificate must be signed personally by the officer concerned.
2. In no circumstances may it be signed by one officer for another or by anyone not holding corresponding rank.
3. In no circumstances should the place of apprehension be described as 'in the Field'. The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

Exhibit B GBC

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Court-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
M-100919	Cfn	ROBERTSON I. C.	2 Cdn Ady A Wksp RCEME

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For ...15(1).AWL.....1..... ....2.. times

For .... times

For .... times

For .... times

2. Previous convictions of the Accused by a court martial or a civil court are not set out in the Schedule overleaf.

3.* The accused at the present time is under sentence for .....NIL.....

beginning on the .N/A..... day of ....N/A....

4. The accused has been awaiting trial on the present charges for Nil. days in civil custody; and for 14.. days in military custody, making a total of ..... days of which .Nil.. days were spent in hosp.

5. The present age of the accused is 20 years 9 mos c

6. The date of his attestation is 17 Apr 42.

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of # CVSM & CLASP

State the military decorations (if any) held by accused.

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date -

	Date of Promotion
In the substantive rank of	//////////
In the war substantive rank of	//////////
In the acting rank of	//////////

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

* Strike out if not applicable

Army Form B.296 (War)

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended

No record of convictions by Court-Martial on MFM 6

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ....31st..... day of March 45

"Stagg" Capt Admin Offr.

1 Cdn Disciplinary Centre

Exhibit C GBC

MFM 6
(AFB 122)
10/PAM/150 (3429)

No M100919 Name Robertson LC | Sqn, Battery, or Company | Corps RCEME | Date of enlistment 17Apr42 | GC Badges | Service or Proficiency Pay |

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc "A W Dunbar" Capt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Hamilton	24-1-43	Pte		AWL from 2245 hrs 24-1-43 to 0955 hrs 28-1-43(3 dys 11 hrs 10 mins)	Documentary	Admonished	28-1-43	Major J S Gzowski	(3 dys pay FR&I 149(1)(a)
Field	16-5-44	Pte		AA 15(1) AWL 1 hrs 15 mins	Sgt McDougall	3 days forf pay	18-5-44	Lt Col J H Fox	3 dys pay FR&I 149(1)(a)

Certified to be a true extract from the regimental books and documents in my custody
"R S C Williams" Lieut
Officer IC Records X
Cdn Sec 2 Ech HQ 21 A Gp
23 Mar 45

Certified true copy of MFM 6 in my possession

"Stagg" Capt

(PTO)

Exhibit "D " GBC

Plea in Mitigation in the case of M 100919 Cfn ROBERTSON L C

The accused is 28 years old and married.
He joined up in Canada approx June 1942 and came overseas,
to England in July 1943.
He is a blacksmith in the RCEME
He came to France with his unit towards the end of June
1944 and served with them continuously until 2 Jan 45.
In the latter part of November when his unit was at
Fort 4 outside Antwerp the accused one night got
involved in a fight with two other Cfn from
his own unit and some other soldiers. They had all
been drinking. The CSM from the Wksps entered
and placed the three of them under arrest. The next
day the CSM had the three of them paraded before
him with their hats off in front of the remainder of
the unit and reprimanded them in fron t ot the
other men and ordered them to be confined to barracks for
three days. Since this time the accused has always
been in trouble with the CSM and eventually went absent.
The accused wishes at the conclusion of his punishment
to drop his trades pay and go to the infantry or if he
is needed as a tradesman and this is not possible he
wishes to go to any other workshop but not 2 Cdn Adv B Wksp.
As the accused has a practically clean crime sheet and this
is his first serious offence of any kind and as further he went a-
absent from a base unit and not from the line I ask that the
court see fit to award a mimimum sentence.

31 Mar 45

"G B Cartmel" Capt RCA
Defending Officer.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M-100919 Cfn Leslie Charles ROBERTSON 2 Cdn Adv B Wksp RCEME att 1 Cdn Disciplinary Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15 (1)	Guilty	Guilty.	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for a period of two years

(Sgd) ... Judge-Advocate, if any. 31 Mar 45 Date awarded. (Sgd) George B H Cox Lt-Col President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 2 APR 45 (Sgd) W S N Goestling (W S N Goestling) Brig

Commanding 2 CDN BASE RFT GP

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
M100919 CFN Robertson LC.	10 APR 45	J McCurdy Lt-Col. Comdg, 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CoR 24 Book 1/54 dtd 45

RECORDED AT CMHQ IN AB 190 5C-144

RECEIVED 15 MAY 1945 D.J.A. CANADA C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CP486 (To Imp of AFA51) 40/P.W.S./1608 (4251) 4/38B

Convened by Order of Lt-Col J Runcie, MC A/Comd 2 CBRG dated 30 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-100919	Cfn	Leslie Charles	ROBERTSON	2 Cdn Adv B Wksp RCEME att 1 Cdn Disciplinary Centre

RECORDS REVIEWED

J Runcie Lt-Col 17 May 45

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 31 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1510 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ... as interpreter? Ans ...

~~The Interpreter is sworn.~~(1) ~~Do you object to ... as shorthand writer? Ans ...~~ ~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G B H COX	CAC att 1 Cdn Disciplinary Centre
Member	Major	A E Lefroy	Lincoln & Welland Regt att 1 Cdn Dis Centre
Member	Captain	J D Pollock	Can Fus att 1 Cdn Dis Centre
Judge-Advocate			
Prosecutor	Captain	J H Labrie	R de Maisonneuve att 1 Cdn Dis Centre
Defending Offr	Captain	G B Cartmel	RCA att 1 Cdn Dis Centre

Questions by President: Is the Prosecutor a lawyer? Ans Nil Is the Defending Offr a lawyer? Ans Nil (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused M-100919 Cfn Leslie Charles ROBERTSON before arraignment make(s) (no) (at) plea ... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vol 5 P 152

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(B) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 92(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. ..... Do you intend to call witnesses on your behalf?
Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(B). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6). RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 351 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes, in mitigation of punishment I would like to say that I am married and have a family to support.
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, M-100919 Cfn Leslie Charles ROBERTSON, 2 Cdn Adv B WKSP RCEME, attached to 1 Cdn Disciplinary Centre, a soldier of the Cdn Army Overseas is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 2300 hrs 2 Jan 45 until apprehended at ANTWERP, Belgium at 1200 hrs 16 Mar 45.

(Total Absence: 72 days 13 hrs)

(A O Hood) Lt col
Commanding
1 Cdn Disc Centre

In the Field
21 Mar 45

To be tried by Field General Court-Martial

(G S N Gestling) Brig
Comd
2 Cdn Base Rft Gp

In the Field
23 Mar 45

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA2)
40/P&S/1697 (2563)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-100919	Cfn		Leslie Charles	ROBERTSON	2 Cdn Adv B Wksp RCEME att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 30 Mar 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial ~~; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major G B H COX CAC att 1 Cdn Disciplinary Centre
(Rank.) (Must be named. RP 106.) (Unit.)

MEMBERS.

Major A E LEFROY Seaforth Highrs att 1 Cdn Disciplinary Centre

Capt J D POLLOCK Can Fus att 1 Cdn Disciplinary Centre
(Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in BELGIUM (Country.) (Signed personally. RP 105 (p 2.) (J Runcie) Lt-Col (Rank.)

Date 30 Mar 45 Accommanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Ex Libit "F"

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined M 100919 (No.)

Cfm. Robertson L. C. and in my opinion he is
(Rank) (Name)

fit to undergo trial by Court-Martial.

Station 1 Cdn Disciplinary Centre

[signature] Capt (Sgd)
(Medical Officer)

Date 31 Mar/45

Unit 1 Cdn Disciplinary Centre

Exhibit A - GRS

Summary of Evidence in the case of M-100919 Cfn ROBERTSON L C, 2 Cdn Adv B Wksp RCEME, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave.

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 2 dated 14 Jan 45.

Exhibit "B" - Certificate of apprehension dated 16 Mar 45.

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused doesnot call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C) (D)(E) (F) and (G) have been complied with.

(Maurice Rousseau) Capt

Officer detailed to take Summary of Evidence.

Dated in the Field
28 Mar 45.

Exhibit 'A'
M. Rousseau Capt

PART II ORDER EXTRACT FORM

TO:

99/20/

19

EXTRACTS FROM: UNIT 2 CDN ADV B WKSP RCEME

Part II Order No. 2 dated 14 JAN 45

ABSENT WITHOUT LEAVE

AWL from 2300 hrs 2 JAN 45
M100919 Cfn ROBERTSON L C

Certified to be a true extract from the regimental books and documents in my custody.

D.E. Mann Lt.

Officer IC Records
Cdn. Sec. 2 Ech, HQ. 21 A Gp.

23 March 45

The following documents are { attached. Please acknowledge receipt on attached duplicate. / required. Please forward same.

RECORDS
RECEIVED
MAR 24 1945
MAR 2 1945

Originating Clerk's Initials

for
Officer in Charge
Canadian Section, GHQ, 2nd Echelon

170 SCH. 6

Exhibit 'B'
M. Rousseau Capt

CERTIFICATE OF ARREST IN ACCORDANCE WITH A.A. SEC.183 (1)(jj)

I certify that No. M 100919 Rank CFN. Name ROBERTSON L.C. of (Unit) R.C.E.M.E. No 2 ADV BASE W/SHOPS was arrested at ANTWERP (place) at 12:00 hrs on 16th MARCH 1945 (date). He was dressed in uniform/~~[illegible]~~.

Date 16th March 45

H S Mallina

Signature of Provost Marshal, ADM or other officer into whose custody the above-named person was taken on arrest.

(Rank)
(Unit or Appointment)

Notes:

1. This certificate MUST be signed personally concerned.
2. In no circumstances may it be signed by one officer "for" another, or by anyone who does not hold commissioned rank.
3. In no circumstances should the place of apprehension be described as "in the Field". The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

Certified true copy of Extract from Pt II Order No 2 dated 14 Jan 45	"A"
Certificate of apprehension dated 16 Mar 45	"B"

I, M-100919 Cfn ROBERTSON LC
acknowledge having received one copy of the Summary of Evidence and one copy of the Charge sheet, free of charge on 28 Mar 45

Robertson LC

M-100919 Cfn ROBERTSON LC

Exhibit B Gre

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M-100191	Cfn	ROBERTSON LC	2 Cdn Adv B Wksp RCEME

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For 15 (1) AWL 1 2 times.

For ____ times.

For ____ times.

For ____ times.

Date of first entry in Field Conduct Sheet 28 Jan 43

Date of last entry in Field Conduct Sheet 18 May 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for NIL beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for NO days in civil custody; and for 14 ~~[illegible]~~ days in military custody, *i.e.*, NO days in open arrest, 14 days in close arrest; of which NO days were spent in hospital.

5. The present age of the accused is 28 years 9 months old

6. The date of his attestation ~~calling up for military service~~ is 17 Apr 42

7. The service which the accused is allowed to reckon is ____

‡State the military decorations (if any) held by accused.

8. The accused is in possession of‡ CVSM & CLASP

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

		Date of Promotion.
In the substantive rank of	/////	
In the war substantive rank of	/////	
In the acting rank of	/////	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27833) Wt.24939/3404 24,000 7/44 A.& E.W.Ltd. Gp.698 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		No record of convictions by Court-Martial on MFM 6		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 31st day of March 45

[illegible] Offr.
[illegible] Centre

Exhibit C

MFM 6
(AFB 122)
40/P&S/126 (3488)

No M 100919 Name ROBERTSON, L. C. Sqn, Battery, or Company Corps RCAMC Date of enlistment 17 APR 42 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 1 Signature OC Company, etc A. W. DUNBAR CAPT Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
HAMILTON	24.1.43	PTE		AWL from 22.45 HRS 24.1.43 TO 09.55 HRS 28.1.43 (3 days 11 HRS 10 MINS)	DOCUMENTARY	ADMONISHED	28.1.43	MAJOR J. S. GZOWSKI	3 days pay FR&I 149(1)(a)
FIELD	16.5.44	PTE		AA 15(1) AWL 1 HR 15 MIN	Sjt McDougall	3 days forf of PAY	18.5.44	Lt-Col J. H. FOX	2 days pay FR&I 149(1)(a)

Certified to be a true extract from the regimental books and documents in my custody.
"R.S.C. Williams, LIEUT" 23 MAR 45
Officer 1c Records x
Cdn Sec 2 Ech HQ 21 A Gp.

Certified true copy of MFM 6 in my possession

[signature]
Capt

(PTO)

Exhibit D Gde

Plea in mitigation in the case of M100919 Cfn ROBERTSON, L.C.

The accused is 28 years old and married.

He joined up in Canada approx June 1942 and came overseas to England in July 1943.

He is a blacksmith in the RCEME

He came to France with his unit towards the end of June 1944 and served with them continuously until 2 Jan 45

In the latter part of November when his unit was at Fort 4 outside Antwerp the accused one night got involved in a fight with ~~an~~ two other Cfn from his own unit and some other soldiers. They had all been drinking. The CSM from the Wksps entered and placed the three of them under arrest. The next day the CSM had the three of them paraded before him with their hats off in front of the remainder of ~~the [illegible] of~~ the unit and reprimanded them in front of the other men and ordered them to be confined to Barracks for three days. Since this time the accused has always been in trouble with the CSM and eventually went absent.

The accused wishes at the conclusion of his punishment to drop his trades pay and go to the infantry or if he is needed as a tradesman and this is not possible he wishes to go to any other workshop but not 2 Chn Adv Base Wksp.

As the accused has ~~[illegible]~~ a practically clean crime sheet and this is his first serious offence of any kind and as further he went absent from a base unit and not from the line I ask that the court see fit to award a minimum sentence.

31 Mar 45

G.D. Cantwell Capt RCA
Defending Officer

GG-152

PIE ROBERTSON L.H.

C.5691 Pte. Lorne Henry ROBERTSON 38
Hast & P.E.R. 5 C.I.R.U.
GG-152

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 13th day of JUNE, 19 43

Whereas it appears to me, the undersigned, an officer in Command of "G" GROUP CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[~~I am unable to appoint:—~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

for the following reasons, namely :—]

Proceedings Approved
for 28 Jun 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	A.S. Pettapiece C.H. of O.	H.Q., C.R.U.

Members.

Rank.	Name.	Regiment.
A Captain from		1 C.I.R.U.
A Lieutenant from		1 C.I.R.U.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J. Stewart Lough Brigadier
Commanding "G" Gp Cdn Rft Units C.A.(O).
Convening Officer.

Arthur S. Pettapiece
Major

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C.5691 Pte. Lorne Henry ROBERTSON HAST. & P.E.R. 5 C.I.R.U.	First Charge A.A. Sec. 15 (1)	Not Guilty	Not Guilty	
	SEE CHARGE SHEET ATTACHED	14 Jun 43 Arthur S. Pettyquis Major		

"I have satisfied myself that none of the Officers detailed as members of this Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charge (charges) before this Court Martial"

Arthur S. Pettyquis Major
President of the Court

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No.

Answer (*to be recorded on separate sheet if necessary*) :—

(*Signed*) J. B. Stewart Lough Brigadier (*Signed*) Arthur S. Pettyquis Major

Commanding "G" Gp Cdn Rft Units *Convening Officer* (*e*) C.A.(O). *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14th day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 14th day of June 1943.

Arthur S. Pettyquis Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this day of 19 ,

Confirming Officer.

Promulgated and extracts taken in the case of C-5691 Pte. ROBERTSON, Lorne Henry Hast. & P.E.R. 5 C.I.R.U.

(*a*) (Dated) D.O.97 d/21 June 43 17 June 43 (Signed) J. Pearson Col. Comd. 5 Cdn. Inf. Rft. Unit

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W.L. 47782/1927 35 M. 5/41 KJL/5265(2) Gp. 698/3

CHARGE SHEET

The accused No. C-5691 Private ROBERTSON, Lorne Henry, Hastings and Prince Edward Regiment, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas, is charged with;

FIRST CHARGE
ARMY ACT
Sec. 15 (1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

did absent himself without leave from Tournay Barracks, Farnborough, Hants, from 2350 hours, 11th day of May 1943, until arrested by the Military Police, at London, at 1900 hours, on the 9th day of June 1943.

Total Absence 28 Days 19 Hours 1 Minute.

S. Pearson
(A.S. Pearson), Colonel,
Commander,
5 Cdn Inf Reinf Unit

In the Field,
12th day of June,
1943.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

J.R. Stewart Lough
(J.R. Stewart Lough) Brigadier
Commander "G" Group
13 Jun 43. CANADIAN REINFORCEMENT UNITS

Arthur S. Pettapiece
Major
President

MEDICAL CERTIFICATE

This is to certify that I have this date examined C.5601 Private ROBERTSON, Lorne Henry, (Hastings and Prince Edward Regiment), 5 Canadian Infantry Reinforcement Unit, and found him FIT to undergo Trial by Field General Court Martial.

S. W. Kingsley Capt.
R.C.A.M.C.
5 Can. Inf. Reinf. Unit.

Dated this 14th
day of June, 1943.

Arthur S. Pettapiece, Major

GGP Form 10

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD AT Barrow Bonaire, Alfredt ON THE 14th DAY OF June 43

TRIAL OF:- No. C 5691 Pte. L. H. Robertson Unit 5 C1R4

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Capt. J. C. McBride (Unit) 5 C1R4

Defending Officer:- (Name) Lt. H. H. Seafield (Unit) 5 C1R4

At hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 - No. The President, members ~~and judge advocate (if any)~~ are duly sworn. AHP

The following constitute the Court:

President Maj. A. S. Pettapiece .....(Unit) H.C.C.R.4.

Members Capt. A. M. Mills .....(Unit) 1 C1R4

Lt. H. C. Grant .....(Unit) 1 C1R4

Lt. H. A. Hay, 1 C1R4, Lt. R. F. Marshall, 1 C1R4.

The officers under instruction are duly sworn. AHP

~~Q2 Do you object to.....acting as Shorthand Writer? A2 -~~ AHP

~~The shorthand writer is duly sworn.~~ AHP

~~The accused pleading Guilty to the charges in the above~~ AHP mentioned charge sheet, R.P. 35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court is closed to consider its finding. Court is re-opened.

Name.....(Unit).....sworn, produces AFB 296 and MFM 6 and upon being questioned by the Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3 (To accused) - Do you wish to make any statement in mitigation of punishment? A3 -

Q4 Do you wish to give evidence yourself or to call any witnesses as to character? A4 -

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED ~~FOR THE CONSIDERATION OF THE SENTENCE~~ AHP

The accused is duly arraigned

The accused pleads "Not Guilty" to the charge.

The Prosecutor proceeds with its case.

The Prosecutor produces a certified copy of a declaration of a Court of Inquiry and it is marked Exhibit A

He also produces a certificate of apprehension of the accused marked Exhibit B.

The defence consents to both of these exhibits going in without further proof.

The prosecution is closed
R.P. 40(B) is complied with.
The accused, having been duly sworn, states.

I applied for a compassionate leave pass on 7th May and I got it. My wife went in the hospital on 8th May. She came out of hospital the same day but on Sunday she got more. My pass expired at 2359 hrs the same day. I couldn't leave her and I sent a priority telegram on Monday morning asking for an extension for 48 hours. (Exhibit C) I did not get a reply, but I discovered since that the extension was granted. The doctor said that my wife could not be left alone. I wrote a letter to the C.O. of "A" Wing explaining my absence Exhibit D. I got no reply to this letter. The doctor gave me a letter to enable

me to draw rations. Then I wrote another letter to the C.O. of "A" Wing enclosing a doctor's certificate Exhibit "E" I got no reply to my second letter. Then a police Sgt came later and picked me up. Just before he called, my wife fainted and I came down stairs and gave my self up. I brought back another certificate from Dr. Shaw and a letter from the Ford Officer. I gave them to the Provost Sgt. at Kaiseth St. but I've not seen them since. The civilian doctor told me that his certificate would explain my absence. ~~I also gave~~ Exhibits "C", "D" & "F" were found in the Bn Orderly Room by my defending officer.

Cross-examination

5 people live in the same house as I do. I did not make any attempt to return when my additional extension had expired. It would take about one hour to get to 5 C/R4 from where I live. I never intended to stay away without permission. When I did not hear from my C.O. I came to the conclusion that they were satisfied with my explanation for my absence.

Re-examination

The doctor said my wife could not be left alone. I could not get anyone to look after the home. I could not afford to get anyone. No 5 C/R4 knew what my address was and I was always available. I thought they were satisfied when I did not hear from them.

The Prosecutor makes a final address (attached hereto)

The Defending officer makes a closing address. (attached hereto.)

The Court is closed for consideration of finding

The Court is re-opened and the accused is pronounced "Not Guilty".

Arthur S. Pettapiece
Major

Exhibit A 4

RECORD of the Declaration of a Court of Inquiry assembled at Tournay Barracks 5. Cdn. Inf. Rft. Unit on the 5th day of June 19 43 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No. C5691 Pte Robertson,L.H. (Hast. PER)

5. Cdn. Inf. Rft. Unit

DECLARATION

The Court declare. The Court declare that C5691 Pte Robertson,L.H. (Hast. PER) illegally absented himself without leave from 5. Cdn. Inf. Rft. Unit at 2359hrs 11 May 1943 and that he was deficient and still is deficient the articles of kit as listed below in the value of £9.12.4 75% value.

ARTICLE	NO	100% value £. s. d.	75% value £. s. d.
Anklets,web	1	3. 5½	2. 7½
Blouses,B.D	1	1. 7. 8	1. 0. 9
Boots,ankle	1	1. 1. 6	16. 1½
Drawers,wool	2	10. 6	7.10½
Gloves,knit	1	2. 7½	2. 0
Jersey,Full.	1	6. 9	5. 1
Shirts,angola	2	18. 4	13. 9
Trousers,B.D.	1	1. 7.11	1. 0.11½
Vest,woollen	2	10. 2	7. 7½
Socks,woollen	2	3. 4	2. 6
Braces,prs	1	1. 3½	1. 0
Brasses,clean.	1	2	1½
Brushes,button	1	8	6
Brush,clothing	1	1. 1	10
Brush,hair	1	1. 1	10
Brush,shave	1	1. 4	1. 0
Trouser denim	1	11. 9	8.10
Blouse,denim	1	12. 9	9. 7
Belt waist	1	4. 4	3. 3
Braces,L&R	1	4. 3	3. 3
Brush,polish	1	9	7
Brush,tooth	1	4½	3
Comb,hair	1	2	1½
Fork,table	1	5	4
Holdall	1	9	7
Housewife	1	2. 3	1. 9
Knife,clasp	1	5. 2½	5.11
Knife table	1	9½	7
Razor,saftey	1	1.10½	1. 5
Shorts,gym	1	1.11	1. 5
Towels,hand	2	1.11	1. 5
Bag,ration	1	2	1½

Names of President and Members:

(carried forward)

Signature of Commanding Officer.....

Certified true copy.....

Signature of Officer having custody of original record.

Exhibit A(3)

RECORD of the Declaration of a Court of Inquiry assembled at

on the day of 19

for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No.

DECLARATION

The Court declare.

ARTICLE	NO	100% value £.	s.	d.	75% value £.	s.	d.
Nets, Helmet	1			8.			6.
Respirator, Complete	1.	1.	6.	8½	1.	0.	0.
Eyeshields, A.G.	1.		4.	8.	0.	3.	6.
Capes A.G.	1.		19.	10.		15.	0.
Outfit A.D.	1.			1½			1.
Haversack Resp.	1.		9.	7½		7.	2.
Spoons, Table	1.			4½			3.
Vests, Gymn	2.		3.	10.		2.	10½
Covers, Mess	1.			4½			3.
Ointment A.G.	2.		2.	4.		1.	9.
		£12/16/0			£9/12/4.		

Names of President and Members:
Signed at: 5 C. I. R. U.
Farnborough Hants this 5th
day of June 1943.

J P Cowans Capt
Capt. J. P. Cowans (PRESIDENT)
(R.H.C.)

R D Yuile Lieut
Lieut. R.D. Yuile (MEMBER)
(R.H.C.)

W L Graydon Lieut
Lieut. W.L. Graydon (MEMBER)
(Hast. & P.E.R.)

Signature of Commanding Officer..... [signature]

Certified true copy..... [signature]
Signature of Officer having custody of original record.

M F B 375
[illegible]

Exhibit "B"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr.42

I CERTIFY that No. C-5691 . . Rank . Pte. . . Name . Robertson, L.H. . . .

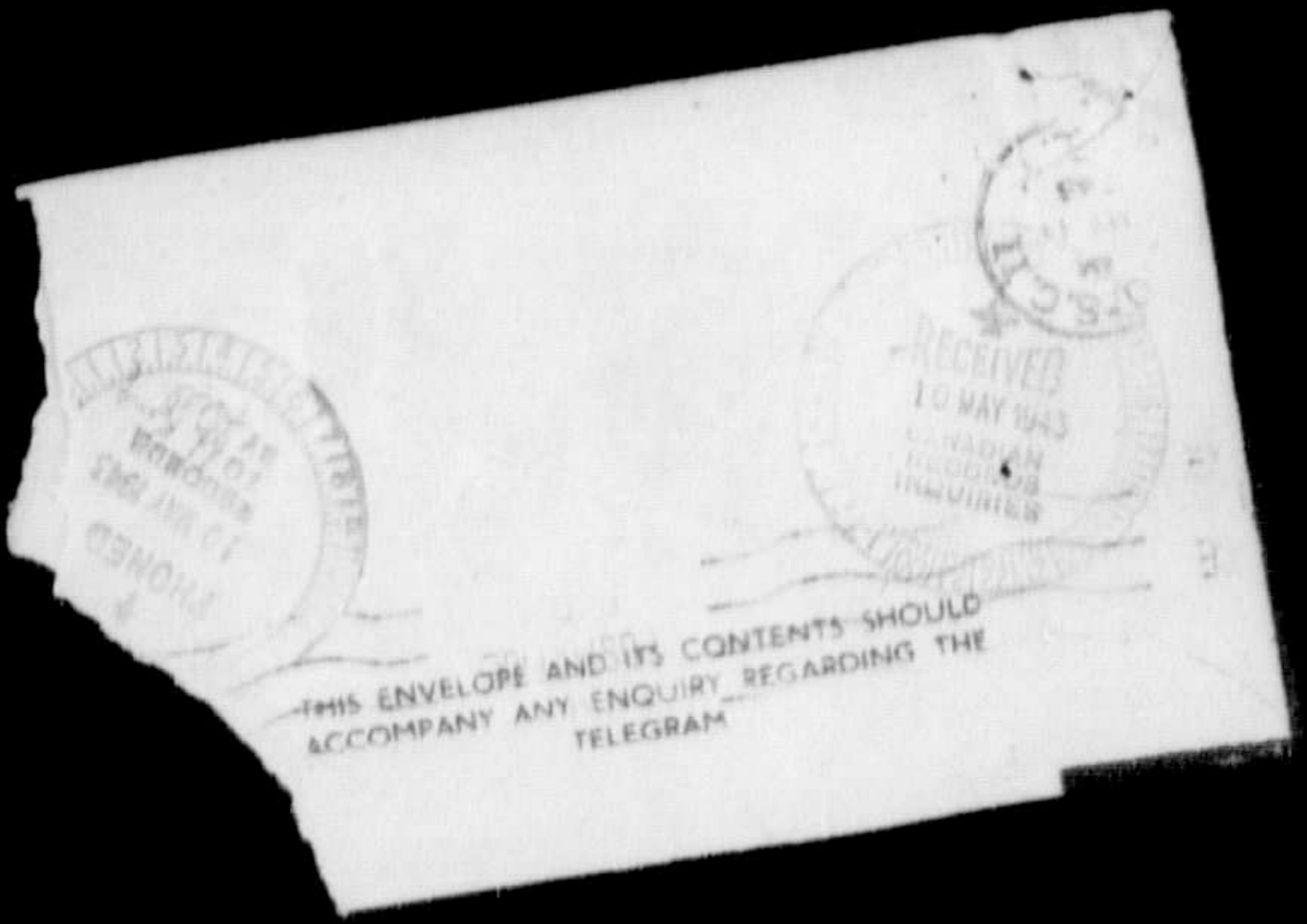
Unit No 5 C.I.R.U. (Hast. & P.E.) was arrested at . London . . . (place)

at .1900. . . (hour) on 9-June-43 . . (date) and that at the time of his arrest he was wearing (Military Uniform) or (~~[illegible]~~) Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

[signature] . . . . . Capt.
(W. Fern) D. A. P. M.,
London Area

PRIORITY

POST OFFICE TELEGRAM


RECEIVED
10 MAY 1943
CANADIAN
RECORDS
INQUIRIES
THIS ENVELOPE AND ITS CONTENTS SHOULD
ACCOMPANY ANY ENQUIRY REGARDING THE
TELEGRAM

No.

OFFICE STA

Charges to pay

d.

RECEIVED

9 AM

POST OFFICE

TELEGRAM

Prefix. Time handed in. Office of Origin and Service Instructions. Words.

25

To

From TRA

125 9.15 LAVENDERHILL 24

PRIORITY RP 9 D LT KING A WING 5 CIRU CANDIAN ARMY

ENGLAND CANRECORDS W 3

= WIFE VERY ILL PLEASE GRANT 48 HRS EXTENSION C 5691

PTE ROBERTSON LH

Approved, bring doctor's letter stating wife [illegible] ill. [illegible]

48 C 5691 5 5

For free repetition of doubtful words telephone "TELEGRAMS ENQUIRY" or call, with this form at office of delivery. Other enquiries should be accompanied by this form and, if possible, the envelope.

B or C
C

C5691. Pte Robertson. L. H
97 St Phillips St
Battersea S.W.8.

26.5.43

Dear Sir,

Trusting you received my last letter.

I am forwarding a certificate from my wife's doctor, (Dr Shaw. 112. Queenstown Rd. S.W.8.) which was given to me shortly after she became ill.

I am hoping that the doctor will give his consent for my return, during the next week. Dr Shaw has informed me that he will give me a certificate to produce for my Commanding Officer on my return

Yours faithfully [signature]
C5691. Pte Robertson. L.H.
Cmdt "E"

112, QUEENSTOWN ROAD,
BATTERSEA, S.W.8.

13/5/1943.

I hereby Certify

that Mrs M. Robinson

residing at 97 St. Philip Pl

is suffering from Post-operating Debility & Pelvic Inflammation

is confined to bed.

~~and is ..... able to follow ..... employment~~

(Signature) [signature]

[signature]



Officer Commanding,
"A" Wing
5 Cdn. Inf. Reinforcement Unit
Cdn. Army Overseas.

6-0 C5691 Pte L. Robertson
97. St Philips St
Battersea. S.W. 8.
5-4

Dear Sir,

This letter is to inform you, that at present my wife is confined to bed being very ill. The hospital & her Doctor have told me that she must have attention & at present I am the only one available. I have seen the doctor, & he has given me a certificate to give to my Commanding Officer when I return.

Yours Faithfully.

C5691. Pte Robertson. L.H.

AHL

Exhibit "D"





Officer Commanding

"A" Wing

No: 5 Cdn. Inf. Reinf: Unit

Cdn Army Overseas.

14 JUNE 43

Address By Lieut A.H. Scrafield made on behalf of Pte Robertson, Lorne Henry #C-5691 Hastings and Prince Edward Regiment, on the strength of #5 Cdn Inf Reinf Unit, a soldier of the Cdn Army Overseas, in connection with a charge laid against him for absenting himself without leave.

I would like to point out to the Court that during the 28 days of the accused's absence he made repeated attempts to get in touch with his O.C. without success. During all this time he remained the same address and no attempt was made by the authorities to bring him in, even though they were aware of his whereabouts. The prosecution stated that the accused could have employed the services of someone to remain with his wife while he returned to his Unit. Putting ourselves in his place I am sure that perhaps we would act similarly to him, if we too were suffering from a degree of mental anguish if our wife were seriously ill. I don't believe that for the purposes of discipline anything will be achieved by punishing this man for this offence but rather that discipline will be lost when he has made every effort to carry out his duty properly.

A.H. Scrafield Lieut
Lorne Scots

SUMMARY OF EVIDENCE

In the case of No. G-5691 Private ROBERTSON, Lorne Henry, Hastings and Prince Edward Regiment, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

By the Direction of the Commanding Officer, this Summary of Evidence is taken on Oath.

FIRST WITNESS FOR THE PROSECUTION

Lieut. J.V. Graydon, Hastings and Prince Edward Regiment, Assistant Records Officer, 5 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am Lieut. J.V. Graydon, Hastings and Prince Edward Regiment, 5 Canadian Infantry Reinforcement Unit. I produce certified true copy of the Record of the Declaration of the Court of Inquiry, showing the accused whom I now recognize, as absenting himself without leave from Fourney Barracks, Cumberough Hants, at 0830 hours, 11th day of May 1943. This document is marked Exhibit "A".

I also produce certificate in accordance with K.R.O.2797, showing the accused whom I now recognize, as being arrested by the Military Police, at London at 1000 hours, 8th day of June 1943, purporting to be signed by Capt. W. Fern, D.A.P.M., London Area. This document is marked Exhibit "B"

J.V. Graydon

(J.V. Graydon), Lieut.

The accused declines to cross examine this Witness.

The accused having been warned according to Rules of Procedure 4 (E), reserves his Defence.

I certify that the foregoing summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C), (D), (E), and (F), have been complied with.

[illegible]

[illegible], Capt.,
Officer Detailed to take
Summary of Evidence.

In the Field,
12th Day of June,
1943.

LIST OF EXHIBITS

In the case of No. C-5691 Private ROBERTSON, Lorne Henry, Hastings and Prince Edward Regiment, on the strength of 6 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

EXHIBIT "A" Certified True Copy of the Record of the Declaration of the Court of Inquiry, showing the accused as absenting himself without leave, from Tournay Barracks, Farnborough, Hants, from 2359 hours, 11th day of May, 1943.

EXHIBIT "B" Certificate in accordance with P.C.2797, showing the accused as being arrested by Military Police, at London at 1000 hours 9th day of June, 1943.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Tournay, Barracks, Farnborough, Hants, on the 12th day of June, 1943, preliminary to My Court Martial.

I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

C-5691 Pte Robertson F.H.
(C.5691 Pte. ROBERTSON, F.H.)

Dated at Tournay Barracks,
this 12 Day of June, 1943.

I hereby request that the Convening Officer appoint an officer to represent me at my Trial.
I desire the service of
if he is available.

C-5691 Pte Robertson F.H.
(C.5691 Pte. ROBERTSON, F.H.)

Dated at Tournay Barracks,
this 12 Day of June, 1943.

(1)

No. C5691 Name Robertson L. H. Sqn., Battery, or Company } Corps HAST & PE.R. Date of enlistment } 25 Mar 40 G.C. Badges } Service or Proficiency Pay }

M.F.M. 6
(A.F.B. 122)
100M—11-40 (8025)
H.Q. 1772-48-15

Date of last entry in Company Conduct Sheet } No. and date of last drunk } Period not reckoning towards freedom from extra fine } Sheet No. 2 Signature O.C. Company, etc. } Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	27 Feb 41	A/CPL		Neglect to the prejudice etc. AA 40		Reduced to pres. grade of Pte.			
				Certified true copy from documents in my custody					
						[illegible]	[illegible]		
				12 Jan 42		[illegible]			

(P.T.O.)

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

(4)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C5691	Pte	Robertson L. H.	Hart R.P.E.R. (5 Cmd)

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For		times	AA 40 One (1)	times
For		times		times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct nil

~~—or,—~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~—or,—~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.F.A. 73~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~—or,—~~

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 4 days in ~~Air Force~~ military custody, making a total of 4 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 22

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 25 mar 40

7. The service which the accused is allowed to reckon towards discharge is 3 yrs

8. The accused is entitled to reckon 3 yrs service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (~~or is in possession of or entitled to~~). State any ~~air force~~ military decoration or reward. nil

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the ~~regimental~~ Air Force rank of .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ~~Permanent Force~~ unit dated , and in his regiment (or corps), the rank of dated .

12. The accused has served as a non-commissioned officer ~~continuously, without reduction, to the present date~~:—

2 Aug 40 Date of promotion.

In the rank of A/Cpl for 2 yrs (6) months ~~years~~.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Army~~ Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit Name of ~~Regiment~~

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3rd day of June 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

241 E - Pte Robertson L. H.

O. H. M. S.

M. F. B. 270
1000M-12-61 (9999-09-70)
H.Q. 1772-39-67

Robertson

Correspondence to be PINNED here.

PROCEEDINGS REVIEWED.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this thirteenth day of Jamary, 1942. (Order convening the Court.)

Whereas it appears to me, the undersigned, an officer in Command of Fourth Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable by delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~[I am unable to appoint :—~~

*~~(1.—Three Officers to form the Court.)~~

*~~(2.—A Field Officer as President.)~~

~~for the following reasons, namely :—]~~

* Omit if not applicable.

In my opinion, military exigencies, namely the dispersion of units, and difficulties of communication and other difficulties, render it inexpedient to observe the provisions of those rules inconsistent with appendix "A" to D.R.O. 772 on the trila of the person named in the annexed schedule.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	L.W.F. Wakefield	Essex Scot.

Members.

Rank.	Name.	Regiment.
Captain	C.C. Sinclair To be named by O.C., R. Regt.	C. R. Regt. C.
Lieutenant	F.S. Weathers/on To be named by O.C., R.H.L.I.	R.H.L.I.
Lieutenant	To be named by O.C., R. Regt.	C. R. Regt. C.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (C.B. TOPP) Brigadier,
Commanding 4 Cdn. Inf. Bde.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A.81407 Private Lyle Harman Robertson, Headquarters Fourth Canadian Infantry Brigade	A.A. Sec. 40 Conduct to the prejudice of good order and military discipline in that he at CHEW HILL, Sussex, on 24 Dec. 41, was improperly in possession of a package of 500 cigarettes, the property of A.81407 Pte. Pickering, A.E. H.Q. 4 Cdn. Inf. Bde.	Not Guilty.	Guilty. 90 Days Detention	Confirmed C.R.T. Pope Brig.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No SIR.

(Signed) C.R.T. Pope (Signed) H.R. Wakefield Maj.
(C.R. Pope) Brigadier, Fourth Canadian Infantry Brigade.
Commanding *Convening Officer* (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the FIFTEENTH day of JAN 1942., and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)
were duly sworn.

* Omit if not applicable.

Signed this 15th day of Jan 1942.

H.R. Wakefield Maj.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 24th day of January 1942

C.R.T. Pope Brig.
Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) 26 January 42 (Signed) D. Sampson

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W.O. 67/92 (1937) 40 M. 5/40 K.J.L./2585(2) Gp. 698/3

MEDICAL OFFICER'S REPORT

I certify that No. A 21407 Pte. Robertson A.
of 4th Edmr. Inf. Bde 49 is in a good state of health,
and fit to undergo Trial by Court martial.

R M Jenee Capt RCAMC
Medical Officer

Station In the Field

Date 15 Jan 1918

M. F. B. 246

5

CHARGE SHEET

The accused, No. A-21407, Private L.H. Robertson, H Q - 4 Canadian Infantry Brigade, a soldier of the Canadian Army (Active Force), is charged with:-

Charge

Sec 40 Army Act.

Conduct to the prejudice of good order and military discipline

in that he

at Green Hill, Sussex, on 24 Dec 41, was improperly in possession of a package of 300 cigarettes, the property of A-22107, Pte. Pickering, S.R., H Q - 4 Cdn Inf Bde.

D.G. CUNNINGHAM
S.M., 4 Can. Inf. Bde.

December, 1941.

STATEMENT OF THE ACCUSED AS TO WHETHER HE DESIRES AN OFFICER TO REPRESENT HIM AT HIS TRIAL.

I hereby request that the Convening Officer assign Lieut E.B. McCorkell to represent me at my trial by Field General Court Martial

A-21407 S. H. Robertson Pte.
H Q - 4 Cdn Inf Bde.

Certified that Lieut E.B. McCorkell, Essex Scot
is available to represent A-21407, Pte. Robertson L.H.
at his trial by Field General Court Martial.

Capt.
Cdn. Inf. Bde.
Adjt.

RECORD OF PROCEEDINGS

Trial of No.A21407 Private Lyle Harman Robertson Headquarters 4th Canadian Infantry Brigade held at Mayfield, Sussex on Thursday 15 January 1942.

ACTUAL COURT

President - Major L.W.F. Wakefield -Essex Scottish Regiment.

Members - Captain G.G. Sinclair -Royal Regiment of Canada.

Lieutenant F.S. Weatherston-Royal Hamilton Light Infantry.

PROSECUTOR - Lieut. G.G. MacLachlan (Lawyer)

DEFENDING OFFICER - Lieut. E.B. McCorkell

The Accused arraigned and pleads NOT GUILTY to the Charge. The Accused is asked the question at the foot of page 2 of A.F.A.3 and his answer "NO" is recorded.

PROSECUTION EVIDENCE see 12 typed pages of Evidence attached.

DEFENCE see 12 typed pages of Evidence attached.

The Court is closed for Finding.

The Court is re-opened.

The Prosecutor files substitute for A.F.B.296 or N.F.B.355 and certified copy of N.F.M.6.

The Court is closed for consideration of Sentence.

Certified that the foregoing and attached 12 pages of Evidence is a true record of the Trial

W.F.K. Wakefield Major,
President..

Taking of Evidence in the case of:

A-21407 Pte. Lyle Harmon ROBERTSON,
H.Q., 4 Cdn Inf Bde., C.A.(A.F.)

1st Witness for the Prosecution., Pte. Pickering, H.Q., 4 Cdn Inf Bde., having been duly sworn, states:

Question: Tell your story, in your own words, what you know about the loss of your cigarettes.

Answer: On the afternoon of 24th of December last, at about 1500 hrs I received nine hundred cigarettes in three cartons of three hundred each.

Question: Can you identify this carton as one of the ones you received?

Answer: Yes, sir; that is one of them.

Question: Continue with your story.

Answer: I placed the cigarettes on my bed and covered them with a sweater. Pte. Foote was in the room at the time, and said that he would be in the room all the time, that he was not going out, and that he would watch my cigarettes. I went out and came back in about five o'clock, there was no one in the hut, and one packet (carton) of cigarettes was missing. In about fifteen minutes Ptes. Foot, Beckerton, and Chrisner came into the hut. I said that one carton of cigarettes was missing, so Pte. Foote said only oneother man was in the hut. That was Robertson. So we went through his kit-bag. We found there was a fatigue jacket on top of the carton. I told him not to touch the cigarettes, and went to report it to CSM Nettleton.

Question: Where is your bed?

Answer: It was two beds from the accused's bed, sir.

Question: What happened after you reported it?

Answer: It was then that he came in.

Question: Do you know anything else?

Answer: No, sir.

Question: Since that time has the accused said anything to you about the cigarettes?

Answer: No, sir.

Cross-Examined by the Defending Officer.

Question: Where were you when you got the cigarettes?

Answer: They were given to me at the Sergeant's Mess.

Question: Was the accused present at the time?

Anser: Yes, sir.

Question: Did he make any comments?

Answer: No, sir.

Question: Nothing about it being a wonderful Christmas, and about Sanat Claus being very good?

Answer: No, sir.

Question: Is this the first case of cigarettes missing from that particular hut?

Answer: Pte. Robertson missed some cigarettes about ten days previous to this case of mine.

Question: Did you ever loan cigarettes to the accused?

Answer: Yes,sir.

Question: When did he pay you back?

Answer: On the twenty-fourth of December, at about noon.

Question: Did you ever loan any money to the accused?

Answer: No, sir; but there was a gambling debt that he paid back to me on the same day.

Question: On the day in question, was there any drinking about four o'clock

Answer: No, sir.

Question: Do you remember sharing a bottle of beer in your quarters?

Answer: No, sir.

Question: When you placed the cigarettes on the bed, how well did you cover them?

Answer: I just put the sweaterover them.

Question: Were the three cartons placed in such a manner as to form a small pile?

Answer: They were placed close together, and the cardigan just placed over them.

Question by the Court.

Question: When examined by the Prosecutor, you stated that you did not recall anyone being in the room. Was the accused in the hut?

Answer: There were three men in the hut at the time.

Question: What led you to go to Robertson's kit-bag?

Answer: Foote said that there was only one other man in the room, and so we went to that kit-bag.

Witness Retired.

2nd Witness for the Prosecution. Pte. Foote, C., being duly sworn, states.

EXAMINED BY THE PROSECUTOR.

Question: I understand that you are a member of H.Q., 4 Cdn Inf Bde. How are you employed?

Answer: I am a driver, sir.

Question: Do you know something about the circumstances of this case?

Answer: Yes, sir.

Question: Tell the Court what you know of it in your own words, and not just what you have heard others talking about.

Answer: On the afternoon of the twenty-fourth of December, Pte. Pickering came into the hut with three cartons of three hundred cigarettes. He asked me if I would look after them. He placed them on his bed, and put a brown sweater over them, and asked me to watch them for him. I went out with a small bucket to fill the coal bin. At that time Robertson was standing at the side of his bed. I went out for the coal, and when I came back in, he

was away from his own bed, and standing between Pickering's and Bickerton's beds. He had nothing on him, by that I mean he only had a shirt on. He had been drinking, and I hadn't paid much attention to him. I went out for coal another two or three times, and when I came in the last time, he was gone. Around five o'clock I went for my supper. When I came back, Pte. Pickering was there, and he told me that three hundred cigarettes were missing. I went through Robertson's bed. We found the carton under a fatigue uniform in his kit-bag. Pte. Pickering said don't touch them, but leave them there; I'll see the Sgt. Major. The Sergeant major came in, and he told us that if Robertson came in, not to say anything to him. Later Captain Wilkinson, the Sergeant Major and Sergeant Thompson came down, and took the cigarettes out.

Question: Who took the cigarettes away?

Answer: Captain Wilkinson.

Question: Was anybody else in the room when the cigarettes were placed on the bed.

Answer: Pickering, Robertson, and myself, but I can't say definitely.

Question: On these trips you took to get coal, how long did you take?

Answer: About three minutes.

Question: How many times did you go for coal?

Answer: About three or four times, sir.

Question: Have you, since the cigarettes were missing, been talking to Pte. Robertson with regard to the cigarettes?

Answer: Not with regard to the cigarettes, sir.

CROSS-EXAMINED BY THE DEFENDING OFFICER.

Question: Where were you between five and six o'clock?

Answer: At five o'clock I went for my supper.

Question: And Pte. Pickering, too?

Answer: I can't say, sir.

Question: Had you seen him at the hut?

Answer: No.

Question: That was before you went to supper?

Answer: No, sir.

Question: At what time did the accused come into the room that afternoon?

Answer: Shortly after the pubs closed, at about two or two:thirty, sir.

Question: At about what time di he go out?

Answer: At about four o'clock, sir.

Question: How was he dressed?

Answer: I didn't see him go out sir,

Question: At what time did Pickering come in with the cigarettes?

Answer: About three o'clock, sir.

Question: How close is the Sergeant's Mess from your hut?

Answer: About fifteen or twenty feet, sir.

Question: Does the person in charge of the mail give the mail out at the Mess?

Answer: I can't say, sir.

Question: Was Pte. Pickering by himself?

Answer: Yes.

Question: Was Robertson present when Pickering came in?

Answer: Yes, sir.

Question: If the accused left the hut at about four o'clock, at what time did he come in?

Answer: About eleven o'clock, sir.

QUESTIONED BY THE COURT.

Question: You say Robertson was drinking. Was he drunk?

Answer: Yes, sir.

Question: How drunk?

Answer: He was staggering quite a lot.

Question: What was he doing when he was staggering around?

Answer: He was putting a tie on.

Question: You were some time out?

Answer: Not that I remember, sir.

Question: Between three o'clock, and the time you went to ~~get coal, was~~ supper, you made three or four trips to get coal?

Answer: Yes, sir.

Question: How far was the coal pile from your Nissen Hut?

Answer: About twenty-five or thirty yards, sir.

Question: Is the coal-pile in sight of the Hut?

Answer: No, sir, it is not.

Question: How long would you say that you were out of the room?

Answer: About three or four minutes, sir.

(Witness Retired).

3rd Witness for the Prosecution, A-22231, Pte. Beckerson, L.E., H.Q., 4 Cdn Inf Bde, having been called and duly sworn, states:

EXAMINED BY THE PROSECUTOR.

Question: Will you tell the Court in your own words your personal knowledge of this case, and not what you have heard others say.

Answer: On the afternoon of the twenty-fourth of December, I was driving in the petrol truck. I came into our hut just at about supper time, went for my supper, and when I returned, I had stopped to make out my work ticket, and when I came into the hut, they were discussing three hundred cigarettes that had been missing, and discovered in Robertson's bag. They found the cigarettes under a fatigue uniform, and Pte. Pickering left to get the C.S.M.

Question: Did you see the Accused at any time after that?

Answer: No, sir; not until about eleven o'clock when the pass truck came from Tunbridge Wells.

Question: Did you say anything?

Answer: Not a word, sir.

CROSS-EXAMINED BY THE DEFENDING OFFICER.

Question: This is the first case of missing cigarettes?

Answer: In this hut it was, I think.

Question: Did you ever loan the accused any cigarettes at any time?

Answer: Yes, sir. It was quite a routine thing for cigarettes to pass back and forth between Robertson and myself.

Question: Did the accused pay a debt of cigarettes to you?

Answer: No, sir.

Question: When was the last time theaccused got cigarettes?

Answer: Possibly ten days or two weeks previously, sir.

Question: You don't recall him giving you four packages of cigarettes?

Answer: Oh! I'm sorry, sir; yes, I do remember him giving me four packages.

Question: Did you ever loan any money to him?

Answer: No, sir; I very seldom have any money to lend, and more than likely I am on the borrowing end of the deal, not on the lending end.

Question: Did he pay you a debt of 2/6?

Answer: Yes, sir.

Question: Did the accused receive any cigarettes?

Answer: I am not sure. But I do know that he paid back some cigarettes.

Question: Did he get the three hundred cigarettes from the Essex Scottish?

Answer: I am not sure, sir; but I think that the four packets that he gave to me came from the Essex Scottish issue.

Question: At what time did you come into the billets?

Answer: At about five thirty, sir.

Question: At what time did the accused come in billets?

Answer: About eleven o'clock.

Question: In what condition?

Answer: He had been drinking.

Question: Was he drunk?

Answer: He was quite happy.

Question: Did you see him the following day?

Answer: Yes.

Question: When the accused came in, did anybody speak to him?

Answer: I can't say for sure sure.

Question: How soon was the Accused taken out of billets the next morning?

Answer: At about nine o'clock, sir.

Question: Did he have any breakfast?

Answer: I can't say, sir.

Question: Was there a Reveille?

Answer: The usual one at about six o'clock when the Orderly Corporal comes around.

Question: Were you working on Christmas Day?

Answer: No, sir.

Question: Can you recall at what time the Accused got up?

Answer: I think I was dressing when the accused got up?

Question: He was taken away when?

Answer: At about 0900 hrs, sir.

QUESTIONED BY THE COURT.

Question: Have you any idea how many cigarettes Robertson usually gets?

Answer: No, sir. But I do know that he got the regular issue from the Essex Scottish, and that he did get three hundred periodically now and again, and that he got a carton of a thousand now and again.

Question: Did he get enough to keep himself in smokes?

Answer: Yes, sir.

(Witness Retired)

4th Witness for the Prosecution, A-23184, Pte. Chrisner, W.E., H.Q., 4 Cdn. Inf Bde, having been called and duly sworn, states:

EXAMINED BY THE PROSECUTOR.

Question: Tell the Court in your own words what you know of this case.

Answer: I don't know much. I happened to be there, and they told me that they had found the cigarettes in the bag. That is all I know.

Question: Where were you?

Answer: I went to have my supper, and when I came back, they told me.

Question: Did you see the cigarettes, and if you did how were they?

Answer: Yes, sir, I saw them. They were standing on end in the bag, and had a denim blouse or something on top of them.

Question: Did you see the denim blouse?

Answer: Yes, but someone else took it off.

CROSS-EXAMINED BY THE DEFENDING OFFICER.

Question: Did you go out on the twenty-fourth of December?

Answer: Yes, sir.

Question: To Tunbridge Wells?

Answer: I went on the pass truck?

Question: Was the Accused with you?

Answer: Yes, sir. At least he was in the pass truck too.

Question: You were aware of the fact that the cigarettes had been found in theAccused's pack?

Answer: Yes, sir.

Question: Why didn't you mention it to him?

Answer: Because the Sergeant Major said not to mention it.

Question: Did you spend the evening with the accused?

Answer: No, sir, but I saw him later in the evening.

Question: You did see him later that evening in Tunbridge Wells?

Answer: Yes, sir; at a pub.

Question: When did you leave?

Answer: At closing time.

Question: Did you and the accused leave together?

Answer: No, sir; but we came home on the pass truck.

Question: In what condition was the accused?

Answer: He had had a few drinks, and he was feeling quite happy.

Question: At what time did you get up the next morning?

Answer: About seven:thirty.

Question: Did you see the accused?

Answer: Yes, sir.

Question: He got up about the same time?

Answer: Yes, sir.

Question: At about what time was he taken out?

Answer: About nine o'clock.

Question: Did you have any conversation with the accused?

Answer: Not that I can recall. I don't think so, sir.

(Witness Retired.)

5th Witness for the Prosecution, B-66552, CSM, Bettleton, T., H.Q., 4 Cdn Inf Bde., having been called and duly sworn, states:

EXAMINED BY THE PROSECUTOR.

Question: Tell the court in your own words what you personally know of this case.

Answer: Sir. Atabout five o'clock on 24th of December, forty one, I was in the Sergeants Mess. I had just arrived after doing some shopping for the mess at Bde HQ, and I was called into the kitchen by the cook, who said that Pte. Pickering wanted to see me. I went into the kitchen, and Pickering reported to me that he had some cigarettes missing, so I went into their Nissen Hut and investigated. The nissen hut, sir, is about ten or twelve yards from the mess building, and in the hut was Ptes. Foote Beckerton and Chrisner. Pickering told me that he had received three cartons of three hundred cigarettes that day and had placed them on his bed, and asked Pte. Foote to keep an eye on them. Pte. Foote said that he had located the cigarettes in Pte. Robertson's kit bag. I asked him where Robertson's bed was, and he showed me. I noticed the kit bag, and found the cigarettes in the kit bag under some denim. I went back into the mess, had my supper, and then reported the matter to theStaff Captain at Brigade Headquarters. He in turn turned it over to Captain Wilkinson, and Captain wilkinson was told what I had been told. Captain Wilkinson jumped into his car, and we went back to the nissen hut. On the way we picked up Sgt. Thompson. When we got into the Nissen hut, we showed Captain Wilkinson where Robertson's kit bags were. I showed him how I had found the cigarettes, and he proceeded to take an inventory of the contents of the bag. He then closed the bag, and took the cigarettes away with him. I went then to the Sergeants Mess, and Captain Wilkinson went to the Officers Mess.

Question: When was the accused put in close arrest?

Answer: At about nine oclock on the twenty-fifth. TheStaff Captain phoned me at the Sergeants Mess, and told me to put Pte. Robertson under close arrest. I detailed the Orderly Corporal to find an escort and place him in close arrest. I then went down to Headquarters, and later I saw Pte. Robertson arrive in a truck with an escort, and he was placed in what served us as a guard room.

CROSS-EXAMINED BY THE DEFENDING OFFICER.

Question: Next morning, when you saw Pte. Robertson being placed in the Guard Room, did you have any conversation with him?

Answer: Yes, sir. Pte. Robertson got out of his truck, came to me and said "Why am I being placed in close arrest?" I told him that he would be told the nature of the charge later. He made the comment "I don't want to be sent to jail for something I have not done".

Witness Retired.

6th Witness for the Prosecution, B-28130, Sgt. Thompson E.J., H.Q., 4 Cdn. Inf. Bde., having been called and duly sworn, states:

EXAMINED BY THE PROSECUTOR.

Question: What is your job at Brigade Headquarters?

Answer: I am Transport Sergeant.

Question: Tell the Court in your own words what you know of this case?

Answer: At about five fifteen Captain Wilkinson came into the Transport Office, and said something about missing cigarettes. He told me to go with him for we were going to the nissen hut. We looked at Pte. Robertson's kit bag, and I saw the carton of cigarettes with a fatigue uniform on them. I was told that the cigarettes belonged to Pickerling. (Identified exhibit.)

Question: During the course of the afternoon, did you see the accused?

Answer: Not until about five thirty, and then he came into the Office and stayed there until about ten after six. He was wanting to know what he would be doing with the water waggon laid up. I told him that I would probably be putting him on a 30-cwrt, and he said that he would like that.

Question: At what time was that?

Answer: From about five thirty to about ten after six.

Question: Was he drunk?

Answer: He had been drinking.

CROSS-EXAMINED BY THE DEFENDING OFFICER.

Question: How far away is the Transport Office from the nissen hut?

Answer: About half a mile.

Question: Does the pass truck go up to the hut?

Answer: Yes.

Question: How was the accused dressed?

Answer: He had a greatcoat, and no gaiters on at that time.

Question: He was there how long?

Answer: Until about six ten.

Question: Is there any communication between your office and Headquarters?

Answer: We are rightat H.Q. And there is no telephone communication.

Question: Is it possible to get communication from the hut to your office?

Answer: Yes, if we send a truck up when we need to.

(Witness Retired).

7th Witness for the Prosecution, Captain C.P. Wilkinson, H.Q., 4 Con. Inf. Bde., having been called and duly sworn, states:

EXAMINED BY THE PROSECUTOR.

Question: Will you tell the Court in your own words what you know of this case?

Answer: On the afternoon of December the twenty-fourth I went to the hut of one of my men because of a message sent to me, and I went with the Sergeant Major, and made certain inquiries about the disappearance of some cigarettes. I took it on myself to inspect the kit-bag of the accused, and in the kit-bag I found the cigarettes that I was looking for. I made certain notes on the description of the cigarettes. I inspected the bag and found that it belonged to Pte. Robertson by the name on the outside of it. I took the cigarettes into my custody.

Question: Did you give the orders for the accused to be placed under arrest?

Answer: Yes; sometime in the early evening.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Question: You have the instructions for him to be placed under arrest?

Answer: Yes, I. Did. To the Guard Commander.

Question: When the pass truck returns, does it comes under the Guard Commander's surveillance?

Answer: No.

Question: When was the accused taken into custody.

Answer: I can't say, actually, but I believe it was some time in the morning.

(Witness Retired).

CASE FOR THE DEFENCE.

1st Witness for the defence, A-21407, Pte. Lyle Harmon ROBERTSON, H.Q., 4 Cdn Inf Bde., having been called and duly sworn, states:

EXAMINED BY THE DEFENDING OFFICER.

Question: Tell your story to the Court.

Answer: I went to dinner with Chrisner, and shortly after dinner I had a wash. We went down to the pub to buy some beer. In the pub we met Beckerton and played darts. Then Chrisner and I caught a bus back to billets. Foote was in the billets, and then we went to the Sergeants' Mess and had a few drinks, and sang a few songs. Then Staff Sergeant Robison came in and ordered us out. Then we went back to our billets, and I went over and had a wash, and shave. Foote was bringing in some coal. He was the only one there. When I came back I went over to where the light was good to comb my hair, and I noticed the cigarettes were on the floor. I threw them over on my bed, and then when I went back to get dressed, I put them in my pack. Then I went ack to to my bed, got dressed, and caught a ride down to supper. I was kind of late for supper, and when I had a bite to eat, I went to see Sgt. Thompson in the Transport Office. I hadn't given the cigarettes to anybody, or told anybody about them, for there was no one around, and I was in a hurry and didn't want to miss the pass truck. I met Pte. Chrisner at Tunbridge Wells. We had a few drinks together, and he had a dance, and we came back on the pass truck together, and I went to bed. I had just got up the next morning when two guards came in and told me that I was under arrest. I was put in the guard room, and was then taken to The Royal Regiment of Canada.

CROSS-EXAMINED BY THE PROSECUTOR.

Question: Were you in the hut at the time that Pte. Foote and Pte Pickering came in?

Answer: No, sir; I saw Pickering in the Sergeants Mess.

Question: Was he getting some mail?

Answer: He had the cigarettes in his arms. We had been singing some songs with the mail corporal, and drank a bottle of beer.

Question: Did you see the cigarettes fall on the floor?

Answer: No, but I saw them on the floor. On the left side of the bed, I think.

Question: Did you know who they belonged to?

Answer: Yes, sir, I did.

Question: Why didn't you put the carton on his bed?

Answer: Because I wanted to keep them safe until someone came in.

Question: How many cigarettes did you have?

Answer: Three hundred, sir, The Essex Scottish issue.

Question: You thought the cigaretteswould be safer on your bed?

Answer: Yes, sir. It was my idea to keep them safe for him.

Question: What were you going to do with them?

Answer: To put them in a safe place until I could give them to him. I put them in my pack with my fatigue clothes over them.

Question: Did you tell anybody?

Answer: No, sir; there was no one to tell.

Question: At what time did you get up in the morning?

Answer: At about eight o'clock.

Question: When were you placed under arrest?

Answer: I can't give you any set times, sir.

Question: When did you get back from Tunbridge Wells?

Answer: On the pass truck, shortly after eleven o'clock.

Question: Was anyone there?

Answer: They were all in.

Question: What did you do?

Answer: I went to bed.

Question: Did you notice anything peculiar about their attitude towardsyou?

Answer: No, I can't say that I did, sir.

Question: When did you first tell this story to somebody?

Answer: To the Staff Captain, sir.

QUESTIONED BY THE COURT.

Question: In your evidence you mention that you tried to find a better light to comb your hair with. In what part of the room was the light in relation to.

Answer: Near Pickering's bed.

Question: Have the huts got the heads of the beds to the wall?

Answer: Yes, sir.

Question: Where is your bed?

Answer: There is Pickerings, Beckerton's, and then mine.

Question: Then there is a bed between yours and Pickering's?

Answer: Yes, sir.

Question: When you saw Pickering get the cigarettes, did you see how many there were?

Answer: No, sir. He had them in his arms.

Question: Could you tell if there were more than one carton?

Answer: Yes, sir.

Question: At what time did you pick the cigarettes up?

Answer: Just before I went to supper. It must have been after five o'clock The pass truck left at about ten after six.

Question: ~~At what time did you pick the cigarettes up.~~

Question: Am I right in assuming that Pickering's bed is next to yours?

Answer: No, sir. Beckerton's is between ours.

Question: In relation to the positions of these beds, where did you pick the cigarettes up?

Answer: Between Pickering's and Bekcerton's, sir.

Question: Lying under the bed?

Answer: No, along the side of the bed.

(Witness Retired)

1st Witness for Prosecution, Pte. Pickering, is recalled.

EXAMINED BY PROSECUTOR.

Question: Do you remember how you put the cigarettes on your bed?

Answer: The three cartons were placed lengthwise close together.

Question: Would it be possible for one of the cartons to fall off?

Answer: No, sir. because they were in the centre of the bed.

Question: How wide is the bed?

Answer: About as wide as that table.

Question: When you placed the cigarettes on the bed did they take up much room?

Answer: No, sir. There were only three cartons on the bed.

Question: Could a person jostling against the bed knock a carton off?

Answer: Yes, sir.

Questioned By the Court.

Question: Your mattress was rolled?

Answer: Yes, sir.

Question: About how much room on the bed would the rolled mattress take?

Answer: About two and a half feet, sir.

Question: Where did you place the cigarettes in relation to the roll of the mattress?

Answer: Halfway between the roll of the mattress and the foot of the bed.

(Witness Retired)

I CERTIFY THAT the above evidence from Page 1 to Page 11 (inclusive) is a true and correct transcript of my notes.

Certified a true record of this trial 15 Jan 1942
[illegible] Wakefield
Major
Pres.

B66906 [illegible] Pte.

No. A21407 Name Robertson L.H. ~~Sqn., Battery,~~ or Company 4 C.I.B ~~HQ~~ Corps Essex Scottish Date of enlistment 8/9/39 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 500M—8-39 (1703) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. [illegible] Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot England	16-2-41	L/Cpl		"Conduct to the prejudice ... etc" in that the accused was in bed 50 minutes after Reveille (A.H. 40)	L/Cpl Thompson J	Reduced to permanent Grade	17-2-41	Major J.H. Mothersill 2 Ic - A/O.C.	—

Certified true and correct copy

[illegible] Capt.
C.C., 4 Cdn. Inf. Bde.

(P.T.O.)

(Substitute for A.F.B. 296)
or M.F.B.355

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No A.21407 NAME Pte. Robertson, L.H. UNIT H.Q. 4 CDN. INF. BDE.

AGE 27 MARRIED OR SINGLE Single NO. OF DEPENDENTS NIL

DATE OF ATTESTATION 9 Sep 39

NO. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL MILITARY 21 days HOSPITAL TOTAL 21 days

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

To L/Cpl. 10 Jun 1940. Reverted to permanent grade 17 Feb 1941.

A CERTIFIED TRUE COPY OF M.F.M. 6 MUST ACCOMPANY THIS FORM

(Officer i/c Records)

Dated at Rotherfield

This 18th day of January 1942

(To be dated and signed as of date of trial)

ABSTRACT OF EVIDENCE

In the case of A-21407, Pte. Robertson L.H.

PTE. PICKERING G.R. A-22167

will state that he received three cartons of 500 cigarettes each on 24 Dec 1941. He took these to his Nissin Hut in the afternoon and placed them on his bed covering them with a sweater. He asked Pte. Foote who was present to keep an eye on them. Pte. Robertson was also present. On returning at about 1715 hrs he saw that one carton was missing. Pte. Foote and two other Ptes. came in shortly afterwards and together they examined Pte. Robertson's kit bag in which was found the missing carton underneath a uniform. He reported the incident to C.S.M. Nettleton.

PTE. FOOTE C.E. B-67566

will state that on 24 Dec 41 at around 1500 hrs Pte. Pickering asked him to keep an eye on three cartons of cigarettes which he saw Pte. Pickering place on his bed under a sweater. Pte. Robertson was in the room. During the afternoon he was sent out on two occasions to get coal and once for his supper. At about 1730 hrs on returning from supper Pte. Pickering complained that a carton was missing. Pte. Foote with two other privates searched Pte. Robertson's kit bag and found the missing carton addressed to Pte. Pickering there.

PTE. BECKERSON L.E. A-22231 and PTE. CHRISTENER W.E. A-22154

will state that they witnessed the opening of the kit bag by Pte. Foote and saw in it Pte. Pickering's carton of cigarettes.

C.S.M. NETTLETON B-66552

will state that on receiving a report from Pte. Pickering that a carton of cigarettes had been stolen, he went to the Transport Nissin Hut and there examined Pte. Robertson's kit bag at the request of the occupants of the room. In it he found a carton of cigarettes addressed to Pte. Pickering. He reported the matter to the Staff Captain and to Captain Wilkinson. The latter came over and examined the kit bag with Sgt. Thomson. On 25 Dec 41, Captain Wilkinson instructed him to place Pte. Robertson under close arrest which he did.

CAPT. WILKINSON and SGT. THOMSON P-28130

will state that they went to the Transport Nissin Hut with C.S.M. Nettleton on the evening of 24 Dec 41 and inspected Pte. Robertson's kit bag and that Capt. Wilkinson removed therefrom a carton of cigarettes addressed to Pte. Pickering.

Abstract of Evidence
prepared by:

(G.M. MacLachlan) Lieut.
1 H.R.R.T.C., CANADIAN ARMY.

3589 Robertson, R. W.
11 Recce Bn.

10/R/326

Correspondence to be PINNED here.

Army Form A. 3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 10th day of March, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 1st Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified Officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

*Omit if not applicable.

*[I am unable to appoint :—

*(1.) Three Officers to form the Court.

*(2.) A Field Officer as President.

*(3.) Three Officers having more than one year's service.

for the following reasons, namely :—]

President.

Rank.	Name.	Regiment.
Major	P.C. Klaehn	Sask L.I. (MG)

Members.

Rank.	Name.	Regiment.
Capt.	R.G. Robart	1 Cdn Div Sup Col
Lieut.	G.P. Baker	1 Cdn Tp Carrying Coy
Waiting Lieut.	A.G. Cawsey	Sask L.I. (MG)

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed G.R. Pearkes
(G.R. Pearkes) Major General
Commanding 1st Canadian Division
Convening Officer.

15019 W2409/P9769 13m 1/27 B. M. & Co. Gp.108 Forms/A3/13

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
L.1650 Pte. Robertson, R.W. 1 Cdn Div Recce Battalion	Army Act Sec 41	~~G.~~ Not Guilty	Guilty Sixty days detention CR Co.	Confirmed G.R. Pearkes Maj Gen 1 CDN
	(See attached charge sheet)			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39(A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— I am ready to proceed

(Signed) G.R. Pearkes (Signed) P. Kemeben Capt

(G.R. Pearkes) Major General
Commanding 1st Canadian Division

Convening Officer (c) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets if necessary to be PINNED Here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 21 day of March 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 21 day of March 1941

P. Kemeben Capt
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless "proof" certificate or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison until further orders.~~ G.R.P.

Signed this 26 day of March 1941.

G.R. Pearkes Maj Gen
Confirming Officer.
Gde 1 Cdn Div

Promulgated and extracts taken in the case of No L.1650 Pte Robertson R.W.

(a) (Dated) 29 March 41 (Signed) H. Pte. A.C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

PROCEEDINGS OF A FIELD GENERAL COURT
MARTIAL HELD IN THE FIELD ON THE
21 DAY OF March 1941

Trial of No. L 1650 Pte Robertson R.C.S.

Prosecutor Lt. J.B. Beveridge 4 Bene Rn

Defending Officer Lt. B.C. Clarke 4 Bene Rn

~~Officers under instruction~~

1. The order convening the Court is read in the presence of the accused.

The accused is asked the following question:-

"Do you object to be tried by the President, or any Members of the Court whose names you have heard read over?"

Answer:- No

3. The President, Members, ~~Judge Advocate~~, Officers under Instruction, Shorthand Writer and ~~Interpreter~~ are duly sworn.

4.(a) The accused answers his name and number and is duly arraigned on the charges.

(b) ~~The accused having pleaded guilty to the charge(s), R.P. 36(S) is complied with.~~

5. The accused is asked the question at the foot of Page 2 of A.F.A. 3 and his answer is recorded beneath the question.

6. The Prosecutor makes (no)(~~the following~~) opening address.

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL

In The Case Of

L.1650 Pte. ROBERTSON, R.W.
1 Cdn. Div. Recce Bn.

The Accused has no objection to being tried by any members of the Court.

The Charge is read to the Accused:

> "A.A.41. W.C.A.S. committing a civil offence, that is to say, stealing, in that he at Redhill, Surrey, on 22 Feb 41, stole one collection box and contents amounting to approximately 15s. 9½d., the property of the Evelina Hospital For Sick Children."

The Accused pleads "Not Guilty" to the Charge.

THE CASE FOR THE PROSECUTION

1st WITNESS FOR THE PROSECUTION — W.J. DAVEY, shop assistant, having been duly sworn, states:

Questioned by the Prosecuting Officer:-

Q. Will you tell us exactly what happened on the night of 22 Feb 41 in connection with this case?
A. On Saturday February 22, I was in Latty's on High St. in Redhill when two Canadian soldiers came in and asked me for shoe black and toilet soap and wine. I told them that we hadn't any of these articles. When they had left the shop, I found that the hospital box, which was tied round the till, was missing. I informed the proprietress, who informed the police.

Q. Do you recognize the accused as one of the two men in the store?
A. Yes sir.

Q. Was it he who was later brought back into the store and you identified him?
A. Yes sir.

Questioned by the Defending Officer:-

Q. Had these two men been drinking?
A. I thought they had sir.

Q. You couldn't say for sure?
A. No sir.

Q. Was there any conversation while the men were in the shop?
A. They were talking to each other.

Q. Do you think that they came in deliberately to rob that box?
A. Yes I do. They were looking at it all the time and one put a penny in the box and as soon as they had gone the box was missing.

1st WITNESS FOR THE PROSECUTION (Continued)

Questioned by the Court:-

Q. How long was it after the soldiers left the shop that you noticed the box had gone?
A. Right after they had gone.

Q. There was no chance of anyone else coming in?
A. No sir.

Q. Why did you want to get them out of the shop?
A. They were acting drunk and generally acting up.

Re-Examined by the Prosecuting Officer:-

Q. When you say acting drunk, did you mean that he was unable to walk or take care of himself or was he just feeling playful?
A. He was perfectly capable.

2nd WITNESS FOR THE PROSECUTION

John Hidout BOWLES, Detective Constable, Reigate Borough Police, having been duly sworn, states:-

Questioned by the Prosecuting Officer:-

Q. Will you tell the Court what happened on the night of 22 Feb 41 in connection with this case?
A. I was on duty at Redhill Police Station at 7:50 p.m. on Saturday, February 22, when in consequence of a telephone message received, I patrolled along London Road Redhill in company with Cpl. King and L/Cpl. McCardle of the R.C.M.P. In a road, known as Station Road, Redhill, I saw the prisoner, Robertson, accompanied by another soldier. We stopped them and I said to Robertson, "Have you been in to a confectionery shop just previously?" He replied, "No, we want to catch a bus to Bletchingley." I asked him to accompany me to the shop in question, which he did, also in company with two R.C.M.P.s. On the way I observed him make an attempt to get away but he was held back by one of the officers, L/Cpl. McCardle. From his condition I observed he had been drinking but in my opinion he was not drunk. As we entered the shop I heard money falling to the ground beneath Robertson and 9½d was recovered from the floor. I felt in his right overcoat pocket when inside the shop and found it to be full of money, which I later found to amount to 15s. comprising mostly pennies, half-pennies, farthings and a few sixpences. In consequence of what the shop assistant, John Davey, told me I caused the prisoner to be taken to Redhill Police Station by police car. His behaviour was then of a person drunk and incapable and he would neither speak nor stand up. At the Police Station he was searched and detained. The following morning, Sunday 23 Feb 41, at 10 a.m. I saw the prisoner and said to him, "It has been alleged that you went into a confectionery shop in High Street, Redhill, about 7:50 p.m. last evening and stole a hospital collecting box from the counter." He replied, "Yes sir, that's right." I then cautioned him and he made a statement which I took down in writing, read over to him, and which he signed in my presence. I made further enquiries in the course of the morning and at 1 p.m. the same day I again saw Robertson and charged him with the theft of the hospital box and contents amounting to 15s. 9½d. from the shop in question the previous evening. He replied, "I don't think there is anything more I have to say."

(A copy of signed statement which Detective-Const. Bowles took from Pte. Robertson was submitted as evidence by the Prosecuting Officer and is classed as Exhibit "B")

2nd WITNESS FOR THE PROSECUTION (Continued)

Q. Did you recover any liquor from Pte. Robertson?
A. In his possession was found one quart bottle Ruby wine full and another almost empty.

(The two bottles were submitted for evidence and are classed as Exhibit "A")

Q. You say that when you took Robertson into the store he became incapable. How did this come about?
A. It was very sudden sir.

Q. When it came over him did he have the usual symptoms of a man who passes out? Did he become unconscious?
A. We had to carry him and he didn't recover at all that night.

Q. Was he normal before this happened?
A. Yes sir, he was noisy but in possession of full faculties.

Questioned by the Defending Officer:-

Q. It appears that there was a second man with Pte. Robertson. Was this man standing with Robertson at the bus?
A. They were heading towards the bus.

Q. Was he placed under arrest?
A. He was asked to accompany us to the shop but he escaped.

Q. Did you have anything further to do with this man?
A. After seeing Robertson, I made enquiries at various Units in the locality but was unable to trace him. About 3 o'clock on the Sunday I did see the other soldier at Redhill Police Station.

Q. Why wasn't he arrested?
A. He was questioned by me and other officers and it appeared from the evidence that Robertson was the guilty party.

Q. Was Picketts an accomplice?
A. He was present throughout. He denied having any knowledge of the box until they got to the public lavatories. For that reason we gave him the benefit of the doubtand took proceedings against Robertson only.

Questioned by the Court:-

Q. When you questioned the accused on Sunday morning at 10 o'clock, what condition was he in?
A. Perfectly sober sir.

Q. In spite of the fact that Robertson was allegedly drunk the night before, did he have full recollection of taking the box?
A. Yes sir.

3rd WITNESS FOR THE PROSECUTION

C.42013 Corporal King, A.W., No.1 Provost Coy. R.C.M.P., having been duly sworn, states:-

Questioned by the Prosecuting Officer:-

Q. Will you tell us what you know about this case which happened on the night of 22 Feb 41?
A. On the night of 22 Feb 41 I was in charge of the Redhill-Reigate town patrol. At approximately 7:50 p.m. a telephone call was received by the Redhill Police to the effect that a hospital box had been stolen from 11 High Street, Redhill.

3rd WITNESS FOR THE PROSECUTION (CONTINUED)

Accordingly, I accompanied Detective-Constable Bowles and L/Cpl. McCardle to investigate. As we approached the stop lights at Redhill we observed two soldiers approaching the intersection. We stopped these two soldiers and we were about to take them to 11 High Street to have them identified as the men alleged to have stolen this hospital box. On the way one of the soldiers escaped in the blackout. The other man, Pte. Robertson, was taken to 11 High Street and identified as one of the men who was alleged to have stolen the box. As we were entering the shop door, Pte. Robertson threw a small handful of pennies on the sidewalk. This was recovered by L/Cpl. McCardle.

Questioned by the Court:-

Q. You actually saw him throw this on the floor?
A. No sir. I didn't actually see the money leave his hand.

As we were in the store, he removed from his right hand pocket a bottle of wine, containing approximately five ounces. Inside his great coat we found a forty-ounce bottle of wine. In the great coat pocket we found a large quantity of pennies and silver. As we found this money the accused slipped to the floor and we were unable to question him any further. He was taken to the Redhill Police Station by L/Cpl. McCardle.

Questioned by the Prosecuting Officer:-

Q. How many years have you been in the R.C.M.P.?
A. 15 years.

Q. What condition was Robertson in when you picked him up?
A. He had been drinking but was not drunk. He didn't stagger.

Q. Did you see this man make an attempt to escape?
A. No sir.

Q. Have you any idea how small the silver was?
A. It was just pennies, half-pennies, and six-penny pieces.

There were no questions by the Defending Officer.

Questioned by the Court:-

Q. Where is the money at the present time?
A. It was taken over by Detective-Constable Bowles.

4th WITNESS FOR THE PROSECUTION

C.42019 L/Cpl. McCARDLE, J.E., No.1 Provost Coy. R.C.M.P., having been duly sworn, states:-

Questioned by the Prosecuting Officer:-

Q. Will you tell us what happened on the night of 22 Feb 41 in relation to this case?
A. I was on duty stationed at the Redhill Police Station. At 1950 hrs. a telephone call was received at the Police Station that a charity box had been stolen from 11 High Street and that Canadian soldiers were responsible for it. Accompanied by Cpl. King and Detective-Constable Bowles of the Reigate Borough Police I proceeded down town towards 11 High Street. At the traffic lights we were stopped by two soldiers who wished to know where they could get the bus for Blatchingley. As one of these soldiers answered the description we received of the men who were in the store, they were asked to accompany us to High Street where the store was. At the Wheatsheaf Arms Hotel, one of the soldiers escaped. Robertson made an attempt but was stopped and

4th WITNESS FOR THE PROSECUTION (Continued)

taken to the store on High Street where he was identified as the soldier who was alleged to have taken the box. On the way into the store I found it necessary to let go of Robertson's arm. He put his hand in his pocket and he pulled out some money which he threw on the sidewalk. This money I subsequently recovered. It was a sixpence four half-pennies, a penny, and a farthing. In the right hand coat pocket there was a quart bottle of wine, containing approximately five ounces, and inside the great coat on the left hand side was a full bottle of wine. In his great coat pocket there was a sum of money, 15 shillings, made up of sixpennies, half-pennies and farthings. As I asked this man for his pay book, he fell on the floor and nothing could be got out of him. The police car came down and he was taken to the Redhill Police Station and turned over to the C.I.B. I retained the wine.

(L/Cpl. McCardle identifies the two bottles of wine)

Q. When you first took Pte. Robertson into custody, in what condition was he?
A. He had been drinking but knew what he was doing.

Q. He tried to get rid of that wine. In what way did he do this?
A. He asked to get rid of the wine.

Q. Was he quite capable of walking?
A. Yes sir.

Q. In your opinion he was in full possession of his faculties?
A. Yes sir.

There were no questions by the Defending Officer.

Questioned by the Court:-

Q. Did Robertson make a break to get away?
A. Yes sir.

Q. Did he at anytime offer any resistance?
A. No sir.

Q. When did he make the attempt to break away?
A. Not until after Pte. Picketts had gotten away.

5th WITNESS FOR THE PROSECUTION

L.2215 Pte. Picketts, L.J., 1 Cdn. Recce. Bn., having been duly sworn, states:

Questioned by the Prosecuting Officer:-

Q. Will you tell the Court what happened on the night of 22 Feb 41 in connection with Robertson?
A. We left our billets at 1 o'clock and went to Bletchingley. We stayed there for half an hour. We went to Redhill. About 2:30 we bought a bottle of wine. We drank this wine and walked the streets. About 6 o'clock we bought another bottle of wine. We drank about half of it and knocked around. About 8 o'clock we went into a confectionery shop. I bought some gum. When I was getting my change, Robertson went outside. I joined him there and we went down to the public lavatories where he pulled out this box. We both went into a cubicle and opened it. He took the money and put it in his pocket. We left and went to the wine store again and bought another bottle of wine. We left there and just came out the door when some M.P.s and a plain clothes man stopped us.

5th WITNESS FOR THE PROSECUTION (Continued)

Q. Did he give you any of the money?
A. No sir.

Q. What happened to the third bottle of wine?
A. We drank all of one and half of the other.

Q. Did you pool your money to buy your bottles of wine?
A. We already had money.

Q. When you were being escorted back by the police to 11 High Street, you broke away?
A. Yes sir.

Questioned by the Defending Officer:-

Q. Are you a friend of this man Robertson?
A. I have known him for about three months. This is the first time I was out with him.

Q. Would you say that Robertson was drunk?
A. Yes sir. He drank a lot more of the wine than I did.

Q. You went into the store and bought a package of gum. Did you see or notice Robertson's actions in there? You didn't see him steal the box?
A. No sir.

Q. Then you met him outside?
A. Yes sir.

Q. Was there any conversation outside?
A. No sir.

Q. You say we went into the cubicle. Did you see him open the box?
A. We both opened it sir.

Q. Why didn't you take some of the money?
A. I just didn't that's all.

Q. How did you open the box?
A. I think he opened the box by stepping on it.

Q. After you came out of the wine store you met the police men?
A. Yes sir. They asked us to walk down to the confectionery store.

Q. Did you go with them?
A. No sir, I Broke away.

Q. Why did you break away?
A. On account of the wine.

Re-examined by the Prosecuting Officer:-

Q. You say that in your opinion Robertson was drunk? How did he act?
A. He drank a lot more than I did and I was no where near sober.

Q. Could he walk unassisted?
A. He wasn't steady sir.

Q. Did you ever have to help him?
A. No sir.

5th WITNESS FOR THE PROSECUTION (Continued)

Q. You say that Robertson was able to walk, talk etc. even though he was drunk?
A. Yes sir.

Questioned by the Court:-

Q. How long were you in the confectionery shop?
A. Just a minute sir.

Q. Who did the talking?
A. We asked them if they had any shoe polish.

Q. When you went to the public lavatories did you ask Robertson to show you the box?
A. No sir.

Q. How did you know he had it?
A. He pulled it out of his pocket and showed it to me.

Q. Did you use the money out of the box to buy the third bottle of wine?
A. No sir.

The Case for the Prosecution is closed.

The Accused declines to make a statement or give evidence on oath.

THE CASE FOR THE DEFENCE

There were no witnesses for the Defence.

Defending Officer:-

I wish to state in closing that I think this man should receive consideration, not only for his age which is rather young, but that I cannot bring myself to say that the crime was premeditated. I wish to bring forward that I think influence was exerted on this man by Picketts. There is something there and I believe Picketts does exert an influence on the Accused. These three things I would like the Court to consider when considering a verdict: The man's age, the fact that the crime was not premeditated and the fact that Picketts does exert an influence on the Accused.

Prosecuting Officer:-

When he found the money in his possession and went into the lavatory, broke the box open and put the money into his pocket and then walked up to a store, there certainly was time there to return it to the proper people.

The Case for the Defence is closed.

(THE COURT DELIBERATES)

There were no character witnesses produced by the Defence but the Defending Officer wished to give evidence as to character:-

During the time that I have been with the Accused, he proved perfectly satisfactory and didn't distinguish himself in any way except that he was a good soldier.

A Certified True Copy of the M.F.M.6 (Conduct Sheet) of the Accused is produced.

The Accused declines to make a statement.

Prosecutor.

DEFENCE

The accused is informed of his rights in accordance with R.P. 40(a) and Note 2 on page 544 of the Manual of Military Law, 1929 edition.

The accused is asked the following questions:-

Q.1 Do you wish to give evidence as a witness?

A.1 No.

Q.2 Do you intend to call any other witnesses on your behalf?

A.2 No.

Q.3 Are they witnesses as to character only?

A.3 N.

See R.P. 41

SUMMARY OF EVIDENCE taken in the case of No.L 1650 Pte. Robertson, R.W., a soldier of 1 Cdn Div Recce Bn, on 25 Feb 41, in the Field, by order of the Commanding Officer.

Witness:

L 2215 Pte. Picketts, L.J. a soldier of the 1 Cdn Div Recce Bn, having been duly sworn states:-

On Saturday, 22 Feb 41, I was with Pte Robertson at about 1930 hrs. We had some wine.

I went into a confectioner's shop with him. I bought some gum. After we came out we went to the Public Lavatories, where he took the box out of his overcoat pocket, and showed it to me.

I asked him where he got it, and he said from the store.

We went into a cubicle, and he broke it open, and put the money into his pocket.

Q.-1 When were we in Reigate?

A.-1 We were not.

Q.-2 What condition was I in?

A.-2 I consider that you were drunk.

Q.-3 Would you say I had more to drink than you did, and we had two bottles of wine?

A.-3 Yes, we had two bottles of wine and you had more than I did.

L. J. Picketts
Pte. L.J. Picketts

L 1650 Pte. Robertson, R.W. (the accused) having been duly sworn states:-

On 22 Feb 41 at about 1400 hrs we got a large bottle of wine, at about 1700 hrs we got another bottle, at about 1830 hrs we got another.

I could not swear what happened after that.

RWRobertson
Pte. R.W. Robertson

Certified that the Rules of Proceedure 4 (C)(D)(E) and (F) have been complied with.

Taken down in the presence and hearing of the accused, this 25 day of February, 1941

[signature]
Officer Taking Sumary

C 42013 Cpl. King, A.W., having been duly sworn states;

On 22 Feb 41, at approximately 1950 hrs a telephone call was received at the police station that a collection box for Eveline Hospital, had been stolen from 11 High St. I accompanied Detective Constable Bowls and L/Cpl. McCardle to investigate At the stop light on Redhill we noticed two soldiers approaching the corner, we stopped them and took them to the store at 11 High St. to see if these were the men who had been in the store when the box was stolen. On the way one of these soldiers escaped in the darkness. We took Pte. Robertson to the shop where he was identified as one of the soldiers who had been in the when the box was stolen. As we entered the shop doorway this man dropped a quantity of pennies on the sidewalk. When searched a large quantity of pennies and small silver was found, there was also a quart bottle of wine and another quart bottle containing a few ounces. When we found the pennies the soldier slid to the floor and we were unable to obtain any information from him at all. He was taken to the Redhill Police Station and placed in a cell.

Q. 1. What condition would you say I was in?

A. 1. When we first met you appeared to have been drinking, but I would not say you were drunk.

Q. 2. When would you say a man was drunk?

A. 2. I would say a man was drunk when he is incapable of carrying on. You walked along to thestore without any assistance.

Q. 3. Why then would a man slide to the floor?

A. 3. I don't know why, but before we entered the store you were very anxious to get rid of the two bottles of wine.

C 42013 Cpl. King, A.W.

C 42019 L/Cpl. McCardle, Having been duly sworn states;

On the evening of 22 Feb 41 I was on duty in the town of Redhill, stationed in the Redhill Police Station, between 1900 and 2000 hrs. At 1950 hrs a phone message was received at the Redhill Police Station that a saving box had been taken from the counter by two Canadian soldiers. Accompanied by Cpl. King and D.C. Bowles I patrolled down High St. and on Station Rd. two soldiers were stopped. These men asked us where they could get the bus to go to Bletchingly. Noting a bottle of wine in the overcoat pocket of one I took him into custody, escorting him to 11 High St. At the Wheat Sheaf (Station Rd.- High St) this man made an attempt to escape, taking him by the arm and and coat collar I escorted him to 11 High St. going through the door I let go his arm. The soldier putting his hand in his pocket pulling out some money which he threw on the side walk. This I later recovered made up as follows:- 1 sixpence, 1 penny, 4 half-penny and a farthing. I then entered the store took another bottle of wine from the inside of his great coat and from the outside pocket of his great coat.I took 15 shillings made up in pennies and a few sixpences. From his tunic pocket I took his pay book from which I obtained particulars and found his name to be Pte. Robertson, Sask L.I. (M.G.). I then turned this man over to D.C. Bowles.

The accused declined to cross-examine this witness.

L/Cpl. McCardle.

Officer Taking Summary

John Ridout Bowles, Detective Constable, having been duly sworn, states:-

"At 7.50pm on Saturday, 15th February, 1941, in consequence of information received at Redhill Police Station, I patrolled London Road to the Town, accompanied by two Military Police officers. In Station Road West, we saw two Canadian soldiers, one of whom was the prisoner - Robertson.

I said to prisoner - "Have you been into a Confectioner's shop in High Street just previously".

He replied:- "No, we want to catch the bus to Blechingley".

I asked him to accompany us back to the shop which he did and at the Wheatsheaf Corner he tried to get away, but was held by one of the Military Police officers - L/Cpl. McCardle. I noticed that Robertson had been drinking, but he was not drunk.

As we were entering the shop I heard money falling to the ground. We took him into the shop and on feeling in his right hand overcoat pocket, I found it to be full of money which amounted to 15/- consisting of coppers, halfpennies, farthings, and a few sixpennes. I also recovered 9d from the floor of the shop.

In consequence of what I was told by the shop assistant - John Davey, I caused the prisoner to be taken to Redhill Police Station where he was searched and detained. It was noticeable that he was now behaving as drunk and incapable; it was impossible to rouse him, nor would he stand up.

At 10.0am on Sunday, 23rd Feb. 1941, I saw the prisoner at Redhill Police Station.

I said to him:- "It has been alleged that about 7.50pm last evening, you entered a Confectioner's shop in High Street, Redhill, and stole a Hospital Collecting Box from the counter".

I cautioned him, and he replied - "Yes that's right", and made a statement which I took down in writing at his dictation, read over to him, and which he signed in my presence.

After making further enquiries, at 1.0pm the same day, I cautioned and formally charged him with the offence, and he replied:- "I don't think there is any more I have to say".

I produced to him a Hospital Collecting Box which I had recovered from the Public Lavatories, Redhill, which he agreed was the one he had stolen."

Signed:- J. R. Bowles.
Det. Constable.

The accused declined to cross-examine this witness.

Certified true copy
W.N. Hovey, Capt.

Officer Taking Summary

John Davey, Shopkeeper's Assistant, having been duly sworn, states -

"At 19.50 hours at II High Street, on Saturday, 22nd February, 1941, two Canadian soldiers came into the shop and asked for articles which we did not sell.

All the time they were near the till where the Hospital Collecting Box was tied.

When they had gone out I found that the Hospital Box was missing, so I informed the proprietoress and they informed the Police."

Signed:- W.J. Davey.

W J Davey

The accused declined to cross-examine this witness.

Officer Taking Summary

Certified true copy

W.N. Hovey, Capt.

AFTER FINDING.

L. Beveridge is sworn and states:-

"I produce a certified copy of A.F.B. 122 relating to the accused. (The said copy is marked C, signed by the President, and attached to the proceedings.)

Question to the accused

"Do you wish to address the Court, or to call evidence as to character?"

Answer:- No

The (~~accused~~)(Defending Officer) makes the following plea in mitigation of sentence:-

See attached sheet page 7

P. Kearsley
Major

REIGATE BOROUGH POLICE.

STATEMENT.

Date 22nd Feb. 1941.

NAME John DAVEY, 17 years.

ADDRESS 56 Garlands Road, Redhill.

OCCUPATION Shop Assistant.

who says :-

"About 7.50pm on Saturday, 22nd February, 1941, I was in "Latty's" shop, High Street, Redhill, when two Canadian soldiers entered the shop. One had a dark moustache, and he appeared to have been drinking.

They asked for Shoe black, Toilet Soap, and if we had any wines. I told them we hadn't any of these things.

On the counter when they came in, was a Collecting Box for the Evelina Hospital for Sick Children.

They went out, and after they had gone, I found the Box was missing.

I informed Mrs Bridger, the proprietress, at once."

Signed:- J. Davey.

Witness:- J. Bowles, D.C.

REIGATE BOROUGH POLICE.

STATEMENT.

Date 23rd Feb. 1941.

NAME John Ridout BOWLES.

ADDRESS Police Station, Redhill.

OCCUPATION Detective Constable.

who says :-

"At 7.50pm on Saturday, 22nd February, 1941, in consequence of information received at Redhill Police Station, I patrolled London Road, Redhill, accompanied by two Military Police officers, and in Station Road West, I saw and stopped two soldiers, one of whom was the prisoner Robertson.

I said to him:- "Have you been into a Confectioner's shop round the corner, just recently".

He replied:- "No, we want to catch the bus to Blechingley."

I asked him to accompany me to High Street, to the shop, which he did. I saw he had been drinking, but he definitely wasn't drunk.

On entering the shop, he dropped some money on the ground, which I recovered, amounting to 9½d. In the shop, I searched his overcoat, and found it contained 15/- in coppers, halfpennies, farthings, and sixpences.

I caused him to be taken to Redhill Police Station, where he was locked up. His behaviour was not that of a drunk and incapable person.

At 10.0am, Sunday, 23rd February, 1941, I saw prisoner at Redhill Police Station.

I said to him:- "It has been alleged that about 7.50pm last evening, you entered a Confectioner shop in High Street, Redhill, and stole a Hospital Collecting Box from the counter.

I cautioned him, and he replied - "That's right", and made a statement (copy attached) which I took down, read over to him, and which he signed in my presence.

At 1.0pm, I cautioned and charged him with the offence -

"For that he at Redhill in the Borough of Reigate, about 7.50pm on Saturday, 22nd Feb. 1941, feloniously did steal one Collecting Box and contents amounting to 15/9½, the property of the Evelina

P.T.O.

REIGATE BOROUGH POLICE.

STATEMENT.

Date 23rd Feb. 1941.

NAME Lee Joseph PICKETTS. 20 years.

ADDRESS 1st Cdn. Reconnaissance Battn. C.A.S.F.

OCCUPATION Private. No.1.2215.

who says :-

"On Saturday, 22nd February, 1941 I was with Robertson from about 1.0pm. We had some wine.

I went into the Confectioner's shop with him, and after we came out, we went to the Public Lavatories, where he took the Box (produced) out of his overcoat pocket, and showed to me.

I asked him where he got it, and he said from the store.

We went into a cubicle, and he broke it open, and put the money into his pocket . He didn't give me any.

He was drunk."

REIGATE BOROUGH POLICE.

STATEMENT.

Date 23rd Feb. 1941.

NAME Russell Wallace ROBERTSON.

ADDRESS 1st Cdn. Recc. Battn., South Park Farm, Blechingley.

OCCUPATION Private. No. L.1650.

who says :-

"I took the Box and broke it open in the Public Lavatories, and took the money from it and put it in my right hand coat pocket.

So far as I remember, I didn't spend any of the money."

Signed:- R.W. Robertson

Witness:- A Borden D/C.

CHARGE

Army Form B 252
(See King's Regulations)

1 Cdn Div Recce Bn — Regiment

A Coy — Battery / Squadron / Troop or Company

CHARGE against No. L 1650 Rank Pte

Name Robertson, R.W.

Place ~~Reigate~~ REDHILL Date of Offence 22 Feb 41

OFFENCE A.A.Sec.41. W.O.A.S. committing a civil offence, that is to say, stealing, in that he at ~~Reigate~~ REDHILL on 22 Feb 41, stole one collecting box and contents, amounting to aprox 15/9½, the property of the Evelina hospital for Sick Children.

Names of Witnesses :— Documentary

Remanded To O.C. Wing Darling major A Coy

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded Remanded for F.A.C.M.

By whom Awarded [signature] Lt Col

Adjutant. [signature]

P.T.O.

[illegible] 1,000,000 [illegible] K. & H. Ltd. [illegible]

23rd Feb. 1941.

Russell Wallace ROBERTSON.

1st Cdn. Recc. Battn., South Park Farm,
Blechingley.

Private. No. L.1650.

"I took the Box and broke it open in the Public Lavatories, and took the money from it and put it in my right hand coat pocket.

So far as I remember, I didn't spend any of the money."

Signed:- R W Robertson

Witness:- J Bowles. D/c.

Exhibit "B"

P. Leacher
Major

List of exhibits in the case of
L 1650 Pte. Robertson, R.W.

1 Qt. bottle of British Ruby Wine (full)

1 Qt. bottle of British Ruby Wine (containing a few ounces)

The above retained at Bn HQ pending instructions as to their disposal.

for [illegible] Capt

H.W. Foster, Lt.-col.,
C.O. 1 Cdn Div Recce Sqn.

Statement of L1650 Pte. Robertson, R.W.

I wish to have an Officer appointed to defend me at my Court Martial.

R.W. Robertson

(Signed L1650 Robertson, R.W.

REIGATE BOROUGH POLICE.

WILLIAM H. BEACHER,
Chief Constable.

TELEPHONE No.1
REIGATE, No. 2211-2 (two lines).

All Official Communications
Address to the
"CHIEF CONSTABLE."

Chief Constables Office,
Reigate.

HCA/FGP. 24th. February, 1941.

Dear Sir,

Russell Wallace Robertson,
No.J.1950.

I am directed by the Chief Constable to inform you that the above-named soldier appeared before the Reigate Police Court this date charged with stealing a collecting box and contents. The decision of the Magistrates was that he should be handed over to the Military Authorities to be dealt with.

I enclose for your information a copy of the evidence in this case.

Yours faithfully,

Chief Inspector.

The Commanding Officer,
1st. Cdn. Recs.Battn.,
South Park Farm,
Bletchingley.

Exhibit C
Pt Remarks
[illegible]

Date of enlistment } 12/10/39 Sheet No.

No. L 1650 Name Robertson, R.W. Squ., Batty., or Company } HQ Corps SLI (MG)

Date of last entry in Company Conduct Sheet } No. and date of last drunk } G.C. Badges } Long Service and G.C. Pay } Signature O.C. Company, etc. }

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Tournay	2/1/40	Pte		Disobedience to a superior officer Sec.9 A.A.	A/Cpl. Strong	14 days C.B.	3/1/40	Lt.-col.Potts	
Tournay	2/1/40	"		Disobedience to a superior officer Sec.9 A.A.	S.S.M. Maddin	14 days C.B.	3/1/40	Lt.-col.Potts	
Tournay	9/1/40	"		Failing to report when a defaulter Sec.15 A.A.	Pte. Clarke	24 hrs det	12/1/40	Lt.-col.Potts	
Tournay	16/4/40	"		A.W.O.L. 10 hrs, 30 min.S.15	L/Cpl. Ashley	3 days C.B.	16/4/40	Capt.Klachn	Forfeits 1 days pay.
Kingswood	25/7/40	"		Sec.46 A.A. W.O.A.S.-A.W.O.L. from 1100 hrs 25/9/40 until 1900 hrs 26/9/40 (32 hrs)		Auto forfeiture 2 days pay. Sec.46. Forf 8 days pay	1/8/40	Lt.-col.C.McKinnon	
Kingswood	25/7/40	"	1	Drunkenness	S.S.M.Fleming-Admonished		1/8/40	Lt.-col.C.McKinnon	
Ockley	1 Oct40	"	2	Drunkenness	Sgt.Magee Sgt.Pollock	27 Days det	4 Oct40	E.Scott Dudley, Major	

Army Form B.122

Wt. 15031/1382 1,000,000 H.P.Ltd. 51-7048 Form B122/4

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Released from the Detention Barracks at Aldershot, 30 Oct 40					
Portslade	28 Dec40	Pte		Sentence having expired. W.C.A.S. Pawned his respirator Sec 24 (1) A.A.	Sgt.Moore	Reprimanded	30 Dec40	Col. McKinon	
Preston	14 Jan41	"		W.C.A.S. did absenting himself without leave from parade. (9 hrs 29min)A.A.15(1)	Cpl.Davies	14 days C.B.	15 Jan41	Major Scott-Dudley	

Certified true copy

L R Rankin Lieut
adjutant SASK Lt.

SSS-91

PTE ROBERTSON T.E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K.41221 Pte. Thomas Eric ROBERTSON

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 403 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of NG see RP 44 fn b.)

~~Accused under close arrest~~ remanding ~~not under~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 29 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Fourteen days Field Punishment with loss of fourteen days pay, and to pay the cost of apprehension, i.e., £4-11-6.

~~Field~~ Judge Advocate, if any. 7 July 44 Date awarded. (Sgd) J.F. Molyneux, Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

(Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding & sentence

~~I direct that the accused be released from close arrest and that all other orders~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) Officer i/c Conv. Section G.H.Q. 1 Echn.

Date 9 July 1944 Commanding

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
K-41221 Pte Thomas Eric Robertson FORMERLY NO 30 Coy CFC NOW.	21 July 44	for (LOUIS [illegible]) Major C.O. No. 1 Can R.P.U. (Lorne Scots

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Extracts taken & published in our DO 153A, d/21 Jul 44.

I certify that there are no ill-gotten gains or [illegible] to justify withholding confirmation of these proceedings

for [illegible] (1 Can Corps) Capt 1 Bch - 21 A Gp

RECEIVED 29 JUL 1944 G.H.Q.

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier A.W. Beament Comd Cdn Sec GHQ 1 Ech 21 A Gp dated 29 June 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent substantive rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K.41221	Pte.	Thomas Eric	ROBERTSON	No.30 Coy. Can Forestry Corps.

PROCEEDINGS REVIEWED

J.K. Coulter Major RCA

REVIEWING OFFICER, JAG BRANCH G.H.Q.

Date

PROCEEDINGS REVIEWED G.H.Q. 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 7 July 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 9/21

A1. The President, Members, waiting Member, ~~Judge Advocate, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RoPs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~in~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 0950 hours trial commences. Typed 9/21

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to~~ ~~the Shorthand Writer?~~ Do you object to C.21569 S/Sgt. Benton, B. as shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~Judge Advocate, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F.J.L. Molyneux	No.28 Coy CFC.
Member	Captain	R.K. Allen	No.15 Coy CFC.
Member	Lieut	T.A. Stinson	No.28 Coy CFC.
~~Judge Advocate~~			
Prosecutor	Captain	J.F. Prebble	No.16 Coy CFC.
Defending Offr	Lieut	G.C. Murphy	No.15 Coy CFC.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused K.41221 Pte. Thomas Eric ROBERTSON before arraignment makes(s) (no) ~~in~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~not~~ plead not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A 18

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M.M.L. p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*ii*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~(name)~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s),(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. Yes (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his ~~(them)~~ plea(s) of Guilty to Not Guilty on 1st charge(s). The accused is (am) so informed, ~~and his attnsy~~ ~~(them)~~ plea(s) of Guilty to charge(s) ~~have(has)~~ ~~(whatever pleas) on~~ ~~remaining charge(s)~~ ~~part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole of part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are (can) as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....

(1. *RP 115.* 2. *RP 80(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (d), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. No.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. No (2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the Court respectively~~.

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2223, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

THE ACCUSED ELECTS TO BE TRIED BY FIELD GENERAL COURT MARTIAL INSTEAD OF SUBMITTING TO A SUMMARY AWARD

CHARGE SHEET

The accused, K 41221 Pte. Thomas Eric ROBERTSON, No. 30 Company Canadian Forestry Corps, a soldier in the Canadian Army, Overseas, is charged with, while on Active Service,

"ABSENTING HIMSELF WITHOUT LEAVE",

Sec 15(1) Army Act

in that he, while travelling on troop train between Thornhill and Bonar Bridge on 28/29 May 44, did absent himself without leave at 23:30 hrs. 28 May 44 till apprehended by Canadian Provost Corps in Glasgow at 10:00 hrs 29 May 44. (Total time absent 10 hrs. 30 min.), thereby causing expense to the Public to the amount of £ 4-11-6, cost of apprehension and return to unit.

In the Field
8 Jun 44.

P.W. Belson Major.
(P.W.Belson)
Officer Commanding,
No. 30 Company C.F.C.

In the Field

To be tried by Field General Court Martial

W. W. Beament Brigadier.
Officer i/c Canadian Services
G.H.Q. 1 Echn.

28 JUN 1944

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(5).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
K-41221	Pte		Thomas Eric	ROBERTSON	No.30 Coy Cdn Forestry Corps

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 28 Jun 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed as detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have stated hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	P.J.L. Molyneux	No.28 Coy, CFC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	R.K. Allen	No.16 Coy, CFC
Lieut.	T.A. Stinson	No.28 Coy, CFC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	C.G. Larsson	Hq 1 CFG
Lieut.	C.C. Curtis	No.16 Coy CFC

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
---	---	---

On Active Service in the Fd

in The Field (Country.)

(Signed personally. RP 105 fn 2) (A.E. Beament) Brigadier (Rank.)

Date 28 Jun 44

Commanding Cdn Sec GHq 1 Sch - 21 Army Group

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAES (1p Jeq of AFAS) 40-F & S/1697 (4691)

(See overleaf for oaths and notes for use on trial.)

Approved 28 Jun 44

(E.A. Howard) Capt.

ADJA

Exhibit "A"

MEDICAL OFFICER'S CERTIFICATE

I Certify that I have this morning examined No. K 41221 Pte. Thomas Eric ROBERTSON of No. 30 Company Canadian Forestry Corps and in my opinion he is fit / ~~unfit~~ to undergo trial by Court Martial.

Station Field

Date 7 July 44

[signature] Capt.
Medical Officer

CFA96 Para B 2

Statement made by K.41221 Pte. Thomas Eric ROBERTSON, No. 30 Company, Canadian Forestry Corps, reference his trial by Field General Court Martial on 7 Jul 44:-

" The only reason why I got off the train while it was in the station was to get an X-ray. It wasn't to jump the draft or anything like that. I was having trouble with my chest and I went to get an X-ray. The pack that I was wearing down there was bothering me, it was causing pains in my chest, and I went to get an X-ray.

EXHIBIT B.

SUMMARY OF EVIDENCE

re charges against

K.41221 Pte. ROBERTSON, T.E.

No. D Coy, C.F.C.

Copy No. 1.

Summary of evidence in the case of No. K41221 Private Robertson, T.E., No. 30 Coy Canadian Forestry Corps, Canadian Army Overseas.

By direction of the Officer Commanding the summary of evidence is taken on oath.

1st witness for the prosecution

Lt. W. Birnie of No. 30 Coy Canadian Forestry Corps, Canadian Army Overseas having been duly sworn states:-

On Sunday, 28 May 44 at Carron Bridge Camp at 1930 hrs. a Muster Parade of this unit was held at which time K41221 Pte Robertson, T.E. was on parade. The unit marched out from Carron Bridge Camp at 1950 hrs. arriving at Thornhill Station and embarking on the train. The men, as they were embarking were counted onto the train, there were no absentees. The train pulled out at 2156 hrs. At approximately 2330 hrs. 28 May 44 there was an unschedule halt in the railway yards on the outskirts of Glasgow. It was fairly dark at that time. On the 29 May 44 a muster parade of the Coy was held at it's home station namely Skibo "A" Camp at which time K41221 Pte Robertson, T.E. was unaccounted for, at 13:00 hrs.

On 29 May 44 a telephone message was received from Canadian Provost Corps, Glasgow to the effect that K41221 Pte Robertson, T.E. was in their custody and to send an escort to return him to his unit. An escort of one corporal and one private were despatch to Glasgow to return K41221 Pte Robertson, T.E. to his unit. On information received from Station Master at Bonar Bridge Station it was ascertained that the cost of two return tickets, military fare 3rd class, from Bonar Bridge Station to Glasgow amounted to £3/13/2. Also that the cost of a single fare, military fare 3rd class, from Glasgow to Bonar Bridge was £0/10/4. I herewith submit expense voucher. Voucher submitted to be known as Exhibit "A".

The accused declines to cross-examine this witness.

W. Birnie

(W. Birnie) Lt. & Adjt.
No. 30 Coy C.F.C.

2nd witness for the prosecution

No. K41245 Cpl. Bohnet, E.A. of No.30 Coy Canadian Forestry Corps, Canadian Army Overseas having been duly sworn states:-

Instructed on orders I proceeded to Glasgow as the N.C.O. i/c of the escort. On arriving I reported to Canadian Provost Corps. They handed over to me the accused, K41221 Pte Robertson, T.E. and certain documents which I now present. I returned with K41221 Pte Robertson, T.E. in my custody to Skibo "A" Camp and turned him over to the adjutant.

The document handed in is marked as Exhibit "A".

The accused declines to cross-examine this witness.

Cpl. Bohnet E.A.

(Bohnet, E.A.) Cpl.
No. 30 Coy C.F.C.

3rd Witness for the Prosecution

B 38885 L/Cpl. W. B. Huston, No. 2 Detachment, No. 6 Area Company, Canadian Provost Corps.

A written statement of this witness' evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence.

Having regard to the expense involved and the loss of time involved the attendance of this witness cannot, in my opinion, be readily procured.

The accused does not demand the attendance of this witness for cross-examination. Statement submitted and to be known as Exhibit "B".

I Rockwell.
(I. Rockwell) Lieut.
No. 30 Company, C.P.C.

4th Witness for the Prosecution

K 59192 L/Cpl. A. Thiesson, No. 2 Detachment, No. 6 Area Company, Canadian Provost Corps.

A written statement of this witness' evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence.

Having regard to the expense involved and the loss of time involved the attendance of this witness cannot, in my opinion, be readily procured.

The accused does not demand the attendance of this witness for cross-examination. Statement submitted and to be known as Exhibit "C".

I Rockwell.
(I. Rockwell) Lieut.
No. 30 Company, C.P.C.

5th Witness for the Prosecution

Capt. A. C. Fowler, R.C.A.M.C. attached to H.Q. No. 1 Canadian Forestry Group, Canadian Army Overseas, having been duly sworn states,

I remember K 41221 Pte. Robertson, T.E. coming on sick parade a day or so before leaving Carron Bridge Camp and his complaint was pains in his lower left chest and after examining him he said he also had a cold. There was nothing very definite about the pain in his chest so there was no treatment given for that, but I think I prescribed either medicine or nose drops for the cold. After that K 41221 Pte. Robertson, T.E. announced that he had ulcers and T.E. and if he wasn't X-rayed that day he would go to Edinburgh. I asked why he wanted to go to Edinburgh and he said he wanted to get properly examined. I then told him to return to his duty.

A few hours later that morning I contacted Major P.W. Belson of No. 30 Coy Canadian Forestry Corps and after considering the case of K 41221 Pte. Robertson, T.E. we decided that he should be seen by Major Robillard, P.S.O. On or about the 1st June 44 I contacted Major Robillard at Beauly with the idea of having him see K 41221 Pte. Robertson T.E.

The accused declines to cross-examine this witness.

A C Fowler
(A. C. Fowler) Capt.
R.C.A.M.C. attached to
H.Q. No. 1 Cdn. Forestry Gp.

6th witness for the prosecution

Major W.H. Muirhead, R.C.A.M.C. attached to No. 3 District H.Q., Canadian Forestry Corps, Canadian Army Overseas having been duly sworn states:-

On the morning of June 2nd, 1944 I examined K41221 Pte Robertson, T.E. I found his chest and lungs clear, no bony abnormalities and found no reason why an Xray should be taken. I contacted Major Watkinson and through him contacted Major Robillard and asked both Major Robillard and Major Watkinson to examine K41221 Pte Robertson, T.E. Major Watkinson examined K41221 Pte Robertson, T.E. on Saturday morning, 4 Jun 44 and Major Robillard examined K41221 Pte Robertson, T. E. on Tuesday, 6 Jun 44. Major Watkinson confirmed my diagnosis and as yet I haven't received reports from Major Robillard.

The accused declines to cross-examine this witness.

W.H. Muirhead Lieut Major
(W.H. Muirhead) Major
RCAMC attd. to No.3 Dist H.Q. CFC

The accused declines to call any witnesses.

The accused having been duly cautioned in accordance with Rule of Procedure 4(E) elects to give evidence on oath.

The accused No. K41221 Pte. Robertson, T.E., No. 30 Coy Canadian Forestry Corps, Canadian Army Overseas having been duly sworn states:-

The day following skin inspection of the company at Carron Bridge Camp I reported on sick parade because I was spitting blood the previous day. I asked the Medical Officer if I could be sent to have an Xray taken. The M.O. asked me why I did not report earlier when I was closer to where an Xray could be taken and refused to take any further action. I then told the M.O. that I would go to Edinburgh on my own accord and have an Xray taken.

The following day while marching to Thornhill Station to embark on the train, the wearing of the large pack caused pains in my chest and back. When the train stopped at Glasgow I decided to go and have an Xray taken. A few hours after leaving the train I was taken into custody by Canadian Provost and didn't get a chance to have the Xray taken. Later I was returned to camp under escort and reported on sick parade but no results.

[illegible]

[illegible]

[illegible]

T.E. Robertson
(K41221 Pte. Robertson, T.E.)
No. 30 Coy C.F.C.

Certified that Rule of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.
Taken down by me in the presence and hearing of the accused this 8 day of June 1944 at Skibo "A" Camp.

I. Rockwell

(I. Rockwell) Lt.
No. 30 Coy C.F.C.

I.R.

Exhibit A. S.1.

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 APR.42

I certify that No.K.41221. Rank . Pte. Name Robertson, T.S. . . .

Unit . 30 Coy. C.F.C. . . . . was arrested at .Glasgow. . . . (place)

at .1000 . .(hour) on 29 May 44. .(date) and that at the time of his arrest he was wearing (military uniform) ~~or (civilian clothes)~~. Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

R.W. Evans Lieut.
Officer i/c Scottish Detachment,
Canadian Provost Corps.

Glasgow
29 May 44.

Exhibit "A"

EXPENSE VOUCHER Ref. K.R.(Can) 539

No. K 41221 Rank. Private Name. Thomas Eric ROBERTSON

The following expenses were incurred in apprehending and returning the a/n soldier to his Unit.

From GLASGOW to BONAR BRIDGE

Date	Particulars	Amount £ S D
29 May 44	2 Escort return fares from Bonar Bridge to Glasgow	3.13. 2
	Prisoner's single fare Glasgow to Bonar Bridge	18. 4
	TOTAL	£4.11. 6

I certify that above statement of Expenses is correct and that the amounts are fair and just.

W. Birnie

(W. Birnie) Lieut. & Adjt.
No. 30 Company, C. P. C.

Statement of **EVIDENCE** in the case of,
K-41221 Pte Robertson,T.E. Exhibit "B"
30 Coy. C.F.C.

Sir:

At GLASGOW at about 10.00 hrs 29-May-44. I was on patrol duty on CENTRAL Stn. in company with L/Cpl Thiesson,A.

On information recived from the C.M.P. I proceeded to the R.T.O.s office where I apprehended the a/m soldier as being an absentee from his unit.

Glasgow.
29-May-44.

W B. Huston L/Cpl.
(B-30665 W.B.Huston.)
No.2. Detachament.
No.6 (Area) Coy.
Cdn.Provost, Corps.

Exhibit "C"

Sir: I have read over the above statement and corroborate same.

Glasgow.
29-May-44.

A Thiesson L/Cpl.
(H-59192.A.Thiesson.
No.2. Detachment.
No.6 (Area) Coy.
Cdn.Provost, Corps.

REMARKS

Exhibit A. O.R.

CHARGE

Army Form B 252
(See King's Regulations)

C.F.C. Regiment

No.30. Coy. Battery / Squadron / Troop or Company

CHARGE against No K-41221 Rank Pte.

Name Robertson, T.E.

Place Glasgow. Date of Offence 29-May-44.

OFFENCE W.O.A.S. was A.W.L.

B M Evans Pt.
IN GOOTTEN DOCUMENTS
CDN PERSONS CORPS

Names of Witnesses :—

L/Cpl.Huston,W.B. Cdn.Provost, Corps.

L/Cpl.Thiesson,A. Cdn.Provost, Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant

P.T.

G6384 W1W28440/806 1,000,000 10/40 R. & H. Ltd. G657/47

ARMY FORM B.296 (WAR). 9M

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only). Exhibit 6

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K 41221	Private	Robertson T. E.	No. 30 Company C. F. C.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL 2 times.

For Conduct to the Prejudice etc. 1 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 7 Aug 42

Date of last entry in Field Conduct Sheet 11 Mar 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~*3. The accused at the present time is under sentence for~~

~~beginning on the~~ ~~day of~~

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 39 days in military custody, *i.e.*, 10 days in open arrest, 29 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 35

6. The date of his attestation ~~calling up for military service~~ is 31 Dec. 41

7. The service which the accused is allowed to reckon is

8. The accused is in possession of‡

‡State the military decorations (if any) held by accused.

9. ~~(If the accused is a warrant officer or N.C.O.).~~ The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of

In the war substantive rank of

In the acting rank of

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) Wt.6670/668 100,000 4/42 A. & E.W.Ltd. Gp.698
(22459) Wt.29258/1873 60,000 9/42 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 7 day of July 1944

W. Bennett Lt
O. i/c Records No. 30 Coy. C.F.C.

Exhibit "D"

M.F.M. 6
(A.F.B. 122)
500M—11-40 (9033)
H.Q. 1773-45-13

COPY No. K41221 Name Robertson Thomas Eric Corps C.F.C. Date of enlistment 31/12/41 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. ????????Lt. Character

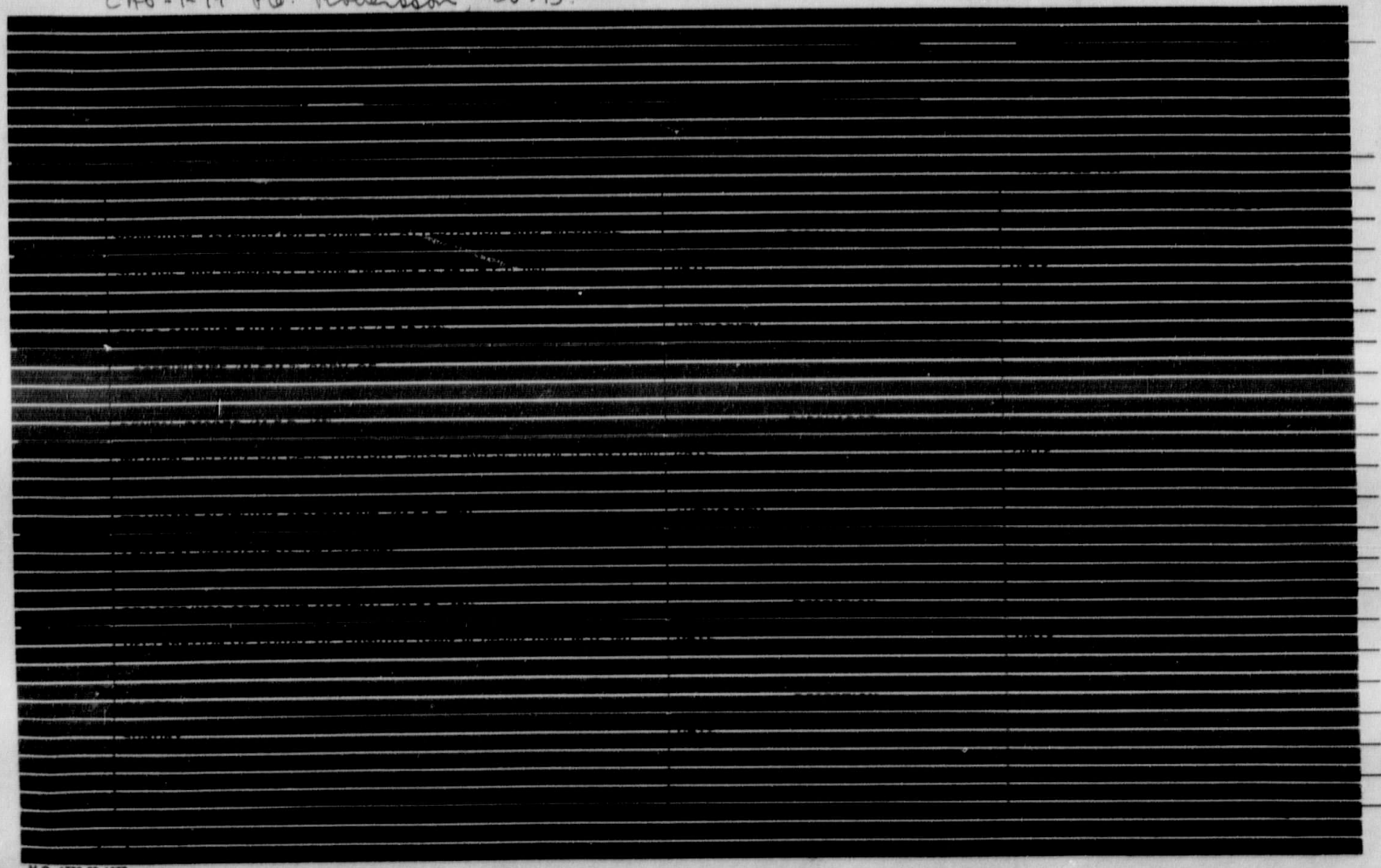
Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Spinningdale	7.8.42	Pte.		Conduct to the pred. Sec. 40 AA in that he at 1350 hours 7.8.42 used improper language to a superior officer.	Lieut. D.M. King	7 days Field Punishment	21.8.42	Lieut.Col A.E.Parlow	
In the Field	27Jul 43	Pte.		AWL from 23:59 hrs 27 July 43 to 16:30 hrs 28 July 43.(Total time absent 16 hrs. 31 min.) (Sec. 15(1)A.A.)	CSM Tyerman	ADMONISHED	28 July 43	Capt.R.K. Cunningham	Forf. 1 days pay FR&I 149(1)(a)
In the Field	11 Mar 44	Pte.		AWL From 2359 hrs 11 Mar 44 Returned at 1615 hrs 12 Mar 44. (Total time absent 16 hrs. 16 min.) Sec. 15 (1) A.A.	CSM Tyerman H.E.	5 days C.B.	13 Mar 44	Major P.W. Belson	Forf. 1 days pay under FR&I 149(1)(a)

Certified true copy,

O. 1/c Records No 30 Coy C.F.W.

(P.T.O.)

CAO-1-79 Pt. Robertson, N.D.



H.Q. 1772-39-1377

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M3266 Pte William Duncan Robertson, 3 Cdn Cemetery Constr Unit RCE

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec 40 AA	Not Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ~~—~~ DACR (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 31 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for one hundred & 20 (120) days

(Sgd) Kenneth Lord Capt — 20 June 46 — (Sgd) DACR Lieut Colonel
Judge-Advocate, if any. — Date awarded. — President. (RP 45, 56)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ~~—~~ Jas ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be ~~not committed to~~ prison or detention barracks until further orders.(1) CAB
(1. AA 57A. Delete if not used.)

Date 2 Jul 46 — (Sgd) [illegible] Brig — Commanding Cdn Sec N.W.E. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
M3266 Pte Robertson W.D.	5 Jul 46	Edwin Adam Capt.

Promulgated —
M3266 Pte Robertson, W.D. 17 July 46 — [illegible] Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 1 0 1946 JAG BRANCH

RECORDED AT CMHQ IN AB 169 - CAD-1-79

CPA96 (To take place of AFA21) 40/P & S/1698 (0144)

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of R.E. McAlister, Esq. Comd 25 CARR1580 dated 17 June 46.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M3266	Pte.		William Duncan	ROBERTSON	3 Cdn Cem Constr Unit RCE

PROCEEDINGS REVIEWED
CONVENING OFFICER, JAG BRANCH C.M.H.Q.

20 Jun 46 C.H. Tait Maj

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 17 & 20 JUNE 1946

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant from RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ DACR amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ DACR brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ DACR fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with~~ DACR ~~summarily by the CO.~~ DACR

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Mr H A Hille as interpreter? Ans No Sir

The Interpreter is sworn.(1) ~~Do you object to as shorthand writer? Ans~~ ~~The shorthand writer is sworn.(1)~~ DACR

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	H.A.C. ROSE	CIC	2 Cdn Disc Unit (NWE)
Member	CAPT	J.C.P. HARDY	CIC	2 Cdn Disc Unit (NWE)
Member	CAPT	K.J. KERFOOT	CIC	2 Cdn Disc Unit (NWE)
Judge-Advocate	DACR CAPT	R.M. MACLEOD	RCA	2 Cdn Disc Unit (NWE) ~~3 Cdn Const Unit~~ DACR
Prosecutor	CAPT	C. ADAM	RCE	3 Cdn Const Unit
Defending Offr	CAPT	F.M. PRITCHARD	RCAPC	2 Cdn Disc Unit (NWE)

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans YES (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI, p 3.)

A8. The accused M3266 Pte Robertson, W.D. before arraignment make(s) (no) ~~(a)~~ DACR plea(s) (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ DACR arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~(do)~~ DACR not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(B).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. ~~The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning~~ of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by ~~using Record Form E on p 3~~.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. ~~As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8~~ inclusive of ~~Record~~ Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (2).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using ~~Record~~ Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No wish (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~his~~ (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. No wish Do you intend to call witnesses on your behalf ?
Ans. No wish Are they witnesses as to character only ? Ans.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the Arrest charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No wish
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s) ~~Offr~~ purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) ~~Rank~~ having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(2)
(1. MFB 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. No through my defending officer (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) 114.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

IN THE CASE OF M3266 PTE William Duncan ROBERTSON,
3 Cdn Cemetery Constr Unit RCE SENTENCED TO 120 DAYS DETENTION
ON 20 JUN 46.

The Vice Judge-Advocate-General, Canadian Army Overseas, having advised that the finding and sentence in these proceedings are invalid, I hereby direct that the record of the conviction on the said charge be, and the same is hereby removed and the accused relieved from all consequences of his trial thereon.

London
15th JUL 46

(J.C. Murchie) Lieut-General
Chief of Staff
Canadian Military Headquarters

Hack

CHARGE SHEET

The accused, H.3266 Pte William Duncan ROBERTSON, 3 Canadian Cemetery Construction Unit, RCE, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, in Holland, on 17 May 46, was concerned in the improper obtaining of one hundred (100) cases of Coca Cola for sale to a Dutch Civilian.

K M Davison

(K M Davison) Capt
Officer Commanding
3 Can Cemetery Constr Unit, RCE

In the Field
1 Jun 46

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

10 Jun 46.

R & F W Hoste Colonel.

COMD. 25 GARRISON.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M.3266	Pte		William Duncan	ROBERTSON	3 Cdn Gen Constr Unit RCE

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and dated (date) 17 June 46 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) Cdn Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	Major HAC ROSE	2 Cdn Disc Unit RWE

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be designated by OC 2 Cdn Disc Unit (RWE)	
Capt or Lt	To be designated by OC 2 Cdn Disc Unit (RWE)	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	To be designated by OC 2 Cdn Disc Unit (RWE)	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	R.M. McLEOD	2 Cdn Disc Unit RWE

On Active Service in the Fd

in France (Country.)

(Signed personally.) R.F. McAlister Colonel. COMD. 25 GARRISON (Rank.)

Date 14 June 46

Commanding Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAB6 (In lieu of AFAB) 40/P & S/1801 14631)

(See overleaf for oaths and notes for use on trial.)

Hack

Pte. William Duncan Robertson

BDT

B K Donnelly Capt.

18 Jan

back

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this day personally examined

Pte. William Duncan Robertson

and find him fit/unfit to undergo trial by Court-Martial.

BR

In the Field

20 Jun 1946

B R Kennedy Capt
Medical Officer RCAMC
Cdn Forces in the Netherlands

Oxaer

TRIAL OF: M. 3266 Pte ROBERTSON, W. D.

1st Witness Prosecution

B144912, Sgt Donaldson, R.M.

having been duly sworn, states:

I am Sgt Donaldson R.M. 3 Can ~~Const~~ Comm Unit I recognize the accused as being in my sec. On May 17 I detailed Robertson to get Coca-Cola for my sec. He was to send it out by driver; he then could go on leave. Driver brought back 50 cases of Coca-cola; I unloaded it.

Exhibit 1 – receipt for 50 cases of coca-cola admitted & Defending officer does not object to it.

This is the only invoice I received

X-exam – No written authority given to purchase Coca-cola – I gave no money to purchase Coca-cola. Robertson had charge of sale of Coca-cola in my section

By the Court – Robertson held money from the sale to buy the next lot. He was supposed to buy ~~Coca-Co~~ 50 cases this day, the 17th May 46

R.P. 83 (B) complied with

(2) Crack

2nd Witness Prosecution

Mr. F. Bolkstal, having been duly sworn through Interpreter, states:

Dem Mr. F. Bolkstal, I work at Coca-Cola factory as a mechanic, Nos. Velserweg, Amsterdam. On afternoon in question 4 Cdns came with a motor ~~Do~~ car to get Coca-Cola. I recognize Roberston as one of them Rev. They had 27 empty Rev. cases with them & wanted 150 full cases to take with them. As I was not authorized to deliver these, I consulted mgr. As a result I took the empty cases & gave 100 Rev. full cases because 150 cases could not be loaded on truck at once. Then they drove away & said they would return for remainder. After about 1 hr. they ~~can~~ came back & took remaining 50 cases away. I do other work when people are away. 4 soldrs were Cdns. I don't know exactly who asked for the "Coke". The cases were specially marked for the Cdn Army. I wouldn't make delivery to all Cdn soldrs; only those who give empty cases in to factory. Amongst each other, the soldrs were handling money after ~~[illegible]~~ their return from the 1st trip. Two went into garage & divided the money.

R.P. 83(B) complied with

Crack

X-exam: On this particular day, I was a stock-keeper. I only make entries in stock-book downstairs; money is handled upstairs; we only have a chit signed. When people come in with empties, office phones down instructing us to deliver full cases. I had seen 2 of the 4 Cans before. The 4 may have come all together. I can't say exactly. I can't say which one ordered the cases of Cola-Cola. The first thing that happened is that as far as I know that original order was 150 cases; I was ordered to load as many as I could on truck as I could & the rest ~~at~~ later. I could identify some of the others there that day. (Hans Sealtiel produced by Defending Office & identified by Witness as having been there) I can't say definitely if Sealtiel asked for 150 cases instead of 50 cases. I've not had dealings with Sealtiel before; he had been there before to load Coca-Cola. 4 Cans dressed 3 complete with uniforms & the 4th had a kind of vest; he was Sealtiel. They didn't talk much to me at all. I had seen Sealtiel before at the factory.

By the Court: The date of this was 1st election day in Holland, sometime in May. Sealtiel & the accused divided the money in my presence. No one seemed to be in charge.

R.P. 83(B) Completed with

3rd witness Prosecution: Mr. E. Kappert, Holten, having been duly sworn through interpreter states:

I am E. Kappert of Holten, Holland. I worked as a cook for Cdns. at Holten for about a year until about 3 weeks ago. I recognize Robertson, the accused. I got a days holiday on the day in question; I can't remember the date exactly; it was the 17th May 46. We came to Amsterdam & stopped at Soest for a beer. While in Cafe, a Dutch soldier came in & the Dutch soldier & Robertson talked together, I didn't understand it. We proceeded to Amsterdam Coca-Cola plant. At the factory, they talked with a fat man. Then 100 cases of Coca-Cola loaded & they we drove away to a shop in Amsterdam & cases unloaded. We returned to the factory & Dutchman got in front of truck & had money in his hand. I was on left side of truck, Dutch soldier, 1st name Hans, gave me 50 guilders & made me accept them. Another 50 cases loaded & we returned to Holten with them. I'm not quite sure if he asked for money from me to pay for the Coca-Cola.

R.P. 8 & B) consulted with

X-exam: Hans was with us at the plant; it was in the afternoon. ~~Lunch~~ Hans didn't eat with us

Hack

~~Hank~~ When I first went to the plant, Robertson was talking with a man. I didn't hear the order for Coca-Cola because I stayed with the truck; I think that when we arrived at the Plant, Hans came running along. At the shop were the Coke delivered, they started unloading at once. Everyone got out of truck at the shop & unloaded the truck. I didn't hear anyone ask where to put the "coke".

By the Court:- No discussion with Robertson at Holten. Truck coming to Amsterdam to get coke. When truck unloaded at shop, 4 of us were there, myself, Hank, Robertson & the Dutch soldier. Hans gave me 50 guilders, Robertson & Hank setting ~~behind~~ beside him; I can't definitely say if he gave them money but they all had money in their hands. Nothing said about when I'd get my money after the sale at the shop. Riding in Army vehicle. Wasn't present when coke paid ~~for~~ after unloading, stopped at a Cafe, can't locate it. at the shop. Hank was driving the truck. I don't know exactly where the others went while loading the coke at the plant. They walked to & fro. I didn't see anyone go into the office. I remember giving evid. on Summary. It may be that I paid Robertson asked for the money at the Plant; I couldn't say exactly now just who asked me.

R.P. 83(B) complied.

Hack

4th witness
Prosecution: Johannes Willem Gerrets,
having been duly sworn, through
Interpreter, states:

I am, Johannes Willem Gerrets,
Beethovenstraat 91, Amsterdam Café owner
Chevalier d'Or. I don't recognise anyone
in the Court-room. Sealtiel came to me
+ offered me 100 cases of Coca-cola for sale.
I accepted + paid him 500 guilders. Coke
was delivered. Someone else was present when I
paid but don't know who it was.

X-exam: I told Sealtiel I would invest in
my name; I asked for it from Sealtiel
+ he said things went wrong + that I'd get
it later. I had previously purchased Coke
from Sealtiel on more than one occasion.

By the Court - I received the coca-cola, I think
in April but I'm not sure. Coke was delivered
in a warehouse in town. Man with Sealtiel
were Cdn uniform. I didn't see any special
marking on the cases. I wasn't present when
coca-cola delivered.

R.P. 83(B) complied with.

Hall

5th Witness Prosecution Lieut J. E. Hogan 3 Cen Const Unit, having been duly sworn, states:

I am Lieut J. E. Hogan 3 Cen. Const Unit in charge of sections constructing Cemeteries in Holland. I recognize the accused Robertson. I investigated alleged sale of 100 cases of Coke. I went to the Plant & checked the books there ~~I found that~~ I received certain documents from the the Plant & was present when it made. I submit ~~to~~ the document as exhibit "B" as the one I received but not as to the truth or otherwise of the contents of the document & this is agreed to by the Defending Officer

By the Court: Invoices of the purchase of Coke is the only record of Coke purchased by the Section I have no personal knowledge of the 100 cases having been delivered I made a search about 19th May & did not find 100 cases in the Camp. There were approx 60 cases.

R.P. 83(B) complied with

 Hack

6th Witness Prosecution Hans Sealtiel, Appeldorn, Holland, having been duly sworn, ~~through the interpreter~~, states:

I am Hans Sealtiel, Appeldorn Holland, interpreter with Cdn Units; at present unemployed. I recognize the accused from Holten. I was in Holten beginning of May & met Robertson who was Cook in "Y" sec. 3 C.C.U. I had a talk with him about Coca-Cola & we decided on a deal sometime. We arranged to meet each other at Appeldorn when Robertson went to draw Coca-Cola in Amsterdam. I wanted & saw the truck pass by & I hitch hiked & caught the truck in Soest. I went into the Cafe & saw Robertson & another one named Hank & Mr. Kappert there. We all went to Amsterdam & stopped at back of Chevalier D'Or. I ~~[illegible]~~ tried to see the mgr.; he not in. We went to Plant about 12 noon at the Plant, we did not load because not sure of deal. Went to town for lunch, Robertson left us & I left because no money to pay for lunch. After lunch Hank, Kappert & myself went to Chevalier d'Or & I went in & made arrangement with owner to deliver 100 cases of Coca-cola at his carpenter shop in town. When I came out truck had left

Hack

& I rode out to the Plant & when I arrived they already had started to load the truck with Coca-Cola. ~~Started to~~ As far as I know they started to load 50 cases for own unit & I was asked by Hank & the others if we could sell coca-cola. We loaded 100 cases, paid for it & went to & delivered at the carpenter's shop. From shop went to Chevalier d'Or, collected the money. Robertson & I went in together to get the money from the mgr. From there to the Plant & loaded 50 cases of coca-cola & then went to town & in the evening ~~all 4 of us~~ Hank, Kappert & I returned to Holten; I can't recall if Robertson returned with us or not. At Holten about midnight; unloaded coca-cola next morning.

At Soest, when I asked why they didn't pick me up, one of them told me that they hadn't seen me. I directed the truck to the Chevalier d'Or. Hank, Robertson & I discussed the sale of Coca-Cola. The profit was to be divided 3 ways & later decided to give Kappert 10% & 30% to each of us. ~~Received 885 guilders~~. I believe we received 9 guilders a case. Got 885 guilders. I got the money & took cost of coca-cola away & left a profit of about 165 guilders each & 55 guilders to Kappert.

Granberg came into the deal in the Cafe at Solst; Robertson said to Granberg "Oh! There you are! That's the man who knows about a coca-cola deal." Granberg didn't know anything about it previously, as far as I know. Down at the Plant the first time it was agreed that Granberg would share in the profit. Robertson brought this up; he asked me "what's in the deal for Hank?" or words something like it.

X-exam: I sold Coca-Cola to Chevalier d'Or before. No dealings with Robertson before. I knew I could sell coca-cola there. I needed a truck to move the coca-cola. When I first saw Robertson first he was in the Kitchen at Holten. I don't recall talking with him during the card-playing. Saw truck pass me at Eppeldorn. When we went to the Chevalier d'Or, they left me there. Hank didn't know anything about ~~it~~ the deal at first. I think they ordered 50 cases when I got to the plant the second time. I talked to one of the men at the Plant; ~~I~~ I made the arrangements with the mgr of the Chevalier d'Or & received the money. Granberg got his cut because he gave us a hand; he was driver of truck. I had no money; got it from Granberg, Kappert & Robertson. Fellows at the Plant speak a little English. Robertson & I paid the bill - very little talking in the office. I don't know who handed the money across the counter.

 Hack

~~Re-examination~~:

Re-examination: I didn't draw for myself in my own name.

By the Court: I ~~don't~~ didn't buy the coca-cola for myself. Company delivers to a Cdn Unit. Bill made out but didn't see it. At Appeldorn I phoned 2 or 3 times to see where the truck was. I was beside the road when truck went by. I was left at Chevalier d'Or after lunch as truck left because it was a dangerous place. I was asked how I made out & I said "We can sell ~~a~~ 100 cases at that price." I don't who ordered the additional 50 cases on the 1st loading. Arrangements were made to get 150 cases.

Truck was a 15 cwt belonging to Cdn Army. It had a Cdn sign on it. It had been previously arranged that we would meet in Appeldorn on day in question. No arrangements to ~~make~~ meet the truck at the Plant after leaving me at the Chevalier d'Or. I was asked for a bill in name of mgr & I said I couldn't get it.

R.P. 83(B) complied.

Prosecution closed

Prosecutor declines to make Closing Address.
Closing Address by Defending Offr (see attached address)

Hack

President announces that in his opinion summing-up by D.A. not necessary.

~~Closed class~~
Court closed to consider finding.

Court re-opened

Defending Officer - ADDRESS

The accused is charged under A.A. c. 40 with conduct to the prejudice in that he was concerned in the improper obtaining of 108 cases of Coca Cola for sale to a Dutch civilian.

The essence of this charge is that he was concerned in the improper obtaining of this Coca Cola and not that he was concerned with any further dealings with it.

Evidence has not been brought before the Court to show in what way the purchase of was improper. There is no evidence that anyone who could buy an empty case could not buy this product. If the prosecution wishes to suggest this then proper evidence should have been submitted to establish it.

The evidence clearly indicates that Scottish was the instigator and organizer of the whole deal. He merely used Robertson, Gramberg and Koppert to provide him with money and with a vehicle to transport the Coca Cola. He heard after them on three occasions when they had gone away without him. They tried to avoid him but through their persistency he involved them in the affair.

Scottish had been dealing in Coca Cola before. It appears that all he needed was a vehicle to move the cases. That is why the others were needed. He

only part played by Robertson & Granberg was in the Hack
improper use of a military vehicle and Robertson is not charged
with that. His offence rather it seems is that he was paid a
few guilders for helping to load and unload the truck and
in consideration of a loan.

The evidence does not indicate that he had anything
to do with the actual purchase of the Coca Cola. Indeed the
evidence points the other way for he had already started to
load the 50 cases he was to buy for the unit. Sealtiel I
suggest did not need his help to buy 100 cases. Sealtiel had
previously sold "Coke" to the Chevalier d'Or and would it
appears have his own way of obtaining it without cases from
the plant. Sealtiel was very evasive, his memory lapsed,
on the subject of who ordered the 100 cases and who paid
for them but there is no evidence that he had Robertson
order or purchase these cases or deal in the matter in any
way.

In the absence of any evidence against the accused on
this point and in the absence of ~~any~~ evidence to show that
the purchase of the Coca Cola by whoever it was done was in
an way "improper", I respectfully submit that the accused
must be acquitted on this charge.

[signature] Capt.

Plea in Mitigation

Attack

M 3266 Pte Robertson W. D.

Gentlemen: You have heard all the evidence with respect to this case and I do not feel that I need to labour the point to show that the offence committed by Robertson is not a serious one. Further I feel that the evidence showed that the part played by the accused was a very secondary one. He was being used by Scottie and only because of weakness was he finally involved. Certainly the evidence indicated that he and Stenberg tried to avoid this man Scottie who was the instigator of the whole deal.

Robertson has now six years of army service. His M & M shows a few very minor charges of AWL. spread over the whole period. There is nothing of a serious nature. This is his first offence on any other charge and I feel he should be treated leniently.

He has been in custody already for a period of 31 days and I feel that this is more than sufficient punishment for this man.

I would ask that the Court take this fact into consideration and that the sentence be a merely nominal one.

For Defence Counsel.

THE COCA-COLA SALES COMPANY

Appx "A"
Exhibit 1
Hack

Plant No. Location Amsterdam.

TO: Gdn.Conc. Unit. R C A.
Holten.
Acc. No. 125. your order No.

DATE May 17 1946.
Invoice No 101.
Rec. rep. No
Sh'p'g memo No

WE CHARGE / CREDIT YOUR ACCOUNT AS FOLLOWS

DESCRIPTION	Quantity	Price	Amount
CASES OF COCA-COLA	50	2.15	107.50
DEPOSIT ON CONATINERS	50	1.35	67.50
		TOTAL CHARGES	175.--
REFUNDS ON FULL CASES OF BOTTLES RETURNED	18	1.35	24.30
REFUNDS ON EXTRA BOTTLES RETURNED	5	0.055	0.28
REFUNDS ON EXTRA CASES RETURNED	5	0.03	0.15
		TOTAL CREDITS	24.73
		NET CHARGE / CREDIT	150.27.

17 MEI 1946

FORM 912.5

THE COCA-COLA SALES COMPANY

Appx C.
Exhibit 2
CAPCR

Plant No. Location Amsterdam

TO: Cdn.Const.Unit
HOLTEN.

Acct.nr. 125 your order No.

WE CHARGE ~~CREDIT~~ YOUR ACCOUNT AS FOLLOWS:

DATE May 17 19 46

Invoice No 999

Rec. rep. No

Sh'p'g memo No

DESCRIPTION	Quantity	Price	Amount
CASES OF COCA-COLA	100	2.15	215. -
DEPOSIT ON CONATINERS	100	1.35	135. -
		TOTAL CHARGES	350. -
REFUNDS ON FULL CASES OF BOTTLES RETURNED	29	1.35	39. 15
REFUNDS ON EXTRA BOTTLES RETURNED			
REFUNDS ON EXTRA CASES RETURNED			
		TOTAL CREDITS	39. 15
		NET CHARGE ~~CREDIT~~	310. 85

Certified true Copy

Certified delivered to a Canadian soldier

dropped off up town. We proceeded to Coca Cola Plant, where the man showed up again and undertook to deliver
C.A. ~~a load of Coca Cola~~ of Coca Cola for him. I agreed to do so. He guided me to the place where he wished delivery made. Pte Robertson and Pte Kapfhut were in the back of truck. We unloaded the coke and from there we went to another place down town further Pte Robertson and the man left the truck. When they returned we went to Coca Cola plant where we loaded another fifty cases for the unit. I took Robertson up town and dropped him off with two cases of coca cola.

Q1. Do you know of Robertson received any money from the man referred to.

A. No.

Q2. Would you recognize the place where the coca cola was delivered.

A2. I might.

Q3. Would you recognize the place where you dropped Robertson and man got off.

A3. I might recognize the street but not the building.

Cross examined by the accused.

Q. Did you know that I had sufficient money to buy 150 cases of coca cola.

A. You told me on the way in that they should have given you money to buy that many cases coca cola.

H Greenberg

Summary of Evidence in the case of M3266 Pte Robertson, W.D. 3 Edm Cemetery Construction Unit, C.A.O. charged with

(i) Stealing 100 cases of Coca Cola (2400 bottles) on 17 May 46 valued at 350:00 Sterlings. (A.A Sec 18(a)).

(ii) Taking a fee in respect of sale of provisions for the case of 3 CCCU, CAO, in that he at Amsterdam, Holland on 9 May 46 accepted 30:0 Sterlings from Hans Sandtbl in consideration of purchase and sale of 100 cases of Coca Cola (AA Sec 23(2))

(iii) Conduct to the prejudice of Good Order and Military Discipline, ~~and~~ in that he at Holten Holland on 21 May 46 was in illegal possession of 60 Sterlings.

By direction of the Commanding Officer the evidence will be taken on oath.

FIRST WITNESS. B25923 L.A.C. Walton K.E. 3 CCCU RCE C.A.O. having been duly sworn states:

Last 6 digits of W/T Walton K.E. 3 CCCU RCE. C.A.O. At approx 1800 hrs 17 May 46 at Holten Holland I placed Pte Robertson under close arrest in my room and searched him & his kit in the presence of F114891X Sgt Donaldson, 3 CCCU RCE. I found one hundred and eleven and a half Sterlings (111½ Stgs) which I took away from him and gave him a receipt. I checked his pay book (AB64 / 1011) which showed last entry of drawing pay as 29/5/46 with leave 40 Stgs.

The accused declines to cross examine this witness.

K Walton

SECOND WITNESS D 144 912 Sgt Donaldson R.M. 3 bbGH RBC CAO.
having been duly sworn states.
"I am M.C.O. in charge Y Sec, 3 cccu RBC. stationed at Holten, Holland. On the 17 May 46 I sent Sgt Cranberg as driver, and Lt Robertson to Amsterdam to pick up boca kola for Y Sec 3 bbGH. After picking up the boca kola Lt Robertson had authority to proceed on leave. Sgt Cranberg was to bring back the boca kola purchased by Lt Robertson. I personally and myself checked the load which consisted of 48 cases boca kola. The invoice received showed 50 cases purchased. I exhibit this invoice. Mr A. Koffert, civilian cook employed by this sec. accompanied the truck to Amsterdam and return. The vehicle used was Dodge 15 cwt Reg No CZ 362681. I was present when C.S.M. Walker searched Lt Robertson at about 1800 hrs 21 May 46. The sum of one hundred and eleven and one half (111½) guilders was found on Lt Robertson."
The accused declines to cross-examine this witness.
Sgt D. M. Donaldson
The invoice referred to by this witness is attached hereto as ATTA A"

Third Witness. C 114 288 L/Sgt Lindy W.H. Y Sec 3 cccu RBC CAO. having been duly sworn states.
"On morning of 18 May 46 Sgt Donaldson had me help him check a load of boca kola. There were 48 cases on load."
The accused declines to cross-examine this witness
W.H. Lindy

Fourth WITNESS. Mr A. Kaffert, Holten Holland having been duly sworn state:
"I am employed as civilian cook of Y Sec 3 cccu at Holten Holland. On 17 May 46 I obtained permission from Sgt Donaldson NCO i/c Y Sec to go with Army truck to Amsterdam. The driver was Sgt Cranberg. Also on the truck was Lt Robertson. While at Joint having refreshments a man dressed in Guardian Army uniform came up & spoke to Cranberg and Robertson. I did not understand what was said. This man came in the truck with us to Amsterdam. One hundred cases of boca kola were loaded onto the truck at the boca kola plant and taken to an old shop which was being opened. The hundred cases were unloaded there. The truck then stopped at a restaurant. I did not get out of the truck but then proceeded to boca kola plant and got another fifty cases of boca kola. Lt Robertson was taken up town and when he got off he took two cases with him.
Q! At place where the hundred cases were unloaded were there any soldiers there or just civilians.
A. No soldiers, just civilians.
The accused declined to cross-examine this witness.
A. Kaffert

FIFTH WITNESS. L62763 Sgt Cranberg 3 cccu, RBC CAO. having been duly sworn states.
"On 17 May 46 I was detailed to go to Amsterdam for boca kola as driver. Lt Robertson, and Mr Kaffert accompanied me. Robertson was in charge of buying the coca cola. On the way to Amsterdam we came to town the name of which I do not know we stopped for refreshments. While there a man whom I had seen before at Y Sec 3 cccu. and we left for Amsterdam. He came with us to Amsterdam and we

SEVENTH
CA. ~~SIXTH~~ WITNESS. Johannes Willem Gerrets.
Chevalier D'Or Café, Amsterdam. Holland.
having been duly sworn state.
"The man I have just indicated, Hans Sealtiel
I saw for the first time several weeks ago
On that occasion he offered me Coca Cola
for sale. I bought approx 35 cases from
him at 10 Gldrs per case. Last week, I think
Thursday 16 or Friday 17 May he came to me
again and offered me 100 cases of Coca Cola.
In the beginning I refused this offer and told
him that I would only take the Coca Cola
if it was accompanied by an invoice of
the Coca Cola factory made out in my name.
He consented to this, whereupon I told him that
he could deliver these 100 cases. The price was
9 Gldrs per case. The cases have been
delivered and the money has been paid. (900 Gldrs).

Q1 Who did you pay the money to.
A Hans Sealtiel.
Q2. Was there anyone else present with him when this payment was made CA
A. Yes a Canadian soldier.
Q3. Do you recognise him as present here?
A No.
Q4. Was the full amount of 900 Gldrs paid in cash.
A No. only 885 Gldrs.

The accused declines to cross examine this witness.
J. Gerrets

The interpreter used was Mr. G. N. Hille.
Official Interpreter-Translator 1 Ldr S.I.S. Amsterdam.

Robertson 5

SIXTH
CA. ~~FIFTH~~ WITNESS. HANS SEALTIEL, of Appeldoorn, Holland
having been duly sworn states.
On Wednesday 15th MAY 1946 I spoke to Pte
Robertson about the sale of Coca Cola. I
told him we could get 10 Guilders a case
and it was decided we go to Amsterdam
together on Friday. As I was in Appeldoorn
on Friday I phoned Robertson and told him
that I would be waiting in Appeldoorn for
him. The truck passed without picking me
up. I hitch-hiked after them and saw
the truck parked in Soest in front of a
cafe, and I met Robertson + Granberg also
Kappert. I went in the truck with
them to Amsterdam. In Amsterdam I
guided the driver to the Chevalier D'or.
cafe. Beethoven Straat; he stopped on the
side street. I went in to speak to the
owner of the cafe but he was not in.
We went to the Coca Cola plant but
decided not to load until after dinner
While there Robertson asked me if there
would be anything in it for Granberg
Robertson, Granberg, and I decided that
~~we would~~ the profits would be split,
that 10% to Kappert and 30% each to
us three. ~~After~~ We split up for dinner
and after dinner Granberg Kappert + I
drove to the Chevalier D'or. where I arranged
with the manager to sell 100 cases of
Coca Cola at 9 Guilders a case When
I came out of the cafe, the truck had
gone and I proceeded to the Coca Cola
Plant where Robertson, Granberg and Kappert

were unloading the 29 ~~empty~~ cases of empties brought from Holten. I told Robertson that we could sell 100 cases at 9 Guilders each. Robertson counted his money and did not have enough to pay the full amount for the 100 cases. Granberg gave him 65 Guilders and Kappert all his money of which he took 30 Guilders. Robertson & I went upstairs to the office and paid 310.15 Guilders for 100 cases of Coca Cola - (Cost 350 Guilders less 39.85 refund on the 29 cases of empties). We loaded the 100 cases and delivered them to the carpenter of the Chevalier D'Or at I believe 57 ~~LOOIERS STRAAT~~ OUDELOOIERS STRAAT. We then drove to the Chevalier D'Or where Robertson & I went in to see the manager who paid 885.00 Guilders to me. 15 Guilders ~~was~~ had been deducted for the cases of empties we had picked up at 57 OUDELOOIERS ST. We returned to the Coca Cola plant and unloaded the 18 cases of empties. We loaded 50 cases of Coca Cola. Before Robertson went upstairs to pay the bill, we split the money as follows. I gave 350 guilders to Robertson on account of the original purchase also 165 guilders as his share of the profit, 165 guilders to Granberg as his share of the profit and 55 Guilders to Kappert as his share of the profit. Robertson later gave me 15 guilders from the refund on the 18 cases of empties making my share of the profit up to 165 guilders. He also returned 65 guilders to Granberg and 30 guilders to Kappert

We drove Robertson up town and dropped him with two cases of Coca Cola. After supper about 2030 hrs. we left Amsterdam to return to Holten stopping enroute at Ammersfoort, Appledoorn where I picked up a box of my clothing and at Deventer. We arrived in Holten about 0030 hours 18 MAY 46.

Q-1. Can you recognize the manager who paid you the 885.00 Guilders at the Chevalier D'or.

A-1 - Yes

The accused declines to cross examine this witness.

H. Scaltrel

Fourth Witness (recalled) E Kappert. Holten Holland having been duly sworn was cross examined by Off Capt C Adam officer taking Summary of Evidence

Q1 When at the Coca Cola plant on 17 May 46 did you receive any money, and if so from whom and how much.

A. Yes from Hans Scaltrel. Received 50 Guilders

Q2 Did you see Scaltrel give Robertson and Granberg any money

A No

Q3 On first leaf to Coca Cola plant after dinner did anyone ask you for money.

A Yes Robertson asked.

Q4 Did you give him any [illegible] [illegible] [illegible]

A I just handed him my wallet.

Q5 Did you know what he wanted the money for.

A No

Q6. Did you know that the others were to sell Coca Cola

A No

The accused declines to cross examine this Witness [illegible] Kappert

~~Seventh Witness: Klaas Gortwoest of Coca Cola Plant Amsterdam having been duly sworn.~~

~~Q.A. "On Friday 17 May 46~~

EIGHTH
Ca. ~~Seventh~~ Witness. Franciscus Boekstal of Coca Cola Plant Amsterdam Holland having been duly sworn states.

"On Friday 17 May 46. empty Coca Cola cases were delivered to the Coca Cola Factory by four Canadian soldiers belonging to the ~~Cat~~ Ca. R.C.E. Seventy nine empty cases were delivered. They wanted to take 150 full cases back with them. As I was not authorized to deliver that amount I rang up Mr. Van Den Wilden and he ordered me to deliver 150 cases. The Canadians could not load more than 100 cases. They said that they were coming back for the remaining 50 cases. About an hour later they returned, delivered approx 18 empty cases and were then given the remaining 50 full cases. While the last mentioned fifty cases were being loaded onto the Military Vehicle I saw that two of the above mentioned Canadians were dividing money. When they saw me watching them they went into the Coca Cola garage. Further I did not see anything of this.

Q. Did you consider that the four men were Canadian soldiers.

A. Yes.

Q. Can you identify the two you saw ~~a~~ handling money.

A. Yes. This one (Robertson) and this one (Sealtiel).

The accused declines to cross examine this witness.

The interpreter used was Mr. G.N. HILLE
Official Interpreter - Translator 1 Cdn Sct. S. [signature]
Amsterdam

NINTH WITNESS. Lieut J.D. Hogan 3 CCCU, R.C.E. CAO having been duly sworn states

" I am Lt J.D. Hogan OC 2 platoon 3 CCCU R.C.E. stationed in Holland.

On Monday the 20th of May 1946, I proceeded to the Coca Cola Sales Plant Amsterdam to investigate the alleged sale of 100 cases of Coca Cola by some of the men in my platoon. I obtained from the Coca Cola Plant a triplicate set of certified true copies invoices dated 17 MAY 46 and billed to Cdn Construction Unit Holten Acc No 125. Invoices No 999 one of which I submit as evidence was for the purchase of 100 cases of Coca Cola by my platoon. The 100 cases were not received by the platoon, although purchased under our authority."

The accused declined to cross examine this witness.

J.D. Hogan Lt R.C.E.

Coca Cola Invoice No 999 d/17 May 46 referred to by above witness is attached as Exhibit D

The accused was cautioned as follows.

Q.1 Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence?

A1. I want to make a statement.

Q 2. On oath or not on oath?

A On oath.

The accused sworn states:

"About the beginning of May a collection was made to help purchase a six months issue of Bronco, the levy per man was 20 Gldrs. I collected this money from the personnel in V Sec; 11 men giving 220 Gldrs. of this I handed over 70 Gldrs. to Lieut Hogan. At a later date a Bronco issue was made, charge per man being 27 Gldrs. Out of the balance of 150 Gldrs that I then had in my possession, I paid for Cpl Williams 27 Gldrs, and Spr Clark 27 Gldrs. I also paid out of the 150 Gldrs, 10 Gldrs for Naffi issue for Spr Clark, leaving me 83 Gldrs out of the 220 Gldrs which I had collected. I had drawn 40 Gldrs from Paymaster and had spent some of this, leaving me with the amount found on my possession when searched. I further state that Mr. E Kappert was unaware of the Bronco Gold deal until after the [illegible] transaction was complete.

W Robertson

I certify that the foregoing Summary of evidence consisting of Eleven pages was taken down in the presence of the accused, — the evidence of Hans Sealtiel and Lieut J.D. Hogan was taken down by Lieut J.D. Hogan, in my presence, and has been checked by me as correct, the balance was taken by me — and that R.F. 4(C), (D), (E), & (F) have been complied with.

Tourcoing France.
25 May 46.

Chas. Adams Capt
3CCCU, R.C.E. C.A.O.

LIST OF WITNESSES

M.3266 Pte ROBERTSON W.D.

B.25923	WOII	WALKER	R.E.	3 CCCU Tourcoing France
SB9279	C.MS	PHILLIPS	P.E.	3 CCCU Tourcoing France
Hans Seatiel				Apledoorn Holland
E.Kappert				Holten Holland
L.62763	Spr	GRANBURG	H.	3 CCCU under arrest at Tournai
B.144912	SGT	DONALDSON	R.M.	3 CCCU Holten Holland
B.114388	L/Cpl	LIVELY	M.H.	3 CCCU Holten Holland
Johannes William Girrets				Chavelier D'Or, Bathoven Street, Amsterdam Holland
Franciscus Boekstal				Coca Cola Plant, Amsterdam Holland
Lieut J.D.HOGAN				3 CCCU Nijmegen Holland

LIST OF EXHIBITS -- M3266 Pte ROBERTSON W.D.

(1) Court of Inquiry

(2) Invoice No 999

(3) Invoice No 101

(4) ~~Copy of Letter~~ 6.

The accused M.3266 PTE ROBERTSON W.D. requests that the Convening Officer assign an officer to represent him at the trial.

(C.Adan)Capt RCE
3 CCCU CAO

I, M.3266 PTE ROBERTSON, W.D. hereby acknowledge that I have received, free of charge, one copy of the Summary of Evidence and one copy of the Charge Sheet therein.

W D Robertson
(W.D. ROBERTSON)

Exhibit A
Hack

In lieu of
Army Form B 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED.

Number	Rank	Name	Unit
M.3266	Pte	ROBERTSON, William Duncan	3 Cdn Cemetery Constr Unit

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets of the accused, exclusive of convictions by a court martial or civil court, of summary awards under section 47 of the army act, and of cases in which trial has been dispensed with:-

	Within last 12 months		Since enlistment
For	AA Sec 15 (1)	1 Times	3 Times
For	AA Sec 15 (2)	1 Times	1 Times
For	AWL (Sec of AA not shown on AFW 6)	1 Times	1 Times

Number of instances of gallantry or distinguished conduct, NONE

2. The accused has not been previously convicted, or
Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 or the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused in NOT under sentence at the present time.

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 31 days in military custody, making a total of 31 days of which NIL days were spent in hospital

5. The present age of the accused according to the record of his service is ~~37 yrs 11 months 3 days~~ 38 yrs 11 days.

6. The date of his attestation specified in his record of service is 21 Jun 40.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 5 years 11 months.

8. The accused is entitled to deferred pay or gratuity in respect of 5 years 11 months service

9. The accused is entitled to reckon n/a service for the purpose of determining his pension, etc.

10. The accused is in possession of or entitled to, no military decoration or military award (or is in possession or entitled to) CVSM & Clasp Defence Medal, Italy Star, 1939-45 Star, France and Germany Star.

11. (If the accused is a warrant officer) N/A

12. (In the case of an Officer) N/A

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR CIVIL COURT, OF SUMMARY AWARDS UNDER SECTION 47 OF THE ARMY ACT OF CASES IN WHICH TRIAL HAS BEEN DISPENSED WITH OF ACCUSED.

No M3266 Rank Pte Name ROBERTSON W.D. of 3 Cdn Cemetery Construction Unit RCE

Description of court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment Remitted.
FGCM	27 Nov 45 3 CID (CAOF	AA Sec 15 (I)	60 days detention	9 days

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~3rd~~ 18 RD. day of June 1946

R.M. Davison

(R.M.DAVISON)Capt RCE
Officer Commanding
3 Cdn Cemetery Constr Unit

Exhibit B. Hack

3/17 MFM 6
(AFB 122)
40/P&S/136 (5413)

No. M.3266 Name Robertson W.D. Sqn, Battery, or Company RCA Corps Date of enlistment 21-6-40 GC Badges Service or Proficiency Pay (J.Roberts) Lt-Col

Date of last entry in Company Conduct Sheet No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No Signature OC Company, etc OC 1 Cdn Arty Holding Unit

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	On the 21st December 1940 this soldier completed six months service and according to R.O. 319 (Canadian Army Overseas) a new sheet was issued and the old one destroyed. There were no regimental entries.								
Field	13.12.41	Gnr		AWL 2200 hrs - 23 15 hrs 13-12-41	Doc	7 days CB	LT A.C.MacWilliams		
Field	20Oct42	Gnr		AWL in that at Hedgecroft on 20 Oct 42 at 1330 hrs he was absent from parade until reporting to Sgt Cook at 1340 hrs 20 20 Oct 42. Absent 10 mins AA Sec 15 (2)	G.7184 Sgt Cook STF	5 days CB	21-10-42	JS Hart Maj	
Field	31-5-43	Gnr		AA Sec 15 - 1 AWL, WOAS absent from 2300 hrs 29 May 43 until 0800 hrs 31 May 43 (Absent 1 day 8 hrs)	Sgt Larter EJ	7 days CB 3 days pay FR&I 149 (2)	31/5/43	J.M.Cape Maj	Forf 2 FR&I 149 1 -(a) Total Forf 5 days pay

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10Sep43	Pte		AA Sec 15 (1) in that ~~xxxxxx~~ WOAS at Fairmile Camp he did absent himself from 2300 hrs 10 Sep 43 and was absent until reporting in at 0700 hrs 11 Sep 43.	BSM Gardiner Bdr Lacey	Admonished	20-9-43	Major GW Johnston	Forf 1 Days pay
Field	12Jun45	Gnr		AA Sec 15 (1) WOAS AWL from 0700 hrs 12 Jun 45 until reporting at 0700 hrs 13 Jun 45. (Absent 24 hrs)	Sgt King King R.D.	28 days F.P. 28 days pay.	13 Jun 45	Lt-Col Steuart-Jones	Forf 28 days pay Forf 1 days pay
Field	28Sep45	Pte		WOAS AWL from 0800 hrs 28 Sep 45 to 7 Nov 45 (Absent 40 days 2 hrs 15 mins) AA Sec 15 (1)	Documentary	60 days Detention	27 Nov 45	F G C M	Released from No 2 Cdn Detn & FP Bks (CAOF) on 16 Jan 46 SENTANCE HAVING EXPIRED.

Remission earned under 'Rules for Detention Barracks & Military Prisons' - 9 days.
Comandants Initials JAT

Certified true copy of MFM 6 held in Unit Files.

(C.Adan) Capt RCR
3 OOCU CAO
OFFR I/C REGT DOCS

332D. Pte Robertson W D

Broadcast [illegible] 6 Rd for [illegible] 7 Jan 42

D-91734 Pte. Robertson, W.D.
No.1 C.E.H.U. A.S.C. H.D.

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 16th day of November, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

*[illegible]—

*(1. [illegible]

*(2. [illegible]

*(3. [illegible]

[illegible]—]

President.

Rank.	Name.	Regiment.
Major	D.J. McLaughlin	No.3 Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	J.B. Beck	No.1 Cdn Eng Hldg Unit
Lieutenant	J.R. Turner	No.3 Cdn Inf Hldg Unit
Lieutenant	S. Kitchen	No.1 Cdn ASC Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [signature] Brigadier

Commanding Cdn Base Units, Cdn Army.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-91734 PTE. ROBERTSON, W.D. No.1 Cdn A.B.C. Hldg Unit.	First Charge A.A. sec 15(1) See charge sheet attached.	Guilty	Guilty. To undergo detention for a period of One Hundred and Twenty days.	Confirmed [signature] Brig

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) [signature] Brigadier
Commanding Cdn Base Units, Cdn Army.
Convening Officer (c)

(Signed) [signature] Maj D.G.
102 C.D.I.Coy.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 20th day of November, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~ The shorthand writer
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 20th day of November, 1941.

[signature] DG.
President of the Court Maj D.G.

C. Certificate in case of death sentences

* See footnote (i) on page 762 M.M.L. 1940.

~~Declared that the sentence of the Court is to be carried into execution forthwith~~

Signed this ~~day of~~ [signature]

President of the Court ~~Major~~

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~And direct that the soldier named in the margin be not committed to prison until further orders.~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 26 day of November 1941.

[signature] Brigadier.
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 29 Nov 41 (Signed) [signature]
OFFICER I/C RECORDS
I.R.C.A.S.C. HOLDING UNIT.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

14739 30-40115—651 200 M 1940 P. St. G. Co.

This is to certify that on the 15th and 20th Nov 41 there was no officer named Major D.J. McLaughlin on the strength of No.3 Cdn Inf Hldg Unit.

Major D.G. MacLauchlan, 2 Cdn Div Inf Reinf Unit (formerly on the strength of No. 3 Cdn Inf Hldg Unit) who sat as President of the court in the case of D-91734 Pte. Robertson,W.D. on 20 Nov 41 was the officer designated by me as President in the convening order dated 16 Nov 41.

(F.R. Phelan)Brigadier
Convening Officer

C-H-A-R-G-E S-H-E-E-T

SEC 15(1) A.A.

The accused, D-91734 Pte. Robertson, William Daniel, of No. 4 Holding Company, 1 RCASC Holding Unit, a soldier of the Canadian Army (Overseas) is charged with,

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he at Blenheim Barracks, Farnborough, Hants., absented himself without leave from 0600 hours on 18 Oct 41 till 1830 hours on 6 Nov 41.

(J.L. Sparling) Major.
Commanding
1 RCASC Holding Unit
Canadian Army (Overseas).

Blenheim Barracks,
Farnborough, Hants.
12 November 1941.

To be tried by Field General Court Martial

(F.R. Phelan) Brigadier
Commanding Cdn Base Units.

Farnborough, Hants
This 13th day of Nov 41.

Maclauchlan
Mayor.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT COVE, Hants. ON THE 20th DAY OF NOV 41.

TRIAL OF:- No. D-91734, Pte ROBERTSON W.D., No. 1 ~~CEHU~~ RCASC HU

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Lt. J.T. Wright (Unit) No. 1 RCASC HU

Defending Officer:- (Name) Lt. J.F. Jardine, (Unit) No. 1 RCASC HU.

At 1330 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1- No, sir.

The President, members and judge-advocate (if any) are duly sworn.

The officers under instruction are duly sworn.

Q2. Do you object to Sgt. T. Pyburn acting as shorthand writer?

A2.- No, sir.

The shorthand writer is duly sworn.

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Q3. Do you wish to make any statement in mitigation of punishment?

A3.- No, sir.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4.- No, sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER.

PROSECUTOR, sworn, produced AF B-296 and copy of MFM-6.

DEFENDING OFFICER requests leniency on acct of accused's youth. Spent time in detention, had been married short time before, and naturally anious see young wife. Suspicion of epilepsy by unit M.O. although not yet proven. Believes this condition result of glandular deficiencies, and suggests accused's troubles may be result of this affliction. Requests leniency on ground wife will suffer through loss of allowance; short sentence to married man same as long one to single man.

Mac Lauchlan
Major.
President of Court Martial

SUMMARY OF EVIDENCE IN THE CASE OF D-91734 Pte. Robertson, W.D. a soldier of 1 RCASC Holding Unit, C.A. (O), at Blenheim Barracks, Farnborough, Hants.

The Commanding Officer, Major J.L. Sparling, 1 RCASC Holding Unit, C.A. (O), Blenheim Barracks, Farnborough, Hants, directs that evidence be taken on oath.

1st Witness:

B-82997 Sgt. Gale, M.E. 1 RCASC Holding Unit, C.A. (O), having been duly sworn states:

I am B-82997 Sgt. Gale, M.E. of #4 Holding Company, 1 RCASC Holding Unit, C.A. (O). On 18th October, 1941, I was section Sergeant in #4 Holding Company, 1 RCASC Holding Unit. When awakening men for fatigues at 0600 hours I found Pte. Robertson, W.D. absent. I reported his absence to the Company Orderly Room. He did not answer his name on the Section Roll Calls while I was Section Sergeant for the three days from 18 Oct 41 to 21 Oct. 41.

M. E. Gale
B-82997 Sgt. Gale, M.E.

The accused declines to cross-examine this witness.

2nd Witness:

B-81545 CSM Foster, E.A. 1 RCASC Holding Unit, C.A. (O), having been duly sworn states:

I am B-81545 CSM Foster, E.A., #4 Holding Coy., 1 RCASC Holding Unit, C.A. (O). At approximately 1830 hours on 6 Nov. 41 the prisoner, whom I now recognize as Pte. Robertson, reported himself to me that he was A.W.L. I called over Cpl. Heath and instructed him to place the accused under close arrest.
Due to a clerical error this man was reported on parade state #4 Holding Company as absent at 2359 hours 17 Oct. 41, instead of 0600 hours 18 Oct. 41.

E. Foster
B-81545 CSM Foster, E.A.

The accused declines to cross-examine this witness.

3rd Witness:

B-95008 Cpl. Heath, F. 1 RCASC Holding Unit, C.A. (O), having been duly sworn states:

I am B-95008 Cpl. Heath, F. #4 Holding Company, 1 RCASC Holding Unit, C.A. (O). On 6 Nov. 41 at 1830 hours Pte. Robertson reported to the CSM of #4 Holding Company, CSM Foster, and acting on his instructions I placed Pte. Robertson in close arrest.

G Heath
B-95008 Cpl. Heath, F.

The accused declines to cross-examine this witness.

mach

The accused soldier was thereupon warned in accordance with R.P. 4(e).

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused soldier declines to make a statement.

W. D. Robertson
D-91734 Pte. Robertson, W.D.

I certify that the foregoing summary of evidence was taken down by me in writing in the presence of the accused and that R.P.4 (c) (d) (e) and (f) have been complied with.

J. F. Burton
Lieut. J.F. Burton.
Officer taking Summary.

I, D-91734 Pte. Robertson, W.D. desire the assignment of an Officer to represent me at my Court-Martial.

W. D. Robertson
D-91734 Pte. Robertson, W.D.

List of Witnesses.

B-82997 Sgt. Gale, M.E. - 1 RCASC Holding Unit, C.A. (O).
B-81545 CSM Foster, E.A. - 1 RCASC Holding Unit, C.A. (O).
B-95008 Cpl. Heath, F. - 1 RCASC Holding Unit, C.A. (O).

Farnborough, Hants.

10 November, 1941.

Mack

Date 20 NOV 41

This is to certify that Regt No. D 81734 Ex PTE Name ROBERTSON

is fit to undergo Court Martial.

Signed [illegible] RCAMC.

mach

Description of Court by which tried, or status of Officer dispensing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority dispensing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 20th day of November 1941

Lorraine

LORRAINE ROCKES
1 RCASC HOLDING UNIT

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

D-91734 Pte. Robertson, W.D. of the 1 RCASC Holding Unit

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Para. 804, K.R., 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INTERCEPTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For AWL Sec 15(1)	3	times	4	times.
For		times		times.
For		times		times.
For		times		times.

~~Number of instances of gallantry or distinguished conduct.~~

~~or~~

~~There are no entries in the Conduct sheets of the accused.~~

~~2. The accused has not been previously convicted.~~

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Mach

3. The accused is not under sentence at the present time.

or

The accused at the present time is under sentence for .....
beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges

for N/A days in Civil Custody,

and 14 days in Military Custody.

Total 14 days.

Of which N/A days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 31 years

6. The date of his ~~appointment~~ attestation specified in his ~~record of service~~ attestation paper is 5 Jan 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is ~~[illegible]~~ Nil N/A.

8. The accused is entitled to deferred pay or gratuity in respect of N/A. Nil years' service.

9. The accused is entitled to reckon N/A. Nil years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward ~~which he is entitled to wear~~.

N/A. Nil

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A. Nil

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

	Date of Promotion.
In the rank of ,	years,
In the rank of ,	years,
In the rank of ,	years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

Note.—A verbatim extract from the regimental books, stating their conditions and dispensations with trial, must be inserted.

Description of Court by which tried, or station of Officer dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority	Punishment remitted

(*Continued overleaf.*)

1st Corps Troops Amn. Coy. RCASC

Services or Proficiency Pay.

MFM 6.
(~~AFW 122~~)

No. D-91734 Name ROBERTSON, William, Daniel. Corps. Date of enlist. 5 JAN 40.

Date of last Entry in Conduct Sheet) No. and date of last drunk)

Character.

SHEET NO. 1.

PLACE	Date of Offence	Rank	Cases of Drunk.	OFFENCE	Names of Witnesses	Pun. Award.	Date Award	By whom Awarded	Remarks.
Worth Park.	6 Jul. 40	PTE		SEC 15 (1) A.A. WOAS AWL from 0630 hours 6 Jul 40 to 1700 hrs. 10 Jul 40 (4 dys. 10 hrs.30min.)	Cpl. Kavanagh	14 dys Det. Forf. 14 days pay	11 JUL 40.	Major Elliot	Forf. 5 dys pay - Art. 149(1)(a)
Bordon	15-7-41	PTE		AWL from 1630 hrs 15.7.41 to 1630 hrs. 17.7.41 Sec 15(1) A.A. Total time absent: 2 days.	Pte. Garrett.	7 dys CB	21-7-41.	J.M. Pocock, Lt-Col.	Forf. 2 dys pay. FR&I 149(1)(a)
Farnborough.	11 Aug. 41.	PTE		WOAS from 2230 hrs 10.8.41 till 0800 hrs. 11.8.41 - 9 hrs. 30 min.		7 dys CB			Forf. 1 dys pay. FR&I 149 (1)(a).
Farnborough.	3-9-41.	PTE		AWL from 1800 hrs 3-9-41 to 1955 hrs 12-9-41 Sec 15 (1) A.A. Time absent 10 dys. 1 hr 35 min.	Cpl Godfrey Cpl McGouran	27 dys Det.	17-9-41.	J.M. Pocock Lt.Col.	Forf. 11 dys pay. FR&I 149 (1) (a) 27 dys. pay FR&I 149 (1) (b).

CERTIFIED TRUE COPY:

OFFICER I/C RECORDS
R.C.A.S.C. HOLDING UNIT.

COUNTER NUMBER 571605

HOUR 12 25 E

OPERATOR'S INITIALS O. G.

RELIEVING OPERATOR E. M.

MM-141 (case #3)
PTE ROBICHAUD E.J.
See Y-113 for 1st case
See GG-108 for 2nd case

G-19337 Pte. ROBICHAUD, Edgar, Joseph.
Carleton & York Regiment,
7 Cdn Infantry Reinforcement Unit.

NM-147

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this tenth day of August, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ Mr. I

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* ~~[I am unable to appoint :-~~ Mr. I

~~*(1. Three Officers to form the Court.)~~ Mr. I

~~*(2. A Field Officer as President.)~~ Mr. I

~~for the following reasons, namely :-]~~ Mr. I

*Must if not appointable.

22 Aug 43 D/ Bendy Capt

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	N. D. Theobald, M.C.	5 C.I.R.U.

Members.

Rank.	Name.	Regiment.
A Captain	to be detailed by C.O.	3 C.I.R.U.
A Lieutenant	to be detailed by C.O.	3 C.I.R.U.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J. A. McIntosh Colonel.

A/Commanding "D" Group, Cdn Rft Unit.
Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
	First Charge A.A. Sec. 15(1)	Guilty	Guilty To undergo detention for a period of 180 days & to be placed under stoppages of pay of 5/-7 d/ing cost of apprehension 11 aug 43 H. D. Theobald. major President.	Confirmed J.G. Mc. Fraser Col a/cond "D" Group 17 aug 43.
G-19337 Pte. ROBICHAUD, Edgar, Joseph. Carlt. & York R. 7 C.I.R.U.				
	See Charge Sheet Attached.			

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) J. G. Mc. Fraser Colonel. (Signed) H.D. Theobald major
A/ Commanding "D" Group, C.R.U. (Western Regt.) 5 C I R U
Convening Officer (e) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings

I certify that the above Court assembled on the 11th day of Aug 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses

Omit if not applicable. ~~(3). The Interpreter~~ ~~*(4). The officers under instruction~~ were duly sworn.

Signed this 11th day of Aug 19 43

H. D. Theobald major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929. I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension. ~~*I direct that the soldier named in the margin be not committed to prison or detention barracks until further orders.~~

Signed this 12th day of August 1943

J. G. Mc. Fraser Col.
Confirming Officer. a/cond. "D" Group

Promulgated and extracts taken in the case of G 19337 Pte Robichaud E J Carlt & York R

(*a*) (Dated) 17 Aug 43 (Signed) [illegible] Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(24906) W1 33230 x11 60,000 12/41 A & E W 111 Gp 688

1. I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Leipzic Barracks, preliminary to my court-martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

Dated at
this 9 day of
August 1943

E.J. Robichaud.....
(E.J. Robichaud)

2. I hereby acknowledge that I have been served with a true copy of an additional Summary of Evidence taken at Leipzic Barracks, preliminary to my Court-Martial.

Dated at
this _____ day of
_____ 194

.....

3. I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Lieut. D.M. Neish
if he is available.

Dated at
this 9 day of
August 1943

W.D. Thistlethwaite E.J. Robichaud.....
(E.J. Robichaud)

CHARGE SHEET

The accused No. G 19337 Private Edgar Joseph ROBICHAUD, Carleton & York Regiment, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, on Active Service, is charged with:

FIRST CHARGE
SEC 15 (1)
ARMY ACT

Absenting himself without leave,

in that he,

at Haig Lines, Crookham, Hants while undergoing Field Punishment, absented himself without leave from 0800 hrs 22 Jul 43 until apprehended by the Corps of Military Police in Reading at 1130 hrs 4 Aug 43. Thereby incurring a cost of apprehension in the amount of £0:6:7.

Total absence - 13 days, 3 hrs., 30 mins.

(W.C. Lawson) Lt-Col.
A/Commander
7 Cdn. Inf. Rft. Unit.

In the Field
8 Aug 43.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(J.A. McIntosh) Colonel.
A/Commander,
"D" Group, Cdn Rft Units.

IN THE FIELD
10 AUG. 1943

H. D. Thistlethwaite Major

MEDICAL OFFICERS CERTIFICATE

I certify that I have examined this morning No. G 19337 Pte. ROBICHAUD, E.J.

7 Cdn. Inf. Reinf. Unit, and in my opinion,

he is fit ~~unfit~~ to undergo trial by Court-Martial.

L. D. Cheveldmajor

P.D. Ferguson Capt. 11 Aug 43

(Medical Officer)

7 Cdn. Inf. Rft. Unit.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Maida Barracks
ON THE 11 DAY OF August 1943

The accused G19337 Pte Robichaud E. J. ...Unit Carleton & York R. 7 C I R U

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Maj. N. D. Theobald M.C. ...Unit 5 C I R U

Members. Capt. J. P. Robinson ...Unit 3 C I R U

Lieut. G. A. Hampson ...Unit 3 C I R U

The officers under instruction are duly sworn:-

.....Unit.....

.....Unit.....

Prosecutor. Lieut. G. W. Rahm ...Unit 7 C I R U

Defending Officer Lieut. D. R. Neish ...Unit 7 C I R U

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

LDT { ~~(a) Makes a statement in mitigation of punishment.~~
~~(b) Calls witnesses as to character.~~
~~(c) Calls witnesses in mitigation of punishment.~~ } LDT
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

See attached statement

L. A. Theobald major

11 Aug 43

Plea for Mitigation, in the Case of,
G 19337 - Private, Edgar, Joseph, ROBICHAUD:

I only wish to inform the Court that the accused has been in the Holding Unit for the past 14 months, where he was twice before Court martialed for a similar offence. It seems apparent that they have done him little good and I take this opportunity of suggesting to the Members of this F.G.C.M. that this man, the accused, be given a change of surroundings after the completion of his sentence.

D P Mac Gillivray
Lieut.

Defence Counsel

H. A. Chevrald major

EXHIBIT "B"

Certificate in accordance with Army Act. Section 183 (1) (ii).

certify that No. G/19337 Rank Pte. Name ROBICHAUD. E.

Unit "A" Coy. No.7 C.I.R.U. was arrested at READING

at 11.30 hours on the 4th/AUGUST/1943.

Signature of Provost Marshal, A.P.M. or other Officer into whose custody the above mentioned person was taken on arrest.

[signature]
Major. A.P.M.
159(H.Q) Provost Coy.

A.C.I.2253 of 1942.

[signature] H. D. Theobald Major

EXHIBIT "C"

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. [illegible] Rank Pte Name Robichaud, F. Unit 7 C I R C

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Reading

Date	Particulars (3 prisoners)	Amount		
6 Aug 43	Escorts return fare from LONDON To Reading		3	9
	Prisoners single fare to LONDON From Reading		2	10
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		6	7

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

CMHQ 1000/55
40/P & S/483

H. S. Theobald Major

SUMMARY OF EVIDENCE

In the case of No. G 19337 Private Edgar Joseph ROBICHAUD, Carleton & York Regiment, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

F 29608 A/Cpl. Taylor, J.S., Canadian Infantry Corps, 7 Cdn. Inf. Rft. Unit, having been sworn states:

I am F 29608 A/Cpl. Taylor, J.S., Canadian Infantry Corps, 7 Cdn. Inf. Rft. Unit. I was Company Orderly Corporal on 22 Jul 43, at 0800 hrs I called the roll and Pte. Robichaud, whom I now recognize as the accused failed to answer his name. I marked him absent from 0800 hrs 22 Jul 43.

J.S. Taylor A/Cpl.

(The accused declines to cross examine this witness)

SECOND WITNESS FOR THE PROSECUTION

Lt. G.W. Rahm, Canadian Infantry Corps, 7 Canadian Infantry Reinforcement Unit, having been sworn states:

I am Lt. G.W. Rahm, Canadian Infantry Corps, 7 Cdn. Inf. Rft. Unit. I produce Certified True Copy of 7 Cdn. Inf. Rft. Unit, Part II Daily Order No. 143 dated 26 Jul 43 para 18(g) of which relates to the accused states, Was on 21 July 43 awarded 28 days F.P.& forfeits 28 days pay for WOAS AA Sec 15(1) AWL from 0815 hrs 14 July 43 until appre. by CMP in Portsmouth at 1930 hrs 18 July 43 thereby incurring a cost of appre. of £0:13:9. This document is marked Exhibit "A". I also produce Certificate in accordance with Army Act. Section 163(I)(jj) which relates to the accused. This document is marked Exhibit "B". I also produce Certificate of Cost of Apprehension C.M.H.Q. 1000:55 which relates to the accused. This document is marked Exhibit "C". The above relates to the accused whom I now recognize.

Rahm Lt.

(The accused declines to cross examine this witness)

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing, and may be given in evidence.

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C), (D), (E), (F) and (G) have been complied with.

Rahm Lt.
(Officer Taking Summary)

In the Field
8 Aug 43.

W. D. Theobald Maj

Certified True Copy [signature] A/Capt.,
Records Officer
7 CIRU

LAST ORDER
NO.142
24 JULY.43

7 CANADIAN INFANTRY REINFORCEMENT UNIT
PART II DAILY ORDERS
SHEET FIVE.

THIS ORDER
NO.143
26 JULY.43

18. PUNISHMENTS

(a) On 14 July.43 awarded 7 days C B and forfeiture of 3 days pay under FR&I 149 (2) for an offence under Sec 40 AA.
(Extract D.O.136 d/15 July.43 of H.Q. 1 CBOD.)
F89692 Pte. Cromwell.R.H. (West N S R) Att'd 1 CBOD.

(b) On 22 July.43 awarded 28 days Detention for WOAS AA Sec 15(1) AWL from 0700 hrs 18 July.43 until appre.by CPC at 2200 hrs 20 July.43 (2 days 15 hrs)
Forfeits 3 days pay under FR&I 149 (1)(a)
Forfeits 28 days pay under FR&I 149 (1)(b)
Total forfeiture 31 days pay.
G22357 Pte. Daigle.L (N Shore R)

(c) On 22 July.43 awarded 14 days F.P.& forfeits 14 days pay for WOAS AA Sec 15(1) AWL from 0800 hrs 19 July.43 until 2215 hrs 21 July.43 (2 days 14 hrs 15 mins)
Forfeits 3 days pay under FR&I 149 (1)(a)
Forfeits 14 days pay under FR&I 149 (1)(b)
Total forfeiture 17 days pay.
F59667 Pte. Doiron.L.G. (West N S R)

(d) Was on 21 July.43 awarded 28 days Detention for WOAS AA Sec 15(1) AWL from 0815 hrs 5 July.43 until appre. by CPC in Aldershot at 1100 hrs 20 July.43 (15 days 2 hrs 45 mins)
Forfeits 16 dayspay under FR&I 149 (1)(a)
Forfeits 28 days pay under FR&L 149 (1)(b)
Total forfeiture 44 days pay.
G23642 Pte. McKay.B.S (N Shore R)

(e) Was on 21 July.43 awarded 14 days F.P.&.forfeits 14 days pay for WOAS AA Sec 15(1) AWL from 0815 hrs 16 July.43 until 1600 hrs 19 July.43 (3 days 7 hrs 45 mins)
Forfeits 4 days pay under FR&I 149 (1)(a)
Forfeits 14 days pay under FR&I 149 (1)(b)
Total forfeiture 18 days pay.
F26395 Pte. MacKinnon.E.S. (C B Highrs)

(f) Was on 22 July.43 reverted to the permanent grade of Pte.for (1)WOAS AA Sec 15(1) AWL from 2359 hrs 19 July.43 until 1545 hrs 21 July.43 (1 day 15 hrs 46 mins)
(2) WOAS AA Sec 15(1) AWL from Morning Parade from 0815 hrs 22 July.43 until 0900 hrs 22 July.43 (Absent 45 mins)
Forfeits 2 days pay under FR&I 149 (1)(a)
G49099 A/Cpl. Perkins.K.L. (Carlt & York R)

(g) Was on 21 July.43 awarded 28 days F.P.&.forfeits 28 days pay for WOAS AA Sec 15(1) AWL from 0815 hrs 14 July.43 until appre. by CMP in Portsmouth at 1930 hrs 18 July.43 thereby incurring a cost of appre. of £0-13-9 (4 days 11 hrs 15 mins)
Forfeits 5 days pay under FR&I 149 (1)(a)
Forfeits 28 days pay under FR&I 149 (1)(b)
Total forfeiture 33 days pay & cost of appre. of £0-13-9.
G16357 Pte. Robichaud.E.J. (N Shore R)

19. AMENDMENTS PUNISHMENTS

(a) D.O.78 d/8 May.43 para 18(d) insofar as it relates to the u/m is amended to read "AWL from 0630 hrs 29 Apr.43" and "F30085 Pte. McKenzie.J.H."
F30085 Pte. MacKenzie.J.H.- (Nth N S Highrs)

20. COURTS MARTIAL

(a) On 20 July.43 Tried by F.G.C.M.
CHARGES.....(1) Sec 15(1) AA AWL from 0700 hrs 21 Feb.43 until

Continued on next sheet.

Certified True Copy A/Capt.,
Records Officer
7 CIRU

LAST ORDER	7 CANADIAN INFANTRY REINFORCEMENT UNIT	THIS ORDER
NO.142	PART II DAILY ORDERS	NO.143
24 JULY.43	SHEET SIX	26 JULY.43

20. COURT MARTIAL CONT'D.

(a) apprehended by the civil Police in London at 2220 hrs. 4 Apr 43.
(Total absence 42 days, 15 hours, 20 mins.)
(2) Sec. 15 (1) A.A. AWL when in close Custody from 0915 hrs. 6 Apr 43 until apprehended by C.P.C. in London at 1500 hrs 9 June 43.
(Total absence 64 Days, 5 Hrs, 45 Mins.)
(3) Sec 15 (1) A.A. AWL when in close Custody from 1215 hrs 13 June 43 until apprehended by C.P.C. in London at 0440 hrs 13 July 43.
(Total absence 29 days, 16 hrs, 25 mins)
(4) Sec. 40 A.A.

FINDING..... Guilty of all Charges.
SENTENCE..... To undergo Detention for a period of 2 yrs.
CONFIRMATION..... Finding and Sentence Confirmed by Commander "D" Grp C.R.U. on 23 July 43.
CLOSE ARREST..... (1) In close arrest from 2220 hrs. 4 Apr 43 until 0915 hrs. 6 Apr.43. (2 Days, 10 hrs 55 Mins.)
(2) In close arrest from 1500 hrs 9 June 43 until 1215 hrs. 13 June 43 (3 Days, 21 hrs. 15 Mins.)
(3) From 0440 hrs 13 July 43 until 20 July 43. (6 Days 19 Hrs. 20 Mins)
FORFEITURES..... Forf. 70 days pay under F.R.&.I. 149 (1)(a)
Forf. 731 Days pay under F.R.&.I.149 (1)(b)
Forf. 12 Days pay under F.R.&.I.149 (1)(c)
TOTAL FORFEITURE... 813 Days Pay.

G[illegible]46 Pte. Alberts, H.C. (Carlt & York R.)

(b) On 22 July 43 Tried by F.G.C.M.
CHARGES.....(1) Sec. 15 (1) A.A., AWL while a defaulter from 1300 hrs. 1 July 43 until surrendering himself to Metropolitan Police, London, at 2345 hrs. 17 July 43
(Total absence 17 Days, 10 Hrs, 45 Mins.)

FINDING..... Guilty.
SENTENCE..... To undergo Detention for a period of 60 days.
CONFIRMATION..... Finding and Sentence confirmed by Commander "D" Grp. C.R.U. on 23 July 43.
CLOSE ARREST..... In close arrest from 2345 hrs. 17 July43 until 22 July 43 (4 Days 15 Mins)
FORFEITURES..... Forf. 18 Days pay under F.R.&.I. 149 (1)(a)
Forf. 60 Days pay under F.R.&.I. 149 (1)(b)
Forf. 3 Days pay under F.R.&.I. 149 (1)(c)
This sentence runs concurrent (10 Days) with sentence on 22 June 43 (D.O. 125 d/3 July 43)
TOTAL FORFEITURE.... Therefore being 71 days pay.

F-40084 Pte. MacMillan, W. (West N.S.R.)

21. REMISSION OF SENTENCE.

(a) The u/m is granted a remission of sentence of 29 days with pay of sentence on 12 April 43.
F42573 Pte. Brannon, F.A. (West N.S.R.)

22. RELEASE FROM CIVIL PRISON

(a) The u/m is released from H.M. Prison, Perth w.e.f. 22 July 43 and granted 19 days remission of sentence with pay.
G17120 Pte. Paul, S.P. (Carlt & York R.)

No. 19337 Name Robichaud, C.J. Sqn., Battery, or Company | Corps Carlton & Yorck | Date of enlistment 1.8.41. | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 500M - 5-1941 (7051) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet Nil. | No. and date of last drunk Nil. | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23.11.42	Pte.		Sect 15(1) AWL from 2359 hrs 23-11-42 until apprehd by C.P.C. in Stafford at 2040 hours 30-11-42.	Documentary Evidence	14 days F.P.	4-12-42		Forfs 22 days pay. Stopp $1.12.7.
Field	4.12.42	"		AA Sect 15(1) AWL from 1800 hrs 4-12-42 until apprehd by C.P.C. 1815 hrs. 15 Dec. 42	~~[illegible]~~	27 Days Detention			Expire 6 $1.5.0
Field	15.1.43	"		AA Sect 15(1) AWL from 2200 hrs, 15.1.43 until apprehd by C.P.C. at 1400 hours, 8.2.43 (23 days, 16 hours)	Documentary Evidence	150 Days Detention	15.2.43	F.~~[illegible]~~ M	Remiss - 50 Days & pay.
Field	10.6.43	"		AA Sect 15(1) AWL (6 days - 13 Hours)	Lieut Donkin Cpl Wheeler	45 Days Detention	14.6.43	F.O.G.M	

CERTIFIED TRUE COPY OFFICER HAVING CUSTODY OF ORIGINAL DOCUMENTS

(9 AUG 43 (C.M.G. ARTHURS) CAPT & ADJT 7CIRU

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	16 July 43	Pte		W.O.A.S.A.W.L. from 0816 hrs. 14 Jul 43 till apprehended by O.M.P. in Portsmouth at 1930 hrs 18 Jul 43 cost of apprehension £0-13-9 Time absent 4 days 10 hrs 15 min AA Sec 15(1)	Documentary	28 days F.P. 28 days Pay £0-13-9 cost of apprehension	21 July 43	Lt. Col. W.L. Lawrence	5 days pay forfeiture FR&I 149(1)(a)
				Certified True Copy Officer Having Custody of Original Record	(C.M.G. ARTHURS) CAPT & ADJT 7 C.I.R.U. - 9 Aug 43				

M.F.B. 355
2(M.—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
G 19337	Private	Robichaud, E.J.	Carlt & York R. 7 C.I.R.U.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ ~~Conduct sheets or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.A. Sec 15(1)	4	times	A.A. Sec 15(1)	4 times
For A.A. Sec 40	1	times	A.A. Sec 40	1 times
For		times		times
For		times		times

For ~~Number of instances of gallantry or distinguished conduct~~ ~~or~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~ ~~or~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act Section 47 of the Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time. ~~or~~

~~The accused at the present time is under sentence for~~ beginning on the ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in Air Force civil custody, and 7 days in military custody, making a total of 7 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 21 years 5 months

6. The date of his ~~commission~~ attestation specified in his record ~~of service~~ attestation paper is 1 August 1941

7. The service which the accused is allowed to reckon towards discharge is 1 year 189 days. 1 year 189 days.

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~(or is in possession of or entitled to). State any air force decoration or reward.~~ ~~military~~

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held~~ ~~Air Force~~ ~~the regimental rank of~~

L. D. Thibodeau major

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit

..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number G 19337 Rank Private Name ROBICHAUD, E.J. of Carlt & York R - 7 CIRU Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	In the Field 15 Feb 43	A.A. Sec 15(1) A.A. Sec 40	150 days detention	50 days remission
F.G.C.M.	In the Field 14 Jun 43	A.A. Sec 15(1)	45 days detention	15 days remission

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 11th day of Aug 43 Rahm Lieut Vasst adjt 7 C.I.R.U.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

L. D. Theobald Major

Y 113.

PTE ROBICHAUD, E.J.

O. H. M. S.

M. F. B. 270

725M-6-41 (789-91)
H.Q. 1772-30-67

G-19337 Private ROBICHAUD, Edgar Joseph,
Carlt. & York. R.
7 C.I.R.U.

Y-113

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this thirteenth day of February, 19 43

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army, (Overseas), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[~~I am unable to appoint:~~
*(~~1. Three Officers to form the Court.~~)
*(~~2. A Field Officer as President.~~)
~~for the following reasons, namely:~~]

* Omit if not applicable.

Proceeding Officer: Martin Capt
Reserve Officer (A.G.) N.H.Q.
2 Mar 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lt. Col	D.L. Redman	Calg. Highrs.

Members.

Rank.	Name.	Regiment.
A Major	from	3 C.I.R.U.
A Captain	from	4 C.I.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Colonel
Commanding "D" Group, Cdn. Reinf. Units
Convening Officer.

[signature]

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
G.19337 Private ROBICHAUD, Edgar, Joseph, Carlt. & York. R. 7 C.I.R.U.	First Charge A.A. Sec. 15 (1) Second Charge A.A. Sec. 40 Third Charge A.A. Sec. 40 See Charge Sheet attached.	Guilty Guilty Guilty Guilty	Guilty Guilty Guilty Sentence To undergo detention for a period of One Hundred and fifty (150) days and to be put under stoppages of pay until he has made good the sum of $ 7-0-8 the expenses of his apprehension and return 15th Feb 1943	I confirm the findings and sentence of the Court G Hickey Barker Lt Col

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) G Hickey Barker Lt Col. (Signed)
Commanding "D" Group, C.R.U.
Convening Officer (e) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 15th day of February, 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The interpreter~~
4. ~~The officers under instruction~~

* Omit if not applicable.

were duly sworn.

Signed this 15th day of February 1943

President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (5) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19 .

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 15 day of Feb 1943.

G Hickey Barker Lt Colonel
Confirming Officer.

G-19337 Pte Robichaud, E. J. 76 Fd Bty

Promulgated and extracts taken in the case of Part II Orders

(*a*) (Dated) 15 Feb 43 (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W.L. 47797/1857. 50 M. 5/43 K.J.L.S.(S.S.) Gp. 698/3

CHARGE SHEET

The accused, No. G19337 Private Edgar, Joseph, ROBICHAUD, of the Carleton & York Regiment, on the strength of 7 Canadian Infantry Reinforcement Unit as a reinforcement, a soldier of the Canadian Army (Overseas) is charged with:

When on Active Service, absenting himself without leave,

in that he,

FIRST CHARGE
SEC 15(1)
ARMY ACT

at Algonquin Camp, Witley, Surrey, absented himself without leave from 2200 hours 15 Jan 43 until apprehended at Reading by C.M.P. at 1400 hours 8 Feb 43, thereby incurring a cost of apprehension in the amount of 8 shillings and 5 pence.

Total absence - 23 days, 16 hours.

When on Active Service, conduct to the prejudice of good order and military discipline,

in that he,

SECOND CHARGE
SEC 40
ARMY ACT

at Reading, at 1400 hours 8 Feb 43, was in possession of a leave pass, purporting it to be a genuine leave pass, well knowing it to be false.

When on Active Service, conduct to the prejudice of good order and military discipline,

in that he,

THIRD CHARGE
SEC 40
ARMY ACT

at Reading, at 1400 hours 8 Feb 43, was improperly dressed, i.e., wearing the regimental flashes of a unit other than his own.

.....
(C.C. Perrie) Lieut.-Col.
A/Commander
7 Cdn. Inf. Reinf. Unit.

In the Field,
12th day of February, 1943.

To be tried by Field General Court Martial.

.....
(C. Hadley Basher) Colonel
Commander
"D" Group, Cdn. Reinf. Units.

In the Field
13 Feb. 43.

15 Feb. 1943

This is to certify that 419337 Pte. Robichaud, L.J.
was examined by me this day and is fit to undergo trial
by court martial.

Medical Officer
7 C.A.R.D.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT LEIPZIG BARRACKS, EWSHOTT, HANTS.,
ON THE 15th DAY OF FEBRUARY 1943

The accused C 19337 Pte. ROBICHAUD, E.J. Unit C&Y R. 7 C.I.R.U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 & 23.

The accused is brought before the Court.
The Medical Certificate is presented to the Court.
The order convening the Court is read by the President and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President LT.-COL. D.L. REDMAN, V.D. Unit H.Q. C.R.U.

Members MAJOR E.J. MOTHERSILL Unit 3 C.I.R.U.

CAPT. W.J. PALMER Unit 4 C.I.R.U.

The officers under instruction are duly sworn:-

-NIL- Unit

Unit

Prosecutor LIEUT. L.E. DONKIN Unit 7 C.I.R.U.

Defending Officer LIEUT. L.N. KITZ Unit 5 C.I.R.U.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B)
The Summary of Evidence is read.
~~The Prosecutor~~ LIEUT. E.J. WERMISON C.H. of O. ASS'T. RECORDS OFFICER is sworn and produces ~~MFB 355~~ AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) makes a statement in mitigation of punishment
(b) ~~calls witnesses as to character~~
(c) ~~calls witnesses in mitigation of punishment~~
(d) addresses the Court by his Defending Officer

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE AND ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Plea in mitigation of punishment by the Defending Officer attached hereto:-

Pls Statement ~~Plea~~ by the accused:

I was supposed to go to another regiment, and I did not even belong to it, so I went A.W.L. I was in the North Shore Regiment, I was sent to Cove on a signal course, and I was transferred to the Carleton & York. Regiment. I went to Reading, and met a fellow from the R. 22nd. Regiment, and I traded tunics, and he gave me his pass. That is how I came to have the R. 22nd. flashes and the pass. I changed the pass by using a crust of bread.

(OVER)

The charges against the accused are of a relatively serious nature but the acts are not ~~of the same serious~~ do not fall into such a ~~serious~~ heavy category.

This person goes A W L and while away changes tunics and picks up a pass from another person. I suggest to the court that he did not realize that he was doing anything of a very wrongful nature when he took this other tunic. I do not believe that he ~~knew this was really a prohibited~~ really appreciated just how the Army looked upon such actions.

The accused did not plan ~~this forged~~ to create a ~~w~~ false pass and make away with it. Rather it was the act of a boy who has started something that gets worse as he goes along, almost inevitably leads him to further mischievous acts.

~~As for the document the attempt was clumsy and the effort weak.~~

I suggest to the court that he did not realize that he was doing something very wrong. ~~I hold~~ I hold out the thought to the court that not very much mental process — not much mental process — was involved in these haphazard and random acts. His record is not that of a real recalcitrant and.

Finally, realizing his deeds at this time ~~he h we ask for the consideration of the court~~ for the accused ~~in~~ has not ~~taking up your~~ taken the time of the court ~~time~~ with idle and fallacious pleas.

[signature]

SUMMARY OF EVIDENCE

In the case of No.G19337 Private Edgar Joseph ROBICHAUD, of the Carleton & York Regiment, a soldier of the Canadian Army (Overseas) on the strength of 7 Canadian Infantry Reinforcement Unit.

By direction of the Commanding Officer this Summary of Evidence is taken under oath.

FIRST WITNESS FOR THE PROSECUTION

G18380 Cpl. Bernatchez, A.J., Carleton & York Regiment, 7 Canadian Infantry Reinforcement Unit, having been duly sworn, states:

I am G18380 Cpl. Bernatchez, A.J., Carleton & York Regiment, 7 Canadian Infantry Reinforcement Unit. I was Orderly Cpl. of the Carlt & York Company on 15 Jan 43. I called tattoo roll call at 2200 hours 15 Jan 43, and the accused failed to answer his name. I marked him absent. I called the roll at reveille and tattoo of every day of my tour of duty as Orderly Cpl., and the accused failed to answer his name at all these roll calls. I handed over to Cpl. McFarlane at 1200 hours 19 Jan 43. This evidence relates to the accused whom I now recognize.

A.J. Bernatchez, Cpl.

(The accused declines to cross-examine this witness)

SECOND WITNESS FOR THE PROSECUTION

G18008 Cpl. MacFarlane, R.K., Carleton & York Regiment, 7 Canadian Infantry Reinforcement Unit, having been duly sworn, states:

I am G18008 Cpl. MacFarlane, R.K., Carleton & York Regiment, 7 Canadian Infantry Reinforcement Unit. I took over as Orderly Corporal at 1200 hours 19 Jan 43. The name of the accused was on the absentee report. I called the roll at reveille and tattoo on each day from the 19 Jan 43 till the present date. The accused failed to answer his name at any of these calls. This evidence relates to the accused whom I now recognize.

R.K. MacFarlane, Cpl.

(The accused declines to cross-examine this witness)

THIRD WITNESS FOR THE PROSECUTION

Lieut. H.G. Williamson, Camerons of Ottawa, Assistant Records Officer, 7 Canadian Infantry Reinforcement Unit, having been duly sworn, states:

I am Lieut. H.G. Williamson, Camerons of Ottawa, Assistant Records Officer, 7 Canadian Infantry Reinforcement Unit. I produce Statement of Evidence in the case of G19337 Pte. Robichaud, E.J., Carlt. & York R., 7 Cdn. Inf. Reinf. Unit. This document is purported to be signed by Cpl. H. Faulkner, 159 (H.Q.) Provost Company, C.M. Police. This statement is corroborated by L/Cpl. A. Gibbon, 159 (H.Q.) Provost Company, C.M. Police. I also produce certificate in accordance with Army Act Section 163(1) relating to the accused. This document contains the time and place of this soldier's apprehension. I produce

SUMMARY OF EVIDENCE

In the case of No.G19337 Private Edgar Joseph ROBICHAUD, of the Carleton & York Regiment, a soldier of the Canadian Army (Overseas) on the strength of 7 Canadian Infantry Reinforcement Unit.

THIRD WITNESS FOR THE PROSECUTION (cont'd)

Army Pass Form made out in the name of the accused; also Ministry of Food Ration Card dated 7 Feb 43. I further produce Statement of Evidence relating to the accused, and purporting to be signed by Sgt. G. Wilding, 159(H.Q.) Provost Company, C.M. Police. I also produce Expense Voucher purporting to be signed by the Officer issuing railway warrant and expense monies, relating to the accused, in the amount of 8 shillings and 5 pence. The above evidence relates to the accused whom I now recognize.

.....Lieut.

(The accused declines to cross-examine this witness)

FOURTH WITNESS FOR THE PROSECUTION

Cpl. H. Faulkner, 159(H.Q.) Provost Company, C.M. Police states:

At Reading on the 8 Feb 43 at about 1400 hours I was on duty at the Y.M.C.A. in Friar Street, where I saw the a/m soldier (G19337 Pte. Robichaud, E.J. Carleton & York Regt., 7 C.I.R.U.).

I asked to see his pass andhe produce a pass with which I was not satisfied. He stated: "I am on leave and this pass is all right."

I conducted him to Military Police H.Q., Reading, where, following enquiries, it was ascertained that his correct particulars were as above and that the pass in his possession was false. He was absent. He was improperly dressed i.e. wearing the regimental flashes of the Royal 22nd Regiment.

He was arrested and conducted to the Civil Police Station, Reading, to be detained pending the arrival of an escort.

(signed) H. Faulkner Cpl.
159 (H.Q.) Provost Coy.
C.M. Police.

I have read over and corroborate the above statement.

READING
8/2/43

(signed) A.O. Gibbon L/Cpl.
159 H.Q.) Provost Coy.
C.M. Police

A statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence. Due to the loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured. The accused does not demand the attendance of this witness for cross-examination.

.....Lieut.
(Officer taking Summary)

SUMMARY OF EVIDENCE

In the case of No. G19337 Private Edgar Joseph ROBICHAUD, of the Carleton & York Regiment, a soldier of the Canadian Army (Overseas) on the strength of 7 Canadian Infantry Reinforcement Unit.

FIFTH WITNESS FOR THE PROSECUTION

Sgt. G. Wilding, 159 (H.Q.) Provost Company, C.M. Police, states:

I have to report that at READING on the 8 Feb 43 at about 1415 hours I was on duty at Military Police H.Q. where I saw G19337 Pte. Robichaud, E.J., Carlt. & York R, of 7 C.I.R.U., who had been detained by No. 5880427 Cpl. Faulkner, H., C.M.Police.

He was wearing the Regimental Flashes of the Royal 22nd Regiment but enquiries revealed that his correct particulars were as above and that he was an absentee.

In his possession he had a diary in which there were a number of private addresses. When questioned about these he stated that these were the addresses of girl friends. Not being satisfied with this, I arrested him and he was conducted to the Civil Police Station, Reading to await the arrival of an escort, and for further enquiries by the Civil Police in regard to these addresses.

It was ascertained that these addresses were of Irish girls working at the Burghfield Ordnnance Factory. I also found in his possession a Ministry of Food Form F.B.12 (Ration card issued to service men) bearing the following name and number: C2694 Laronde, which he stated had been given to him by a soldier in the Royal Canadian Engineers.

(Signed) G. Wilding Sgt.
159 (H.Q.) Provost Coy.
C.M. Police.

Reading
8/2/43

A statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence. Due to the loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured. The accused does not demand the attendance of this witness for cross-examination.

A.J. Blakeney ....Lieut.
(Officer taking Summary)

The accused having been duly warned in accordance with Rule of Procedure 4 (E) reserves his defence.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence and hearing of the accused at Leipzic Barracks, Ewshott, Hants, on the 12th day of February 1943, and that Rules of Procedure 4 (C) (D) (E) (F) and (G) have been duly complied with.

A.J. Blakeney ....Lieut.
(Officer taking Summary)

In the Field,
12th day of February, 1943.

HSW.

File No. 16/159. . .

Officer Commanding.
Carlton & York Regt. #1 C.D.I.R.U.
Re:-
G-19337 Pte. ROBICHAUD E.J.

1. Forwarded for your information and necessary action, please, and disposal under G.A.R.O. No. 588 dated 29 Oct. 40.

London
9-Feb.1943

Capt.
(S.[illegible]) D. A. P. M.,
London Area.

CHARGE

Army Form B 252
(See King's Regulations)

MILITARY POLICE
9 FEB 1943
S.M.A. OXFORD

[illegible] YORK ..... Regiment

Battery
Squadron
Troop or
Company

CHARGE against No. G.19337 Rank Private

Name ROBICHAUD, E.J.

Place GROOKHAM. Date of Offence ?

OFFENCE W.O.A.R. (1) ABSENT from ? until apprehended by the Military Police at the Y.M.C.A., FRIAR STREET, READING on the 8th/FEB/1943 abt. 14.00 hrs.
(2) Stating a falsehood to a Military Policeman.
(3) Being in Possession of a Document, knowing it to be false, with intent to mislead or deceive.
(4) Improperly Dressed. i.e:- Wearing the Regimental Flashes of a Unit other than his own.

Names of Witnesses 5880427 Cpl. Faulkner, M.
5880199 L/Cpl. Gibbon, A.
(1st Provost Coy. C.M.Police)

Major,
APM 169 (HQ) Provost Coy.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Statement of **EVIDENCE** in the case of:-

No. G.19337 Pte. ROBICHAUD, E.J.
The Carlton & York Regt. No.7 C.D.I.R.U.
Leipzig Barracks,
CROOKHAM. Hants.

Sir,

At READING on the 8th/FEBRUARY/1943 abt. 14.00 hrs. I was on duty at the Y.M.C.A. in FRIAR STREET, where I saw the a/n Soldier.

I asked to see his Pass and he produced a Pass with which I was not satisfied. He stated:- "I am on leave and this pass is alright".

I conducted him to Military Police H.Q., READING, where, following enquiries, it was ascertained that his correct particulars were as above and that the pass in his possession was false. He was ABSENT. He was improperly dressed. i.e:- Wearing the Regimental flashes of the Royal 22nd. Regt.

He was arrested and conducted to the CIVIL POLICE STATION, READING, to be detained pending the arrival of an escort.

READING.
8/2/43

H Faulkner Cpl.
159(R.[illegible]) Provost Coy.
C.M.Police.

Sir,

I have read over and corroborate the above statement.

READING.
8/2/43

REMARKS A.A. Gibbon L/Cpl.
159(R.[illegible]) Provost Coy.
C.M.Police.

[illegible] calling-out of the whole Army Reserve is ordered every soldier [illegible] pass must return immediately to his unit without waiting for instructions.

No. 137. Regiment R.22R.

Army Form Bay (in pads of 100)

PASS

No. 6.19.337 (Rank) P/E (Name) Robichaud C.J.

has permission to be absent from his †quarters daily, from

26-1-43 at 17.00 Hrs. 9-2-43. at 2359 Hrs.

for the purpose of proceeding to Sheffield.

(Station) Down the Field

(Date) 26-1-43

[illegible] Commanding [illegible] (P.T.O.)

† Delete [illegible]

* Destination [illegible] is to exceed 24 hours, unless notification is desirable owing to [illegible] or is necessary to enable purchase of a rail ticket at reduced rate.

CROWN COPYRIGHT RESERVED

RECORDS OFFICE C.D.I.R.U.

R.B.12

MINISTRY OF FOOD

Name and Initials LARONDE

N.R. No. or Service No. C2694

Week ending FEB 7 1943

F.O. Stamp or Issuing Officer

MILK	GRID
CHEESE R.B.12	PANEL 2 R.B.12
TEA R.B.12	PANEL 1 R.B.12
SUGAR R.B.12	QUARTER PRESERVES R.B.12
BACON R.B.12	EGGS R.B.12
BUTTER MARGARINE & COOKING FATS R.B.12	SPARE TWO R.B.12
MEAT R.B.12	[illegible] R.B.12
MEAT R.B. [illegible]	

G.19337 Pte. ROBICHAUD. E.J.

Carlton & York Regt. No.7 C.D.I.S.U. READING.

14.00 hrs. 8th/FEBRUARY/1943

159(H.C.) Provost Coy.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. G-19337 Rank Pte. Name Robichaud, E.J. Unit Carl. & York 1 Cd. 1 RU

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Reading

Date	Particulars	Amount		
10 Feb. 43	Escorts return fare from LONDON To Reading		5	7
	Prisoners single fare to LONDON From Reading		2	10
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		8	5

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] ~~Lieut~~

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
10/P & S/483

REPORT.

To:-

The A.P.M.
159(H.Q.) Provost Coy.
C.M.Police.

HSW.

Sir,

I have to report that at READING on the 6th. FEBRUARY 1943 abt. 14.15 hrs. I was on duty at Military Police H.Q. where I saw:-

No. G.19337 Pte. ROBICHAUD. E.J.
The Carlton & York Regt.
No.7 O.D.I.R.U.
Leipzig Barracks,
CROOKHAM. Hants.,

who had been detained by No. 6880427 Cpl. VAULKNER U. C.M.Police.

He was wearing the Regimental Flashes of the ROYAL 82nd. REGT. but enquiries revealed that his correct particulars were as above and that he was an ABSENTEE.

In his possession he had a diary in which there were a number of private addresses. When questioned about these he stated that these were the addresses of girl friends. Not being satisfied with this, I arrested him and he was conducted to the CIVIL POLICE STATION, READING to await the arrival of an escort, and for further enquiries by the CIVIL POLICE in regard to these addresses.

It was ascertained that these addresses were of Irish girls working at the BURGHFIELD ORDNANCE FACTORY. Also found in his possession was a Ministry of Food Form F.B.12 (Ration card issued to Service men) bearing the following name and number:- 6.2694 LARONDE, which he stated had been given to him by a soldier in the Royal Canadian Engineers.

READING.
8/2/43

G. Wilding Sgt.
159(H.Q.) Provost Coy.
C.M.Police.

No. G19337 Name Robichaud E. Sqn., Battery, or Company | Corps Carlt & York R. | Date of enlistment 1-8-41 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6. (A.F.B. 133) SOOM—8-39 (1702) H.Q. 1772-43-18

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Conduct sheet destroyed after six months service. Nil entries 2-2-42					
Field	23 Nov 42	Pte		A.W.L. 6 days 20 hrs 46 min. Cost of apprehn £1-12-7. A.A. 15(1)	Pte Fisher	14 days F.P. 14 days pay cost of apprehn £1-12-7	4 Dec 42.	Lt Col W C Lawson	27 days pay total forf
Field	4 Dec 42	"		AWL 11 days 15 min. Cost of apprehension £1-15-0 AA 15(1)	Lt Col Camden Dost	27 days detn Cost of apprehn £1-15-0	19 Dec 42	Lt Col W C Lawson	42 days pay total forf
				Certified True Copy consisting of one sheet					

R.G. Williamson Lieut. Asst. Records Officer - 7 C. I. R. U.

(Officer having original custody of document)

(P.T.O.)

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
HSW				HSW

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15th day of February 1943

[signature] Lieutenant
Assistant Records Officer
7 C.I.R.U.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

G19337 Pte Robichaud, E. of the Carlt & York R, 7 Cdn. Inf. Rein. Unit

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Para 664, K.R. 1905.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For A.A. 15 (1)	2	times	2	times.
For		times		times.
For		times		times.
For		times		times.

HSW Number of instances of gallantry or distinguished conduct HSW

or,

HSW There are no entries in the Conduct sheets of the accused HSW

2. The accused has not been previously convicted,

or,

HSW Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement. HSW

HSW

Wt. 42848/664 50,000 2/40 W. S. Ltd. 51—6004

[signature] Lt Col

3. The accused is not under sentence at the present time,

or,

~~The accused at the present time is under sentence for~~ _____ ~~beginning on the~~ _____ ~~day of~~ _____

4. The accused has been in confinement, awaiting trial on the present charges

for nil days in Civil Custody,

and 7 days in Military Custody.

Total 7 days.

Of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 20 years.

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 1 Aug 41.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr 150 days

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr 150 days ~~years~~' service.

9. The accused is entitled to reckon 1 yr 150 dys ~~years~~ service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward ~~or is in possession of or entitled to~~

~~11. (*If the accused is a warrant officer.*) The accused before he was made a~~ warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of _____, dated _____, and in his regiment (*or* corps *or* department) the rank of _____ dated _____

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of _____, _____ years, _____

In the rank of _____, _____ years, _____

In the rank of _____, _____ years, _____

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked _____, signed by the ~~president, and annexed to the proceedings.~~

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name G19337 Pte. Robichaud, E.J. of the Carlt & York R, 7 Cdn. Inf. Rein. Unit

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(*Continued overleaf.*)

(1) I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Leipzic Barracks, Ewshott, Hants, preliminary to my Court-Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

Dated at Leipzic Barracks,
Ewshott, Hants,
this 13th day of
February 1943. Rothschild C.J.

(2) I hereby acknowledge that I have been served with a true copy of an additional Summary of Evidence taken at Leipzic Barracks, Ewshott, Hants, preliminary to my Court-Martial.

(3) I hereby request that the Convening officer appoint an officer to represent me at my trial.

I desire the services of Lieut Kelly C.R.A.
if he is available.

Dated at Leipzic Barracks,
Ewshott, Hants,
This 13th day of
February 1943. Rothschild C.J.

ZZ-119 (can #4)

PTE ROBICHAUD E.J.

See Y-113 for 1st can
" GG 115 " 2nd "
" MM 147 " 3rd "

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G-19337 Pte Robichaud, Edgar, Joseph - CIC - 7 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd AA Sec 40	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of NINE days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of Forty Five (45) days and to be put under stoppages of pay and to be reduced to the 2-3-3 the rate prescribed for the 3rd class and return

(Sgd) ..... 15th Jan/44 (Sgd) MMMunro Lt Col

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Findings and Sentence Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.(1)~~ (1. AA 57A. Delete if not used.)

Date 19 JAN 1944 (Sgd) T Brandon Brigadier Commander "D" Group

Commanding ..... Can. Reinforcement Unit Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G19337 Pte Robichaud E.J. CIC 7 C.I.R.U.	20 Jan 44	J. E. Willyhurst 7 C.I.R.U.

Part II A.O. No 24 dated 24 Jan 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Exhibit 22-119

FIELD GENERAL COURT-MARTIAL

CFA80 (In lieu of AFA3) 47-0 & E-1608 (2004)

Convened by Order of Brigadier G. Francoeur Comd "D" Gp, CRU dated 12 JAN 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G-19337	Pte	Edgar Joseph	ROBICHAUD	7 CIRU CIC

PROCEEDINGS REVIEWED
27 Jan 44
Lt Col Judge Advocate
REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

R Held in the Fd in (country) England on (date(s)) 15th Jan/44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

R A1. The President, Members, waiting Member, ~~JA, if any,~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnm RQs. For guidance on procedure when a variation in this form arises, see fnm for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) R The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

R A3. The Court is opened. The accused is (are) brought before the Court. At 11.30 hours trial commences.

R A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) R ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

R A5. President to accused: Do you object to ..... as interpreter? Ans

~~The Interpreter is sworn.(1)~~ Do you object to ..... as shorthand writer? Ans

R The shorthand writer is sworn.(1).

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO-SIR

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

R A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D F Redman	HQ, CRU
Member	Capt	G R Ladouceur	7 CIRU
Member	Lieut	J A Matthews	4 CIRU
~~Judge-Advocate~~			
Prosecutor	Lt	E A Willey	7 CIRU
Defending Offr	Lt	F R Laverdure	7 CIRU

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

R A8. The accused ..... before arraignment make(s) (no) ~~his~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(4), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

R A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (no) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

R A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 90(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO - SIR (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans..... Do you intend to call witnesses on your behalf? Ans..... Are they witnesses as to character only? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans NO - SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans only by way of plea
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should not permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2) 7/6/20
(*1. When several accused tried separately see RP 48. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ, CDN RFT UNITS

17 Jan 44

Confirming Officer
Comd D Gp

FGCM - G-19337 Pte Robichaud, E J - 7 CIRU

1 You will note that this soldier has been in the army about two and a half years. He got along without too much difficulty until the year 1943. He has had four Courts-Martial, one in February, one in June, one in August and one in Jan 44. He is perfectly friendly, harmless looking young fellow. Either he is not being handled correctly or he is suffering from mental disability. I would respectfully suggest that he be examined by a psychiatrist at an early date.

(D L Redman) Lt-Col,
President of the Court

FLR/rm

Copy to

AA & QMG
DJA

CHARGE SHEET

The accused No. G19337 Private Edgar Joseph ROBICHAUD, Canadian Infantry Corps, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, on Active Service is charged with:

FIRST CHARGE
SEC 15(1)
ARMY ACT

When on Active Service absenting himself without leave,

in that he,

In the Field, whilst undergoing Field Punishment, absented himself without leave from 1800 hours 22 Dec 43 until apprehended by the Corps of Military Police in Cardiff at 0130 hours 6 Jan 44 thereby incurring a cost of apprehension and return to unit in the amount of £2.3.3

Total absence - 14 days 7 hours 30 minutes

SECOND CHARGE
SEC 40
ARMY ACT

When on Active Service conduct to the prejudice of good order and military discipline,

In that he,

In the Field at approximately 0130 hours 6 Jan 44 was improperly wearing the rank chevrons of a corporal to which he was not entitled, he being in the rank of private

J.R. Calkin Col.

(J.R. Calkin) Colonel
Commander
7 Cdn Inf Rft Unit

In the Field
11 Jan 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

G. Francoeur

IN THE FIELD
12 JAN 1944

(G. Francoeur) Brigadier.
Commander,
"D" Group, Cdn Rft Units.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAS/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-19337	Pte		Edgar Joseph	ROBICHAUD	7 CIRU CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet~~(s)~~ attached and on (*date*) 12 JAN 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-col.	D. L. Redman	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Captain	to be detailed by CO	7 CIRU
A Lieutenant	to be detailed by CO	4 CIRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

[signature] (Signed personally. RP 105 fn 2.)

Brigadier. (Rank.)

Date 12 JAN 44

Commanding "D" Group, Cdn Rft Units.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No. G19337 Pte (R a n k)

Robichaud E.J. (N a m e)

of CIC - 7 CIRU and in my opinion he is fit ~~unfit~~ to undergo trial by Court Martial.

Station: Leipzic Bks

Sgd. . . . . M.J. McGuire Capt . . . . .

Date:---15 Jan 44

(Medical Officer) 7 Cdn.Inf.Rft.Unit.

MJ

PLEA for Mitigation.

IN RE:

G-19337. pte. Edgar Joseph. ROBICHAUD.

1. The accused is 20 yrs of age. He is single and A cat.

2. He enlisted on 1 Aug 41 at the age of 18 and proceeded o/s on 12 Jun 42.

3. He attended Gr. VIII school ... has no special trade in civilian life. Is a riflemen in the Army.

4. He's young, fit physically and single and is anxious to get into action with his friends & pals.

5. He was examined by a psychiatrist at 8 C Gen. on 14 Jan 44. The reason for examination is not known to the undersigned but it is felt that this being his 4th Court martial might have a bearing on same. Would it be too much to ask of the Court that they get in touch with #8 C. G. Hosp. and find the results of this psychiatrist's report? Evidently there's something wrong with this accused's judgment if one is to judge by his actions. He looks pleasant, clean cut and willing but just seems to be getting in the wrong all the time! It is self-evident that he suffers from an inferiority complex and persecution complex and the report from a psychiatrist might help guide the Court in its decision.

6. It is also evident from his MFM 6 that the accused is more of a liability than an asset to the war effort in his present employment which, so far, has been mostly confined to a detention barracks. Evidently, punishment does not appear to have any appreciable results. Whether this is due to his youth or to his brains — I believe that a psychiatrist's report would decide.

Respectfully Submitted,

W. R. Plaud Ecuyer

Defending Officer.

15 Jan 44.

NOTE E-3

MM

(c) On 16 Dec.43 awarded 7 days F.P.& forfeits 7 days pay for WOAS AA Sec 15(1)AWL while undergoing F.P. from 1000 hrs 13 Dec.43 until appro by CPC in Reading at 1920 hrs 13 Dec.43 thereby incurring a cost of appro of £0-5-0. (1 hr 20 mins)
(The accused was in close cistody from 1920 hrs 13 Dec.43 until 1000 hrs 16 Dec.43 (2 days 14 hrs 40 mins)
Forfeits 7 days pay under FR&I 149(2)
Forfeits 3 days pay under FR&I 149 1 (c)
(This award is concurrent (7 days) with award on 13 Dec.43 (D.O.265 d/18 Dec.43.) Total forfeiture 3 days pay & cost of appro £0-5-0.
C10337 Pte. Robichaud.E.J. Carlt & York R

Exhibit "A"

PART II ORDER EXTRACTS

FROM

7 CANADIAN INFANTRY REINFORCEMENT UNIT

Date....11 Jan.....1944

To: F.G.C.M.

Extracts from our PartII Order

No.....266.....d/20 Dec 43.....

(M.J. Gleeson) Capt.
Records Officer

.....p.t.o.....

"Exhibit "D"

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. G19337 Rank Pte Name Robichaud, E.J Unit 7 C I R U

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Cardiff

Date	Particulars	Amount		
6 Jan 44	Escorts return fare from LONDON To Cardiff	1	3	6
	Prisoners single fare to LONDON From Cardiff		11	9
	Prisoners fare from To			
	Escorts & Prisoners expenses for Refl, Meals, Bus fares		8	0
	Total £	2	3	3

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

L S Grayson Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-55
40/P & S/483

MJ

Exhibit "B"

PART II ORDER EXTRACTS

FROM

7 CANADIAN INFANTRY REINFORCEMENT UNIT

Date 11 Jan 1944

To: F.G.C.M.

Extracts from our PartII Order

No 274 d/ 31 Dec 43

(1) AWL from 1600 hrs 22 Dec.43.
(H9337 Pte. Robichaud.E.J. CIC

(M.J.A. Gleeson) Capt.
Records Officer

Exhibit "C"

Certificate in accordance with the Army Act, Section 1[illegible] (1) jj

I certify that No. 9 19337 Rank Pte Name [illegible] F.S.

Unit "A" Coy. CARLETON & YORK was arrested at CARDIFF

at 0130 hrs on the 6TH JAN 1944 bearing military uniform.

Signature of Provost Marshal, A.P.M. or other Officer into whose custody the above named was taken on arrest.

Staff Lieut.
[illegible] H.Q. PROVOST COMPANY C.M.P.

CHARGE

Army Form B 252
(See King's Regulations)

Carleton & Yorks Regiment

"A" Coy. Battery / Squadron / Troop or Company

CHARGE against No. G.19337 Rank Pte.

Name Robichaud E.J

Place Date of Offence

OFFENCE When on active service

1. Absent from....until apprehended by the Military Police at the Church Army Hostel, Queen St., Cardiff on 6 Jan 44 about 0130 hours.
2. Stating a falsehood to a N.C.O. of the Military Police.
3. Improperly dressed i.e. Wearing badges of rank to which he was not entitled.
4. Improper use of respirator haversack i.e. carrying cleaning materials in same.
5. Failing to be in possession of his respirator facepiece.

Names of Witnesses :— [signature] Staff Lieut
167 H.Q. PROVOST COMPANY C.M.P.

3118001 L/Cpl. Webster C.M.Police.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

H4889. Wt.W21972/580 2,000,000 7/41. K. & H., Ltd. G657/47

Statement of **EVIDENCE** in the case of :-

G.19337 Pte. Mohammad E.J
A.Coy.Carleton & Yorks Regt.
No.7 C.I.E.U.
Crookham X Road, Nr. Aldershot,
Hants.

Sir,

At Cardiff on 6 Jan 44 about 0130 hours I was on duty at the Church Army Hostel, Queen St., where I saw the above named soldier who was wearing Corporals chevrons which are attached. I asked him if he was on leave to which he replied, "Yes.,from convalescent Depot Bath". He was unable to produce a pass. I challenged him with being absent to which he replied, "Yes that's right" I arrested him. I observed that his respirator haversack was being improperly used, it contained cleaning materials. He was not in possession of his respirator face piece. I pointed this out to him and he replied, "Oh. thats back at the unit".

He was conducted to Mainly Barracks where he was handed over to the M.P.O. i/c Guard to be detained, pending the arrival of an escort from his unit.

5118001 ..... L/CPL.
CORPS OF MILITARY POLICE.

CARDIFF.
6 Jan 44

REMARKS

ASSISTANT PROVOST MARSHAL
SOUTH WALES DISTRICT

List of witnesses in the case of 019337 Pte Robichaud E.J.

FOR THE PROSECUTION

First Witness — Lt. G.W. Rahm CIC Acting/ Adjutant 7 CIRU

Second Witness — 5118001 L/Cpl Webster C.J. 167 HQ Coy, CMP

FOR THE DEFENCE

Nil

List of exhibits in the case of G19337 Pte Robichaud E.J.

Exhibit "A"	Extract from 7 CIRU Part II Order No. 266 dated 20 Dec 43 which relates to the accused
Exhibit "B"	Extract from 7 CIRU Part II Order No. 274 dated 31 Dec 43 which relates to the accused
Exhibit "C"	Certificate in accordance with the Army Act Sec 163 (1) (m) which relates to the accused
Exhibit "D"	CMHQ 1000/55 which relates to the accused

1. I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Leipzic Barracks, preliminary to my Court-Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

E.J. Robichaud
(E.J. Robichaud)

Dated at Leipzic Bks
this 11th day of
January 1944

2. I hereby acknowledge that I have been served with a true copy of an additional Summary of Evidence taken at preliminary to my Court-Martial.

3. I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Capt F.R. Flourde

if he is available.

E.J. Robichaud
(E.J. Robichaud)

Dated at Leipzic Bks
this 11th day of
January 1944

SUMMARY OF EVIDENCE

In the case of G19337 Private Edgar Joseph ROBICHAUD, Canadian Infantry Corps, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION — Lt. G.W. Rahm, Canadian Infantry Corps, Acting Adjutant, on the strength of 7 Canadian Infantry Reinforcement Unit having been sworn states:

I am Lt. G.W. Rahm, Acting Adjutant of 7 C I R U. I produce Extract from Part II Order of 7 CIRU, No. 266 dated 20 Dec 43 which shows the accused awarded 7 days F.P. and 7 days forfeiture of pay on 16 Dec 43. This document is marked Exhibit "A". I also produce extract from 7 CIRU Part II Order No. 274 dated 31 Dec 43 which shows the accused absent without leave from 1800 hours 22 Dec 43. This document is marked Exhibit "B". I also produce Certificate in accordance with the Army Act, Section 163 (1) JJ which relates to the accused, showing him apprehended at 0130 hrs 6 Jan 44 in Cardiff. This document is marked Exhibit "C". I also produce CWHQ 1000:55 which relates to the accused, showing cost of apprehension and return to unit in the amount of £2.3.3. This document is marked Exhibit "D". The accused is and always has been a private.

Rahm ----------Lt.

(The accused declines to cross examine this witness)

SECOND WITNESS FOR THE PROSECUTION — 5118001 L/Cpl Webster C.J., 167 Headquarters Company, Corps of Military Police.

A written statement of this witness's evidence has been read to the accused and is included in this Summary of Evidence. Owing to the loss of time involved, attendance of this witness, in my opinion, cannot be readily procured.

A E Willby ----------Lt.
(Officer taking Summary)

(The accused does not demand the attendance of this witness for cross examination)

The accused was cautioned as follows:

Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of ONE page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

A E Willby ----------Lt.
(Officer taking Summary)

In the Field
11 Jan 44

EXA

MFM 6
(AFB 122)
40/P&S/136 (3438)

No G19337 Name ROBICHAUD, E.J. Sqn, Battery, or Company Corps C.I.C. Date of enlistment 1-8-41 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 1 Signature OC Company, etc C.O. Huggard Character Capt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23-11-42	Pte		WOAS A.A.Sec.15(1)AWL from 2359 hrs 23-11-42 until appr.by CPC in Sheffield at 2045 hrs 30-11-42	Documentary Evidence	14 days F.P.	4-12-42		forf.25 dy pay stop.£1-12-7
Field	4-12-42	Pte		WOAS A.A.Sec.15(1)AWL from 1800 hrs 4-12-42 til appr.CPC at 1815 hrs 15-12-42	Documentary	27 days Detn.		C.O.	Cost of appr. £1-5-0
Field	15-1-43	Pte		WOAS A.A.Sec.15(1) AWL from 2200 hrs 15-1-43 until appr by CPC at 1400 hrs 8-2-43(Abs.23 dy 16 hr)	Documentary	150 days Detn.		F.G.C.M.	24 days pay FR&I 149/1/a
Field	1-6-43	Pte		WOAS A.A.Sec.15(1) AWL 6 days 13 hrs	Lt.Donkin Cpl.Whalen,P.J.	45 days detn	14-6-43	F.G.C.M.	

Certified True Copy Rahm Lt adjt 15 Jan 44 Officer having Custody of Original Docements.

(PTO)

Ex 2

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	22-7-43	Pte.		WOAS A.A.Sec.15(1) AWL from 0800 hrs 22-7-43 until 1130 hrs 4-8-43 (Abs 13 dys 3 hrs 30 min)	Documentary Evidence	180 days detn	11-8-43	F.G.C.M.	Stoppages of 6/-7 Cost of Appr.
Field	11-12-43	,Pte.		WOAS A.A.Sec.15(1) AWL from 0830 hrs 11-12-43 until surr. 0900 hrs 13 Dec 43 (abs 2 days 30 min)	Sgt. Murphy	7 days F.P. forf. 7 days pay	13 Dec 43	J.N.Medhurst Lt.Col.	3 days pay FR&I 149-1-a
Field	13-12-43	Pte		WOAS AWL from 1800 hrs 13-12-43 whilst undergoing FP til appr. by CPC at Reading at 1920 hrs 13-12-43 (Total abs.1 hr 20 min) Cost of Appr 5/8 d.A.A.Sec.15(1)	Sgt.Murphy Documentary	7 addit. days F.P.Forfeits 7 days pay	16 Dec 43	J.N.Medhurst- Lt.Col.	Cost of Appr 5/8d.

Certified True Copy 15 Jun 44 Rahm Lt adjt ..... Officer having custody of original document

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
G19337	Private	Robichaud E.J.	CIC - 7 CIRU

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~Record, Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. Sec 15(1)	2 times	4 times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

~~2. The accused has not been previously convicted~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.F.A. 73~~ A.A. 73 are set out in the Schedule annexed to this statement.

~~3. The accused is not under sentence at the present time~~

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and NINE days in ~~Air Force~~ military custody, making a total of NINE days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 21 yrs 324 days

6. The date of his ~~commission~~ specified in his ~~record of service~~ attestation attestation paper 1 Aug 41

7. The service which the accused is allowed to reckon towards discharge is 1 yr 253 days

8. The accused is entitled to reckon 1 yr 253 days service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to no air force decoration, or air force reward~~ (or is in military ~~possession of or entitled to~~). State any air force decoration or reward. military

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force, the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number G19337 Rank Pte Name Robichaud E.J. of CIC - 7 Cdn Inf Rft Unit Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	15 Feb 43 Field	A.A. Sec 15(1)	150 dys detention	50 days
F.G.C.M.	14 Jun 43 Field	A.A. Sec 15(1)	45 dys detention	15 days
F.G.C.M.	11 Aug 43 Field	A.A. Sec 15(1)	180 dys detention	59 days

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody. J. E. Welley Lieut Ch/Adjt 10 FRU

Signed this 15th day of Jan 44

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

GG-108 (case #2)

PTE ROBICHAUD E.J.

See Y-113 for 1st case

G-19337 Pte. ROBICHAUD, Edgar, Joseph.
Carleton & York Regiment,
7th Cdn Infantry Reinforcement Unit.

GG-108

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twelfth day of June, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~ Ewll

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers ~~[illegible]~~ appointed or detailed hereunder.

* Omit if not applicable.

*~~I am unable to appoint~~:

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~ Ewll

*~~(3. Three Officers having more than one year's service.)~~

~~for the following reasons, namely:~~

Proceedings Reviewed [illegible] for 25 Jun 43

President.

Rank.	Name.	Regiment.
Lieut. Col.	D.L. Redman	Calg. Highrs.

Members.

Rank.	Name.	Regiment.
A Major	from	1 C.S.R.U.
A Captain	from	1 C.E.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

[illegible] *Signed* Ewll Hardenby Brigadier.

Commanding "D" Group, Cdn Rft Units.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
G-19337 Pte. ROBICHAUD, Edgar, Joseph. Carlt. & York R. 7 C.I.R.U.	First Charge A.A. Sec.15(1) See Charge Sheet Attached.	Guilty	Guilty Sentence To undergo detention for a period of Forty Five (45) days and to be put under stoppages of pay until he has made good 7-2-5 the expenses of this return to his unit. 14th June 1943 WM	Confirmed 14 June 43 Carl

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer to be recorded on separate sheet if necessary):—

(Signed) E.W. Wardenby Brigadier. (Signed) W.M. Lum Wd.

Commanding "D" Group, C.R.U.
Convening Officer (e) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14th day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
WM ~~2. The witnesses~~
WM ~~(3. The interpreter)~~
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 14th day of June 1943

W.M. Lum Wd.
President of the Court Martial.

C. Certificate in case of death sentences.

WM ~~I certify that the terms of A.C.I. 570 of 1918 have been complied with.~~

WM ~~Signed this day of 19~~

* See footnote (*b*) on page 762, M.M.L. 1929.

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison until further orders.~~)

Carl

Signed this 14 day of June 1943

E.W. Wardenby Brig
Confirming Officer.
DOMI 4/14 June 43

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Promulgated and extracts taken in the case of G19337 Pte. Robichaud E.J. - Carlt. & York R.

(*a*) (Dated) 14 Jun 43. (Signed) R.E. Baker Lt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[31729] Wt. 40113—893 200 m. 1/43 P. St. G. 640

CHARGE SHEET

The accused No. G19337 Private Edgar Joseph ROBICHAUD, Carleton & York Regiment, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, on Active Service, is charged with:

Absenting himself without leave,

in that he,

FIRST CHARGE
SEC 15 (1)
ARMY ACT

at Haig Lines, Crookham, Hants, absented himself without leave from 0700 hrs 30 May 43 until he surrendered to C.P.C. at 2000 hrs 5 Jun 43 in Edinburgh, thereby incurring cost of apprehension in the amount of £3-2-5.

Total Absence: 6 days 13 hrs.

In the Field,
10 Jun 43

J.M. Calkin Col.
(J.M. Calkin) Colonel
Commander
7 Cdn. Inf. Rft. Unit

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

E.W. Haldenby

IN THE FIELD
12 June 43.

(E.W. Haldenby) Brigadier.
Commander
"D" Group, Cdn Rft Units.

14 Jun 48

MEDICAL OFFICER'S CERTIFICATE

- K.R. (Can) Para. 557 -

I certify that I have this morning examined No. 4 1933 7 Pte Robichaud E J Carl + York R.

No. 7 ~~Cdn.~~ Cdn ~~Div.~~ Inf. Reinf. Unit, and in my opinion,

he is fit ~~unfit~~ to undergo trial by Court-Martial.

P Ferguson Lt.
(Medical Officer)

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Blenheim Barracks
ON THE 14 DAY OF June 1943

The accused G-19337 PTE ROBICHAUD, E.J. Unit 7 C.I.R.U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lt. Col. D.L. REDMAN Unit HQ C.R.U.

Members 1. MAJ. R.H. BURGESS Unit 1 C.S.R.U.

2. CAPT. A. MONETTE Unit 1 C.E.R.U.

The officers under instruction are duly sworn:-

Lieut. D.M. Sheldrick Unit 1 C.S.R.U.

Lieut. C.E. Abner Unit 1 C.A.S.C.R.U.

Prosecutor Lieut. L.E. Donkin Unit 7 C.I.R.U.

Defending Officer Lt. R.J. Albert Unit 7 C.I.R.U.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, ~~AFB 296~~ and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) ~~Calls witnesses as to character.~~
(c) ~~Calls witnesses in mitigation of punishment.~~
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Statement of accused on reverse plea in mitigation is attached

[signature]

14 June. 43

G-19337 Pte. Robichaud E.J.

As defending officer for the a/m I would like ~~to say~~ the Court to take into consideration the fact that the accused was only absent for a little over six days and that he gave himself up voluntarily. Also that he has been in a Holding Unit for over a year although he has tried time and again to go to the Field Unit, where in my estimation he would be best suited. Were he given another chance I sincerely believe he could correct himself. He has not had a pass since Nov. 42.

[illegible] Lieut.

[illegible]

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Blenheim Barracks
ON THE 14 DAY OF June 1943

The accused. G.19337. Pte Robichaud, E.J. Unit... 7 C.I.R.U. .....

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lt. Col. D.L. REDMAN....Unit HQ..C.R.U.....

Members. 1. Maj. R.H. BURGESS..Unit. 1..C.S.R.U.....

2. CAPT. A. MONETTE..Unit. 1..C.E.R.U.....

The officers under instruction are duly sworn:-

Lieut. D.M. Sheldrick Unit. 1..C.S.R.U.....

Lieut. C.E. Abner...Unit. 1..C.A.S.C.R.U.

Prosecutor Lieut. L.E. Donkin..Unit...7..C.I.R.U....

Defending Officer Lt. R.J. Albert..Unit...7..C.I.R.U.....

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, ~~AFB 296~~ and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) ~~Calls witnesses as to character.~~
(c) ~~Calls witnesses in mitigation of punishment.~~
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Statement of accused on reverse
Plea in mitigation is attached

[signature]

The accused makes a Statement in Mitigation of Punishment. 14 Jun 43

Sir, I was sent from Canada to No. 1 C S R U & I went on a course there & they sent me to Whitley Holding Unit. I showed my papers to the Major & asked him for a transfer & he didn't say much more about it then. On my papers it said North Shore Regt, & I had always wanted to go there & they never let me go. I would like to get to my own Regt. I am 21 years of age, and worked on the Section gangs for the C.N.R. I went to grade 9 in school & I am single. When I last came out of detention I asked for a pass & was not given one — not even a weekend.

G- 19337 Pte. Robichaud E.J. 14 June 43

As defending officer for the a/m I would like ~~[illegible]~~ the Court to take into consideration the fact that the accused was only absent for a little over six days and that he gave himself up voluntarily. Also that he has been in a Holding Unit for over a year although he has tried time and again to go to the Field Unit, where in my estimation he would be best suited. Were he given another chance I sincerely believe he could correct himself. He has not had a pass since Nov. 42.

[illegible] Lieut.

[illegible]

MB

14 June. 43

G-19331 Pte Robichaud E.J.

As defending officer for the a/m I would like ~~to say~~ the Court to take into consideration the fact that the accused was only absent for a little over six days and that he gave himself up voluntarily. Also that he has been in a Holding Unit for over a year although he has tried time and again to go to the Field Unit, where in my estimation he would be best suited. Were he given another chance I sincerely believe he could correct himself. He has not had a pass since Nov. 42.

D. E. Gilbert Lieut.

H. Shore R.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. G 19337 Rank Pte Name Robichaud, E.J. Unit 7 C I R U

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Edinburgh

Date	Particulars (1 portion)	Amount £	s	d
7 June 43	Escorts return fare from LONDON To Edinburgh	1	10	4
	Prisoners single fare to LONDON From Edinburgh	1	10	4
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares (1 portion		1	9
	Total £	3	2	5

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

CAPT
W. FERNLEY A. P. M.
LONDON AREA.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-43
40/P & S./483

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (I) (J)

I, Capt. W. Fern, D.A.P.M. London Area, ... certify that

Reg. No. G-19337. Rank Pte. Name Robichaud. E.J. .....

REGIMENT A. Coy. No. 7. C.I.R.U. .....

UNIT .....

STATIONED AT In the Field. .....

Surrendered himself to No. M-17179. Rank. Sgt. Name. Thomson. L. .....

of the No. 1 Cdn. Provost Detachment, No. 6 Cdn. (Area) Provost Coy. .....

on the 5 day of June 1943, at Edinburgh. hours 2000 .....

..... AS AN ABSENTEE WITHOUT LEAVE .....

at the time of his surrender he was wearing (Military Uniform) XXXXXv XXXXXXXXXXXXX)'

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on surrender.

(Strike out part inapplicable)'

[signature] ..... XXXXt. Capt.

Officer 2/8 Detention Room,
No. 6 Cdn. Provost Coy.

LONDON.
7-6-43.

[signature]

Ex. "A"

SUMMARY OF EVIDENCE

In the case of G19337 Pte. Robichaud, E.J., Carlt & York R, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken under oath.

FIRST WITNESS FOR THE PROSECUTION

F59666 Cpl. Whalen, P.J., Nth N.S. Highrs., 7 Cdn. Inf. Rft. Unit, having been duly sworn, states:

I am F59666 Cpl. Whalen, P.J., Nth N.S. Highrs., 7 Cdn. Inf. Rft. Unit. On 29 May 43 I was Acting Company Orderly Sergeant of "A" Company. The accused was on strength of this Company. The accused was in possession of a reveille pass which expired at 0700 hrs, Sunday, 30 May 43. At this time I checked the huts, and found the accused absent. I marked his absent from 0700 hrs 30 May 43.

P.J. Whalen .....Cpl.

(The accused declines to cross examine this witness)

SECOND WITNESS FOR THE PROSECUTION

Lt. L.E. Donkin, C.B. Highrs., 7 Cdn. Inf. Rft. Unit, having been duly sworn, states:

I am Lt. L.E. Donkin, C.B. Highrs., 7 Cdn. Inf. Rft. Unit. I produce Certificate under the army act, section 163 (I) (J) relating to the accused, marked Exhibit "A". I also produce C.M.H.Q. form 1000:55 relating to the accused, marked Exhibit "B".

L.E. Donkin .....Lt.

(The accused declines to cross examine this witness)

The accused having been warned according to Rule of Procedure 4 (E), reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C), (D), (E), (F), and (G), have been complied with.

L.E. Donkin .....Lt.
(Officer taking Summary)

In the Field,
10 Jun 43.

(1) I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Leipzig Barracks, Ewshott, Hants, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

Dated at Leipzig Bks.,
Ewshott, Hants,
this 10th day of
June 1943. ...Richard E.J....

(2) I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Lt A J Byers
if he is available.

Dated at Leipzig Bks.,
Ewshott, Hants,
this 10th day of
June 1943. ...Richard E.J....

No. G 19337 Name Robichaud, E. J. Sqn., Battery, or Company

Corps Carlt & York R

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Date of enlistment 1-8-41

Sheet No.

G.C. Badges

Signature O.C. Company, etc.

Service or Proficiency Pay

Character

M.F.M. 6
(A.F.B. 122)
175M—7-41 (1215-26)
H.Q. 1772-58-1552

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23-11-42	Pte		Sec 15(1) A.A. A.W.L. from 2359 hrs 23 Nov 42 until apprehended by C.P.C. in Sheffield at 2045 hrs 30 Nov 42		14 days F.P.	4 Dec 42		Forf 25 days pay Stop pay £1:12:7. cost of apprehension
Field	15-1-43	Pte		Sec 15(1) A.A. A.W.L. from 1800 hrs 4 Dec 42 until apprehended by C.P.C. at 1815 hrs 15 Dec 42		27 Days Detention			Cost of appr. £1:15:0 Forf 42 days pay
Field	15-1-43	Pte		A.W.L. 2200 hrs 15-1-43 until appr. by C.P.C. at 1400 hrs 8-2-43 (23 days 16 hrs Sec. 15(1) A.A.		150 days detention	15 Feb 43	F.G.C.M.	Remission 50 days 24 days pay FR 3 149(1)(a) 150 " " FR 3 149(1)(b) 6 days pay FR 3 149(1)(c)

L. E. Donkin Lt

Certified true copy Officer Having Custody of Original Document
Asst Adjt 7 C I Rd

(P.T.O.)

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
G19317	Pte.	Robichaud, E.J. Carlt & York R 7CIRU	

1. The following is a fair and true summary of the entries in the LED ~~Service and General~~ LED Regimental and Squadron, Battery Conduct sheets LED ~~or Company Conduct sheets of~~ LED the accused, exclusive of convictions by a Court-Martial or a Civil Court, LED ~~Air Force Act~~ LED of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	AA Sec 15(1) 2	times	2	times
For		times		times
For		times		times
For		times		times

LED ~~Number of instances of gallantry or distinguished conduct~~ LED

or,

There are no entries in the conduct sheets of the accused.

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~ LED LED

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the LED ~~Air Force Act~~ LED Army Act and dispensations with trial under LED ~~A.F.A. 73~~ LED A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

LED ~~The accused at the present time is under sentence for~~ ..... beginning on the ..... LED LED ~~day of~~ ..... LED

4. The accused has been in confinement awaiting trial on the present charges, for ..... days in civil custody, and 9 days in military custody, making a total of 9 days in custody, of which ..... days were spent in hospital.

5. The present age of the accused according to his LED ~~record of service is~~ LED attestation paper is 21 years.

6. The date of his LED ~~commission~~ LED attestation specified in his LED ~~record of service is~~ LED attestation paper 1 Aug 41.

7. The service which the accused is allowed to reckon towards discharge is 1 year 94 days.

8. The accused is entitled to reckon 1 yr 94 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to LED ~~no air force~~ LED military decoration, or LED ~~air force~~ LED military reward LED ~~(or is~~ LED ~~in possession of or entitled to)~~ LED ~~State any air force decoration or reward.~~ LED LED ~~military~~ LED

LED ~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held~~ LED LED ~~the regimental rank of~~ ..... LED

LED 11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of

Permanent Force
unit

LED

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

LED In the rank of.....years. LED

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number [illegible] Rank [illegible]

Name Robichaud, E.J. of Carlt & York R.F. C.I.R.U. Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	15 Feb 43 Field	AA Sec 15(1)	150 days detn.	50 days
LED				LED
LED				LED

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 14 day of June 43

L.E. Donkin Lt
Asst Adjt TC I.R.U.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked..... signed by the president, and annexed to the proceedings.

[illegible signature]

QQQ-25
PTE ROBICHAUD E.L.

Correspondence to be PINNED here.

RECORDED AT CMHQ IN AB 160

RECEIVED 3 JUL 1944 JAG BRANCH C.M.H.Q.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. 2

Order convening the Court.

On Active Service, this Ninth day of May, 1944.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

H.58

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~(and that it is not practicable to delay the trial for reference to a superior qualified officer.)~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [I am unable to appoint :—

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~for the following reasons, namely :—]~~

3 JUN 1944 GMO 2nd ECH

97

PROCEEDINGS REVIEWED 3 July 44

W. C. Inch Lieut

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	F Trudeau	R 22e R

Members.

Rank.	Name.	Regiment.
Capt	C E Bent	HQ 3 Cdn Inf Bde
Lieut	L P J Mongeon	3 CIB Sp Gp(SLI)

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding 3 Cdn Inf Bde

Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F54629 Pte Egbert Lozare ROBICHAUD, West NSR	First Charge Sec 15(1) AA	Guilty	Guilty.	I confirm the finding and sentence of the court but mitigate the sentence so that it shall read as follows: "To be imprisoned with hard labour for one year." 13 May 44 [signature] Brig
	Second Charge Sec 15(1) AA	Guilty.	Guilty.	

Tickers
[illegible] Imprisonment with hard labour
10.5.44

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) [signature] Brigadier (Signed) Ferrand Judeay, Major

Commanding 3 Cdn Inf Bde
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10th day of May 44, and duly tried the person named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The Interpreter)~~
*~~(4. The officers under instruction)~~

were duly sworn.

*Omit if not applicable.

Signed this 10th day of May 19 44.

Ferrand Judeay, Major.
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (b) on page 762 M.M.L., 1929.

Signed this day of 19 ,

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 13th day of May 19 44

[signature] Brig
Confirming Officer.

Promulgated and extracts taken in the case of F54629 Pte Robichaud E.L. West NSR

(a) (Dated) 25 May 44 (Signed) [signature] Capt West NSR

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23579) Wt.46179/850 30,000 2/43 A.& E.W.Ltd. Gp.498

A

Army Form A9.

**An printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a F.G.C.M. Court-Martial held at in the field on the 10th day of May 1944 by order of Brigadier P.E. Bernatchez, officer Commanding 3 C.I.B. dated the 9th day of May 1944

President

Major F. Trudeau
R22 Rgt.

Members.

Capt G.S. Bent
H.Q. 3 C.I.B.

Lieut L.P. J. Mongeon
#1 Group. S.L.I.

Trial of* F 54629 Pte Robichaud, E.L. W.N.S. Rgt

~~Judge-Advocate~~

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that F.I. is not available to serve owing to

I.I., waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt A.H. McLean - W.N.S. Rgt

Counsel‡ or defending officer† Capt J.J. Taylor .. W.N.S. Rgt

At 0940 o'clock the Trial commences.

The order convening the Court is read, and is marked A2, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No —

Fernand Trudeau. Maj.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

30057 Wt.W4182/21 10,000 sets. 12/41. K. & H., Ltd. G657/11. Forms 19-55.

B

The President, members and ~~judge advocate~~ FT are duly sworn. ✓

~~The following officers under instruction are duly sworn.~~ FT

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The Medical Officer's certificate is signed by the President marked B3 & annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Question to the accused.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Answer. guilty, yes

Question.

Are you guilty or not guilty of the second charge against you, which you have heard read?

Answer. guilty, yes

Question.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ FT

Answer.

Question.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ FT

Answer.

The accused having pleaded Guilty to 2 charges, the provisions of Rule of Procedure 35 (B) are here complied with. yes

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Forward Judge Mgr

BR

CHARGE SHEET

The Accused, F54629 Pte Egbert Lozare ROBICHAUD, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, AAI, when on Active Service, is charged with:

1st CHARGE
Sec 15 (1)
Army Act

When on Active Service, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the Field, at approx 1800 hrs 22 Dec 43, absented himself without leave and remained absent until apprehended by the Military Police at FOGGIA at about 1430 hrs on 10 Jan 44. Total time absent 18 days 20 hrs 30 mins.

2nd CHARGE
Sec 15 (1)
Army Act.

When on Active Service, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the Field, at approx 0630 hrs 8 Apr 44, when under close arrest, absented himself without leave and remained absent until apprehended by the Military Police in NAPLES at approx 1945 hrs 20 Apr 44.
Total time absent 12 days 13 hrs 15 mins.

Waterman

In the Field
7 May 44.

(R S E Waterman) Lt col
Comd West NSR

"TO BE TRIED BY FIELD GENERAL COURT-MARTIAL"

In the Field

(J P E Bernatchez) Brig
Commanding 3 Can Inf Bde.

7 May 44

B3

MEDICAL OFFICERS CERTIFICATE

KGR.(GRM) PARA 557

I certify that I have this morning examined

No. F54629 Pte Robichaud E L

of West N S R

~~unfit~~ fit to undergo trial by Court Martial and in my opinion he is

Station Field

Date 10 May 44

I enclose Tindy Pyjer

H Mendelson Capt

Medical Officer.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused Pte E.L. Robichaud F54629 is found guilty of the two charges

†The summary (~~or abstract~~) of evidence is read, marked CC1 - CC2 signed by the President, and attached to the proceedings.

Question to the accused.

Do you wish to make any statement in mitigation of punishment ?

Answer.

The accused in mitigation of punishment says :— No

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~

Forward Tuesday Mtg

F.T.

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer.

7/0

Evidence as to character.

E

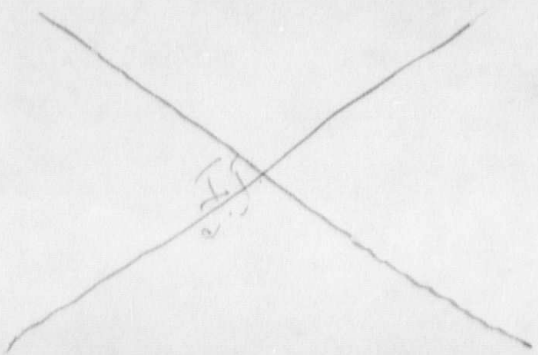
Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

~~I.J.~~



Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

~~*The Court being re-opened, the accused is again brought before it.~~

CAPT. AH McLEAN, WNSR ~~is duly sworn.~~ IS DULY SWORN

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* yes –

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E2 + E3 signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes –

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* done by adjudant

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. yes

~~Cross-examined by the accused.~~ no –

(Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any additional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.* no

The Court is closed for the consideration of the sentence.

Fernad Tried by Major

F

Sentence.

The Court sentence the accused

Sentence

F 54629 Ste Eglit. Lozac. Robichaud
W. N. S. R

to 2 years imprisonnement with hard labour

Fernand Tindeaz. Maj.
President.

10.5.44.

C.C.1

SUMMARY OF EVIDENCE in the case of F54629 Pte Egbert Lozare ROBICHAUD, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, CMF, on Active Service.

By the order of Lt-col. R S E Waterman, Com', West NSR

Evidence taken on oath.

First Witness for Prosecution

F55486 L/Cpl Wadden, E M, "B" Company, West Nova Scotia Regiment, having been duly sworn states :-

On checking the guard at 1800 hrs on the 22 Dec 43 I found that F54629 Pte Robicheaud E L was absent without permission. He has not returned to this company since that date.

Signed E. M. Wadden

The accused declines to cross examine this witness.

Second Witness for Prosecution

Capt A J W Dyer, Adjt. West Nova Scotia Regiment, having been duly sworn states :

I am, Capt A J W Dyer, Adjt, for West NSR and officer in charge or regimental records, I produce as evidence in the case of the accused, F54629 Pte Robicheaud E L Certificate of Apprehension under section 163 (i) (jj) Army Act and attached to the Summary as Exhibit "A"

Signed [signature] Capt

The accused declines to cross examine this witness.

The accused having been duly cautioned as follows:- "Do you wish to make a statement or to give evidence upon oath ? you are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence that you give will be taken down in writing and may be given in evidence". declines to make a statement or give evidence upon oath.

Certified that Rule of Procedure, 4 (c) (d) (e) & (f) have been complied with.

Taken down by me in the presence and hearing of the accused this 6th day of April 1944.

In the Field
6 Apr 44

[signature] Lieut.
.....
(Officer taking Summary)

Forward Tuesday, N.Y.

CC 2

Additional Summary of Evidence in the case of F54629 Pte Egbert Lozare ROBICHAUD, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, AAI, when on Active Service.

By Order of Lt col R S E Waterman Comd West N S R.

Evidence taken on Oath.

1st Witness
for Prosecution

F43640 L/Cpl Allan R C, West Nova Scotia Regiment, having been duly sworn states:

"On the night of 7 Apr 44 I was on duty in the Regimental Guard Room. At approx 2000 hrs I checked the guardroom and found Pte Robichaud, a soldier under close arrest, present at that time. Shortly after 0600 hrs 8 Apr 44 I sent Pte Churchill to wake the prisoners. He returned at once and informed me that Pte Robichaud was not in the guardroom. I immediately reported this to my superior Sjt Chalmers"

Signed: Allen RC

The accused declines to cross-examine this witness

2nd Witness
for Prosecution

F49971 Pte Churchill W R, West Nova Scotia Regiment, having been duly sworn states:

"On the morning of 8 Apr 44, I was on duty in the Regimental Guard Room. At about 0630 hrs I went into the guard room to wake the prisoners. I found that Pte Robichaud was missing. I immediately reported this to my superior, L/Cpl Allen. On further checking, I found that Pte Bennett a member of the Regt Police and Pte Lee M L another of the prisoners, were also missing.

Signed: W R Churchill

The accused declines to cross-examine this witness.

3rd Witness
for Prosecution

Capt A J W Dyer, Adjutant, West Nova Scotia Regiment, having been duly sworn states:

"I am Adjutant and Officer in charge of Regtl Records for the West Nova Scotia Regiment. I produce herewith a certificate of apprehension under Sec 163 (1) (jj) Army Act showing that the Accused, F54629 Pte Robichaud E L was apprehended by the Military Police in Naples at approx 1945 hrs on 20 Apr 44. Attached to the summary as Exhibit "B".

Signed: A J W Dyer Capt

The accused declines to cross-examine this witness.

Fernand Trudeau Maj

...../2

The accused having been duly cautioned as follows:-

"Do you wish to make a statement or to give evidence upon Oath? you are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence", declines to make a statement or give evidence upon oath.

Certified that Rule of Procedure 4 (c) (d) (e) & (f) has been complied with.

Taken down by me in the presence and hearing of the accused this 1st day of May 1944.

In the Field
1 May 44.

Officer Taking Summary

Forwarded Tuesday 7th May

F.54629 ... PTE. ... ROBICHAUD E.L.

WEST NOVA SCOTIA REGT. NAPLES

20 APRIL 1944 ... 1945 ...

CERTIFICATE OF ARREST UNDER A.A. 163 (1) (jj).

I, Wm H Williamson certify that No. F54629 Rank Pte

Name Robichaud E.L. Unit B'Bay West Nova Scotia Regt

was arrested at Foggia at about 1430 hrs. on the 10. 1. 1944

He was dressed in Uniform ~~Civilian Clothes~~

Wm H Williamson
2nd Manor Camp

for Captain.
~~Officer Commanding.~~
~~[illegible] of G Provost Company.~~
The Officer into whose custody the above named person was taken on arrest.

RECEIVED
15 JAN 1944
Canadian Section
G.H.P. 2nd Ech.

Forward Tuesday Pg

Supplementary Sheet

M.F.M. 6
(A.F. B.122)
40/P & /S138 (2965)

No. F54629 Name Robich and E L Sqn., Battery, or Company Corps CIC Date of enlistment G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character E2

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Certified true copy from the regimental books in my custody on the ~~[illegible]~~ 2 MAY 44									

Officer i/c regt'l recor's

Leonard Trudey Maj

(P.T.O.)

E 3

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED

No. F54629 Rank. Pte. Name. Robichaud, E.L., Regiment West Nova Scotia Regt

1. The following is a fair and true summary of the entries in the regimental Conduct Sheet of the Accused :

Within last 12 months Since Enlistment

No MFM 6 available - supplimentary sheet -

No of instances of gallantry or distinguished conduct. Nil

The accused is NOT under sentence at the present time

The accused has been under Close Arrest awaiting trial on the present charge for. . 20 . . . . days of which no days were spent in Hospital.

The present age of the accused is . . 26 . . . . . years

SCHEDULE

On conviction by Court Martial, of a summary awards under Sec 47 of the Army Act, and of cases in which trial has been dispensed with of accused, No. F54629 Rank. Pte. Name. Robichaud, E.L. of the West Nova Scotia Regiment.

Nil ?

I hereby certify that the foregoing schedule of convictions and dispensations with trial is true extract from the regimental books in my custody.

Signed this 10th day of May 1944 [signature]
(Officer i/c Regti records
West Nova Scotia Regiment)

The above statement (with schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

Leonard Lindsay Maj.

4V-105

PTE ROBICHAUD FW

40-125

CERTIFIED TRUE COPY
(D.M.O&A/M)Capt

FIELD GENERAL COURT-MARTIAL

CFA66 (To Dept of AFA2) AG. P.B. B/1808 (2864)

Convened by Order of Brig JPE Bernatchez DSO OBE Comd 3 CIB dated 29 Jan 45

Cdn Sec 2 Ech
AFHQ
17 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G 28124	Pte	Frederick William	ROBICHAUD	CYR

Proceedings Reviewed
"W.S.Bate" Capt A/DJA
Cdn Sec 2 Ech - AFHQ

PROCEEDINGS OF TRIAL. "FJ"

Held in the Fd in (country) ITALY on (date) 30 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. "FT"

A1. The President, Members, ~~waiting Members, Lls if any, and Offrs under instn, sworn~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout it on p 4. Citations do NOT include all relevant fnns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.) "FT"

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.) "FT"

A3. The Court is opened. The accused is (are) brought before the Court. At 1510 hours trial commences. "FT"

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ "FT"

(1. KR Can 557. 2. AA 46(6), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you ~~XXXXXXX~~ as interpreter ? Ans ~~XXX~~ "FT" ~~XXXXXX

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~(no)~~ (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and that, accordingly, the trial ~~will~~ proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. No ..... Do you intend to call witnesses on your behalf? Ans. Yes ..... Are they witnesses as to character only? Ans. Yes after finding
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the TWO charge(s), being subject to confirmation, will be promulgated later.(1) ~~and that he proceeds to announce that the sentence found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. Yes, witness as to character
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement ~~of~~ as to Character and Particulars of Service(1), and certified true copy (extract) of Conduct Sheet ~~of~~ (2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier ~~of~~ having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement ~~of~~ and Conduct Sheet ~~of~~, and in mitigation of punishment?(1) Ans. Yes in mitigation of punishment (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 306, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused C86134 Pte Frederick William Robichaud, a soldier of the Carleton & York Regt, Canadian Army Overseas, Central Mediterranean Force, on active service, is charged with:-

First Charge
Sec 12 (1)(a)
Army Act

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

In that he

In the Field, in Italy, on 7 Dec 44 after having been warned that his Coy was to proceed to an attack, with intent to avoid so proceeding, absented himself without leave from approximately 2100 hrs 7 Dec 44 until surrendering himself to Cpl MacIntosh, S.E. at his Coy area at approximately 0700 hrs 10 Dec 44. Total time absent 10 hrs.

Second Charge
Sec 12(1)(a)
Army Act

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

In that he

In the Field, in Italy, on 12 Dec 44, after having been warned that his platoon was to proceed to an attack, with intent to avoid so proceeding, absented himself without leave from approximately 2130 hrs 12 Dec 44 until surrendering himself to Cpl MacIntosh, S.E. at THAYENDANA at approximately 1100 Hrs 14 Dec. Total time absent 1 day 13 hrs 30 min.

In the Field,
Date. 28 Jan 45

(E.A. Kennedy) Major,
T/Cond Carlt & York R.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Fd
29 Jan 45

"P.E. Bernatchez"
(J P E Bernatchez) Brigadier
Commanding 3 C dn Inf Bde "FT"

"???"
28 Jan 45

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/FA3/1697 (5663)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G 28124	Pte		Frederick William	ROBICHAUD	CYR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 29 Jan 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial". "PEB"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~) "PEB"

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. I ~~am unable to appoint~~ (a) three Offrs to form the Court, (b) a Fd Offr as President (for the reasons I have attached hereto). "PEB"

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ "PEB"

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Major (*Rank.*)	F TRUDEAU (*Must be named. RP 106.*)	R 22 R (*Unit.*)

MEMBERS.

Capt	R E CAMPBELL	WNSR
Lt (*Rank.*)	J R LAPORTE (*Named or detailed. RP 106.*)	CYR (*Unit.*)

WAITING MEMBER.

Capt (*Rank.*)	G PAYETTE (*Named or detailed, if any. RP 106.*)	R 22 R (*Unit.*)

JUDGE-ADVOCATE.

(*Rank.*)	(*Must be named, if any. RP 106.*)	(*Unit.*)

On Active Service in the Fd

in Italy (*Country.*)

"P.E. BERNATCHEZ" (*Signed personally. RP 105 fn 2.*)

Brigadier (*Rank.*)

Date 29 Jan 45

Commanding 3 Cdn Inf Bde "PT"

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICERS CERTIFICATE

KR(CAN) 357

Appendix "A"

I certify that I have this morning examined

No. G-28124 Pte. Robichaud, F.W.

of the Carleton & York Regiment and in my opinion he is

fit to undergo Trial by Court Martial

~~Under~~

Station In the Field

Date 30th Jan. 1945

R J Zenderscapt

Medical Officer

Carleton & York Rggt.

"F T"

EVIDENCE in the case of G28124 Pte Frederick William ROBICHAUD
CARLETON & YORK REG'T Page 1

First Witness for Prosecution:

F 2829 SGT MacINTOSH B.M. having been duly sworn states as follows:

I am F 2829 SGT MacINTOSH B M of 12 platoon B Coy CYR On the 9 Dec 44 I warned my section at approx 1500 hrs that we would be moving in an attack at 2100 hrs same date. The accused was present. When we were getting into the boats to cross the Lamoine River Pte Robichaud was absent this was approx 2100 hrs same date. He (the accused) reported back to my section at approx 0700 hrs 10 Dec 44 at the bridgehead we had formed across the river. On 12 Dec 44 our platoon was warned by the platoon sgt we would be going in on an attack at approx 2100 hrs same date and the accused was present, I also warned the section myself and the accused was present.

We moved off approx 2130 hrs same date I checked my section Pte ROBICHAUD was absent. He reported back to my section on 14 Dec 44 approx 1100 hrs in TRAVERSARA. Pte ROBICHAUD

"FT"

Page 2

belonged to No 8 Sec and I was the section commander.

Cross Examined by defence:

I regognize the accused as Pte ROBICHAUD.
RP 83(B) has been complied with. Witness withdraws.

2nd Witness for Prosecution: G23706 CPL PELKEY E T being duly sworn states as follows:-

I am G23706 CPL PELKEY E T of 12 platoon B Coy CYR . On the 9th and 12 Dec 44 I was 2 i/c of No 8 section 12 platoon B Coy CYR. On the 9th of Dec 44 at approx 1500 hrs we were warned by our section leader Cpl MacIntosh that there would be an attack at approx 2100 hrs by the CYR. the accused was present. When getting into the boats at approx 2100 hrs same date the accused was absent. The accused reported back 10 DEC 44 approx 0700 hrs . On 12 Dec 44 we were warned by CPL MacIntosh our section leader that we would attack that night, the accused was present. When moving up the road I checked my section Pte ROBICHAUD was absent "FT"

Page 3

At approx 2130 hrs same date.
DEFENCE declines to cross-examine the witness.

RP 83(B) has been complied with.
WITNESS WITHDRAWS
PROSECUTION IS CLOSED.
DEFENCE makes closing address in writing (attached) "FT"

THE PROSECUTOR DECLINES TO MAKE A CLOSING ADDRESS

E-1

First Witness for Defence:
(Character Only) G17415 CSM COX C.A.A. having been duly sworn states:

I am G17415 CSM COX C.A.A. CSM of C Coy CYR I first saw Pte ROBICHAUD last winter while we were on patrol on the Ortona front during that time I was a platoon Sgt. He left the unit some time during the winter and I next saw him in Piedmonte and he remained with us up until 7 Sept 44 at which time he was wounded. Up until the time he was wounded he carried out his duties in a soldierly manner to the best of my knowledge
Prosecution declines to cross examine witness.
RP 83(B) has been complied with: Witness withdraws "FT"

CLOSING ADDRESS FOR THE DEFENSE in the case of
G 28124 Pte ROBICHAUD F W

AccORding to MML definition of desertion, is : The offense of desertion or attempting to desert His Majesty's service implies an intention on the part of the offender not to return to His Majesty's service at all.
And in both cases the accused reported back himself. "PT"

5. E - 3

PLEA FOR MITIGATION OF SENTENCE in the case of
G 28124 Pte ROBICHAUD F W

Mr President & Members of the court Pte ROBICHAUD is 24 years old.
He joined the Active Army in July 1940 he came overseas in September 43 and to Italy in March 44,. He was posted to the CARLETON & Y ORK REGT. and joined them in their static position on the Ortona front. He always has been with the unit since. except for one month he was in hospital after having been wounded at the GOTHIC LINE .
You can see that this man has a good record of service, I am asking the clemence of the court and the consideration of all the facts in this case.

"G. RIVA" Lieut.
Defending Officer "PT"

Exhibit "D"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
G28124	Pte	Robichaud, F.W.	Cadet York R. Fusiliers

1. The following is a fair and true summary of the entries in the ~~regimental and squadron, battery or company~~ conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement and not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the entries of crimes in the conduct sheets, permission being given to the court to refer to any previous entries to save expense, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Sec 40 AA	(-) times	(2) times.
For Sec 15(1) AA	(2) times	(6) times.
For Sec 40(4) A.A	(-) times	(1) times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, Nil

WTm ~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted. ~~or~~

WTm ~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

WTm 3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 46 days in military custody, making a total of 46 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ ~~attestation paper~~ WTm is 26 yrs

6. The date of his ~~commission~~ WTm ~~attestation~~ specified in his ~~record of service~~ ~~attestation paper~~ WTm is 31 Jul 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 6 mos

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 6 mos service.

9. The accused is entitled to reckon 4 yrs 6 mos service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~or entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or reward)).~~ CSM & 6 Bars

WTm 11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of _____~~

WTm 12. ~~(In the case of an officer.) The accused holds in the army the rank of _____ dated _____ and in his regiment (or corps or department) the rank of _____ dated _____~~

(*18250) W1.15802/144 125,000 8/41 A.S.R.W.Ltd. Gp.498

FT
Exhibit "B"

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 628124 Rank Pt Name Robichaud, F.W. of 6 + Y. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which trial, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		WTm		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30 day of Jan 15

W. M. Craft Capt
Officer i/c Records
Cavalt. Mark Regt.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years .....

In the rank of ..... years, ...

WTm

(Observations.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

MFM 6
(AFB 122)
40/PAS/136 (5438)

No G28124 Name Robichaud, F.W. Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 31 Jul 40 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No one | Signature OC Company, etc G.R. Ledoux Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous Sheet Destroyed 2 Dec 43.					
St. John, N.B.	8/12/40	Pt		Cond to pre etc. absenting himself from duty	Sgt Lange	14 Days Detn	9/12/40	Major Black	For 14 Days Pay.
" "	26/12/40	"			Cpl Sullivan	14 Days Detn	27/12/40	Major Black	For 14 Days Pay
Kingston Bks. N.S.	28/2/41	"		Breaking out of barracks while on C.B.	Cpl Dewar	168 hrs Detn	1/4/41	Lt Col F. West	For 7 Days Pay
" "	17/3/41	"		Cwh from 2000 hrs 16/3/41 to 1200 hrs 17/3/41	Lt. Boston	14 Days C.B.	18/3/41	Lt Col F. West	For 1 Days Pay
						For 2 Days Pay	~~6/10/41~~	Lt. Col F. West	For 1 Days Pay
" "	5/10/41			Cwh from 2220 hrs 5/10/41 till 0005 hrs 6/10/41	Cpl Sullivan	7 Days C.B.	6/10/41		
					For 3 Days Ord Pay	7 Days C.B.			
Labrador	13/3/43	"		Cwh from 2359 hrs 13/3/43 to 2120 hrs 14/3/43	Lt Sgt Bishop	7 Days Pay	15/3/43	Maj Black	For 1 Day Pay
Sussex, N.B.	5/9/43	"		Cwh from 0600 hrs 5/9/43 to 2310 hrs 5/9/43	Sgt Carter, A	7 Days C.B.	6/9/43	Capt W. Sawdon	For 1 Days Pay

Blood Donor at Red Cross 6 Line 10 Dec 43 Exhibit "C" F.T.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6.3.44	Pt		AWL from 2100 hrs 6.3.44 until 2245 hrs 6.3.44	Doc Cond.	7 Days P.B.	7 Mar 44	W.S. Henry	Capt.
Field	19 May 44	Pt		Sec 15(1)AA AWL 1430 hrs 19 May 44 to 1945 hrs 21 May 44	C.S.M. Cox	28 Days F.P. with loss of pay	22 Jan 44	Lt. Col C.D. Danby	Pay 3 Days Pay for AWL

Certified True Copy
W. McCrally Capt.
Officer i/c Records
Cart. Tech. Regt. Mitchfield 29 Jan 45.

Summary of evidence in the case of C23184 Pte Robichaud, F.W. a soldier of the Canadian Army Overseas, on strength of the Carleton & York Regt,

The Commanding Officer directs that the evidence be taken under oath.

First Witness For Prosecution

F2089 Sgt MacIntosh, B.M. "B" Coy Carlt & York R., having been duly sworn states:-

I am F2089 Sgt MacIntosh, B.M. of 12 platoon "B" Coy Carleton & York Regt, On the 9 Dec 44 at approximately 1500 hrs I called my sec. together and warned ther they were going into the attack at 2100 hrs the accused was present, when we got into the boats at approximately 2100 hrs the accused was absen he reported back at 0700 hrs 10 Dec 44, On the afternoon 12 Dec 44 our platoon was warned for an attack by the platoon sgt the accused was present, I warned my sec again Pte Robichaud was was present, I checked my sec at 2130 hrs after we had started and Robichaud was absent ,He reported to my sec at TRAVERSARA 1100 hrs 14 Dec 44,

B McMac Intosh

The accused declines to cross examine this witness.

Sedond Witness For Prosecution

G23706 Cpl Pelkey, E.T. "B" Coy Carleton & York Regt, having been duly sworn states:-

I am G23706 Cpl Pelkey, E.T. of 12 platoon "B" Coy Carleton & York Regt, On 9 Dec 44 at approximately 1500 hrs we were warne by the section leader that they would be going into the attac at approximately 2100 hrs 9 Dec 44 , the accused was present, on getting into the boats at approximately 2100 hrs the accuse was absent, On 12 Dec 44 our sec was warned by Cpl MacIntosh, that we were going into an attack that night, Pte Robichaud, was present as we were moving up the road I checked the sec & and Robichaud was absent, that was at 2130 hrs

E T Pelkey

The accused declines to cross exmine this witness.

Question to the Accused

Do you wish to make a statement or to give evidence upon oath You are not obliged to say anything, or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence,

Answer by the Accused

No

I certify that the foregoing summary was taken down by me in the presence of the accused and that Rules of Procedure 4 (c) (d)(e) and (f) have been complied with.

In the Field

Date 25..Jan 45

Officer taking Summary

List of Witnesses

In the case of G26124 Pte Robichaud,F.W. a soldier of the Cdn Army Overseas, on strength of the Carleton & York Regt

For The Prosecution

F28829	Sgt	MacIntosh,E.M.	- Carlt & Yor
G23706	Cpl	Pelkey,N.T.	- Carlt & Yor

For the Defence

NIL

List of Exhibits

In the case of G26124 Pte Robichaud,F.W. a soldier of the Cdn Army Overseas, on strength of the Carleton & York Regt.

NIL

Certificate by the accused

I certify that I have received free of charge a copy of the Charge Sheet,Summary of Evidence,List of Witnesses, andlist of exhibits pertaining to my trial by Court Martial.

I desire the services of an officer to defend me at my tria

Date.25..Jan 45

F W Robichaud

LLL-81
SPR ROBICHAUD G F

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F 91610 SPR. ROBICHAUD G F

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At ~~present under sentence for~~ ~~beginning on (date)~~ A/H

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 23 days, of which N/A days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

60 days Field Punishment
60 days forfeiture of pay
~~[illegible]~~

(Sgd) ..... (Sgd) S L Hyperny

Judge-Advocate, if any. Date awarded: 3 May 44. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1) Ewh

(1. AA 57A. Delete if not used.)

(Sgd) Earl Haig Brig

Date 3 May 44 Commanding COMMANDER 1 CDN BASE SET Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F91610 Spr Robichaud G.F	5 May 44	J Elizabeth Wbl

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 2 L L 81 S L Hyperny
Received 8 MAY 1944 CMHQ
PROCEEDINGS REVIEWED
REVIEWING OFFICER, JAG BRANCH, CMHQ.

FIELD GENERAL COURT-MARTIAL

CF A96 (In lieu of AFA83) SD. P.S.(T) (1) 108 (2604)

Convened by Order of BRIG E.W. HALDENBY Comd 1 CBRGp - CMF dated 2 MAY 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F91610	SPR 31 May 44	GERALD FRANCIS	ROBICHAUD	7BN 1 CBRD

PROCEEDINGS OF TRIAL.

G76

Held in the Fd in (country) ITALY on (date(s)) 3 MAY 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Existence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 0730 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~as interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to~~ ~~as shorthand writer? Ans~~

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 187, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	S.C. HAYES	C.I.C.	3½ CDN BASE RAF SQN
Member	CAPT	E.M. LEONARD	C.I.C.	1 BN 1 CBRD
Member	LT.	J. WASHBURN	C.I.C.	2 BN 1 CBRD
~~Judge-Advocate~~				
Prosecutor	LT	A.R. FRASER	R.C.E.	7 BN 2 CBRD
Defending Offr	LT	H.G. HESS	R.C.E.	7 BN 2 CBRD

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused F91610 SPR G.F. ROBICHAUD before arraignment make(s) (no) ~~the~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 82(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 13

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*); *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). (The accused is (not) so informed; and he (they) does (does not) change(s) his (their) plea(s) on ..... charge(s).) Part I of the Schedule is amended accordingly.
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(*1. RP* 155. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(3) (*b*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to ~~give evidence yourself~~ or to call any witnesses as to your character?(1)
Ans Yes
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(*1. MFB* 355 *or AFB* 296. *2. MFM* 6. *3. RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes(2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(*5*), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*18*), 56(*1*), *KR Can* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

S.C. Hyrmey
Pres

CHARGE SHEET

The accused F 91610 Sapper Gerald Francis ROBICHAUD, Royal Canadian Engineers, on the strength of 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot as a reinforcement, a soldier of the Canadian Army Overseas is charged with:-

FIRST CHARGE
Army Act
Section 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field in Italy, did absent himself without leave from 2130 hours on the 30 March 1944 until he surrendered himself to the Military Police in Algiers, North Africa at 0001 hours on the 9th April 1944. (Total time absent 9 days 2 hours) 31 minutes)

.....

(J D Macbeth) Lt-Col,
Officer Commanding,
7 CBRBn, 2 CBRD, CMF.

In the Field
this 22nd day of April, 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

2 May 44

(E. W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Group
Cdn Army - C M F

S.C. Hayes
Brm

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/FA8/1407 (2668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-91610	Spr		Gerald, Francis,	ROBICHAUD	7 Bn 2 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 2 May 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial". OWH

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~) OWH

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ OWH

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ OWH

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)			(Unit.)
Major	S.C. HEYES (Must be named. RP 106.)	CIC	38 Cdn Base Rft Coy - 1 CBRGp

MEMBERS.

(Rank.)			(Unit.)
Capt	E.M. LEONARD	CIC	1 Bn 1 CBRD
Lieut	J. WASHBURN (Named or detailed. RP 106.)	CIC	2 Bn 1 CBRD

WAITING MEMBER.

(Rank.)		(Unit.)
Capt or Lt	To be detailed by 3 Bn 1 CBRD (Named or detailed, if any. RP 106.)	

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

Date 2 May 44

O.W. Haldenby
(E. W. Haldenby)
(Signed personally. RP 105 (a) (i))

Brigadier (Rank.)

Commanding 1 Cdn Base Rft Group
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

7 CANADIAN BASE REINFORCEMENT BATTALION

MEDICAL OFFICER'S CERTIFICATE

(K R (Can) Para 557)

I certify that I have this morning examined No. F 91610 Sapper Rebichaud G F of 7 CBRBn, 2 CBRD, CMF. (RCE) and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station .....

Date 30 Jan 44

.....

Medical Officer

EXHIBIT B

Schleyer
Army
Pres.

Certificate under Army Act Section 165 (1) (j)

I, Captain B.A. Galliford certify that No. V 91610 Bar Robichaud, of the Royal Canadian Army surrendered himself to No. [illegible] L/Cpl. Hendy G. at ALVIERE on the 9th Day of April 1944 as a Deserter (or absentee without leave.)

Signed B.A. Galliford .....Captain.
O.C. 227 Provost Company Company CSF.

(See reverse Side)

Commanding Officer of the person or portion of His Majesty's Forces to whom surrender was made.

E 1

1st Witness

P10196 sgt Harris A.B. 7Bn 2CBRD having been duly sworn states;-

I have known the accused who has been in the same coy as myself during the last four years. I have always found him to be a very good worker & has always carried out all orders given him. He was with me in Italy & out to hospital there.

R. P. 83(B) complied with.

SCH

E3 Statement in Mitigation of Sentence of the accused F91610 Sapper Gerald Francois Robichaud

The accused has served with 1 Fd Coy R.C.E. 1 Canadian Division from November 1939 till approx 10 March 1944. Spr Robichaud has proven himself as a Canadian Soldier in that he was in the invasion in Sicily and again in the invasion of Italy. During this time he was away from his unit for approx 3 weeks while confined to hospital.

Spr. Robichaud left the Division on or about 10 March 44 because he had reported sick and was sent to an M.D.S. in S. Vito. From there he was sent to 4 Bn and finally to 7 Bn 2 C.B.R.D.

Spr Robichaud did not commit this crime in the front line but only after he had given his services as a true soldier.

The MFM6 of Spr Robichaud appears on first glance to be bad but on closer examination shows all his crimes to be of minor nature.

In view of these facts sir we plead for leniency and put ourselves at the mercy of the court.

E3

H. G. Hess Lt.

[illegible]
Pres.

LIST OF WITNESSES FOR THE PROSECUTION

FIRST WITNESS : - M 10936, Company Sergeant Major, George Valentine JONES, CSM of "B" Company, 7 Canadian Base Reinforcement Battalion, 2 CBRD.

SECOND WITNESS : - Captain John Murchie Tierney, Captain and Adjutant of 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot.

LIST OF WITNESSES FOR THE DEFENSE

NIL

LIST OF EXHIBITS

Exhibit A - AFB 252 made out for F 91610 Sapper Robichaud G F, purporting to be signed by ??? Capt for Major APM Algiers.

Exhibit B - Certificate of surrender for F 91610 Sapper Robichaud G F, purporting to be signed by Captain ??? O C 227 Provost Coy, CMP.

Exhibit C - Statement of handing over made out for F 91610 Sapper Robichaud, G F, purporting to be signed by Lance Corporal Moody G.

LIST OF WITNESSES FOR THE PROSECUTION

FIRST WITNESS : - M 10936, Company Sergeant Major, George Valentine JONES, CSM of "B" Company, 7 Canadian Base Reinforcement Battalion, 2 CBRD.

SECOND WITNESS : - Captain John Murchie Tierney, Captain and Adjutant of 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot.

LIST OF WITNESSES FOR THE DEFENSE

NIL

PROS

LT. AR FRASER RCE 7BN 2CBRD

DEF

LT H.G HESS RCE 7BN 2CBRD

DEF

LT W.B. REID CIC 3BN/CBRD

PROS

LT F. PETLEY CIC 2BICBRD.

10 JAN 44
9 JAN 45

LIST OF EXHIBITS

Exhibit A - AFB 252 made out for F 91610 Sapper Robichaud G F, purporting to be signed by ??? Capt for Major APM Algiers.

Exhibit B - Certificate of surrender for F 91610 Sapper Robichaud G F, purporting to be signed by Captain ??? O C 227 Provost Coy, CMP.

Exhibit C - Statement of handing over made out for F 91610 Sapper Robichaud, G F, purporting to be signed by Lance Corporal Moody G.

7 CANADIAN BASE REINFORCEMENT BATTALION

Received this 11 day of April 1944

(a) One copy of Summary of Evidence.

(b) One copy of Charge Sheet.

I wish to make the request for the Convening Officer to appoint Lt. H.A. Hess to act as my Defending Officer

[illegible]

Witnessed:-

.....

S. C. Hayes maj
Pres

B5 – Summary of Evidence not complete enough + witnesses called.

1st witness Pros. B94931 Sgt Young Herbert Thomas RCC 7 Bn 2 CBRD having been duly sworn states:

I was orderly sjt at 7 Bn 2 CBRD from 30 Mar 44 until 5 Apr 44. I called the roll at 2130 hrs 30 Mar and the accused whom I now recognize as Pte Robichaud G.F was absent. I called the roll at 0630 hrs and 2130 hrs on the 31 Mar 44 and the 1, 2, 3, 4, Apr and the roll at 0630 hrs 5 Apr and the accused was still absent

Cross Exam nil
Re-exam nil
Ques by court nil

RP 83 (B) complied with.

2nd witness Pros D36204 Sjt Yalcock J.W. 7 Bn 2 CBRD having been duly sworn states:-

I was orderly sjt at 7 Bn 2 CBRD from 5 Apr to 8 Apr 44. I called the roll on the 5 Apr at 2130 hrs and also at 0630 and 2130 hrs on the 6, 7, 8 Apr 44 and the accused whom I now recognize as Apr Robichaud GF was absent.

Cross-exam nil
Re-exam nil
Ques by court nil

R.P 83 (B) complied with.

8-5

EXHIBIT A

Summary of Evidence in the case of F 91610, Sapper Gerald, Francais, ROBICHAUD, Royal Canadian Engineers, on the strength of 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the Summary of Evidence be taken upon oath.

FIRST WITNESS for the prosecution

M 10936, Company Sergeant Major, George Valentine JONES, Company Sergeant Major of "B" Company, 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a Warrant Officer of the Canadian Army Overseas, having been duly sworn states:

"I am Company Sergeant Major George Valentine Jones, CSM of "B" Company, 7 Canadian Base Reinforcement Battalion, 2 CBRD. On the 31st day of March, 1944, Sergeant Young who was acting Coy Orderly Sergeant, reported to me the accused, Sapper Robichaud, whom I now recognize, was absent from Tattoo Roll Call at 2130 hours on the 30th March, 1944. I again saw the accused on the 20 th of April, 1944 at approximately 1330 hours."

The foregoing statement is read back to this witness in the presence and hearing of the accused.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS:

G. V. Jones
.....

(G V JONES) Company Sergeant Major.

SECOND WITNESS for the prosecution

Captain John Murchie Tierney, Adjutant of 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, an Officer of the Canadian Army Overseas, having been duly sworn states:

"I am Captain John Murchie Tierney, Adjutant of 7 Canadian Base Reinforcement Battalion, 2 C B R D. I produce as ~~exhibit A, this AFB 252 made out for F 91610 Sapper Robichaud G F, and purporting to be signed by ???????? Captain for Major A F M, Algiers, also as~~ exhibit B, this certificate of surrender, purporting to be signed by ???????? Captain, OC 227 Provost Company, CMP, ~~and as exhibit C, this statement of handing over, purporting to be signed by Lance Corporal G Moody, CMP, each~~ duly initialed by me for purposes of identification."

The foregoing statement is read back to this witness in the presence and hearing of the accused.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS:

J M Tierney
.....

(J M TIERNEY) Captain & Adjutant.

The exhibits referred to by the witness, produced, read over to the accused, marked Exhibits A, B and C, signed by me and attached hereto".

J M Tierney
.....

(J M TIERNEY) Captain & Adjt,
Officer taking the Summary of Evidence.

WARNING TO THE ACCUSED - You may make a statement or give evidence on oath but you do not have to make a statement or give evidence on oath unless you wish, but if you do, it may be taken down in writing and given in evidence.

THE ACCUSED DECLINES TO MAKE A STATEMENT OR TO GIVE EVIDENCE ON OATH AND RESERVES HIS DEFENCE.

(Continued on Page Two)

Rules of Procedure 4 (C)(D)(E) and (F) have been complied with.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in writing in the presence and hearing of the accused on this 21st day of April, 1944.

.....

(J M Tierney) Captain and Adjutant,
Officer detailed to take the Summary.

In the Field
this 21st day of April, 1944.

In addition to those already called, the following witnesses will be called for the prosecution in the case of the accused, F 91610, Sapper Gerald Francis ROBICHAUD, R C E, on the strength of 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot.

WITNESS FOR THE prosecution

B 94931, Sergeant Herbert Thomas YOUNG, Royal Canadian Engineers, on the strength of 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, has been called as a witness for the prosecution in the case of the accused, Sapper Gerald Francis ROBICHAUD, R C E,

He will state that he called the tattoo roll call at 2130 hours on the 30th of March, 1944 and Sapper Robichaud G F, was absent. He will further state that he called the roll at reveille 0630 hours and tattoo 2130 hours on the 31 March, 1944 and also on the 1st, 2nd, 3rd, 4th and the reveille roll call on the 5th day of April, 1944 and the accused, Sapper Robichaud G F, was absent.

WITNESS FOR THE prosecution

D 56204, Sergeant Joseph William VALADE, Canadian Armoured Corps, on the strength of 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, has been called as a witness for the prosecution in the case of the accused, Sapper Robichaud G F, R C E.

He will state that he was Company Orderly Sergeant of "B" Company and that he called the tattoo roll call at 2130 hours on the 5th day of April, 1944 and both the reveille and tattoo roll calls on the 6th, 7th and 8th days of April, 1944 and the accused, Sapper Robichaud, G F, was absent.

..... Capt & Adjt,

for (J D Macbeth) Lt-Col,
Officer Commanding,
7 CBRBn, 2 CBRD, CMF.

Time of Sig 1400 hrs 2 May 44.

I have received the above notice made out in accordance with Rule for Procedure 76.

.....

(G F Robichaud) Sapper.

Witnessed by:

.....

EXHIBIT 7

M.F.M. 6

No. F 91610 Name Robichaud, G.F. | Sqn., Battery, or Company | Corps R.C.E. | Date of enlistment 14 Dec 39 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	26 Dec 40	Spr		AA 15(a) Absenting himself from a place at parade AA 40 Neglect to the prej etc Not completing his duties in Men's Mess	Sjt Seaton WW	7 Days CB	27 Dec 40	Maj HL Meuser	7 days F&E FR&I 149 (1) (e)
Field	16 Feb 41	Spr		AA 15(a) Absenting himself from a place of duty AA 40 Neglect to the prej etc	Sjt Simpson	5 days CB	16 Feb 41	Maj HL Meuser	
Field	27 Mar 41	Spr		on parade with respirator in an unfit condition	Sjt Seaton	5 days CB	28 Mar 41	Maj HL Meuser	
Field	17 Mar 41	Spr		AA 15(1) AWL from 2230 hrs 17 Mar 41 to 0720 hrs 18 Mar 41	Sjt Seaton	7 days C.B.	18 Mar 41	Maj HL Meuser	3 days pay FR&I 149 (1)(e)
Field	17 May 41	Spr		AA 15(1) AWL from 2230 hrs 17 May 41 to 2200 hrs 18 May 41	Sjt Seaton	7 days C.B	19 May 41	Maj HL Meuser	2 days pay FR&I 149 (1) (e) (P.T.S.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30 Jun 41			AA15(2) Absent from a place of parade	LS Terris	5 days C.B.	30 Jun 41	Maj AL Tregillus	
Field	6 Oct 41	Spr		AA15(1) AWL from 2230 hrs 6 Oct 41 to 2345 hrs 6 Oct 41	Cpl Harris	4 days CB	7 Oct 41	Maj AL Tregillus	
Field	7 Jul 42	Spr		AA15(1) AWL from 2215 hrs 7 Jul 42 to 2359 hrs 7 Jul 42	WC Smith	5 days CB	8 Jul 42	Maj E J Durnin	
Field	22 May 42	Spr		AA15(1) AWL from 1200 hrs 22 May 42 to 1700 hrs 23 May 42	LS Harris	7 days CB 5 days pay	1 Jun 42	Capt J D Middlemass	2 days pay TR&T 14907(2)
Field	13 Aug 42	Spr		AA15(1) AWL from 2300 hrs 13 Aug 42 to 2359 hrs 13 Aug 42	WC Smith	2 days CB	19 Aug 42	Maj E J Durnin	
Field	8 Sep 43	Spr		AA15(1) AWL from 2300 hrs 8 Sep 42 to 2300 hrs 9 Sep 42	Cpl Shiers	3 days CB	10 Sep 42	Capt W K Lye	1 days pay
Field	1 Feb 43	Spr		AA40 Conduct to the prej etc failed to get up at reveille	Cpl Orr CSM Simpson	7 days CB	1 Feb 43	Maj E W Eddleifson	

Certified true copy from documents in my possession

See sheet #2.....

M.F.M. 6
(A.F. B.122)
40/P & /B136 (2965)

No. F 91610 Name Robichaud, G F | Sqn., Battery, or Company | Corps R.C.C. | Date of enlistment 14 Dec 39 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. ??????? Maj | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8 Mar 43	Spr		AA15(1) AWL from 2300 hrs 8 Mar 43 to 0030 hrs 9 Mar 43. AA10(9) Breaking out of bks while on duty platoon.	Cpl Rector	10 days pay FR&I 149(1)(e)	9 Mar 43	Maj L G C Lilley	LGCL
Field	3 Apr 43	Spr		AA40 Conduct to the prej etc failed to get up at reveille. AA40 Neglect to the prej etc failed to report on parade with the guard	LIC Mosher CSM Simpson	7 days CB 7 days pay FR&I 149(1)(e)	5 Apr 43	Maj L G C Lilley	LGCL
In the Field	11 Jun 43	Spr		AA15(1) AWL from 2400 hrs 1 Jun 43 until 0600 hrs 12 Jun 43 (about 6 hrs)	1 days pay FR&I 149(1)(e)	1 Cpl Williams CSM Simpson	12 Jun 43	Major L G C Lilley	7 days pay FR&I 149(2)
Field	10 Sep 43	Spr		AA40 Indulgence in ~~alcholic~~ alcoholic beverages AA40 Use of improper language	27 days FP 27 days pay	Cpl Hall J H	11 Sep 43	Maj L G C Lilley	Forf 27 days pay 149(2)

Released from 25 FPCM. 10.43
Sentence having expired

????? DAPM
OC 22 CCC

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13 Feb 44	Spr		AA15 (1) AWL from 2200 hrs 13 Feb 44 until 0720 hrs 19 Feb 44 (Absent 9 hrs 30 mins)	Sgt Robichaud	9 days pay forf	15 Feb 44	Maj Wf Bright	Fort 1 days pay FAI 199 (1)(a) Fort 9 days pay 199 (2) TOT. Fort. 10 days

I certify that the above is a true extract from the original document in my custody

W.H. Wallace Capt. O.C.
2 Coy. 7 Bn. 2 C.B.R.D.

EXHIBIT C
J C Hayes maj

ARMY FORM B.213

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F 91610	Sapper	Robichaud G F	7 CBRBn, 2 CBRD.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—As a trial by field general court martial is a summary one, or equivalent, from the field conduct sheet.

The accident shewn pertinent should be presented in court with this statement but not asserted to the prejudice.

* See Secs. 677, K.R., 1940.

* The authority before whom accused appears will see that no pay or arrears in the accused's case, pay-book or conduct sheet is lost. The word "nil" should be entered in each entry, and no re-enactment should take or added to distinguished conduct.

Instructions.—If the charge is for misconduct the entry for disciplinary record is to be separately dated.

	* Within last 12 months.		* Since Enlistment.	
For	Army Act Sec 15 (1)	two times	10	times.
For	Army Act Sec 40	one time	4	times.
For	N/A	times	AA Sec 15 (2) Three Ti	
For	N/A	times	N/A	times.
For	N/A	times	N/A	times.

Number of instances of gallantry or distinguished conduct.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* [redacted] N/A beginning on the N/A day of N/A

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 23 days in military custody, making a total of 23 days, of which nil ~~23~~ days were spent in hospital.

5. The present age of the accused according to his record of service [redacted] is 23 years.

6. The date of his [redacted] attestation specified in his record of service [redacted] is 14 Nov 39.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .....

8. The accused is entitled to deferred pay or gratuity in respect of ..... service.

9. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of or entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A, dated N/A, and in his regiment (*or* corps *or* department) the rank of N/A dated N/A

(*13620) W1.15802/144 125,000 6/41 A.A.E.W.Ltd. Gp.498

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

(*INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3 day of May 44

---

18. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of _____ years.

In the rank of _____ years

In the rank of _____ years.

(*Insert note:—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraphs must be struck through except that on the case of a trial by field general court-martial the information may be collated from such sources as are available and the paragraphs concerned amended accordingly.*)

III-14
PTC ROBICHAUD J.J.

ENTERED IN RECORDS OF C.M.

III-14

6-44

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Fifth day of March, 1944.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ } seal

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*~~[I am unable to appoint:~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely:~~ } seal

PROCEEDINGS REVIEWED
K. C. Irish Lieut
25 Apr 44 Rev. 3
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

39

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	F Trudeau	R 22e R

Members.

Rank.	Name.	Regiment.
Captain	C E Pettipiece	Carlt & York R
Lieut	G M Stark	Carlt & York R
Lieut	F S Hogan	R 22e R

Waiting

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Lt-Col

T/Commanding 3 Cdn Inf Bde

Convening Officer.

E74

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
G22912 Pte John Joseph ROBICHAUD, Rest NSR	First Charge Sec 15(1) AA	Guilty	Guilty 6 months detention 7/3/44	Confirmed AHW

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) A.K. Walker Lt-Col (Signed) Jerrard Pinder Major

T/Commanding 3 Can Inf Bde
Convening Officer (c) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (If necessary) to be PINNED here.

B. Certificate of President as to proceedings

I certify that the above Court assembled on the Seventh day of March 44. , and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

*Omit if not applicable.

1. The members of the Court
2. The witnesses
~~*(3. The Interpreter)~~
~~*(4. The officers under instruction)~~

were duly sworn.

Signed this Eight. day of March 1944.

Jerrard Pinder Maj.
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 702 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded; the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ AHW

Signed this 10 day of Mar 1944.

A.K. Walker Lt-Col
~~Confirming Officer.~~
T/Commanding, 3rd Can Inf Bde

Promulgated and extracts taken in the case of G22912 Pte John Joseph Robichaud Regt No. R.S.R.

(*a*) (Dated) 10 Mar 44 (Signed) [illegible] Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23578) W1461/8-534 30,000 2-43 A.& E.W.Ltd. Gp.698

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a F.G. Court-Martial held at REAR W.N.S.R. on the 7th day of MARCH 1944 by order of Lt. Col. J. A. CALDER

T/ Commanding 3 CAN INF. BDE

Dated the 5th day of MARCH 1944.

President.

MAJ. F. Trudeau R.C.R.

Members.

CAPT. C.E. Pettifrice C.Y.R.

Lieut. G.Y. Stark C.Y.R.

Trial of* G22912 PTE JOHN JOSEPH ROBICHAUD ~~Judge Advocate~~ W.N.S.R.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that is not available to serve owing to~~

~~waiting member takes his place as a member of Court~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor, † CAPT. C.B.C. COCHRAN.

Counsel § or defending officer † LIEUT. F.H. HOLLOWAY

At 1030 the 7th March 44 at 1050 the 8th March trial is resumed + adjourn till the 8th

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No.

(N.B. — If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
§ Qualification to be stated.

Fernand Trudeau Maj.

PMEJ/2,000 - 5/42

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (3), the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The medical Officer's Certificate is signed by the President, marked B 3 (1) & (2) and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the (first) charge against you, which you have heard read? *Question to the accused*

~~Not Guilty~~, Not Guilty 7th 3rd *Answer.*

Guilty 8th 3rd

~~Are you guilty or not guilty of the second charge against you,~~ which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to First charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the Court proceeds upon any charge to which where is a plea of Not Guilty, the Court will not proceed upon the record of a plea of Guilty, until after the finding on that other charge.

B2

CHARGE SHEET

The accused, G22912 Pte John Joseph ROBICHAUD, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, CMF, on Active Service, is charged with:-

1st Charge
Sec 15 (1)
Army Act

When on Active Service, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the Field, at approx 1300 hrs 13 Jan 44, did absent himself without leave and remained absent until apprehended by the Military Police in FOGGIA at approx 1345 hrs 12 Feb 44. Total time absent 30 days 45 mins.

In the Field
3 Mar 44

F. E. Hiltz
(F E Hiltz) Major
T/Comd West NSR.

To be tried by Field General Court Martial.

In the Field
6 Mar 44

[signature]
T/Comd 3 Cdn Inf Bde.

Ferrand
Trudeau
Maj.

B 3 (1)

MEDICAL OFFICER OF [illegible]

KR (CAS) PARTS 337

I certify that I have this morning examined

No. G-22812 Pte. Robichaud J. J.

of W. N. S. R. and I am opinion he is

fit to undergo trial by Court Martial.

Station Field

Date 7/3/44

Fernand Tudor Maj

Medical Officer.

B3 (2)

MEDICAL OPINION CERTIFICATE

KR (CAN) PARA. 557

I certify that I have this morning examined

No. 622812 Pte Robichaud. J. J.

of W. N. S. R. and in my opinion he is

~~fit~~ to undergo Trial by Court Martial.

Static Fuld Fernand Tindas Mg. F. Skennerlyt

Date 8/3/44 Medical Officer.

C

Proceedings on Plea Not Guilty.

*Instruction. (See R. P. 39 (A))

Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer.

YES. - Leave adjourn (grounds)*

The prosecutor makes an opening address (hands in a written address which is read, marked , signed by the President, and attached to the proceedings.)

The prosecutor proceeds to call witnesses.

First witness for prosecution.

being duly sworn, is examined by the prosecutor.

* Grounds:- The defending officer states: that Pte Rolichard was arrested twice + first certificate of apprehension not received yet and so accused undecided as to plea.
Fernand Jendrey
Maj

* The defending officer after consultation with the accused decided that the case should be proceed as is.
Fernand Jendrey. Maj.

CC

Proceedings on Plea of Guilty.

* To be struck out in case on plea of "Not Guilty" has been proceeded with.

*(The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.)

The accused is found guilty of G 22912 Pte John Joseph Richard West NSR. First Charge Sec 15(1) AA.

†The summary (or abstract) of evidence is read, marked 2C signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

yes.

Answer. The accused in mitigation of punishment says:—

(*or* hands in a written statement which is read, marked , signed by the President, and attached to the proceedings.)

The accused came up with our first reinforcements in Sicily and has served faithfully until the time of his absence

Sernand Jucleau Major

Instructions. † If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on plea of «Not Guilty.»

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of «Guilty,» the Court shall alter the record, and enter a plea of «Not Guilty,» and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

yes.

Answer.

Evidence as to character.

This is the first trouble that I have had in nine years coming to this unit
(about blank not read underneath)

E

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty"

Findings.*

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

Proceedings on Conviction before Sentence

~~*The Court being re-opened, the accused is again brought before it~~

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by Witness.* yes, a certified true copy of AFA.6 and statement as to Character

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked E2 signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* yes.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* yes

Instruction — If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to this fact, and the Court must inquire into the nature and amount of that additional punishment.

Cross-examined by the accused.

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence

Fernand Tuckers Maj.

F

Sentence.

The Court sentence the accused G 22912 Pte John Joseph Rotichaud of the West Nova Scotia Regiment. Sentence.

to 6 months detention.

Fernand Jundeau, Major.

C. E. Pelletier Capt

G. C. Stark Lieut.

CERTIFICATE OF ARREST UNDER A.A. 163 (1) (jj).

I, Cdr. [illegible] certify that No. G. 22912 Rank PTE

Name ROBICHAUD J.S Unit WEST NOVIA SCOTIA.

was arrested at FOGGIA at about 1345 hrs on the 12. 2. 1944.

[illegible] Captain. ADJT.

~~Officer Commanding.~~ FOGGIA

~~230 L of C Provost Company.~~ GARRISON.

The Officer into whose custody the above named person was taken on arrest.

CERTIFIED TRUE COPY.

4 Bn. 1 C.B.R.D.

POSTING ..... NOTICE

Date 5 Feb. 44

Coy D. Serial No .....

No. G 22912 Rank PTE Name ROBICHAUD J. J.

Regt W. N. S. R. Trade G. D.

T O S from ..... Wef from 5 - Feb - 44

awl from J. J.

returned under Ope Arrest

J. J. D. Parks. Sgt
Records Officer

L. P. Willoughby. Capt.
OC. D Coy. #4 Bn. #1 CBRG.

CHARGE

Army Form B 252
See King's Regulations

WEST NOVA SCOTIA

Regiment
Battery
Squadron
Troop or
Company

CHARGE against No. E 22912 Rank PTE.

Name ROBICHAUD. T. T.

Place Date of Offence

OFFENCE W. O. A. S. Absent from 1300 hrs 13 Jan 44 until apprehended by the Military Police at FOGGIA on the 12.2.44 at about 13.45 hrs.

Names of Witnesses:

L/CPL. H. SHAW. C. M. POLICE.

Signature of O.C. Battery, Squadron, Troop or Company J. G. C. M

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

P.S.S. 121 - 250,000 - 11-1

2C

SUMMARY OF EVIDENCE in the case of G22912 Pte John Joseph ROBICHAUD, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, CMF, on Active Service.

By Order of Major F E Hiltz, T/Comd, West Nova Scotia Regiment.

Evidence taken on Oath.

First Witness for Prosecution — F43571 A/CSM Hamm F L, West Nova Scotia Regiment, having been duly sworn states:-

"At approx 1300 hrs 13 Jan 44 I held a coy parade of "D" Coy, West NSR, of which the accused, G22912 Pte Robichaud JJ, is a member, and found him to be absent. He has not returned to the coy since that time."

Signed: F.L. Hamm CSM

The accused declines to cross-examine this witness.

Second Witness for Prosecution — Capt R V Inman, RCAPC, having been duly sworn states:-

"I am Capt R V Inman, RCAPC, acting in the capacity of adjutant West NSR. I produce as evidence Army Form B252, Certificate of Arrest under Army Act 163 (1)(jj), Posting Notice 4 Bn 1 CBRD to this unit, [redacted] relating to the accused, G22912 Pte Robichaud, J J."

Signed: R V Inman Capt

The accused declines to cross-examine this witness.

The accused having been duly cautioned as follows: "Do you wish to make any statement or to give evidence upon oath ? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be used as evidence", declines to make a statement or to give evidence upon oath.

Certified that Rules of Procedure 4 (c)(d)(e) and (f) have been complied with.

Taken down by me, in the Field, this 2nd day of March, 1944, in the presence and hearing of the accused.

In the Field
2 Mar 44

R V Inman Capt
Officer taking Summary.

Leonard Maclean Mayn

M.F.M. 6
(A.F. B.122)
40/P&/S136 (2965)

No. G22912 Name ROBICHAUD J J Sqn., Battery, or Company | Corps OIC | Date of enlistment 15-6-40 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Original NOT Available.					

Certified to be a true copy from the regimental books in my custody

[signature] Capt
Officer i/c Records
West NSR - 3 Mar 44

Fernand Tudeau Maj

(P.T.O.)

F2

No. G22912 Rank. Pte Name Robichaud J J Regiment West Nova Scotia Regiment

1. The following is a fair and true summary of the entries in the regimental Conduct Sheet of the accused:

Within last 12 months — Since Enlistment

No MFM'6 Available

No. of instances of gallantry or distinguished conduct — Nil

The accused is NOT under sentence at the present time.

The accused has been under Close Arrest awaiting trial on the present charge for 21 days of which NO days were spent in hospital.

The present age of the accused is: 24 years.

SCHEDULE

On convictions by a Court Martial, of a summary award under Sec 47 of the Army Act, and of cases in which trial has been dispensed with of accused, No. G22912 Rank. Pte Name Robichaud J J of the West Nova Scotia Regiment.

No MFM'6 available

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3rd day of March 1944

(Orderly Room Clerk)
West Nova Scotia Regiment

The above statement (with schedule of convictions and of cases in which trial has been dispensed with) is read, marked and signed by the president, and annexed to the proceedings.

Leonard Judson
Maj.

LL-150
GRR ROBICHAUD J.B

CC-150

Correspondence to be PINNED here

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Eleventh day of July, 19 43

Whereas it appears to me, the undersigned, an officer in Command of Rear Party 1 Cdn Div Cdn Army (O), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[I am unable to appoint :—

*(1. ~~Three Officers to form the Court.~~)

*(2. A Field Officer as President.)

for the following reasons, namely :—]

NONE AVAILABLE

Proceedings approved

for E.H.M. Donald Capt

18 Sep 43

W.G. Winters Capt

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Captain	W G Winters	Sask L I

Members.

Rank.	Name.	Regiment.
Captain	G J Whitty	Carlt & York R
Lieut	P. M. Moore	4 Recce (PLDG)

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

B 1 W.G. Winters Capt.

*Signed J.D. Adams

Commanding C.C. 1 Cdn Div Lt Col Detailed

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit o. Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
G 8134 Gnr Joseph O'Neil Robichaud 4 Bn No.1. Canadian Base Reinf Depot	A.A. Sec 15(1) (See Charge Sheet Attached)	Guilty	To undergo detention for NINETY days. (90 Days) W.K.Winters Capt 9 Aug 43.	Finding Sentence Confirmed J.V. Coleman Lt Col 9 Aug 43

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) J.V.Coleman Lt Col — *Commanding* — *Convening Officer (a)*
(Signed) W.K.Winters Capt SASK L.I. — *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the ninth day of August 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
~~2. The witnesses~~ 2 The witnesses were
*~~(3. The interpreter)~~ were
*~~(4. The officers under instructions)~~ were

* Omit if not applicable.

were duly sworn.

Signed this ninth day of Aug 1943.

W.K.Winters Capt.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

Signed this ~~day of~~ 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

J.V.C.

Signed this 9th day of August 1943.

J.V. Coleman Lt Col
Confirming Officer.
Comd. 1 Can Base Sub Area

Promulgated and extracts taken in the case of G 8134 Gnr J. O. Robichaud 4 Bn No 1 Can Base Reinf Depot.

(a) (Dated) 9 Aug 43. (Signed) W.K.Winters Capt SASK L.I. (Adjt 4 Bn No 1 Can Base Reinf Depot)

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

O/S. 47750/1937 25 M. 5/41 K.H.Q.(S.D.) Gp. 698/2
Wy. 28—9/1939 6 M. 8/41 K.H.Q.(S.D.) Gp. 698/2

Records

attn Capt Henderson.

1. In N soldier tried by FBCM 9 Aug 46. It is records do not disclose any entry evening the conviction and file is passed in order that appropriate action may be taken.

2. Proceedings disclose that soldier

charged AA 16(1)

found guilty

sentenced.

confirmed.

also entracts.

3. Please return file when it has served your purpose.

B2

CHARGE SHEET

G 8134 Gnr Joseph, O'Neil, ROBICHAUD of the 4th Bn of No.1. Canadian Base Reinforcement Depot, Canadian Army Overseas, is charged with while on Active Service:

1st CHARGE
A.A. Sec
15(1)

ABSENT WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 2230 hrs 22 Jun 43 until he surrendered himself to Corps of Military Police at GLASGOW at 2250 hrs 7 Jul 43. Time absent 16 days 20 min.

Station: Field
Date 10 Jul 43

M A G Stroud
(M. A. G. Stroud) Major,
A/O.C.,4 Cdn Recce Regt (4 P.L.D.G.)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

Station:
Date:

F D Cedarwood Lt Col
(Convening Officer)

C.C. 1 Cdn Div Details
(Unit)

W G Winters
Capt.

Records

attn Capt Henderson.

1. Mr N Soldier tried by FBCM 9 Aug 98. It is records do not disclose any entry evening the conviction and file is passed in order that appropriate action may be Taken.

2. Proceedings disclose that soldier

charge AA16(1)

found guilty

sentenced.

confirmed.

also entracts.

3. Please return file when it has served your purpose.

M E M O R A N D U M.

20/CMHQ CM/1
13/Census B/1
A.G.5a

Camp Commandant.

6 Mar 44.

Court of Inquiry.
Loss of Vehicle - C.M.H.Q.

1. A ~~Board of Officers,~~ Court of Inquiry composed as under has been detailed ~~to form the Court of Inquiry~~ to enquire into and report on the circumstances surrounding the loss of the W.D. truck 15 cwt. Panel Chev. No. C.V.199159.

2. President - Capt. P.D. Shannon, RCASC,
"Q" Branch,
C.M.H.Q.

Member - Lieut. W.R. Burns, RCOC,
O.S. Sub Branch,
C.M.H.Q.

3. The terms of reference of this Court of Inquiry will include specifically enquiring into and reporting on the following matters:-

(a) To determine ~~that such vehicle~~ whether the said ~~truck~~ vehicle ever existed.

C ~~X~~ (b) To determine whether the ~~above-mentioned~~ said vehicle

MEDICAL OFFICER'S CERTIFICATE

This is to certify that I have this morning examined G 8134 Gnr Robichaud, J. C. of the 4th Bn CBRD. and find him fit/~~unfit~~ for Trial by Field General Court Martial.

Field
9 Aug 43

C B Caswell Capt
(C. B. Caswell) Capt. RCAMC

Proceedings for F.G.C.M.

The Court satisfies themselves that Rules of Procedure 22 and 23 have been complied with.

"I have satisfied myself that none of the officers detailed as members of this Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charge before this Court Martial."

W. H. Winter Capt.

The accused is brought before the Court

Prosecutor - Capt J. C. Newlands P.P.C.L.I.

Defending Officer - Capt J. B. Lawson, 4 Col. Recce Regt (H.P.L.D.G.)

at 1015 hrs the trial commences.

The order convening the Court is read and is marked B/1 signed by the president and attached to the proceedings.

The names of the president and members of the Court are read in the hearing of the accused, and they severally answered to their names.

PRESIDENT - "Do you object to be tried by me as President or by any of the officers whose names you have heard read out?"

ANSWER BY THE ACCUSED - 'No. Sir.'

A-1

B.

The President and members are duly sworn.

Charge-Sheet.

The charge sheet is signed by the president, marked B2 and annexed to the proceedings.

The accused is arraigned upon the charge in the above-mentioned charge-sheet.

Question 2 - Are you guilty or not guilty of the charge against you?

W.H.W.

A. 2 - Guilty, Sir.
The provisions of R. P. 35 (B) were duly complied with.
W.J. Winters Capt.

C. C.

The summary of evidence is read, marked CC, signed by the President, and attached to the proceedings.

Quest 3 - Do you wish to make any statement in mitigation of punishment.

Ans. 3 - YES, SIR.
The defence in mitigation of punishment says - "With regards to the character of the accused the conduct sheet is practically clean. It was impossible to produce witnesses as to his good character. The accused has been under close arrest since 8 July 43."
W.J. Winters Capt.

D. D.

Quest 4 - Do you wish to give evidence yourself or to call any witnesses as to character.

Ans. 4 - No. SIR.

E.

Proceedings on Conviction - Before Sentence.

QUESTION 5: Have you any evidence to produce as to the character and particulars of service of the accused.

ANSWER 5: (By the prosecutor)
YES. SIR.
Capt. J.C. Newlands P.P.C.L.I. being duly sworn in states: I produce - RHFM 6 of the accused. marked E. (W.J.W.)
I also submit - Statement as to character and particulars of service of the accused. marked E.2 (W.J.W.)

E

Proceedings on Conviction - Before sentence - (continued)

6 Question By the President.

Is the ~~person~~ accused the person named in the statement which you have read ?

6 Answer - (by witness)

Yes - I recognize the accused as that person.

Quest 7 - Have you, to the best of your ability, compared the contents of the above statement with the regimental books?

Answer 7 - Yes.

The accused declines to cross-examine the witness.

Question 8 Do you wish to address the Court.

Answer 8. - No. SIR.

The court is closed for the consideration of the sentence.

F Sentence

Sentence -

The Court sentence the accused G 8134 Gunner Joseph O'Neil Robichaud, 4 Bn No 1 Cdn Reinf. Base Depot to undergo detention for NINETY DAYS (90).

9 Aug 43
In the Field.

W G Winters Capt President
#2 C.I.B. Support Group
(SASK.L.I.)

Exhibit B to the summary of Evidence in the case of G 8134 Gnr Robichaud G.O. taken by me on 10 July 43

El Thorne
Lt.

ARGE

Army Form B 252
(See King's Regulations)

THE ROYAL CANADIAN ARTILLERY Regiment

N°1 C.S.B.D. Battery / Squadron / Troop or Company

CHARGE against No. G 8134 Rank GUNNER

Name ROBICHAUD, J.

Place BELLASHIELDS Date of Offence ?

OFFENCE WOAS ABSENT FROM ? UNTIL SURRENDERING HIMSELF TO THE MILITARY POLICE ON CENTRAL RAILWAY STATION GLASGOW ON JULY 7TH 1943 ABOUT 2250 HOURS

Names of Witnesses :— L/C SKEATES, C. C.M. POLICE
L/C HILL, J. C.M. POLICE

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Lt. Kirkwood Capt.
A.P.M. WEST OF SCOTLAND DISTRICT

W.H. Winter Capt.

20169. Wt.9031274/1961 2,000,000 10/42 K. & H. Ltd. G657.

EVIDENCE

No G 8134 GNR ROBICHAUD J.
No 1 CANADIAN SPECIAL BASE DEPOT
THE ROYAL CANADIAN ARTILLERY
BELLASHIELDS
No 8 EDINBURGH.

REMARKS

CERTIFICATE OF SURRENDER UNDER SECTION 163 (1) (j) ARMY ACT.

I, CAPT. K.G. KIRKWOOD certify that No. G. 8134

Rank. GUNNER Name. ROBICHAUD J. Coy No. 1 C.S.B.D.

Rn. ROYAL CANADIAN ARTILLERY surrendered himself to

No. 5510319 Rank. L/CPL Name. SKEATES C.

Corps of Military Police, at GLASGOW at 2250 hrs, on the 4TH

day of JULY 7TH 1943, as a deserter (or absentee without leave).

(Signature) K.G. Kirkwood Capt.

U. A.P.M. WEST OF SCOTLAND DISTRICT

Place GLASGOW

Date JULY 7TH 1943

[illegible] Capt.

Exhibit A to the Summary of
Evidence in the case of G 81374
Gnr Robertson J.O. taken by
me on 18 July 73

Field. 9 July 43.

I the undersigned G 8134 Gunner Robichaud J.O. MAGS make the following statement after having been properly cautioned in accordance with R.P.(E). No threat or promise of mitigation of sentence was used to procure the statement from me. I went absent without leave from my unit 4th Bn CBRD at Barrhead on Tuesday 22 June 43. I was never warned that the unit was about to move away. I stayed in the Glasgow area when absent. I went back to Barrhead Sunday 27 June 43 and found that the unit had left there. I then continued absent without leave until 7 July 43 when I turned myself over to the provost in Glasgow at 2250 hours that date.

(Robichaud)

Certified that the above statement was given to me by G 8134 Gnr Robichaud J.O. after he had been properly cautioned in accordance with R.P. 4(E).

W. G. Johnston Capt & adjt

4 CDN. RECCE. REGT. 4 (P.L.D.G.)

W B Whittier Capt

Summary of Evidence in the case of
No G 8134 Gnr Joseph O'Neil Robichaud
4 Bn of No 1 Canadian Base Reinforcement Depot.

The Commanding Officer directs that the evidence be taken on oath.

First witness for the prosecution No A 6127 A/Sgt Gough R. of the 4th Cdn Provost Regt (4th PLDG) being duly sworn states:

Acting on instructions on the 8th July 43 I proceeded to Glasgow to pick up Pte Robichaud from the Canadian Provost Corps No 6 Kew Terrace Great Western Road Glasgow. They took me to the Canadian police station where I signed for Pte Robichaud and brought him to my unit under close arrest. I handed Pte Robichaud with documents to the guard commander the documents to be delivered to the adjutant.

The accused declines to cross examine this witness.

R. Gough

Second witness for the Prosecution Capt WT Johnston adjutant 4 Canadian Base Regt 4th PLDG.

duly sworn states:

I was notified by the Cdn Provost Glasgow that G 8134 Gnr Robichaud J.O. of 4 Bn 1 CBRD was in custody on the 7 July 1943 and sent an escort to bring him here. He was returned under escort on 8 July 43. Properly dressed. I interviewed the accused whom I had not previously known on the 9th July 43 and obtained the following statement from him, after cautioning him in accordance with R.P. & E.

Direct Witness for Prosecution
continued

He said that he had gone absent without leave from his unit at Barrhead on the 22 June 1943 and that he had not been warned that the unit was to move. He returned to Barrhead on Sunday ~~[illegible]~~ 27th June 43 and found that his unit had gone away. He continued absent without leave until he surrendered himself to the Provost at Glasgow on 7 July 43 at 22 50 hrs. I submit herewith the signed statement of the accused as Exhibit A to this summary and Certificate of Surrender & provisional charge sheet forwarded to me by the Provost at Glasgow, as Exhibit B to the summary of evidence.

The accused declines to Cross Examine the witness

W. G. Johnston Capt

The accused duly cautioned in accordance with R.P. 4(E) declines to give evidence or make any statement.

The accused does not call any witnesses for the defence.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4(C)(D)(E)&(F) have been complied with.

E L Thorne Lieut
(E S THORNE)
4 Cdn Race Regt
(4th PLDG)

W G Winters Capt

In Field
10 July 1943

M.F.B. 355
40/P & S/678

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

E-2 WSW.

Number G 8134 Rank Gnr Name Robichaud, J.O Regiment (or unit) 4th Bn 1 CBRD.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron, Battery Conduct sheets or ~~Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	Sec 15 A.A.	once times	X Sec 15 A.A.	once times X
For		times		times
For		times		times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or,~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under~~ Section 47 of the Army Act Air Force Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for N.A. beginning on the N.A. day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 32 29 days in military custody, making a total of 32 29 days in custody, of which 26 days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 27 years and 67 days

6. The date of his ~~commission~~ attestation specified in his record of service is ~~attestation paper~~ 11 Sep 39

7. The service which the accused is allowed to reckon towards discharge is N.A.

8. The accused is entitled to reckon N.A. service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force military decoration, or air force military reward ~~or is in possession of or entitled to~~. State any air force military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N.A.

W.R. Winters Capt.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N.A. dated N.A., and in his regiment (or corps), the rank of

dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of N.A. years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
N.A				

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Ninth day of Aug 43 [signature] Capt & Adj

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

[signature] Capt.

LIST OF WITNESSES FOR PROSECUTION

A 6127 Sgt Gough, R. 4 Cdn Recce Regt (4 P.L.D.G.)

Capt W. F. Johnston 4 Cdn Recce Regt (4 P.L.D.G.)

WITNESSES FOR DEFENCE

NIL

W H Winters Capt

LIST OF EXHIBITS

Exhibit "A" AF.B 252 Charge Sheet against accused by DAPM West of Scotland District
Certificate of Surrender under Sec 163(1)(j) A.A.

Exhibit "B" Statement made by accused to Capt. W. F. Johnston Adjt.,4 Cdn Recce Regt (4 P.L.D.G.) dated Field 9 Jul 43.

W H Winters Capt

STATEMENT BY ACCUSED
REGARDING OFFR
FOR DEFENCE

I wish to have Capt. J. B. Lawson, 4 Cdn Recce Regt defend me at my Trial.

.....
(Accused's Signature

W H Winters Capt

E 1 WW

ARMY FORM B 116.

4 Bn No.1. Cdn Reinf Base Depot *REGIMENT.*

STATION Field Date 10 Jul 1943

Application for a FIELD GENERAL *Court-Martial.*

SIR,

I have the honour to submit One charge against No. G 8134 Gunner Joseph O'Neil Robichaud of the Unit under my command, and request you will obtain the sanction of O.C. Rear Party 1 Cdn Div that a F.G. Court-Martial may be assembled for his trial at Field

The Case was investigated by (*a*) Lieut. E. S. Thorne 4 Cdn Recce Regt (4 P.L.D.G.)

A Court of Inquiry was held on (*b*) Not Applicable (date) at (Station).

President	N.A.	Ranks, Names and Corps.
Members		

The accused is now at Field His General Character is (*c*) Unknown Sgt C.S.

I enclose the following documents (*d*) :—

1. One Charge Sheet (in duplicate) (*e*).
2. Summary of Evidence, original (*f*) and xxxxxxxx copy. copies.
3. Original Exhibits (g). N.A.
4. List of witnesses for the prosecution and defence (with their present stations or addresses) (g).
5. List of Exhibits (*h*).
6. Correspondence (g).
7. Statement as to character (A.F.B. 296) and regimental and company, etc., conduct sheets of accused (g).
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (*h*). [R.P. 14 (B)].

I have the honour to be,
Sir,
Your obedient Servant,

Signature of Commanding Officer M&A.G. Stroud

(M&A.G. Stroud) Major,

To O.C. Rear Party 1 Cdn Div A/O.C., 4 Cdn Recce Regt (4 P.L.D.G.)

MEDICAL OFFICER'S CERTIFICATE.

I CERTIFY that No. G8134 Gnr Robichaud, J. O. Regiment 4 Bn No.1 Cdn Base Depot Cdn Army is* fit to undergo trial by Court-Martial.

Signature of the Medical Officer H. Henderson Capt

* Insert "fit" or "unfit"

(*a*) Here insert name of :—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence [R.P. 19 (B) (iii)].
(*b*) To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges ; otherwise to be struck out [R.P. 19 (B) (ii)].
(*c*) To be filled in by the Commanding Officer.
(*d*) Any items not applicable to be struck out.
(*e*) One copy to be sent to the President ; one copy to be filed with the application for trial.
(*f*) Original summary of evidence to be sent to the President.
(*g*) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.
(*h*) 5 and 8 to be sent to the President.

If the accused has elected to be tried under A.A. 46 (8) the fact should be recorded at the top of this form.

W.H. Wardrop Capt.

(16M) WL12003/314 20,000 8/39 A.& E.W.Ltd. Gp.484
(11M) WL40726/161 120,000 1/40 " " Forms/B116/18

5A-132

Pte. Rebichaud. O

A-132

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig J A Roberts Comd 6 Cdn Inf Bde dated 5 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or substituted rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G57541	Pte	Ovila	ROVICHAUD R de Chaud	

CERTIFIED A TRUE COPY

D J A, Cdn Sep Inf Bde (or Div) Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany on (date(s)) 6 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 26/79

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS OR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms RQs. For guidance on procedure when a variation in this form arises, see form for CCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 18, 19. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Rfn Simard R P as interpreter? Ans No

The Interpreter is sworn.(1) ~~Do you object to as shorthand writer? Ans~~ ~~The shorthand writer is sworn.(2)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F F Moar,	N Shore R
Member	Capt	T S WALDIE	QOR of C
Member	Lieut	A M DEANS	QOR of C
Judge-Advocate	Capt	R P MILLIGAN	HQ 3 Cdn Inf Div
Prosecutor	Lieut	J.P.E.CARRIER	R de Chaud
Defending Offr	Lieut	C DRAPEAU	R de Chaud

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) (1) plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(5), 108), or as to the jurisdiction of the Court (RP 24, 25(4), 112), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 120, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~does~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62, when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB 160 G1-72

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G57541 Pte Ovila ROBICHAUD R de Chaud

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 463 fn 4 para 2, RP 44; special findings see RP 45 and MML p 733, and in lieu of kit see RP 84 fn 6.)

RFM At present under sentence for beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for two (2) years.
The Court recommends the accused to mercy on the grounds of his good record.

(Sgd) R P Milligan Capt, Judge-Advocate, if any. 6 Mar 45, Date awarded. (Sgd) F F Moar Major, President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I vary the sentence so that it shall read'to undergo detention for one year' and I confirm the finding and sentence so varied.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) AFS

(1. AA 57A. Delete if not used.)

(Sgd) Jas A Roberts Brig

Date 4 Nov 45 Commanding 6 Cdn Inf Bde, Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
G 57541 Pte Robichaud, O.	16 Mar	J F L'Esperance Major A/OC R de Chaud

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 25(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by vsn of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s)~~.(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Evidence on oath Do you intend to call witnesses on your behalf ?
Ans No Are they witnesses as to character only ? Ans N/A
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is ~~(are)~~ recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) *Or,* ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Sir
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 358. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes sir by Def Officer (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 119, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused MML p 60, 757-759. already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

5/14

LE REGIMENT DE LA CHAUDIERE

In the Field,
6 March 1945

This is to certify that I have examined, this morning No G57541 Rank Pte Name Robichaud, O.
and find that he is fit to undergo F G C M

(Sgd) C.D. Kilpatrick Major
RCAMC

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charges sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
G 57541	Pte		Ovila	ROBICHAUD	R de Chaud

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on JAB (date) 4 Mar 45 endorsed by me, ~~or upon oath taken before me~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that by reason of the absence from Canada of witnesses the trial cannot be held without serious injury to the public service)~~ JAB

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed JAB or detailed hereunder.

~~I am advised that it is not practicable to detail Offrs to form the Court, and I therefore appoint the undermentioned~~ JAB ~~officers~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~I also appoint as Judge-Advocate thereat the Officer mentioned hereunder.~~ JAB

(RP 106(E). Delete, if none appointed.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder JAB

PRESIDENT.

(Rank.)		(Must be named. RP 106.)		(Unit.)
Major	F F Moar		N Shore R	

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)		(Unit.)
Capt	I S WALDIE		Q O R of C	JAR
Lt	A M DEANS		Q O R of C	JAR

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)		(Unit.)
Captain	L J J BOURASSA		R de Chaud	JAR

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)		(Unit.)
Captain	R P MILLIGAN		HQ 3 Cdn Inf Div	

On Active Service in the Fd

in Germany (Country.) Jas A Roberts (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 5 Mar 45 Commanding 8 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A(CFA85 (In lieu of AFA8) 40-P & S/1607 (4401)

(See overleaf for oaths and notes for use on trial.)

F F Moar Major

CHARGE SHEET

In the case of G-57541 Pte Ovila ROBICHAUD, of Le Regiment de la Chaudiere, a soldier of the Canadian Army Overseas on active Service is charged with:-

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE

IN THAT HE

1st Charge
A.A. Sec 21(1)(a)

In the Field after having been warned to proceed with his Platoon which was attacking an enemy position, with intent to avoid, so proceeding absented himself without leave from Le Regiment de la Chaudiere at about 1800 hrs on the 26th Feb 45 until he surrendered himself at approximately 0900 hrs 27 Feb 45.

(Total Absence 15 hrs)

Signed in the Field
this 4th day of March 45

G O Taschereau Lt Col
Commadning,
Regiment de la Chaudiere

TO BE TRIED BY F.G.C.M.

Signed in the Field
this 4th day of March 45

Jas A Roberts Brigadier
Commanding
8 Cdn Inf Bde

D.3

K.45892 A/Sgt Savoie, L. R de Chaud, sworn states:

Identifies accused as being in my Pl - 12 Pl "B" Coy R de Chaud. On 26 Feb 45 at around 1800 hrs accused refused to go into an attack. The Coy was in the line. I warned accused for an attack around 1800 hrs on 26 Feb 45. He told me his nerves were not good enough to go in for second attack. He stayed with Pte Tessier in trench. My Pl went into the attack. The accused did not go into the attack. The accused did not go with us. The accused reported back to Pl the next day 29 Feb around 0900 hrs with his weapon and equipment. This was second attack that day.

No cross Examination.

By Court:

I told accused we were going into attack and to come with us He said he could not go and did not go. Lt Deon is Pl Comdr. The accused is a good soldier.

R.P. 83(B) complied with.

E.102071 Pte Gagnon, H. R de Chaud sworn states through interpreter:

On 26 Feb 45 at night at about 1800 when we left for attack the accused whom I identify as being in my Pl - No 12 Pl "B" Coy, R de Chaud was absent. He reported back about 0900 hrs next morning. I was present where accused warned for attack. We attacked the enemy, the accused was not with us.

Cross Examination:

I am a runner in Pl. I have known accused about a month. I have been about a month in Bn. I have heard Pl Comdr say accused is a good soldier.

R.P. 83 (B) complied with.

D.6

The accused, sworn states through interpreter:

When the night came that they asked me to go on second attack I told them I was too nervous that I could not go to the front anymore. It is eight months that I have been in action and I have never been evacuated and never missed an attack. I am not able to go in any more.

No Cross-Examination.

By Court

I joined Bn on 11 July 45. I did not go on the attack that night. I stayed behind. Nobody gave me leave to stay behind. I stayed with Pte Tessier. I have been with "B" Coy since 11 July 45.

R.P. 83 (B) complied with.

Def Officer does not address the Court on the finding.

Pros officers does not addres the Court on the finding.

PLEA IN MITIGATION BY DEF OFFICER

ACCUSED with Bn since July. Coy Comdr says he is good soldier. Coy Comdr asked C.O. to send accused to psychiatrist. Due to his age 29, Coy Comdr say he is too old for Infantry. He has a good conduct sheet. Never been any trouble and I ask Court to be lenient.

SUMMING UP BY JUDGE ADVOCATE in the case of G.57541 Pte Ovila

OBICHAUD, R de Chaud

Desertion is absence Without leave plus the intention to either (a) quit the Army altogether or (b) avoid a particular service. A soldier is absent without leave when he is absent without leave from the place where his duty requires him to be. The particular service may be service such as an operation, movement, or serving in the front line. Now, in this case you have evidence that the accused did, in fact, avoid a particular service, i.e. an attack on the enemy.

The accused in giving evidence states that he was unable to continue. It is for you to decide whether the accused was physically or mentally unable to continue on the evidence presented to you.

I remind you that the accused is innocent until proven guilty and as such is entitled to the benefit of all reasonable doubt. However, it must be a reasonable doubt on the evidence and not a doubt conjured up in your own mind or fanciful doubt. However, if you have reasonable doubt you should give the accused the benefit of that doubt.

In this case, the accused is charged with desertion. You may bring in a verdict of guilty of desertion or you may bring in a verdict of guilty of absence without leave, or you may decide to acquit the accused.

(Sgd) R P Milligan Capt
J.A.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
G 57541	Pte	ROBICHAUD O	Le Regiment de La Chaud

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Nil Nil times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

~~2. [illegible] in the Schedule [illegible]~~

*Strike out if not applicable.

*3. ~~[illegible]~~

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for four days in military custody, *i.e.*, ... days in open arrest, ... days in close arrest; of which no days were spent in hospital.

5. The present age of the accused is 28 years of age

6. The date of his attestation ~~[illegible]~~ is 5 Nov 42

7. The service which the accused is allowed to reckon is 2 yrs 3 mths

8. The accused is in possession of† C.V.S.M. and Clasp

†State the military decorations (if any) held by accused.

9. ~~[illegible]~~ —

Date of Promotion.

In the substantive rank of .....

In the war substantive rank of .....

In the acting rank of .....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

E V [illegible]

Wt 55906/1602 20,000 3/44 51-4751. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
			NIL	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 4th day of Mar 45

(Sgd) R L Boulander Capt Adjt
Offr i/c Unit Records

No C57541 Name ROBICHAUD O | Sqn, Battery, or Company | Corps CIC | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Temporay Sheet					

Ex Z
F F Moar Major

Certified true copy

R.L. Boulanger Capt Adjt
Officer having custody of the Original

(PTO)

RECORDED AT CMHQ IN AB 160 A5-138

FIELD GENERAL COURT-MARTIAL

CFASS (In lieu of AFA3) 4/38B

RECEIVED 9 APR 1945 JAG BRANCH C.M.H.Q.

Convened by Order of Brigadier J.A. Roberts Comd 8 Cdn Inf Bde dated 5 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G57541	Pte		Ovila	ROBICHAUD	R de Chaud

PROCEEDINGS REVIEWED 10 Apr 45 K.Y. Dick, Capt REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany on (date(s)) 5 Mar 45

RECORD FORM A--OPENING PROCEEDINGS AND ARRAIGNMENT. 26/79

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Pte Demarchi RR as interpreter? Ans No

The Interpreter is sworn.(1) ~~Do you object to~~ ..... ~~as shorthand writer? Ans~~ ..... ~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major F.F. Moar, N. Shore R.
Member	Capt. J.S. Waldie, Q.O.R. of C
Member	Lieut. A.M. Beaver, Q.O.R. of C
Judge-Advocate	Capt. H. Kneligan H.Q. 3 Cdn Inf Div
Prosecutor	Lieut. J.P.E. Carrier, R de Chaud
Defending Offr	Lieut. C. Drapeau, R de Chaud

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

(AB160 G1-72)

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 1. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

In the name of G-57541 Pte Ovila ROBICHAUD, of Le Regiment de la Chaudiere, a soldier of the Canadian Army Overseas on active Service is charged with:-

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE

IN THAT HE

1st Charge
A.A.Sec 12(1)(a)

In the Field after having been warned to proceed with his Platoon which was attaking an enemy position, with intent to avoid, So proceeding absented himself without leave from Le Regiment de la Chaudiere at about 1800 hrs on the 26th Feb 45 until he surrendered himself at approximately 0900 hrs 27 Feb 45.

(Total Absence 15 Hrs)

Signed in the Field
this 4th day of March 45

W Taschereau
(G.O.Taschereau) Lieut-Col
Commanding,
Regiment de la Chaudiere

TO BE TRIED BY F.G.C.M.

Signed in the Field
this 4th day of March 45

Jas C Roberts
(J.A.Roberts) Brigadier
Commanding,
8 Cdn Inf Bde

Taschereau Major

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-57541	Pte		Ovila	ROBICHAUD	R de Chaud

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 4 Mar 45 endorsed by me, (~~or by an offr of my staff for me~~)," To be tried by Field General Court-Martial "

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. Duly unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reason I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~X. Duly appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	F.F, Moa r	N Shore R

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	I.S. WALDIE	ROR OF C
Lt	A.E. DEANS	QOR OF C

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	L.J.J. BOURASSA	R de Chaud

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Captain	H.P. MILLIGAN	HQ 3 Cdn Inf Di

On Active Service in the Fd

in Germany (Country.)

Dat 5 Mar 45

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Commanding 8 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 96 (In Lieu of AFA 3) 40/P & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

Bourassa Maj

LE REGIMENT DE LA CHAUDIERE

In the Field,
8 March 1945

This is to certify that I have examined, this morning No 937541....Rank. Pte.....Name Robidoux A.
and find that he is fit/~~unfit~~ to undergo F.G.C.M.

C D Kilpatrick Maj.
RCAMC

Plea in Mitigation by Def. Officer
Accused with 1 on since July.
Coy Comdr says he is good
soldier. Coy Comdr asked C.O.
to send accused to psychiatrist
due to his age 29. Coy Comdr
say he is too old for Infantry.
He has a good conduct sheet.
Never been any trouble and
I ask court to be lenient.

D3. K45892 A/Sgt Savoie, L. R de
Chand, sworn states:
Identifies accused as being
in my Pl. - 12 Rt. "B" Coy R de
Chand. On 26 Feb 45 at
around 1800 hrs accused
refused to go into an attack.
The Coy was in the line. I
warned accused for an attack
around 1800 hrs on 26 Feb 45
He told me his nerves were not
good enough to go in for
second attack. He stayed
with Pte Tessier in trench.
My Pl. went into the attack.
The accused did not go with
us. The accused reported
back to Pl. the next day 27 Feb
around 0900 hrs with his
weapon & equipment. This
was second attack that day.

No Cross Examination:

By Court: I told accused we
were going into attack & to come
with us. He said he could
not go and did not go. Lt.
Dion is Pl. Comdr. The accused
is a good soldier.

R.P. 83 (B) complied with.

D3. E 102071 Pte Gagnon, H. R de Chaud sworn states through interpreter:

On 26 Feb 45 at night at about 1800 when we left for attack the accused whom I identify as being in my Pl. - No 12 Pl. "B" Coy, R de Chaud was absent. He reported back about 0900 hrs next morning. I was present when accused warned for attack. We attacked the enemy, the accused was not with us.

Cross Examination:

I am a runner in Pl. I have known accused about a month. ~~He~~ I have been about a month in Bn. I have heard Pl. Comdr. say accused is a good soldier.

R. P. 83 (B) Complied with.

D6. The accused, sworn states through interpreter:

When the night came that they asked ~~to~~ me to go on second attack. I told them I was too nervous that I could not go to the front any more. It is eight months that I have been in action and I have never been evacuated and never missed an attack. I am not able to go in any more.

No Cross Examination:

By Court - I joined Bn on 11 July 45. I did not go on the attack that night. I stayed behind. No body gave me leave to stay behind. I stayed with Pte Tessier. I have been with "B" Coy since 11 July 45.

R. P. 83 (B) Complied with

Def. officer does not address the Court on the finding.

Pros. officer does not address the Court on the finding

SUMMING UP BY JUDGE ADVOCATE in the case of G.57541 Pte. Ovila ROBICHAUD, R de Chaud

Desertion is Absence Without leave plus the intention to either (a) quit the Army altogether or (b) avoid a particular service. A s ldier is absent without leave when he is absent without leave from the place where his duty requires him to be. The particular service may be service such as an operation, movement, or serving in the front line. Now, in this case you have evidence that the accused did, in fact, avoid a particular service, i.e. an attack on the enemy.

The accused in giving evidence states that he was unable to continue. It is for you to decide whether the accused was physically or mentally unable to continue on the evidence presented to you.

I remind you that the accused is innocent until proven guilty and as such is entitled to the benefit of all reasonable doubt. However, it must be a reasonable doubt on the evidence and not a doubt conjured up in your own mind or fanciful doubt. However, if you have reasonable doubt you should give the accused the benefit of that doubt.

In this case, the accused is charged with desertion. You may bring in a verdict of guilty of desertion or you may bring in a verdict of guilty of absence without leave, or you may decide to acquit the accused.

A. J. Duncan Capt.
J.A.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
G-57541	Pte	ROBICHAUD O	LE REGIMENT DE LA CHAUDIERE

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishments being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For NIL	times	NIL times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, N/A

or

There are no entries in the conduct sheets of the accused. N/A

2. ~~The accused has not been previously convicted, or~~

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. ~~The accused is not under sentence at the present time, or~~ The accused ~~at the present time is under sentence for~~ NIL beginning on the NIL day of NIL

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and four days in military custody, making a total of four days, of which No days were spent in hospital.

5. The present age of the accused according to his record of service ~~attestation paper~~ is 28 years of age

6. The date of his ~~attestation~~ specified in his ~~record of service~~ attestation paper is 5 Nov 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 years 3 mths

8. The accused is entitled to deferred pay or gratuity in respect of 2 years and 3 mths service.

9. ~~The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). C.V.S.M. and Clasp

11. (*~~If the accused is a warrant officer.~~*) ~~The accused before he was made a warrant officer last held the regimental~~ rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of dated and in his regiment (*or* corps *or* department) the rank of dated

(17755/6/0) Wt.34498/1750 20,000 10/42 A.& E.W.Ltd. Gp.698
(39909) Wt.33904/1429 15,050 2/44 " "

Ex Y

Lieutenant Major

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. G-5 541 Rank PTE Name ROBICHAUD O. of C.I.C Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

RLB

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 4th day of Mar 45

R L Boulanger Capt Adjt
Offr 1/c Unit Records

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of	, years,	
In the rank of	, years	
In the rank of	, years,	

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

No. C-5/541 Name ROBICHAUD O Sqn, Battery, or Company | Corps C.I.C | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/136 (2413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Temporary Sheet					

Ex. I.

Indemnity Major

Certified true copy
R L Boulanger Capt Adjt
Offr having custody of the Original

SUMMARY OF EVIDENCE

In the case of G-57541 Pte Ovila ROBICHAUD, Le Regiment de la Chaudiere, of the Canadian Army placed on Active Service.

The C.O. directs that the evidence be taken on oath.

First Witness: K-45892 A/Sgt Savoie L., Le Regiment de la Chaudiere having been duly sworn states:

I am K-45892 A/Sgt Savoie L., after the completion of our first objective at about 1800hrs 26 Feb 1945 I gave the order to Pte Robichaud to carry on for an other attack and he answered me that "I can't go on because I did not feel strong enoug". Then he stayed in the slit trench with Pte Tessier. He reported himself on the 27 Feb 1945 at about 0900hrs he was fully equipped. Before the attack the platoon was duly warned and the accused was there.
The accused declines to cross-examine the witness

A/Sgt Savoie L.

(K-45892 A/Sgt Savoie L)
Le Regiment de la Chaudiere

Second Witness: E-102071 Pte Gagnon H., Le Regiment de la Chaudiere having been duly sworn states:

I am E102071 Pte Gagnon H. On the 26 Fen 1945 at approx 1800hrs before the attack on the second objective I saw the accused and when the attack was launched the accused was not with us. I did not see him until he reported himself on the 27 Feb 1945, at approx 0900hrs.

The accused declines to cross-examine the witness.

H Gagnon

(E102071 Pte Gagnon H.)
Le Regiment de la Chaudiere

Question to the accused

Desirez-vous faire une declaration ou rendre temoignage sous serment. Vous n'etes pas oblige de dire quoi que ce soit ni de rendre temoignage a moins que vous le desiriez mais tout ce que vous direz et toutes depositions que vous ferez seront pris par ecrit et pourront servir de preuve.

Answer

No Sir. I reserve my defence

Question to the accused

Do you want to call any witness on your behalf?

Answer

No Sir.

I certify that rule of Procedure 4 (c) (d) (e) and (f) have been complied with. This summary of evidence consisting of 2 pages has been taken down by me in the presence and hearing of the accused.

Signed in the Field
this 5th day of March 1945

(E. Ouellet) Lieut.
Officer taking Summary

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (~~an~~) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RF 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s)~~.(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(2) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(3) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Evidence on Oath. Do you intend to call witnesses on your behalf? Ans No. Are they witnesses as to character only? Ans N/A.

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RF 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)~~

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans No Sir.

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3)

(1. AFB 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes Sir I will Address the Court.(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G 57541 Pte Aula Robichaud, R de Chaud

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~Not~~ present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for two (2) years. The Court recommends the accused be given every consideration of his good record.

(Sgd) A Buntingdale 8 Mar 45. (Sgd) Pedelman Maj
Judge-Advocate, if any. Date awarded. President. (RP 45.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I vary the sentence so that it shall read 'to undergo detention for one year' and I confirm the finding and sentence so varied.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) JAR

(1. AA 57A. Delete if not used.)

(Sgd) James Roberts Brig

Date 9 Mar 45

Commanding 5 Can Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G 57541 Pte Robichaud O.	16 Mar.	J S L Espenay Maj A/OC, R Chaud

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

24-V

Pte ROBICHAUD. R

24-V

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty Eighth day of November, 1942.

Whereas it appears to me, the undersigned, an officer in Command of Third Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~] of

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

~~*[I am unable to appoint:—~~ of

~~*(1 Three Officers to form the Court)~~

~~*(2 A Field Officer as President)~~ of

for the following reasons, namely :—]

Proceedings Reviewed

H.H. Haugh Capt

pr Treasurer

15 Jan 43

Gemmell Major Pres.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	W.C. Gemmell	West N.S.R.

Members.

Rank.	Name.	Regiment.
Capt	J.H. Farthing	Carlt & York R
Lieut	J. Roy	R 22e R
(Waiting) Lieut	H.M. Eisenhauer.	West N.S.R.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier.

Commanding 3 Cdn Inf Bde.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
G 19222 Pte Raymond, ROBICHAUD West N.S.R.	1st Charge:- Sec 18 (4) A.A.	NOT GUILTY	NOT GUILTY	
	2nd Charge:- Sec 40 A.A.	NOT GUILTY	GUILTY	
	See charge Sheet Attached		To undergo detention for sixty days. Cemmell Major Pres. 30 Nov 42	confirmed 1 December 1942 Charles Faulkes Brigadier, Comd. 3 Cdn. Inf. Bde.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No.
Answer (to be recorded on separate sheet if necessary) :—

(Signed) Charles Faulkes Brigadier (Signed) Cemmell Major
Commanding 3 Cdn Inf Bde West N.S.R.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the thirteenth day of November 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of ~~each~~ such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter)~~
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this thirteenth day of November 1942

Cemmell Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 1 day of December 1942

Charles Faulkes Brigadier.
Confirming Officer. 3 Cdn Inf Bde

Promulgated and extracts taken in the case of G 19222 Pte Robichaud R

(a) (Dated) 4 Dec 42 (Signed) O H Nielson Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(84) Wt. 38092/1216 70m 2/43 W. & Co., Ltd. Gp. 748/2

COPY

HEADQUARTERS
3 Cdn Inf Bde

3 CIB/5-10
1 Dec 43

G.O.C., 1 Cdn Div

Field General Court Martial
No.22 Pte Raymond RABICHAUD
West N&B

1. As there is some doubt as to the intelligence and mental capacity of the marginally named soldier, I recommend that Pte Rabichaud should be examined by the psychiatrist before the sentence of this court takes effect.

2. This soldier is considered in his unit to be mentally deficient and I consider that to carry out the sentence without first ascertaining that this soldier can be held responsible for his action would have a bad effect on the discipline in the unit.

(Sgd)(Charles Foulkes), Brigadier,
Commanding 3 Cdn Inf Bde.

/VGR
Time of Signature_____hrs.

B2

CHARGE SHEET

G19222 Pte Raymond ROBICHAUD, West N.S.R., a soldier of the Canadian Army Overseas, stationed in the Field is charged with:-

1st CHARGE
Sec 16 (4)
Army Act.

When On Active Service, STEALING GOODS THE PROPERTY OF A PERSON SUBJECT TO MILITARY LAW,

In that he,

In the Field, on the 23 Nov 42 stole a ring, the property of F42632 Pte Pierce, H.M. West N.S.R., a person subject to Military Law.

2nd CHARGE
Sec 40
Army Act.

When on Active Service, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

In that he,

In the Field, on 23 Nov 42 was in improper possession of a ring, the prpperty of F42632 Pte Pierce, H.M. West N.S.R.

In the Field.
27 Nov 42.

(M.P. Bogert), Lt.-Col.,
Comd. West N.S.R.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field.
28 Nov 42.

(C. Foulkes) Brigadier.
Comd 3 Cdn Inf Bde

G. 19222. Pte Robichard R.

November 30th/1942

[illegible] Capt

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held ~~at~~ in the field on the 30th day of November 1942 by order of Brigadier C. Foulkes

Commanding 3 Cdn Inf Bde dated the 28th day of November 1942

President.

Major W. C. Gemmell West N.S.R.

Members.

Capt. J. H. Farthing Carlt & York R.

Lieut. J. Roy R 22e R.

~~Officer under instruction.~~ G

~~Lieut. H. Ar. Eisenhauer West N.S.R.~~ G

, Judge Advocate.

Trial of* G19222 Pte Raymond Robichaud West N.S.R.

The order convening the Court, the charge-sheet and the summary (~~or abstract~~) of evidence are laid before the Court.

~~The Court satisfy themselves that is not available to serve owing to~~ G

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut J. H. ~~Rodgers~~ Jones West N.S.R. G

~~Counsel,~~‡ or defending officer† Lieut A. W. Rodgers West N.S.R.

At Hoo'd clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q263. WLW43203-426. 10,000 sets. 1/40. R. & H. Ltd. G607/11. Forms A 9/55.

B

The President, members ~~and judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Lieut. H.R. Rosenbaum Host N.S.R.

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act, sec. 16 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not Guilty. *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

N/A *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

N/A *Answer.*

The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? No.

Answer.

The prosecutor makes ~~an~~ no opening address [~~hands in a written address which is read, marked~~ , ~~signed by the President, and attached to the proceedings.~~]

The prosecutor proceeds to call witnesses. –

First witness for prosecution.

F-42632 Pte Pierre H.M.
West Nova Scotia Regt.

being duly sworn, is examined by the prosecutor.

On the ~~23~~ 24rd nov 1942 while I was packing some of my belongings I looked for a ring that I was keeping at the time in a jar on the mantle place in my room. This was following the release of Pte Robichaud R. from the unit detention as I had reasons to believe he would have the ring I wrote this note to Sgt Cunningham - (note submitted as evidence ex-B-)

Q. When did you see the ring last before you found it to be missing?

A- Either saturday or the sunday before - the 21st or 22nd nov '42

Q- And where was the ring at that time

A- It was in the glass jar on the mantle piece.

Q. Did you remove the ring from that time from the jar anytime after ~~of~~ saturday or sunday, when you last saw it

A- no sir

Q- Did you give anyone else authority to remove it?

A- no sir

Q- Do you recognize the accused.

A- Yes sir, Pte Robichaud R.

Questions by the defence -

C 2

Q - In your evidence you stated that you last saw the ring on the 21st or 22nd - and that Robichaud was released on the 23rd - and that first noticed the loss of the ring on nov the 24th

A - Yes sir -

Q - What reasons did you have for thinking that Robichaud might had taken the ring -

A - I slept in the same rooms as the prisoners and had the ring on the mantle piece in the same room - so he could easily help himself -

Q - Where there any others sleeping in the same room besides Robichaud?

A - Yes sir -

Q - How many -

A - one other sir -

Q - Why did you write asking to contact Robichaud and not the other?

A - Because the other convinced me he did not have the ring -

Q - Could you tell me the chances of anyone gaining access to that room from the 21st or 22nd until the loss was discovered on the 24th

A - Yes - anyone of the provost section could have entered that room -

Q - What would you say was the value of the ring -

A - nothing to anybody else but me -

Second witness F-39879 Sgt Cunningham H.S. W.N.S.R. Being duly sworn states -

Q - On the 25th nov you were acting as pl sgt where you not?

A - Yes sir

Q - Do you recognize the accused

A - Yes - Pte Robichaud R.

Q - Was the accused a member of #15 P.L. on the 25th -

A - Yes sir since the middle of Mar - 1942

Q - Sir on the afternoon of the 25th nov 1942 C.Q.M.S. Lothus gave me a letter which had been given to him the day before by Pte Pierce H.M. (letter recognized by the witness) the letter mentioned that Pierce had lost a ring and he asked me to see if Robichaud had the ring I questioned Robichaud and found him wearing a ring answering to the description of the ring mentioned in the letter - I took possession of the ring and prefered the charge against Pte Robichaud - (Ring identified by witness) Ring Ex A.

~~Lieut. Felt. Jones being duly sworn~~

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes.

Question. Do you intend to call any other witness in your defence?

Answer. No.

Question. Is he a witness as to character only? *Answer.*

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

G

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

G. 1922 Pte Robichaud R. duly sworn states:

by the ~~prosecution~~ defence

Q. Have you ever had this ring -

A. Yes I have had it on my finger -

Q. How did you come to have that ring -

A. I picked it up on the side walk outside New Haven -

Q. Was it East or West

A. Towards the billets. That is to say E West of New Haven -

Q. Do you remember what date it was -

A. It was Tuesday the 24th of Nov 1942

Q. Did you report finding the ring to anyone.

A. No Sir -

Q. Why

A. I thought the ring was of no value and I did not bother reporting it -

Q. Was the ring actually on the side walk.

A. No Sir it was between the side walk and ~~[illegible]~~ the grass -

Q. When you were in Pte Pierce's Room - did you see a glass jar on the mantle piece

A. No Sir.

Q. While you where in Pte Pierce's room - when there any people ~~[illegible]~~ entering the room from time to time -

A. I did no notice but the door was open to anyone -

Questions by the prosecution

Q. You stated that you were wearing the ring in question did you intend to keep it for yourself.

A. Yes - seeing it was of no value -

Q. You didn't report the finding of the ring to any body -

A. No Sir

Q. Do you think you could have found out who the ring belonged to -

A. I think I could have, but did not thing it had any value -

Q. - Questions by the Court

Q. How old are you Robichaud

A. 21 Sir

Q. How old were you when you left school -

A. about 16 Sir

Q. What grade were you when you left.

A. grade six -

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused Not Guilty of the first charge and Guilty of the second charge

Finding of the first charge given in open court.

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut J. H. Jones having been duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused.

Nil

[Instruction.—It is reason of the nature of the service of the accused in a departmental corps, in otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must require into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

HEADQUARTERS
3 Cdn Inf Bde

3 CIB/5-10
28 Nov 42

Major W.C. Gemmell
~~Major P.H. Stehelin~~
West N.S.R.

President of F.G.C.M.
G19222 Pte Robichaud, R.

1. The C.O. of the West N.S.R. has submitted that it is the opinion of the M.O. of the West N.S.R. that Pte Robichaud is a soldier of dull intelligence and has suggested that the trial be withheld pending investigation at the Neurological Hospital. I direct that the court proceed and if the accused is found guilty and it is the opinion of the court that Pte Robichaud is mentally deficient it will be in order for the court to make a recommendation that the accused be examined by a Neurological specialist before he is committed to serve any sentence which the court awards.

Charles Foulkes

(Charles Foulkes), Brigadier,
Commanding 3 Cdn Inf Bde.

/WGB
Time of Signature 0900 hrs.

The court are of the opinion that the accused No. G19222 Pte Robichaud R. is not so dull as would be imagined. This attitude could be a front to try and get away with anything that called for disciplinary action. At the same time the court recommend that the accused be examined by a neurological specialist.

Gemmell Major Pres
J. H. Farching Capt. Member
J. Roy Lieut Member

Lemmetz/Kij 24/9/42 Ex C

G19222 Pte Robichaud Raymond

Date of Enlistment - ~~Nov 1941~~ Aug 15 - 1941
~~Date~~ of arrival in Eng - Nov 1941
occupation - laborer.

age — 19 yr
D of B. — Nov 9th 1921
P. of B. — St John N.B.
Nat — French Canadian
Relig. — R.C.
S.S. — Single

Family Hist - Father - 1 — Robichaud; could not tell me his father's first name. "He died when I was just a young baby."
Step father - Geo Thomas, labourer at the "dry docks".
Mother - ~~[illegible]~~ He was unable to give me the maide name of his mother "I can't remember back that far".
Sisters - 1 alive 0 dead } all in good health
brothers - 2 " 0 "

Past Hist. - No serious illnesses during childhood. Began school about "5 or 6" yrs of age & stopped at 15 yr being in grade VI. Had to repeat several grades at school. I used to work on Silverfalls farm during the time he was attending school. This farm was an Industrial school. After the death of his father he was placed in an orphanage. He was later sent to this farm which was run by the R.C. sisters. After he was 15 yrs of age he left the Industrial farm & got work on various farms about the neighborhood. He held one job for 8 months. "I usually left because I didn't like the bosses; they were too cranky." I was in the General Public hospital, St John N.B. for my nerves. My arm would shake (a course tremor) all the time. It was just like someone shivering." "I was in hospital for 3 or 4 months." He could not tell me the diagnosis of this nervous disease.

Mental - Robichaud R - specimen of his handwriting
Reads & writes fairly well. Months of year +; days of week +; can do simple problems in arithmetic; can tell time by watch; He is a quiet, reserved type of lad; says he does not keep company c̄ girls. Could not name any chums; says he drinks a little "enough to get feeling good": drinks alone; kept biting his finger nails during interview & stated when stopped "my bother bites them up to there" pointing to half way up the nail. Says there is nothing bothering him

I could not elicit any delusions or hallucinations.
Have you any friends? "just when I make them;
say he has one friend Melvin Goldins, C. & Y.
What is the capital of Canada? no reply – could not answer
" " " " " W.S.A. ? " " " " "
" " " " " Br Empire? " " " " "
He is correctly orientated as to T.P. & P.
says that at school he was at times considered backward
at school.

Diagnosis – Dull normal or borderline intelligence.
Showing early Schizoid Tendencies

[signature] capt

From

Received By No. 2 C.B.D.M.S. Date

MED. 16

24 / Nov 42.

Sgt. Cunningham :

Dear ~~Sr~~ Friend ~~[illegible]~~ Ex B

This morning following the release of Pte. Robicheau R. I find a ~~ring~~ ring missing. A mans signet ring. (no initals) gold, well worn and thin, no doubt a little bent. Would it be to much trouble for you and ~~a~~ Cpl Vienott to keep an eye open, and if seen please keep the same if you don't know

(over)

my adress and oblige.

Pte. H. M. Pierce.

Gerrenold
Pres.

30 Nov 1942.

Mitigation of sentence by Trent Rogers A.W.

The B.M.O. has reported on the dull intellect of the accused and the petty crimes are typical of one who is not sufficiently alert and intelligent to be a good soldier of circumstance. His coy. comd. has never treated him partially on the times he has been up before him with these charges cause he realizes that the chap is not quite up to standard - therefore not quite responsible for his petty ~~mis~~ crimes. I'm quite certain that he would not know the steps to take in a case of finding lost articles.-

Ex "A" Ring being held by Pres. pending order for disposal.

Cemyell Maj
Pres

M.F.M. 6
(A.F.B. 122)
17553—7-41 (1215-20)
H.Q. 1772-30-1052

No. 617222 Name ROBICHAUD, R. Sqn., Battery, or Company Corps West NSR Date of enlistment G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26 Apr 42	Pte		(1) WOAS neglect to the prejudice etc, i.e. neglect to have his hair cut after having been warned to do so. Sec 40 A.A. (2) WOAS conduct to the prejudice etc i.e. appearing on parade 8 min late on 1 May 42. Sec 40 AA	Cpl Cunningham.				
	1 May 42	"		(3) WOAS conduct to the prejudice etc i.e. appearing on parade improperly dressed Sec 40 AA (4) like the Cy was standing to AWL from 2245 hrs 3 May 42 to 2359 hrs 3 May 42. 15(1) AA	L/Cpl Vaisnot				
	1 May 42	"			Cpl Taylor.	8 days C.B.	4 May 42	Mjr J. G. Hebb.	
Field	13 May 42	"		AA 15(1) AWL from 2359 hrs 18 May 42 to 0600 hrs 19 May 42.	Cpl Goudrey. L/Cpl Pendleton.	7 days C.B. 7 days pay.	21 May 42	Cl Lawson.	For 4 days. Pay 149(1)e.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23 May 42	Pte		(1) AA40 conduct to the prejudice dirty rifle on parade. (2) AA40 conduct to the prejudice having his section of puncture [illegible]	Lt Cunningham Sgt Martin	Fox 1 days pay. 14 days C.B.	25 May 42	Col Lawson	
Field	31 May 42	"		(1) AA10(4) Breaking out of barracks while C.B. (2) AA15(1) AWL from 1300 31 May 42 to 2230 hrs 31 May 42. (3) AA29 Escaping from lawful custody (4) AA15(1) AWL from 0920 hrs 1 June 42 to 0930 hrs 1 June 42.	Opl Whitman C Sgt Cooper	28 days detn.	1 June 42	Col Lawson	
Field	13 Nov 42	Pte		Sec 15(1) AA UCAS, AWL, from 2230 hrs 13 Nov 42 to 0630 hrs 15 Nov 42. (2) Sec 9(1) discharging a lawful command	Sgt Cunningham	168 hrs detn.	Mjr J. G. Hall 16 Nov 42		Fox 9 days pay 14.9.(1) [illegible] 7 days pay 14.9.(1) [illegible]

Certified true copy
John R Lemmon, Capt
Adjt West N S R
27 Nov 42.

SHORT STATEMENT AS TO PARTICULARS
OF SERVICE OF THE ACCUSED

(a) The accused has been in confinement awaiting trial on the present charges for nil day in Civil Custody and 4 days in Military Custody, making a total of 4 days; of which nil days were spent in hospital.

(b) The present age of the accused according to his paybook is 21 yrs.

(c) The date of his attestation specified in his pay book is 15-7-41.

(d) The accused is in possession of, or entitled to:-

(i) No military decoration or military award.

or

(ii) Is in possession of or entitledto the following:

Cornwell Maj
Pres

I hereby certify that the foregoing particulars are true extracts from the paybook of the accused.

Date Nov 30 1942.

Joh R Cameron, Capt
Adjutant, Nova Scotia Regiment

NOVA SCOTIA REGIMENT
ORDERLY ROOM
Date
1st CAN. DIV. C.A.S.F.

Summary of Evidence
in the case of
C-19222 Pte Raymond Robichaud,
of the West Nova Scotia Regiment, a soldier
of the Canadian Army Overseas, stationed
in the Field.

By order of the Commanding Officer the West Nova Scotia Regiment this evidence is taken on oath.

First Witness for Prosecution

F 39879 Sgt Cunningham, H.S. of the West NSR having been duly sworn states:

On Wednesday 25 Nov 42 I received a letter from # F 42632 Pte Pierce, H.M describing a ring of his which he stated had been missing since the morning of the 24 Nov 42. As a result of my investigation I questioned Pte Robichaud, the accused. I found this ring on his finger. (Ring produced, marked Exhibit "A" and admitted in evidence). He stated he had found this ring on the side walk on the way in to Newhaven. On the 15th date in question I was Pln Sgt # 14 Pln of which the accused is a member.

The accused declines to cross-examine this witness

H S Cunningham Sgt.

Cammell Pres

Second Witness for Prosecution

Take notice (R.P. #76) that at your trial #F42632 Pte Pierce, H.M. now of #1 C.G.R.V. will be called and will give evidence of the following.

(1) that he is the owner of the ring (exhibit A)

(2) that the ring was in his possession until taken without authority, i.e. the ring was kept in a glass jar in Pte Pierce's room and was removed therefrom without lawful authority.

The accused having been duly ~~[illegible]~~ cautioned in accordance with R.P. 4(e) reserves his defence.

I hereby certify that R.P. 4 (c) (d) (e) & (f) has been complied with.

Taken down by me in the Field in the presence and hearing of the accused this 27th day of November AD 1942.

Orkn R Cameron Capt
(Offr detailed to take Summary)

In the Field
27 Nov 42.

Cammell Maj
Pres.

LIST OF WITNESSES in the case of 019222 Pte Rotlohaue, R. West N.Z.R.

PROSECUTION:

1. F39879 Sgt Cunningham, H.S., West N.Z.R.
2. F42632 Pte Pierce, H.R., 1 C.D.N.U.

DEFENCE: NIL.

LIST OF EXHIBITS:

1. Exhibit "A" - Ring.

Statement by the Accused as to a Defending Officer.

If I am to be tried by Court Martial on charges now pending against me I wish to have ..Lieut. C.H. Pratt.....to act in my behalf.

In the Field
27 Nov 42.

Rolvchaud R.....
Signature of Accused.

This is to certify that I ...Rolvchaud R..... have been given free of charge a copy of the Summary of Evidence, Charge sheet, documents, etc., relative to my trial by Court Martial.

In the Field
27 Nov 42.

...Rolvchaud R.....
Signature of Accused.

AA-111

GNR ROBICHAUD R.

E-30571 Gnr Robichaud, F.
No 3 CARU.
A.A.111

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this TWENTY-FIRST day of MARCH, 19 FORTY-THREE

Whereas it appears to me, the undersigned, an officer in Command of NO 3 CANADIAN ARTILLERY REINFORCEMENT UNIT, CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* ~~[I am unable to appoint:—~~

*~~(1 Three Officers to form the Court.)~~

*~~(2 A Field Officer as President.)~~

for the following reasons, namely :—]

*Omit if not applicable.

Proceedings Reviewed
H. H. Hough Capt
Reviewing Officer (J.A.G.) C.M.H.Q.
9 Apr 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	H.H. BERRY, R.C.A.	1 C.A.R.U.

Members.

Rank.	Name.	Regiment.
CAPTAIN	J.E. EYRES, R.C.A.	2 C.A.R.U.
LIEUT.	J.K. EWING, R.C.A.	1 C.A.R.U.
LIEUT.	F.R. IRWIN, R.C.A.	1 C.A.R.U.

(WAITING MEMBER)

*Signed [signature] Brigadier,
Commanding "C" Group, Cdn.Rft.Units.
Convening Officer.

*Must be signed personally by the Officer actually in command at the time, and all [illegible] the reasons in [illegible] the Convention [illegible] to [illegible]

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E-30571 Gnr. Robichaud, F. RCA. No 3 CARU.	FIRST CHARGE A.A. Sec 15(1)	Guilty	Guilty To undergo detention for Fifteen (15) months ~~detention~~ and awarded stoppages of pay to the amount of three pounds four shillings nine pence half penny in respect of deficiencies of kit. H Berry Major 22 Mar 43	I confirm the finding and sentence of the court but remit six (6) months detention.
	SECOND CHARGE A.A. Sec 15(1)	Guilty	Guilty	
	THIRD CHARGE A.A. Sec 24(2)	Guilty	Guilty	
	See Charge Sheet Attached.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"

Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) [signature] Brigadier, (Signed) H. Berry Major

Commanding "C" Group, C.R.U. Not CARU.

Convening Officer (e) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

CHARGE SHEET

The accused, E 30571, Gunner Frank ROBICHAUD, "P" Training Wing, No. 3 Cdn. Arty. Rein. Unit., a soldier of the Canadian Army Overseas, is charged with:-

1st Charge
Section 15(1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

In that he

at Huron Camp, Bramshott, Hants, illegally absented himself without leave from 2215 hrs 29 Oct 42 until apprehended by 159 H.Q. Provost Coy., at Cornmarket, Oxford at 1500 hrs 8 Dec. 42. Total absence 39 days 16 hrs 45 min.

2nd Charge
Section 15(1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

In that he

whilst a patient under close arrest in "A" Ward, West Wing, # 15 Cdn. General Hospital, illegally absented himself without leave from 0600 hrs 21 Dec. 42 until surrendering himself to the Cdn. Provost Corps at 1030 hrs 22 Feb 43. Total absence 64 days 4 hrs 30 min.

3rd Charge
Section 24(2)
Army Act

WHEN ON ACTIVE SERVICE
LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING AND REGIMENTAL NECESSARIES.

In that he

at Huron Camp, Bramshott, Hants., on 19 Mar 43 was deficient of equipment, clothing and regimental necessaries to the value of Three pounds, four shillings and nine pence half penny (£3:4:9½), which sum is 75% of the vocabulary price of such articles which amounts to Four pounds, six shillings and five pence (£4:6:5), in accordance with C.A.(O) R.O. 1398.

(B.R. ~~Ker~~) Colonel
Commanding Officer
No. 3 Cdn. Arty. Rein. Unit.

Huron Camp,
Bramshott, Hants.,
20 March 1943

To be tried by Field General Court Martial.

(J.C. Stewart) Brigadier,
Commanding "C" Group,
Cdn. Reinforcement Units.

Dated 21 Mar 43,
Bordon, Hants.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT No 1 CARU ON THE 22nd DAY OF Mar 1943

TRIAL OF:- No. E 30571 Gunner Frank Robichaud - 'P' Fig Wing 3 CARU

The Order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.
The Court satisfy themselves as provided by R.P. 22 & 23.
The accused is brought before the Court.

Prosecutor:- (name) Capt H. J. Sale (unit) No 3 CARU

Defending Officer:- (name) Lieut J. H. Grange (unit) No 3 CARU

At 1110 hrs. the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and Members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q.1. Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? A.1. No Sir.
The President, Members and judge-advocate (if any) are duly sworn.
The Officers under instruction are duly sworn.

Q.2. Do you object to N/a HB acting as shorthand writer?
A.2. N/a HB.

The shorthand writer is duly sworn.

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P. 35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Q.3. Do you wish to make any statement in mitigation of punishment?

A.3. No Sir.

Q.4. Do you wish to give evidence yourself or to call any witnesses as to character?

A.4. Defending Officer made a statement.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER.

The accused is one of those poor misguided youths who has had no home life & an extremely bad environment. He left home when only 12 yrs. old & has had no schooling whatsoever. Due to his illiteracy he has made no progress as a gunner. On several occasions he has asked for a transfer to the Pioneer Corps, but nothing was ever done about it. As a result, he feels everyone is against him. However, he wants to be a good soldier & might be one in a unit where his abilities could be used.

H. Berry Major

SUMMARY OF EVIDENCE IN THE CASE OF
E 35071 Gunner ROBICHAUD, F.,
"A" Battery, "P" Training Wing,
No. 3 Gun. Arty. Rein. Unit.

The Commanding Officer directs that the evidence be taken on oath.

1st Witness for Prosecution — E 7159 Bdr. McLelland, R.G., "A" Battery, No. 3 C.A.R.U.,

"I, Capt. J.R. McElroy, R.C.A., the officer taking this Summary of Evidence, certify that owing to the loss of time and expense involved, the attendance of this witness cannot, in my opinion, be readily procured."

"I now produce and read to you, a Certified True Copy of the Tattoo Report of "A" Battery dated 29 Oct 42, purporting to be signed by the said Bdr. McLelland and showing you to be absent without leave from 2215 hrs 29 Oct 42. This report is marked "A" and annexed hereto".

J.R. McElroy Capt

The accused does not require the presence of this witness for the purpose of cross-examination.

2nd Witness for Prosecution — Major M. Taylor, A.P.M. 159 (H.Q.) Provost Coy.

"I, Capt. J.R. McElroy, R.C.A., the officer taking this Summary of Evidence, certify that owing to the loss of time and expense involved, the attendance of this witness cannot, in my opinion, be readily procured."

"I now produce and read to you a Certificate, purporting to be signed by the said Major M. Taylor which states that you were arrested at Oxford at 1500 hrs on the 8th day of December 1942 and that at that time you were taken into custody." This report is marked "B" and annexed hereto.

J.R. McElroy Capt

The accused does not required the presence of this witness for the purpose of cross-exhamination.

3rd Witness for Prosecution — A 57034 A/Sgt. Stirling, S., N.C.O. i/c Kit Stores, No. 3 C.A.R.U., having been duly sworn, states:-

"On the 19th day of March 1943 I examined the kit of E 30571 Gnr. Robichaud, F., and found him to be deficient of articles to the value of Three pounds, four shillings and nine pence half penny (£3:4:9½), which sum is 75% of the vocabulary price of such articles which amounted to Four pounds, six shillings and five pence (£4:6:5), in accordance with C.A.(O) R.O. 1398. as per list I am now presenting".

S. Stirling A/Sgt A 57034

This list is marked "C" and annexed hereto.

The accused does not require the presence of this witness for the purpose of cross-examination.

(Tp page 2)

H.B. Berry Maj

The accused having been duly cautioned in accordance with Rule of Procedure 4(e) , reserves his defence.

Certified that Rules of Procedure 4(c), (d), (e), (f), & (g) have been complied with.

I certify that the foregoing summary of evidence, consisting of one and one quarter pages was taken down before me in the presence and hearing of the accused this 19th day of March 1943, at "P" Training Wing, No. 3 Can. Arty. Rein. Unit.

(J.R. McElroy) Capt., R.C.A.
No. 3 Can. Arty. Rein. Unit.

SUMMARY OF EVIDENCE in the case of E.30571 Gnr. Robichaud, F., #3 CARU a patient in military custody at West Wing, No.15 General Hospital, RCAMC.

The Commanding Officer directs that the evidence be taken on oath.

1st Witness: D.24120 Cpl. Deschatelets, Y., R. 22 Rgt., attached #15 General Hospital, R.C.A.M.C. having been duly sworn states:-
"I am a corporal in charge of the guard at #15 General Hospital and as such was on duty on the 20th - 21st of December 1942. At approximately 0600 hrs. on the 21st December 1942, Gnr. Robichaud, F., whom I now recognize escaped from custody on "A" Ward, West Wing. I instituted a search of the grounds, but no trace of the escaped prisoner could be found. I did not see Gnr. Robichaud again until 24th Feb.1943 when I saw him in "A" Ward when he was re-admitted. Had he returned previous to 24th Feb. 1943 I would have known it, because a nominal roll is kept of all prisoners, and they are checked by me during my tour of duty daily."

Y. Deschatelets Cpl.
D.24120 Cpl. Deschatelets, Y.

The accused declines to cross examine this witness.

2nd Witness: M.15556 Sgt. Baker, L., Edmonton Rgt., attached #15 General Hospital, R.C.A.M.C. having been duly sworn states:-
"I am the sergeant in charge of the guard at #15 General Hospital, RCAMC. On the morning of 21st Dec.1942 at approximately 0800 hrs. I checked the patients in military custody on "A" Ward, West Wing, and found that E.30571 Gnr. Robichaud, F, whom I now recognize as the accused, was absent. Gnr. Robichaud had been in custody in my charge since his admission to hospital on the 10th of December 1942. On the morning of 21st Dec.1942, when I made my check, Robichaud's bed was made up as if to appear that someone was sleeping in it. A dressing gown and pillow had been used for this purpose. I did not see Gnr. Robichaud again until the 23rd Feb.43 when he was re-admitted to "A" Ward. I would have been informed had he returned prior to this as a roster of all patients in custody is kept in the guard room, and detention wards are checked at intervals daily. Herewith (Appendix "A") certificate of apprehension by the Cdn. Military Police, which was returned with Gnr. Robichaud.

The accused declines to cross examine this witness.

L Baker
M.15556 Sgt. Baker, L.

Q. Gnr. Robichaud, do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence.

A. Yes, sir. I wish to make a statement.

N Berry Maj

Continued overleaf

E.30571 Gnr. Robichaud, F., #3 CARU states as follows:

"I went absent without leave from the West Wing because the night orderly on duty was continually taking samples of blood from me, and then telling me that I was the wrong man. One day I told him to stop that stuff and pick the right man and he told me my blood was no good anyway. I couldn't stand it any longer so I went absent without leave.

Q. Do you know the name of the night orderly?

A. No sir. I don't know his name, but I could recognize him if he is still here.

F Robichaud
.....
E.30571 Gnr. Robichaud, F.

I certify that the foregoing evidence consisting of one and a half pages was taken down by me in writing in the presence of the accused and that Rules of Procedure (C)(D)(E)(F) and (G) have been complied with.

#15 General Hospital
9 March 1943.

.....Capt.
(D.C. Balsillie)

H Bergman

20 Mar CERTIFIED TRUE COPY OF ORIGINAL REPORT

43 **ABSENTEE REPORT.** TATTOO

Squadron, Battery, Troop, Company: "A" Bty

Army Form B 290 (In sheets of 7.)

Army No.	Rank and Name	When Absent	Hour of Return	In what state	Remarks
E 30571	Gnr. Robichaud, F.	2215 hrs 29 Oct 42		[illegible]	A

Date 29 Oct 42

Sgd Bdr. McClelland

Orderly Sergeant NCO

Certificate in accordance with the Army Act, Sect. 103 (1) (iii).

I certify that No. 3.30571 Rank Gnr Name Robichaud P.

R.C.A.R.U. Unit, was arrested at Oxford

at 1500 hours on 5.12.42.

Signature of Provost Marshal, A.P.M., or other Officer, into whose custody the above-named person was taken on arrest

L. Taylor Major, APM 159 (HQ) Provost Coy

"B"

H.

No. 7 PROVOST COMPANY
CANADIAN PROVOST CORPS.

5-7-6/2373

I certify that Reg. No. R.30571 Cnr. Robichaud, F. of the Royal Canadian Artillery, No. 3 C.A.H.U. WAS APPREHENDED BY L/Cpl. McDonald, H. of No. 7 Provost Company., Canadian Provost Corps in Fleet at 1030 hrs. on the 22nd. day of February of the year 1943.

At the time of his arrest he was improperly dressed i.e. wearing a forage cap bearing the badge of the R.C.A. and was not in possession of any means of identification.

(G. Newman) ....Lieut.
No. 7 Provost Co'y.,
Canadian Provost Corps.

H Berry Maj

No. 3 Canadian Artillery Reinforcement Unit
Canadian Army Overseas

19 Mar 43

E 30571 Gnr. Robichaud, F.

LIST OF DEFICIENCIES

			100%	75%
Braces	prs	1	1 - 3½	-10½
Greatcoat		1	£3 -17 - 0½	£2-17- 9¼
Comb, hair		1	- 2	- 1½
Drawers, woollen prs		1	5 - 3	3-11¼
Dressings, first field		1	1 - 1	- 9¾
Fork, table		1	- 5	- 3¾
Knife, table		1	- 9½	- 7½
Spoon, table		1	- 4½	- 3½
TOTAL			£4 - 6 - 5	£3 -4- 9½

I hereby certify that I have examined the kit of E 30571 Gnr. Robichaud, F. and find the above mentioned list of deficiencies.
Dated this 19th day of March 1943.

I hereby certify that I examined the kit of E 30571 Gnr. Robichaud, F. on entering this unit on the 25th day of October 1942. Kit was completed.

Signed ..J. Stirling Sgt. A 57034
N.C.O. i/c Kit Stores No. 3 C.A.R.U.

H Berry Major

C

Huron Camp
No. 3 C.A.R.U.

19 Mar 43

Commanding Officer
No. 3 C.A.R.U.

F.G.C.M. - E 30571 Gnr. Robichaud, F.

Sir:-

It is respectfully requested that Capt. E.G. Dunbar be appointed to defend me at my forthcoming F.G.C.M. or, if he is not available, that Defending Counsel be appointed.

F. Robichaud
(Gnr. Robichaud, F.) E 30571

NO.7 PROVOST COMPANY
CANADIAN PROVOST CORPS

APPENDIX "A"

5-7-6/2373

I certify that Reg. No. E.30571 Gnr. Robichaud, F. of the Royal Canadian Artillery, No. 3 C.A.R.U. WAS APPREHENDED BY L/Cpl. McDonald, H. of No.7 Provost Company, Canadian Provost Corps in Fleet at 1030 hrs. on the 22nd. day of February of the year 1943.

At the time of his arrest he was improperly dressed, i.e., wearing a forage cap bearing the badge of the R.C.A. and was not in possession of any means of identification.

(Signed) C.H. Newman, #7 Provost Co'y.
Canadian Provost Corps.

SUMMARY OF EVIDENCE in the case of M.30571 Gnr. Robichaud, F., #3 CARU a patient in military custody at West Wing, No.15 General Hospital, RCAMC.

The Commanding Officer directs that the evidence be taken on oath.

1st Witness: D.24120 Cpl. Deschatelets, Y., R. 22 Rgt., attached #15 General Hospital, R.C.A.M.C. having been duly sworn states:-

"I am a corporal in charge of the guard at #15 General Hospital and as such was on duty on the 20th - 21st of December 1942. At approximately 0600 hrs. on the 21st December 1942, Gnr. Robichaud, F., whom I now recognize escaped from custody on "A" Ward, West Wing. I instituted a search of the grounds, but no trace of the escaped prisoner could be found. I did not see Gnr. Robichaud again until 24th Feb.1943 when I saw him in "A" Ward when he was re-admitted. Had he returned previous to 24th Feb. 1943 I would have known it, because a nominal roll is kept of all prisoners, and they are checked by me during my tour of duty daily."

A. Deschatelets Cpl
.....
D.24120 Cpl. Deschatelets, Y.

The accused declines to cross examine this witness.

2nd Witness: M.15556 Sgt. Baker, L., Edmonton Rgt., attached #15 General Hospital, R.C.A.M.C. having been duly sworn states:-

"I am the sergeant in charge of the guard at #15 General Hospital, RCAMC. On the morning of 21st Dec.1942 at approximately 0800 hrs. I checked the patients in military custody on "A" Ward, West Wing, and found that M.30571 Gnr. Robichaud, F, whom I now recognize as the accused, was absent. Gnr. Robichaud had been in custody in my charge since his admission to hospital on the 10th of December 1942. On the morning of 21st Dec.1942, when I made my check, Robichaud's bed was made up as if to appear that someone was sleeping in it. A dressing gown and pillow had been used for this purpose. I did not see Gnr. Robichaud again until the 23rd Feb.43 when he was re-admitted to "A" Ward. I would have been informed had he returned prior to this as a roster of all patients in custody is kept in the guard room, and detention wards are checked at intervals daily. Herewith (Appendix "A") certificate of apprehension by the Can. Military Police, which was returned with Gnr. Robichaud.

The accused declines to cross examine this witness.

L Baker
.....
M.15556 Sgt. Baker, L.

Q. Gnr. Robichaud, do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence.

A. Yes, sir. I wish to make a statement.

Continued overleaf

E.30571 Gnr. Robichaud, F., #3 CARU states as follows:

"I went absent without leave from the West Wing because the night orderly on duty was continually taking samples of blood from me, and then telling me that I was the wrong man. One day I told him to stop that stuff and pick the right man and he told me my blood was no good anyway. I couldn't stand it any longer so I went absent without leave.

Q. Do you know the name of the night orderly?

A. No sir. I don't know his name, but I could recognize him if he is still here.

F Robichaud
.....
E.30571 Gnr. Robichaud, F.

I certify that the foregoing evidence consisting of one and a half pages was taken down by me in writing in the presence of the accused and that Rules of Procedure (C)(D)(E)(F) and (G) have been complied with.

#15 General Hospital
9 March 1943.

D G Balsillie
.....Capt.
(D.G. Balsillie)

No. E30571 Name ROBICHAUD, F. Sqn., Battery, or Company Corps R.C.A. Date of enlistment 11 Oct 40 O.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. Character

M F M 6 (A F B 122) 50000 - 8-39 (1703) H.Q. 1272-46-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Lauzon, P.Q.	30 Mar 41	Pte.		A.A.Sec.40 (1) Insubordination (2) Treatening to strike a superior officer. (3) Improperly dressed on parade.	Cpl. Drouin L/Cpl. Caron, L/Cpl. Leroux	7 days detention	1 Apr 41	Lt. Col. J. N. Turgeon	Fts. 7 days pay.
Lauzon P.Q.	30 Dec 41	Pte.		A.A.Sec.40 Desobedience to a sup. officer.	Sgt. Emond, G.	7 days C.B.	30 Dec 41	Capt. Chs. Gagnon	
Petawawa	23 Jan 42	Gnr.		A.A.Sec.40 Improper replies to an N.C.O.	Bdr. Daley, R.F.	7 days C.B.	24 Jan 42	Maj. JFC. Mainder.	
Petawawa	5 Feb 42	Gnr.		A.A.Sec.15(2) Failing to appear at place of parade.	A/Bdr. Vivian	7 days C.B.	7 Feb 42	Lt. Col. Von Steinburg	
Petawawa	7 Feb 42	Gnr.		A.A.Sec.15(1) Whilst a defaulter AWL from 1400 hrs 7 Feb 42 to 1930 hrs 14 Feb 43. (Abs. 7 days, 5 hrs. 30 min.	Sgt. Bargh, H.	27 days Det.	28 Feb 42	Lt. Col. Von Steinburg	Fts. 8 days pay.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Three Rivers	14 Feb 42	Gnr.		Resisting Arrest Using insubordinate language to his superior officer. To make good cost of repairs .25¢ To make good cost of repairs $8.52 Neglecting to obey an order. To make good the cost of apprehension & return - $2018	Documentary Cpl.J.J. Barrett CSM.Rayner,H. Sgt.Stanford,A. Documantary	To make good cost of apprehension and repairs.			
Ontario Camp Bramshott Hants.	7 May 42	Gnr.		WOASAWL from fatigue from 1300 hrs 7 May 42 to 1320 hrs 7 May 42. Abs. 20 minutes.A.A.Sec.15(1) WOAS.AWL from 0800 hrs 19 July 42 to 2359 20 July 42.Absent 1 day 15 hrs 59 mins.A.A.Sec.15(1)	B.S.M.McKenna,J. Gnr.Morris,C. Gnr.Niskanen,C.I. Sgt.Loghrin, A/L/Bdr. Bdr.Lloyd,A.W. L/Bdr.Quinlan.	3 days C.B. 7 Days F.P. 2 days pay. FAI 149(1)(a) McConnell,D.	8 May 42 23 Jul 42	Lt.Col. J.F.Plow Maj.A.M. Clarke	
Bramshott Hants Ontario Camp.									

No. E 30570 Name Robichaud, F. Sqn., Battery or Company Corps R.C.A. Date of enlistment 11 Oct 40 O.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bramshott, Hants. Ontario Camp.	2 May 42	Gnr.		WOAS. Neglect to the prejudice of good order and M.D. at Haslemere Surrey, was improperly dressed, that is not wearing anklets. A.A. Sec. 40.	L/Cpl. Winter, A.R. L/Cpl. Douglas, W.B. C.P.C.	3 days C.B.	9 May 42	Lt. Col. J.F. Plow	
Ontario Camp Bramshott, Hants	19 Jul 42	Gnr.		WOAS. Cond. to the P. of G.O. & M.D. in that he at Haslemere, Surrey on 19-7-42 was improperly in possession of bicycle, the property of Lieut. E.L. Willard of Huron Camp, #3 CARU. A.A. Sec. 40.	Lieut. E.L. Willard Gnr. Turcotte, L. Bdr. Stone, A.V. Mr. Riddle Civ. P. Bdr. Lloyd, M.W. Bdr. Quinlan, F.J. S/Sgt. Lamarre	Awarded 28 days Det.	24 Jul 42	Major A.M. Clarke	Fts. 28 Days pay FRI 149 (1)(b)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18Sep 42	Gnr.		(1)AWL from 0800 hrs 17 Sep 42 to 2200 hrs 17 Sep 42(14 hrs) A.A.Sec.15(1) (2)AWL from 0800 hrs 18 Sep 42 to 2220 hrs 18 Sep 42(14 hrs 20 Min) A.A.Sec.15(1)	CSM.Bennett, Sgt.Johnson,	F.W.14 days E.R.F.P.with 14 days ft're of pay	19 Sep 42.	Lt.Col.W.C. Fletcher	Fts.1 days pay FRI 149(1)(a) 14 days pay 149(1)(b)-1 days pay FRI 149(1)(a). Total ft're 16 days pay.

CERTIFIED TRUE COPY OF ORIGINAL CONDUCT SHEET - 15 Mar 43.

H. Berry Major

J. R. McElroy Capt

(J.R. McElroy) Capt.
Adjutant,
"P" Training Wing,
No. 3 C.A.R.U.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E 30571	Gunner	ROBICHAUD, F.	No. 3 C.A.R.U.

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Army Act and of cases in which trial has been dispensed with.

Since completion of 6 mos service.
~~Since collection or appointment~~

	Within last 12 months			
For A.A. Sec. 15(1)	4	times	6	times
For A.A. Sec. 40	2	times	4	times
For A.A. Sec. 8(2)	0	times	3	times
For A.A. Sec. 9(2)	0	times	1	times
A.A. Sec. 10(1)			1	

~~Number of instances of gallantry or distinguished conduct~~

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Army Act and dispensations with trial under A.F.A. Act are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 38 days in Air Force military custody, making a total of 38 days in custody, of which 31 days were spent in hospital.

5. The present age of the accused according to his ~~recorded service is~~ attestation paper is 20 yrs 139 days as of 28 mar 43

6. The date of his ~~enrolment~~ attestation specified in his ~~recorded service~~ attestation paper is 31 Oct 40

7. The service which the accused is allowed to reckon towards discharge is 2 yrs 140 days.

8. The accused is entitled to reckon 2 yrs 140 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (~~or is in possession of or entitled to~~ ~~Since any air force decoration or reward~~ military.

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~ Air Force

H. Berry Major

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

dated , and in his regiment (or corps), the rank of

dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number E 30571 Rank Gnr. Name ROBICHAUD, F. of No. 3 C.A.R.U. Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
---	---	Nil	---	--

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 20th day of Mar 43 (R.G. MacKinnon) Lieut. Records Officer #3 CARU

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 22nd day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. ~~The witnesses~~ HB
*~~(3. The Interpreter)~~ HB
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 22nd day of March 1943.

H. Berry Major

President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (b) on page 702 M.M.L. 1929.

Signed this day of HB 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 23rd day of March 1943.

J. Stewart

Confirming Officer.

Promulgated and extracts taken in the case of E30571 Gnr Robichaud F.

(a) (Dated) D.O. 68 dated 26 March (Signed) [signature] Lieut. No. 2 CDN. ARTILLERY HOLD

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(20704) Wt.47533/242 25,000 2/42 A.& E.W.Ltd. Gp.698
(21785) Wt.19088/1259 40,000 7/42 " "

B/5/3-74

PTE ROBICHAUD R

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: ~~G-19838~~ G-18938 ~~Pte~~ Pte Robichaud, Rene - Carlt & York R - 7 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ____ beginning on (date) ____ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To forfeit all ordinary pay for a period of seven (7) days.

(Sgd) ____ Judge-Advocate, if any. 1 Feb 44. Date awarded. (Sgd) F.D. Tweedie Lt.-Col. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ____ (Sgd) ____ Commanding ____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(1). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and Sentences Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

2 FEB 1944 (Sgd) ____ Brigadier Commander "D" Group (Cdn. Reinforcement Units) C.A. Confirming Officer.

Date ____ Commanding ____

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G-18938 Pte Robichaud, Rene G+4R 7C.I.R.U. Part II Order No. 29 d/5 Feb 44	4 Feb 44	A.P. Willy Lieut 7 C.I.R.U.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFA66 (In lieu of AFA3) A.F.P. & S. (1608) (1961)

Convened by Order of Brigadier G. Francoeur Comd "D" Gp, CRU dated 31 JAN 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
~~G-19838~~ G-18938	Pte	Rene	ROBICHAUD	7 CIRU Carlt & York R

PROCEEDINGS REVIEWED

J. Rutherford Capt 15 Feb. 44.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 1 Feb 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet [or] attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is [not] amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [not] brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is [not] fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ____ as interpreter? Ans ____ ~~The Interpreter is sworn.~~(1) Do you object to Sgt. Ruch, L.F. as shorthand writer? Ans No The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure [illegible] p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt.-Col.	F.D. Tweedie	H.Q. C.R.U.
Member	Capt.	L.C. Winhold	3 C.I.R.U.
Member	Lieut.	H.F. Fleming	4 C.I.R.U.
Judge-Advocate			
Prosecutor	Lieut.	A.E. Willy	7 C.I.R.U.
Defending Offr	Capt.	T.M. Lowe	7 C.I.R.U.

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2) See Proceedings

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ____ before arraignment make(s) (no) plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in all cases the name of the accused making the plea.)

A9. The accused is [not] arraigned (separately) on all charges in the charge sheet.(1) The accused does [not] not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Ans to be recorded per Notes.*)

B3. ~~The Court considers the accused's statement. ... Court decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on ~~...~~ charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ... charge(s).~~ Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

~~C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)~~
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using ~~Record Form E on p 3.~~

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: ~~Do you wish to apply for an adjournment on the ground that any of the rules~~ relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(1. *RP 112, 113.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 85, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using ~~Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~(copies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes.
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(1. *When several accused tried separately see RP [illegible]. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, RP, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No. G~~[illegible]~~ 18938 Private Rene ROBICHAUD, Carleton and York Regiment, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas on Active Service is charged with:

FIRST CHARGE
SEC 40
ARMY ACT

When on Active Service, neglect to the prejudice of good order and military discipline,

in that he,

In the Field, at or about 1730 hours 8 Jan 44 did so negligently handle a revolver as to cause it to be discharged and thereby injured the left arm of F50154 Cpl MacDonald D.B., rendering him temporarily unfit for service

J.R. Calkin Col.
(J.R. Calkin) Colonel
Commander
7 Cdn Inf Rft Unit

In the Field
27 Jan 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

IN THE FIELD
31 JAN 1944.

G. Francoeur
(G. Francoeur) Brigadier.
Commander,
"D" Group, Cdn Rft Units.

F.B.T.

FIELD GENERAL COURT-MARTIAL

CPA95 (In lieu of AFA2)
40/PAM/1697 (2nd Ed)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G-~~106310~~ 18938	Pte		Rene	ROBICHAUD	7 CIRU Carlt & York R.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on *(date)* 31 JAN 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-col.	F. D. Tweedie	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Captain	to be detailed by CO	3 CIRU
A Lieutenant	to be detailed by CO	4 CIRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England *(Country.)*

[signature] Brigadier. *(Rank.)*

(Signed personally. RP 105 fn 2.)

Date 31 JAN 44

Commanding "D" Group, Cdn Rft Units.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No. G18938 Private (R a n k)

Robichaud R. (N a m e)

of 7 CIRU and in my opinion he is fit / unfit to undergo trial by Court Martial.

Station: Field

Date:--- 1 Feb 44

Sgd. . . . . M. G. [illegible] . . . . . .

(Medical Officer) 7 Cdn.Inf.Rft.Unit.

D.D.T.

Field General Court Martial of
G.18938 Pte. Rene ROBICHAUD, 7 CIRU
held on 1 Feb 44

It is noted by the court that the prosecutor is a lawyer. The defending officer states that he has received verbal notice to this affect and waives notice in writing under RP 89(2).

The accused on being arranged states that his regimental number is not G.19838 but G.18938. It is noted that he is referred to in the convening order under No. G.18938. The number in the charge sheet is amended to read G.18938 under RP 33(A) and the amendment initialled by the President.

PLEA OF MITIGATION BY DEFENDING OFFICER attached herewith.

301.

1 Feb 44.

G18938 Pte. Robichaud R. - Negligently handling pistol C. Sec 40 aa.

The accused has pleaded guilty to the charge and therefore the remarks following are made with a view to mitigation of punishment.

The accused is a Canadian Volunteer 31 years of age. He is a longshoreman from New Brunswick. He has been in the army for nearly three years. His documents testify to the fact that he is a good soldier. In these years of service he has not committed a single offence. He was eligible for a good conduct stripe. He has served overseas for since December of 1941. and ~~the~~ 15 months of this service has been with the Lot.

About 2 weeks before the unfortunate incident in question the accused was issued with a pistol. This was the first time he had ever handled this type of weapon. He received only one period of instruction on the weapon at which it was stressed that to become a good shot he should practice with drawing and firing in his spare time. On the evening of the accident the accused placed one round in the pistol and thoughtlessly forgot to withdraw it. Continuing his practice a few minutes later without proving the pistol the round was accidentally discharged and penetrated the arm of Cpl. MacDonald.

The accused has been badly worried over the result of his thoughtless action which in itself has been a severe punishment.

The accused has a mother in Canada who is 65 years of age and who is ill with heart trouble dependant on him. Half of his pay is assigned to her.

J.P.T.

2.

These facts are submitted in the hope that they will weigh in favour of the accused when sentence is considered by the Court.

Geo Lowe Capt
C.B. Stigers 7 CSRU

List of witnesses in the case of C18938 Pte Robichaud R.

FOR THE PROSECUTION

First Witness	F50454 Cpl MacDonald D.B.		7 CIRU
Second Witness	F50232 A/Cpl Mawdsley J.		7 CIRU
Third Witness	F34774 L/Cpl Masters W.J.		7 CIRU
Fourth Witness	F45156 Pte MacDonald H.D.		7 CIRU
Fifth Witness	Capt M.G. McGuire	RCAMC	7 CIRU

FOR THE DEFENCE

Nil

1. I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Leipzic Barracks, preliminary to my Court-Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

R Robichaud
.....
(R. Robichaud)

Dated at Leipzic Bks
this 27th day of
January 1944

2. I hereby acknowledge that I have been served with a true copy of an additional Summary of Evidence taken at preliminary to my Court-Martial.

3. I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Capt F.H. Flourde

if he is available.

R Robichaud
.....
(R. Robichaud)

Dated at Leipzic Bks
this 27th day of
January 1944

$\$07$

SUMMARY OF EVIDENCE

In the case of G19838 Private Rene ROBICHAUD, Carleton & York Regiment, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION — F50154 Cpl MacDonald D.B., Nth NS Highrs, on the strength of 7 Canadian Infantry Reinforcement Unit having been sworn states:

I am F50154 Cpl MacDonald D.B., Nth NS Highrs, on strength of "A" Company, 7 CIRU. On the night of 8 Jan 44 at approximately 1730 hours I was in Hut D5 sitting on a bed and sewing a tassel on my hat. The accused, Pte Robichaud, whom I now recognize, had a .380 pistol, pointing it at me. I said "Go away and don't be so foolish". He said "You count". Just then the shot went off. I knew that I was shot and I started out toward the door. I was going to the R.A.P. When I got as far as the door I saw that I could not make it, so I went back to the bed. I told the boys to go for the M.O. Pte Robichaud, R. went for him and came back with the medical orderly who bandaged my arm. A few minutes later the M.O. came in and changed the bandage. Later I was taken in the ambulance to 8 Cdn Gen Hospital.

D.B. Macdonald ------Cpl

(The accused declines to cross examine this witness)

SECOND WITNESS FOR THE PROSECUTION — F50232 A/Cpl Mawdsley J., North Nova Scotia Highlanders, on the strength of 7 Canadian Infantry Reinforcement Unit having been sworn states:

I am F50232 A/Cpl Mawdsley J., Nth NS Highrs, on the strength of Regtl Police, 7 CIRU. On the evening of 8 Jan 44, at approximately 1730 hours I was in hut D5. I noticed Cpl MacDonald D.B. and Pte Robichaud whom I now recognize as the accused, sitting on one of the beds. Cpl MacDonald was sewing his cap and Pte Robichaud was playing with a pistol. I saw Pte Robichaud point the pistol at Cpl MacDonald's back and I heard the accused say "Money or your life". Cpl MacDonald answered "You'll have to take my life as I have no money". After this Pte Robichaud, the accused, snapped the pistol a few times while it was still pointing at Cpl MacDonald. I then saw the accused get up from the bed and walk toward his own bed. After two or three minutes he returned to the bed on which Cpl MacDonald was sitting and sat down. As my attention was diverted elsewhere I did not watch the accused further, but shortly afterward I heard a shot fired. I turned around and saw the accused holding the pistol pointing toward the floor. Cpl MacDonald got up and asked Pte Robichaud to go to the Guard Room with him. They went as far as the door and Cpl MacDonald said that he could not make it. He went back towards the bed and fell on it. He asked for a drink of water which I got for him. When I gave him the water L/Cpl Baltzer was cutting the sleeve of Cpl MacDonalds sweater and I saw the blood on Cpl MacDonald's arm and realized he was hurt. In the meantime the accused had gone to the R.A.P. and a few minutes later returned with a medical orderly named Pte MacDonald H.D. who administered first aid. Very shortly the M.O. arrived and treated Cpl MacDonald until the arrival of the ambulance.

J. J. Mawdsley ------A/Cpl

(The accused declines to cross examine this witness)

SUMMARY OF EVIDENCE

In the case of G19838 Private Rene ROBICHAUD, Carleton & York Regiment, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

THIRD WITNESS FOR THE PROSECUTION F34774 L/Cpl Masters W.J., Princess Louise Fusiliers, on the strength of 7 Canadian Infantry Reinforcement Unit having been sworn states:

I am F34774 L/Cpl Masters W.J., P L Fus, on strength of 7 Cdn Inf Rft Unit, Regimental Police. On the night of 8 Jan 44 at approximately 1730 hours I was sitting on my bed in Hut D5 when I saw Cpl MacDonald D.E. and Pte Robichaud who I now recognize as the accused, sitting on the bed across from me. They were talking and laughing. I saw a pistol in the accused's hand and I heard Cpl Mac Donald tell him to put it away. Shortly after that I heard a shot and Cpl MacDonald fell on the bed. I got up and dressed and helped L/Cpl Baltzer cut Cpl MacDonald's sweater off. When we were cutting Cpl MacDonald's sleeve I told the accused to go and get the M.O. He returned with a medical orderly who rendered first aid. The M.O. arrived shortly afterwards and dressed the wound. In a short time the ambulance came and took Cpl MacDonald away.

W. J. Masters -----L/Cpl

(The accused declines to cross examine this witness)

FOURTH WITNESS FOR THE PROSECUTION F45156 Pte MacDonald M.D., North Nova Scotia Highlanders, on the strength of 7 Canadian Infantry Reinforcement Unit having been sworn states:

I am F45156 Pte MacDonald M.D., Nth NS Highrs, on strength of 7 Canadian Infantry Reinforcement Unit. I am a medical orderly. I was on duty at the R.A.P. on the night of 8 Jan 44. I was called upon shortly after coming on duty at 1800 hours to attend Cpl MacDonald who was reported to have been shot. I called the M.O. and an ambulance from 8 C.G.H. and then proceeded to Hut D5. I examined the patient and found a wound in the left upper arm. I dressed it, soon afterwards Capt McGuire, the M.O. at 7 CIRU arrived and took over.

[illegible] -----Pte

(The accused declines to cross examine this witness)

FIFTH WITNESS FOR THE PROSECUTION Capt M.G. McGuire, Royal Canadian Army Medical Corps, on the strength of 7 Cdn Inf Rft Unit having been sworn states:

I am Capt M.G. McGuire, RCAMC, on strength of 7 Cdn Inf Rft Unit as Medical Officer. At about 1730 hours on the night of 8 Jan 44 I received a rush call that there was a man shot so I came right down. Cpl MacDonald was lying on a bed in a hut and the orderly had already applied a first aid dressing to the left arm. I removed the dressing and found a through and through bullet wound in the middle third of the left arm with the bullet lodged in the subcutaneous tissue medial aspect. I applied dressings and gave him one surette of morphine and had him removed to the 8 CGH immediately.

M.G. McGuire ---Capt

(The accused declines to cross examine this witness)

SUMMARY OF EVIDENCE

In the case of G19838 Private Rene ROBICHAUD, Carleton & York Regiment, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

The accused was cautioned as follows:

Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of THREE pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (G) (D) (E) (F) and (G) have been complied with.

N. E. Willey -------Lt.
(Officer taking Summary)

In the Field
27 Jan 44

F.D.T.

Entitled to one G.C. Badge

MFM 6
(AFB 122)
40/P&S/186 (5488)

No G18938 Name Robichaud R. Sqn, Battery, or Company — Corps CIC — Date of enlistment 18 Jun 4 — GC Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No 1 — Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				NIL					

Certified True Copy ..... Lt ..... 17Feb44 ..... Adjt - Officer having custody of original documen

(PTO)

M.F.D. 355
22M—5-41 (372-3)
H.Q. 1772-30-620
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
G18938	Private	Rene ROBICHAUD	CYR - 7 CIRU

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	times	times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under~~ Air Force Act A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule ~~annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in ~~Air Force~~ civil custody, and Nil days in military custody, making a total of Nil days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service in~~ attestation paper is 33 yrs 202 days

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 18 Jun 41

7. The service which the accused is allowed to reckon towards discharge is 2 years 223 days

8. The accused is entitled to reckon 2 years 223 days service for the purpose of determining his pension, etc.

9. The accused ~~is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or~~ entitled to). State any air force ~~military~~ decoration or ~~military~~ reward. One good conduct badge

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit .....dated....., and in his regiment (or corps), the rank of .....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of .....years.

In the rank of .....years.

In the rank of .....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number.....Rank.....

Name.....of.....Regiment Unit

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody. S. E. Willey Lieut 4/9/ adjt 7 C.I.R.V.

Signed this 1st day of Feb

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

4B-17

Pte Robichaud R.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G-3930 Pte Raymond Joseph ROBICHAUD

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 18(2)	Guilty	Guilty	
2nd	(Alternative) AA Sec 40		Withdrawn by prosecutor.	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~Kentucky~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting trial & total of ~~xxxxxxxxxxxxxxxxxxxx~~ days of which ~~xxxxxxxxxxxxxxxxxxxx~~ days were spent in hospital (1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for two years, The court recommend the accused to mercy on the ground that he is a youth of only 20 yrs who spend 58 days in the line without rest under the most difficult fighting he tried to fight off his collapse but finally bombing by our planes was too much for him he has a previously clean record.

(Sgd) ~~xJudge-Advocate~~ 1 Oct 44 (Sgd) H N E Curry Major
~~xJudge-Advocate~~ Date awarded. President (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that he be released from custody or detention hereafter undergone.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) "A W HEAMEN"
Date 4 Oct 44 (A W Beament) Brigadier
Commanding Offr i/c Cdn Sec GHQ
21 Army Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G-3930 Pte Raymond Joseph ROBICHAUD	9 Oct 44	A E Thoms Major Registrar 21 C H H.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

In illegalities or irregularities such as a warrant withholding confirmation.

RECORDED AT CMHQ IN A8 160 4/3-17

FIELD GENERAL COURT-MARTIAL

CFA80 (To be used for AFA27) (O/P.R.S. 15698 (3864))

Convened by Order of Brig A W Beament Comd Cdn Sec GHQ 1 Ech 21 Army Gp dated 26 Sep 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-3930	Pte	Raymond Joseph	ROBICHAUD	N Shore (NB) att 7 Cdn Gen HOSP.

Certified True Copy
(W Hwang) Major DJA
Cdn Sec CMHQ 1 Ech

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) France. on (date(s)) 1 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~xxxiting Member~~, J.A. if any, and ~~Offrs~~ under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1145 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by his CO(2).~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~x~~ President to accused: ~~x~~ Do you object to ~~xxxxxxxxxxxxxxxxxxxx~~ the interpreter ~~xxx~~

~~The interpreter is sworn(1)~~ ~~x~~ Do you object to ~~xxxxxxxxxxxxxxxxxxxx~~ shorthand writer ~~xxx~~

~~The shorthand writer is sworn(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~J.A. if any, and Offrs under instr, if any, are sworn(1)~~ The following are the rk. ranks, names and units of the offrs comprising the Court, etc:

President	Major	H N E Curry	Gen List att Cdn Sec GHQ 1 Ech	
Member	Major	M L Troy	AlgRegt	" " " "
Member	Capt	F A Baillargeon	Gen List	" " " "
Judge-Advocate				
Prosecutor	Lt-Col	J W G Thompson	HQ 2 Cdn Corps.	
Defending Offr	Capt	W G D Hungerford	RCASC att Cdn Sec GHQ 1 Ech	

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) ~~(a)~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~severally~~ on ~~all~~ charges in the charge sheet.(1) The accused does (do) not object to ~~any~~ charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

the first.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO.(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.~~) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the first charge(s). The accused is (~~not~~) so informed, and he ~~(they)~~ ~~change(s) his (their) plea(s) on charge(s)~~. ~~Part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 56(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans Yes

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces ~~Statement(s) as to Character and Particulars of Service(s),~~ and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that the documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and C Ex ~~respectively~~.(3)

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the ~~Statement(s) and~~ Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes through my Defending Officer.(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused G-3030 Pte Raymond Joseph ROBICHAUD North Shore Regiment of Canada attached to No. 7 Canadian General Hospital a soldier of the Canadian Army Overseas is charged with:-

FIRST CHARGE Army Act Sec 18(2) WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he

in the field on 10 Aug 44 by discharging his Bren gun wilfullly injured himself by shooting himslef in the left foot with intent thereby to renderhimself unfit for service

SECOND CHARGE (Alternative) Army Act Sec 40 WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.

in that he

in the field on 10 Aug 44 while with his regiment in the line so negligently handled his rifle as to shoot himslef through the left foot threroy rendering hims elf unfit for service.

V O Mader Col

Oc No. 7 Can Gen Hospital.

In the Field
21 Sep 44

To be Tired by Field General Court Martial

"A W Beament"
(A W Beament) Brigadier,
OBE
CCM Sec GHQ 1 Ech 21 A G p

In the field,

26 Sep 44 .

26

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-3930	Pte		Raymond Jospeh RI[illegible]CHAUD	N Shore R att No 7 Cdn Gen Hosp.	

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) ..... endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[illegible]~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I [illegible] (a) [illegible] to form the Court, (b) a Fd Offr as President, for the reasons I have [illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	H N E CURRY	Gen List Att Cdn Sec GHQ 1 Ech 21A Gp
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Major	M L Troy	Alq Regt	Same.
Capt	F A Baillargeon	Gen List	Same.
(Rank.)	(Named or detailed. RP 106.)		(Unit.)

~~WAITING MEMBER.~~

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in FRANCE (Country.) "A W Beament" (Signed personally. RP 105 fn 2.) Brigadier. (Rank.)

Date Commanding (A W Beament) Cdn Sec G Q 1 Ech 21 Army Gp

Convening Officer.

Approved

B W Howard

ADJA

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

CdnSec GHQ 1 Ech 21 Army Gp

26 Sep 1944.

MEDICAL CERTIFICATE.

I certify that I have this morning examined No. G-3930 Rank Pte

Name Raymond Joseph R BICHAUD and he is fit to undergo trial

by court martial.
1 Oct 44

"W Edward Armour"
Medical officer.

G-3930 Pte Raymond Josep h ROBICHAUD N Shore Regt. sworn states:

Born Chatham NB 2 Jun 24, Went to public school tt grade 6 left at 15 to work as a general labourer. Volunteered 20 Jan 43. 24 months basic Edmonllston 2 months advanced utopia NB Then did fatigues until came t UK in Jul 43. Arrived 7 CIRU and was there for about 2 months then to N Shore R and came over with them on D Day and remained with unit until 10 Aug a period of 65 days. Served 58 days without rest. Had a 5 or6 day rest and was going back into action when t is happened. It was at the time when we were bombed by mistak by our own air force. Ever heard of anyone wounding himself before. I , ust could now stand it any longer. In my statemtne I said I lost my brother on D Da y, what I meant was that he was injured when larding andfell in the water. I have not heard from him since but I understand that he is in England. There were a number of casualties from time to time. In my own crew there were three wounded by bombs before this thing happened. T here were a number of casualties from time to time. The corporal was one of them I don't want to go back to the Regt because I feel that Icould not stand it. Father andmother living French extraction. Four brothers in the services my myself. One brother in talay now missing The one injured on D day and two others back home. I'm Category"A" and now walking case. Never suffered fr m any disease that would have any bearing on this. Wt 150 lbs hr 5'7". I am single and have no worries. If I could stand it I would go back. but I know that I could not stand it and would rather take punishment than go back. This condistion was growing for about 3 days and I tries to put it aside but cound not.

Read over (NF 838)

G-3930 Pte Raymond Joseph ROBICHAUD, N Sh ore Regt Att 7 Cdn Gen Hosp.

Plea in Mitigation by Defending Officer.

This accused has not been examined by a psychiatrist. This should be done in any event and as soon as possible. He seems a nervous type and has undoubtedly seen a long period of action, having been with his regt for 65 days when this happened.
He does not feel he would be a y use if he went back whendisposing of this case I would ask the Court to recommend further psychiatirc treatment. It may be that after obtaining same this soldier could be restored to normally and thereby anabled to vidicate himself to the best advantage. Gentlemen, you know and I know that in even more serious cases of battle exhaustion than this and in this war, soldiers have been given threamtre by our own Canadian Hospitals Theyhave worked marvels for these men. Whatever be your disposition will you please recommend to senior authority, that this man be given the benefit of such treatment. I'd like to see him given the chance to help himslef out of his unfortunate predicament.

Seine Inferience)
FRANCE)
1/10/44)

W D Hungerford Capt.
RCASC.
Defence Counsel.

SUMMARY OF EVIDENCE Exhibit A

Summary of Evidence in the case of G-3030 Pte Robichaud, R.J. North Shore Regiment, att 7 Cdn Gen Hospital, charged with, when on active service wilfully injuring himself with intent thereby to render himself unfit for service(AA Sec 18(2)) alternative, when on active service neglect to the prejudice of good order and military discipline (AA Sec 40)

By direction of the Commanding Officer the evidence is taken on oath.

First Witness Capt W E Armour, No. 7 Cdn Gen Hospital RCAMC sworn states:

I am Capt W E Armour, Medical Officer at No. 7 Cdn Gen Hospital, Pte Robichaud was admitted tomy care on 8 Sep 44 from No.10 Cdn Gen Hospital suffering from a wound of the left foot incurred on 10 Aug 44 according th medical records accompanning him. The wound perforates the foot in a vertical direction slanting downwards and outwards in th region of the base of the second and third toes. There was no fracture. He is now fit to return toduty probably without change of category as far as the wound is concerned. In my opinion the wound could have beencaused by a small arms projectile from a weapon held by the man himself. There is nothing to show at what distance from the wound the weapon might have been fired.

The accused declines to cross examine this witness.

W E Armour, Capt, RCAMC.
Witness.

Second Witness G-93456 Cpl Norton T.N. No. 4 Cdn Pro Coy att No. 7 Cdn Gen Hospital sworn states:

On 11 Sep 44 Pte Robichaud of the North Shore Regiment came to me with a voluntary statemtnt. He was warned that he didn't have to make a statement unless he wished to do so but anything that he did say would be taken down in writing and may be used in evidence. He ~~xxxxxxxxxx~~ understood t e caution. We ide tified ourselves prior to the statemtnt being given and told him we were investigating the circumstances surrounding his injury. That was why he came to us. I took the statement down and I read it over to him. He read it over himself before signing it. He was not under arrest at the time. There were no threats promises or inducements of any kind made to make him give the statemtnt, I produce the statement as an exhibit. I witnessed the signature of the accused, whom I recognize.

The accused declines to cross examine this witness.

T N Norton
Witness.

The statement referred to in the evidence of the above witness is attached hereto as Exhibit "A",

The accused is cautioned as follows:--

Do you wish to make any statemtnt or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you do say or any evidence you give will betaken down in writing andmay be given in evidence.

The accused doesnot wish to say anything at this time.

The accused does not call any witnesses.

I certify that the foregoing summary of evidence consisting of two pages was taken down before me in the presence of the accused and that RP 4 (C)(D)(E)(F) and (g) have been complied with.

J W GThompson Lt-Col
Officer detailed to take the
Summary of Evidence.

In the Field
23 Sep 44.

166

'A'

Statement of G-3930 Pte Robichaud R J North Shore Regt 3rd Div

Suspected Self-Inflicted Wound.

On 11 Sep 44 at at approx 1600 hrs Pte Robichard R.J. came to the writer of his own free will and asked if he may be a lowed tomake a further statement. He was told that he may doso.
The statement is as follows:
I am Pte Robichaud R.J. and have been cautioned that I do not have to make a statement, but that anything I say may be taken down in writing and may be used as evidence.
On the 10 Aug 1944 at approx 2030 hrs we were in the attack at the time of the big drive south of Caen. We were crossing a field under enemy ifre, and there were two Jerry tanks right in front of me. We were being mortared and shelled by the tanks. I was nervous two days before the attack and I guess I lost my head when I got into action and shot my self deliberately through the left foot. My nerve was gone and I couldn't possibly takeany more. I had lost a brother on D day and had seen a lot of my chums go down . I just couldn't stand it.
In my first statement I gave to the Progost on the 12 Aug 44 I didn't know what to do, so I have come and given this statement which is the truth and wish the other be ignored.
I have re d this statement and it has been read over tome and I have nothing more to add.

Signed Pte Robiahcaud R.J.

Wittneesed by G.E. Kydd L/Cpl
#2 Cdn Prov Cps.

Statement taken by T.H. Norton, Cpl.
4 Coy C.P.C.

This is exhibit A referred to in summary of evidence in the Case of G3930 Pte Robichaud RJ taken down before me this 22 Sep 44.

"JWS Thompson" Lt Col
Officer taking summary.

RCC

MFM 6
(AFB 122)
40/P&S/136 (3438)

No G-3930 Name ROBICHAUD RJ Sqn, Battery, or Company Corps CIC Date of enlistment 20 Jan 43 Padges Service or Proficiency Pay Character

Date of last entry in Company Conduct Sheet 3 May 43 No and date of last drunk N/A Period not reckoning towards freedom from extra fine Sheet No 2 Signature OC Company, etc "SIGNED BUT NOT READABLE"

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
							Exhibit "3".		
				CERTIFIED TRUE EXTRACT FROM THE REGIMENTAL BOOKS AND DOCUMENTS IN MY CUSTODY					
						"G Stewart-Patterson" Lieut. Officer i/c Rec "X" Con Sec GHQ 2Ech 21 A Gp			
					PM JG - J				

(PTO)

4W-25

Pte. Robichaud V. J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G1499 Pte Vincent Joseph Robichaud N Shore R

Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA-15 (1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) .....(1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which N/A days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
to undergo detention for six (6) months

(Sgd) ..... Judge-Advocate, if any. 3 Feb 45 Date awarded. (Sgd) W.J. Weir President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~(1) Jab.
(1. AA 57A. Delete if not used.)

(Sgd) Jas A Roberts Brig
Date 3 Feb 45 Commanding 8 Can Inf Bde.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G1499 Pte Robichaud VJ	5 FEB 45	B.A. Oulton Maj/Lt + Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 10[illegible] LW 25.

FIELD GENERAL COURT-MARTIAL

CPA506 (To issue of AFA21 40/P 20-8-1868 (5000)) 4/38B

RECEIVED 20 MAR 1945 JAG BRANCH C.M.H.Q.

Convening Order of Brig J.A. Roberts Comd 8 Can Inf Bde dated 2 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) appmt, Aironk or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-1499	Pte	Vincent Joseph	ROBICHAUD	N Shore R

PROCEEDINGS REVIEWED 21 Mar 45 [illegible]

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Held at Nijmegen (Country) Holland on (date(s)) 3 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 31/58

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp. 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1035 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to N/A as interpreter? Ans .....
The Interpreter is sworn.(1) Do you object to N/A as shorthand writer? Ans .....
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W.J. Weir	G.O.R of C
Member	Capt	A.C. MacCallum	N Shore R
Member	Capt	R.M. Lavigne	R de Chaud
Judge-Advocate			
Prosecutor	Capt.	J.A. Woodcock	N Shore R
Defending Offr	Lieut	J.C. Sutton	N Shore R

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Qi p 3.)

A8. The accused G1499 Pte Vincent Joseph Robichaud before arraignment make(s) (no) (his) plea (2)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see refrences in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*b*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans N.E.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on N/A charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on N/A charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 80(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....Do you intend to call witnesses on your behalf ?
Ans.....Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 46 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 80(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(2).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Plea in Mitigation(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, G/1499 Pte Vincent Joseph ROBICHAUD, North Shore (New Brunswick) Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
AA SEC 15 (1)

WHILE ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, absented himself without leave from 1400 hrs 1 Jan 45 until apprehended by a member of the Cdn Pro Corps at 1000 hrs 30 Jan 45. (Absent 28 Days' and 20 hrs).

In The Field.
1 Feb 1945.

(J.W.H. Rowley) Lt-Col.
Comd North Shore (NB) Regiment.

To be tried by Field General Court Martial.

(J.A. Roberts) Brigadier
Commanding 8 Cdn Inf Bde

2 Feb 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-1499	Pte		Vincent Joseph	ROBICHAUD	N Shore R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 2 Feb 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". Jak

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ Jak

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder. Jak

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ Jak

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ Jak

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj	W.J. Weir	QOR of C
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	A.C. MacCallum	N Shore R
Capt	R.M. Lavigne	R de Chaud
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Lt	C.H. Jefferson	QOR of C
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland	Jas A Roberts	Brigadier
(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)

Dat 2 Feb 45 Commanding 8 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 9) 40/P & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

MEDICAL CERTIFICATE

This is to certify, that this date I have examined G-1499 Pte ROBICHAUD, V. J., and in my opinion, found him fit to undergo trial by Court-Martial.

In The Field
3 Feb 1945

(J.McCabe) Capt R.C.A.M.C.
att North Shore (NB) Regiment.

Statement by Accused on Oath

The day the provost and picked us up we told a girl to go and get the provost to come and get us.

Plea of Mitigation

D.A.

Sir:

The Accused, G 1499 Pte. Vincent Joseph Robichaud arrived in France on the 11th of June and served well for one month before he was wounded at Carpiquet. He returned to this theatre of war in November and this has been his first offence in over a year. He assigns $20.00 a month to his parents. I ask for leniency of the Court with the promise that the Accused will do his best to avoid recurrence of any offence which is contrary to Military Discipline.

J. Chetwynd Capt.

Summary of Evidence in the case of 61499 Pte Rolichaud, V.J., North Shore (New Brunswick) Regiment, Canadian Army Overseas

Exhibit "A"

The Commanding Officer does not direct, nor does the accused demand that the evidence be taken on oath,

First Witness

A/Capt. B.A. Oulton, Adjutant North Shore (New Brunswick) Regiment, states:

I produce a record of a declaration of a Court of Inquiry on the illegal absence of the accused marked Exhibit "A" and a certificate of apprehension relating to the accused which is marked Exhibit "B"

The accused declines to cross examine the witness

B.A. Oulton A/Capt

The accused was cautioned as follows

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence

A. I do not wish to make a statement

I certify that the foregoing Summary of Evidence consisting of one page, was taken down by me in the presence of the accused and that Rule of Procedure 4(c)(d)(E) and (F) have been complied with

In The Field
1 Feb 1945

J.A. Woodcock Capt
North Shore (NB) Regiment

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 22nd. day of January 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. G/1499 Pte. Robichaud, V.J.

DECLARATION.

The Court declare That G/1499 Pte. Robichaud V.J. NORTH SHORE(NEW BRUNSWICK) REGIMENT. Has been absent from his Regiment from 1400 hrs 1 Jan. 45 until 1400 hrs 22 Jan. 45 and is still absent. Also has deficient kit to the amount of, 35.31 Dollars.

This is Exhibit 'A' referred to in the Summary of Evidence in the case of G 1499 Pte. Robichaud, V.J., North Shore (N.B.) Regt. taken before me this First day of February 1945. [illegible] North Shore (N.B.) Regt.

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 APR.42

I CERTIFY THAT NO. G1499 NAME Pte. ROBICHAUD, V J

UNIT: "C" Company, North Shore Regt.

was arrested at 38 Looistraat, Heumen Holland at 1000 hrs. 30 Jan 1945

and at the time of his arrest he was wearing Military Uniform.

Signature of Provost Marshal, Assistant Provost Marshal, or the Commanding Officer, W.O., N.C.O. in charge of the Detatchment of the Cdn. Provost Corps, Cdn. Army, into whose custody the above named person was taken at time of arrest.

[signature] Lieut.
#4 Cdn Provost Coy

No.4 Cdn. Provost Company
Cdn. Provost Corps

This is Exhibit "B" referred to in the Summary of Evidence in the case of G1499 Pte Robichaud, V.J. North Shore (N.B.) Regt taken before me this First day of February 1945 [illegible]

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 22nd. day of January 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. G/1499 Pte. Robichaud, V.J.

DECLARATION.

The Court declare That G/1499 Pte. Robichaud V.J. NORTH SHORE(NEW BRUNSWICK) REGIMENT. Has been absent from his Regiment from 1400 hrs 1 Jan. 45 until 1400 hrs 22 Jan. 45 and is still absent. Also has deficient kit to the amount of, 35.31 Dollars.

This is Exhibit 'A' referred to in the Summary of Evidence in the case of G 1499 Pte. Robichaud, V.J., North Shore (N.B.) Regt. taken before me this First day of February 1945. Jan Woodcock Capt. North Shore (N.B.) Regt.

Names of President and Members E T Garman Capt N. Shore R.
D Macpherson Lt N. Shore R.
J Chetticton Lt N. Shore R.

Signature of Commanding Officer J W H Lowley LtCol
Comd: N. Shore R.

CERTIFIED TRUE COPY.

B. A. Oulton A/Capt & Adjt
Signature of Officer having custody of the Original Record.

126827 Wt.51046/560 100,000 2/44 A. & E. W. Ltd. Gp.698 Form/B.115/64

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 APR.42

I CERTIFY THAT NO. G1499 NAME Pte. ROBICHAUD, V J

UNIT: "C" Company, North Shore Regt.

was arrested at 38 Looistraat, Heumen Holland at 1000 hrs. 30 Jan 1945

and at the time of his arrest he was wearing Military Uniform.

Signature of Provost Marshal, Assistant Provost Marshal, or the Commanding Officer, W.O., N.C.O. in charge of the Detatchment of the Cdn. Provost Corps, Cdn. Army, into whose custody the above named person was taken at time of arrest.

[signature] Lieut.
#4 Cdn Provost Coy

No.4 Cdn. Provost Company
Cdn. Provost Corps

This is Exhibit 4 referred to in the Summary of Evidence in the case of G1499 Pte Robichaud, V.J. North Shore (N.B.) Regt taken before me this First day of February 1945 [signature] Accordingly capt

EXHIBIT B

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or at the case may be).*
0/1499	PTE	ROBICHAUD V J	NORTH SHORE(NB)REGIMENT

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For A W L A A SEC 15(1) 1 time. BAO

For N/A ____ times.

For N/A ____ times.

For N/A ____ times.

Date of first entry in Field Conduct Sheet 26 Dec 43

Date of last entry in Field Conduct Sheet 26 Dec 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. XXXX

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N I L		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 1ST day of FEBRUARY 1945

(J.W.H. Rowley) Lt-Col.
Comd North Shore (NB) Regiment.

MFM 6
(AFB 122)
40/P&S/136 (3438)

No G/1499 Name ROBICHAUD VJ | Sqn, Battery or Company | Corps C I C | Date of enlistment 10/6/43 | CC Badges | Service or Proficiency Pay N/A | Character

Date of last entry in Company Conduct Sheet 28/12/43 | No and date of last drunk NIL | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
"SHEET NO 1 DESTROYED - UTOPIA CENTRE, N.B.	28 DEC 43	PTE		10 DEC 43" "DATE OF LAST ENTRY A A SEC 15 (1) WOAS: A W L from 2359 hrs 28 Dec 43 until 2330 hrs 3 Jan 44 (Absent 5 Days 23 hrs 30 mins)	- 28 DEC 43" Cpl Matthews Pte Walsh	"NO OF CASES OF DRUNKENNESS - 10 Days' CB	4 Jan 44	Major H J Woods	"NIL" Forf 6 Days' Pay FR&I 149 (1) (a).

CERTIFIED TRUE COPY

1 FEBRUARY 45 B.A. Oulton Capt & Adjt

(PTO)

4T-54

Pte. Robichaud L. F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F-52375 Pte Louis Frederick Robicheau[illegible] N.S.H.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 15(1)	Guilty	Guilty	
2nd 15(1)	"	"	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 402 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ (1) [illegible]

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 24 days, of which [illegible] days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of eighteen (18) months.

(Sgd) ..... Judge-Advocate, if any. 25 Jan 45 Date awarded. (Sgd) [illegible] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) N/A

(1. AA 57A. Delete if not used.)

(Sgd) J. A. Jackingham, Brig

Date 26 Jan 45 Commanding 2 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F-52375 Pte Louis Frederick Robicheau North Nova Scotia Highlanders	29 Jan 45	J. Ferguson, Capt Adjt North Nova Scotia Highlanders

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4-T-54

CPA66 (10-1961) W AG431 40-P-36-8-1568 MML

4388

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig J. A. Jackingham DSO Comd 2 C.I.B. dated 21 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-52375	Pte	Louis Frederick	Robicheau	3 Bn N S H D

Certified true copy

[illegible] Capt

Can Sec G.H.Q. 2

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 25 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 19/147

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr~~ DC if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fore RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) DC

~~The Court is satisfied that it is properly convened and constituted(2), assumed to (are) amenable to military law, and each charge discloses an offence.~~(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~was~~ DC brought before the Court. At 0940 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) DC

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by his CO(2).~~ DC

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn(1). Do you object to ..... as shorthand writer? Ans .....~~

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2) DC

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr~~ DC if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D. Watts of	N.S.H.
Member	Capt	J.P. Palmer	S.D. & Hldrs
Member	Lt	C.F. Pellard	R.I. of C
Judge-Advocate			
Prosecutor	Lieut	R.E. Smith	N.S. Hldrs
Defending Offr	Lieut	A.M. Parker	N.S. Hldrs

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused F-52375 Louis Frederick Robicheau before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and Finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~are~~ DC arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (do) DC not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A56 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B DC

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No Stat.(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on this charge(s). The accused is (~~are~~) so informed, ~~and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB. : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ! Ans .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 40(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No Evr

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s) (~~Sheets~~), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E and Ex C respectively.(2)

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Through My Defending Officer.(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisn, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

D.E.

CHARGE SHEET

The accused, H-52375 Pte Louis Frederick Robicheau North Nova Scotia Highlanders, a soldier of the Canadian Army Overseas , is charged with:

First Charge
~~Army Act~~
Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE,

in that he

in the Field, absented himself without leave from 0700 hours 9 Nov 44 until surrendering to the R.P. 11 In 2 CBRG at 2115 hours 30 Dec 44. (Total absence 51 days, 14 hrs 15 mins)

Second Charge
~~Army Act~~
Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE,

in that he

in the Field, when in close arrest, did absent himself without leave from 0235 hours 8 Jan 45 until apprehended by Cdn Provost Corps at 2145 hours 8 Jan 45.(Total absence 19 hrs 10 mins)

In the Field
19 Jan 45

(sgd) D.F. Forbes, Lt-Col
Commanding
North Nova Scotia Highlanders

To be tried by Field General Court Martial

In the Field
21 Jan 45

(sgd) J.M. Rockingham, Brig
Comd 9 Cdn Inf Bde.

D.E.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-52375	Pte		Louis Frederick	Robicheau	Nth N S Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 21 Jan 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D. Eastwood	Nth NS Highrs

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J.P. Palmer	SD&G Highrs
Lt	G.W. Pollard	FLI of C

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	J.E. Gillespie	HQ 9 Cdn inf Bde

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland (Country.) J.M. Rockingham (Signed personally. RP 105 fn 2.) Brig (Rank.)

Date 21 Jan 5 Commanding 9 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA95 (In lieu of AFA3) 40/P & S/1697 (4931)

D.E.

MEDICAL CERTIFICATE

I certify that I have this morning examined

No. M-32375 Rank Pte Name Robichaud Initials L.F. Unit NNS Highrs

and in my opinion he is fit to undergo trial by Court-Martial

Station In the Field

Date 25 Jan 45

(sgd) K.A. Campbell, Capt
Medical Officer
North Nova Scotia Highlanders

EXHIBIT "A"

SUMMARY OF EVIDENCE IN the case of F.42375 Pte L. ROBI
"B" Company North Nova Scotia Highlanders, B.".E.F., a
of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be ta

FIRST WITNESS
For the
Prosecution

C.19605 L/Cpl. Larocque, D.N., sworn state
L/Cpl Larocque, D.N., B Company, North Nov
landers. On 9 Nov 1944 I was a member of
B Company and have been in the platoon eve
approximately 0730 hrs I went to the quart
Robicheau L.F. to get him out as we were l
and moving to a new area. I went to his q
three different occasions but I could not
Robicheau L.F. has not been on parade with
since 9 November, 1944.

(Sgd) D.N. Larocque
North Nova Sco

The accused declines to cross-examine thi

SECOND WITNESS
For the
Prosecution

C.19605 L/Cpl Larocque, D.N. sworn states
present the original certificate in accord
section 163 (1)(j) dated 30 December, 194
by an officer for the officer Commanding
relating to the accused, F.52375 Pte Robi

(Sgd) D.N. Larocque,
North Nova Scot

The accused declines to cross-examine thi

Question to the accused

A. Do you wish to make any statement or
upon oath? You are not obliged to say an
give evidence unless you wish to do so bu
say or any evidence you give will be take
ing and may be used as evidence against y

A. No, sir.

Q. Do you wish to call any witnesses in
at this point?

A. No, sir.

Rules of procedure 4 (c)(d)(e)(f)(g) have
with.

I certify that the foregoing summary of e
ing of two pages was taken down by me in
presence of the accused, this 7 day of Ja

(Sgd) M.A. McTague
NNSH Officer i/c su

In the Field
7 Jan 45.

DE

ADDITIONAL SUMMARY OF EVIDENCE in the case of F.52375 Pte Louis Frederick ROBICHEAU, "B" Company North Nova Scotia Highlanders, C.W.E. a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS For the Prosecution

F.55326 L/Cpl Upton, J.D., sworn states: I am F.55326 L/Cpl Upton, J.D., Regimental Police, North Nova Scotia Highlanders. While in charge of the accused in close arrest, on 8 Jan 45, at approximately 0235 hrs, I checked the room in which the accused had been detained, and found him absent. I checked the area of the detention rooms and could not find him. I then awakened L/Cpl Lowden, of the Regimental Police and we proceeded to the Nijmegen Bridge and checked with Corps Provost on duty then, advising them of the escape of the accused. I also reported his absence to HQ No. 4 Cdn Provost Coy. I next saw the accused when he was returned to my custody, under close arrest, at approximately 1830 hrs 16 Jan 45. I hereby present as evidence certificate under the Army Act Section 163 (1) (jj), signed by Lt. R.O. Dunn, No 7 Cdn Provost Coy, officer in charge Antwerp Detachment, relating to the accused F.52375 Pte Robicheau, L.F. and marked Exhibit "A".

(Sgd) J.D. Upton L/Cpl
North Nova Scotia Highrs.

The accused declines to cross-examine this witness.

Question to the accused

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything o to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be used as evidence against you.

A. No, sir.

Q. Do you wish to call any witnesses in your defence this point?

A. No, sir.

Rules of procedure 4 (c)(d)(e)(f)(g) have beencomplied with.

I certify that the foregoing summary of evidence was ta down by me in writing in the presence of the accused an consisting of two pages, this 9 day of January, 1945.

(Sgd) M.J. Hefferman Capt
NNSH Officer i/c Summary

In the Field
19 Jan 45.

DE

CERTIFICATE UNDER ARMY ACT SECTION 163 (1) (j)

Certified that No F.52375 Rank Pte Name ROBICHEAU, L.F.
of the North Nova Scotia Highrs Regt, surrendered to No E0090
Rank Pte Name De Ste Croix L. of the R.P.
11 Bn at 2 C.B.R.D. at 2115 hrs, on the 30th
day of Dec 1944 as an absentee without leave.
He was wearing Military Uniform at the time of his Surrender.
Place Leopold Barracks
Date Dec 30, 1944 (Sgd) ???????????Major
A/C. C. 10 C.B.R. Bn.

Exhibit "A"

CERTIFICATE UNDER SECTION 163 (1)(jj) OF THE ARMY ACT DE

I certify that No. F.52375 Rank Pte Name Robicheau, L.F. of the North Nova Scotia Highlanders Regiment was arrested in Antwerp at 2145 hrs on Date 8 Jan 45 and at the time of his arrest he was wearing Military Uniform

(Sgd) R.O. Dunn Lieut
No. 7 Cdn Prov Coy
i/c Antwerp Det.

Folio 154 Exhibit "B".

EXHIBIT "C"

No. F. 52375 Name ROBICHEAU, L. F. | Sqn, Battery, or Company | Corps RCOC CIC | Date of enlistment 28/4/43 | GC Badges | Service or Proficiency Pay | DE 3/17 MFM 6 (AFB 122) 40/PAS/130 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order discussing with Hqd	By whom awarded	Remarks
Field	17 Dec 43	Pte		Sec 15(1) AWL from 0615 hrs 17 Dec 43 till 0635 hrs 17 Dec 43 (Absent 20 mins)	Sgt Cornett V.	7 days C.B.	17 Dec43	OH William Major	
Crookham	20-3-44	Pte		Sec 15(1) AWL from 1900 hrs to 2100 hours 20-3-44 Absent 3 hrs	CSM Holland Sgt Emerson	3 days C.B.	21-3-44	Capt RH Simpson	
Crookham	19-3-44	Pte		Sec 15(1) AWL from 2359 hrs 13 Apr 44 till 2145 hrs 19 Apr 44 Absent 5 days 21 hrs 46 min	Documentary	14 days FP Auto forft 6 days pay cost of app. £1-10-7	21 Apr 44	Major RC Kelly	
Field	29-4-44	Pte		Sec 15(1) AWL from 1200 hrs 29 Apr 44 until 2359 hrs 2 May 44 absent 3 days 11 hrs 59 mins.	Documentary	27 days det.	4 May 44	Major RC Kelly	Auto for 32 day py

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if under depending with trial	By whom awarded	Remarks
Field	22 Aug 44	Pte		AA Sec 15(1) AWL from 1600 hrs 22 Aug 44 to 2245 hrs 28 Aug 44	Sgt Webster Documentary	forf 15 days pay FR&I 149 (2)	28 Aug 44	Lt-Col A.F.MacPherson	For 5 days pay FR&I 149(1)a

Certified true copy of N.F.M. 6 in my possession

(Sgd) M.J. Heffernan Capt & Adjt
North Nova Scotia Highlanders.
Officer i/c Records.

EXHIBIT "B"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F.52375	Pte	Robicheau, L.F.	North Nova Scotia Highrs

NOTE.—The Field Conduct Sheet is to be produced in Court with the statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For 5 times.

~~XX~~ MJH ~~times.~~ ~~XXXX~~ MJH

~~XX~~ MJH ~~times.~~ ~~XXX~~ MJH

~~XX~~ MJH ~~times.~~ ~~XXX~~ MJH

Date of first entry in Field Conduct Sheet

Date of last entry in Field Conduct Sheet

2. ~~[illegible]~~ MJH

*3. ~~[illegible]~~ MJH

~~[illegible]~~ MJH ~~days~~ ~~XXX~~ MJH

4. The accused has been awaiting trial on the present charges for ~~[illegible]~~ and for 24 days in military custody, *i.e.*, ~~[illegible]~~ days in open arrest, ~~[illegible]~~ days in close arrest; of which ~~[illegible]~~ days were spent in hospital.

5. The present age of the accused is 24

6. The date of his attestation ~~[illegible]~~ is 28-4-43

7. ~~[illegible]~~ MJH

8. The accused is in possession of‡ C.V.S.M.

9. ~~[illegible]~~ MJH

~~[illegible]~~ MJH ~~Date of Promotion~~

~~[illegible]~~ MJH

~~[illegible]~~ MJH

~~[illegible]~~ MJH

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

*Strike out if not applicable.

‡State the military decorations (if any) held by accused.

(*28072) Wt.30723/3701 32,000 9.44 A.&E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		--------NIL-------		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this _____ day of _____

(Sgd) M.J. Heffenan Capt & Adjt
North Nova Scotia Highlanders
Officer i/c records.

5

C.72375 Pte Louis Frederick ROBICHEAU NNS

NOTE E.3

In the case of accused, I wish to bring before the court, Pte Robicheau enlisted in April 43. From that itme until present he has 5 crimes. All these occured while in England. He came to his unit on 13th Oct 44 during fighting in Sheld Estuary. He served with the unit until Div moved to Ghent for rest. While in Ghent with unit he decided that he would spend French money in his possesion, so crossed border to France and came back on 9 Nov to rejoin unit. The unit had moved. Accused heard that unit had moved to HOLLAND so followed but found no trace. He returned to Ghent and heard rumour, that unit was at St Deinz which is about 20 kil from Ghent. The unit had moved again so accused returned to Ghent where he stayed until surrendering on 30th Dec 44 to R.P. This story ~~that he was absent for the~~ shows that it was not intentional that he was absent for the first time, but that he made an honest effort to rejoin his unit.

Pte Robicheau is single but has dependent mother. He wishes to return to his coy as soon as possible so I offer this plea to the court, that his story be considered and that he be granted his wish.

(R. of P. 83 (3) complied with.)

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

3249 E

Pte Robidoux H (1st case)

See 76K for 2nd case

O. H. M. S.

M. F. B. 270

1000M 12-40 (S668-59-70)
H.Q. 1772-30-67

E-5197 Pte. Robidoux, H.
1 C.D.I.R.U.

E 329

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 3rd day of February, 1942.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial to reference to a superior qualified officer~~]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[~~I am unable to appoint~~—

*(1. ~~Three Officers to form the Court~~)

*(2. ~~A Field Officer as President~~)

*(3. ~~Three Officers having more than one year's service~~)

~~for the following reasons namely~~)

PROCEEDINGS REVIEWED

President.

Rank.	Name.	Regiment.
Major	J.M. Allen	No.1 Cdn M.G. Reinf Unit

Members.

Rank.	Name.	Regiment.
Captain	E. Van Houghnet	No.1 Cdn Eng Reinf Unit
Lieutenant	P. Gravelle	3 Cdn Div Inf Reinf Unit
Lieutenant	W.C. Wilde	No.1 Cdn Sigs Reinf Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [signature] Brigadier

Commanding Cdn Reinforcement Units.

Convening Officer.

E 4836 [illegible]

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E-5197				
PTE. ROBIDOUX, H.	First Charge	Guilty	Guilty	
2 Cdn Div Inf Reinf Unit.	A.A. sec 15(1)			Confirmed [signature] Brig
	See charge sheet attached.			
		TO UNDERGO DETENTION FOR ONE HUNDRED AND FIFTY (150) DAYS.		

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [signature] Brigadier (Signed) [signature] Major

Commanding Cdn Reinforcement Units. 1 C.M.G.R.U.
Convening Officer (c) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Fifth day of February, 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter)~~ The shorthand writer
*(4. ~~The officers under instruction)~~
were duly sworn.

* Omit if not applicable.

Signed this Fifth day of February, 1942.

[signature] Major 1 C.M.G.R.U.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~President of the Court Martial.~~

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison until further orders.~~)

Signed this 10th day of February 1942.

[signature] Brigadier,
Confirming Officer.

Promulgated and extracts taken in the case of E-5197 Pte. Robidoux, H.

(a) (Dated) 16 Feb 1942 (Signed) [signature] 2 CAIRU Maj Adj.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(11739) Wt. 40113—293 100 m 2/40 P. St. G. 6a

10/Robidoux H./1 (JAG Rev Cts)

28 Feb 42

Memorandum

F.G.C.M. - 5 Feb 42
E.5197 Pte Robidoux H.
No 2 Cdn Div Inf Reinf Unit

1. Full name of accused does not appear - MML 768, para 13. RP 12(A). MML 714.

2. Sentence not dated - Green Book 59B.

3. Documents not signed by the President - MML 769, para 25.

4. AFB 296 and MFM 6 improperly certified - AA 163(h).

5. Passed.

6. Return for recording please.

(G.M. Graham) Captain
JAG Rev Cts
Canadian Military Headquarters

CHARGE SHEET

The accused No.E-5197 Pte.H.ROBIDOUX (R.22nd. Regt.) Administration Wing 2nd Canadian Division Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas) is charged with

SECT. 15 (1) ARMY ACT

ABSENTING HIMSELF WITHOUT LEAVE

in that he

at Laurentide Camp at 1500 hrs. on the 16th day of December 1941 absented himself without leave until surrendering himself at Laurentide Camp at about 1920 hrs on the 22nd day of January 1942.

Absent 36 days 4 hrs 20 min.

Lt.Col.
(M.K.Greene) Lt.Col.
Officer Commanding
2nd Can. Div. Inf. Reinf. Unit

Laurentide Camp
30th January 1942

To be tried by Field General Court Martial

(F.R. Phelan) Brigadier
Commanding Cdn Reinforcement Units.

Farnborough, Hants
This 3rd day of Feb 42.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD AT BORDON, Hants. ON THE 5th DAY OF FEB. 42.

TRIAL OF:- No. E-5197, Pte. ROBIDOUX, H., 1 CDIRU.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Lt. M.J. Chilton, (Unit) 2 CDIRU.

Defending Officer:- (Name) Lt. W.R. McIntyre, (Unit) 1 CDIRU.

At 1415 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1- No, sir.

The President, members and judge-advocate (if any) are duly sworn.

The officers under instruction are duly sworn.

Q2. Do you object to Sgt. T. Pyburn acting as shorthand writer?

A2.- No, sir.

The shorthand writer is duly sworn.

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P. 35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Q3. Do you wish to make any statement in mitigation of punishment?

A3.- Yes, sir.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4.- No, sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER.

THE ACCUSED:- "Sir, I stayed away because my wife was sick and I was not able to get anybody to take my place to look after her, and until I found somebody I stayed there with my wife."

PROSECUTOR, sworn, produced AF B-296 and copy of MFM-6.

DEF OFFICER admits accused's record is none too good, but submits present case is exceptional, owing to sickness of wife. Accused wrote requesting medical certificate re wife but to date no reply recd. Requests court to be as lenient as possible.

F. J. Allen
Major
ILMGRU

President of Court Martial.

SUMMARY OF EVIDENCE

In the case of No. E-5179 Pte. H. Robidoux

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

1st Witness for the Prosecution:- No.D-98556 Cpl. Ward, M. Admin. Wing, 2nd C.D.I.R.U. having been duly sworn states,

"I am No.D-98556 Cpl.Ward, M. of the Administration Wing of No.2 C.D.I.R.U. I am permanent Orderly Cpl. of the a/m Wing. At about 1500 hrs on the 16th day of December 1941 I called a parade of men being transferred to No.1C.D.I.R.U. Pte Robidoux was absent from parade. He remained absent until he surrendered to Sgt Martin at about 1920 hrs on the 22 January 1942. During the period from 1500 hrs. on the 16th December 1941 to 22nd January 1942 Pte. Robidoux did not answer any roll calls nor did he appear on any parades. He was absent without leave.

M Ward
(Cpl. Ward, M.)

The accused declines to question the witness.

2nd Witness for the Prosecution:- No.A-3043 L/Sgt. Martin, R.H. Admin. Wing, 2nd C.D.I.R.U. having been duly sworn states:- " I am No.A-3043 L/Sgt. Martin, R.H. of the Administration Wing of No.2 C.D.I.R.U. I am employed in the Regimental Police of the said Unit. At about 1920 hrs. on the 22nd day of January 1942 Pte. Robidoux, whom I knew to be an absentee, surrendered himself to me at Laurentide Camp. I at once placed him in arrest.

R H Martin
(Sgt Martin, R.H.)

The accused declines to question the witness.

The accused having been cautioned in accordance with R.P. 4 (e) reserves his defence.

Certified that all the provisions of R.P. 4 (c) (d) (e) and (f) have been duly complied with in connection with the foregoing Summary of Evidence.
Taken down by me in the presence and hearing of the accused this 27th day of January 1942.

H Bergeron Lieut

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No.E-8197 Pte. H.Robidoux of the R.22nd.Regt and find him fit to undergo trial by Court Martial.

J.D.Warren Capt.
(Medical Officer)

Laurentide Camp
5th February 1942.

Description of Court by which trial, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial or summary award or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30th day of Jan. 1942

Wm Anderson Maj. Cdr.
2 CDRIU

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

No.E-5177 Pte Robidoux,H. of the 2nd C.D.I.R.U.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Para. 601, K.R. 1935.

*The numbers herein stated should correspond with the number of *Entries* in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For A.W.L.	4	times	5	times.
For		times		times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct,

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Wt. 42649/664 50,000 2/40 W. S. Ltd. 52—6004

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges

for ..... days in Civil Custody,

and 15 ~~12~~ days in Military Custody.

Total 15 ~~12~~ days.

Of which ..... days were spent in hospital.

5. The present age of the accused according to his ~~xxxxxxxxxxxx~~ attestation paper is 27

6. The date of his ~~xxxxxxxx~~ attestation specified in his ~~xxxxxxxxxxxx~~ attestation paper is 21-2-40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr 11 mos

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr 11 mos years' service.

9. The accused is entitled to reckon 1yr.11mos ~~xxxx~~ service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to

]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of ....., dated ....., and in his regiment (*or* corps *or* department) the rank of ..... dated .....

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion.
In the rank of	, years,	
In the rank of	, years,	
In the rank of	, years,	

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ....., signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name ..... of the .....

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which trial, or statue of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(Continued overleaf.)

Copy taken from M. F. M. 2

No. E-5197 Name Robidoux H. Sqn., Battery, or Company Corps Royal 22nd Regt. Date of enlistment 21-2-40 O.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 500M—8-39 (1703) H.Q. 1773-45-18

Date of last entry in Company Conduct Sheet 3-7-41 No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Quebec	16-4-40	Pte		to forfiet one days pay A.W.L.		1 days Pay.	16-4-40		
U.K.	26-2-41	Pte		A.W.L. FR.X.I 149 (1) 9d)		9 days Pay.	26-2-41		
"	8-4-41	Pte		A.W.L. 22 days. 27 days Det. and	49 days Pay.	FR &1(149(1)	(a) (b)	w.e.f. 8-4-41	
"	3-7-41	"		A.W.L. 10 days. 27 days Det. and	37 days Pay	" " " "	" "	" 3-7-41	
"	3-2-41	"		A.W.L. 5 days. 5 days Pay F.R.& 1 149 (1) (a)				" 3-2-41	

Artificial
Jeffrey
Lt.

(P.T.O.)

76K (2nd case)
See 329E for 1st case

REGIMENTAL DOCUMENTS

H.Q. FILE No. .....

NAME Pte ROBIDOUX, H ..... REGIMENTAL No. .....

UNIT OF ENLISTMENT ..... RANK .....

	CONTENTS	NON-EFFECTIVE BY
	COMBINED DECLARATION FORM OR ATTESTATION AND MEDICAL HISTORY (M.F.M.1 & 1A) OR (M.F.M.2 & 2A)	DEATH
	SERVICE AND CASUALTY FORM (M.F.M.4 & 4A) (A.F.B.103)	DATE
	PARTICULARS OF FAMILY (M.F.M.5)	CAUSE
	FIELD CONDUCT SHEET (M.F.M.6) (A.F.B.122)	AUTHORITY
	CERTIFICATE OF SERVICE (M.F.M.8) COPY OF, OR DISCHARGE CERTIFICATE (M.F.M.7) COPY OF	
	FORM OF WILL (M.F.M.10 OR M.F.M.10A)	DISCHARGE
	DENTAL HISTORY SHEET	DATE
	MEDICAL REPORT OR CASE HISTORY SHEET	REASON
	MEDICAL EXAMINATION ON LEAVING THE SERVICE	AUTHORITY
	TRANSFER CLOTHING STATEMENT	
	LAST PAY CERTIFICATE (M.F.D.930A)	
	PROCEEDINGS ON DISCHARGE	DESERTION
	PROCEEDINGS COURT OF ENQUIRY	DATE
	DECLARATIONS COURT OF ENQUIRY	AUTHORITY
	PAY SHEETS	
	CARDS	
	SUNDRY	

M.F.W.2589
46/P & S/1113

E-5197 Pte. Henri ROBIDOUX
R.22e R. No.1 C.D.I.R.U.

76K

Army Form A.3.

Correspondence to be PINNED here

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 26th day of JULY, 1942.

Whereas it appears to me, the undersigned, an officer in Command of "A" GROUP CANADIAN REINFORCEMENT UNITS, C.A.(O). , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer]~~ ✓ NG.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

✓ ~~[illegible]~~

*(1. ~~Three Officers to form the Court.~~ NG.

*(2. ~~A Field Officer as President.~~

~~[illegible]~~ ✓

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

PROCEEDINGS REVIEWED.

K.G. Lundin Lieut
Remaining Officers (C.A.G.) C.H.R.
3 Aug 42

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	T.S. Ketcheson (Hast.& P.E.R.)	No.1 C.D.I.R.U.

Members.

Rank.	Name.	Regiment.
Captain	D.R. Ladore (Essex Scot.)	No.2 C.D.I.R.U.
Lieutenant	S.S.A.P. Boreham (R.Regt.C.)	No.2 C.D.I.R.U.
Waiting Member Lieutenant	M.E. George (48 Highs.)	No.1 C.D.I.R.U.

*Signature [signature] Colonel

Commanding "A" Group Cdn. Reinf. Units, C.A.(O).

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
E-5197 Pte. Henri ROBIDOUX R.22e R. No.1 C.D.I.R.U.	First Charge A.A. Sec. 15(1) SEE CHARGE SHEET ATTACHED	Guilty	Guilty 60 days detention July 27-42 Whitehead maj	I confirm the finding and Sentence of the Court W.Hamilton Rawes Colonel 27.7.42

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) W.Hamilton Rawes Colonel (Signed) D.Whitehead Maj
Commanding "A" Group Cdn.Reinf.Units. Asst. Adjt. 1 C.D.I.R.U.
Convening Officer (c) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 27th July. day of July, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 27th day of July 1942

D.Whitehead Maj

President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this ~~3rd~~ day of 19 .

~~J.~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

✓ ~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further order.)~~ ✓ N.G.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 27th day of July 1942

W.Hamilton Rawes -COLONEL
COMMANDING
"A" GROUP CDN. REIN. UNITS.
C.A.(O).
Confirming Officer.

Promulgated and extracts taken in the case of E-5197 Pte. Robidoux, H. (R22eR)1 CDIRU
Promulgated in D.O. PART II, 178, dated 29/7/42.

(*a*) (Dated) 27 Jul 42 (Signed) C.H.Bashor, Col.
(C.H. Bashor) Commander
No.1 Cdn. Dlv. Inf. Reinf. Unit

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W.D. 47202/1937 35 M. 5/41 K.P.L.-2250(2) Cp. 4/39-3
W.D. 20078/1936 40 M. 5/41 K.P. 7314-2 Cp. 4/39-3

CHARGE SHEET

The accused E-5197 Private Henri ROBIDOUX of the Royal 22e Regiment, on the strength of No. 1 Canadian Division Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army (Overseas) is charged with:-

FIRST CHARGE
Sec. 15 (1)
Army Act

While on Active Service, absenting himself without leave,

in that he,

at Algonquin Camp, Witley, Surrey, absented himself without leave from 0600 hours on the 16th day of July 1942 until surrendering himself at 1900 hours on the 20th day of July 1942 to L/Cpl Longpre in the Coy. Office of the Royal 22e Regiment, Algonquin Camp, Witley, Surrey.

Total absence: 4 days 13 hours

.....Lt-Col.
(C.C. Ferrie) A/Commander
No. 1 Cdn. Div. Inf. Reinf. Unit.

Algonquin Camp,
Witley, Surrey

24th day of July, 1942

To be tried by Field General Court Martial.

(A.Hamilton Gault) Colonel,
Commanding,
"A" Group Cdn. Reinf. Units,
C.A.(O).

Promulgated
2 p.m.
27-7-42

Witley, Surrey — Convening Officer.
26 July 42.

J S Kitchison
major

MEDICAL OFFICER'S CERTIFICATE

- K.R. (Can) Para. 557 -

I certify that I have this morning examined No.E-5197
Pte. Henri ROBIDOUX, R.22e R., No. 1 C.D.I.R.U.
No. 1 Cdn. Div. Inf. Reinf. Unit, and in my opinion
he is ~~unfit~~ fit to undergo trial by Court-Martial.

Algonquin Camp,
Witley, Surrey,
July 27, 1942.

W M S
J. Shanstey Capt.
Medical Officer, R.C.A.M.C.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT ON THE DAY OF 42

TRIAL OF:- No. E 5197 Pt Henri Robidoux Unit Royal 22e. Regiment

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Lieut Turner J. R. (Unit) Edmonton Regt

Defending Officer:- (Name) Lieut Vaughan G. (Unit) R.22. Regt.

At 0930 hrs the trial commences.

The order convening the court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 - No.

The President, members and judge-advocate (if any) are duly sworn.

The following constitute the Court:

President T. S. Tetrahem Maj. (Unit) Hast & P.E. Regt

Members D. R. Ladoux Capt. (Unit) Essex Scot.

S.S.A.P. Boreham Lieut. (Unit) Royal Regt Glade

The officers under instruction are duly sworn.

Q2 Do you object to Lieut. Clarke H. acting as shorthand writer? A2.- No Sir

The shorthand writer is duly sworn.

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court is closed to consider its finding. Court is re-opened.

Name Lieut. Turner J. R. (Unit) Edmonton Regiment sworn, produces AFB 296 and MFM 6 and upon being questioned by Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3. (To accused) - Do you wish to make any statement in mitigation of punishment? A3 - Yes

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4 - No

---

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

When I went A.W.L. this time I had an overnight pass. The day before I was in a cross country race and as I had a sore leg I was unable to get up the next morning because my leg was stiff and I stayed in bed and got up around dinner time. I knew if I stayed away a little longer that I would get no more, as I would already be marked A.W.L., than if I returned immediately. The real reason I stayed away was because I want a transfer out of the infantry. I have applied for transfer.

(over)

Q. by Court: How long ago did you make application for transfer?

A. About 9 months ago.

Q2. Have you ever been down to the Field?

A. No Sir: I was in the Provost and they told me I was too nervous to stay with them.

Defending Officer: In regard to character: I knew at one time he behaved well and then he, all at once, started going A.W.L.

The court recommends

1- As the accused has been in England for approximately two years without being with the field unit, that he be sent to the field unit.

2- That his application for transfer to the Armoured Div be checked and reported on.

Witness was

SUMMARY OF EVIDENCE

In the case of E-5197 Private Henri Robidoux, Royal 22e Regiment, attached to R22eR. Coy, No. 1 Canadian Division Infantry Reinforcement Unit.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

First Witness for the prosecution.

E-4777 Cpl G. St-Germain, R22eR. Coy of NO1 C.D.I.R.U. having been duly sworn, states:

I am E-4777 Cpl G. St-Germain, R22eR.No. 1 C.D.I.R.U. On Friday 17 July 1942 I took the bed check in hut 5 where the accused, whom I now recognize sleeps at 0605 hours and I found that the accused was absent.

G. St. Germain Cpl.....

Second Witness for the Prosecution

E-5402 Cpl E. Riopel, Royal 22e Regiment, No.1 C.D.I.R.U. having been duly sworn, states:-

I am E-5402 Cpl E. RIOPEL, Royal 22e Regiment, # 1 C.D.I.R.U. On the 17th of July 1942 I was acting as orderly sergeant for the Royal 22e Coy. I called the Coy roll at 0815 hours on this day and I found that the accused whom I now recognize was absent. On the 18th day of July 1942 I called the roll at 0815 hours and I found that the accused was absent. The accused was not present for any parade on either the 17th or 18th of July 1942.

The accused declines to cross examine this Witness.

.....Cpl. E. Riopel.....

Third Witness for the PROSECUTION

E-5241 L/Cpl M. Longpre, Royal 22e Regiment, No. 1 C.D.I.R.U. having been duly sworn, states:-

I am E-5241 L/Cpl M. Longpre of the Royal 22e R. No. 1 C.D.I.R.U. On the 19th and 20th of July I was orderly Sergeant for the Royal 22e Coy. At 0700 hrs on the 19th of July 1942 I made a bed check and found that the accused whom I now recognize was absent.
At 0615 hours on the 20th of July 1942 I made a bed check and I found that the accused was absent.
The accused was not on any parade on the 19th July 1942. He was not on any parade on 20th July 1942; but at 1900 hours on 20 July 1942 he reported to me in the Coy. Office of the R 22e R. Algonquin Camp, Witley.

The accused declines to cross-examine this witness.

L/Cpl. Longpre M...

[illegible] Major

SUMMARY OF EVIDENCE

In the case of E-5197 Private Henri Robidoux, Royal 22e Regiment, attached to R22eR. Coy, No. 1 Canadian Division Infantry Reinforcement Unit.

FOURTH WITNESS for the PROSECUTION

I am Lieut. H.J. McDOUGALL, Ass't Records Officer, No. 1 C.D.I.R.U. and I produce Part II D.O. Number 172 d/21st July 1942 showing that E-5197 Pte Robidoux, H. of the R22eRegiment, the accused whom I now recognize absent without leave from 0600 hours 16-7-42. This order is marked as exhibit "A".

H.J. McDougall Lieut

The accused having been duly cautioned in Accordance with Rule of Procedure 4 (E) reserves his defence.

I certify that the foregoing summary of evidence, consisting of two pages, was taken down by me at Algonquin Camp, Witley, Surrey, on the 24th day of July, 1942, and that Rules of Procedure 4(C) (D) (E) and (F) have been complied with.

J.R. Farmer .....Lieut.
Officer taking Summary

Algonquin Camp,
Witley, Surrey.

24th Day of July 1942.

L Ketcheson Maj

Ex. A

LAST ORDER
NO. 171
20 JUL. 42

NO. 1 CANADIAN DIVISION INFANTRY
REINFORCEMENT UNIT
PART II DAILY ORDERS
ISSUED BY
LT-COL. G.C. FERRIE ED.
ACTING COMMANDER

THIS ORDER
NO. 172
21 JUL. 42

SECTION "A" OFFICERS

1- STRENGTH INCREASE

Capt. L.F. DAWES — (EDM) T.O.S. from HQ 1 Cdn. Div. while att'd to JUNIOR WAR STAFF SCHOOL w.e.f. 16-4-42 (Auth: CAORO 22 08 d/3-7-42)

2- STRENGTH DECREASE

(a) Lieut. R.D. BROWN-CLAYTON — (PPCLI) S.O.S. to HQ 1 Cdn. Corps w.e.f. 24-3-42 (Auth: ECH/3960 d/18-7-42

(b) Lieut. J.S. FREEMAN — (HPE) S.O.S. to # 1 Cdn. Reception Camp w.e.f. 20-7-42 (Auth: 9/1 Div. Inf/R.U./1 (MS.B.) 10/Freeman J.S./1 d/17-7-42)

(c) Lieut. J.A. INRIG — (HPE) S.O.S. to # 1 CNETD (Cat. "E") w.e.f. 21-7-42)

3- ATTACHMENTS

(a) Lieut. R.D. BROWN-CLAYTON — (PPCLI) Ceases to be att'd FAP to HQ 1 Cdn. Corps w.e.f. 24 Mar. 42. (Auth: Ech. /3960 d/18-7-42)

(b) Capt. L.F. DAWES — (EDM) Ceases to be att'd FAP to Junior War Staff School w.e.f. 20-7-42

(c) Lieut. J.B. DUMONT — (R22eR) Ceases to be att'd to CTS FAP w.e.f. 11-7-42

(d) Lieut. J.S. FREEMAN — (HPE) Ceases to be Att'd FAP to Cdn. Reception Camp w.e.f. 20-7-42

(e) Capt. J.H. TREMBLAY — (EDM) Ceases to be att'd FAP to Junior War Staff School w.e.f. 20-7-42

(f) Capt. H.T. VICARS — (SHofC) Ceases to be att'd FAP to Junior War Staff School w.e.f. 20-7-42

4- AMENDMENT COURSES

Lieut. B.M. McLEAN — (HPE) D.O. 171 d/20-7-42 Para. 4 (b) insofar as it refers to the m/n is amended to read: w.e.f. 20-7-42

5- LEAVE OF ABSENCE

Capt. L.F. DAWES — (EDM) P.L. from 10 to 16-7-42
Capt. J.H. TREMBLAY — (EDM) P.L. from 10-to 16-7-42

6- HOSPITAL DISCHARGE

Lieut. G.W. THEAKSTON — (WNSR) Disch. from Garnons 20-7-42

Certified true copy consisting of three sheets:
[signature] Capt
Officer in Charge of Records 1CDIR4

SECTION "B" OTHER RANKS

7- STRENGTH INCREASE

(a) A-3565 Pte BLGG L.M. (RCR) T.O.S. from RCRe.t. F.U. while attending Equipment Repairers Course w.e.f. 8-7-42 (D.O. 49 d/42 RCR)

(b) K-42002 Pte BISHOP D.E. (SHofC) T.O.S. from SHofC. F.U. on adm. to # 1 CGH w.e.f. 15-7-42 (Auth: D.O. 57 d/ 21-7-42 SHofC)

(c) K-53763 Pte FERGUSON A.W. (SHofC) T.O.S. from SHofC, F.U. on adm. to # 1 CGH w.e.f. 15-7-42 (Auth: D.O. 57 d/ 21-7-42 SHofC)

(d) P-13845 Pte GRAYSTON A.B. (RCR) T.O.S. from RCRegt. F.U. while attending Equipment Repairers Course w.e.f. 5-7-42 (Auth: D.O. 49 d/42 RCR)

(e) K-52693 A/L/Sgt HODGSON P.D. (SHofC) T.O.S. from SHofC. F.U. on attending CMHQ Course # 303 Ser. HW/14 (Pltn Weapons course) w.e.f. 15-7-42 (Auth: D.O. 57 d/21-7-42 SHofC)

(f) A-3340 PTE HAMPTON C.J. (RCR) T.O.S. from RCR F.U. while on course # 804 (Inf. Gen. NCO'S) at CTS w.e.f. 13-6-42 (Auth: D.O. 49 d/42 RCR)

(g) M-16455 Pte HAYLS R. (EDM) T.O.S. from Edm. Regt. on adm. to # 1 CGH w.e.f. 15-7-42 (D.O. 58 d/21-7-42 Edm. Regt.)

(h) A-27143 Pte McGINNIS L.J. (RCR) T.O.S. from RCRegt. F.U. on adm. to # 14 CGH w.e.f. 11-7-42 (Auth: D.O. 49 d/42 RCR)

(i) G-17431 Pte McKINNON J.A. (CYR) T.O.S. from # 1 CBSC w.e.f. 21-7-42 (Auth: D.O. 42 d/20-7-42 # 1 CBSC)

(j) A-3685 Pte STEWART D.E. (RCR) T.O.S. from RCR F.U. on adm. to # 15 CGH w.e.f. 14-7-42 (D.O. 49d/42 RCR)

(k) M-15721 A/Cpl WALKER W. (EDM) T.O.S. from Edm. Regt. F.U. w.e.f. 15-7-42 on adm. to # 1 CGH (Auth: D.O. 58 d/18-7-42 Edm. Regt.)

(l) A-3610 Pte WELCH G. (RCR) T.O.S. from RCR F.U. while on course # 814 (D & M) CTS w.e.f. 8-6-42 (Auth: D.O. 49 d/ 42 RCR)

8- AMENDMENT STRENGTH INCREASE

(a) K-53582 Pte CROWE-SWORDS W.E. (SHofC) D.O. 149 d/25-6-42 Para. 7 (b) insofar as it relates to the m/n is amended to read: "w.e.f. 5 May 42 "

(b) P-48789 CSM DESCOTEAUX L. (R22eR) D.O. 137 d/11-6-42 Para. 6 (j) insofar as it relates to the m/n is amended to read: " w.e.f. 4-6-42 "

(c) E-5017 Pte GRENIER A. (R22eR) D.O. 61 d/16-3-42 Para. 4(k) insofar as it relates to the m/n is cancelled.

(d) E-4141 Pte LEBLANC A. (R22eR) D.O. 149 d/25-6-42 Para. 7 (l) insofar as it relates to the m/n is amended to read, w.e.f. 18-6-42)

(e) M-17476 Pte NIDER J. (EDM) D.O. 171 d/20-7-42 Para. 6 (d) insofar as it refers to the m/n is hereby cancelled. (Already shown before)

9- STRENGTH DECREASE

(a) H-70074 Pte DALTON J.A.R. (SHofC) S.O.S. to CMHQ w.e.f. 14-7-42 & ceases to be shown as att'd (Auth: D.O. 84 d/10-7-42 CMHQ)

(b) K-70073 A/L/Cpl MOFFATT R.C.G. (SHofC) S.O.S. to HQ CRU w.e.f. 8 Jun. 42 (Auth: CRU 6-0-CMH d/3-7-42)

10- AMENDMENT STRENGTH DECREASE

(a) K-52044 Sgt ANDERSON E.J. (SHofC) D.O. 132 d/5-6-42 Para. 6 (c) insofar as it relates to the m/n is hereby cancelled.

(b) K-70073 L/Cpl MOFFATT R.C. (SHofC) D.O.76 d/2-4-42 Para. 9 insofar as it relates to the n/n is hereby cancelled.

11- ATTACHMENTS

(a) K-52044 Sgt ANDERSON E.F. (SHofC) Att'd FAP from # 1 CSRU from 29-5-42 to 5-6-42)

(b) H-16029 Cpl HOLOSKI A. (PPCLI) Att'd this Unit FAP on reporting from hospital w.e.f. 20-7-42 pending authority to T.O.S.

(c) B-73737 Pte CATON W.H. (48th)
U-1613 " WESTBURY W.S. (48th) Ceases to be att'd to # 2 CARU w.e.f. 18-10-41

(d) K-70073 A/L/C MOFFATT R.C.G. (SHofC) Ceases to be att'd FAP to HQ CRU w.e.f. 7-6-42 (Auth: CRU 6-0- CRU d/3-7-42)

(e) A-3815 Pte WOOLRIDGE F.J. (A.WING) Att'd FAP to HQ CRU w.e.f. 21 Jul. 42 (Auth: CRU 10-2- PERS d/2-7-42

(f) G-17697 Pte BLANCHARD T. (CYR)
B-73737 " CATON W. (48th)
C-4605 " SOPHA H. (HPE)
U-1613 " WESTBURY W. (48th) The m/n ceases to be att'd FAP to # 1 CSSC w.e.f. 20-7-42)

12- AMENDMENTS ATTACHMENTS

(a) K-52041 Sgt ANDERSON E.F. (SHofC) D.O. 126 d/ 0-5-42 Para. Z insofar as it relates to the m/n is hereby cancelled.

(b) B-66542 Pte NUTT A. (RCR) D.O. 18 d/23-1-42 Para. 12 insofar as it relates to the n/n is hereby cancelled.

13- AMENDMENTS TO COURSES

G-23325 Pte GAGNE A. (CYR)
H-16001 Pte JOHNSTONE J.H. (A.Wing)
E-4369 " LAMARRE R. (R22eR) D.O. 171 d/20-7-42 Para. 11 (c) insofar as it relates to the m/n is hereby cancelled.

14- HOSPITAL ADMISSION

F-86295 Pte	LORIMER F.W.	(WNSR) # 2 CMC	20-7-42
D-62204 A/L/C	FRANKS G.	(CYR) "	"
E-24822 Pte	PETTIGREW H.	(PPCLI) "	"

Certified true copy

15- HOSPITAL DISCHARGE

G-18914 Pte	BLANCHARD A.J.	(CYR)	# 15 CGH	20-7-42
G-17050 "	CALHOUN L.	(CYR)	# 1 CGH	20-7-42
H-16029 "	HOLOSKI A.	(PPCLI)	# 14 CGH	20-7-42
C-40540 "	HUTCHINSON W.V.	(HPE)	# 14 CGH	20-7-42
K-52391 "	SALTER A.F.	(SHofC)	# 14 CGH	20-7-42
G-21004 "	LEBRUN G.	(CYR)	# 14 CGH	20-7-42
H-16497 "	SHANKS B.	(PPCLI)	# 6 CCS	20-7-42
G-17551 "	THOMPSON P.E.	(CYR)	# 1 CGH	20-7-42
M-16147 "	VENNE J.U.	(EDM)	# 5 CGH	20-7-42
A-3403 "	WALDIE J.T.	(RCR)	# 8 CGH	20-7-42

16- AMENDMENT HOSPITAL

(a) K-52044 Sgt ANDERSON D. F. (SHofC) D.O. 126 d/30-5-42 Para. 13 insofar as it relates to the n/n is hereby cancelled.

(b) C-4705 Pte EMOREY H.C. (A.WING) D.O. 158 d/6-7-42 Para. 14 insofar as it relates to the n/n is hereby amended to read: # 15 CGH "

(c) B-66542 Pte NUTT A. (RCR) D.O. 18 d/23-1-42 Para. 16 insofar as it relates to the n/n is hereby cancelled.

17- AMENDMENT LEAVE OF ABSENCE

(a) L-20412 Pte RODGER K.M. (EDM) D.O. 170 d/19-7-42 Para. 8 insofar as it relates to the n/n is amended to read: " [illegible]pI."

(b) M-67226 Pte WLADYKA D. (EDM) D.O. 158 d/6-7-42 Para. 18 insofar as it refers to the n/n is amended to read: " Pte WLADYKA P. "

18/ COMPASSIONATE LEAVE.

K-52947 Pte WILLIAMS R. (SHofC) from 27-6-42 to 4-7-42

19- ABSENT WITHOUT LEAVE

B-75143 Pte	BAIR G.	(48th) Absent from 1800 hrs 6-7-42 still absent after 8 days.
C-5169 Pte	BOOKOUT, N.R.	(HPE) AWL from 2359 hrs 12-7-42 still absent after 8 days.
K-70317 Pte	COLEBANK M.L:	(SHofC) AWL from 2359 hrs 26-6-42 still absent after 8 days.
K-70818 Pte	DeRoche E.I.	(SHofC) Returned from AWL at 1600 hours 17-7-42
K-53587 Pte	GORDON G.G.	(SHofC) Returned from AWL at 1500 hrs on the 19-7-42
E-4639 Pte	LECOMPTE O.	(R22eR) AWL from 2300 hrs 19-7-42
E-5685 "	PRONOVOST A.	(R22eR) AWL from 2300 hrs 19-7-42
B-73720 "	LEBLEVRE J.A.	(A.WING) Ret. from AWL at 0930 hrs 15-7-42
B-73524 "	O'CONNOR C.J:	(48th) AWL from 1200 hrs 11-7-42 still absent after 8 days
K-75131 "	PALMATIER L.	(48th) AWL from 0600 hrs 6-7-42 still absent after 8 days

LAST ORDER NO. 171 20 JUL. 42

NO. 1 CANADIAN DIVISION INFANTRY REINFORCEMENT UNIT PART II DAILY ORDERS SHEET FIVE

THIS ORDER NO. 172 21 JUL. 42

20- ABSENT WITHOUT LEAVE CONT'D

E-5197 Pte ROBIDOUX H. (R22eR) AWL from 0600 hrs 16-7-42
B-73779 L/CPl STILLWELL H. (48th) AWL from 2359 hrs 2-7-42 till absent after 8 days
G-18108 Pte STOREY H.J. (CYR) AWL from 1200 hrs 7-7-42 still absent after 8 days.
A-4365 Pte TICKNER G.L. (RCR) Returned from AWL at 1545 hrs 16-7-42

21- APPOINTMENTS & PROMOTIONS & CONFIRMATIONS

(a) B-87957 Cpl MARSHELLO A.J. (RCR) To be promoted to the ranks of A/Sgt with pay on the Reinf. Str. of the RCRCoy w.e.f. 10-7-42
(b) B-87986 Pte PORTER W.P. (UHQ) To be A/L/Cpl with pay from 18 May 42 to 23 Jul. 1942 (Vice A/L/C 1 Griff J.R.)
(c) H-17655 A/L/Cpl STIRLING J. (RRCLI) Promoted to the rank of A/Cpl with pay w.e.f. 17-7-42
(d) G-23002 A/Cpl VIENNEAU M.J. (CYR) To be confirmed in the rank of Corporal w.e.f. 4 Jul. 42

22- TRADESMEN'S RATES OF PAY

C-5706 Pte HALPIN J.H. (A.WING P.E.) To draw trades pay Group "C" as Butcher w.e.f. 8 Jun. 42

23- MARRIAGE

D-106007 Pte DUROCHER W.D. (R22eR) Having been granted permission to marry was married to Miss Agnes Thomson Short at Restabrig Church Edinburg on the 1st Jun. 42

24- CHANGE OF NEXT OF KIN

D-106007 Pte DUROCHER W.D. (R22 eR) To Mrs Agnes Thomson Durocher (Wife) 14 Loganlea Place Edinburg Scot.

24- PUNISHMENTS

(a) G-10025 Pte ALLEN E.T. (CYR) Was on the 20 Jul. 42 awarded 28 days Field Punishment and placed under stoppages of pay to the sum of £0-2-5 Cost of his apprehension, on the Charge of: A.A. Sec. 15(1) WOAS AWL from 1200 hrs 7 Jul. 42 until apprehended at 1135 hrs on the 16-7-42 at Kingston.
(8 days 23 hours & 35 mins. absent)
Forfeits 9 days pay FR & I 149 (1)(a)
Forfeits 28 days Pay FR & I 149 (1)(b)
Total forfeiture of pay 37 days.

(b) B-73662 Pte CALDER J. (A.WING) Was on the 21-7-42 awarded 3 days Field Punishment on the charge of/WOAS AWL from 0600 hrs to 0900 hrs 20-7-42 (3 hours) A.A. Sec. 15(1)
Forfeits 3 days Pay FR & I 149 (1)(a)

Certified true copy.

24- PUNISHMENTS CONT'D

(c) A-3636 Pte COLLINS P. (A.WING) Was on the 21-7-42 awarded 7 days Field Punishment on the charge of:-WOAS AWL from 2359 hrs 19-7-42 until 0900 hrs 20-7-42 (9 hrs 1 min.) A.A. Sec. 15(1)
Forfeits 1 days' Pay FR & I 149 (1)(a)
Forfeits 7 days Pay FR & I 149 (1)(b)
Total forfeiture of pay 8 days.

(d) B-72931 Pte McCOY J.P. (48th) on the 10 July 42 was tried by a FGCM
Charges: 1- Sec. 15(1)A.A.
Findings:- Guilty
Sentence: 6 days detention and stoppage of pay to the amount of £3-4-3 to cover cost of apprehension.
Confirmation: Findings & sentence confirmed by Brigadier "F" Group C.R.U. on 13 Jul. 42
Close Arrest: Placed in close arrest from 0205 hrs 2-Jun. 42 to 0930 hrs 10 Jul. 42
Forf. 6 days pay FR & I 149 (1)(b)
Forfeits 39 days pay FR & I 149 (1)(c)(ii)
Forfeits 14 days pay FR & I 149 (1)(a) AWL from 2359 hrs 18 May 42 till appr. at 0205 hrs on the 2 Jun. 42 (14 days 2 hrs 5 mins)
Total forfeiture of pay 59 days.
Total stoppages of pay £ 3-4-3- under FR & I 172 (8)
(Extract from Part II order # 88 d/17-7-42 CTS)

for .....Major
(D. J. MacARTHUR) Admin. Officer
No. 1 Cdn. Div. Inf. Reinf. Unit.

AFB 296

STATEMENTS as to CHARACTER & PARTICULARS of SERVICE of ACCUSED

S-5197 Pte Henri ROBILOUX, R.C.A.S.C. No.1 C.D.U.

1. The following is a fair and true summary of the entries in the regimental conduct sheet of the accused, exclusive of convictions by a court-martial or a civil court, and of cases in which trial has been dispensed with:

	Within last 12 months	Since Enlistment
AWL Sec. 15(1) A.A.	1	4

Number of instances of gallantry or distinguished conduct: Nil

2. The accused is not under sentence at the present time.

3. ~~The accused has not been previously convicted by a Court-Martial~~ or a civil court.

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 7 days in military custody, making a total of 7 days in custody of which 0 days were spent in hospital.

5. The present age of the accused according to his attestation paper is 28 years.

6. The date of his attestation specified in his attestation paper is 21 Feb. 1940

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 Year & 243 days

8. The accused is entitled to deferred pay or gratuity in respect of 1 Year 243 days service.

9. The accused is entitled to reckon 1 year 243 days service for the purpose of determining his pension, etc.

10. The accused is in possession of or entitled to no military decoration or military reward.

SCHEDULE

of convictions by a court-martial or a civil court and of cases in which trial has been dispensed with of the accused.
On the 5th of February 1942 tried by F.G.C.M. for an offence under A.A. Sec. 15 (1) absent 37 days 4 hours 40 minutes and found guilty and sentenced to 150 days detention. Total forfeiture of pay 201 days. Released from detention on the 15 May 1942 sentence having expired. Remission earned - 50 days.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Algonquin Camp,
Witley, Surrey.
27 day of July, 1942.

George [illegible] Capt.
Officer Having Custody
of Original Documents

[illegible] Maj.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5-2-42	Pte.		F.G.C.M. A.A.Sec 15(1) AWL 37 days 4 hrs. 40 mins.		150 days Detention			For 38 dp FR&I 149. (1)(a) 13 days p FR&I 149 (1)(b) 150 days p FR&I 149 (2)
Field	17-6-42	Pte.		WOAS AWL A.A.Sec 15(1) 6 days 4 hours 50 minutes		28 days detention	10-6-42		For 7 days FR&I 149 (1)(a) For 28 dp FR&I 149 (2)

CERTIFIED TRUE COPY

Records Officer

Certified true copy consisting of one sheet.

[illegible] Capt.

Officer-Living Custody of Original Document.

No. E-5197 Name Robidoux, H. Sqn., Battery, or Company Corps R, 22e.R. 1CDIRU Date of enlistment 21-2-40 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 133) 10079 - 6-39 (1702) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On the 21-2-42 this soldier completed two years consecutive service and in accordance with appx. to R.O.319(OS) his previous sheet was then destroyed on the 24-7-42 and the u/m entries were transfered.									
Field	16/2/41	Pte		Sec. 15(1) WAOS. AWL8days 7hrs30min.	Sgt. Dupare Cpl Girard	14 days C.B.	26/2/41	P.E.Belanger	9 days pay FR&I 149(1)(a)
Field	16-3041	Pte.		Sec 15(1) WOAS. AWL 21 days 7 hrs 30 mins.	Sgt. Allen L/C. Isabeel	27 days J.detention	8-4-41	Lt.-Col Matheson	For 22 days pay FR&I 149 (1)(a) For 27 da FR&I 149 (2)
Field	22-6041	Pte.		A.A.Sec 15(1) WOAS AWL 9 days 23 hrs. 30 mins	Sgt. Nobert Sgt. Jette	27 days detention	3-7-41	Lt-Col Matheson	10 days pay FR &I 149 (L)(a) 27 days pay FR &I 149 (2)

Certified true copy: .....Capt.

(P.T.O.)

LIST OF EXHIBITS

In the case of H-5197 Pte HENRI ROBIDOUX, Royal 22e Regiment, attached to H.Q.C.R. Coy, No. 1 CANADIAN DIVISION INFANTRY REINFORCEMENT UNIT.

(1) Exhibit "A" Certified true copy of Part II D.O. No. 1 CDIRU relating to the a/m soldier.

.....Lieut....
(J.R. TURNER) No. 1 CDIRU

(1) I hereby acknowledge that I have been served with a true copy of the summary of evidence taken at Algonquin Camp, Witley, Surrey, preliminary to my court-martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to court-martial.

Dated at Witley, Surrey,
this 24 day of
July, 1942.

W. Robertson

(2) I hereby acknowledge that I have been served with a true copy of an additional summary of evidence taken at Algonquin Camp, Witley, Surrey, preliminary to my court-martial.

Dated at Witley, Surrey,
this ____ day of
_____, 1942

.....

(3) I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of _____
if he is available.

Dated at Witley, Surrey,
this 24 day of
July, 1942

W. Robertson

2-7.

22-55 (can #3)

PTE ROBIDOUX H.

See E-329 for 1st case
" K-76 " 2nd " .

22-55

FIELD GENERAL COURT-MARTIAL

CFA66 (1st issue of AFA21)
40-P-B-R(1608-12804)

Convened by Order of J. A. Calder - A/Col Comd "A" Gp CRU dated 9 Jan 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E.5197	Pte	L/Cpl	Henri	ROBIDOUX	6 CIRU (CIC)

PROCEEDINGS REVIEWED
[illegible] Capt
21 Jan 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 11 Jan 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and (Corrt) Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 13:45 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 551. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Lt C. Jay as interpreter? Ans No

~~Do you object to~~ as shorthand writer? Ans ~~—~~

The Interpreter is sworn.(1) ~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 187MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	E. OSLER	2 CIRU (Camerons of C)
Member	Capt	~~Lt~~ Capt J.B. Donagh	2 CIRU (Camerons of C)
Member	Lt	J. Prada	6 CIRU (Royal Chaud)
~~Judge Advocate~~			
Prosecutor	Capt	G.P. Archambault	6 CIRU (R. de Mais)
Defending Offr	Lt	A. Rabelle	6 CIRU (R. de Mais)

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 83.)

A8. The accused E.5197 Pte(L/Cpl)Henri ROBIDOUX before arraignment make(s) (no) ~~fm~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E.5197 Pte (L/Cpl) Henri ROBIDOUX - 6 CIRU - CIC

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A.Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 463 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence to~~ Beginning on (date) ~~—~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 3 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be reduced to the ranks and to undergo detention for six months

(Sgd) [illegible] Judge Advocate, if any. 11 Jan 44 Date awarded. (Sgd) [illegible] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings and sentence of the Court but remit two (2) months detention

~~I direct that the accused be not remitted from custody without further order.~~ (1. AA 57A. Delete if not used.)

(Sgd) J.A. Calder A/Col

Date 12 Jan 44 Commanding COMMANDING "A" GROUP CON. RTN. UNITS. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
E.5197 Pte (L/Cpl) Henri Robidoux 6 CIRU - CIC	12 Jan 44	[illegible] Capt 6 CIRU

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)*

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B--PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans N o.(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides ~~to~~ advise accused to change his (their) pleas(s) of Guilty to Not Guilty on ~~_____~~ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ~~_____~~ charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex *A1*, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C--PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D--PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. *If "Yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans...... Do you intend to call witnesses on your behalf?

Ans..... Are they witnesses as to character only? Ans.....

(1. *RP 185.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(6). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E--PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans N o.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet (Sheets)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex *A2* and Ex *B 2* respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans *I do not.*(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 809, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 1(k). When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No H-5197, Private (Lance-Corporal) Henri ROBIDOUX, of the Canadian Infantry Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SECTION 15 (1)
ARMY ACT

WHILST ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

at ALGONQUIN CAMP, WITLEY, SURREY, did absent himself without leave from 1600 hours on the 26th day of December, 1943, until 2200 hours on the 7th day of January, 1944.

(Total absence: 12 days, 6 hours).

Witley, Surrey,
8 Jan 44.

J Gavan Downs, Lt-Col
(J. GAVAN DOWNS), Lt-Col
A/Commander
6 Cdn Inf Rft Unit

To be tried by Field General Court Martial.

9 Jan 44
Witley, Surrey

(J. A. Calder) A/Col.,
Comd,
"A" Gp Cdn Rft Units,
C.A.(O).

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/FA8/1097 (Em63)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E.5197	Pte	(L/Cpl)	Henri	ROBIDOUX	6 CIRU (CIC)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 9 JAN 44 endorsed by me, ~~as by an offr of my staff (as aforesaid)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~And I am satisfied it is proper that three Offrs of the Court (A) a FA Offr as President, for the reasons I have stated hereto.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

~~And I also appoint as Judge Advocate thereat the Officer mentioned hereunder.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	W.E. OSLER	2 CIRU (Camerons of C)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by CO 2 CIRU	
Lieutenant	" " " " CO 6 CIRU	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieutenant	" " " " CO 6 CIRU	

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (*Country.*)

Date 9 Jan 44

(*Signed personally. RP 105 fn 2.*) A/Col., (*Rank.*)

(J. A. Calder)

Commanding "A" Group Cdn Rft Units, C.A.(O).

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

E 5197

I certify that I have this morning examined No: Impl Robidoux H.
(Rank) (Name)

of 6 C.I.R.U. and in my opinion he is fit to undergo
~~unfit~~

trial by Court Martial.

Station

Date Jan-11-1944

Sgd J. L. Hurteau Capt
(Medical Officer)

CAPT. J. L. A. HURTEAU, M.D.
R.C.A.M.C.

CAPT.
MEDICAL OFFICER, 6 C.I.R.U.

E 3 [illegible]

11-1-44

In the case of E 5197 L/cpl Robidoux.

Statement made by his defending officer Lt Latelle.

This man that you will now judge is married in England & got 2 children. He wanted to spend his christmas leave to his home, he was granted 72 hours leave. He failed to return to camp, not because he wanted to enjoy life with any woman he will meet in his path, but to stay a little bit longer with his wife and his children. During this period his little daughter got sick & he had to call for a doctor. Here is the certificate from the doctor.

The woman of his love, the woman with whom he is facing the life with its difficulties did not wanted him to go, so like a good husband but not like a good

soldier he admitted, he stayed home to encourage his wife. At the end the soldier gained over the husband & he returned to camp. He admitted his fault, he is deeply sorry. The colonel of this camp of the 6 C.I.R.V. who was absent during this case, sympathized with it. I know that those things do not excuse him of his fault. Before you'll retire Monsieur le President & Members of the court let me tell you that in judging this man you are judging his wife & his 2 children.

I am asking the court to be clement.

Ex Sentence 25

Junior member

E 4
R.D.

TELEPHONE 198.

AT HOME:
9 TO 10 A.M.
5-30 TO 6-30 P.M.
DAILY EXCEPT
WEDNESDAY AND SUNDAY.
AND BY APPOINTMENT.

DARWIN,
FARNBOROUGH,
HANTS.

Dec 28 1943

I hereby Certify that I have visited Baby Robidoux

residing at 33 Yeovil Road

who is suffering ~~has recovered~~ from Pyrexia & Chesty Cold.

and is confined to bed ~~able to follow~~ employment.

H B Stuart

A1

SUMMARY OF EVIDENCE

In the case of No E-5197, Private (Lance-Corporal) Henri ROBIDOUX, of the Canadian Infantry Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

First Witness for the Prosecution. D-10536 Sgt Gatien, W.J., of the Canadian Infantry Corps, on the strength of 6 CIRU, having been duly sworn, states as follows:

On Jul 26 Dec 43, L/Cpl Robidoux, whom I now recognise, was in possession of a pass which expired at 1600 hours. He was to report to the guard room for duty at the expiration of his pass. He failed to report for duty and I had his name placed on the Absentee Report. I did not see him again until he was placed in the guard room on 7 Jan 43.

The accused declines to cross-examine this witness.

[signature] Gatien ..... Sgt.

Second Witness for the Prosecution. D-124817 L/Cpl Heroux, G., of the Canadian Infantry Corps, on the strength of 6 CIRU, having been duly sworn, states as follows:

On 7 Jan 44, at 2200 hours, the accused, whom I now recognise, reported to me as an Absentee without leave.

The accused declines to cross-examine this witness.

[signature] ..... L/Cpl.

The accused is then cautioned in French as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you may say or any evidence you may give will be taken down in writing and may be used in evidence".

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C), (D), (E) and (F) have been duly complied with.

[signature] ..... Lt.
Officer detailed to take the Summary of Evidence.

Algonquin Camp,
Witley, Surrey,
8 Jan 44

/JLN

Compiled from MFM 4 - Original not available

No E-5197 Name Robidoux, E. Sqn, Battery, or Company Corps CIC Date of enlistment 21 Feb 40 GC Badges N/A Service or Proficiency Pay N/A

MFM 6 (AFB 122) 40/P&S/136 (3428)

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 1 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		AA 15-1 AWL 5 days		Admonished	3 Feb 41	DO 29/41	Forf 5 days pay for AWL
Field		Pte		AA 15-1 AWL 9 days		14 days CB	26 Feb 41	DO 49/41	Forf 9 days pay for AWL
Field		Pte		AA 15-1 AWL 22 days		27 days Detn	8 Apr 41	DO 84/41	Forf 22 days pay for AWL
Field	22 Jun 41	Pte		AA 15-1 AWL from 2200 hrs 22 Jun 41 to 2200 hrs 2 Jul 41 (10 days)		27 days Detn	3 Jul 41	DO 156/41	Forf 10 days pay for AWL & 3 days for time in arrest
						Released from Detn 29 Jul 41 Remission 3 days			

Certified true copy

Officer having custody of original documents

11 Jan 44

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16 Dec 41	Pte		AA 15-1 AWL from 1500 hrs 16 Dec 41 to 1920 hrs 22 Jan 42 (37 days 4 hrs 40 min)		150 days Detn Confirmed by Comd CNU 10 Feb 42 Released from Detn 18 Mar 42 Remission 50 days	5 Feb 42	FGCM	Forf 38 days pay for AWL & 13 days for time in arrest
Field	4 Jun 42	Pte		AA 15-1 AWL from 0800 hrs 4 Jun 42 to 1350 hrs 10 Jun 42 (6 days 4 hrs 50 min)		28 days Detn Released from Detn 3 Jul 42 Remission 4 days	10 Jun 42	DO 142/42	Forf 7 days pay for AWL
Field		Pte		AA 15-1 AWL 5 days		40 days Detn Released from Detn 4 Sep 42 Remission 20 days	25 Jul 42	FGCM	Forf 5 days pay for AWL & 6 days for time in arrest
Field		Pte		(1) AA 15-1 AWL 5 days 15 hrs 30 min (2) AA 15-1 AWL 2 days 7 hrs 30 min		7 days pay	22 Dec 42	DO 209/43	Forf 9 days pay for AWL
Field	14 Aug 43	A/Cpl		AA 15-1 AWL from 2359 hrs 14 Aug 43 to 0730 hrs 20 Aug 43 (5 days 7 hrs 31 min)		Reduced to rank	21 Aug 43	DO 173/43	Forf 5days pay for AWL

Certified true copy consisting of one sheet

.....

for Officer having custody of original documents

E' [illegible]

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
E-5197	Pte L/Cpl	Henri ROBIDOUX	Canadian Infantry Corps.

1. The following is a fair and true summary of the entries in the regimental and squadron battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, R.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A. A. 15 (1)	1 times	8 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, NIL

or

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. ~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 3 days 11 hrs days in military custody, making a total of 3 days 11 hrs days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 29 years

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 21 Feb 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 320 dys

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 320 days service

9. The accused is entitled to reckon 2 yrs 320 days. service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (~~or is in possession of or entitled to (state any military decoration or reward).~~)

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

12. ~~(In the case of an officer.) The accused holds in the army the rank of dated and in his regiment (or corps or department) the rank of dated~~

(*18220) Wt.15852/144 125,000 6/41 A.S.E.W.Ltd. Gp.458

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. E-5197 Rank Pte L/Cpl Name Henri Robidoux of Cdn Inf Corps; Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FOCM	Field 5 Feb 42	A.A. 15 (1) ABL	150 days Detn	50 days
FOCM	Field 25 Jul 42	A.A. 15 (1) ABL	60 days Detn	20 days.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th day of Jan 44.

[signature]

officer having custody of original documents

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of A/L/Cpl	Nil years,	8 Nov 43
In the rank of	years	
In the rank of	years,	

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

83-V.

Pte ROBIDOUX, J A

O. H. M. S.

M. F. B. 270
1000M-12-40 (8668-60-70)
H.Q. 1774-36-67

A —

83 V

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Seventh day of January, 1943.

Whereas it appears to me, the undersigned, an officer in Command of Third Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer;]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint :—]

*[1. Three Officers to form the Court;]

*[2. A Field Officer as President;]

* Omit if not applicable.

for the following reasons, namely :—]

Proceedings [illegible] Capt

Reviewing Officer [illegible] 26 Jan 43

115

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	W.B. Carson	Carlt & York R

Members.

Rank.	Name.	Regiment.
Capt	G.L.F. MacNeil	West N.S.R.
Capt	S.D. Smith	West N.S.R.
Capt	M.S. Sutherland	Carlt & York R

(WAITING)

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding 3 Cdn Inf Bde.

Convening Officer.

WB Carson Major

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E4497 Pte Joseph Albert ROBIDOUX. R 22e R	1st Charge:- Sec 15 (1) A.A.	Guilty	Guilty Ninety (90) days Detention WRC Carson Major President 8 January 1943.	Confirmed Charles Faulkes Brigadier Commanding 3rd Infantry Brigade. 8 January 1943
	see charge sheet attached			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) Charles Faulkes Brigadier (Signed) WRC Carson Major

Commanding 3 Cdn Inf Bde Carlt & York R
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

WRC Carson Major.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 8 day of January 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(~~3. The interpreter~~) WRC
*(~~4. The officers under instruction~~) WRC.

were duly sworn.

* Omit if not applicable.

Signed this 8 day of January 1943.

WRC Carson Major.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

WRC.

~~President of the Court Martial.~~

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 8th day of January 1943.

Charles Faulkes Brigadier
Comd 3 Cdn Inf Bde
Confirming Officer.

Promulgated and extracts taken in the case of E4497 Pte J.A. Robidoux

(a) (Dated) 9 Jan 43 (Signed) [signature] Capt

Adjutant
[illegible] REGIMENT, C.A.O.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(B4) Wt. 38092/1316 70m 2/41 W. & Co., Ltd. Gp. 748/2

WRC Carson Major.

CHARGE SHEET

The accused, E.4497 Private Joseph Albert ROBIDOUX, Royal 22e Regiment, a soldier of the Canadian Army, Overseas, is charged with:-

FIRST CHARGE
A.A.Sec. 15(1) WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, at about 2230 hours, on the 18th December 1942, absented himself without leave and remained absent until he reported to his Company at about 2230 hours 5th January 1943.

Total Absence:- 18 days.

(J.P.E. BERNATCHEZ), Lt.-Col.,
Commanding Royal 22e Regiment

In the Field,

This 6th day of January 1943.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(C. Foulkes) Brigadier.
Comd 3 Cdn Inf Bde.

In the Field
7 Jan 43

"F."

MEDICAL CERTIFICATE K.R.(OAN)359

I certify that I have seen this morning No. E4497 Rank Pte Name Robidoux J. A. of Coy, Royal 22e Regiment, and in my opinion he is fit to undergo trial by Court-Martial.

Guy Lahiri Capt
Medical Officer

In the Field
8 Jan 1943

[illegible] Cassel Major

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialed by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field

on the 8 day of January 1943 by order of Brig. Chas. Faulkes.

Commanding 3 Cdn Inf. Bde.

dated the 7 day of January 1943.

President.

W.S. Carson Capt. York Regt.

Members.

Capt. G. L. F. McNeil West. N.S.R.

Capt. S. D. Smith West. N.S.R.

~~Judge Advocate.~~

Trial of* E 4497 Pte. Joseph Albert Robidoux R.22.R.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ WSC ~~is not available to serve owing to~~

~~waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. P. Hart. R.22.R.

Counsel‡ or defending officer† Lieut. P.E. Chasse R.22.R.

At 1030 o'clock the Trial commences.

The order convening the Court is read, and is marked "A" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q263. W1 W43203 426. 10,000 sets. 1/43. K. & H., Ltd. G657/11. Forms A 1/55.

W.S. Carson Major.

B

The President, members and ~~judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn:~~

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (3) the fact should be here recorded.

The accused is arraigned upon ~~each~~ charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the ~~first~~ charge against you, which you have heard read?

Question to the accused.

Answer. Yes.

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~

Question.

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~

Question.

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~

Question.

Answer.

The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

CC

Proceedings on Plea of Guilty.

* To be struck out in case any plea of "Not Guilty" has been recorded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused E4479 Pte Joseph Albert Robidoux R.22.R. is found guilty of The Charge.

†The summary (or abstract) of evidence is read, marked signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. ~~The accused in mitigation of punishment says:—~~

No

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings].~~

Instructions.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Carson Major

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer. Yes.

Evidence as to character

Statement of accused.

Pte Robidoux is sworn and states:

My trouble started last February 1942. I was at Whitby a full Cpl. I was paraded to the Coy office, they told me I was transferred to the Regt and I had to revert but keep my stripes up as I would be promoted again shortly after joining the Unit. I kept doing duty as a full Cpl. At the Regt I was called to Coy office and told to take down my stripes and revert as W.E. was complete. Two months later I was promoted 4 Cpl. I went on a N.C.O. course. There I got a 24 hour pass. I came back 13 hours late due to it being unavoidable. I was given a Severe Reprimand. Later at the Unit I asked for a week end pass, asked my reasons which I gave but on the Saturday found my pass was cancelled. I was mad and went away without a pass. When I came back I got a severe reprimand. The third time I went A.W.O.L. I had 24 hours leave and went home. My wife was pregnant. She had an accident, the baby was born but died shortly. I got extensions till it was all over and came back to the Unit.

When I got back I was bothered and discouraged so went A.W.O.L.

Before this time I had asked to be transferred to my own Coy but it was refused. This trouble would not have happened in my own Coy.

R.P. 83 complied with.

[illegible] Carson Mayo.

B.

SUMMARY OF EVIDENCE

in the case of

E.4497 Private Joseph Albert ROBIDOUX, a soldier of the Royal 22e Regiment, Canadian Army, Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

- -

FIRST WITNESS FOR PROSECUTION

E.5108 Cpl. Desjardins, L., Royal 22e Regiment, having been duly sworn states:-

" I am a Corporal of the Royal 22e Regiment pos ted to "C" Coy. On 18 Dec 42 I was C.O.S. at "C" Coy I made the tattoo at 2230 hrs Pte. Robidoux was absent. I saw him again only on 5 Jan 43 in the evening.

L Desjardins .....Cpl.
Royal 22e Regiment.

The accused declines to cross-examine this witness.

SECOND WITNESS FOR PROSECUTION

E.4671 L/Cpl. Beaudet, E., Royal 22e Regiment having been duly sworn, states:-

" I am a L/Cpl. of the Royal 22e Regiment posted to "C" Coy. On 5 Jan 43 I was on duty at "C" Coy office when Pte. Robidoux, the accused reported to me at 2230 hrs. He was sober and properly dressed. I put him under arrest.

E Beaudet .....L/Cpl.
Royal 22e Regiment.

The accused declines to cross-examine this witness.

THIRD WITNESS FOR PROSECUTION

P.48583 a/CSM. Simard, J.P.E. Royal 22e Regiment, having been duly sworn states:-

" I am a C.S.M. of the Royal 22e Regiment posted to "C" Coy. On 18 Dec 42 the C.O.S. reported the absence of the accused, Pte. Robidoux, at 2230 hrs. I told him to collect Robidoux's kit and take it to the C.Q.M.S. I did not see him again until 5 Jan 43 at 2300 hrs.

[signature] .....C.S.M.
Royal 22e Regiment.

The accused declines to cross-examine this witness.

The accused having been duly cautioned in accordance w ith Rule of Procedure 4(e) declines to make a Statement and reserves his defence.

I certify that the foregoing Summary of Evidence was taken down by me in the presence of the accused and that Rules of Procedure 4(c)(d)(e)(f) have been complied with.

[signature]

(P. HART), Captain,
Adjutant Royal 22e Regiment

In the Field,

6 Jan 43.

Officer detailed to take the Summary

[signature] Major

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused E.4497 Pte Joseph Albert Robidoux R.22R.

is Guilty of the Charge.

Wm Carson Major President
8 Nov 43

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out. Evidence of character, etc.

*The Court being re-opened, the accused is again brought before it.

Capt P. Hart. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked "C", signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

Cross-examined by the accused. No.

[Instructions.—(1) by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

Wm Carson Major.

F

Sentence.

The Court sentence the accused E.4497 Pte Joseph Albert Robidoux Sentence.
R. 22. R.

Ninety (90) days.
Detention

W.B. Carson Major President

8 January 1943.

W.B. Carson Major

"E"

LIST OF WITNESSES

in the case of

E.4497 Private Joseph Albert ROBIDOUX, Royal 22e Regiment, a soldier of the Canadian Army, (Overseas).

PROSECUTION

E.5108	Cpl.	Desjardins,	L.
E.4671	L/Cpl.	Beaudet,	E.
P.48583	CSM.	Simard,	J.P.E.

DEFENCE

NIL

LIST OF EXHIBITS

NIL

STATEMENT BY ACCUSED.

I, E.4497 Pte. Robidoux, J.A., Royal 22e Regiment, desire to have an Officer to represent me at my trial by F.G.C.M.

I desire the services of Captain W.G. Wells if he is available.

This is to certify that I received free of charge, copies of proceedings, documents, etc., relating to my trial by F.G.C.M.

J A Robidoux

In the Field
6 Jan 43.

O.C. Casa Major

"D"

No. E.4497 Name Robideaux J.A. Sqn., Battery, or Company "C" Coy Corps R. 22e. R. Date of enlistment 2-11-39 G.C. Badges Service or Proficiency Pay M.F.M. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				On the 2 nov 42 this soldier completed two years consecutive service clear of a Regt'l Entry and in accordance with Appx to R.O. 319(Overseas) the above entries were transferred from previous sheet which was then destroyed.					
In the Field	23/8/42	L/C.		WOAS Sec 15AA overstaying his pass from 0830 hrs the 23 Aug 42 till 2130 hrs. Total absence: 13 hrs.	Sgt. Marchand L/C.Perreault.	Severely reprimanded	28/8/42	Lt.-Col. Bernatchez	Forfeits:one days pay under FR&I 149.
In the Field	5/9/42	L/C.		WOAS Sec 15 AA While on Stand-To AWL from 1800 hrs 5/9/42 until 1800 hrs 8/9/42. Total absence 3 days.	Cpl.Desjardins L/C.Caulin. Evidence.	Severely reprimanded.	9/9/42	Major P.M. Millette.	3 days pay
In the Field	12/12/42	L/C.		WOAS Sec 15 AA AWL from 1600 hrs 12 Dec 42 until he surrendered himself at his coy line at 1650 hrs 15 Dec 42. Total absence 3 days and 50 mins.	L/Sgt Dechene Cpl. Gervais	Deprived of Lance Stripe.	16/12/42	16 Dec 42 Lt.-Col. Bernatchez	Forfeits: 4 days pay under FR&I 149.

CERTIFIED TRUE COPY.

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order thereon being duly confirmed	By whom awarded	Remarks
				I certify this conduct sheet to be a true copy of the regimental records in my charge Lieut Col + Adjt Royal ?? Regt					

"S"

STATEMENT AS TO CHARACTER AND PARTICULARS OF ACCUSED.

Number E4497 Rank Pte Name Robidoux J A Regiment Royal 22 Regt

(1) the following is a fair and true summary of the entries in the Regt'l conduct sheets of the accused, exclusive of ---- convictions by a Courts Martial or a Civil Court, of summary awards under the Section 47 of the Army Act, and of cases in which trial has been dispensed with:-

	Within last 12 months		Since Enlistment.	
For AA 15(1)	Three	times	n/a	time
For		times		time
For		times		time
For		times		time

number of instances of gallantry or Distinguished conduct:- nil

There are no entries in the conduct sheets of the accused.
(Instructions:- If the charge is for drunkeness, the entries for drunkeness must be stated separately and dated)

(2) The accused has not been previously convicted.

or

Previous convictions of the accused by a Court Martial or a Civil Court, summary awards under Section 47 of the Army Act, and dispensations with trial under A.A.73, are set out in the schedule annexed to this statement. n/a

(3) The accused is not under sentence at the present time

or

The accused at the present time is under sentence for _____ beginning on the _____ day of _____

(4) The accused has been in confinement, awaiting trial on the present charges for no days in civil custody, and 2 days in Military custody, making a total of 2 days in custody, of which no days were spent in hospital.

(5) The present age of the accused according to his attestation paper is 26

(6) The date of his attestation specified in his attestation paper is 2 nov 1939

(7) The Service which the accused is allowed to reckon towards discharge or transfer to the reserve is nil

(8) The accused is entitled to deferred pay or gratuity in respect of _____ service.

(9) The accused is entitled to reckon no service for the purpose of determining his pension, etc.

(10) The accused is in possession of _____ or entitled to no Military decoration or military award.

(11) (If the accused is a warrant officer) The accused before he was made a warrant officer last held the rank of _____

(12) In the case of an officer) The accused holds in the Army the rank of _____ dated _____ and in his reg't the rank of _____ dated _____

(13) ~~In~~ The accused has served as a non-commissioned officer continuously, without reduction, to the present date:-

In the rank of..... Date of promotion.
.....years

In the rank of..... .....years

In the rank of..... .....years

(Instructions:- if any matter in any of the above pragraphs cannot be

[signature]

stated from the regimental books the paragraph must be struck through.

SCHEDULE

Of convictions by a Court Martial of a Civil Court, of summary awards under sec 47 of the Army Act and of cases in which trial has been dispensed with of accused.

number rank name

of ..... Regt.

(Instructions:- A verbatim extract from the regt'l books stating these convictions and dispensations with trial must be inserted)

I hereby certify that the foregoing schedule of convictions and dispensations with trials is a true extract from the Regt'l books in my custody.

Signed this 5th day of January 1943

Capt

The above statement (with schedule of convictions and of cases in which trial has been dispensed with, is read marked, signed by the President and annexed to the proceedings.

AAA-129

PTE ROBIDOUX J.L.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A),(B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

~~B3. The Court considers the accused's statement(s) the Court decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on ~~charge(s). The accused is (are) to return and hearing~~ charge(s) ~~is (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~ JLAG JLAG JLAG
(1. Court may be closed to consider the statement. Delete whole or part not used.)

(Int) JLAG

B4. On the charge(s) to which the plea(s) of Guilty is ~~was~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

(Int) JLAG

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.).

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans ..... Do you intend to call witnesses on your behalf?
Ans ..... Are they witnesses as to character only? Ans .....
(1. RP 155. 2. RP 40(A), see 98(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 113(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

(Int) JLAG

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~none~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

(Int) JLAG

E3. President to accused: Do you wish to address the Court on ~~the statement(s) and Conduct Sheet(s)~~ and/or mitigation of punishment?(1) Ans Yes (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

(Int) JLAG

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) JLAG
(1. When several accused tried separately see RP 76(2). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

FIELD GENERAL COURT-MARTIAL

CFAAM (In lieu of AFAA3) 40/P & S 1608 (2604)

Convened by Order of A/Col J.A. Calder Comd "A" Gp, CRU dated 20 Jan 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/crank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
E-4836	Pte	Jean Louis	ROBIDOUX	6 CIRU (CIC)

PROCEEDINGS REVIEWED
(Sgd) BW Howard Capt
8 Feb 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Certified true copy of original proceedings hereto. Returned July 29 1944 JAG BRANCH CMHQ.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*) 21 Jan44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JAG if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed. (Int) JLAG (Int) JLAG

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) (Int) JLAG
The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1330 hours trial commences. (Int) JLAG (Int) JLAG

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) (Int) JLAG
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being tried summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Lieut Bastien DLas interpreter ? Ans No

The Interpreter is sworn.(1) ~~Do you object to ... as shorthand writer ? ... The shorthand writer is sworn.(1)~~ (Int) JLAG

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No (2) (Int) JLAG

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JAG if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	J.L.A. GIGUERE	6 CIRU (R de Chaud)
Member	CAPT	M.K. ST Pierre	6 CIRU (R 22e R)
Member	LT	R.F. STEINHOFF	2 CIRU (Cams of Can)
~~Judge-Advocate~~	LT (Int) JLAG	Lapointe B (Int) JLAG	6 CIRU (Gen List)
Prosecutor	~~CAPT~~ JLAG	~~Lt Lapointe~~	~~2 CIRU~~ (Int) JLAG
Defending Offr	CAPT	G.V. ARCHAMBAULT	6 CIRU (R de Mais)

Questions by President: Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (b) and fn 2 were not followed. See D1, p 1.)

A8. The accused E-4836 Pte Jean Louis ROBIDOUX before arraignment makes(s) (no) ~~the~~ plea (Int) JLAG (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(6), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. (Int) JLAG (Int) JLAG

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~adjourned~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B (Int) JLAG

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused:

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A.Sec15(1)	Guilty	Guilty	
2nd	A.A.Sec15(1)	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for 219 days beginning on (*date*) 29 Nov 1943 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: ~~To undergo 6 period (Int) JLAG~~ ~~2 Years Detention and~~
stoppage of pay to the amount of Two pounds Ten shillings (£2.10.0)
To undergo Detention for a period of 2 years

(Sgd) ..... Judge-Advocate, if any. 21 Jan 1944 Date awarded. (Sgd) J.L.A. Giguere Major President. (RP 45, 50)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: it shall (Int) JLAG
I vary the sentence so that/be as follows: "to undergo detention for a period of two (2) years and to be placed under stoppages of pay to make good the sum of two pounds ten shillings, being cost of his return to his unit", and confirm the findings and sentence as so varied.
~~I direct that the accused be not committed to prison or detention barracks until further orders.(1)~~
~~(1. AA 57A - Delete if not used)~~

Date 21 Jan 44 (Sgd) J.A. Calder A/Col COMMANDING "A" GP. C2m. REINF UNITS
Commanding ..... Confirming Officer CA(O)

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
E-4836 Pte Jean Louis Robidoux	22 Jan 44	L.G.A. Barette Capt Adjt 6 CIRU

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

(Int) JLAG

CHARGE SHEET

The accused, No E-4836, Private Jean Louis ROBIDOUX, of the Canadian Infantry Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Oversees, is charged with:

FIRST CHARGE
SECTION 15(1)
ARMY ACT

WHILST ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he

at ALGONQUIN CAMP, WITLEY, SURREY, did absent himself without leave from 0900 hours on the 3rd day of November, 1942, until he surrendered to the Civil Police in HUDDERSFIELD at 2350 hours on the 26th day of November, 1942, thereby incurring expenses for his return to his unit to the amount of two pounds, ten shillings (£2.10.0).
(Total absence: 23 days, 14 hours, 50 minutes).

SECOND CHARGE
SECTION 15(1)
ARMY ACT

WHILST ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he

at ALGONQUIN CAMP, WITLEY, SURREY, did absent himself without leave from 1030 hours on the 1st day of December, 1942, until he was apprehended by the Civil Police on the 10th day of March, 1943.
Total absence: 99 days).

Witley, Surrey,
13 Jan 44.

(Sgd).W.E..Morgan.....
(W.E. MORGAN), A/Col
Commander
6 Cdn Inf Rft Unit

To be tried by Field General Court Martial.

(Sgd).J.A..Calder.....
(J.A. Calder) A/Col.,
Comd,
"A" Gp Cdn Rft Units,
C.A.(O).

20 Jan 44
Witley, Surrey

(Int) JLAG

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/FAN/1697 (2668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-4836	Pte		JEAN LOUIS	ROBIDOUX	6 CIRU (CIC)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 20 JAN 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial". (Int) JAC

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ (Int) JAC
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~XXXX

(Int) JLAG

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No E-4836 Pte Robidoux J.L.
(Rank) (Name)
of R. 22 R. and in my opinion he is fit ~~unfit~~ to undergo
trial by Court Martial.

Station

Date 21 Jan 44

Sgd J. Daudenault Capt
(Medical Officer)

(Int) JLAG

Closing address for the Defence.

Mr. President, Gentlemen of the Court.

I would like to ask you to disregard the record of the accused for a moment, a record which I admit is very much against him, and to consider the story of Pte. Robidoux.

Robidoux enlisted in December 1939 and proceeded overseas in February 1940. While in Canada he rose to the rank of Corporal but had to revert to the rank of private soldier upon arrival here when he was sent immediately to his Regiment the Royal 22ieme. He was a smart soldier and a good one and was thought of well enough to be selected to mount the Guard at Buckingham Palace in the summer of 1940. He was promissed a leave, just as the others had been promissed but at the last minute it was cancelled. Therefore, Robidoux took matters into his own hands and went A.W.L. His conduct went from bad to worse and he was sentenced to detention several times. When he came out in 1942 after been given a remission of seven months on his last sentence, he was determined to become a good soldier. For three months while at the Reinforcement Unit he did his best went on a battle drill course and qualified on the range and in his weapons. On three different occasions he was put on drafts proceeding to his Regiment but was withdrawn at the last moment without any apparent reasons. Thinking his Regiment did not want him and feeling pretty discouraged he again went A.W.L.

That is the charge on which, Gentlemen of the Court, you have to pass judgement, but I would ask you to take into consideration the fact that the accused still has six months to serve on his previous sentence. Also, though I do not claim the accused was treated unjustly in the past, he has'nt had much of a break which accounts for his bad conduct, and it is his greatest wish that he be given a chance to prove that he can be a good soldier again.

The accused is young, only 26 years old, fit and qualified. He would be far more useful to the army and to his country if a light sentence was imposed on him and he was given an opportunity to go into action rather than rot in jail where he would get more and more demoralized and come out a total loss to society.

(Sgd) Guy V. Archambault,
Capt.

EXHIBIT "A" (Int) JLAG

RECORD of the Declaration of a Court of Inquiry assembled at 1 CDIRU on the 26th day of Nov. 1942.

for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No. E-4836 Pte. Robidoux J. (R22eR) 1 CDIRU by authority of Part I D.O. 2848 d/25 Nov. 42.

DECLARATION

The Court declare, E-4836 Pte. Robidoux J.L. (R22eR) 1 CDIRU illegally absented himself without leave from 0900hrs, at Algonquin Camp on 3 Nov. 42 and is still so absent and that on 4 Nov. 42 he was deficient and is still deficient the following articles of kit:

Anklets web prs	1	0- 3-5½	0- 2-7
Badges cap	1	0- 0-6½	0- 0-5¼
Blouses serge	2	2-15-4	2- 1-6
Trousers serg	1	1- 7-11	1- 0-11¼
Boot laces	2	0- 0-3	0- 0-2¼
Boots ankle prs	2	2- 3-0	1-12-3
Braces prs.	1	0- 1-3½	0- 0-11¼
Brasses button	1-	0- 0-2	0- 0-1½
Brushes cloth	1	0- 1-1	0- 0-9¾
Brushes shaving	1	0- 1-4	0- 1-0
Brushes tooth	1	0- 0-4½	0- 0-3¾
Cap F.S.	1	0- 0-8	0- 0-9
Greatcoat	1	3-17-½	2-17-9¾
Comb hair	1	0- 0-2	0- 0-1½
Discs identiry	3		
Drawers cell	2	0- 4-1	0- 3-¾
Dressing 1st Field	1	0- 1-1	0- 0-9¾
Holdall	1	0- 0-9	0- 0-6¾
Housewife	1	0- 2-3	0- 1-8¾
Jacket sweater	1	0- 6-9	0- 5-¾
Knife clasp	1	0- 5-2½	0- 3-10½
Blouses denim	1	0-12-8-	0- 9-6¾
Trousers denim	1	0-11-9	0- 8-9¾
Razor	1	0- 1-10½	0- 1-5¼
Shirts flannel	2	0-18-4	0-13-9
Shirts P.T.	1	0- 1-6	0-1 -1¼
Bags ration	1	0- 0-1½	0- 0-1¼
Staps shoulder	2	0- 6-8	0- 5-0
Web supporting	2	0- 2-2	0- 1-7½
Haversack	1	0-10-6	0- 7-9¾
Res. Complete	1	1- 2-7	0-16-7½
	Total	£ 16-3-11	12-2-11½

Names of President and Members:

President	Capt. V.P.E. Aubut
Member	Lieut. H.A. St-Amand
Member	Lieut. P.E. Chasse.

Signature of Commanding Officer.....C.C. Ferrie Lt-Col.

Certified true copy.....H.T. Atkinson Lieut ? ?....
Signature of Officer having custody of original record.

M.F.B. 375
40/P&S/392

EXHIBIT "B" (Int) JLAC

Army Form O.1617
R.A.F. Form 1617

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

I Certify that the man whose personal description is given below surrendered himself to* Sergeant Jack Sykes
at Huddersfield at (hour) 23.50 on the 26th day of November 1942 as being No. E4836
(Rank and Name) Private ROBIDOUX Jean Louis
Royal 22nd Canadian Regt
a deserter (or absentee without leave) from Camp 101 Whitley Surrey Since 3.11.42
and it appears to me from his confession that he is a deserter or absentee without leave.

*After the word "to" to be inserted the name and rank of the police officer concerned.

Age 25 Height 5 Feet 6½ Inches
Complexion fresh Hair brown Eyes brown
Marks Cut scars over lefteye & on left cheek bone
In uniform or plain clothes Uniform

Probable Date and Place of Attestation	8. 12. 1939 Quebec Canada
Probable Date of Desertion or beginning of absence, and from what place	3. 11. 42 Camp 101 C.D.I.R.U. Whitley Surrey.

Stamp
Borough Police Office
Huddersfield

27th Nov 1942

Signature of Officer of Police in charge of (Sgd) A.T. Arnold. Inspector HUDDERSFIELD BOROUGH STATION.

27th Nov. 1942 Date of Signature.

EXHIBIT "C"

Expense Voucher Re—: Ref: K.R. & O. (Can) 539 (Int)JLAG

Reg. No. E-48836 Rank Pte Name Robidoux, J.L. Unit 1 CDIRU

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit from~~ London from Huddersfield

Date	Particulars	Amount		
29 Nov, 42	Escorts return fare from LONDON To Huddersfield	1	8	0
	Prisoners single fare to LONDON From Huddersfield		14	0
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares		8	0
	Total £	2	10	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

? ? ? S.B. GEIMER, Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:5/5
40/P & S/483

EXHIBIT "D" (Int) JLAG

RECORD of the Declaration of a Court of Inquiry assembled at 1 CDIRU on the 24th day of December 1942 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Blothing of No. E-4836 Pte Robidoux, J.L., R 22e R, 1 CDIRU

DECLARATION

The Court declare, E-4836 Pte Robidoux, J.L., R 22e R, 1 CDIRU, did illegally absent himself without leave from 1030 hours 1 Dec 42 and that he is still so absent, and that, on 24 Dec 42, he was deficient and is still deficient of the articles of kit listed below, amounting to £3.3.10½ (appraised value):

Article		Vocabulary Price	Appraised Value
Badges, cap	1	£ 0. 0. 6½	£ 0. 0. 5
Blouses, serge	1	1. 7. 8	1. 0. 9
Trousers, serge	1	1. 7.11	1. 0.11½
Boots, ankle, prs	1	1. 1. 6	0.16. 1½
Braces	1	0. 1. 3½	0. 0.10
Cap, Field Service	1	0. 3. 8	0. 2. 9
Comb	1	0. 0. 2	0. 0. 1½
Dressing, First Field	1	0. 1. 1	0. 0. 9½
Vest, PT	1	0. 1. 6	0. 1. 1½
		£ 4. 5. 4	£ 3. 3.10½

Names of President and Members:

President: Capt P.M.A. Simard, R 22e R
Members: Lt L.G.A. Barette, R 22e R
Lt C. Gagnon, R 22e R

Signature of Commanding Officer ..... A.S. Pearson, Col

Certified true copy (Sgd) LGA Barette A/Capt
ADJT 6 CDN INF RFT UNIT

.....
Signature of Officer having custody of original record.

M.F.B. 375
40/P&S/392

(Int) JLAC

EXHIBIT "E"

EXTRACT FROM DAILY ORDER, PART II (6 CIRU), NO 45, d/24 Mar 43

6. STRENGTH INCREASE

6-C T.O.S. from desertion on apprehension by Civilian Police, w.e.f. 10 Mar 43 and posted to "A" Coy (Hours unknown).

E-4836 Pte Robidoux, J.L. (R 22e R).

(SIGNED) J.H. Chicoine, Capt
A/Adjutant
6 Cdn Inf Rft Unit

CERTIFIED TRUE COPY

L.G.A. Barette
(L.G.A. BARETTE), A/Capt
Officer having custody of
original document.

(Int) JLAC

1. I acknowledge that I have been served with a copy of the Summary of Evidence taken prior to my trial by Court-Martial. I further acknowledge that I have been served with a true copy of the charges upon which I am being brought to trial by Court-Martial.

2. I desire the services of an officer to represent me at my trial by Court-Martial. I request the services of

Capt Archambault R de Mais 6 CIRU

if he is available.

Algonquin Camp,
Witley, Surrey,
13th Day of January 1944

(Sgd) J.L. Robidoux

1100 hrs

"A" (Int) JLAG

SUMMARY OF EVIDENCE

In the case of No E-4836, Private Jean Louis ROBIDOUX, of the Canadian Infantry Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

First Witness for the Prosecution.

Lt M.P. Menard, of the Canadian Infantry Corps, on the strength of 6 CIRU, having been duly sworn, states as follows:

I hereby produce the following documents, relating to the accused, No E-4836 Pte Robidoux, J.L.:

(a) A certified true copy of the Declaration of a Court of Inquiry, purporting to be signed by the officer having custody of the original document. This document is marked "Exhibit 'A'" and is attached to the Summary of Evidence.

(b) A Certificate of Surrender to the Civil Police of a Deserter or Absentee Without Leave, (AFO 1617), purporting to be signed by the Officer of Police in charge of Huddersfield Police Station. This document is marked "Exhibit 'B'" and is attached to the Summary of Evidence.

(c) An Expense Voucher in accordance with KR Can 539, purporting to be signed by the Officer Issuing Railway Warrant and Expense Monies, No 6 Provost Company, London. This document is marked "Exhibit 'C'" and is attached to the Summary of Evidence.

(d) A certified true copy of the Declaration of a Court of Inquiry, purporting to be signed by the Officer having custody of the original document. This document is marked "Exhibit 'D' and is attached to the Summary of Evidence.

(e) An extract from Daily Order, Part II (6 CIRU), No 45, dated 24 Mar 43, purporting to be signed by the Officer having custody of the original document. This document is marked "Exhibit 'E' and is attached to the Summary of Evidence.

The accused declines to cross-examine this witness.

(Sgd) M.P. Menard Lt.

The accused was duly cautioned in French as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you may say, or any evidence you may give, will be taken down in writing and may be used in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C), (D), (E), (F), and (G) have been duly complied with.

Witley, Surrey,
13 Jan 44.

(Sgd) ?.? Renaud Lt.
Officer detailed to take the Summary of Evidence

/JLN

Compiled from MFM 4 - Original incomplete --- Last Sheet Destroyed 18 Jun 40 "C" (Int) JLAG

NoE-4836 Name Robidoux, J.L. Sqn, Battery, or Company | Corps CIC | Date of enlistment 18 Dec 39 | Badges N/A | Service or Proficiency Pay N/A | MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet 3 Jun 40 | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc P. Simard, Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		Stealing £9.0.0		3 months Impt HL	21 Oct 40	Lambeth Police Court	Forf 2 days pay for time in arrest
				Released from prison 22 Dec 40 --- remission 30 days					
Field 30	Jul40	Pte		(1) AA 15-1 AWL from 30 Jul 40 to 2125 hrs 15 Sep 40 (46 days) (2) AA 15-1 When in arrest AWL from 2030 hrs 17 Sep 40 to 2330 hrs 19 Oct 40 (32 days 3 hrs 30 min) (3) AA 15-1 When in arrest AWL from 2030 hrs 13 Feb 41 to 0330 hrs 14 Mar 41 (29 days 7 hrs)	Sentence confirmed by Comd CBU, but commuted to one of 1 years detention	2 years Impt HL	29 Mar41	FGCM	Forf 109 days pay for AWL & 69 days for time in arrest
					Escaped from detention 29 Apr 41 (Sgd) ? ?				

Certified true copy dated 21 Jan 44 Officer having custody of original documents

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		(1) Obtaining 10/ by false pretences (2) Obtaining 10/ by false pretences (Five other offences of obtaining money by false pretences were taken into consideration)		6 months Impt HL	7 Jun 41	Occasional Court, Sale	Forf 10 days pay for time in arrest
						Released from prison 21 months Impt HL	7 Oct 41 --		remission 61 days
Field	27 Apr 41	Pte		(1) when in lawful custody AWL from 1845 hrs 27 Apr 41 to 0830 hrs 25 May 41 (30 days 13 hrs 45 min) AA 15-1 (2) AWL from 1630 hrs 7 Oct 41 to 1110 hrs 21 Oct 41 (13 days 18 hrs 40 min) AA 15-1		Conf by Comd CRU Sentence suspended by CMHQ, on 2 Oct 42	27 Dec 41	FGCM	Forf 45 days pay for AWL & 75 days for time in arrest Senior Officer, remission 368 days
Field		Pte		Stealing 1 Fountain pan & 1 pr of boots		14 days Impt, wef 10 Mar 43	17 Mar 43	Sheriff Court, Jedburgh	
						Released from prison (Sgd) ? ?	24 Mar 43		

Certified true copy dated 21 Jan 44 — Officer having custody of original documents

No E-4836 Name Robidoux, J.L. Sqn, Battery, or Company | Corps CIC | Date of enlistment 18 Dec39 GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc P. Simard, Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 13	Feb 43	Pte		(1)Stealing 1 Purse and £1.0.0 from Mary Charlton, Throckely		6 months Impt HL	2 Apr43	Police Court Newcastle	Forf 9 days pay for time in arrest
				(2)Stealing one wrist watch & 1 ring (Value £3.17.6) from Joyce Wilkinson		2 sentences being concurrent & 2 being consecutive			
				(3)Stealing 1 camera, 1 pr gloves & 1 signet ring (value £2.10.0)					
				(4)Unlawfully obtaining credit(£3.0.0) and money (£3.15.0)		Released from prison 2 Dec 43 --			Remission 121 days
				(4 other cases of larceny and 1 case of obtaining money under false pretences were taken into consideration by the court)					

Field ordered by Senior Officer, CMHQ, that the sentence of 21 months Impt HL, awarded on 7 Oct 41 and suspended on 2 Oct 42, be placed in execution, w.e.f. 29 Nov 43 --- prisoner committed to detention.

(Sgd) ? ?

Certified true copy consisting of two sheet dated 21 Jan 44 Officer having custody of original documents.

"B" (Int) JLAG

Army Form B.296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or as the case may be).
E-4836	Private	Robidoux, J.L.	Cdn Inf Corps 6 CIRU

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:-

(Int)

(Int)

(Int)

Number of instances of gallantry or distinguished conduct, Nil

(Int)xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx (Int)

2. (Int)xxxxxxxxxxxxxxxxxxxxxxxx(Int) Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 77 of the Army Act, are set out in the schedule annexed to this statement.

3. (Int)xxxxxxxxxxxxxxxxxxxxxxxxxx(Int)The accused at the present time is under sentence for 219 days beginning on the 29th day of November, 1943.

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and nil days in military custody, making a total of nil days, of which days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 26 years (Int) (Int) (Int) (Int)

6. The date of his ~~commission~~ attestation specified in his ~~[illegible]~~ attestation paper is 18 Dec 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 287 days

8. The accused is entitled to deferred pay or gratuity in respect of 287 days service.

9; The accused is entitled to reckon 287 days service for the purpose of determining his pension etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (Int)xxxxxxxxxxxxxxxxxxxxxxxxxxxx(Int)
(Int)xxxxxxxxxxxxxxxxxxxxxxxxx(Int)

11. (Int)(xxxxxxxxxxxxxxxxxxxx

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR CIVIL COURT, OF SUMMARY AWARDS UNDER SECTION 47 OF THE ARMY ACT AND OF CASES IN WHICH TRIAL HAS BEEN DISPENSED WITH OF ACCUSED.

No E-4836 Rank Private Name Robidoux, J.L. of CIC, 6 CIRU Regiment (or as the case may be).
(INSTRUCTION - A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial or summary award under A.A.47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the Court or authority disposing of the charge or order of the dispensing authority.	Punishment remitted
Civil Court	Lambeth 21 Oct 40	Stealing £9.0.0	3 months Impt HL	30 days
FGCM	Field 29 Mar 41	(1) AA 15(1) AWL 46 days (2) AA 15(1) AWL 33 days when in arrest (3) AA 15(1) AWL 30 days when in arrest	1 year's detention	Escaped 29 Apr 41
Civil Court	Sale 7 Jun 41	(1) Obtaining 10/ by false pretences (2) Obtaining 10/ by false pretences	6 months Impt HL	61 days
FGCM	Field 27 Dec 41	(1) AA 15(1) AWL 31 days when in custody (2) AA 15(1) AWL 14 days	21 months Impt HL	368 days
Civil Court	Jedburgh 17 Mar 43	Stealing 1 fountain pen and 1 pair of boots	14 days Impt	
Civil Court	Newcastle 2 Apr 43	(1) Stealing 1 purse and £1.0.0 (2) Stealing goods valued at £3.17.8 (3) Stealing goods valued at £3.15.8 (4) Unlawfully obtaining credit (£3.0.0) and money (£3.15.0)	12 months Impt HL	121 days

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21st day of January 1944

(Sgd) ? ? Lt
Officer having custody of original documents

(Int)

(Int)

The Judge Advocate General, Canadian Army Overseas, having advised that the sentence in these proceedings is invalid, I hereby direct that the sentence be and the same is hereby removed and the accused relieved from all consequences of such sentence, and I do hereby sentence the accused, E4836 Pte Robidoux J.L. to undergo detention for one year and seventy-one days and to be placed under stoppages of pay until he has made good the sum of £2.10.0 being costs of apprehension, such sentence to be effective as if passed by the court-martial on 21 Jan 44.

In the Field
2 Feb 44

(Sgd) J.H. Roberts
(J.H.Roberts)Maj Gen
Comd Cdn Rft Units

Sentence dated 2 Feb 44 re E-4836, Pte. Jean Louis Robidoux, was promulgated today at No. 1 Cdn. Detention Barracks, and extracts have been taken.

(Sgd) Camille Major Lt

In the Field,
4 Feb 44.

(CAMILLE MAJOR), Lieut.,
Asst. Adjt.,
No. 6 Cdn. Inf. Rft. Unit.

Sentence dated 2 Feb 44 re E-4836, Pte. Jean Louis Robidoux, was promulgated today at No. 1 Cdn. Detention Barracks, and extracts have been taken.

(Sgd) Camille Major Lt

In the Field,
4 Feb 44.

(CAMILLE MAJOR), Lieut.,
Asst. Adjt.,
No. 6 Cdn. Inf. Rft. Unit.

2911.A Pte. Robidoux, J.L. 101/R/335/
R. 22e Rgt.

Correspondence to be PINNED here.

294 A.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 27th day of March, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[XXXX

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E-4836 PTE. ROBIDOUX, J.L. (R 22e R reinforcement) No.2 Cdn Inf Hldg Unit.	First Charge A.A. Sec 15 (1) as per charge sheet	Guilty	Guilty	I confirm the finding a sentence of the Court but remit 1 year of the sentence Promulgation to be carried out by being read on parade P
	Second Charge A.A. Sec 15 (1) as per charge sheet	Guilty	Guilty	
	Third Charge A.A. Sec 15 (1) as per charge sheet	Guilty	Guilty	

THE COURT SENTENCE THE ACCUSED NUMBER E-4836 PRIVATE ROBIDOUX J.L. TO BE IMPRISONED WITH HARD LABOUR FOR TWO YEARS. F.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*): no.

(Signed) L. F. Page. Brigadier (Signed) [signature] Major

Commanding Canadian Base Units, Cdn Army. President.
Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 29th day of March, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The ~~interpreter)~~
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 29th day of March 1941.

[signature] Major
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

* See footnote (b) on page 702 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ P

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 3rd day of April 1941.

L. F. Page. Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of E4836 Pte Robidoux, J.L. R22e Regt (2 C.L.H.U)

(a) (Dated) 7 April 41 (Signed) [signature] Lieut. Col. Officer Commanding No. 2 Cdn. Inf. Holding Unit. C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] Wt. 40115—[illegible] 100 m. 1/40 P. St. G. [illegible]

CHARGE SHEET

The accused, No. E4836 Pte. J.L. Robidoux, No. 2 Canadian Infantry Holding Unit (Royal 22nd Regiment Reinforcement) a soldier of the Canadian Army(Overseas) is charged with:

First Charge
Sec 15 (1) Army Act.

While on active service, absenting himself without leave,

in that he,

at Royal Air Force Station, Odiham, Hants, on the 30th July 1940, absented himself without leave, and remained absent, until apprehended by Military Police, in High Street, Hagshot, at 2125 hours on the 15th September 1940. (Total absence, 46 days).

Second Charge
Sec. 15 (1) Army Act.

While on active service, absenting himself without leave,

in that he,

at Louisburg Barracks, Bordon, Hants, at about 2030 hours 17th September 1940, absented himself without leave, while under close confinement, and remained absent, until apprehended by Metropolitan Police, London at 2330 hours on 19th October 1940.
(Total absence 32 days, 3 hours and 30 minutes)

Third Charge
Sec 15 (1) Army Act.

While on active service, absenting himself without leave,

in that he,

at Camp 102, Witley, Surrey, at about 2030 hours on 13th February 1941, absented himself without leave, while under close confinement, until surrendering himself to Civil Police in London, on the 14th March 1941 at 0330 hours.
(Total absence, 29 days 7 hours)

(F.O. MATHESON) Lt-Col.
Officer Commanding
No. 2 Can. Inf. Holding Unit.

Camp 102
Witley, Surrey
20 March 1941

To be tried by Field General Court Martial

.....Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This 17th day of March 41.

MEDICAL OFFICER'S CERTIFICATE

I certify that No. F48.3.6 ..... Rank ... Pte .....

Name ... Robinson + J.L. ..... Regiment R. 22E R. Nat. of.

is ... Fit .....

to undergo trial by Court-Martial.

F.

Date 29-3-41.

W.L. Boulton / Major RCHMC

M.O. Signature.

E 4836 Pte. Robidoux, J. D. (R 22nd Reinforcement), No. 2 Canadian Infantry Holding Unit, tried by Field General Court-Martial at Witley Surrey, 29 Mar 41.

The Order convening the Court, the charge sheet and the summary of evidence are laid before the Court.

Prosecutor: Lieut. Cannon.

Defending Officer: Lieut. Wallace.

At 1000 hours the Trial commences.

The names of the President and members of the Court are read over to the accused, and they severally answer to their names.

Q1 - Do you object to being tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No, sir.

The President and members are duly sworn.

Q2 - Do you object to B 88521 Sgt. James Lonergan, Royal Canadian Artillery, C.M.H.Q., acting as Court Stenographer?
A2 - No, sir.

The C ourt Stenographer is duly sworn.

The charge sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge sheet.

Q3 - Are you guilty or not guilty of the first charge against you, which you have heard read?
A3 - Guilty, sir.
Q4 - Are you guilty or not guilty of the second charge against you, which you have heard read?
A4 - Guilty, sir.
Q5 - Are you guilty or not guilty of the third charge against you, which you have heard read?
A5 - Guilty, sir.

R. P. 35(B) is complied with by the court.

Q6 - Do you wish to make a statement in mitigation of punishment?
A6 - Yes, sir.
Q7 - You can make a statement either under oath or not under oath, But here it is my duty to informa you that if you make a statement under oath it will carry more weight with this court than a statement made not under oath. However, if you make such a statement under oath you are liable to be cross-examined by the prosecuting officer or the members of this court. Do you wish to make a statement under oath or not under oath?
A7 - I wish to make a statement not under oath, sir.

Accused makes a statement:

I wish the court to excuse my broken English. I came to this country in 1940 and was a Lance-Corporal in charge of 62 men on the ship. I was given 5 days pass but I refused to take it because I had no money, and I didn't have any friends here in this country. Later on, when I came out of the glass house I asked for a pass for 24 hours and they wouldn't give it to me. I got mad. I came to this country not to go absent but to fight the Germans. When I was absent I saw the women and children being bombed and it made me mad and I came back. I want to fight the Germans, as I am very angry with them now.

Q8 - Do you wish to call any witness as to character?
A8 - Yes, sir.

J.

Q9 - You are sure it is only a witness as to character?
A9 - Yes, sir.

F 48789 C.S.M. Alfred Hebert, No. 2 Infantry Holding Unit, was then sworn as a character witness for the Defence.

Q10 - Do you know the accused?
A10 - Yes, sir, I do.
Q11 - How long have you known him?
A10 - Since last January, sir.
Q11 - Will you make a statement to the court as to what you know of Him?
A11 - Well, sir, He was a Lance Corporal when he came over from Canada. On the parade ground he was very efficient and was a very good soldier in my estimation. He was picked for the Buckingham Palace Guard along with me in the month of May, sir.

Prosecutor was duly sworn.
Q12 - Have you any evidence to produce as to the character and particulars of the accused?
A12 - I produce the A.F.B. 206 and N.F.N. 4 of the accused. I swear that the entries herein are correct and that I have checked them with the original entries on the regimental books, and they apply to the accused, whom I recognize.

Q13 - Do you wish to address the court:
A13 - Defending Officer: The accused has pleaded guilty to the charges. He is 24 years of age and comes from a good family. His father is Fire Chief of No. 11 Fire House in Montreal. His uncle is Mayor of Sorel. That is a good indication of his background. He himself had the equivelent of a high school education. He has taken an active interest in the militia since 1934 and has maintained that interest, up to the present time, for he joined the Canadian Active Service Force in 1939 and came overseas early in 1940. He has told you how he had a stripe back in Canada and how he brought a draft over. He said and there is no cause to disbelieve him, that he refused his landing leave and later when he applied for a leave it was turned down and he very wrongly went A. W. L. He now states that he is anxious to do a good job. I would like to appeal to the consideration of the Court that he be given a sentence that will permit him to demonstrate that he can do a good job as a soldier. I think we can take his statement as worthy of consideration.

The Court is closed for the consideration of the sentence.

SUMMARY OF EVIDENCE

in the case of

E-4836 Pte. Robidoux, J.L., No. 2 Canadian Infantry Holding Unit, (Royal 22nd Regiment, Reinforcement) a soldier of the Canadian Army (Overseas)

Evidence taken on oath by order of the Commanding Officer.

First Witness for Prosecution — F40173, Pte. W.H. Wood, being duly sworn, states: I am Regimental L.P. at Camp 102, Witley, Surrey. On the 13th February 1941, I was on duty in the guard room, with instructions to see that none of the prisoners left the guard room without a runner as escort. At about 2030 hrs we ran out of coal. Pte. LeBlanc and Pte. Robidoux volunteered to get some. I detailed a runner to escort them to the coal yard. He returned a few minutes later and told me that Pte. LeBlanc and Pte. Robidoux dropped the bucket they were carrying, when they reached the coal yard, and fled in different directions.

W.H. Wood . . .Pte.

The accused declines to cross-examine this witness.

Second Witness for Prosecution — F40168 L/Cpl. E.R. Jollimore, being duly sworn, states: On the night of February 13th 1941, I was in charge of the detention barrack, Camp 102, Witley, Surrey, from 1600 hours to 2400 hours. At about 2030 hours, I detailed L/Cpl. Patry to take over from Pte. Wood. L/Cpl. Patry reported in a few minutes, and said that he refused to relieve Pte. Wood, because two of the prisoners, Pte. Robidoux and Pte. LeBlanc had escaped. I immediately went around to the guard room and asked Pte. Wood what had happened. He told me that they had run out of coal, and that Pte. LeBlanc with Pte. Robidoux had volunteered to get some. He said that he had detailed a runner to escort the prisoners to the coal yard, and that the runner had returned within a few minutes to report that the prisoners on reaching the coal yard, had dropped the bucket they were carrying, and fled in opposite directions.

E.R. Jollimore . . .L/Cpl.

The accused declines to cross-examine this witness.

Third Witness for Prosecution — F59742 Pte. Clow, A.L. (W.R.S.R.) No. 2 Cdn. Infantry Holding Unit, being duly sworn, states: On the night of 13th February 1941, at about 2030 hours, I was detailed by Pte. Wood to escort Pte. LeBlanc and Pte. Robidoux to the coal yard, to get some fuel for the guard room. When we reached the coal yard, Pte. Robidoux and Pte. LeBlanc dropped the bucket they were carrying, and fled in different directions. I called to them to stop, but they escaped. I returned to the Guard Room, and reported the escape of the prisoners to Pte. Wood.

A.L. Clow . . . . . .Pte.

Accused declines to cross examine this witness.

SUMMARY OF EVIDENCE
in the case of

E-4836 Pte. J.L. Robidoux, No. 2 Canadian Infantry Holding Unit (Royal 22nd Regiment Reinforcement) a soldier of the Canadian Army (Overseas)

Evidence taken on oath by order of the Commanding Officer.

Fourth Witness E-17009 C.Q.M.S. F. Gagne, having been duly sworn, states:
Prosecution

"I am C.Q.M.S. No. 1 Company [illegible] No. 2 Canadian Infantry Holding Unit. On the 19th March 1941 I took an inventory of Pte. J.L. Robidoux's kit, and found him deficient of the following articles:

	s	d
Badges cap		
Brush Boot Bl. 1		7½
Brush Boot Pol 1		8
Brush Button 1		10½
Brush Cloth 1	2	3
Dressing 1st fld	1	2
Jacket Sweater	6	3
Knife Clasp	3	4
Gloves wool pr	1	7
Trousers Service pr	4	8
Shirt Service 2	3	7
Shoes canvas pr	3	5
Bottles water	2	9
Respirator a-g	19	11
Cape a-g	13	0
Wallet a-g		6
Ointment a-g		6½
Total £3	5s	3½d

F. Gagne
. . . . . .C.Q.M.S.

Accused declines to cross-examine this witness.

J.

in the case of

E-4836 Pte. J.L. Robidoux, No. 2 Canadian Infantry Holding Unit (Royal 22nd Regiment Reinforcement) a soldier of the Canadian Army (Overseas)

Evidence taken on oath by order of the Commanding Officer.

Fifth Witness Prosecution Lieut. Malcolm MacPherson, having been duly sworn, states;

I am an officer of No. 2 Canadian Infantry Holding Unit. On the 20th March 1941, Pte. Jean, Louis, Robidoux declared to me, that he went absent without leave, on the 30th July 1940 from the Royal Air Force Station, Odiham, Hants, and that he remained absent until apprehended by C.M. Police, in Bagshot, on the 15th September 1940, at 2125 hours.

Malcolm MacPherson ..... Lieut.

Accused declines to cross-examine this witness.

Compliance with R.P. 4 (c) (d) (e) certified.

Laurence Cannon ..... Lieut.
Officer detailed by O.C. #2 C.I.H.U. to take Summary of Evidence.

Witley Camp 102
March 20 1941

7

SUMMARY OF EVIDENCE
In the case of

R-4836 J.L. Robidoux, No. 2 Canadian Infantry Holding Unit (Royal 22nd Regiment Reinforcement) a soldier of the Canadian Army (Overseas)

Evidence taken on oath by order of the Commanding Officer.

Sixth Witness Prosecution

Lieut. Bernard Guimond, having been duly sworn, states:

"I am an officer of No. 2 Canadian Infantry Holding Unit. On the 22nd March 1941, Pte. Jean Louis Robidioux, Declared to me, that, on the 17th September 1940, at Louisburg Barracks, Bordon, Hants, at about 2030 hours, he went absent without leave, while under close confinement, and remained absent, until apprehended by Metropolitan Police London, at about 2330 hours on 19th October 1940, at which time he was wearing corporal's stripes.

The accused declines to cross-examine this witness.

Compliance with R.P. 4 (c) (d) (e) certified.

Lieut.
Officer detailed by the Officer Commanding #2 C.I.H.U. to take Summary of Evidence.

Camp 102
Witley, Surrey
22 March 1941

SUMMARY OF EVIDENCE
In the case of

No. H-4836 Pte. J.L. Robidoux, No. 2 Canadian Infantry Holding Unit (Royal 22nd Regiment Reinforcement) a soldier of the Canadian Army (Overseas)

Evidence taken on oath by order of the Commanding Officer.

Seventh Witness Prosecution — Lieut. I.H. MacIntosh, having been duly sworn, states:

"I am Records Officer of No. 2 Canadian Infantry Holding Unit, and produce herewith the following documents which concern the accused.

(a) Record of Declaration of the Court of Inquiry
(b) A F B 252 19-10-40
(c) A F B 252 14-3-41
(d) A F C 1617 14-3-41

. . . . W.H. MacIntosh . . Lieut.

The accused declines to cross-examine this witness.

Compliance with R.P. 4 (c) (d) (e) certified.

Lawrence Cameron Lieut.

Officer detained by O.C. #2 C.I.H.U. to take Summary of Evidence.

22 March 1941
Camp 102
Witley, Surrey

J.

R II

RECORD OF THE DECLARATION OF A COURT OF INQUIRY ON THE ILLEGAL ABSCENCE OF A SOLDIER.

Record of the Declaration of a Court of Inquiry assembled at R.A.F. Station, Odiham, Hants., on the 22nd. day of August 1940, for the purpose of investigating and recording the abscence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipment, Instruments, Regimental Necessaries or Clothing of: No. E4836 Pte. Robidoux, J.L., Royal 22nd. Regt., No. 2 Cdn. Inf. Holding Unit, C.A.S.F.

DECLARATION

The Court Declares That No. E4836 Pte. Robidoux, J.L., Royal 22nd. Regt., No. 2 Cdn. Inf. Holding Unit, C.A.S.F. illegally absented himself without leave, at R.A.F. Station, Odiham, Hants., on the 30th. Day of July 1940, that he is still so absent, and that on the 22nd. Day of August 1940, he was deficient, and that he is still deficient of the following articles.

ARTICLES:

	s.	d.		s.	d.
[illegible]	[illegible]	[illegible]	Jacket Sweater 1	6	3
Badges Can.	[illegible]	[illegible]	Knife Clasp 1	3	4
[illegible]	[illegible]	[illegible]	Gloves Woollen prs 1	1	7
[illegible]	[illegible]	[illegible]	Trousers service prs 1	4	8
[illegible]	[illegible]	[illegible]	Razor 1		5½
[illegible]	[illegible]	[illegible]	Shirt Flannel Kh. 1	7	6
Brush Boot Bl. 1		7½	Shirts service 2	3	7
Brush Boot Pol 1		8	Shoes canvas prs 1	3	5
Brush Button 1		10½	Bottle, water 1	2	9
Brushes Cloth 1	2	3	Respirator a-g. 1	19	11
Cap F.S. 1	2	11	Cape a-g. 1	13	0
Comb, Hair 1		2½	Wallet a-g. 1		8
Drawers Woollen prs 1	5	6	Ointment a-g. 1		6½
Dressing First Fld. 1	1	2	TOTAL	27-1-11½	

Signed at Odiham, Hants this 22nd day of August 1940

President J.S. Townshend, Lieut. No. 3 C.I.H.U.
Members E.J. Lawrence, Lieut. No. 1 C.I.H.U.
G.J. Starling, Lieut. No. 3 C.I.H.U.

CERTIFIED A TRUE COPY

from M.B. 68

[signature] Major,
Officer Commanding No. 2 C.I.H.U.

J.W. Beveridge Captain,
Adjutant, No. 2 C. I. H. U.

~~Major~~,
Officer having Custody of Original Copy.

C.R. 1 NOV. 40 Pm. Pay, Records & Treasury

7.

I CERTIFY that the man whose personal description is given below surrendered himself to* P.S.7 Morris S/C at Ealing Broadway at (hour) 3-30a.m. on the 14th. day of March, 1941 as being No. E4886 (Rank and Name) Private Robideaux J.L. a ~~deserter~~ (~~or~~ absentee without leave) from 2nd. Canadian Infantry Holding unit and it appears to me from his confession that he is a ~~deserter or~~ absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 24 Height 5 Feet 5½ Inches

Complexion fresh Hair brown Eyes brown

Marks scar left eye

In uniform or plain clothes uniform

Probable Date and Place of Attestation	1934 Montreal Canada.
Probable Date of Desertion or beginning of absence, and from what place	13th. February, 1941

J. Pulle SPS.

Signature of Officer of Police in charge of EALING Station.

14th. March, 1941 Date of Signature.

Army Form O.1617.
R.A.F. Form 1617.

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of No. ..... who surrendered to the Police at ..... on ..... Payable to .....

CERTIFIED that this statement of expenses is correct.

..... Superintendent or Officer in charge of Police Station at .....

..... Date of Signature.

IMMEDIATE.

Army Form O.1617.
R.A.F. Form 1617.

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

(27922B) Wt W168/577 2,190 5/30 H. J. S. & L. Ld. Gp 121 Form O.1617/9

STATEMENT BY THE ACCUSED

I, E-4836, Pte. J.L. Robidoux, No. 2 Canadian Infantry Holding Unit (Royal 22nd Reinforcement) a soldier of the Canadian Army (Overseas)

DESIRE

That Lieut. F. Chicoine, if his services are available,

defend me at my trial by Court Martial.

J.L.L. Robidoux, Pte.

Camp 102
Witley, Surrey
22 March 1941

J.

21 Apl. 41

Major Embury:

This M.F.M.6 shows summary conviction for "desertion" Contr. of R. (Con) 459.

Should this be allowed to remain on records?

M

Copy

Date of enlistment 18-12-39

Sheet No.

No. E4836 Name Robidoux, J.L. Squ., Batty., or Company Corps R. 22 R.

Date of last entry in Company Conduct Sheet No. and date of last drunk G.C. Badges Long Service and G.C. Pay Signature O.C. Company, etc.

Place	Date of offence	Rank	Cause of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Guillemont Barracks	29-2-40	Pte		While on Active Service I - A.W.L. from 2300hrs 28-2-40 till 0600hrs 29-2-40 Total A.W.L. 7 hrs. II A.W.L. from 2200hrs 29-2-40 till 0820 hrs 11-8-40 Total absent: 10 days 10hrs 20m.	Sgt A Hebert L/Sgt Boucher Cpl A. Miville	14 days Det.	12-3-40	Lieut-Col. Percy Flynn	Forfeits 11days' pay under F.R.+I. For C.S.F. place under sec. tried pay for a period of 3 months
Guillemont Barracks				When on active Service Deserting H.M.'s S. from 2200hrs 26-4-40 till apprehended by military police 1100hrs 22-5-40 Losing by neglect his equipment.	L/Sgt Dumais	28 days Det.	3-6-40	Lieut-Col. Percy Flynn	To Forfeit 65 days' pay.

RELEASED from the DETENTION BARRACK Aldershot 26 MAR 1940 Having EXPIRED

Released from the Detention Barracks Aldershot on 26-6-40 sentence having expired. Remission earned under Rules from Detention Barracks and Military Prisons 4 DAYS.

Army Form B.122

P.T.O.

Wt. 52661/1218 4/40 1,000,000 S.P.Co. 51-6667

Place	Date of offence	Rank	Grade of Branch	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order disposing with case	By whom awarded	Remarks
Police Court Lambeth	8/4/40	PC		Theft of Nine pounds (£9-0-0)	Civil police	3 months (H.L.) Wards Worth (one month remitted)	2/4/40	Police Court	

Certified true copy
Lawrence Cannon Lieut.

Description of Court by which tried, or status of Officer dispensing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 25th day of March 1941.

[signature] Adjutant,
No. 2 Inf. Rifle Holding Unit, (C.A.S.F.)

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

E-4836 Pte Robidoux J. L. of the No. 2 Canadian Infantry Holding Unit Royal 22nd Regiment Reinforcement

NOTE.—The Regimental and Squadron, Battery or Company Conduct sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

†See Para. 164, K.R., 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	*Within last 12 months.	*Since Enlistment.
For H. W. L.	times	3 times.
For Civil Crimes	1 times	1 times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the Conduct sheets of the accused.~~

~~2. The accused has not been previously convicted.~~

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Wt. 42048/964 50,000 2/40 W. S. Ltd. 51—9004

7.

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for .....
beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges

for ..... days in Civil Custody,

and 68 days in Military Custody,

Total 68 days.

Of which 20 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 24

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 18th Dec. 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .....

8. The accused is entitled to deferred pay or gratuity in respect of ..... years' service.

9. The accused is entitled to reckon ..... years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to .....

.....]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of .....

12. (*In the case of an officer.*) The accused holds in the army the rank of ....., dated ....., and in his regiment (*or* corps *or* department) the rank of ..... dated .....

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion.
In the rank of	, years,	.....
In the rank of	, years,	.....
In the rank of	, years,	.....

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ....., signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name F 4836 Pte. Rutherford, H. K. of the Ned. Canadian Highland Mobile Unit (Royal 12 inch Gun Section Heavy Artillery)

Note.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of Court by which tried, or name of Officer dispensing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
Police Court	21-10-40, Kandahy.	Theft of Bicycle (£7-0-0)	3 months Hard Labour	One remitted

(Continued overleaf)

1905 - Ile Robidoux J.L.

O. H. M. S.

M. F. B. 270
1000 M 12-40 (8668-09-70)
H.Q. 1772-50-07

E-4836 Pte. Robidoux, J.L.
1 C.D.I.R.U.

190E. Orig

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this 23rd day of December, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

* ~~I am unable to appoint~~ —

*(1. ~~Three Officers to form the Court~~

*(2. ~~A Field Officer as President~~

*(3. ~~Three Officers having more than one year's service~~

~~for the following reasons, namely~~ —

PROCEEDINGS REVIEWED.

27/1/42

Reviewing Officer Pres. Bmd

President.

Rank.	Name.	Regiment.
Major	H.N. Langlois	2 Cdn Div Inf Reinf Unit

Members.

Rank.	Name.	Regiment.
Captain	E.R. Allen	No.1 Cdn Arm'd Corps H.U.
Lieutenant	M.L. Ranger	2 Cdn Div Inf Reinf Unit
Lieutenant	R.B. Partridge	No.1 Cdn Sigs Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [signature] Brigadier

Commanding Cdn Reinforcement Units.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
E-4836 PTE. HOBIDOUX, J.L. 1 Cdn Div Inf Reinf Unit.	First Charge A.A. sec 15(1)	Guilty	Guilty	Findings & sentence ~~in~~ Confirmed but sentence to remitted to 21 months imprisonment with hard labour. ~~A.~~ Brigadier Comd
	Second Charge A.A. sec 15(1)	Guilty	Guilty	
	See charge sheet attached.			
	TO BE IMPRISONED WITH HARD LABOUR FOR TWO (2) YEARS.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— No

(Signed) A.M. Nelson Brigadier (Signed) J. Douglas Major.
Commanding Cdn Reinforcement Units. 2 C.D.I.R.U.
Convening Officer (e) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 27th day of December, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~XXXXXXXXXXXX~~ The shorthand writer
*(4. ~~The officers under instruction~~)

* Omit if not applicable.

were duly sworn.

Signed this 27th day of December, 1941.

J. Douglas Major 2 C.D.I.R.U.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

~~XXXXXXXXXXX

CHARGE-SHEET

The accused, E-4836 Pte. ROBIDOUX, J.L., (Royal 22e Regiment), on the strength of No. 1 Canadian Division Infantry Reinforcement Unit as a reinforcement, a soldier of the Canadian Army (Overseas), is charged with:-

1st Charge
Sec. 15(1)
Army Act

When on active service, absenting himself without leave--

in that he

when in lawful custody at Canadian Detention Barracks, Witley, Surrey, absented himself without leave at about 1845 hours on the 27th April 1941 until apprehended by the Civil Police at Sale, Cheshire, at 0830 hours on the 28th May 1941.

2nd Charge
Sec. 15(1)
Army Act

When on active service, absenting himself without leave--

in that he

at Stafford, absented himself without leave at 1630 hours on the 7th October 1941 until surrendering to the Civil Police in London at about 1110 hours on the 21st October 1941.

L.W.W. Slack ..... Lt-Col.
(L.W.W. Slack) Officer Cmdg.
1st Cdn Div Inf Reinf Unit.

Algonquin Camp, Witley,
15th December 1941.

To be tried by Field General Court Martial

F.R. Paelan) Brigadier
Commanding Cdn Reinforcement Units

Farnborough, Hants
This 23rd day of Dec 41.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD AT WITLEY, Surrey, ON THE 27th DAY OF DEC 41

TRIAL OF:- No. E-4836, PTE. J. L. ROBIDOUX, 1 C.D.I.R.U.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Lt. J.R. Turner, (Unit) 1 CDIRU.

Defending Officer:- (Name) Lt. H. Cassels, (Unit) 1 CDIRU.

At 1500 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1-No, sir.

The President, members and judge-advocate (if any) are duly sworn.

The officers under instruction are duly sworn.

Q2. Do you object to Sgt. T. Pyburn acting as shorthand writer?

A2.- No, sir.

The shorthand writer is duly sworn.

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P. 35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Q3. Do you wish to make any statement in mitigation of punishment?

A3.- Yes sir, a written statement.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4.- No, sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER.

Prosecutor, sworn, produces AF B296 and certified true copy of MFM-6.

Accused presents written statement in mitigation of punishment, which is read, signed by the President, and attached to the proceedings.

.....
President of Court Martial

SUMMARY OF EVIDENCE
In the case of

E4836 Private Robidoux, J.L., Royal 22e Regt. Reinforcement, First Canadian Division Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas)

Evidence taken on oath by direction of the Commanding Officer.

First Witness Prosecution — A34001 Sgt. P.J. Semple Canadian Provost Corps, having been duly sworn, states:

"I am a Sergeant on the staff of Canadian Detention Barracks, Witley, where the accused was serving sentence on the 27th April 1941. On that day I was in charge of the night Guard. When I took over my duties at 1700 hours, I checked the huts and found all the prisoners present. At about 1845 hours one of the prisoners who were employed in the tailor's shop reported to me that two uniforms were missing. I immediately made a check and found two prisoners missing, one of which was Pte. Robidoux. I made a search of the compound. The accused was no where to be found. When going through the tailor's shop I saw one of the windows close to the compound showing marks where the escaped prisoners had climbed over the wire. A search was made outside of the compound without any results. The accused remained absent from 27th April 1941 until he was brought back under escort on or about 21st October 1941.

P.J. Semple Sgt.
P.J. SEMPLE

Accused declines to cross-examine this witness.

Second Witness Prosecution — Police Sergeant 130 J. Hawksworth, Cheshire Constabulary, made the following statement:

"I am a Police Sergeant in the Cheshire Constabulary, stationed at Sale. At 8.30 a.m. Wednesday 28th May 1941 I was on duty in Eastway, Sale, when I saw a man dressed in the uniform of 22nd Regiment of the Royal Canadians. I said to him:- "Can I see your leave pass?" He replied: "No." I asked him for his name and what unit he belonged to. He said: "I will tell you in some other place."

"He was conveyed to Sale Police Station where he gave his name as No. E4836 Pte. Jean Louis ROBIDOUX, of No. 1 Coy, 2nd Infantry Holding Unit, Royal Canadians, Withy Camp, Surrey. He was then cautioned and charged with being an absentee from this unit since 24.00 hours, 29th April 1941. In answer to the charge he replied:"Yes."

"He was in possession of Two, Three Bar Chevrons, and his tunic bore signs of these being worn. He was detained. At 11am 29th May 1941 he was charged before an occasional Court at Sale and remanded in custody until 11 am 31st May 1941. At 11 am 31st May 1941 at the same Court he was remanded to H.M. Prison, Manchester until 10am 7th June 1941.

"At 10 a.m. 7th June 1941 at an Occasional Court at Sale he was charged with two offences of obtaining money (10/- in each case) by means of false pretences, and five other offences of obtaining money by false pretences were taken into consideration. For these offences he was sentenced to six months imprisonment with hard labour. The offence of being absent without leave was adjourned 'sine die.'
4th November 1941 Sgd. J. Hawksworth, Sergeant 130"

The accused does not question this statement, and does not require the presence of this witness for cross examination.

SUMMARY OF EVIDENCE
In the case of
E4836 Pte. Robidoux, J.L. (continued)

Third Witness Prosecution Documentary — A. Fisher, H.M. Prison, Stafford, made the following statement:

"E4836 Pte. Robidoux, J.L./Royal 22e Regt. #2 C.I.H.U. The above soldier was released from this Prison on the 7th October 1941 at 4.30 p.m. As no Military Escort arrived to apprehend him upon release, he was given a warrant to Witley, Surrey, and instructed to report to his Unit.

(Sgd) A. Fisher
for Governor, Stafford Prison
26.11. 1941 "

Fourth Witness Prosecution Documentary — C21046 Cpl. Martin, R. Canadian Provost Corps, made the following statement:

"E-4836 Pte. Robidoux, J.L., No. 2 Cdn. Inf. H.Unit
Sir: At London at about 1300 hrs on the 21 Oct. 41 I was on duty at No. 6 Prov. Coy H.Q. when acting on instructions received I proceeded to the Lavender Hill Police Stn. where the a/m soldier was given into my custody. He had surrendered himself to P.C. Keith of the Lavender Hill Police Stn. as an absentee. I conducted him to No. 6 Provost Coy H.Q. where I handed him over to the N.C.O. i/c cells to be detained. Statement from police is att'd.
London
21-Oct-41 (Sgd) R. Martin Cpl
C-21046

Accused does not question the above statement, and does not require the presence of this witness for cross-examination.

Certified that owing to the exigencies of the service, having due regard to the expenses involved, and loss of time, the attendance of the witnesses giving documentary evidence, could not readily be procured.

Certified that Rules of Procedure 4(c) (d) (e) (f) and (g) have been duly complied with.

Taken down by me in the presence and hearing of the accused this 1st day of December 1941.

A C Ross Capt

Officer detailed by Commanding Officer, No. 2 Canadian Inf. H.Unit to take Summary of Evidence.
(The taking of this Summary was ordered by C.O. #2 C.I.H.U. in November 1941 before the change over)

CERTIFIED TRUE COPY:

R Turner Lieut

MEDICAL OFFICER'S CERTIFICATE

- K.R. (Can) Para. 557 -

I certify that I have this morning examined No. 1

E-4834 Pte. ROBIDOUX, J.L. (Royal 22e Regiment),

No. 1 Canadian Infantry Holding Unit, and in my

opinion he is ~~unfit~~ fit to undergo trial by Court-Martial.

Algonquin Camp, Witley,
23rd December 1941.

Medical Officer

CANADIAN LEGION

WAR SERVICES

Decembre 22 1941

The Officers of the Court

Sirs.-

I plead guilty to both of these charges, which are placed before you. I have no other plea because I believe that these charges where only made against me, upon my own stupidity.

When I was in the lawful custody of the Canadian detention Barracks I did escape because of the other prisoners going over the top. These words are written because of my poor spoken English. Therefore I try to make my self clear. This escape was not planned, it was a temptation which by my impulsiveness

CANADIAN LEGION

WAR SERVICES 19

– Sir I can now see my
mistake, but it has happened
– can not I amend that error
by showing in self feeling
for a good soldier Sir
I had no intention of deserting
the Army – because if I
had – I would not have
given my self up I just
don't know what got into me
– all I know – I just left
and – now – I beg you
– Sir to have some mercy
upon me and give me a
fair chance.

Sir, I hope upon
sentencing me that you
will not sentence me
for the crimes that I

CANADIAN LEGION

WAR SERVICES

Page four

19

already paid for.

Sirs I am

Your Humble Servant

P.C. E 4836 Jean Louis Robidoux

R. 22 R. Cmt Rit Barraks

Camp 101 Witley Surrey

[illegible]

Page two

CANADIAN LEGION

WAR SERVICES 19

weakness made me do this

Sir's I do hope that you will see it fit to be as lieveant as possible - because I - while AWL have paid, and paid very dearly I have been locked up for a very long time even while AWL and I do beg, that I shall be given a chance to pay back my foolishness - by - being a Good soldier - I want to be ready for active Services - because now I believe that this war has reached its peak - I want to be out - to be able to fight - because of the Hong Kong affair

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

(12929) W.L.40937/337 20,000 12/39 A.& E.W.Ltd. Gp.698 Forms/O.1617/52

I CERTIFY that the man whose personal description is given below surrendered himself to* LC 83rd Kent

at Lavender Hill, SW11 at (hour) 11.10 am on the 21st day of October as being No. E 4836

(Rank and Name) Private Jan Louis Robidoux

a deserter (or absentee without leave) from 6th October 1941

and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word " to " to be inserted the name and rank of the police officer concerned.

Age 24 Height 5 Feet 6 Inches

Complexion fresh Hair dark brown Eyes brown

Marks Scar above left eye and left chick

In uniform or plain clothes In uniform

Probable Date and Place of Attestation	
Probable Date of Desertion or beginning of absence, and from what place	6th October 1941

Signature of Officer of Police in charge of Lavender Hill Station.

21-10-41 Date of Signature.

Army Form O,1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of No. .....

who surrendered to the Police at ..... on .....

Payable to .....

CERTIFIED that this statement of expenses is correct.

..... Superintendent or Officer in charge of Police Station at .....

..... Date of Signature.

LAST SHEET DESTROYED 24-3-41

M.F.M. 6 (A.F.B. 133)

No. E24836 Name Robidoux, J.L. Sqn., Battery, or Company — Corps R.22e R.(CASF) Date of enlistment 18-12-39 G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Guille-mont	29-2-40	Pte		When on active service 1-A.W.L. fr 2300 H. 28-2-40 till 0600 hr 29-2-40 total absence: 7 hrs 2-AWL fr 2200 h 29-2-40 till 0820 hr 11-2-40 total absence: 10 days 10 hr 20 minutes	Sgt.A.Hebert L/Shoucher Pte A Miville	14 days Detention	12-3-40	Lt-Col F. Flynn	To forfeit 11 day's pay. Placed under restriction of pay for a period of 3 months
"	26-4-40	Pte		When on active service: 1- Deserting His Majesty's Service from 2200 hr 26-4-40 till apprehended by Military Police at 1100 hr 22-5-40 Total absence 26 days 9 hrs	L/Sgt Dumais	28 days Detention	3-6-40	Lt-Col. F. Flynn	To forfeit 65 days pay

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
LONDON	19-10-40	Pte		Theft £9.0.0	Trial by Police Court Lambeth	3 months hard labour Wandsworth Prison	21-10-40	Police Court Lambeth	
WITLEY CAMP				A.A. 15-1 AA 15-1 AA 15-1	Sentence	to be imprisoned with hard labour for two years	29-3-41	F.O.C.M. Brig.L.F. Page	
					Remitted Sentense	1 year 1 yr imprisonment with hard labour			
Sale	21-5-41	Pte		Unlawfully obtaining by false pretences cash 10/ from W.T.Stallard, Sale		6 months imprisonment	8-6-41	Police Court Sale	

CERTIFIED TRUE COPY

E.J. Rider Lieut.

LAST SHEET DESTROYED 24-3-41

No. E4836 Name Robidoux,J.L. Sqn.,Battery, or Company Corps R.22e R.(CASF) Date of enlistment 18-12-39 G.C. Badges Service or Proficiency Pay Character

M.F.M. 6 (A.F.B. 123)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Guille-mont	29-2-40	Pte		When on active service 1-A.W.L. fr 2300 H. 28-2-40 till 0600 hr 29-2-40 total absence: 7 hrs 2-AWL fr 2200 h 29-2-40 till 0820 hr 11-3-40 total absence: 10 days 10 hr 20 minutes	Sgt.A.Hebert L/SBoucher Cpl A Miville	14 days Detention	12-3-40	Lt-Col F. Flynn	To forfeit 11 day's pay. Placed under restriction of pay for a period of 3 months
"	26-4-40	Pte		When on active service: 1- Deserting His Majesty's Service from 2200 hr 26-4-40 till apprehended by Military Police at 1100 hr 22-5-40 Total absence 26 days 9 hrs	L/Sgt Dumais	28 days Detention	3-6-40	Lt-Col. F. Flynn	To forfeit 65 days pay

(P.T.O.)

STATEMENT as to CHARACTER & PARTICULARS of SERVICE of ACCUSED

No. E-4836 Pte. ROBIDOUX, J.L. (R. 22e R.) 1st Cdn Div Inf Reinf Unit.

1. The following is a fair and true summary of the entries in the regimental conduct sheet of the accused, exclusive of convictions by a court-martial or a civil court, and of cases in which trial has been dispensed with:

	Within last 12 months	Since Enlistment
Absence without leave - Sec 15(1)		3 times

Number of instances of gallantry or distinguished conduct: Nil.

2. ~~The accused is not under sentence at the present time.~~

3. ~~The accused has not been previously convicted by a Court-Martial or a civil court.~~

4. The accused has been in confinement, awaiting trial on the present charges, for 1 days in civil custody, and 1 days in military custody, making a total of 2 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 24 years.

6. The date of his attestation specified in his attestation paper is 18th December 1939.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 year.

8. The accused is entitled to deferred pay or gratuity in respect of 1 year's service.

9. The accused is entitled to reckon 1 year's service for the purpose of determining his pension, etc.

10. The accused is in possession of or entitled to no military decoration or military reward.

SCHEDULE

of convictions by a court-martial or a civil court and of cases in which trial has been dispensed with of the accused.

At Police Court, Lambeth, on 21st Oct 40, was awarded 3 months' hard labour for theft of £9:0:0.
At F.G.C.M. at Witley on 29th Mar 41, was awarded 2 years' imprisonment with hard labour for three offences of absence without leave under Sec. 15(1) of the Army Act. One year of sentence was remitted.
At Police Court at Sale on 8th Jun 41 was awarded 6 months' imprisonment for unlawfully obtaining by false pretences cash to the amount of 10/- from W.T. Stallard, Sale. 3 months of sentence was remitted.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

E.J. Rider ..... Lieut.
(E.J. Rider) Records Officer
1st Cdn Div Inf Reinf Unit

Dated at Algonquin Camp, Witley,
this 17th day of December, 1941.

QQQ-17

SGT ROBIE. GW

33 fils.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : H-63521 Sgt. ROBIN, George William 11 Cdn Armd Regt

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. Sec 40	Not Guilty	Not Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) .....
(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 1 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

(Sgd) Excellorman Maj Judge-Advocate, if any. 5 June 44 Date awarded. (Sgd) [illegible] President. (RP 45, 80.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

Geo Wm Robin 8 Jun 44 [illegible] Lt-Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ BRANCH (60) 444-17 H.70

CFA86 (In Lieu of AFA42) 40 P & R (1808) (2004)

FIELD GENERAL COURT-MARTIAL

RECEIVED 3 JUL 1944 JAG Branch

Convened by Order of Lt-Gen Murphy Comd 1 Cdn Armd Bde dated 3 June 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt	Full Christian Names	Surname	Unit.
H-63521	Sergeant	George William	ROBIN	11 Cdn Armd Regt

PROCEEDINGS REVIEWED 3 Jul 44 [illegible] and Asst Capt REVIEWING OFFICER, JAG BRANCH CMHQ

RECEIVED 11 JUN 1944 CANADIAN MILITARY HEADQUARTERS

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) [illegible] on (date(s)) 5 May June 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to [illegible] as interpreter ? Ans [illegible]
The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer ? Ans [illegible]
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	R.R. Taylor	14 Cdn Armd Regt
Member	Captain	C.H. Rennie	1 Cdn Armd Bde Coy (HQ Coy) RCASC
Member	Captain	H.E. Emery	1 Cdn Armd Bde Ord Fd Pk Coy RCOC
Judge-Advocate	Major	G.L. Morrison	DJA, 1 Cdn Corps
Prosecutor	Captain	G.W. Hamm	11 Cdn Armd Regt
Defending Offr	Lieut	K.D. McLord	11 Cdn Armd Regt

Questions by President : Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) plea(s) (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed) and considers the Instrs on Procedure after Arraignment at top of p 9. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*D*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).~~(2) The Court ~~is closed, and considers the submission.~~(3) The Court is re-opened, and the President announces that the submission ~~is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded on all charges, use second alternative in para D8.) 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted per Notes.*
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ~~Yes, evidence~~ ..... Do you intend to call witnesses on your behalf ?
Ans ~~Yes~~ ..... Are they witnesses as to character only ? Ans ~~No~~ .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(c).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.~~(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (b), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by MML p 60, 757-759. As to assembly and disposal of record after trial see instrs on back of Convening Order. Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No. H-63521 Sgt. George William ROBIE, The 11th Canadian Armoured Regiment (Ont. R.), a soldier of the Canadian Army Overseas is charged with:

1ST CHARGE

AA Sec 40 When on active service conduct to the prejudice of good order and Military discipline,

In that he,

In the Field on or about 27 May 1944 did improperly and without authority make use of Cdn Military vehicle No. F205952.

(R.L. Purves) Lt.- Col.,
Cmdg. 11 Cdn Armd Regt - CAC.

Field/Italy,
3 Jun 44.

To be tried by F.G.C.M.

(W.C. Murphy) Brig,
Comd, 1 Cdn Armd Bde.

Field
3 June 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA9)
40/FA9/1697 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-63521	Sergeant		George William	ROBIE	11 Cdn Armd Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 3 June 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	R.R. Taylor	14 Cdn Armd Regt

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	C.H. Rennie	1 Cdn Armd Bde Coy (83 Coy) RCASC
Captain	H.E. Emery	1 Cdn Armd Bde Ord Fd Pk, RCOC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Major	G.M. Morrison	DJA, 1 Cdn Corps

On Active Service in the Fd

in ITALY (Country.)

(Signed personally. RP 105 fn 2) (W.C. Murphy) (Rank.) Brig

Date 3 June 44

Commanding 1 Cdn Armd Bde, C.M.F.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No H63521

Sgt. G.W. Robie Of the 11 Cdn Armd Regt and in my opinion

he is fit/~~unfit~~ to undergo trial by Court-Martial.

Station 11 CAR

Date 5/6/44

C.E. Mellow Capt.
(Signature of Medical Officer)

morning Sgt Sheehan came & told me that he had come back for his kit. The truck that his kit was in did not get into the harbor until 1230 hrs. It had been missing since the previous day and I had been informed by Sgt Bryant to place the occupants under arrest when they returned which I did, and then helped loading radical truck (which was the one that had been missing). I then sent it to new area. Then Sgt Sheehan and I carried his kit across rd to where main concentration of Eqpt was and discussed the possibilities of him getting back to Torino, where he had been ordered to return, before his pass expired. At approx 1300 hrs I approached RQMS Turner as to advisability of taking Sgt Sheehan part of the way. He suggested that I only go as far as no 6 Highway where I could contact CMP. I asked him if he would supervise the loading of his own kit as the rest of the area was cleaned up. I was then free to leave with Sgt Sheehan which I did at about 1400 hrs. We arrived at junction of no. 6 and 85 and there were several men there waiting for lifts towards Naples so I decided to take Sgt Sheehan further as there seemed little possibility of him getting a ride further on. As I saw men looking for rides all the way along so I took him to south outskirts of Naples on the Avelino rd. I left him off there with his kit which consisted of a large duffle bag, large pack, small pack and steel helmet. I then proceeded back towards new 'B' Echelon harbor which was the same direction as I

First Witness for the Prosecution.

B60743 Sgt Sheehan J. 11 Can Armd Regt having been duly sworn states:

I recognize accused. On 26 May 44 I came 'B' Ech of the regt to get my kit and I was offered a drive to no 6 highway by the accused. He drove me to the outskirts of Naples. The accused said he would take me to Naples.

No cross-exam.

To the court 'B' Ech was then located on the Volturno. The vehicle in which the accused drove me was a scout car. The highway I mentioned above was no. 85 not no. 6. I realize now it was 85.

RPs B complied with.

Second witness for the pros:

B60554 RQMS Turner (KW). 11 Can Armd Regt. having been duly sworn states

I recognize accused. On 26 May 44 at about 1300 hrs I arrived in 'B' Ech after making a trip to Avelino. I was there approached by the accused as to the possibility of taking Sgt Sheehan to Avelino with the scout car. I told him it would be advisable to take him only to Route no. 6, where he could contact the CMP and possibly secure a drive for Sgt Sheehan. From Camp to Route 6 is about 2 or 3 miles but may be more.

Cross-exam - 'B' Ech had left the Camp when I returned with only a rear party there. The work had been completed there as far as I could see

To the Court - The only reason I knew of why the accused should ask me if he could take the vehicle was because I am of senior rank.

RPT 3 (B) complied with.

Third Witness for the Prosecution

Capt. J. M. Harold, 11 Cdn Armd Regt, having been duly sworn states:

I am QM of the 11 Cdn Armd Regt. At approx 0530 hrs I was leaving "B" Echelon of the unit to lead the "B" echelon of the Bde to San Vittore area. At about 1030 Sgt Bryant told me Sgt Sheehan had appeared in the old "B" Ech area to pick up kit and wished transport. I told him the unit would not supply transport as we had done so already a few days before. The occurred was general duty NCO, orderly sgt and general disciplinarian in the "B" Ech. He was in charge of the old "B" Ech area after I left.

No cross exam.

By the Court - Any vehicles left in the old "B" ech were left for the purpose of cleaning up the area and then moving forward to new area. The scout car was left behind because the regular driver of it was AWL when we left.

RP 83(B) complied with.

Fourth Witness for Pros.

B 148 31 Sgt Bryant P. 11 Cdn Armd Regt having been duly sworn states: I am Transport Sgt. Hdq Sqn of the Regt. On 27 May 44 at about 1030 hrs I was detailed to go after a scout car which had been missing from the unit. I found it in Santa Maria. The accused had told me that the scout car was approx 20 miles from our "B" Ech and that it was broken down. At the time I was escort for Sgt Robie and he was with me when I recovered the vehicle. A fitter was also with us to see if we could put the vehicle in running condition. It took him 1½ hrs to fix it.

No cross-exam

By the Court - I would say we went about 20 or 30 miles to recover the vehicle, along Highway No. 6. There was no evidence of a collision.

RP 83(B) complied with.

Fifth Witness for the Prosecution

B 60801 F/Sgt Isaac A. E. 11 Cdn Armd Regt having been duly sworn states: I am mech. Sgt for Hdq Sqn. I recognize accused. On 27 May 44 Scout car F 205 952 which had been recovered from Santa Maria was examined by me. It had a broken crown in the right rear bevill box. This could have been wearing for some time and could break without the vehicle being involved in an accident.

No cross-exam.

RP 83(B) complied with

First Witness for the Defence:

The accused having been duly sworn states: At about 0600 hrs 26 May 44 I was approached by Lt M Fox who told me that I would be in charge of rear party at "B" ech and to see that area was cleaned up. All available tpt with exception of one half-ton Scout car had left at 0630 hrs for new harbor area at San Vittore. With the men left behind we cleaned up area working until appx 1200 hrs. During the

had come. When about a mile south of Santa Maria I heard a noise from what I thought was the transmission of the scout car. I could not be certain what the trouble was so I left the scout car at the town square in Santa Maria. There were several U.S. trucks there and when I had parked the car I closed the sliding top. I approached a U.S. police and asked him if it would be safe to leave the car there till about 2200 hrs. This happened about 1500 hrs. I then proceeded to hitch hike back to new camp area to get a truck to tow the scout car. I had been instructed by S.S.M Fox that the new area was about 200 yds to right of where Speedy Express leaves us & but on arrival there could find no trace of 'B' Echn. I slept in a truck near there overnight and next morning continued my inquiries until CMP told me my Echn must be further down at next rd junc. Traffic was very heavy and I did not reach new 'B' Echn area until about 1030. Reported to S.S.M Fox and he paraded me to Echn Comd Maj Orr. He placed me under close arrest and I was told to go with M/ Sgt to recover scout car. I never received any orders that I could not take Sgt Sheehan.

Cross-Exam - I did not necessarily think I could get to Naples without anyone knowing. There were three men at old 'B' Echn when I left - the asst. cook and two others. The B.G.M.S promised me he would look after them.

By the Court - I figured the disposition of

vehicles was under me. Sgt Sheehan was preparing to go on 6 mos compassionate leave and I thought I was quite within my rights to take him. RGMS accepted responsibility for seeing that two trailers and his stores went along to new area. I did not seek a lift for Sgt Sheehan from CMP, on acct. of the men there at no 6 waiting for a lift. The vehicle was scout car no F205952. It did not actually break down but I was afraid it would as it was making quite a noise at rear end. The American MP told me it would be quite safe. When we went looking for it the next day we found the U.S. provost had taken it into their enclosure. I am not sure whether the fitter tried to operate the vehicle or not. The motor was running alright. It never occurred to me to immobilize the vehicle since Provost had told me it was OK to leave it there. It was possibly 35 miles or a little latter from old "B" ech to where I dropped Sgt Sheehan. From there back to new "B" ech would be about 5 or 10 miles further. It would not have been possible for me to make this trip without my absence being known. The fact that Sgt Sheehan's kit was missing when he first left, and had to return for it was one reason why I wanted to give him a lift. There was very little traffic on the road to Naples.

RP83(B) complied

Second witness for the Prosecution

B60600 SSM Fox G.A., 11 Cdn Armd Regt.

On 26 May 44 I detailed the accused to

take charge of rear party at "B" echn.
No cross-exam.
RP 83 (B) complied with.

Defending Offr's summing up.
My plea is that since the accused was in charge of the rear party and in charge of the vehicles there he had implied authority to do what he did and used his discretion properly.
The Pros. offr makes no summing-up.

Summing up of J.A.
The sole issue in this case is that raised by the Def. Offr in his summing-up. Quotes final sub-para of Para 13, page 13 MML and places a charge of taking W.D. vehicle without authority in same category as examples given there. Sole point is that if according to customs of the service the accused, by reason of his position at the particular time had implied authority to use the vehicle in the manner he did. That issue is purely one of fact and is solely for you to decide. Discusses burden of proof - reasonable doubt

EXHIBIT B-1

SUMMARY OF EVIDENCE IN THE CASE OF

NO. H63521 SGT. ROBIE, GEORGE, WILLIAM., 11 CDN ARMD REGT.

The Commanding Officer directs that the evidence be taken on oath.

First Witness for Prosecution. B60743 Sgt Sheehan, J., 11 Cdn Armd Regt., Central Mediterranean Force, having been duly sworn, states: -

I was given compassionate leave to England and was sent down to Forino, to commence my trip. Upon arriving there, I was asked where my kit was. The answer I gave, it being back at my Regiment.

I was given a special 24 hr pass to return to my Unit to gather up my kit.

Upon arriving at the Unit I gathered up my kit. I was offered a lift to highway 6 by the accused, whom I recognize, in a scout car, which I accepted. The accused drove me to the south side of the outskirts of Naples, to the junction of the Naples and Avelino road.

Cross-examined by the accused.

Q. Did you not say that you would appreciate a lift as far as I could take you?

A. Yes.

Q. What kit did you have to take back with you?

A. 1 Large bag.
1 Big Pack.
1 Haversack.
1 Steel hat.

Q. How long did it take you to hitch-hike from Forino to the Regiment, for your kit?

A. Approximately 4 1/2 to 5 hrs.

Q. Did you have hopes getting back to Forino before your pass expired by hitch-hiking?

A. Yes. But the traffic was poor.

Q. Did you at any time suggest that I take you all the way?

A. No.

Q. Do you think with all the kit you were carrying that it would be hard to hitch-hike?

A. Yes it would, because you can hitch-hike much better free handed, minus kit.

Q. Do you think at any time did I drive in a manner that might cause damage to the vehicle?

A. No.

Q. What time did you get to Forino?

A. Approximately 2200 hrs.

Q. What time did I drop you on the other side of Naples?

A. Approximately 1700 hrs.

Q. How far approximately from Naples to Forino?

A. About 30 miles.

Q. Why did it take you 5 hrs to go 30 miles?

A. I was hitch-hiking and carrying my kit.

Second Witness for Prosecution.

B60554 RQMS Turner, H. W., 11 Cdn Armd Regt., Central Mediterranean Force, having been duly sworn, states: -

On 27 May 44 at approximately 1300 hrs, the accused, whom I recognize, approached me with the possibilities of taking Sgt Sheehan, J., to Forino.
I suggested to the accused, to take him as far as highway 6, where he could drop him off at a CMP post, where a lift would be easily gotten.

Cross-examined by the accused.

Q. You knew Sgt Sheehan had came back for his kit and had obtained it?

A. As far as I knew he had his kit. I didn't see it.

Third Witness for Prosecution.

Capt. J. M. Harold, 11 Cdn Armd Regt., Central Mediterranean Force, having been duly sworn, states: -

At approximately 1000 hrs 26 May 44, while in harbour area of San Vittore, Sgt Bryant informed me that Sgt Sheehan had arrived back at the Unit, and was in the old harbour. I asked Sgt Bryant what he was doing there and he informed me, that he had come back for his kit, and he wished transportation back to Forino. I emphatically stated that we would not give any transport to Sgt Sheehan and that he could get back on his own.
Sgt Bryant informed me that Sgt Robie, the accused, whom I recognize, was driving a Daimler Scout Car from the old to new harbour. Tpr Froud, who was driver of the scout car, was one of the men that was absent at the time of the move.
Immediately after lunch I left "B" Echelon to see the Adjutant, who is in A2 Echelon. On my return at approximately 1830 hrs Sgt Bryant informed me that he understood that the accused had driven Sgt Sheehan in the Scout Car, part way to Naples.

The accused declines to cross-examine this witness.

Fourth Witness for Prosecution.

B74831 Sgt Bryant, P., 11 Cdn Armoured Regt., Central Mediterranean Force, having been duly sworn, states: -

On 27 May 44 SSM Fox put the accused, whom I recognize, under arrest and detailed me for escort and to go down to Santa Maria to pick up a Scout Car, that was supposed to be there. When Tpr Rychoski and I arrived at the spot, No car was to be found. Later we found it at the American Police Post. Tpr. Rychoski checked and fixed the car and we returned to the Unit in it.

The accused declines to cross-examine.

Fifth Witness for Prosecution.

B60801 L/Sgt Haase, A. E., 11 Cdn Armd Regt., Central Mediterranean Force, having been duly sworn, states: -

On 27 May 44 the accused, whom I recognize, reported to me that Scout Car F205952 had broken down near Santa Maria. One of our fitters went down and brought it back.

On 28 May 44 I made an inspection of said Scout Car and found tools correct, but a broken crown in the right rear bevill box.

Cross-examined by the accused.

Q. In your opinion was I responsible to this break down, of these parts?

A. No. It could happen to anyone.

Q. Did I do right by leaving the vehicle, when it had broken down?

A. Yes, not knowing what was the matter.

Q. Do you think that the damage could have been caused by this particular trip, or could it have been wearing for sometime?

A. It could have been wearing for sometime and upon examining it, it could have broken anytime.

The accused was cautioned as follows: -

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused does not call any witness for the defense.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with.

G. W. Hamm

(G. W. Hamm) Capt.
11 Cdn Armd Regt.

ld, Italy.
May 1944.

80-92

Cpl. Robillard, L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-101921 Pte Clifford ROBILLARD X-4 List RR of C att 1 Cdn Disciplinary Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15 (2)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~The present undue sentence for ..... beginning on (date) .....~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 27 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a Period of 150 Days

(Sgd) ..... Judge-Advocate, if any. 13 June 45 Date awarded. (Sgd) ~~.....~~ President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(7), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 17 JUN 45 (Sgd) (J G Sprague) Brigadier, Commanding 2 Can Base Rft Gp

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

C 101921 PTE CLIFFORD ROBILLARD CR 591 (SHEET 1 & 2 ONLY) d/20 Jun 45

W J Richmond Lt-Col. Comdg. 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Brig J G Sprague DSO OBE, Comd 2 CBRG dated 9 JUN 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) Appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Permt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names	Surname	Unit.
C-101921	Pte	Clifford	ROBILLARD	X-4 List RR of C att 1 Cdn Disciplinary Centry

PROCEEDINGS REVIEWED

J H Brody Capt

Judge Advocate

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Held in the Fd in (country) BELGIUM on (date(s)) 13 JUN 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 34/C3.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 695, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 559. 2. AA 46(2), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans ~~.....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer?~~ Ans ~~.....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(2). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G G MacKENZIE MBE	FGH	Cdn C M Centre
Member	CAPT	P S POULIN	RCA	Cdn Com Centre
Member	CAPT	G K BISSETT	CHQ	Cdn Com Centre
Judge-Advocate				
Prosecutor	CAPT	K.A. MACKENZIE	CIC	Cdn Com Centre
Defending Offr	CAPT	A.J. THOMPSON	CIC	Cdn C M Centre

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused C-101921 Pte Clifford ROBILLARD before arraignment make(s) (no) ~~no~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RaP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 696 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B + C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vol VII, p. 129

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E2 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1)~~ The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(B). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 113(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pieces of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans. NO.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. NO - 63 .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined C 101921 (No.)
Pte (Rank) Robillard C. (Name) and in my opinion he is
fit to undergo trial by Court-Martial.

Station Field

(Sgd) (Medical Officer)

Date 13 June 1945 Unit I cdn. Disc. Centre.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-101921	Pte		Clifford	ROBILLARD	X-4 List RRofC att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 9 JUN 45 endorsed by me, ~~(or by an offr of my staff for me),~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	G G MacKENZIE MBE (Must be named. RP 106.)	FGH	Cdn C M Centre (Unit.)

MEMBERS.

Capt	P J POULIN	RCA	Cdn C M Centre
Lieut (Rank.)	G K BISSETT (Named or detailed. RP 106.)	CH of O	Cdn C M Centre (Unit.)

WAITING MEMBER.

(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally. RP 105 (n 2.)) Brigadier (Rank.)

(J G SPRAGGE)

Commanding 2 Cdn Base Rft Gp

Convening Officer.

Date 9 Jun 45

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA95 (In lieu of AFA3) 40/P & S/1697 (4031)

CHARGE SHEET

The accused, C-101921 Pte C lifford ROBILLARD, X-4 List Royal Regt of Canada, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 0820 hrs 13 Mar 45 until surrendering himself at 1400 hrs 20 May 45.

(Total absence: 68 days 5 hrs 40 minutes)

In the Field
4 Jun 45

(J N Medhurst) Lt col
Commanding
1 Cdn Discipline Centre

To be tried by Field General Court-Martial

In the Field
9 Jun 45

(J G SPRAGGE) Brigadier
Commanding
2 Cdn Base Rft Gp

Case of C-101921 Pte Robillard C. E423

Mitigation Plea

The accused enlisted in Nov 42 and came to France about 7 Jul 44 with his regiment, and served in action with a rifle company for about 4 months. His reason for going absent as charged was that he had asked for a pass and was told that he could not get one, although he had not had one for over a year. He went A.W.L. from 11 Bn. and stayed in Brest, and finally surrendered himself.

The court is requested to consider these facts in passing sentence.

A.J. Thompson Capt
Officiating officer.

4 R.

Summary of Evidence in the case of C-101921 Pte ROBILLARD C, X 4 List Royal Regt of C, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By direction of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings

Exhibit "A" - Certified true copy of Extract from Pt 11 Order No 35 dated 21 Mar 45

Exhibit "B" - Certificate of surrender dated 20 May 45

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to give evidence or to say anything unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say

The accused does not call any witness

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C)(D)(E)(F) and (G) have been complied with.

M. Rousseau Capt

(Maurice Rousseau) Capt

Officer detailed to take Summary of Evidence

Dated in the Field
4 Jun 45

Exhibit A
M. Rousseau Capt

PART II ORDER EXTRACT FORM

TO: O.C. 1 Disc Centre

99/20/

31 May 1945

EXTRACTS FROM: UNIT X-4 List Royal Regt of Canada

Part II Order No. 35 dated 21 Mar 45

ABSENT WITHOUT LEAVE

AWL from 0820 hrs 13 Mar 45

C 101921 Pte Robillard C. (X-4 List 13 Bn)

Certified to be a true extract from the regimental books and documents in my custody.

[signature]
Officer IC Records
Cdn. Sec. 2 Ech. HQ 21 A Gp

The following documents are { attached. Please acknowledge receipt on attached duplicate. / required. Please forward same.

Originating Clerk's Initials

for
Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70 ECH—6 40/C&S/1276 (0704)

Explicit B

Mr. Rouillard Capt.

xxxxxxxxxxxxxx
Captain J. Moon C 101921 Pte Robillard C

Royal Regt of Can

B 146589 L/Cpl Simon T

20 May 45 1400

xxxxxxxxxxxxxxxxx

(J.Moon) Capt
xxxxxxxxxxxxxx

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

Certified true copy of extract from Pt 11 Order No 35 dated 21 Mar 45 "A"

Certificate of Surrender dated 20 May 45 "B"

I, the undersigned, hereby acknowledge receipt of one copy of Charge Sheet and one copy of Summary of Evidence free of charge on 4 Jun 1945.

Rob Ward, C.
C-101921 Pte ROBILLARD C

I, C-101921 Pte ROBILLARD C desire to have an officer assigned to represent me at my trial by Field General Court-Martial.

I desire the services of ~~any officer detailed~~ ~~if he is available~~.

DATE: 4 Jun 45

Robillard, C.
(Signature of Accused)

Army Form B 296 (War)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martials only)

Number	Rank	Name	Regiment (or as the case may be)
C-101961	Pte	ROBILLARD C	Royal Regt of C

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court-martial or a civil court:-

For 15(1) AWL 1 0 times

For _____ _____ times

For _____ _____ times

For _____ _____ times

Date of first entry in Field Conduct Sheet 16 Aug 43

Date of last entry in Field Conduct Sheet 23 Jan 45

2. Previous convictions of the Accused by a Court-Martial or a civil court are set out in the Schedule overleaf.

3. The accused at the present time is under sentence for NIL

beginning on the N/A day of N/A.

4. The accused has been awaiting trial on the present charges for N/A days in civil custody and for 23 days in military custody, i.e. N/A days in Open Arrest 23 days in Close Arrest, of which N/A days were spent in Hospital.

5. The present age of the accused is 21 years 9 months old.

6. The date of his Attestation is 16 Nov 42.

7. The service which the accused is allowed to reckon _____.

8. The accused is in possession of 6 V.S.M with bars.

9. (If the accused is a Warrant Officer or NCO). The accused has served continuously without reduction, to the present date:-

	Date of Promotion
In the substansive rank of ////	_____
In the War substansive rank of ////	_____
In the acting rank of ////	_____

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR CIVIL COURT OF SUMMARY AWARDS UNDER SEC 47 AA AND OF CASES IN WHICH TRIAL HAS BEEN DISPENSED WITH OF ACCUSED

Description of Court by which tried	Date & Place of trial	Charges upon which convicted	sentence of court	Punishment remitted or sentence suspended
FGCM	Field 23Jan45	15(1) AWL (No particulars)	90 days pay	no record

I hereby certify that the foregoing particulars which have been extracted from the regimental books in my custody are correct to the best of my knowledge and belief

Signed this 13 day of Jun 45

(M Cooke) Lt
Officer ic Regimental books
1 Cdn Discipline Centre

No. C101921 Name ROBILLARD C Sqn, Battery, or Company | Corps CIC | Date of enlistment 16.11.42 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/126 (5412)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16Aug43	Pte		15(1) AWL 3 days 22 hrs 30 min		3 days pay		CO	
Field	24Aug43	Pte		15(1) AWL 1 hr 20 min		7 days pay		CO	
Field	11Mar44	Pte		15(1) AWL 12 hrs		2 days pay		CO	
Field	30Mar44	Pte		15(1) AWL XX 9 hrs 10 min		2 days pay		CO	
Field	8May44	Pte		15(1) AWL		14days pay		CO	
Field	29Oct44	Pte		15(1) AWL		10 days pay		CO	
Field	23Jan45	Pte		15(1) AWL		90 days pay		FGCM	

Certified true copy of original MFM 6 in my custody

M Cooke Lt

(M Cooke) Lt
Officer ic Regimental books
1 Cdn Discipline Centre

(PTO)

4X-15.

Pte Robillard C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C101921 Pte C ROBILLARD 1 R Regt C

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge	Guilty	Guilty	
2nd	Charge	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) .....
(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 49 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for forty (40) days and to forfeit all ordinary pay for a period of ninety (90) days.

(Sgd) ..... Judge-Advocate, if any. 23 Jan 45 Date awarded. (Sgd) C Matthewson Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) E Clayton Lt Col

Date 26 Jan 45 A/Commanding 4 Can Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C-101921 Pte C Robillard	30 Jan 45	T. Sutton Lt. 1 R Regt of C

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4/X-15

FIELD GENERAL COURT-MARTIAL

CFA96 (To 10th Ed AFAS) 40/P & S/1888 (Ed 2) 4/388

(Convened by Order of) Lt-Col J E C PANGMAN A/Comd 4 CDN INF BDE dated 22 Jan 45

ACCUSED.

(Where trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C-101921	PTE		CLIFFORD	ROBILLARD	R REGT C

PROCEEDINGS REVIEWED

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in ..... on (date(s)) 23 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2/72.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for paths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6, AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court at 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ..... as interpreter? Ans ~~Yes~~ No

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans ~~Yes~~ No

~~The shorthand writer is sworn.~~ (1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	H W P THOMSON	ESSEX Scot
Member	CAPT	R C A COMBERLAND	R Regt C
Member	CAPT	W. L. COLEMAN	RHLI
Judge-Advocate	N/A		
Prosecutor	Lt	N. HUHON	R Regt C
Defending Offr	Lt	W. M. LANGMUIR	R Regt C

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused C101921 Pte C Robillard before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RaP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Vol IV Fol 41

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or recalling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO .....(5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "D", initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....

(*1. RP 115. 2. RP 40(A), see 90(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. NO .....

(*1. If evidence has already been given by accused and witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s) purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "E" and Ex "F" respectively.(2)

(*1. MFB 355 or MFB 296. 2. MFM 6. 2. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. NO .....(2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No C-101921 Pte ROBILLARD, Clifford, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE — WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

Sec 15 (1)
Army Act

- in that he -

In the Field, absented himself without leave from 2000 hrs, 8 Nov 44, and remained absent until surrendering himself at 2235 hrs, 21 Nov 44, to the Canadian Provost Corps, in the city of Brussels, Belgium. (Total Time Absent: 13 days, 2 hrs, 35 mins.)

SECOND CHARGE — WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

Sec 15 (1)
Army Act

- in that he -

In the Field, ~~while undergoing~~ when in arrest, absented himself without leave from 0800 hrs, 27 Nov 44, and remained absent until surrendering himself at 2345 hrs, 10 Dec 44, to the Canadian Provost Corps, in the city of Brussels, Belgium. (Total Time Absent: 13 days, 15 hrs, 45 mins.)

E.J.H. Ryall Major

~~E.J.H. Ryall, Major, C.~~
~~A Officer Commanding,~~
1 Bn The Royal Regt of Canada.

IN THE FIELD
19 Jan 45.

IN THE FIELD

To be tried by Field General Court-Martial

Comd 4 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-101921	PTE	CLIFFORD	ROBILLARD	R REGT C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 Jan 45 endorsed by me [illegible] " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial [illegible]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	H W P Thomson	Essex Scot

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
	A Capt to be detailed by CO RHLI	
	A Capt to be detailed by R Regt C	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	A Capt to be detailed by R Regt C	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
	N/A	

On Active Service in the Fd

in HOLLAND (Country.)

(Signed personally. RP 105 fn 2.) (J E C PANGMAN) LT-COL (Rank.)

Dat 22 Jan 45

A/ Commanding 4 CDN INF BDE

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 98 (In lieu of AFA 3) 40/P & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE
AW (Can) FORM 551

I certify that I have this morning examined No C-101921
Pte Robillard, C. of 1 R Regt C and in my opinion he is
fit/~~unfit~~ to undergo trial by court-martial.

Station In The Field.
Date 22 Jan 45

T A Barnett Capt
Medical Officer.

Plea for mitigation of sentence on behalf of

O 101 931 Pte Robillard C.

This man is just twenty years of age & apparently at the time he went A.W.O.L. didn't realize how serious a mistake he was making. It seems that he had too much money at the time & he went out with a friend & drank too much. He did make an effort to get back but the regiment which was out for a rest at the time had left an hour or two before he arrived.

As to the second charge. The guard room he was put into had no lights & no blankets & he was induced by a friend to leave again ft.

Defending Officer

SUMMARY OF EVIDENCE

Ex "A" Hwd

Summary of Evidence in the case of No-C-101921 Pte ROBILLARD, Clifford, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas:-

The accused is informed of his rights.

By Direction of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS

For the Prosecution

B-59570 L/Cpl MacDonald, J.B., 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am B-59570 L/Cpl MacDonald, J.B., storeman of "B" Coy, 1 Bn The Royal Regiment of Canada. The accused, C-101921 Pte Robillard, C., whom I now recognize, was employed under my supervision as coy shoemaker. At 2000 hrs, 8 Nov 44, I discovered Pte Robillard, C., to be missing from the coy. I searched for him but was unable to locate him. I have not seen Pte Robillard since that time until making this statement.

The accused declines to cross-examine this witness.

J B MacDonald

(J.B. MacDonald) L/Cpl.

SECOND WITNESS

For the Prosecution

Lt G. Bernard, Fus MR, an officer of the Canadian Army Overseas.

A statement of this witness' evidence purporting to be signed by him has been read over to the accused and is included in this summary and is marked as Exhibit "A."

I certify that the attendance of this witness cannot be readily procured owing to the exigencies of the service and to the expense and loss of time involved. The accused does not demand the attendance of this witness for purpose of cross-examination.

N. Hutton Lt

(N. Hutton) Lt,
Officer Detailed to Take Summary.

THIRD WITNESS

For the Prosecution

Lt G.H. James, 1 Bn The Royal Regiment of Canada, an officer of the Canadian Army Overseas, having been duly sworn, states:

I am Lt G.H. James, Asst-Adjt, and in charge of all regimental documents for 1 Bn The Royal Regiment of Canada. I present herewith Certificate of Surrender in accordance with Sec 163 (i)(jj) which shows that the accused, C-101921 Pte Robillard, C., whom I now recognize, surrendered himself to the Canadian Provost Corps, in the city of Brussels, and which is annexed hereto and marked as Exhibit "B." I also present herewith Certificate of Surrender in accordance with Sec 163 (i)(jj) which shows that the accused surrendered himself to the Canadian Provost Corps, in the city of Brussels, and which is annexed hereto and marked as Exhibit "C."

The accused declines to cross-examine this witness.

G H James

(G.H. James) Lt.

The accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or to give evidence on oath or to call witnesses in his defence at this point.

I certify that the foregoing Summary of Evidence, consisting of TWO pages, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

W. Hutton Lt.

IN THE FIELD
19 Jan 45.

(W. Hutton) Lt,
Officer Detailed to Take Summary.

44 Adv Hft Coy 13 C.B.R.Bn.

27 Nov 44

STATEMENT OF EVIDENCE

EXHIBIT "A"

D 114916	Pte.	DUROCHER	J.L.
D 55087	Cpl.	PICARD	A.
D 63151	Pte.	ST JEAN	P.
F 731X7	Pte.	KELLY	A.J.
F 51294	Pte.	O'GRADY	A.R.
C 101891	Pte.	MOBILLARD	C.

The above six mentioned men did escape custody while under close arrest by b reaking out of improvise jail (barn), On Nov 25, 1944, 40 prisoners were given to me to keep. I (LIEUT G. BERNARD) was in chargeof the guards and these 40 men were put in the improvise jail. At all times there were 9 guards on duty. Every door and window was closely watched. Around 1730 hrs it was reported to me that some prisoners had escaped by a hole they had made in the roof of the barn (tile roof). This report was made to me by the Cpl. in charge of the guards at that time-Cpl. Olmstead. I immediately investigated and I found out that there was a hole big enough to let me through at the rear end of the barn. This hole in the roof was not there when the prisoners entered the barn. Around 1800 hrs I tried to make a roll-call to find out who did escape but it was impossible as the barn was in complete darkness and everybody was answering at the same time. No guards were put inside the barn on account of complete darkness. On the morning of the 26 Nov 44 the prisoners where brought out and I personally made a roll-call and the above six mentioned prisoners were absent.

EXHIBIT "B"

CERTIFICATE OF SURRENDER UNDER ARMY ACT
SECTION 163(i) (j).

I .. ..LT. T. CLARK..... certify that No C101921
Rank ..PRIVATE ..... Name ..ROBILLARD, C.....
of (Unit) "B" COY. 1ST. BN. ROYAL REGT. CANADA., 1ST. CANADIAN ARMY.
surrendered himself to No 4914308..... Rank..L/CPL.....
Name. FLETCHER A. G. .....of (Unit) 120 PROVOST COMPANY C.M.P. BLICE
at.....BRUSSELS.....at..22.35...hrs on 21ST. NOV. 1944
as a deserter (or absentee without leave). He was dressed
in uniform
~~plain clothes~~.

Signature .. ..[signature]
(Officer Commanding)
COMMANDING 120 PROVOST COY. G.H.Q.
....(Unit).
CORPS OF MILITARY POLICE

Date 21ST NOV 1944.

NOTES.

1. If the surrender was made to an OR, this certificate MUST be signed personally by HIS Commanding Officer.

2. If the surrender was made to an Officer, this certificate may be signed either by that officer or by his Commanding Officer.

3. In no circumstances may it be signed by one officer "for" another, or by anyone who does not hold commissioned rank.

4. In no circumstances should the place of surrender be described as "in the Field". The actual place of surrender should be stated, or if difficulty is experienced in describing the place the map reference should be given.

EXHIBIT "C"

CERTIFICATE OF SURRENDER UNDER ARMY ACT
SECTION 165 (1) (j)

I.....LT. T. CLARK....certify that No. C-101921.....

Rank. PRIVATE..Name. ROBILLARD. C.....

of (Unit) "B" COY..ROYAL REGT. OF CANADA. 2ND. DIV. 1ST. CAN. ARMY

surrendered himself to No. 2653149.....Rank...L/CPL.....

Name. BARRETT. R.....of (Unit) 120 PROVOST COMPANY. C.M. POLICE

at.....BRUSSELS.....at..23:45...hrs on 10TH. DEC 1944

be a deserter (or absentee without leave). He was dressed

in ~~plain clothes~~ uniform.

Signature.....[signature]

Officer Commanding
COMMANDING 120 PROVOST COY. G.H.Q

.....Unit.
CORPS OF MILITARY POLICE

Date. 10TH. DEC 1944

NOTES.

1. If the surrender was made to an OR, this certificate MUST be signed personally by his Commanding Officer.
2. If the surrender was made to an officer, this certificate may be signed either by that officer or by his Commanding officer.
3. In no circumstances may it be signed by one officer "for" another, or by anyone who does not hold commissioned rank.
4. In no circumstances should the place of surrender be described as "In the Field". The actual place of surrender should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

[signature]

Ex "E"

Army Form B.296.

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
C-101921	Pte	Robillard, C.	1 R Regt C

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For	Sec 15 (1) AA 1 times	1 times
For	times	times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

or

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted, or~~ ~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and xx 49 days in military custody, making a total of xx 49 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service ~~attestation paper~~ is 20 yrs

6. The date of his ~~commission~~ attestation specified in his record of service ~~attestation paper~~ is 16 Nov 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 2 mos

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 2 mos service.

9. The accused is entitled to reckon 2 yrs 2 mos service for the purpose of determining his pension, etc.

10. ~~The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to [illegible] military decoration or award).~~

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer (as held the regimental rank of~~

12. ~~(In the case of an officer.) The accused holds in the army the rank of dated and in his regiment (or corps or department) the rank of dated~~

Wt.[illegible] 20M. 5/44. P. Ltd. TS1-2.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* _____ Name _____ of _____ Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating there convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted
		-NIL-		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 19 day of Jan 45.

(G.H. James) Lt,
Officer IC Records, 1 A REGT C.

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date

	Date of Promotion
In the rank of _____	years.
In the rank of N/A	years.
In the rank of _____	years.

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.)

MFM 6
(AFB 172)
40/PAS/130 (3438)

No C-10192 Name ROBILLARD, C. Sqn, Battery, or Company "B" Corps R R of Can Date of last entry in Conduct Sheet 16 Nov 42 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc H.W. Caldwell | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
"A" Ech	26 Oct	Pte		Previous Sheet destroyed by fire. Absent without leave 2 days, 1 hr, 55 mins.	CSM McCartney	10 days Pay FRI 149(2) 3 days Pay FRI(1)a	29 Oct 44	E.L. McGiverin, Capt.	

CERTIFIED TRUE & CORRECT COPY OF ORIGINAL DOCUMENT IN MY POSSESSION:

(G.H. James) Lt,
Officer IC Records, 1 R REGT C.

PTO

5-m-121

Pte. Robillard, G.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-123196 Pte Gerard ROBILLARD HQ 2 Cdn Corps att 1 Cdn Disciplinary Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15 (1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~Not~~ present under sentence for ~~.....~~ beginning on (date) ~~.....~~

(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 44 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a Period of 90 days.

(Sgd) ..... Judge-Advocate, if any. 5 June 45 Date awarded. (Sgd) ~~A Macdonald~~ Major, President. (RP 45, 46)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 59A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 10 JUN 45 (Sgd) (J G Spragge) Brigadier, Commanding 2 Cdn Base Rft Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D123196 PTE GERARD ROBILLARD	12 JUN 45	W Richmond Lt-Col. Comdg, 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

C#5m 6/12 Jun 45

RECEIVED 22 JUN 1945 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160 5 M-121

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Brig J G Spragge DSO CDN HQ Comd 2 CBRM dated 1 JUN 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-123196			Gerard	ROBILLARD	HQ 2 Cdn Corps att 1 Cdn Disciplinary Centre

PROCEEDINGS REVIEWED
Comdg 2 Cdn Base Rft Gp
28 Jun 45
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) BELGIUM on (*date(s)*) 5 JUN 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 33/93

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1600 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to~~ as interpreter? Ans ~~.....~~

~~The Interpreter is sworn.~~(1) Do you object to ~~.....~~ as shorthand writer? Ans ~~.....~~

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(8). If objection, see procedure AA 51, RP 25, 71, 10, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G G MacKENZIE DSO	TGH Cdn C M Centre
Member	CAPT	P J POULIN	RCA Cdn Con Centre
Member	LIEUT	G H BISSETT	CHQ Cdn Con Centre
Judge-Advocate			
Prosecutor	LIEUT	H.A MACKENZIE	CIC Cdn Con Centre
Defending Offr	LIEUT	A.J THOMPSON	CIC Cdn Con Centre

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused D-123196 Pte Gerard ROBILLARD before arraignment make(s) (no) (~~a~~) plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or to one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRM Vol VII p. 111

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No .(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans . Do you intend to call witnesses on your behalf ? Ans . Are they witnesses as to character only ? Ans .
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No .
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 3 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No 63 .(2)
(1. *RP 37(C), 46(2).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused, D-123196 Pte Gerard BOUILLARD, Increment (E) to HQ 2 Cdn Corps, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 1800 hrs 15 Mar 45 until apprehended in GHENT, Belgium at 1100 hrs 21 Apr 45.

(Total absence: 36 days 17 hrs)

Remanded for Summary of Evidence

In the Field
24 May 45

(J [illegible]) Lt-col
Commanding
1 Cdn Discipline Centre

Remanded for Field General Court-Martial

In the Field
24 May 45

(J [illegible]) Lt-col
Commanding
1 Cdn Discipline Centre

To be tried by Field General Court-Martial

In the Field
28 May 45

(J S H LIND) Brigadier
Commanding
3 Cdn Base Rft Gr

To be tried by Field General Court-Martial.

In the Field
1 Jun 45

(J [illegible]) Brigadier
Commanding
2 Cdn Base Rft Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 187, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-123196	Pte		Gerard	Robillard	HQ 2 Cdn Corps att I Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 1 Jun 45 endorsed by me, ~~(or by an offr of my staff for me),~~ " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)		(Unit.)
Major	G G MacKENZIE MBE	FCH	Cdn C M Centre

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)		(Unit.)
Capt	F J POULIN	RCA	Cdn C M Centre
Lieut	G K BISSETT	CH of C	Cdn C M Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally) (RP 105 fn 2.) Brigadier (Rank.)

(J A [illegible])

Date 1 JUN 45

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (2PA85 (1p lists of AFAS) 40-P & S/1697 (49021)

(See overleaf for oaths and notes for use on trial.)

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined D 133196.
(No.)

PTE. (Rank) ROBILLARD G. (Name) and in my opinion he is

fit to undergo trial by Court-Martial.

Station FIELD

Date 5-6-45

Unit 1 SEA DIV. SENTRE

[signature] Capt (Sgd)
(Medical Officer)

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined D-133196
(No.)

PTE (Rank) BODELLORD, I (Name) and in my opinion he is

fit to undergo trial by Court-Martial.
~~unfit~~

Station FIELD

Date 6-6-42

Name Capt (Sgd)
(Medical Officer)

Unit 1 GEN. DISC. [illegible]

Case of D123196 Pte Robillard T.

Ex E3
DC

Mitigation Plea

The accused enlisted in 1941 and came to France 6 Jul 44 with H.Q. 2 Corps as a cook, serving thus ever since. He had had no news from home for a year and a half, although he has been supporting his parents by an assignment. He was working night shift and had been for a month and a half, but could not sleep properly during the day. He asked to be put on day shift but was told he would have to wait. And he had had only one "48" since 6 Jul, and had asked twice for a pass but had been refused.

All this combined to make him feel depressed & discouraged, and so he went A.W.L. to have a rest. Then after 3 or 4 days the British police came to the place where he was staying in Ghent and took his battle dress away, so that all he had to wear was another pair of battle dress trousers and an American jacket. Subsequently the woman with whom he was staying dyed his trousers navy blue without his permission, and he was wearing these when picked up. He wanted to get a uniform before returning to his unit, but had not been able to get one.

The accused has volunteered for service with the occupational forces. He has already been in custody 44 days awaiting trial.

In conclusion I would point out that the accused was not with a front line unit, and that there is therefore no question of his evading any fighting.

J J Thompson Lt.
Defending Officer.

EPA
M.

Summary of Evidence in the case of D-143196 Pte ROBILLARD G, Increment (e) to HQ 2 Cdn Corps, attached to 1 Cdn Discipline Centre, a soldier of the Cdn Army Overseas.

Charge - Absence without leave

By direction of the CO the evidence is taken on oath.

The following documents have been read over to the accused marked as exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Pt 11 Order No 9 dated 25 Mar 45

Exhibit "B" - Certificate of apprehension dated 28 Apr 45.

Desirez-vous faire une declaration ou rendre temoignage sous serment? Vous n'etes pas oblige de dire quoi que ce soit ni de rendre temoignage a moins que vous ne le desiriez mais tout ce que vous direz ou toute deposition que vous ferez sera pris ecrit et pourra servir de preuve.

A. I have nothing to say.

The accused does not call any witness

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C)(D)(E)(F) and (G) have been complied with.

M. Rousseau Capt
(Maurice Rousseau) Capt

Officer detailed to take Summary of Evidence

Dated in the Field,
24 May 45

Exhibit A

PART II ORDER EXTRACT FORM

TO: DISCIPLINE & PAY SECTION
CDN SEC 2 ECH HQ 21 A GP

99/20/2 Corps Incr E/1 (A5176

21 MAY 45 19

EXTRACTS FROM: UNIT INCREMENT (E) TO HQ 2 CDN CORPS

Part II Order No. 9 dated 25 MAR 45

ABSENT WITHOUT LEAVE

(a) AWL from 1800 hrs 15 MAR 45
D123196 Pte ROBILLARD G

Certified true extract

(W A MURRAY) Lieut
for Officer IC
Cdn Sec 2nd Ech HQ 21 A GP

The following documents are { attached. Please acknowledge receipt on attached duplicate. / required. Please forward same.

Originating Clerk's Initials

Officer in Charge ..... for
Canadian Section, GHQ, 2nd Echelon

1/70 WCH—4

CERTIFICATE UNDER ARMY ACT. SECTION 163 (1) (d) Exhibit B

Certified that No. D.123196.....Rank..Etc.....Name. ROBILLIARD 24 Kansas Corp

of the. RCASC.....(HQ 2 Corps).....Regt, ~~xxxxxxxxxxxxxxx~~ J.A.D. to No. U.2015.....

Rank. Sgt.....Name. Gatehouse W.H. was apprehended by.....of the.....SIS. C Pro C. 2 CBRG.....

.....at. Ghent.....at...1100..hrs, on the...21.....

day of.....April..... as an absentee without leave.

He was wearing ~~xxxxxxxxxxxxxxxxxxxx~~ J.A.D. at the time of his ~~xxxxxxxx~~ J.A.D.
Civilian Clothes. Arrest.

Place. Ghent..... J. A. Thomson LIEUT.

J. A. THOMSON,
Ofc. SIS C Pro C - 2 CBRG

Date. 28 Apr 45..... Canadian Provost Corps.

I, D-123196 Pte ROBILLARD G desire to have an officer assigned to represent me at my trial by Field General Court Martial.

I desire the services of any Officer detailed by Convening Authority if he is available.

Date 24/5/45

G Robillard
(Signature of Accused)

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

Certified true copy of Extract from Pt II Order No 9 dated 25 Mar 45	"A"
Certificate of apprehension dated 28 Apr 45	"B"

I D-123196 Pte ROBILLARD G, acknowledge having received one copy of the Summary of Evidence and one copy of the charge sheet, free of charge on 24 May 45.

G. Robillard

D-123196 Pte ROBILLARD G

E+B

ARMY FORM B.295

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
D123196	Pte	ROBILLARD G	Increment(E) to HQ 2 Cdn Corps

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 627, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For 15(1) AWL	1 times	2 times
For 40	times	1 times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct,~~ nil

~~or~~ nil

~~[illegible] to the conduct sheet of the accused~~ nil

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for NIL beginning on the day of N/A

4. The accused has been in confinement, awaiting trial on the present charges, for NO days in civil custody, and 44 days in military custody, making a total of 44 days, of which NO days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ nil / attestation paper is 30 years 1 month old

6. The date of his ~~commission~~ nil / ~~attestation~~ nil specified in his record of service / ~~attestation paper~~ nil is 15 May41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is ~~in possession of, or~~ nil entitled to, ~~no~~ nil military decoration ~~or military award~~ nil ~~(or is in possession of or entitled to (state any military decoration or reward).~~ nil

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A, dated and in his regiment (*or corps or* department) the rank of dated

Wt.57637/1589 20M. 5/44. P. Ltd. T51-5.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D123196 Rank Pte Name ROBILLARD G of Inc to HQ 2 Cdn Corps Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		No record of conviction by Court-Martial on MFM 6		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5th day of June 45

[illegible signature]
O i/c Records

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ////// years.

In the rank of ////// years.

In the rank of ////// years.

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

No D123196 Name ROBILLARD Gerard | Sqn, Battery, or Company | Corps 1 Bridge Coy RCASC | Date of enlistment 15May41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3-2-41	Pte		AA Sec 40 Left veh unattended and immobilized	Documentary	7 days CB	9-2-43	Maj A Gagnon	
Field	18Sep43	Pte		15(1) AWL from 0800 hrs 18Sep43 until 0800 hrs 8 Oct 43 (20 days)	Sgt Asselin	27 days FP 27 days Pay	9-10-43	Maj Gagnon	27 days pay 149(2) 20 days pay 149(1)(a)
Field	18Jan45	Pte		AWL from 2230 hrs 18 Jan 45 until 1730 hrs 22 Jan 45 (3 days 19 hrs)	Sjt Dawson	forf 28 days pay 149(2) 14 days CB	23Jan45	F Leaman Capt	forf 4 days pay 149(1a)

Certified true copy of MFM 6 in my possession

McCoole Lt Ok Records

(PTO)

YY-152
GNR ROBINS H.A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B15337 Gnr. Robins H.A. 1 Cdn L AA Regt RCA.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge A.A. 9 (1)	Guilty	Guilty	
2nd	Charge A.A. 9 (2)	Guilty	Guilty	
3rd	Charge AA 15(4)	Guilty	Guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 28 days, of which 4 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer Sixty days field punishment and to forfeit daily Ordinary pay for a period of sixty days.

(Sgd) ..... 6 Dec 43 (Sgd) A.L. MacInnes Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) H.C.

(1. AA 57A. Delete if not used.)

(Sgd) H. Crowe H. Col.

Date 11 Dec 43. Commanding Coond REME 1 Cdn Corps Tps

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B15337 Gnr. Robins H.A. OR 1 Cdn LAA Regt RCA.	15 Dec 43	F.J. Thomas Capt OC 1 Cdn LAA Regt RCA

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

44-152 Sept/16 M-107

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFB3) 41/P.S./B.1650 (2864)

Convened by Order of Brigadier H.O.N. Brownfield Coond CCRA - 1 Cdn Corps dated 1 Dec 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B15337	Gnr.	Hugh Adrian	Robins	1 Cdn LAA Regt R.C.A.

PROCEEDINGS REVIEWED

REVIEWING OFFICER HQ 1 Cdn Corps

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy at 1 Cdn Corps H.Q. on (date(s)) 6 Dec. 43.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1345 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused pleaded to be tried by court-martial instead of being dealt with summarily by the CO.~~(2) A.L.M.

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~an interpreter?~~ Ans. A.L.M.

~~The Interpreter is sworn.~~(1) ~~Do you object to~~ ~~a shorthand writer?~~ Ans. A.L.M.

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A.L. MacInnes	1 Cdn A/T Regt R.C.A.
Member	Captain	V.G. Sinclair	1 Cdn L AA Regt RCA
Member	Lieut.	J.E. Priest	81 Cdn Arty Coy RCASC
Judge-Advocate			
Prosecutor	Capt.	J.A. Dick.	1 Cdn L AA Regt RCA.
Defending Offr	Lieut.	R.W. Crawford	1 Cdn L AA Regt RCA.

Questions by President: Is the Prosecutor a lawyer? Ans. No Is the Defending Offr a lawyer? Ans. No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 32.)

A8. The accused Gnr. Robins H.A. before arraignment make(s) (no) ~~(no)~~ plea

(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62. When several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. Defending Offr will address Court. No statement (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex B, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. ..... Do you intend to call witnesses on your behalf?
Ans. ..... Are they witnesses as to character only? Ans. .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. C. and Ex. D. respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Defending Offr will address Court. (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2123, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 30. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No B-15337 Gunner HUGH ADRIAN ROBINS, 89 Battery, 1 Canadian Light Anti-Aircraft Regiment, R.C.A., a soldier of the Canadian Army Overseas, is charged with, when on active service:

Offering violence to his superior officer, being in the execution of his office,

FIRST CHARGE
Section 8(1)
Army Act

in that he,

in the Field, at or about 1700 hours on the 14th day of November, 1943, offered violence to B-13053 Sgt G.A. Burroughs, who was at the time placing him BEAZLEY FH UNDER AND F16631 GNR. arrest, by grabbing him from the rear by the arm and shoulder.

Using threatening language to his superior officer,

SECOND CHARGE
Section 8(2)
Army Act

in that he,

in the Field, at or about 1700 hours on the 14th day of November, 1943, said to B-13053 Sgt G.A. Burroughs "I am going to get even with you and shoot you" or words to that effect.

Absenting himself without leave,

THIRD CHARGE
Section 15(1)
Army Act

in that he,

in the Field, on the 14th day of November, 1943, absented himself without leave from 1130 hrs 14 NOV 43 till 1630 hrs 14 NOV 43.

F. J. Thorne Lt-Col

(F.J. Thorne) Lt-Col.
Comd 1 Canadian Lt A.A. Regt, R.C.A.

In the Field,
14th NOV 43

To be tried by Field General Court-Martial

H.O.N. Brownfield

(H.O.N.Brownfield) Brigadier
C.C.R.A. 1 Cdn Corps

In the Field,
1 DEC 43

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2663)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-15337	Gunner		Hugh Adrian ROBINS		1 Cdn LAA Regt, RCA.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet~~(s)~~ attached and on (*date*) 1 DEC 43 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". HB

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ HB

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed HB or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ HB

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ HB.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	A.L. McInnes	7 Cdn A/Tk Regt, R.C.A.

MEMBERS.

A Captain to be detailed by O.C. 14 Cdn Fd Coy, R.C.E.

A Lieutenant to be detailed by HQ 81 Cdn Arty Coy, RCASC.

(Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

A Lieutenant to be detailed by O.C. 1 Cdn LAA Regt, RCA.

(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in Sicily (Country.) H. Brownfield (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 1 DEC 43 Commanding C.C.R.A. 1 Cdn Corps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

A.L.M.

A. Captain from 14 Cdn Fd Coy RCE not being available the waiting member was sworn in as a member of the Court

A. L. Mason Major

MEDICAL CERTIFICATE

I certify that I have this morning examined B-15337
(Number)

GNR ROBINS, H.A. 1st CDN. L.A.A. RGT.
(Rank) (Name) (Unit)

and in my opinion he is fit, ~~unfit~~ to undergo trial by court martial.

In the Field

6-12-43
(Date)

[signature]
(Medical Officer)

[signature]

MEDICAL CERTIFICATE

SUMMARARY OF EVIDENCE Exhibit "B"

in the case of

B 15337 G N R. ROBIN S, HUGH ADRIAN, 89 BTY 1 CDN LAA REGIMENT

The Commanding Officer directs that the evidence be taken on

oath

FIRST WITNESS for PROSECUTION

B 13053 Sgt. BURROUGHS, G.A. 89 BTY 1CDN LAA REGIMENT having been duly sworn states:-

"I, B 13053 SGT. BURROUGHS, G.A. 89 BTY 1 CDN LAA REGIMENT, at 1650 hours on the 14 NOV 43 was ordered by LIEUT. G.F. BOYER and G 4213 BSM RUSSELL G.H. both of 89 BTY 1 CDN LAA REGIMENT to place the accused under close arrest for AWL. I went into "E" Troop H.Q. room, IGNATIUM BARRACKS, to apprehend him. I placed B 15337 GNR ROBINS H.A. under close arrest. In doing so resistence was offered by B 15337 Gnr ROBINS H.A. who grabbed me from the rear by the arm and shoulder. At 1700 hours on the 14 NOV 43 I was escorting the accused B 15337 GNR ROBINS H.A. from his sleeping quarters the the Guard Room, IGNATIUM BARRACKS, B 15337 GNR ROBINS H.A. threatened me by saying, quote' I am going to get even with you and shoot you' unquote. B 15337 GNR ROBINS H.A. used such threatening and insubordinate language of a profane nature for fully five minutes. B 15337 GNR ROBINS H.A. was sober, properly dressed and fit for duty".

G H Burroughs

B 13053 SGT. BURROUGHS G.A.
89 BTY 1 CDN LAA REGIMENT

Cross-examined by the accused.

Q1-"What did I grab you for?"

A1-"To stop me in the execution of my duty from placing F 16931 GNR BRAZLEY F.H. 89 BTY 1 CDN LAA REGIMENT under arrest".

A.L.R.

THIRD WITNESS for PROSECUTION

LIEUT. G.F. BOYER 89 BTY 1 CDN LAA REGIMENT having been duly sworn states:-

"I,LIEUT G.F. BOYER 89 BTY 1 CDN LAA REGIMENT , at approximately 1630 hours on the 14 NOV 43, I was standing on the 89 BTY Parade Square at IGNATIUM BARRACKS awaiting to inspect the MESSINA TOWN GUARD prior to mounting. The accused B 15337 GNR ROBINS H.A. 89 BTY 1 CDN LAA REGIMENT arrived late forthe 89 BTY Supper Parade. Having found out that GNR ROBINS H.A. had been AWL I ordered B 13053 SGT BURROUGHS G.A. 89 BTY 1 CDN LAA REGIMENT to place him under close arrest. He was sober properly dressed and fit for duty."

Cross-examined by the accused.

Q 1" Wasn't I drunk Mr.Boyer?"

A 1 " As far as I could see you were not"

G.F. Boyer
LIEUT G.F. BOYER
89 BTY 1 CDN LAA REGIMENT

FOURTH WITNESS for PROSECUTION

G 4213 BSM RUSSELL G.H. 89 BTY 1 CDN LAA REGIMENT having been duly sworn states:-

" I,G 4213 BSM RUSSELL G.H. 89 BTY 1 CDN LAA REGIMENT,knew the B 15337 GNR ROBINS H.A. 89 BTY 1 CDN LAA REGIMENT was issued a pass which expired 1130 hours on the 14 NOV 43. GNR ROBINS H.A. did not report in and I reported him absent to 89 BTY HQ. I did not see GNR ROBINS H.A. until 1630 hours on the 14 NOV 43 when GNR ROBINS H.A. arrived late for 89 BTY Supper Parade. He was not drunk."

Cross-examined by the accused.

Q I" Wasn't I drunk Sergeant-Major?"

A 1" No".

G H Russell
G 4213 BSM RUSSELL G.H.
89 BTY 1 CDN LAA REGIMENT

EXHIBIT for PROSECUTION

" I produce the PASS BOOK STUB belonging to the pass issued to B 15337 GNR ROBINS H.A. 89 BTY 1 CDN LAA REGIMENT effective from 1030 hours 14 NOV 43 until 1130 hours 14 NOV 43,which is marked "A" (EXHIBIT)

J.A. Dick
CAPT J.A. DICK
89 BTY 1 CDN LAA REGIMENT

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence on oath?. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

After the above caution the accused elected to give a statement as follows:-

The accused, B.15337 GNR. ROBINS, H.A., 89th. BTY., 1 CDN. L.A.A. REGT., states:-

"I do not remember using any threatening language to B.13053 SGT. BURROUGHS, G.A., as I was under the influence of drink".

(B.15337 GNR. ROBINS, H.A.)
89t . Bty. 1 Cdn. L.A.A. Regt.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of 3 pages was taken down by me in writing in the presence of the accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

(J.A. DICK) CAPT.
89th. Bty., 1 Cdn. L.A.A. Reg't.

MESSINA
~~11~~ 22 November 1943.

"A"

Pass No. 8

Regiment 1 CBN LAA

Army No. B16337

Rank GNR

Name ROBINSON A.

Date [illegible]

14/11/43 [illegible] 14/11/43

MESSINA

Commanding 89 BTY.

Station FIELD

"A"

Date 14 NOV 43

89 BATTERY
4 NOV 1943
1 [illegible] L.A.A. Reg'l. C.A.

PLEA OF MITIGATION for

B15337, Gnr. Robbins, H.A.,
89 Battery, 1st, L.A.A. Reg't.

With reference to the attached Summary Of Evidence of which the accused has pleaded guilty, I would like to bring the following points before the Court for consideration before sentence is passed on the three charges as described therein:-

1. Gnr. Robbins, H.A. spent the period in which he was A.W.L. as stated in Charge 3, making a tour of the local wine shops in company with two other men. They all arrived back at the barracks intoxicated and the subsequent insubordinate actions on the part of his companions in this incident resulted in both being sentenced to terms of detention by the C.O.

2. The accused apparently did not appear to be physically incapable of carrying out his duties but I would ask the Court to take into consideration the fact that he had been drinking "Vino" and it is recognised that this wine has a particularly violent reaction on men not used to drinking it. The accused states that he does not remember his actions at the time the crimes on which he is charged were committed.

3. The attached Crime Sheet (M.F.M.6) does not indicate that the accused was a vicious character or in any way an incorrigible "bad actor" and I would therefore ask the Court to temper their judgement with clemency in passing sentence on the charges to which Gnr. Robbins has pleaded guilty.

H.W. Crawford Lt
(Defending Officer)

Exhibit "C"

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B15337	GNR	ROBIN B, H.A.	1 CDN LAA REGIMENT

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	SEC 15 (1) AA	TWO times
For	XXXX

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B15337 Rank GNR Name ROBINS HA of 1 CDN. LAA Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22 day of NOVEMBER 1943

James A. Beck
Capt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion

In the rank of ____ years ____

In the rank of ____ years ____

In the rank of ____ years ____

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

76-5.
Fur. ROBINS, W S

O. H. M. S.

M. F. B. 270
1000 M-12-40 (9958-09-70)
H.Q. 1774-39-67

76. S

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this fourteenth day of November, 1942.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery, 1st Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ *

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[~~I am unable to appoint~~ :—

*(~~1. Three Officers to form the Court.~~)

*(~~2. A Field Officer as President.~~)

~~for the following reasons, namely :—~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

Proceedings Reviewed
H. H. Hough Capt
for Reviewing Officer (GAA) M.H.Q.
[illegible]

L.W.H. Randall
Maj.

40

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	L.W.H. Randall	1 Cdn Fd Regt

Members.

Rank.	Name.	Regiment.
Capt	D.M. Davies	3 Cdn Fd Regt
Lieut	R.F. Parker	1 Cdn Fd Regt
Lieut	WAITING MEMBER A.A. Gremlees	3 Cdn Fd Regt

*Signed [signature]
(A.E.D. Tremain) Brigadier,
Commanding C.R.A. 1 Cdn Div.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B 21034 Gnr ROBINS, William, Samuel; 1 Cdn A.Tk Regt	First Charge Sec 18 (4) A.A.	Guilty	Guilty 6 Months Detention	Confirmed The finding and sentence
	Second Charge Sec 40 A.A. Alternative charge withdrawn by the prosecution. W.H. Randall Maj		18 Nov. 42. W.H. Randall Maj	J. The Court [illegible] Brigadier

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [illegible] Brigadier (Signed)

Commanding ACA 1 Cdn Div President.
Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 18th day of Nov. 42, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(~~3. The interpreter~~) W.R.
*(~~4. The officers under instruction~~) W.R.

were duly sworn.

* Omit if not applicable.

Signed this 18th day of Nov. 1942

W.H. Randall. Maj., 1st Regt RCHA.
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 18 day of Nov. 1942.

[illegible] Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of B-21034 Gnr. Robins, William Samuel

(a) (Dated) 19 Nov 42. (Signed) [illegible] Capt.
1st. Anti-Tank Regiment, R.C.A., C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible]

5

CHARGE SHEET

The accused, No. B-21034 Gunner WILLIAM SAMUEL ROBINS, Regimental Headquarters, 1 Canadian Anti-Tank Regt.,RCA, a soldier of the Canadian Army Overseas, is charged with:

Charge
AA Sec 18(A)

When on Active Service stealing public property

in that he

at COODEN BEACH on 12 Nov 42 did steal,
1 lb butter
1 2-oz tin of margarine
1 2-oz tin of apricot jam
1 2-oz tin of sugar
1 7-oz tin of tea
1 12-oz tin of pork luncheon meat
being public property on charge to 1 Cdn Anti-Tank Regiment, R.C.A.

Alternative Charge
AA Sec 40

When on Active Service conduct to the prejudice of good order and military discipline

in that he

at COODEN BEACH on 12 Nov 42 was in improper possession of
1 lb butter
1 2-oz tin of margarine
1 2-oz tin of apricot jam
1 2-oz tin of sugar
1 7-oz tin of tea
1 12-oz tin of pork luncheon meat
being public property on charge to 1 Cdn Anti-Tank Regiment, R.C.A.

(H.W.Hague)Lt.-col.,
O.C., 1 Cdn Anti-Tank Regiment, R.C.A

In the field
13 Nov 42

To be tried by Field General Court Martial

1st hour of 2nd

Brigadier

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

2

I certify that I have this morning examined no. B-21034

GNR ROBINS, W.S.

of R.H.Q. 1 CDN ANTI TANK REGIMENT R.C.A.

and in my opinion he is ~~unfit~~ fit to undergo Trial by Court Martial.

Station FIELD

Date 18 NOV 42

R. Frank Cope
Medical Officer

W.S. Rob

1

I have satisfied myself that none of the officers detailed as members of the Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charge(s) before the Court Martial.

W. T. Randolph.

(Signature of the President)

Form "A"

4

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD IN THE FIELD ON THE 18 DAY OF November 1942

Trial of No. B 21034 Gnr Robins W.S.

Prosecutor: Lieut. RJK Pyne. 1 Cdn Anti Tank Regt.

Defending Officer: Lieut R.D Palk. 1 Cdn. Anti Tank Regt.

Officers under instruction:

None.

1. The order convening the Court is read in the presence of the accused.

The accused is asked the following question:
"Do you object to be tried by the President or any Members of the Court whose names you have read over?"

Answer:

No Sir.

2. The President, Members, ~~Judge Advocate, Officers under instruction, Shorthand writer and Interpreter~~ are duly sworn. W.R.

3. The accused answers to his name and number and is duly arraigned on the charges.
The accused having pleaded guilty to the 1st charge. charge(s) R.P. 35(B) is complied with. (2nd charge (Alternative) is withdrawn).

4. The accused is asked the question at the foot of page 2 of AFA.3. and his answer is recorded beneath the question.

5. The Prosecutor makes (no) (~~the following~~) opening address: W.R.

W.H. Randall
Maj

Form "B"

13

DEFENCE

The accused is informed of his rights in accordance with R.P. 40(A) and Note 2 on page 644 of the Manual of Military Law, 1929 edition.

The accused is asked the following questions:

Q.1. Do you wish to give evidence as a witness?

A.1. No

Q.2. Do you intend to call any other witnesses on your behalf?

A.2. No

Q.3. Are they witnesses as to character only?

A.3. N/A.
(see R.P. 41)

W. H. Randall

Form "C".

AFTER FINDING

Capt. Hugh Burnett. Adj. 1st Cdn. Anti Tank Regt.

IS SWORN AND STATES:

I produce a certified true copy of AFB 122 relating to the accused. (The said copy is marked , signed by the President, and attached to the proceedings). Form B296.

AFB122 — Exhibit "B."
Form B196 — " "C."

QUESTION TO THE ACCUSED:

Do you wish to address the Court, or to call evidence as to character?

ANSWER:

The (~~Accused~~) (Defending Officer) makes the following plea in mitigation of sentence:

Exhibit "D"

Summary of Evidence in the case of
B. 2103 H. Gnr. Robins, W.S., R.H.Q., 1 Edn
Anti-tank Regiment, R.C.A.

The Commanding Officer directs that the evidence be taken on oath.

First witness for the Prosecution.

G-4066. A/Sgt. McPhail R.W., 90 Bty, 1 Edn Anti-Tank Regt. R.C.A., having been duly sworn states:

"At 1405 hrs on 12 Nov 42 I was ~~ordered~~ detailed by Capt. A.B. Guard Commander in the R.H.Q. Guard Room when Gnr Robins came to get his pass. I examined his equipment and in his respirator haversack I found one two ounce tin of sugar, one twelve ounce tin of Pork Luncheon Meat, one tin of tea, one pound of National Butter, one two ounce tin of margarine and one two ounce tin of Apricot Jam. I produce the above mentioned articles as Exhibit "A".

I reported this to the R.S.M. who in turn examined the articles and after I made a list of them, he removed them from the Guard Room and ordered me to place Gnr Robins under close arrest."

On his evidence being read to him the witness desires to make the following alterations:

"Instead of 1405 hrs I wish to say approximately 1405 hrs."

"Instead of one two ounce tin of margarine I wish to say a small tin which I understand contain margarine"

"I was not actually on duty at the time."

R.W. McPhail A/Sgt.
G-4066. A/Sgt. McPhail R.W.

The accused declines to cross examine this witness.

Lt. W.S. Robins

Second witness for the Prosecution.

G-4102. L/Bdr. Amos N.C.J., 90 Bty, 1 Coln Anti Tank Regt. R.C.A. having been duly sworn states:

At approximately 1405 hrs on 12 Nov 42 I was standing next to the table in the Guard Room at R.H.Q. when Gnr Robins came in to get his pass, before proceeding on leave. L/Sgt. McPhail was sitting down behind the table and told Robins he had to check his kit. Robin handed him his Gnard pack which he opened and checked. While the Gnard pack was being checked Robins said he wanted to go to the Q.M. Stores. He got outside the door before L/Sgt. McPhail stopped him and ordered him to take off his respirator. Robins said again that he had to go to the Quarter Stores and would be right back. After being ordered two or three times to take off his respirator by L/Sgt. McPhail, he finally did so and handed it to L/Sgt. McPhail. By that time he was back in the Guard Room again and L/Sgt. McPhail examined the contents of Robins respirator haversack and I saw him take out of it one two ounce tin of sugar, one twelve ounce tin of Pork luncheon meat, one tin of tea, one pound of National Butter, one two ounce tin of Apricot Jam and one ounce tin of which I could not read the label. I recognize the aforementioned articles as Exhibit "A".

L/Sgt. McPhail went to get the R.S.M. who arrived shortly afterwards, made a list of the articles of food with L/Sgt. McPhail and then removed them from the Guard Room.

N.C.J. Amos.
G-4102. L/Bdr. Amos. N.C.J.

The accused declines to cross examine this witness.

Lt. W.H. Randall

Third witness for the Prosecution.

C-10375. R.S.M. Hayes W.E., R.H.Q., 1 Can A.Tk. Regt. R.C.A. having been duly sworn states:

"At approximately 1420 hrs, 17 Nov 42, I was called to the Guard Room by the N.C.O. in charge of the Guard, A/Sgt. McPhail who showed me one two ounce tin of sugar, one twelve ounce tin of Pork Luncheon meat, one tin of tea, one pound of National Butter, one two ounce tin of Apricot Jam and one small tin of which I found not read the label. I recognize the aforementioned articles as Exhibit "A". He stated he had found them in the respirator haversack of Gnr Robins who was at the Guard room for the purpose of obtaining his pass before proceeding on Privilage leave. I asked Robins if he owned any of these articles and he said "NO, except for about two ounces of the tea which I brought back with me off pass last week."

I had A/Sgt. McPhail make a list of the articles and I ordered that Robins be detained under close arrest. I collected the articles and handed them to Capt. Burnett in the presence of Major Harkness.

I had previously seen these articles with the exception of the can of tea, on November the ninth at approximately 1000 hrs. At that time they were shown to me in the presence of R.Q.M.S. Doddridge by Gnr Stewart who had reported as relief cook to the Sgts' mess that afternoon. I saw these articles in the kitchen of the Sgts' mess. Robins is the Sgts' mess cook.

W.E. Hayes.

C-10375. R.S.M. Hayes W.E.

The accused declines to cross examine this witness.

W.B. Randall Maj.

Fourth witness for the Prosecution. E.0025 RQMS Doddridge A.C., R.A.O. 1 Can Anti-Tank Regt. R.C.A. having been duly Sworn States:

On 9 Nov 42, between 1600 hrs and 1700 hrs I was called into the Sgts Mess kitchen and shown some rations which had evidently been hidden away in a biscuit tin in the pantry. They consisted of one pound of rations butter, a small two ounce tin of sugar, a two ounce tin of apricot jam, a two ounce tin of margarine, a twelve ounce tin of Pork Luncheon meat and one tin of tea. Instructions were given to have these rations put back into the box and the box replaced where it was found. I saw them put back into the box. I checked the box on 11 Nov 42 and found the aforementioned articles therein with the exception of the tea.

I was informed of Gnr. Robin's arrest at about 1530 hrs. 12 Nov 42 for having been found in possession of rations when going on leave and when I checked the biscuit box in the pantry it was empty.

The articles of food, now called Exhibit "A", are identical to those I saw in the biscuit box in the pantry with the exception of the tin the tea is in.

Question. 1

Do you recognize Exhibit "A" as rations issued to this Regiment?

Answer. 1

Yes, but we have been issued with rations identically the same with the exception of the Pork Luncheon meat which is purchased as NAAFI on the 2½d account.

Taken C. Doddridge

E. 0025. RQMS DODDRIDGE, A.C.

The accused declines to cross examine this witness.

Wm H Randall
maj.

The accused does not call any witnesses for the defence.

The accused having been duly cautioned in accordance with Rule of Procedure 4 (E) reserves his defence.

Certified that Rules of Procedure 4 (C), (D), (E). and (F) have been complied with.

I certify that the foregoing Summary of Evidence consisting of four hand written pages was taken down by me in the presence and hearing of the accused.

Hugh Burnett Capt.
1st. Anti-Tank Regiment, R.C.A., C.A.S.F.

Cooden Beach, Sussex.
12 Nov 42.

W. H. Randolf
Maj

Exhibit "A"

1 – lb. butter
1 – 2 oz. tin of margarine.
1 – 2 oz tin of apricot Jam
1 – 2 oz tin of sugar.
1 – 7 oz tin of tea
1 – 12 oz. tin of pork luncheon meat.

Having been duly examined by the Court
was found to be as above, and was
returned to the Adjutant 1 Cdn. A/T. Regt. R.C.A.

W. H. Randall
Maj.
President.

3

I request that my defending officer at my forthcoming Court Martial be selected by Lt.-col. H.M.Hague, Officer Commanding 1 Cdn Anti-Tank Regiment, R.C.A.

Cooden Beach
12 Nov 42

Gnr W.S. Robins.....
B-21034 Gnr Robins, W.S.

The Commanding Officer details Lieut. R.D. Falk, 90 Bty., 1 Cdn Anti-Tank Regt., R.C.A., to act as defending officer in the case of B-21034 Gnr Robins, W.S.

17

Exhibit "D"

Statement. - Lieut R D Polk. Council for Defence states.

wishes to draw the attention of Court to the fact the accused joined H P A M. 1936. took his discharge from them Sept 5/1939 and on 6 day September 1939 joined the C A S F.

He proceeded overseas febuary 1940 and has been in this county ever since.

Since his arrival in England he has become married and has seen fit to adopt a daughter.

I would like to point out to the court any extreme involving extreme stoppage of pay will involve undue hardship both on accused and his family.

The second point I'd like to make is ~~Sub~~ Cpl. Robbis civilian trade is cooking and has been so for 15 years. All his service in the army has been spent as a cook and for a man who has worked around food for that length of time a rather proprietary attitude is adopted towards the food they receive and prepare.

A cook proceeding on a 9 day pass with a 12 hour journey by rail quite normally might provide himself with what he considered sufficient food for his own personall use. The value of the articles in question is trifling there is obviously

no

Exhibit "D" Continued

18

[illegible]

Matrice of resale,

Therefore although this action legally is not a correct one, yet to someone who has been in contact with food so long their slant may be quite different to yours and mine.

I should like the court to bear those 2 points in mind in consideration of their Punishment.

Q, What was the destination of Gnr Robbins on this leave.

A1. Plymouth via London.

Exhibit "B"

M.F.M. 6
(A.F.B. 122)

No. B-21034 Name Robins, W.S. Sqn., Battery or Company 23 Bty Corps R.C.A. Date of enlistment 10 Sep 42 Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature of Signed Company, etc. T.A. Cowan Lieut Character

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
"Sheet revised in accorsance with R.O. (Overseas) 319 after six months service									
Posted to R.H.Q. W.e.f. SHIRLEY 29/8/41 Gnr				4 Jan 41 A.A.Sec.40 - W.O.A.S. conduct to the prejudice etc in that he at Shirley on 29 Aug 41 was in improper possession of rations.	Capt McKnight BQMS Williams Bdr Watt	28 days F.P.1 Forfeits 28 days pay under FR&I 149(1)(b)	29 Aug 41	Lt-col. T.M. Medland C.O.1 A/T Regt	

CERTIFIED TRUE COPY of original MFM-6

Hugh Burnett Capt

(H.Burnett) Capt., Adjutant 1 Cdn A Tk Regt., R.C.A.

W.H.S. Randall

(P.T.O.)

Exhibit "C"

16

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B-21034 Gnr WILLIAM SAMUEL BORINS of the 1 Cdn Anti-Tank Regt., R.C.A.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be appeared to the proceedings.

Chee Para. 661, K.R., 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given in the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.	*Since Enlistment.
For A.A.Sec.40	times	1 times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct,~~

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or,

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.~~

Wt. 43849.004 30,000 2/40 W. S. Ltd. 51—6004

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13th day of November, 1942.

Stephen Smith Capt.
Asst. Adjt. Regiment, R.C.A., C.A.S.F.

3. The accused is not under sentence at the present time,

or,

~~The accused at the present time is under sentence for~~
~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges

for nil days in Civil Custody,

and 5 days 19 hours ~~days~~ in Military Custody. as at 0900 hrs 18 Nov 42

Total 19 hours ~~days~~.

Of which no days were spent in hospital.

[signature] Adjutant
1st. Anti-Tank Regiment, R.C.A., C.A.S.F.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 33¼ yrs

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 18 Sep 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 1/6 years

8. The accused is entitled to deferred pay or gratuity in respect of 3 1/6 years' service.

9. The accused is entitled to reckon 3 1/6 years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [~~or is in possession of or entitled to~~]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of N.A. dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of , years,

In the rank of N.A. , years,

In the rank of , years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted*

Description of Court by which tried, or status of Officer dispensing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(*Continued overleaf.*)

136 E - Pte Robinson A.C

O. H. M. S.

M. F. B. 270
1000M-12-40 (8668-69-70)
H.Q. 1772-39-67

M-17215 Pte. Robinson, A.C.
H.Q., O.R.U.

136-E

Army Form A.3.

Correspondence to be PINNED here.

PROCEEDINGS REVIEWED

20/1/42

Redeeming Officer (Rank)

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this 19th day of December, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

~~*I am unable to appoint—~~

~~*(1. Three Officers to form the Court)~~

~~*(2. A Field Officer as President)~~

~~*(3. Three Officers having more than one year's service)~~

~~for the following reasons namely:~~

President.

Rank.	Name.	Regiment.
Major	P.J.R. Payne	No.1 Cdn ASC Reinf Unit

Members.

Rank.	Name.	Regiment.
Captain	W.B. McIsaac	No.1 Cdn Div Inf Reinf Unit
Lieutenant	J.I. McLaren	No.1 Cdn Eng Reinf Unit
Lieutenant	L McKenna	No.1 Cdn Div Inf Reinf Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [signature] Brigadier

Commanding Cdn Reinforcement Units.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
M-17215 PTE. ROBINSON, A.C. H.Q. Cdn Reinf Units.	First Charge A.A. sec 40 See charge sheet attached.	Not guilty	Guilty to undergo Detention for 60 days.	Confirmed D.M. Mulvain Brig

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No Sir.

(Signed) D.M. Mulvain Brigadier (Signed) C.J.R. Vayro Major
Commanding Cdn Reinforcement Units. *Convening Officer* (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23 day of Dec / 41, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) The shorthand writer,
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 23 day of Dec. 1941

C.J.R. Vayro Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

~~I certify that the terms of XXCIX 330 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison until further orders.~~

Signed this 6th day of January 1942.

D.M. Mulvain Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of M17215 Pte Robinson, A.C.

(*a*) (Dated) 5 Jan 42 (Signed) J. Stein
(J. STEIN) Capt.,
Camp Commandant & O.M.
H.Q. - Cdn. Base Units.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(44720) Wt. 40115—803 500 m 5/40 P. St. C. 640

CHARGE-SHEET

The accused, M-17215 Pte. ROBINSON, Arnold Clare, H.Q. Cdn Reinforcement Units, a soldier of the Canadian Army (Overseas) is charged with:-

First Charge Sec 40 Army Act

When on Active Service, Conduct to the Prejudice of good order and Military Discipline

in that he,

At Guildford, Surrey, on the night of 6 - 7 Dec 1941 improperly and without authority used for his own private purposes a Canadian Government Vehicle Norton Motorcycle CC 4366342.

(J.H. Townsend) Lieut.
Commanding Signals Section H.Q. Cdn Reinf Units.

Farnborough, Hants
16 December 1941.

To be tried by Field General Court Martial

(F.H. Phelan) Brigadier
Commanding Cdn Reinforcement Units

Farnborough, Hants
This 16th day of Dec 41.

No. M-17215, PTE. A. C. ROBINSON, H.Q., C.R.U., tried by Field General Court Martial at Farnborough, Hants. on the 23rd day of December, 1941.

The order convening the Court, the charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:-	Lieut. W.L.D. Carter,	1 CASCRU.
Defending Officer:-	Lieut. S. Fidler,	1 CGMU.

At 1600 hrs the trial commences.

The order convening the Court is read, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1. No, sir.

The President and members are duly sworn.

Q2. Do you object to B66944, Sgt. T. Pyburn, acting as shorthand writer?
A2. No, sir.

The shorthand writer is duly sworn.

The charge sheet is signed by the President, and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge sheet.

Q3. Are you guilty or not guilty of the charge against you, which you have heard read?
A3. Not guilty.

Q4. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A4. No, sir.

1st witness for prosecution) — No. 7690616, L/CPL W. LILLINGTON, C.M.P., being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q5. Will you tell the court what you know of this case?
A5. On Sun 7 Dec 41, at 0020 hrs, acting on information received from the civil police I went to Lysons Ave, Ashvale, where I found a Norton m/c, CC4386342. I took this m/c back to bks, where it was picked up the same morning.
Q6. Do you know who picked the m/c up from your bks?
A6. I don't know, sir.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q7. You have no idea who had left that m/c there?
A7. None at all.

2nd witness) No. C9399, CPL. M. JAMIESON, C.M.P., being
for) duly sworn, is examined by the prosecutor:-
prosecution)

Q8. Will you tell the court what you know about this case?
A8. I was on duty in Guildford on the 6 Dec 41 at approx 2200 hrs at the Stoke Dance Hall and Pte Robinson approached me and asked if he could have a ride back to Aldershot and I said I would, yes, and for him to be at the station at approx 2230 hrs. I arrived at approx 2230 hrs and picked up my patrol and Pte Robinson was not around, so I pulled out at approx 2235 hrs. On the 7 Dec 41 at approx 1200 hrs Sgt Baizley instructed me to investigate into a case in which one of our motorcycles was stolen on the night of 6 Dec 41. The m/c stolen was CC4366342, a machine assigned to L/Cpl Hartling. I asked L/Cpl Hartling if he suspected anyone and he said a Pte Robinson had been inquiring about a ride. I went to C.B.U. on the 7 Dec 41 and learnt that Pte Robinson was on the Witley run and would not be in until 1230 hrs. I returned at the time stated and asked Pte Robinson how he got home from Guildford how he got home on the night of the 6th and he said he walked. I asked him what time he got in and he said about three in the morning. I asked him if he was wearing that battle dress and he said, "No." I asked him if I could see the one he was wearing and he produced it and I examined it. I noticed about 12 or 15 ins. of the pant leg was full of sand and I turned the trouser leg inside out and found the trousers to be the same inside, which looked as though the wearer of them had been riding on a m/c and in the wind and wet. I questioned him and was quite positive he had ridden a machine, so I went back to my orderly room and informed Sgt Baizley what I had found and he instructed me to go back and escort Pte Robinson to the orderly room, which I did. About 1500 hrs Pte Robinson confessed to the taking of the machine and he voluntarily made a statement and I was present when it was taken. At approx 1400 hrs on the 7 Dec 41 I received a phone call from No 7 Provost saying the machine we had lost was at the C.M.P. Bks, Stanhope Lines, Aldershot. I went down, recognised the machine, and saw where the baker light had been taken off the distributor spark plug and wired together, but apart from that everything was in first class shape. Then, sir, the machine was brought back to our orderly room.
Q9. Do you know definitely if m/c CC4366342 belongs to L/Cpl Hartling?
A9. Yes sir, each man is assigned a machine and nobody else can ride that machine.
Q10. Were you present when Pte Robinson made his statement to Sgt Baizley?
A10. Yes, sir.
Q11. Was he warned?
A11. Yes sir, he was warned and he was told whatever was written down would probably be before the court as evidence.
Q12. Did they tell him it could be used as evidence against him?
A12. Yes, sir.
Q13. And you were a witness to that fact?
A13 Yes, sir.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q14. What time did the accused speak to you in the Stoke Dance Hall in Guildford?
A14. Approx 2200 hrs.

Q15. Are you sure it would not be 2000 hrs?
A15. No sir, it was approx 2200 hrs.
Q16. I notice in your summary of evidence you said he came to yo
eight o'clock at night?
A16. Yes, I saw him about eight o'clock, but he never asked me fo
ride then.
Q17. I want you to be very careful. In your summary of evidence yo
stated 2000 hrs on 6 Dec 41 Pte Robinson approached you at the
Stoke Damne Hall in Guildford and asked you for a ride home.
Now will you be sure of the times?
A17. I am sure it was about 2200 hrs.
Q18. You want to change your time then from 2000 to 2200 hrs?
A18. I am sure it was 10 o'clock when Pte Robinson approached me and
asked me if he could have a ride home, but I had seen him previous
to that.
Q19. The following day you say Sgt Beazley instructed you to go to
HQ, CRU, and interview the accused, whom you had suspicions of?
A19. That is right.
Q20. Did he order you to put him under arrest?
A20. No, sir.
Q21. At the time you interviewed Robinson did he seem as though he
was inclined to help you, or did he seem inclined to hold any-
thing back from you at all?
A21. He kept saying he had walked home alone.
Q22. That was his original statement, was it?
A22. Yes, sir.
Q23. And then you proceeded back to your own coy H.Q.?
A23. I went back first with Pte Robinson to his bke and examined the
battle dress he was wearing the night in question, sir.
Q24. You know for a fact that Robinson is a D.R.?
A24. That is right.
Q25. Would it be possible for Robinson, as a D.R., the day previous in
the course of duty to be wearing that battle dress, and if it
had rained, could not his trousers have been in that condition?
A25. I asked him if he had used that battle dress for riding a m/c
and he said no, that he was keeping it clean for going out.
Q26. After you had examined the condition of his trousers, did you take
him back to C.R.U.?
A26. I left him at his bx room and returned to my orderly room.
Q27. Then you came back for him again, did you?
A27. That is right.
Q28. Did you then put him under arrest?
A28. No, sir.
Q29. You say that at approx 1500 hrs Pte Robinson made a confession?
A29. Approx 1500 hrs, yes sir.
Q30. Could it have been 1550 hrs?
A30. It could have been.
Q31. You say he was warned in the regular manner?
A31. Yes, sir.
Q32. What time did you take Robinson over to your office in the first
place?
A32. Approx 1430 hrs.
Q33. You say that approx an hour and a half after that time Robinson
signed a confession or made a confession?
A33. Yes, he admitted taking the machine.
Q34. What happened between 2.30 in the afternoon and 3.50?
A34. Sgt Bailey was questioning him.
Q35. Was he questioning him all that time?
A35. Yes, sir.

PROSECUTOR: I object to that; he was not present.

Q36. DEFENCE: From 2.30 until 3.50 were you present while the accused
was being examined?
A36. While he was being questioned I was.
Q37. Who else was present?
A37. L/Cpl Larocque, L/Cpl Hartling and Sgt Bailey.
Q38. At what time between 1430 and 1550 was the accused warned? Now I

1161

want you to be quite clear of this in your mind, and remember you are on oath. At what time was he warned that anything he might say or give in evidence could be used against him?

A38. It was at approx 1600 hrs after he had told the Sgt he had taken the machine the Sgt said, "Do you wish to make a voluntary statement and sign a statement?" and he cautioned him.

Q39. At 1430 hrs the accused was brought into your office and apparently questioned?

A39. Yes, sir.

Q40. But it was not until 1600 hrs or possibly a little later on that he was warned?

A40. That is correct.

Q41. Did the four of you present enter into a general discussion with Robinson on the loss of this motorcycle?

A41. We did not.

Q42. What was Robinson doing all that time?

A42. The Sgt asked him where he had been, how he got home, etc. and everybody had a smoke. We never hurried Robinson; we were quite sure he was the man who took the machine.

Q43. What makes you so sure he took the machine? Did you see him take it?

A43. I did not.

Q44. Did you see him on it at any time?

A44. No.

Q45. Did you see him leave it?

A45. No.

Q46. What made you so sure?

A46. Because Robinson said later on he had taken it.

Q47. But what made you so sure before that?

A47. L/Cpl Hartling phoned our orderly room wanting a truck to come to Guildford Railroad station to pick him up. Our truck went the same route that Robinson claimed he came home by and he claimed he never saw a vehicle.

Q48. Would not that be possible?

A48. Not if he took the same route.

Q49. In any event you don't know for a fact that Robinson had anything whatever to do with the motorcycle that night?

A49. Not at the time I didn't, no.

Q50. So when you suspected him and talked the matter over with him among the four of you and himself, you questioned him on various things, I imagine, and told him he was the guilty person?

PROSECUTOR: I object to that question.

THE COURT: Carry on.

Q51. DEFENCE: What is your answer?

A51. He has asked us for a lift and we have taken him to and from Guildford many times.

Q52. You don't know for a fact, though, that Robinson did take the machine?

A52. I only had my suspicions, sir.

RE EXAMINED BY THE PROSECUTOR:

Q53. How long intervened between the time you first brought Robinson to your guard room and the time he made his statement?

A53. I brought him to the guard room at approx 1430 hrs.

Q54. Roughly about how long was he there?

A54. Probably about half an hour or three-quarters of an hour.

Q55. That is before hemade his statement, is that right?

A55. Yes, sir.

Q56. In warning him how long did it take to warn him?

A56. The Sgt cautioned him several times.

Q57. Then he was there approx half an hour or 20 mins before you even started to warn him?

A57. Yes, sir.

Q56. How long was he there before he admitted the fact he had taken vehicle?
A56. I don't know exactly whether half an hour or three-quarters.

PROSECUTOR: Sir, I am trying to prove there was not a lot of time wasted and the man did not have his fingers pulled or his ears twisted in the office, as the defence would suggest. L/Cpl Hartling, whose m/c was stolen, is away on leave and it was impossible to get him.

3rd witness for prosecution) No. D-61092, L/CPL C. LAROCQUE, C.P.C., being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q59. On the evening of 6 Dec 41 were you on duty?
A59. Yes, sir.
Q60. Were you on duty with L/Cpl Hartling?
A60. Yes, sir.
Q61. Were you with him all evening?
A61. Yes, sir.
Q62. Do you know the number of his machine?
A62. C04366342.
Q63. How do you know he had that machine?
A63. Because we always have our own machine.
Q64. In other words he is the only person who can use that machine?
A64. Yes, sir.
Q65. What do you know about that vehicle?
A65. At 2230 hrs I was detailed with L/Cpl Hartling to relieve the patrols at Guildford Ry Station, which we did. At approx 2235 hrs I noticed the accused approach L/Cpl Hartling and ask him if our patrol truck was gone, and he said, "Yes." He asked us for a ride home on the back of our bikes and we said it could not be done. At about 0300 hrs we heard a bike go out but took no notice of it. The following morning we went to get our bikes and L/Cpl Hartling's bike was gone and could not be found. We phoned our orderly room and told them what had happened and they came to get us. The following day, the 7th, L/Cpl Hartling and L/Cpl Jamieson had a suspicion the accused took the bike. At 1500 hrs the same day I was in the orderly room when the accused admitted taking our bike. That is all, sir.
Q66. Were you present when the accused was warned and when the accused made his statement?
A66. I was.
Q67. Who warned him?
A67. Sgt Baizley, i/c of the sec.
Q68. How was he warned?
A68. He was told the statement he was giving now would be used against him and the court could use it as evidence when he was tried.
Q69. Did the accused object to giving a statement?
A69. No, sir.
Q70. Was he forced in any way to give that statement?
Q71. No sir, the Sgt said, "You may give it or keep it," and he said, "I might as well come clear, I took the bike," and the Sgt said, "I will write down what you say; after I have written it you may sign it if you want to."
Q72. Did he sign it of his own free will?
A72. Yes, sir.

CROSS EXAMINED BY DEFENDING OFFICER

Q73. At approx 1430 hrs the accused was brought to the Provost Sec orderly room?
A73. Yes, sir.
Q74. Were you there at the time?
A74. No sir, I came in about five mins later or something like that.

Q56. How long was he there before he admitted the fact he had taken vehicle?
A56. I don't know exactly whether half an hour or three-quarters.

PROSECUTOR: Sir, I am trying to prove there was not a lot of time wasted and the man did not have his fingers pulled or his ears twisted in the office, as the defence would suggest. L/Cpl Hartling, whose m/c was stolen, is away on leave and it was impossible to get him.

3rd witness for prosecution) No. D-61098, L/CPL C. LAROCQUE, C.P.C., being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q59. On the evening of 6 Dec 41 were you on duty?
A59. Yes, sir.
Q60. Were you on duty with L/Cpl Hartling?
A60. Yes, sir.
Q61. Were you with him all evening?
A61. Yes, sir.
Q62. Do you know the number of his machine?
A62. CC4386342.
Q63. How do you know he had that machine?
A63. Because we always have our own machine.
Q64. In other words he is the only person who can use that machine?
A64. Yes, sir.
Q65. What do you know about that vehicle?
A65. At 2230 hrs I was detailed with L/Cpl Hartling to relieve the patrols at Guildford Ry Station, which we did. At approx 2235 hrs I noticed the accused approach L/Cpl Hartling and ask him if our patrol truck was gone, and he said, "Yes."He asked us for a ride home on the back of our bikes and we said it could not be done. At about 2300 hrs we heard a bike go out but took no notice of it. The following morning we went to get our bikes and L/Cpl Hartling's bike was gone and could not be found. We phoned our orderly room and told them what had happened and they came to get us. The following day, the 7th, L/Cpl Hartling and L/Cpl Jamieson had a suspicion the accused took the bike. At 1600 hrs the same day I was in the orderly room when the accused admitted taking our bike. That is all, sir.
Q66. Were you present when the accused was warned and when the accused made his statement?
A66. I was.
Q67. Who warned him?
A67. Sgt Baizley, i/c of the sec.
Q68. How was he warned?
A68. He was told the statement he was giving now would be used against him and the court could use it as evidence when he was tried.
Q69. Did the accused object to giving a statement?
A69. No, sir.
Q70. Was he forced in any way to give that statement?
Q71. No sir, the Sgt said, "You may give it or keep it," and he said, "I might as well come clear, I took the bike," and the Sgt said, "I will write down what you say: after I have written it you may sign it if you want to."
Q72. Did he sign it of his own free will?
A72. Yes, sir.

CROSS EXAMINED BY DEFENDING OFFICER

Q73. At approx 1430 hrs the accused was brought to the Provost Sec orderly room?
A73. Yes, sir.
Q74. Were you there at the time?
A74. No sir, I came in about five mins later or something like that.

Q75. In your former evidence you said at 1.30 hrs you were in the L of C Provost orderly room?
A75. As I have not a watch I only guessed it, it was only a matter of a few mins though.
Q76. If you were in at 1.30 hrs you would have been there when the accused arrived?
A76. Yes, sir, I was at the door of my garage when I saw them come in and I followed them in after.
Q77. At what time was Robinson warned in connection with any evidence he might like to give?
A77. About 10 mins after he got there.
Q78. Are you quite sure of that?
A78. Yes, sir.
Q79. If I were to say to you that Robinson was not warned until a quarter past three regarding the statement he might make, might I not be correct in giving you that time?
A79. No sir, because his statement was signed before that.
Q80. If Cpl Jamieson says three quarters of an hour later or half an hour later Robinson was warned, would Jamieson be wrong?
A80. I don't know.
Q81. There seems to be quite a discrepancy in the time. You say 10 mins after 2.30 he was warned?
A81. No sir, when I came in it was about 25 mins to the hour and they were talking with the accused about other things.
Q82. What were they talking about?
A82. About the incident that happened and he admitted it as soon as he got in and he said, "I might as well come clean with it," and the Sgt said, "Whatever you say will be written down," and he said afterwards, "What you say will be used against you," and that took about 20 mins.
Q83. That was in the 20 mins following the 2.30?
A83. No, following the 25 mins to the hour.
Q84. In any event, it was before three o'clock in the afternoon?
A84. Yes, sir.
Q85. You had some conversation in that 20 mins with Robinson, didn't you?
A85. I didn't address the accused, sir.
Q86. Did you during the time you were there hear anyone say to Robinson this was a pretty serious case for Hartling having lost his m/c the night before?
A86. I don't remember that, I couldn't swear to that.
Q87. Could a remark like that have possibly been made?

PROSECUTOR: I object to that; he said he didn't hear it.

Q88. DEFENCE: In any event, did you hear anyone say to Robinson that if he were to come clean with this story that you wanted him to give, the whole affair could be arranged between your own C.O. and Robinson's C.O.?
A88. No, sir.
Q89. You say it was some 20 mins then before Robinson was warned?
A89. Yes, sir.
Q90. Do you remember him saying at first that he had walked home?
A90. No sir, I didn't hear that.
Q91. Is there anything you do remember very clearly about that 20 min period imaly after 2.30 or 2.35?
A91. I couldn't exactly say because I have been through so much since in my duties.
Q92. I believe you said you were suspicious of Robinson having taken the m/c?
A92. Yes, sir.
Q93. What made you suspicious of him?
A93. I knew he was a D.R. and he knew something about motorcycles.
Q94. There are a lot of D.Rs. in the Bordon Area?
A94. Yes sir, but he was the only who approached us and when our bike was found at Farnborough our suspicion was on him.

C481

Q95. Would it not be possible for any number of D.Rs. or people who could ride motorcycles to be in Guildford that morning?
A95. Possibly.
Q96. You did not see him take it?
A96. No.
Q97. Did you see him on it?
A97. No, sir.
Q98. Did you see him leave it?
A98. No, sir.

RE EXAMINED BY THE PROSECUTOR

Q99. But you were suspicious of him because he asked for a ride home on the truck?
A99. Yes, sir.
Q100. When Robinson came and asked you for a ride home the evening before, did he also ask you for a ride home on the back of a m/c?
A100. He did.
Q101. And you heard a m/c leaving there shortly after that, did you?
A101. Yes sir, somewhere around 11 o'clock, a short while after the accused asked us for a ride home.
Q102. The accused was not forced to sign that statement, was he?
A102. No, sir.
Q103. Did anyone take hold of him or say, "You sign this statement?"
A103. No, sir.
Q104. Was he thoroughly warned?
A104. Yes, sir.
Q105. Was he told the statement could be used against him?
A105. Yes, sir.
Q106. Are you sure of that?
A106. Yes, sir.
Q107. Did the accused object to sign it?
A107. No, sir.
Q108. Did he want to make the statement himself?
A108. Yes, sir.

Q109. THE COURT: Do you leave your motorbikes unattended?
A109. Yes sir, there is a place in the rly station.
A110. They are immobilised, are they?
A110. Yes, sir.

4th witness for prosecution) NO. U1576, SGT. R.G. BAIZLEY, C.P.C., being duly sworn, is examined by the prosecutor:-

Q111. Do you know the accused?
A111. Only by sight.
Q112. Do you recognise him?
A112. Yes, Pte Robinson A.C.
Q113. When last do you recall having seen the accused?
A113. Several times whilst passing through Farnborough Bks.
Q114. Did the accused in connection with this case make a statement to you?
A114. Yes sir, he did.
Q115. Did you warn the accused when he made that statement?
A115. I cautioned him, I explained to him he did not have to make a statement unless he wished to do so, it was entirely up to him, if he wished to give me a statement I would take it down in writing and ask him to sign it, and he gave me the statement and I had it typed out and he signed it voluntary. I warned him it could be used against him if there was a court martial or anything, and he said he would give the statement voluntarily. He said, "I did it, I might as well be truthful about it.
Q116. Did he tell you what to write down or did he give you the story and you write it down?
A116. The procedure was this, I asked him would he mind giving a statement and he replied yes, he would give me a statement.

CJRP

that he wanted to give a statement. I said, "Very good, if you will just tell me what happened it will all be typed out now." He said, "I don't know how to start it," so I asked him if he had ever given a statement before and he said no. I said, "Would you like me to give you a rough summary of what you have told me previously," and he said, "That will do very good, Sgt, because I am not very well versed in making statements. I explained it to him and I said, "Is that what you have to say?" and he said it was. Then I said I would type it out bit by bit, and if anything was wrong for him to say so. I said, "I will read it while I am typing it." I believe there was a slight mistake at some time and he checked me up on it, and it was corrected immediately.

Q117. Is that the statement (producing document)?
A117. Yes sir, that is the statement.

PROSECUTOR: I present this as an exhibit.

DEFENCE: I know the contents of the statement. I am going to enter an objection on the grounds that it is inadmissible. At the moment I am not objecting to the statement being put in or for the court to see it in any way.

Q116. THE COURT: Is the accused the man mentioned in this statement?
A116. Yes, sir.
Q119. You are under oath, you know?
A119. Yes sir, that is the man.

Q120. PROSECUTOR: Were there any witnesses to this statement?
A120. Yes sir, Jamieson, Hartling and Lapocque: they were all there.

CROSS EXAMINED BY DEFENDING OFFICER

Q121. When you sent Cpl Jamieson over to C.R.U. you merely sent him to interview Robinson, is that correct?
A121. That is correct.
Q122. When Robinson returned to the provost orderly room at 9.30 he was not then under arrest, was he?
A122. No, sir.
Q123. Mainly after 9.30 did you have any discussion with Pte Robinson on his activities of the night before?
A123. Yes sir, that is right.
Q124. Can you give us any idea as to the nature of this discussion you had with Robinson?
A124. Not word, but generally speaking when Pte Robinson and Cpl Jamieson walked into the orderly room Jamieson explained to me this was Pte Robinson and he asked him if he would mind accompanying Cpl Jamieson to my orderly room, that he was not under arrest but I just wanted to have a talk with him. I told Pte Robinson to have a seat, which he did. He had often asked me for a ride to Guildford and was never turned down in our truck. I asked him what he knew about a m/c and he said nothing at all. I said one of my men had lost a machine in Guildford the previous night and I said, "He tells me you asked him for a ride on the back of his machine and he refused you." He admitted that. I said, "You never saw his machine before?" and he said, "No, I didn't." I said, "Well then, all right, sit down and have a smoke." I let him sit there about five mins and I carried on with my work and I answered the telephone, and after the telephone call I turned to Robinson and asked him if he would explain his actions during last night. He said, "Sgt, you have been pretty decent with me, you are pretty well known among our D.Rs. I don't know why I should do a trick like this on you; I took your machine last night. I am sorry but I took it and drove it and put it by a tree at North Camp Ry station. I said, "Would you mind giving me a statement to that effect?" He said, "Certainly." I said, "Mind you, you don't have to give me a

6985

statement, you are not compelled to do so, it is entirely up to you," and he said, "I might as well give a statement and have it over with." As I previously stated the statement was obtained voluntarily. There was no suggestion of a threat, promise or anything, it was merely like a couple of friends talking about something missing.

Q125. There was a friendly atmosphere all through?
A125. There was.
Q126. Did you at any time suggest to Pte Robinson if he did make any admission there would not be any serious charge arising out of it?
A126. No, sir.
Q127. You did not lead him to believe that the matter would be taken up between his own C.C. and your O.C.?
A127. Robinson asked me what would happen about it and I explained I had to notify my officer and I said, "If I am not mistaken my officer then notifies your officer."
Q128. You didn't say that this would be a matter to be taken up between your officer and my officer and that he would not come up for anything more serious than a charge from his own coy officer?
A128. The man was not charged at that time.
Q129. You say he turned to you and said you were pretty decent about the whole thing?
A129. As a matter of fact, before Robinson left my orderly room he shook hands with me and thanked me.
Q130. Yet when Robinson first entered your orderly room I believe he said he had walked home, is that correct?
A130. He said so, yes sir.
Q131. He also told you he knew nothing at all about the m/c?
A131. Yes.
Q132. How long was it before you actually warned him as to what would happen in the event of him making a statement?
A132. I never warned him about that at all.
Q133. What time did you warn him regarding the statement that he made?
A133. When we started the procedure was approx 1450 hrs, sir.
Q134. It could not be about quarter past three, could it?
A134. No, sir.
Q135. You had three other witnesses then beside yourself?
A135. Yes, sir.
Q136. If you know that one of the witnesses you had present said that this warning was given at quarter past three, would you be prepared to deny that?
A136. Yes, because there was a watch on my desk, I looked at that watch at the time of starting the statement and it read 1450.
Q137. If I were to tell you one of your witnesses in his summary of evidence said it was at 1550 hrs that the accused gave a voluntary statement, what would you say to that?
A137. I would say it was entirely wrong.
Q138. Yet he was present, wasn't he?
A138. He was present.
Q139. You say there was no inducement whatsoever to the accused during that time?
A139. None whatsoever.
Q140. What time did the accused leave the provost orderly room?
A140. I am not quite sure, but it would be some time around 1550, but I am not quite sure about that.
Q141. Now, when did you place the accused under arrest?
A141. I didn't place him under arrest, I warned him in view of the fact the statement he had given me would result in my having to detain him in the guard room until such time as I notified my seniors.
Q142. Isn't that putting him under arrest?
A142. Yes sir, in one way, and he said, "Well, I might just as well finish it off," and I explained as he had admitted taking the m/c and in view of the statement he had given to me I had no choice but to place him in the guard room and send a report through to my C.O., and it was done.
Q143. He was not under arrest up until the time he made the statement to you, though?

0161

A143. No, definitely not, I had nothing to place him under arrest for.
Q144. You had nothing more than suspicions to go on?
A144. All I knew was the m/c was stolen and the driver of it thought it might be Robinson and would I mind talking to him, and as he was one of my men naturally I assisted him.
Q145. There was no officer present during the taking of this statement?
A145. No sir, I am in command of the det.
Q146. Did you ever hear of any CMHQ instructions to the effect that an officer should be present during the taking of a statement?
A146. Unfortunately no sir, we don't get CMHQ R.O.
Q147. But there is a possibility there might be such an instruction?

PROSECUTOR: I object to that; he has stated he does not get CMHQ orders: there is a possibility of anything.

DEFENCE: I will let the question go for what it is worth.

The prosecution is closed.

The Court is closed to consider their decision as to the acceptance or non-acceptance of the signed statement of the accused submitted by the prosecution.

The Court being re-opened, the President announces the acceptance as evidence of the statement above referred to.

The above mentioned statement is signed by the President and attached to the proceedings.

Q148. THE COURT: Do you apply to give evidence yourself as a witness?
A148. No, sir.
Q149. Do you intend to call any other witness in your defence?
A149. No, sir.

The Court is closed for the consideration of the finding.

The Court being re-opened, the accused is again brought before it.

LIEUT. J.T. ROBB, H.Q., C.R.U., being duly sworn, is examined by the Court:-

Q150. Have you any evidence to produce as to the character and particulars of service of the accused?
A150. Yes, sir, I produce AF B296 and certified true copy of MFM-6.

The above statement is read, signed by the President, and annexed to the proceedings.

Q151. Is the accused the person named in the statement which you have heard read?
A151. Yes, sir.
Q152. Have you compared the contents of the above statement with the regimental books?
A152. Yes, sir.
Q153. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A153. Yes, sir.

No cross-examination.

Q154. THE COURT: Do you wish to address the Court?
A154. DEFENDING OFFICER: If you will refer to the MFM-6 of the accused which is before you, sir, you will find all his cases of crimes have been of a very, very minor nature. The accused himself is very well thought of by his own officers and the men with whom he lives and works. The circumstances and the type of offence

6981

being what it is, something that to my mind might have been dealt with very easily by his own C.O. I feel any sentence the Court may see fit to give should be of a minimum nature.

The Court is closed for the consideration of the sentence.

12 Dec '41

Summary of evidence in the case of No 17213 Ale Robinson, A.C. by direction of the commanding officer, all evidence is taken on oath

7690616 L/Cpl Lillington, W. Corps of Military Police Aldershot; having been duly sworn states:-

On 7 Dec 1941 I received a telephone message at 0020 hrs. from the Ash civil police to the effect that one of their patrolmen had found a W.D. Norton motorcycle CC 4386342. abandoned in Lysons Ave Ashvale.

I proceeded in the truck and found the motorcycle on a footpath leaning against a tree in Lysons Ave.

We put the motorcycle in the truck and carried it back to barracks.

Q. What was the condition of the of the motorcycle.

A The lead to the spark plug had been cut and joined again.

Q Was the motorcycle immobilized when you found it

A No.

The accused declined to cross-examine the witness

7690616 W. Sellington, Spr

C. M POLICE

U1576 Sgt R. G. Baigley, L of C Provost Sect having been duly sworn states: The attached written statement made by me to O.C. No 7 Provost Coy is my full evidence in this case.

The statement to O.C. No 7 Provost Coy File Ref. 5-4-1/B/Inv. dated 7-12-41 was read and Sgt Baigley affirmed this to be his evidence

R G Baigley.

The accused declined to cross-examine the witness

C 9399. Cpl Jamieson, M. of L.O.C.
Provost sect having been duly sworn states:-

At about 2000 hrs 6 Dec '41 Pte Robinson (the accused) approached me at the Stake Dance Hall in Guildford and asked if he could have a ride home with the patrols of which I was in charge. I said "yes". He asked me what time I was leaving and I told him to be at the railway station between 2230 and 2300 hrs.

I left the railway station with the foot patrols about 2235 hrs and left the motorcycle patrols there. Pte Robinson was not around when the truck pulled out.

I proceeded back to Farnborough.
At approx 1230 hrs 7 Dec '41 I was informed by Sgt Bayley that L/Cpl Hartlings

bicycle was stolen on 6/12/41 and to proceed on investigations.

I asked L/Cpls Hartley and Laroque if they saw anybody in the Guildford Railway Station who might be suspected.

They said that Pte Robinson A.C. (the accused) had been in the station arriving for a ride to Farnborough accompanied by L/Cpl Hartley

I interviewed the accused and asked him if he was in Guildford on 6/12/41. He said "yes". I asked him how he got home. He said that he walked.

I asked him how he was dressed on the night in question. He said in battle dress. I asked him if those were the clothes he had on and he said "no"

I asked to see the clothes he was wearing on the night of 6/12/41 and he said "yes, come to my barracks"

He took me over to his barracks where I examined the battle dress he was wearing on 6/12/41 in Guildford. I found this battle dress trousers ~~full of sand~~ had on them a large quantity of sand. I also checked his boots and found them sandy.

I then went back to the orderly room and reported to Sgt Baizley the above information. Sgt Baizley then instructed me to bring Pte Robinson to h of c orderly room.

I escorted Pte Robinson to h of c orderly room where Sgt Baizley interviewed him.

At approx 1550 hrs on 7/12/41 Pte Robinson voluntarily made and signed a statement to the effect that he had taken the motor cycle.

At approx 1430 hrs I proceeded on information telephoned in from 7 Prevost Coy to Stanhope lines to pick up

motorcycle CC 4386342 which had been found in the meantime.

I examined the motorcycle and found that the insulation had been stripped from the spark plug ~~connection~~ wiring and the wiring joined together to mobilize the motorcycle. The bakelite connector had been removed by p/cpl Hartling when he immobilized his motorcycle

M Jamieson Cpl.

The accused declined to cross examine the witness

1761

F 44925 L/Cpl Hartling, G. J. being
been duly sworn states.

On 6/12/41 at 2230 hrs I left my
motorcycle, CC 4386342 at Guildford Railway Station
in a shed which was assigned to
L of C Provost to use. There was no
door on this shed.

After putting my motorcycle in
there I immobilized it by taking off
bakelite connection in spark plug wiring.

We then relieved the patrols in
Guildford Station.

~~At~~ At about 2245 hrs the accused
approached me asking if our patrol truck
had left Guildford. I informed him that
it left about 10 min previously.

He then asked me if I could give
him a ride home and I said "no".

He then left the station and I did
not see him again that night.

At about 2300 hrs I heard a motor-
cycle running but paid no attention as

clothing which had been worn on previous night. The clothing showed signs of having ridden a vehicle open to the weather.

We then left the accused and informed Sgt Bradley of our finding.

At 1430 hrs the accused came to our Office in company of Cpl. Jamieson where he was questioned by Sgt Bailey.

At 1450 hrs, after being cautioned, the accused gave a voluntary statement to the effect he had taken the motorcycle along with some one unknown to him and modified the motorcycle - by disconnecting the wires and connecting them together.

He then drove the motorcycle to the vicinity of North Camp station and left it leaning against a tree.

He stated that he was slightly under the influence of liquor at the time of taking the motorcycle.

G.J. Hartley

The accused declined to cross-examine the witness

motor cycles are coming and going at all times.

At 0115 hrs 7/12/41 I finished my duty at the station and proceeded to a/m shed. when I found my motorcycle missing. After looking around and finding no trace of it I notified my unit orderly room. of the loss.

~~The next morning.~~

At about 0900 hrs I informed Sgt Bayley that I suspected the accused. He then detailed Cpl Jamieson and myself to look into the matter.

At 1230 hrs we went to the D.R's office at H.Q. C.R.U. and asked for the accused and were told he would be there at 1300 hrs. At 1300 hrs we met the accused and questioned him on the loss of the motorcycle. He denied knowing anything about it.

With his permission we went to his barrack room and checked his

find it. We telephoned our orderly room for transportation.

On returning from the station we patrolled around Ash and Aldershot but still could not find the motor cycle

~~At~~ We suspected the accused.

At 1430 hrs. I was in the L of C Provost orderly room when the accused ~~made~~ came in with Cpl Jamieson and L/Cpl Hartling and was cautioned and made his own statement to the effect that he had taken L/Cpl Hartling's motorcycle.

Questions by the accused

Q. Did I not ask you for a ride

A. Yes. and I refused.

Q. Did you hear me ask L/Cpl Hartling for a ride on his motorcycle.

A. I did

Q. On account of the distance about 20 ft between you and L/Cpl Hartling

D 61092 L/Cpl Laroque after being duly sworn states.

At 2230 hrs 6/12/41 in company with L/Cpl Hartley I relieved the patrols on Guildford Railways Station. At about 2240 hrs I noticed the accused approach L/Cpl Hartley who was near me. I heard the accused asking L/Cpl Hartley if our truck was gone. afterwards he asked L/Cpl Hartley for a ride on his motor cycle. and was refused.

At about 2300 hrs we heard a motor cycle in the Railways Station yard. But did not take any notice of it because that is not uncommon.

At 0115 hrs 7/12/41 we returned to our motor cycles and found that L/Cpl Hartley's was gone. We looked around the Station and could not

Could you have been mistaken about me asking him for a ride home on the back of his motor cycle.

A The distance was at the most 10 ft and I was not mistaken.

L. Lamoyd.

The accused is duly warned in accordance with R.P. 4(c) and declines to make a statement

I certify that the foregoing summary of evidence has been taken down by me in the presence of the accused and that R.P. 4(c) (d) (e) & (f) have been complied with

Faraborough.
Dec 11/41

J. H. Townsend

(J. H. TOWNSEND) Lieut.
Signal Officer, H.Q., Con. Base Units.

11/41

Date...23 December 1941

This is to certify that Regt. No M-17215 ... Ex Pte. Name Robinson, A.C. ...

is ... fit ..... to undergo Court Martial.

Signed [illegible]

Statement of M 17315 Pte. Robinson, A.C. H.Q.C.B.U.
Taken at approx. 1530 hrs. on the 7-12-41 at Farnborough, Hants.

Having been duly warned under R.P.4 (e) the M/n soldier wishes to make the following statement voluntary.

I was in Guildford on the 6-12-41 and at approx. 2300hrs I went into the Stoke Dance Hall and inquired from Cpl. Jamieson of the Cdn. Provost Corps as to what time his truck would be leaving Guildford for Farnborough, and asked him if it would be possible for me to obtain a ride back to Farnborough with him, and he replied "yes". I had a couple dances and then I left for the Railway Station. When I arrived at the Railway Station I learned that the Truck had left and that I would have to walk home. When I learned that I would have to walk home I approached L/cpl. Hartling, G.J. who was on duty at the Railway Station and I asked him if he would give me a ride home with him on the back of his machine. He informed me that he could not give me a ride on his machine. I then decided to take the Provost motor-cycle and ride same to my barracks. At approx. 2300hrs I took the motorcycle and I picked up a chap unknown to me and the two of us proceed on the motor-cycle with me driving, to North Camp Railway Station where I left the motor-cycle leaning against a tree. After I left the motor-cycle, I walked to my barracks. When I took the motor-cycle I had to connect the wires to-gether in order to start the motor-cycle. I was slightly under the influence of liquor when I took the motor-cycle.
I have read over the above statement And I verify same to be the truth.

A.C. Robinson .....Pte
(Robinson, A.C.)
(H.Q.C.B.U.)

Witnessed By

A.G. Baizley .....Sgt.
(R.G. Baizley Cdn. Provost Corps)

M. Jamieson .....Cpl.
(M. Jamieson Cdn. Provost Corps)

G. J. Hartling .....L/cpl.
(G.J. Hartling Cdn. Provost Corps)

C. Larocque .....L/cpl.
(C. Larocque Cdn. Provost Corps)

PJ&P

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
		NONE		

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23rd day of Dec 1941

J. T. Robb Lieut
H.Q. C.R.U.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

Pte. Robinson, A.C. of the 49th Edmn R. Att. H.Q., C.R.U.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

15th Para. 604, K.R. 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

		*Within last 12 months.		*Since Enlistment.	
For	A.W.L.	0	times	2	times.
For	Absent from parade	2	times	2	times.
For	A.A. sec 40	3	times	3	times.
For			times		times.

Number of instances of gallantry or distinguished conduct,

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

[illegible] W. S. Ltd. 11—[illegible]

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for
beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges

for days in Civil Custody,

and 16 days in Military Custody.

Total 16 days.

Of which days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 24

6. The date of his commission / attestation specified in his record of service / attestation paper is Apr 5/40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of years' service.

9. The accused is entitled to reckon years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion
In the rank of	, years,	
In the rank of	, years,	
In the rank of	, years,	

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

of the

Army Number, Rank and Name

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispositions with trial, must be inserted.*

Description of Court by which tried, or statute of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

NONE

(Continued overleaf.)

No. M 17215. Name Robinson A.C. Sqn., Battery, or Company Edn Provost Corps Depot. Edm. Regt. Date of enlistment Apr 5. 40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 123) 500M - 8-39 (1703) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Currie Brks	28.6.40	Pte		A.W.L. 2 dys 8 hrs	Sgt Marsh V.N. Sgt Wagstaff A.B.	7 days C.B.	1.7.40	H Taverten Mg.	Forfeit 3 dy Pay
Aldershot	7.11.40	Pte		WOAS was A.W.L. from 1330 hrs until 1415 hrs 7.11.40 (Absent 45 min) Sec 15 AA	RSM Fick S/Sgt Cooper	Reprimand	10.11.40	Capt G W Ball	
Jasper Camp	23.9.41	Pte		Losing by neglect his Equipment. i.e. deficient one respiration	Mgr Graham S/Sgt Cosgrove				
Aldershot	1.6.41	L/C		Not wearing gaiters Contrary C.A.R.O. 559	L/C Wallis & Beattie	3 dys C.B.	3.6.41	C M Graham	
"	1.6.41	"		Improperly dressed wearing Collar + tie	L/C Wallis & Beattie	3 dys C.B.	3.6.41		
"	2.6.41	"		Absent from place of Parade	Sgt Seaward	3 dys C.B.	3.6.41	C M Graham	
"	11.7.41	"		Improperly dressed Contrary Sec 11 AA	L/C Jamison & Higgins	Redn. to rank of Pte.	14.7.41	C M Graham	
Witley	12.9.41	Pte		WOAS failing to appear at P.T. AA Sec 15 (2a)	Cpl Anderson	3 dys C.B.	12.9.41	J F O Neil	(Capt)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified true Copy.					
				(J. STEIN) Capt., Camp Commandant & Q.M. H.Q. - Cdn. Base Units.					

107-V (case #2)

Sgmn ROBINSON, A.C.

See 136 E for 1st case

M-17215 Sigmn. Robinson, A.C.
Signal Section, H.Q., C.R.U.
107 V

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 8th day of January, 1943

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CDN ARMY, OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~] Pl

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[~~I am unable to appoint:—~~ Pl

*(1. ~~Three Officers to form the Court.~~]

*(2. ~~A Field Officer as President.~~)

~~for the following reasons, namely:—~~]

* Omit if not applicable.

Proceedings Reviewed
Reviewing Officer (I.A.G.)
26 Jan 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lt-Col.	D.L. Redman, V.D.	H.Q., C.R.U.

Members.

Rank.	Name.	Regiment.
A Captain	from	No. 1 C.A.S.C.R.U.
A Lieutenant	from	No. 1 C.E.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding Cdn Reinforcement Units.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M-17215 SIGMN. ROBINSON, A.C., Signal Section, H.Q., Cdn Reinf Units.	First Charge A.A. sec 40	not guilty	Guilty Sentence To undergo detention for a period of Ninety (90) days. 14th Jan. 1943	Confirmed A.M. Nelson Brig
	See charge sheet attached.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— Answer = No

(Signed) A.M. Nelson Brigadier (Signed) [illegible]
Commanding Cdn Reinf Units, *Convening Officer* (c) — *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 12th & 14th day of JANUARY, 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
3. The interpreter
*(4. The shorthand writer
*(5. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 14th day of January 1943.

[signature]
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of A.O.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 16 day of Jan 1943

A.M. Nelson
Confirming Officer.

Promulgated and extracts taken in the case of M17215 Signmn Robinson, A.C.

(a) (Dated) 18 Jan 43 (Signed) [illegible] Lieut. for O.C. Signal Sec. 1st Cdn Div.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

O.C. 47782/1937 10 M. 3/41 K.H.L./326522 Gp. 698/3

CHARGE SHEET

The accused, M.17815 Signmn ROBINSON, A.J., on the strength of Signal Section, C.R.U. a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec. 40
ARMY ACT

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Farnborough, Hants., on the 23rd day of December 1942 did improperly and without authority take and use a Canadian Military Vehicle, namely Ford 8 cwt. CZ 4209282 for his private purposes.

Farnborough, Hants
5 JAN 43

(J.H. Townsend) Capt.
Officer Commanding,
Signal Section, C.R.U.

To be tried by Field General Court Martial

(E.R. Phelan) Brigadier
Commanding Con Reinforcement Units.
Convening Officer

Farnborough, Hants.
This 8th day of Jan 43.

Medical Officers' Certificate.
K.R. (Can.) Para 557

I certify that I have this morning examined No. M17215 Sig Robinson, A.C.

of H.Q. C.R.U. and in my opinion he is fit to undergo

trial by court martial.

Station.

Date. 12 Jan 1943

Sgd. H Kingstone
(Medical Officer)

Medical Officers' Certificate.
R.R. (Can.) Para 557

I certify that I have this morning examined No. M.17215 Sg. ROBINSON. AC.

of.....HQ.CRU.....and in my opinion he is fit to undergo

trial by court martial.

station. Field.

Date. 14 Jan 1943

Sgd. H Kingstone Capt
(Medical Officer)

TRANSCRIPT OF EVIDENCE

In the case of M 17215 Sgmn. ROBINSON A.C., Signal Section, H.Q. C.R.U, held at Guillemont Barracks on the 12th day of January, 1943.

The order convening the court, the charge sheet, the summary of evidence and the Medical Certificate are laid before the court.
The court satisfy themselves as provided by Rs P. 22 and 23.
The accused is brought before the court.
Prosecutor:- Lieut. M.H. Thomas-Peter, RCCS Sig. Sect. H.Q. CRU
Defending Officer:-Capt. W. McClews H.Q., C.R.U.
At 1430 hrs. the trial commences.
The order convening the court is read, signed by the president, and attached to the proceedings.
The names of the president and members of the court are read over in the hearing of the accused, and they severally answer to their names.
Do you object to be tried by me as president, or by any of the officers whose names you have heard read over ?
A:- No, sir.
The President and Members were duly sworn.

PRESIDENT:-	LT.-COL. D.L. REDMAN, V.D.	H.Q., C.R.U.
MEMBERS :-	CAPT. L.L. VANLUVEN	1 C.A.S.C.R.U.
	LIEUT. F.C. TEMPLETON	1 C.E.R.U.

There are no officers under instruction.
Do you object to H 20133 Pte. Millard, R. H.Q. C.R.U. acting as shorthand writer ?
A:- No, sir.
The shorthand writer was duly sworn.
The charge sheet is signed by the president, and annexed to the proceedings.
The accused is arraigned upon the charge in the above-mentioned charge sheet, and pleads NOT GUILTY to the charge against him.
The President complied with R.P. 39(A)
A:- No, sir.

1ST WITNESS FOR THE PROSECUTION:- P.C. Const. B. BRADLEY, Surrey Constabulary, Police Station Godalming, having been duly sworn, is examined by the prosecutor:-
Q1:- Tell the court what happened when you were on patrol on the 23rd. of December.
A1:- About 12.20 AM. on the 24th of December last I was on motor patrol, stationary at Milford cross-roads, in company with P.C. Thatcher. An Army truck passed me at a very fast speed. Not being satisfied with the speed it was travelling at, I gave chase, and caught up with the car before reaching Godalming town. I followed it through Godalming town at an estimated speed of 50 M.P.H. I passed it and drew into the near side. P.C. Thatcher signalled it to stop. This it failed to do. I again gave chase, and putting on my side light, I drew alongside for some distance. PC. Thatcher shouted through the loud speaker fitted to the front of the car, telling him to stop, this the driver of the Army truck failed to do. I drew in behind the Army truck , it being unsafe to drive alongside any further, owing to the driver of the truck swerving from one side to the other of the road. I followed the Army truck through Peasmarsh, Common. I was driving all out with a Woolsey car that makes a speed of 85 m.p.h. The driver drove over Peasmarsh railway bridge which is an "S" bend at a speed which I estimated between 50 and 60 narrowly missing a cyclist I still followed the truck into Guilford. The truck drove down on the correct side of a dual carriageway, I drove on the wrong side and drew across the end of the dual carriageway to block this passage. As I did this the Army truck went into reverse, again into full gear, turned right into Drummond's Road. After this I lost trace of the truck and cruised around Guildford for the space of about one half hour and was about to re-trace the journey I had already covered when I saw an Army truck parked at a side road without lights. I stopped and went to the truck and a soldier was sitting behind the driver's wheel in company with a young lady. I asked him if he was in charge of the truck, he replied "Yes." He said "I have been here two hours". After further questioning, he said he had been there one hour. I felt the radiator of the truck which was very warm. I also felt the tires which were warm. He was asked to get out of the truck where upon he was found very unsteady. He was then placed in the police patrol car and driven by P.C. Thatcher to Guild-

ford Police Station. I drove the army truck, following the patrol car to the Guildford Police Station. That is my evidence.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q2:- You said in the summary of evidence signed by you that the car reached a speed of 80 m.p.h. ?

A2:- I followed the car, I did not have a light on the dash.

Q3:- Would you say that this army car did drive at a speed of 80 m.p.h. at any time ?

A3:- Yes, sir. I would.

2ND WITNESS FOR THE PROSECUTION:- Const. R.J. THATCHER P.C. 323, Surrey constabulary, Police Station, Godalming, having been duly sworn, is examined by the Prosecutor:-

Q4:- Tell the court what occured on your patrol on the night of 23 - 24 of December 1942 ?

A4:- About 1220 A.M. on the 24th of December I was on patrol car duty in company with P.C. Bradley. We were stationary at Milford, facing towards Godalming. A light army truck passed us at a very high speed. We decided to follow this truck, and got up to it at Catford railway bridge. We followed it then through Godalming at a very fast speed a speed of 90 m.p.h. , and owing to the narrowness of the road, we were unable to pass it there. But further on we drew alongside the truck and I signalled it to pull in to the side with a hand torch. We drew close to the front of the truck into the near side of the road, when the truck passed us at a fast speed. We again took after it and drew level with it, and the police car was fitted with a loud speaker, and I ordered this car to pull into the side of the road with this loud speaker, but he took not notice of it, and we again drew in behind it, as we were afraid he might crash into us. We got behing and followed it over the Peasmarsh Common which is a long straight stretch and there we reached a maximun of 80 m.p.h. I checked this by flashing the torch on the speedometer. The truck rounded the bridge at a terrific speed, about 60 m.p.h., I think. It narrowly missed some cyclists on the near side of the road. We followed the vehicle into Guildford, and all the way the army truck was running criss-cross very dangerously, and we thought it inadvisable to pass it. At Woodlinged road which is a dual passageway, we went down this road on the wrong sides and stopped in the path of the truck at the end of the dual carriage way. This truck stopped behind us, went into reverse, stopped again, then started off a side road to the right. We turned our vehicle around and followed the truck up this side road. We lost sight of it, and for approximately one-half hour we toured that part of the district looking for the truck. We eventually saw an army truck stationary in the Queen's Road. We went to it we saw Robinson sitting behind the steering wheel , and his compenion was a lady. I asked him how long he had been there, and he said an hour, and then later changed the time to one-half hour. I felt the radiator and found it was still very hot, also the tyres were hot. I asked him if he had permission to have the vehicle, and he could not give me a satisfactory reply. I asked him to get out of the truck, and when he got out, he was very unsteady on his feet. I took him to the police station in the police car, where he was examined by a doctor.

Q5:- How did you clock the two vehicles ?

A5:- After the vehicle had started off again, it was driven at such a speed it was dangerous for us to drive by the lights we were using, and we were forced to put on the powerful police light, and by this light I was able to take the number of the vehicle CZ 4209882. We were able to get up close to the rear of the truck, and I took that number down. When I saw the stationary vehicle at Queen's road, I went to the rear of the truck, and compared the number with the number I took, and they were the same.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q6:- During your conversation with the accused, was Const. Bradley in your presence ?

A6:- Not at the time sir.

Q7:- Was he there when you questioned Robinson on how long he had been there ?

A7:- I doubt it sir. There were three of us on the car, and Bradley was driver. As observer, it was my duty to get out first.

Q8:- How many stories did Robinson tell you about how long he had been there ?

A8:- Just two, sir.

Q9:- Then constable Bradley informed us that Robinson said two hours, and then later one hour, so we have three different times.
A9:- He may have.
Q10:- About one-half hour elapsed before you found the truck ?
A10:- Approximately.
Q11:- In that half hour from the time you last sight of the vehicle, until the time you found the same vehicle parked in that place, did you ever see it again ?
A11:- No, sir.
Q12:- What would be the complete length of time that elapsed from the time you lost it until the time you found it ?
A12:- I would say 25 minutes.
Q13:- All you can tell us about the identity of the driver is the fact that you found the canadian soldier, namely Robinson, sitting at the wheel of a parked car ? I suggest that you do not know who drove the vehicle while it was in motion.
A13:- No, sir.

RE-EXAMINED BY THE PROSECUTOR

Q14:- Can you identify the man you found with the truck in this court room ?
A14:- Yes, sir.

3RD WITNESS FOR THE PROSECUTION:- Miss SYBIL KING, 52 LOWER FARNHAM ROAD, ALDERSHOT, having been duly sworn, is examined by the prosecutor:-
Q15:- Will you tell the court what occurred after you left work on 23rd of December ?
A15:- I waited on the corner for Miss Meredith and her young man, and we went into the Prince Albert, and there we stayed until closing time. We came out of there, we went to Guildford station and got a train for Farnborough. After that we walked until we came to some barracks, and we waited there until Robby went for a truck. When he came back, Miss Meredith got in the front, and I got in the back with his friend. We drove to where I live, and I got out and bid him good night, and he went in the front of the truck with Miss Meredith and her friend. That is all I know.
Q16:- Tell the court please the names of the two men whom you were with.
A16:- One was Robby, and the other George.
Q17:- You do not know their last names ?
A17:- No.
Q18:- At what time did you go in the Prince Albert ?
A18:- Approximately 7 o'clock, and left at 10 o'clock.
Q19:- At what time did you meet the Accused ?
A19:- 6.30 that evening.
Q20:- How did Sgmn. Robinson act when you left them ?
A20:- He seemed very lively to me.
Q21:- What was his speech like, was it thick ?
A21:- I can't say, because they walked behind, and we walked in front.
Q22:- Can you tell me what time you got the train at Guildford station ?
A22:- About 10.35.
Q23:- And you arrived in Farnborough when ?
A23:- About 11 P.M.
Q24:- Did you say that the four of you went through some barracks ?
A24:- Yes,
Q25:- Exactly what happened when you stopped ?
A25:- Robby said " wait there with the girls George".
Q26:- How long was it before he came back ?
A26:- About 5 minutes.
Q27:- Did he walk back ?
A27:- No.
Q27:- How did he come back ?
A27:- With a truck.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q28:- It was dark Miss King when Robby left you ?
A28:- Yes.
Q29:- The time would be somewhere between 11.07 and 11.30. Did I understand that Robinson said wait here until I come back ?
A29:- Yes, sir.
Q30:- And in about five minutes a vehicle turned up ?
A30:- Yes, sir.
Q31:- You and him got in the back ?
A31:- Yes, sir.

Q32:- Do you know who was in the front of the vehicle when it came back ?
A32:- No, sir.
Q33:- Did you see Robinson in the front of that vehicle when it came back ?
A33:- No, sir.
Q34:- Then, Miss King, am I correct that you did not see Robinson in the front of the vehicle, or anywhere near the vehicle ?
A34:- Yes, sir.

4TH WITNESS FOR THE PROSECUTION:- Miss Dorothy Ether MEREDITH, 22 Queen's Road, Guildford, HAVING been duly sworn, is examined by the prosecutor:-
Q35:- Tell the court what occurred after you left work on the 23 of Dec. ?
A35:- I met Robinson at half past six, and I went up to my lodgings, and then we went down to the Prince Albert. We were drinking there until 10 O'clock. We went down to the station to get a train, and went to North Camp station. Then we went about 25 minutes walk, and Robinson left us. He came back in a truck with someone else. He took Miss King home and took Collins home near Witley, I think. Then we drove to Guildford.
Q36:- Who drove the car ?
A36:- I cannot say.
Q37:- Were you in the front seat ?
A37:- Yes.
Q38:- Was Robinson driving the vehicle ?
A38:- No.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q39:- Miss Meredith, how old are you ?
A39:- 19.
Q40:- How long have you known the accused, Sgman. Robinson ?
A40:- About 10 months.
Q41:- Is it true that you have become very familiar in that time ?
A41:- Yes, sir.
Q42:- Is it true that providing a marriage bond can be absolved, it is your intention to enter into marriage with Robinson ?
A42:- Yes.
Q43:- How have you found Robinson as a man in his conduct with you ?
A43:- Quite honourable.
Q44:- On the night in question, you went to the Prince Albert pub, what did you do there ?
A44:- We drank.
Q45:- Robinson, yourself, and Miss King were drinking ?
A45:- Yes.
Q46:- Did you drink a little or a great deal ?
A46:- I drank quite a lot.
Q47:- Did Robinson drink a great deal or not ?
A47:- Yes, he did.
Q48:- And Sgman. Collins ?
A48:- Yes.
Q49:- Was Robinson steady on his feet when he left the pub ?
A49:- No.
Q50:- Was his speech normal or thick ?
A50:- I can't remember.
Q51:- The reason y u cannot remember, I suggest, is that you yourself were slightly under the weather ?
A51:- Yes.
Q52:- You do remember getting a train ?
A52:- Yes.
Q53:- You caught that train a little after that ?
A53:- Yes.
Q54:- You walked through a barrack area ?
A54:- I don't know where it was.
Q55:- And then Robinson left you ?
A55:- Yes.
Q56:- He came back shortly afterwards ?
A56:- Yes.
Q57:- He was in a truck ?
A57:- Yes.
Q58:- He was sitting in the front seat of that truck ?
A58:- Yes.
Q59:- Was there anyone else in the front seat at that time ?
A59:- Yes, I did not know who it was.

Qb0:- What happened to Pte. Callin and Miss King ?
Ab0:- They got in the back of the truck.
Qb1:- Where did you sit ?
Ab1:- I sat on Robby's knee.
Qb2:- You took Miss King home ?
Ab2:- Yes.
Qb3:- Then you proceeded to another camp, and took Callin home ?
Ab3:- Yes. Callin got in the front.
Qb4:- You and Robinson and Calling got in the front seat of an 8 cwt. truck ?
Ab4:- Yes.
Qb5:- You went then to Guildford, and you were passed by a car ?
Ab5:- There was a car following behind.
Qb6:- Finally the police came up to you when you were parked in Guildford, and started to ask questions ?
Ab6:- Yes.
Qb7:- Do you know this officer, have you met him before ?
Ab7:- I think so.
Qb8:- I think he asked you some questions ?
Ab8:- No, he just asked us to sign this paper.
Qb9:- I hand you this document, Miss Meredith, do you recognise that ?
Ab9:- Yes.
Q70:- Is that your signature ?
A70:- Yes.
Q71:- You read that statement before you signed it ?
A71:- Only parts of it.
Q72:- Are you sure that you did not read it all ?
A72:- Yes, sir.
Q73:- Were you questioned on it before you signed ?
A73:- No, sir.
Q74:- In the statement you said that Robinson did drive that truck, on the way from Aldershot to Guilford, is that correct ?
A74:- Yes, sir.
Q75:- Did you know that that was an untruth when you signed it ?
A75:- Yes.
Q76:- Why did you sign that statement, and then tell us today it was someone else in the car ?
A76:- I was mad at Robby, and wanted to get my own back.
Q77:- Why were you mad at Robinson ?
A77:- Because he annoyed me all the evening when we were drinking.
Q78:- Am I correct in suggesting that while Robinson was drinking, he was paying toomuch attention to another girl ?
A78:- Yes.
Q79:- And it was because of that you said Robinson drove the venicle ?
A79:- Yes.

RE-EXAMINED BY THE PROSECUTOR

Q80:-Will you please tell us were you alone in that venicle in the front seat when the police arrived in Guildford ?
A80:- Robby was there with me.
Q81:- Was there anyone else in the truck ?
A81:- Not at the time when the police came.
Q82:- When did this third person leave ?
A82:- About 5 minutes before the police came.
Q83:- What did the police officer say when he came up to the truck ?
A83:- I can't remember.
Q84:- Did he ask you any question ?
A84:- No.
Q85:- Did he ask Robinson any question ?
A85:- Just asked him if he had a work ticket.
Q86:- Were you there when the police took Robinson into the police car ?
A86:- No.
Q87:- What occurred the following morning ?
A87:- The civil police came to ask me some questions.

It being 5.30, the court adjourned. Upon reconvening, it will say whether or not it requires this witness furtner.

The court re-opened at 1020 hrs. 14th of January, 1942, at Oudenarde Barracks, Aldershot, Hants., the same members presiding, and a medical certificate of this date was presented to the court.

5TH WITNESS FOR THE PROSECUTION:- Capt. J.H. TOWNSEND, Sig. Section, H.Q. C.R.U., having been duly sworn, is examined by the prosecutor:-
Q88:- What is your position ?
A88:- I am O.C. Signal section, H.Q. C.R.U.
Q89:- Give your account of the case in question.
A89:- On the 23rd of December, 1942, I was O.C. of the signal section. At approximately 1730 hours I was informed that it was necessary to send the 8 cwt. truck, which is CZ 4209282, which vehicle is the property of the Canadian government, on the establishment of the signal section C.R.U., it was necessary to send that truck to Bordon, to transport one of the signal section, who had been on duty in Aldershot, and also to deliver some personal mail. I gave authority for the truck to proceed to Bordon on this day, and understood that it would be returned to the unit lines by 2030 hours. I did not see the truck again that evening. On the morning of the 24th of December, 1942, at approximately 0930 hours, acting on information received, I proceeded to Guildford and I found at the Guildford Police Station, the Ford 8 cwt truck mentioned above, and Sgmn. Robinson in the custody of the civil police. We brought the truck back to H.Q. C.R.U., and gave orders that Sgmn. Robinson was to be placed under close arrest, pending further investigation. From the evidence received from the civil police, I had Robinson charged.
Q90:- Who, in the signal section, has the authority to authorize trucks to leave that parking lot ?
A90:- Myself, Lieut. Thomas-Peter, and Sjt. Bentley, M.C.O. in charge of the vehicles.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q91:- You say that the only persons who can authorize transport are the three of you ?
A91:- Yes, sir.

QUESTIONED BY THE PRESIDENT

Q92:- Did you authorize the accused to take or use the truck which you mentioned for any purpose on the 23rd of December ?
A92:- No, sir.

6TH WITNESS FOR THE PROSECUTION:- H 16897 Sjt. Bentley, J.H. Sigs. Section, H.Q., C.R.U., having been duly sworn, is examined by the prosecutor:-
Q93:- Will you give us your statement in this case ?
A93:- On the 23rd of December I was M.C.O. in charge of vehicles for H.Q. C.R.U. Under my charge was the W.D. Vehicle mentioned. On the afternoon of the 23rd, I gave authority for one vehicle to proceed to Bordon. The vehicle returned at approximately 2030 hours. After that time I did not issue any authority for the vehicle. The following morning Capt. Townsend and myself went to Guildford and picked up our vehicle. The vehicle had travelled approximately 25 miles, from the time of the last work ticket until the time we picked it up.

THE DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

QUESTIONED BY THE PRESIDENT

Q94:- Did you issue any authority to the accused to use this vehicle that day ?
A94:- No, sir.
Q95:- Who drove the vehicle to Bordon ?
A95:- Sgmn. Murray, sir.

7TH WITNESS FOR THE PROSECUTION:- A3508o Sgmn. CALLIN, G.B. Sigs. Section, H.Q. C.R.U., having been duly sworn, is examined by the Prosecutor:-
Q96:- Tell the court what you did on the evening of the 23rd of Dec.
A96:- On the night of the 23rd of December we went to the R.F.D. factory in Guildford, and met our two girl friends. After we met them, Robinson went up to the house with Dorothy Meredith, and when they came back we went into the pub, the four of us. We went into the pub and ordered up Drinks. Robinson bought the first round, two double whiskies and light ales for Robinson and myself, and gin and lime for the girls. We carried on for an evening's drinking. We were drinking heavy. I am not sure of the exact time of leaving the pub, it was around closing time. After leaving the pub things are hazy to me, in fact I do not remember what happened after leaving the pub. I do remember getting into a truck, but what kind of truck or where the truck was from, I don't remember, and I distinctly remember

getting out of the truck, and the next morning I found myself in my camp at Witley. I am at 5 C.I.R.U.
Q97:- Can you remember getting out of the back of that truck and getting into the front ?
A97:- No, sir.
Q98:- You have no recollection of anything after leaving the pub ?
A98:- No, sir.

THE DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

The defending officer raised the plea that the prosecution had not made a prima facie case.

" There have been 7 witnesses called for the prosecution. I think we can quite safely elimin ate the evidence of the two women and Captain,Townsend, except insofar as lack of authority is concerned. There are three witnesses who can prove the lack of authority, Capt. Townsend, Sjt. Bradley, and the prosecutor. Theevidence of Const. Bradley is totally useless, because at no time in the whole of his evidence did he ever mention the name of the accused, that simply, is the reasonwhy I did not ask him any questions. The evidence of Constable Thatcher is on a slightly better footing, he was at least capable of following the military vehicle which was careening at a terrific speed. Afterwards, they find the accused Robinson and the girl Miss Meredith sitting in that truck. I presume that the taking and the using of a truck means that of actually taking the possession of the truck, and causing it to move, and using it either for the purpose of transporting himself, or for some other purpose. I suggest that the evidence of Constable Thatcher of finding the accused inthe truck does not constitute taking and using the vehicle in the sense of these words, if so it is stretching these words beyong their meaning. That leaves only one other witness. That is the evidence of the girl Meredith. I do not if the Rules of Procedure are thrown to the wind because this is a military court. Miss Meredith told two different stories, which would lead the court to doubt her credulity, but she is the prosecution's witness. That does not mean that the accused is damned, that merely means that the prosecutions case has failed. I am not responsible for what Miss Meredith said, nor am I responsible for the evidence which she gave here, whether she lied or ot. She told me on cross-examination that Robinson did not do the driving. She was an unbreditable witness, produced by the prosecution, at the prosecution's risk. I do not suspect that this court has thrown the rules to the wind, and the burden remains on the prosecution. I therefore apply for dismissal of the charge, and the release of the accused.

Prosecutor:-
On the basis of Constable Thatcher's statement, there is, as you know, far better than on the case where after a man is found in possession of recently stolen property, there is a strong presumption that he stole it. In addition tothat, I called Miss Meredith, who had made an entirely different statement. Which one she lied in is difficult to state, but I put it to the court, that on the basis of her evidence, they all drove to Witley in the front seat, which is a physical impossibility. There is, therefore, on the Basis of Constable Thatcher's evidence, sufficient evidence to show that Robinson was in possession of a W.D. vehicle. The driver of the truck has stated that after turning in his work ticket, he did not drive again that night. I submit that a prima facie case has been established.

The court was closed to consider the Application. The court re-opened the president stated the court refuses the application, and calls the accused for his defense. The court pointed out that there is not enough evidence with the evidence of Const. Thatcher, but there is the evidence of the two female witness, who referring to the actions after arriving at North Camp Station, state as follows:- Miss King.... "Robby went for a truck.....when he came back Miss Meredith got in the front and I got in the back.....Robby said to george, you wait here with the girls.....he came back in about 5 minutes with a truck" Miss Meredith " We got a train and went toNorth Camp Station....then we went for about a 25 minute walk.....Robby left us and he came back in a truck with someone else.....I was in the front seat.. I sat on Robby's knee".

R.P. 40(a) note 2 complied with, and the accused stated he wished to give evidence under oath, and also to call one witness.

1ST WITNESS FOR THE DEFENSE:- C 30097 Sgmn. O'LEARY H.L. H.Q., C.R.U., Signal Section, having been duly sworn, is examined by the Defending Officer:-

Q99:- You are on the signal section at C.R.U. ?
A99:- Yes, sir.
Q100:- Howlong have you been on strength there ?
A100:- Since November, 1940.
Q101:- Do you know the accused ?
A101:- Yes, sir.
Q102:- How long have you known him ?
A102:- About 12 to 15 months, since he came to the signals.
Q103:- What do you do on the signals section ?
A103:- I am D.R.L.S. Clerk.
Q104:- Have you anything todo with the trucks on charge to the signals section ?
A104:- No, sir.
Q105:- Do you know if there are any trucks on the signal section strength ?
A105:- Yes, sir, I know we have two, an 8 cwt. and a 15 cwt.
Q106:- Do you know the numbers ?
A106:- No.
Q107:- On the evening of 23rd of December, 1942, will you tell the court what you did between 2100 hours and 2130 hours ?
A107:- At approximatelt 2105 hours I left the signals office, the back way of H.Q., C.R.U., and went over to Ramilles N.A.A.F.I. and had a cup of tea. When I finished, I returned to the signals office. As I was going in the back gate of H.Q., C.R.U. I met what I thought was our 8 cwt. coming out of the gate.
Q108:- You met the 8 cwt. truck coming out of the gate ?
A108:- Yes, just as I was going in.
Q109:- Can you identify that truck ?
A109:- No, I can't. How do you mean identify it ? There was a white signal mark on it.
A110:- It was an 8 cwt. truck ?
A110:- I am certain of that.
Q111:- It was marked with the H.Q. C.R.U. signal sign ?
A111:- I think it was wour sign, a white sign.
Q112:- Was it marked signal section or not ?
A112:- It was a white signal sign, I did not notice the "H.Q. C.R.U."
Q113:- To your knowledge, could there be any other signal truck in the yard coming out at that time ?
A113:- There could not be another 8 cwt.
Q114:- The truck was moving towardyou ?
A114:- Yes. sir.
Q115:- Did anyone speak or anything ?
A115:- Someone in the truck shouted "Hi O'Leary", or some ferm of greeting.
Q116:- They used your name ?
A116:- Yes, sir.
Q117:- Did you know who the person was who spoke to you ?
A117:- No, sir, I did not.
Q118:- Do you know, or are you prepared to say that it was the accused ?
A118:- I would say it was not the accused, by the tone of his voice.
Q119 - Are you prepared to swear it was not the accused ?
A119:- I am prepared to swear anytime, that in my opinion, it was not the accused.
Q120:- On what do you base your ability to swear it was not ?
A120:- I have known him for the length of time mentioned, and he has shouted through the wicket almost every day.
Q121:- You know his voice so well, you are prepared to say you could not be deceived by someone else's voice ?
A121:- That's right.
Q122:- Do you know who it was who spoke to you ?
A122:- No, sir, I do not.
Q123:- Have you any idea who it was ?
A123:- No, sir, it might have been anyone of 12 different men.
Q124:- You know that Robinsen is accused of taking and using the 8 cwt. in question ?
A124:- Yes, sir.

Q125:- When did that knowledge come to your attention ?
A125:- On Saturday, the day after Christmas.
Q126:- Did you communicate the knowledge, the evidence which you have just given to this court, to anyone else prior to today ?
A126:- Yes, to Capt. Townsend, on Saturday, I believe.
Q127:- Did you tell him substantially the same story that you have told here today ?
A127:- Yes, sir, I think so.

CROSS-EXAMINED BY THE PROSECUTOR

Q128:- You state that you cannot give the number of the 8 cwt?
A128:- Yes, sir.
Q129:- Did you see on this white sign the "H Q., C.R.U." ?
A129:- No, sir, I wasn't paying much attention.
Q130:- Do you know the mark of 1 C.S.R.U. ?
A130:- No, sir.
Q131:- You are quite sure it was an 8 cwt ?
A131:- I would say it was an 8 cwt.
Q132:- Would you swear it was an 8 cwt. ?
A132:- No, certainly not.
Q133:- You did not know the voice ?
A133:- No, sir.
Q134:- Do you know the voices of all the D.R.s at H.Q. C.R.U. ?
A134:- Fairly well.
Q135:- Was it one of those ?
A135:- I thought it would be at that time.
Q136:- Have you an affliction of the ears which precludes you from working on the switchboard ?
A136:- Yes, in the left ear.
Q137:- What side was he on ?
A137:- The left hand side.
Q138:- In that case it would have been the driver who spoke to you ?
A138:- I should think so.
Q139:- Were the curtains down ?
A139:- I did not notice.
Q140:- You cannot postively identify the truck ?
A140:- No, sir.

5TH WITNESS FOR THE PROSECUTION:- Capt. J.H. TOWNSEND, remaining under oath, is recalled by the defending officer:-
Q141:- You have two vehicles on charge to the signals section, H.Q.C.R.U?
A141:- Yes, a 15 cwt., and an 8 cwt.
Q142:- On the night of the 23rd of December, where was the 15 cwt ?
A142:- As far as I know, it was locked up in one end of the garage.
Q143:- Is it not true that the 15 cwt. is normally locked up after duty ?
A143:- Yes, in the garage.
Q144:- What happens to the 8 cwt ?
A144:- At that time it was parked in the yard, because the other end of the garage was being used.
Q145:- It is parked in H.Q. C.R.U. yard ?
A145:- At that time, yes.
Q146:- Is there ever any other vehicle parked in that yard at night, other than your two trucks ?
A146:- Yes, I have seen other vehicles parked there at night.
Q147:- Staff cars ?
A147:- Yes, and trucks too.
Q148:- Tell me definitely, if a signals section 8 cwt. truck was observed to emerge from that yard at 0930, whose 8 cwt. would it be ?
A148:- I cannot say definitely. The chances are it could be any other truck. Previous evidence was that that truck had a white mrke on it. The signals have white above, and blue below.

2ND WITNESS FOR THE DEFENSE:- The accused, M 17215 Sgmn. ROBINSON, A.C Signal section, H.Q., C.R.U., having been duly sworn, is examined by the defending officer:-
Q149:- You are a member of the signals section, H.Q. C.R.U. ?
A149:- Yes, sir.
Q150:- For how long ?
A150:- Since October, 1941.
Q151:- Where do you come from ?
A151:- Peace River, Alberta.

Q152:- What is your occupation ?
A152:- I did some farming.
Q153:- How old are you ?
A153:- 25.
Q154:- Have you ever had anything to do with cars or trucks ?
A154:- I had a little to do with a Model "T" Ford.
Q155:- Did you drive the model "T" Ford ?
A155:- About 300 miles in 1935.
Q156:- Have you ever driven any other vehicle ?
A156:- No, sir.
Q157:- As a D.R. you ride motorcycles ?
A157:- Yes, sir.
Q158:- Have you ever driven any war department vehicles ?
A158:- No, sir.
Q159:- Have you ever driven an 8 cwt.
A159:- No, sir.
Q160:- Have you ever driven an War Department vehicle in England ?
A160:- No, sir.
Q161:- Have you had any instruction on them ?
A161:- No, sir.

CROSS-EXAMINED BY THE PROSECUTOR

Q162:- Did you ever at any time offer your services to your commanding officer as a driver ?
A162:- Yes, I asked Capt. Townsend to let me drive, but I had my brother to show me the gear shifts and so on. I never said I could drive a truck.
Q163:- Why did you want to drive ?
A163:- Because I wanted to get off the slippery roads at that time of the year.
Q164:- I put it to you that you did state that you could drive, is that not true ?
A164:- No, sir.
Q165:- Have you ever held a license to drive a four-wheeled vehicle ?
A165:- No, sir.

5TH WITNESS FOR THE PROSECUTION:- Capt. J.H.TOWNSEND, remaining under oath, is recalled by the prosecutor in rebuttal:-

Q166:- Did you ever, at any time receive a request from the accused to drive for you a four wheeled vehicle ?
A166:- I would call it an offer. I was using a vehicle for a recreational party, and had difficulty in getting a driver. The accused said " if you want a driver any time, sir, I can drive". I said, you have no license, and he said " well, sir I knew how to drive trucks" and that was the conversation between Sgmn. Robinson and myself.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q167:- Were there other offers given you of a similar nature by D.R.s who wanted to get driving a car ?
A167:- I do not recall any others ?
Q168:- Did Robinson's brother ask you ?
A168:- It may be so, but I don not recall it.
Q169:- Why would they want to drive a truck instead of a motorcycle ?
A169:- It is more comfortable, but carries less pay.

Closing address by the defending officer:-We heard the evidence of the two police, as to the speed with which this 8 cwt. tore through the streets, at a very merry time, Christmas. The speed was mentioned as from 50 to 60 miles per hour, coming around an "S" turn. That the vehicle the police were driving had a maximun speed of 85 miles per hour, and that it was going all out, and allowing for a slight exaggeration, then the speed of this 8 cwt. , was, at some stretch on the road 80 miles per hour. It would be entirely unsafe for the police vehicle to pass or ever take it. I think you knew the road in question The court will remember that it was blackout period, and I submit that only a driver of great skill in possession of all his faculties, who knows the road, could have handled the vehicle at that time. What could not possibly have been Robinson, because he is not qualified to drive an 8 cwt. that speed. He would have wrecked the truck at that time. If he were drunk, he would not have proceeded very far. That casts a doubt as to whether Robinson was driving the car. The evidence of Sgmn O'Leary also casts a doubt. The prosecuter does not need to point out to me that 0930 is not 1130, or subsequent thereto.

I feel sure that they should not overlook that that truck was checked in before 0930 hours, that the work ticket was turned in by Sgmn, Murray, and there was no further authority for the truck to go anywhere. Yet there is the fact that 0930 hours, a signals truck, driven by someone who knew o'Leary, spoke to him, and took that truck out of the yard. It could not have been Robinson. Where was he at that time ? In a pub in Guildford. Don't ask me what the truck did between0930 and 11 o'clock. It is sufficient for me to say this:- that sometime during the evening, someone outside of Robinson had that truck outside the signals yard. It is little things that sway thecourse of justice. It is true he was sitting in the front seat of the car at Guildford, but sitting in it is not using it. And the statement that Robinson went for a truck does not mean that he came back with a truck. They did not know who was in the front seat of it. We have to accept one of Miss Meredith's stories, if the court is going to pay any attention to it at all, which I think they should not.
Some doubt still remains, there is doubt about Robinson's driving the truck. There is evidence that someone else had unauthorized use of it. There is just one proposition; sitting in it in Guildford. I suppose, sir, that if I go and sit on the toilet, I used it, but it does not necessarily follow that I did use it.. I think the charge should be dismissed, by reason of the prosecution having failed to prove their case.

Closing address by the defending officer:-We have proved that it was a Canadian military vehicle, and secondly, he was found in the vehicle Several witnesses have proven that he was in the vehilce.. O'Leary was unable to identify the vehicle he saw leaving the yard, and we also have the fact that he could not have identified the sign on the front of the vehicle as being the sign of his own unit. There is the evidence of the two police constables to the effect that this vehicle was being driven down the road, swerving from side to side, in such a manner as to make it dangerous for them to follow alongside. This might indicate and inexperienced driver. There is the evidence of Miss Meredith, to the effect that Robinson was in the vehicle. You can use a car for a number of things. There is sufficient evidence that he was found in the car, that the car was absent from its authorized place, and that he transported females in it. That is the case for the prosecution.

THE COURT IS CLOSED TO CONSIDER ITS FINDING.

Q:- By the President:- Have you any evidence to produce as to the particulars of service and statement of character of the accused ?

Capt. J.H. TOWNSEND, O.C. Sigs. Section, H.Q. C.M.U., having been duly sworn, produces AFB 296 and MFM 6, both relating to the accused and states:- The originals are in my possession. The 6 signed by Lieut. Thomas-Peter, an officer authorized to sign. They have been compared with the regimental books, and are true extracts therefrom.

Q:- By the president to the accused:-
Do you wish to call any witnesses as to character ?
A:- No, sir.
Q:- Do you wish to address the court in mitigation of punishment, or will your defending officer speak for you ?
A:- I will leave it to my defending officer;

STATEMENT IN MITIGATION OF PUNISHMENT BY THE DEFENDING OFFICE

The offences mentioned on the M.F.M. 6 are all petty offences. The accused in his statement to me professes no knowledge of the facts of the taking of this car at all. Drunkeness would not excuse this, but so far as his service with the signal service is concerned, he is one of the older D.R.s here. Had it not been for the taking of alcohol, this probably would not have occurred. He would not have been with Capt. Townsend so long as he has been, if he had not been a good man.

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE
A shorthand writer being employed, the court expressed its opinion that it was unnecessary to comply with RP 83(BO), no witness desiring such compliance.

SUMMARY OF EVIDENCE

SUMMARY OF EVIDENCE IN THE CASE OF M.17215 Sigmn. ROBINSON, A.C. - R.C.C.S. - on the strength of SIGNAL SECTION, C.R.U.

By direction of the Commanding Officer the summary of evidence is taken on oath.

FIRST WITNESS for the prosecution

Capt. J.H. Townsend - R.C.C.S. - Officer Commanding, Signal Section, C.R.U. having been duly sworn states:

"On 23 Dec 42 I was Officer Commanding, Signal Section C.R.U. At approximately 1730 hrs I was informed by the C.S.M. that it would be necessary to despatch the 8 cwt truck CZ 4209282 which is a vehicle on the establishment of this Section to Bordon for the purpose of transporting one of the N.C.O.'s of this Section from Aldershot to Bordon and also to deliver personal mail. I gave the necessary authority for this trip and understood that the truck would return to the unit lines at approximately 2030 hrs. At 0930 hrs, 24 Dec 42 I was informed by the duty officer at H.Q. C.R.U. that a message had been received that morning from the Surrey Constabulary that M.17215 Sigmn. ROBINSON, A.C. was in civil custody on a charge of operating a vehicle in an improper manner as a result of indulgence in alcoholic beverages. I telephoned the inspector of Police at Guildford and verified that Sigmn. ROBINSON was in civil custody there and that the truck previously mentioned was also being held by the civil police. I went to Guildford at approximately 1100 hrs in company with Sgt. BENTLEY, E.H. and found the truck and Sigmn. ROBINSON at the Guildford Police station. Sigmn. ROBINSON was released in military custody by the civil authorities on a bail of £5-0-0 pending decision as to whether he would be tried by the civil authorities or turned over to the military for disposal of his case. I was later informed by letter by the Surrey Constabulary that all evidence in the case was to be delivered to me and this evidence in documentary form has since been received.
Sigmn. ROBINSON was immediately placed on charge and remanded for Summary of Evidence.

J.H. Townsend

(J.H. Townsend) Capt.
Officer Commanding,
Signal Section, C.R.U.

The accused declines to cross examine.

SECOND WITNESS for the prosecution

H.16897 Sgt. BENTLEY, S.H. - R.C.C.S. - on strength of SIGNAL SECTION, C.R.U., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

"On 23 Dec 42 I was N.C.O. i/c Vehicles, Signal Section, C.R.U. A W.D. Vehicle, Ford 8 cwt CZ 4209282 was on my charge; after the driver returned at 2030 hrs I did not authorize another work ticket for a/m Vehicle. On the morning of 24 Dec 42 I went to Guildford with Capt. J.R. Townsend and picked up the 8 cwt truck, numbered as above, which was in custody of the civil police. The truck had travelled approximately 25 miles after its return at 2030 hrs.

Sgt. H. S. Bentley
(H.16897 Sgt. BENTLEY, S.H.)
N.C.O. i/c Vehicles,
Signal Section, C.R.U.

The accused declines to cross examine this witness.

THIRD WITNESS for the prosecution

C.761 Sigmn. MURRAY, W. - R.C.C.S. - on strength of SIGNAL SECTION, C.R.U., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

" I am a driver i/c, Signal Section, C.R.U.
I drive CZ 4209282, Ford 8 cwt. After supper 23 Dec 42 I drove Cpl. OUELLETTE, J.G. and Gnr. DINNER, R.A. to Bordon. I returned with the truck to H.Q. C.R.U. at approximately 2025 hrs. I put the truck in yard, made up my work ticket and put it inside the D.R. Office. I did not use the truck again that evening.

W Murray
(C.761 Sigmn. MURRAY, W.)
Driver i/c
Signal Section, C.R.U.

The accused declines to cross examine this witness.

FOURTH WITNESS for the prosecution

Mr. B. BRADLEY - POLICE OFFICER - Police Station Godalming.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence.

" On the night of the 23rd and 24th December 1942, I was on car driving patrol duty, in company with P.C. THATCHER and T.C. McCASHEN. At 12.20 a.m. we were stationary at Portsmouth Road Milford when a Military lorry 8 cwt. passed us at a fast speed. I started after this vehicle as he appeared to be travelling at a very excessive speed for that type of vehicle. I caught up with it before reaching Godalming Town, but owing to the fast speed at which we were travelling it was not safe for me to attempt to pass. At Meadrow I did pass the other vehicle, as I ran level with it, P.C. THATCHER signaled it to stop, I drew ahead and into the nearside, but the other vehicle drew out and passed me and went away at a fast speed. I again followed and drew level with it and P.C. THATCHER through the loudspeaker requested the driver to pull into the side, but the other driver did not slacken speed, and I had to draw in behind as we were approaching a corner. I followed it over the Peasmarsh Road where we reached 80 m.p.h. At Peasmarsh Bridge the driver went round the "S" bend at a terrific speed on the wrong side of the road, as he approached this bend he narrowly missed running down some cyclists. I followed it into Guildford, and the driver appeared to be driving blind he was rounding corners on the wrong side of the road, completely ignoring the danger of such driving.

At Woodbridge Road, I proceeded down the wrong side of the dual carriage way and drew across the path of the other vehicle at the end of the carriage way, but the other vehicle, stopped then turned off to the right. I turned my vehicle round and followed but I lost sight of the other vehicle. After searching the roads for half an hour I eventually found the other vehicle stationary in Queens Road. The driver Arnold Clare ROBINSON was sitting in the cabin of the lorry with a girl. When he was asked to get out of the vehicle, he appeared to be unsteady on his feet and we conveyed him to Guildford County Police Station."

Signed (B. BRADLEY - CC 148)
Police Officer,
Police Station, Godalming.

Having regard to the exigencies of the service, the attendance of this witness cannot, in my opinion, be readily procured.

(F.B. Thomas-Peter) Lieut.

The accused does not demand the attendance of this witness for cross examination.

FIFTH WITNESS for the prosecution

Mr. R.G. THATCHER - POLICE OFFICER - Police Station Godalming.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence.

" I beg to report that at 12.20 a.m. on the 24th Dec 1942, at Portsmouth Road, Milford, while on car patrol in company with P.C. BRADLEY and T.C. McCASHEN. A 8 cwt Military truck passed us at a fast speed, travelling in the direction of Godalming. We started after this vehicle and eventually caught up with it at Ockford Road, Bridge. We followed through Godalming High Street at a fast speed, reaching 50 m.p.h. in places. When at Meadrow we drew level with the other vehicle and I leaned out of the Police car and signaled the other vehicle to stop. I did this by means of a hand torch. We drew just ahead of the other vehicle and we were slowing down on the nearside of the road to stop when the army truck drew away and passed us, accelerating to a very fast speed in the direction of Guildford. We again followed the truck and drew level with it. I then requested the driver to pull into the side, I did this through the loudspeaker, but the driver took no notice, Owing to the terrific speed at which we were travelling, it was necessary for us to draw back behind. Our fog lamp was then switched on and I was able to read the number on the rear of the truck, CZ 4209282. Our speed was very high going across Peasmarsh, where we reached 80 m.p.h. At Woodbridge Road, Guildford, the truck kept to the left side of the road and we proceeded down on the right of the dual carriage was. At the end of the island we drew across to the nearside in the path of the truck and stopped. The driver of the other vehicle stopped, then went into reverse for approximately 50 yards then turned off to the right. We turned our car round then commenced to follow, but we lost sight of the truck. We searched the roads in the vicinity for half an hour and eventually found the army truck stationary in Queens Road at 1.0 a.m. The driver was seated in the cabin with a girly Miss Dorothy Ethel MEREDITH of 28 Queens Road, Guildford The driver of the vehicle was Arnold Clare ROBINSON, M.17216 of the Canadian Army, Edmonton Regiment. At this time I felt the engine of the truck and found it to be very hot and the tyres were still warm.

I informed ROBINSON that I was not satisfied with his driving and his explanation as to how he came in possession of the vehicle. His condition gave me the impression that he was under the influence of drink.

We conveyed him to Guildford County Police Station where he was seen by Doctor Peter MILLIGAN at 1.40 a.m. and he certified him as not being in a fit condition to drive.

On the 24th December 1942 in company with P.C. BRADLEY, we interviewed Dorothy Ethel MEREDITH and she made the attached statement.

I am Sir,
Your obedient servant,
Signed - Roland G. Thatcher,
Police Constable No. 823.

The Superintendent,
GODALMING.

Having regard to the exigencies of the service, the attendance of this witness cannot, in my opinion be readily procured.

(P.G. Thomas-Peter) Lieut.

The accused does not demand the attendance of this witness for cross examination.

SIXTH WITNESS

for the prosecution

DOCTOR PETER MILLIGAN - Asst. Police Surgeon - Guildford Police Station.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence.

" I have examined Arnold Clare ROBINSON and in my opinion he is under the influence of drink to such an extent as to be unfit to have proper control of a motor vehicle.

Signed (Doctor Peter MILLIGAN)
Asst. Police Surgeon)
Guildford Police Station.

Having regard to the exigencies of the service the attendance of this witness cannot, in my opinion, be readily procured.

(P.B. Thomas-Peter) Lieut.

The accused does not demand the attendance of this witness for cross examination.

SEVENTH WITNESS

for the prosecution

Miss Sybil KING, 52 Lower Farnham Road, Aldershot

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence.

"I have been warned that I am not obliged to say anything unless I wish to do so, but that anything I now say will be taken down in writing and may be given in evidence. To show that I understand the above warning, I make this statement voluntarily and sign my name herewith.

"I am Sybil KING, residing with my parents at 52 Lower Farnham Road. I am employed at R.F.D. Stoke Road, Guildford. On 23 Dec 42 I stopped work at 5.30 p.m. along with Dorothy MEREDITH. I waited at the corner until Dorothy returned from her lodgings. My boy friend George was with me while waiting. When Dorothy and her boy friend Robby came back we all went to the "Prince Albert" pub, this would be approx 7 p.m. We stayed in the pub till closing time. I did not have any more than two drinks, a Port and a Sherry. The two soldiers were drinking Double Whiskeys and Beer all night, and Dorothy had Port and Sherry. The soldiers were lively but I would not say they were drunk. After we all left the pub at closing time we went to Guildford Station and got the train to North Camp. From North Camp Station we walked for about 20 minutes, I am not quite sure in what direction but went through some barracks.
On arrival at the corner, Robby told the three of us to wait while he went and got a truck. He, Robby, returned in about 5 minutes with the truck. I and George got in the back and Dorothy got in front with Robby. As soon as we left with the truck it came direct to my home on Lower Farnham Road.
I got out of the truck at my home and George got in front with the other two. I bid them good-night and they left for Witley to take George home.
I have only known George for approx two weeks and was only in his company on two previous occasions. I had no idea

(cont'd on Page6)

SEVENTH WITNESS for the prosecution — Miss Sybil KING, 52 Lower Farnham Road, Aldershot. CONT'D

the truck was stolen or I would never have got in it.

I have read the above statement and it is true.

Signed (Miss Sybil KING)
52 Lower Farnham Road,
Aldershot.

Having regard to the exigencies of the service the attendance of this witness cannot, in my opinion, be readily procured.

(T.S. Thomas-Peter) Lieut.

The accused does not demand the attendance of this witness for cross examination.

EIGHTH WITNESS for the prosecution — Miss Dorothy Ethel MEREDITH, 22 Queens Road, Guildford Surrey.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence.

"I have been cautioned and wish to make the following statement:

I left the factory at 6.30 p.m. on the 23rd December 1942 at Guildford with Sybil KING, when we got outside the factory we met two of our friends ROBINSON and GEORGE CALLIN, both Canadian soldiers. My young man Robby and myself went to my lodgings at 22 Queens Road, then we went to the Prince Albert, where we again met our friends, Sybil KING and George CALLIN. We arrived at the public house at 7.0 p.m. and we left about 10.0 p.m. While we were there we all had several drinks. I was drinking sherry and the two men were drinking whiskey and light ale.
When we left the public house we all caught the train from Guildford Station at 10.40 p.m. and went to North Camp. When we left the train we went to where ROBINSON is attached as a "D.R." and he said he was going to get a truck. After about 5 or 10 minutes he came back with and Army truck.
We then took Sybil home, Robby was driving and I sat in the front by the side of him and the other two sat in the back. We took Sybil to her home in Aldershot, at 52 Lower Farnham Road.
After dropping Sybil we took CALLIN to Witley Camp, I do not know which road we took. We travelled very fast, but I did not think there was anything wrong with ROBINSON'S driving. We dropped CALLIN right near to the camp. Then ROBINSON said that he would drive me back to Guildford. The first time I remember a car was following us, was after we left Witley Camp and a large car pulled up in front of us and we passed it. We drove pretty fast to Guildford and a car followed us. We went down near Guildford station, then round near the market. A large car passed us in Woodbridge Road, the car was on the wrong side of the road. We then turned up a road to our right after that we got into Queens Road and stopped. Both ROBINSON and myself sat in the lorry all the time, after quite a while the police came up and questioned us.

(cont'd on Page 7)

EIGTH WITNESS Miss Dorothy Ethel MEREDITH, 82 Queens Road, Guildford. Cont'd

For the prosecution

I am quite sure that none of us had anything to drink from the time we left the Public House at Guildford at 10.0 P.M.

Signed(Dorothy Ethel Meredith)
82 Queens Road, Guildford.

Having regard to the exigencies of the service, the attendance of this witness cannot, in my opinion, be readily procured.

(P.B. Thomas-Peter) Lieut.

The accused does not demand the attendance of this witness for cross examination.

NINTH WITNESS A-33056 Sigmn CALLIN, G.B. R.C.C.S. on strength Signal Section H.Q. C.R.U., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

For the prosecution

" On 23 Dec 42 ROBINSON and I had planned to meet in Guildford. I arrived in Guildford at approximately 1800 hrs. I went to where I was to meet Robinson, went on to a pub for a while and then returned to meet him at approximately 1820 hrs. When the girls came out Robinson and Dorothy went off to her house, then came back and we went into the pub together. When we went into the pub we ordered up a couple of double gins and lime, a couple of double whiskeys and some light ale and started off. Robinson bought the first round , I bought the next and we continued drinking until closing time. From there on things are hazy. I remember leaving the pub and I have a hazy recollection of getting into the back of a truck. I could not say what truck it was. I can dimly remember getting out of the truck and the next morning when I awoke I was back in barracks.

(A33056 Sigmn. Callin G.B.)
Despatch Rider
Signal Section C.R.U.

The accused declines to cross-examine this witness.

The accused was cautioned as follows;-
"Do youm wish to make a statement or give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused elects to give evidence on Oath.

M 17215 Sigmn. Robinson A.C. - R.C.C.S.- on strength of Signal Section C.R.U., a soldier of the Canadian Army Overseas, having been duly sworn, States as follows:-

On 23 Dec 42 I left H.Q. C.R.U. to go to Aldershot station to catch the 1650 hrs train for Guildford, I caught the train, and, after reaching Guildford, I went to the R.F.D. on Stoke Road. It was about 1750 hrs when I got there. I was still much too early so when the pubs opened at1800 hrs I went into one and had two double whiskies and a light ale. I went back to the R.F.D. and waited for 5 or 10 minutes for Miss Dorothy MEREDITH. While I was waiting Sigmn. CALLIN came along. We met the girls and from there Dorothy and

I went to Dorothy's home, from which we later went to the Prince Albert pub with Callin and his girl. When we got inside the pub I ordered six drinks; two double whiskies, two double gins with lime and two pints of light ale. We carried on in this manner until the pub closed. I can remember leaving the pub and after that I can remember nothing until I woke up in Guildford Police Station the next morning.

Signn Robinson A.C.

M17215 Signn, ROBINSON A.C.
Signal Section C.R.U.

There are no witnesses for the defence.

I certify that the foregoing summary of evidence, consisting of eight pages, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c),(d), (e),(f) and (g) have been complied with.

In the field
4 Jan 43

(F.B.THOMAS-PETER)Lieut
R.C.O.S.
Signal Section C.R.U.

S.C. 8.

Surrey Constabulary

Station or Section GODALMING

Division GODALMING.

Date 25th December 1942.

8-5476. 7,000. 19/7/37.

SUBJECT MATTER :

Name Bertram BRADLEY.
(In full—Block Letters)

Address Police Station, Godalming.

Age

Occupation Police Officer.

States :-

On the night of the 23rd and 24th December 1942, I was on car driving patrol duty, in company with P.C. THATCHER and T.C. McCASHEN. At 12.20 a.m. we were stationary at Portsmouth Road Milford whena Military lorry 5 cwt. passed us at a fast speed. I started after this vehicle as he appeared to be travelling at a very excessive speed for that type of vehicle. I caught up with it before reaching Godalming Town, but owing to the fast speed at which we were travelling it was not safe for me to attempt to pass. At Meadrow I did pass the other vehicle, as I ran level with it, P.C. THATCHER signaled it to stop, I drew ahead and into the nearside, but the other vehicle drew out and passed me and went away at a fast speed. I again followed and drew level with it and P.C. THATCHER through the loudspeaker requested the driver to pull into the side, but the other driver did not slacken speed, and I had to draw in behind as we were approaching a corner. I followed it over the Peasmarsh Road where we reached 80 M.P.H. At Peasmarsh Bridge the driver went round the "S" bend at a terrific speed on the wrong side of the road, as he approached this bend he narrowly missed running down some cyclists. I followed it into Guildford, and the driver appeared to be driving blind he was rounding corners on the wrong side of the road, completely ignoring the danger of such driving.

At Woodbridge Road, I proceeded down the wrong side of the dual carriage way and drew across the path of the other vehicle at the end of the carraige way, but the other vehicle, stopped then turned offto the right. I turned my vehicle round and followed but I lost sight of the other vehicle. After searching the roads for half an hour I eventually found the other vehicle stationary in Queens Road. The driver Arnold Clare ROBINSON was sitting inthe cabin of the lorry with a girl. When he was asked to get out of the vehicle, he appeared to be unsteady on his feet and we conveyed him to Guildford County Police Station."

Signature of Person making statement B. Bradley P.C. 25

Witness to the above

Surrey Constabulary,

Godalming Division,

Godalming Section.

Sir,

re Arnold Clare ROBINSON, Drunk in charge of motor vehicle.

I beg to report that at 12.20 a.m. on the 24th December 1942, at Portsmouth Road, Milford, while on car patrol in company with P.C. BRADLEY and T.C. Mc Cashen. A 15 cwt. Military truck passed us at a fast speed, travelling in the direction of Godalming. We started after this vehicle and eventually caught up with it at Ockford Road, bridge. We followed it through Godalming High Street at a fast speed, reaching 50 M.P.H. in places. When at Meadrow we drew level with the other vehicle and I leaned out of the Police car and signaled the other vehicle to stop. I did this by means of a hand torch. We drew just ahead of the other vehicle and and we were slowing down on the nearside of the road to stop when the army truck drew away and passed us, accelerating to a very fast speed in the direction of Guildford. We again followed the truck and drew level with it, I then requested the driver to pull into the side, I did this through the loudspeaker, but the driver took no notice. Owing to the terrific speed at which we were travelling, it was necessary for us to draw back behind. Our fog lamp was then switched on and I was able to read the number on the rear of the truck, CZ 4209282. Our speed was very high going across Peasmarsh, where we reached 80 M.P.H. At Wood~~street~~ Street Road, Guildford, the truck kept to the left side of the road and we proceeded down on the right of the dual carriage way. At the end of the island we drew across to the nearside in the path of the truck and stopped. The driver of the other vehicle stopped, then went into reverse for approximately 50 yards then turned off to the right. We turned our car round then commenced to follow, but we lost sight of the truck. We searched the roads in the vicinity for half an hour and eventually found the army truck stationary in Queens Road at 1.0 a.m. The driver was seated in the cabin with a girl Miss Dorothy Ethel MEREDITH of 22 Queens Road, Guildford The driver of the vehicle was Arnold Clare ROBINSON M.17215 of the Canadian Army, Edmonton Regiment. At this time I felt the engine of the truck and found it to be very hot and the tyres were still warm.

I informed ROBINSON that I was not satisfied with his driving and his explanation as to how he came in possession of the vehicle. His condition gave me the impression that he was under the influence of drink.

We conveyed him to Guildford County Police Station, where he was seen by Doctor Peter MILLIGAN at 1.40 a.m. and he certified him as not being in a fit condition to drive.

On the 24th December 1942 in company with P.C. BRADLEY, we interviewed Dorothy Ethel MEREDITH and she made the attached statement.

I am Sir,
Your obedient Servant.

Roland G. Thatcher
Police Constable No. 323.

The Superintendent,

GODALMING.

COMMUNICATIONS TO BE ADDRESSED TO THE

Division.

Section.

TEL. NO.

To

SUBJECT:

Headquarters.
24/10/42.

I have examined Arnold Claire Robinson, & in my opinion he is under the influence of drink to such an extent as to be unfit to have proper control of a motor vehicle.

P/Sr. Milligan. B.E. B.A.
Ass. Police Surgeon.

STATION OR SECTION - GODALMING DIVISION - GODALMING

DATE - 24th December 1942.

NAME - DOROTHY ETHEL MEREDITH

ADDRESS - 22 QUEENS ROAD, GUILDFORD.

AGE - 19 YEARS OCCUPATION - FACTORY WORKER

States:

"I have been cautioned and wish to make the following statement".

"I left the factory at 6.30 p.m. on the 23rd December 1942 at Guildford with Sybil KING, when we got outside the factory we met two of our friends ROBINSON and George CALLIN, both Canadian Soldiers. My young man Robby and myself went to my lodgings at 22 Queens Road, then we went to the Prince Albert, where we again met our friends, Sybil KING and George CALLIN. We arrived at the public house at 7.0p.m. and we left about 10.0 p.m. While we were there we all had several drinks. I was drinking sherry and the two men were drinking whiskey and light ale.

When we left the public house we all caught the train from Guildford Station at 10.40 p.m. and went to North Camp. When we left the train we went to where ROBINSON is attached as a "D.R." and he said he was going to get a truck. After about 5 or 10 minutes he came back with an Army truck.

We then took Sybil home, Robby was driving and I sat in the front by the side of him and the other two sat in the back. We took Sybil to her home in Aldershot, at 52 Lower Farnham Road.

After dropping Sybil we took CALLIN to Witley Camp, I do not know which road we took. We travelled very fast, but I did not think there was anything wrong with ROBINSON'S driving. We dropped CALLIN right near to the camp. Then ROBINSON said that he would drive me back to Guildford.

The first time I remember a car was following us, was after we left Witley Camp and a large car pulled up in front of us and we passed it. We drove pretty fast to Guildford and a car followed us. We went down near Guildford Station, then round near the market. A large car passed us in Woodbridge Road, the car was on the wrong side of the road. We then turned up a road to our right, after that we got into Queens Road and stopped. Both ROBINSON and myself sat in the lorry all the time, after quite a while the police came up and questioned us.

I am quite sure that none of us had anything to drink from the time we left the Public house at Guildford at 10.0 p.m.

D Meredith

(Dorothy Ethel Meredith)
22 Queens Road, Guildford.

C A N A D I A N P R O V O S T C O R P S

STATEMENT OF : - Miss Sybil KING,
52 Lower Farnham Road, Aldershot

I have been warned that I am not obliged to say anything unless I wish to do so, but that anything I now say will be taken down in writing and may be given in evidence.

To show that I understand the above warning, I make this statement voluntarily and sign my name herewith.

STATES:-

"I am Sybil KING, residing with my parents at 52 Lower Farnham Road. I am employed at R.F.D. Stoke Road, Guildford.

On 23 Dec 42. I stopped work at 6.30 p.m. along with Dorothy MERIDITH. I waited at the corner until Dorothy returned from her lodgings. My boy friend George was with me while waiting. When Dorothy and her boy friend Robby came back we all went to the "Prince Albert" pub, this would be approx 7 p.m. We stayed in the pub till closing time. I did not have any more than two drinks, a Port and a Sherry. The two soldiers were drinking Double Whiskeys and Beer all night, and Dorothy had Port and Sherry. The soldiers were lively but I would not say they were drunk. After we all left the Pub at closing time we went to Guildford Station and got the train to North Camp. From North Camp Station we walked for about 20 minutes, I am not quite sure in what direction but went through some barracks.

On arrival at the corner, Robby told the three of us to wait while he went and got a truck. He, Robby, returned in about 5 minutes with the truck. I and George got in the back and Dorothy got in front with Robby. As soon as we left with the truck it came direct to my home on Lower Farnham Road.

I got out of the truck at my home and George got in front with the other two. I bid them good-night and they left for Witley to take George home.

I have only known George for approx. two weeks and was only in his company on two previous occasions. I had no idea the truck was stolen or I would never have got in it.

I have read the above statement and it is true.

[redacted] Sybil King.
(Miss Sybil KING)
52 Lower Farnham Road,
Aldershot.

Statement taken by Sgt. Latta. S.I.S. Cdn Military Police

Guildford 3232 0 839 - 1830

Sheet destroyed 5 Oct 40

No. 17215 Name ROBINSON A.C. Sqn., Battery or Company | Corps R.C.C.S. | Date of enlistment 5 Apr 40 | Badges | Service or Proficiency Pay N A | M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet 28 Jun 4 | No. and date of last drunk Nil | Period not reckoning towards freedom from extra fine NA | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Jun 41	L/Cpl		A.A. 40 Conduct to the prejudice of good order and military discipline. Not wearing gaiters contrary to C.A.R.O. 559	L/Cpl. Wallis	3 days C.B.	3.6.41	C.M.Graham	
				2. A.A. 40 Conduct to the prejudice of good order and military discipline (wearing collar and tie)	L/Cpl. Beattie	3 days C.B.	3.6.41	C.M.Graham	
Field	2 Jun 41	L/Cpl		A.A.15(2) Absent from place of parade.	Sgt. Seaward	3 days C.B.	3.6.41	C.M.Graham	
Field	11 Jul 41	L/Cpl		A.A. 40 Conduct to the prejudice of good order and military discipline (improperly dressed)	L/Cpl Jamieson Higgins	Reduced to rank of pte.	14 Jul 41	C.M.Graham	
Field	12 Sep 41	Pte		A.A.15(2) Failing to appear on P.T. Parade	Cpl. Anderson	3 days C.B.	12 Sep 41	J.F.O'Neil	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23 Dec 41	Pte		F.C.C.M. A.A. Sec 40. under close arrest 7 Dec 41 to 22 Dec 41		90 days detention Forf. 10 days pay F.R.&I 149(1)(c)(1)	23 Dec 41	F.C.C.M.	Confirmed
Field	25 Aug 42	Sigman		A.A. 15(1) A.W.L. from 0630hrs 25 Aug 42 to 2200hrs 25 Aug 42 (Absent 15 hrs 30 min)	Sgt.Bentley	7 days C.B.	26 Aug 42	Capt. N.H. Townsend	Forf. 1 day pay F.R.&I 149(2)(a)

Certified True Copy.

.....Lieut

Signal Section C.R.U.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M.17215	Sigman	ROBINSON, A.C.	Signal Section, C.R.U.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 827, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry* or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For A.A. 15	one	times	three	times
For A.A. 40	no	times	three	times.
For		times		times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct, Nil

~~There are no entries in the conduct sheet of the accused~~

2. ~~The accused has not been previously convicted.~~/X

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or ~~The accused at the present time is under sentence of~~

~~XXXX

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. M.17215 Rank Sigmn Name ROBINSON, A.C. of Signal Section J.R.H. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
F.G.C.M.	Field 23 Dec 41	A.A. Sec. 40 (Missuse of a W.D. Vehicle)	60 days detention Forf 16 days pay F.R.&I 149(1) confirmed	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 4th day of Jan 43

J.H. Townsend
capt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of N A , years,

In the rank of , years

In the rank of , years,

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

REQUEST FOR A DEFENDING OFFICER

O.C. Signal Section
Cdn Rein Units

I. M17215 ..... Sigmn ..... Robinson A.C. .....
(Number) (Rank) (Name

DO request that an Officer be provided to defend me.
~~DO NOT~~

If available I would like ..... Capt. W. McLaws .....

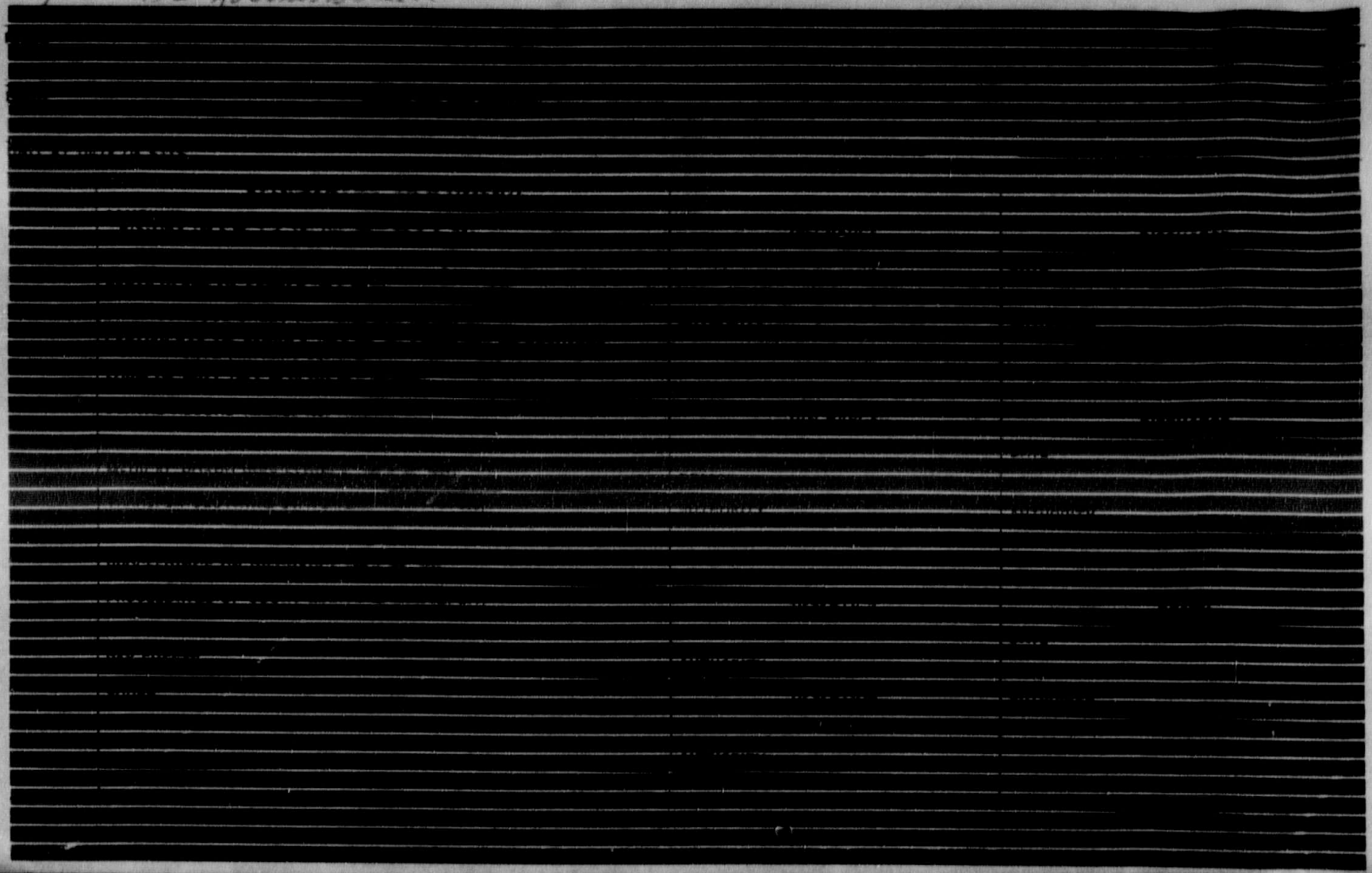
to defend me.

Date ~~2~~ 4 Jan 43

(Signed) Sigm. Robinson A.C.

[illegible] Lieut.

5Y-80 Pte Robinson - LA



SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 87995 Pte Bernard Allan ROBINSON 1 Cdn Repat Dep

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 24 days, of which 18 16 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Do undergo detention for a period of six (6) months and to be put under stoppages of pay in the amount of £ 1=14=6 cost of return to his unit.

(Sgd) ..... Judge-Advocate, if any.

27 JAN 46 Date awarded. (Sgd) C. Woodrow President. (RP 45, 50.) Lt Col

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed.

I direct that the accused be not committed to prison or detention barracks until further orders.(1) JWR

(1. AA 57A. Delete if not used.)

(Sgd) J.W. Rutherford for Brig

Date 29 Jan 46. Commanding E Gp C.R.U. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B 87995 Pte Bernard Allan Robinson	1 Feb 46	W E Hagan Lt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECORDED AT CMHQ IN AB 108 [illegible] 54-80

(Page [illegible] of AF A3) (C.F.A. & R.1008 (2664))

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig T J Rutherford Comd "E" Gp CRU dated 25 Jan 46

RECEIVED 30 JAN 1946 JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 87995	Pte	Bernard Allan	ROBINSON	1 Cdn Repat Dep

PROCEEDINGS REVIEWED
18 Feb 46 K Bowlerway
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 28 Jan 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(✓) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10.45 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do~~ you object to ..... as interpreter? Ans .....

~~The Interpreter is sworn.(1)~~ Do you object to E199409 Sgt O'NEILL J as shorthand writer? Ans NO SIR

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	C. E WOODROW OBE, ED	HQ, CRU
Member	CAPT	E.H. LOVE	1 CDN REPAT DEP
Member	LIEUT	H. BERNHARDT	1 CDN REPAT DEP
~~Judge-Advocate~~			
Prosecutor	LIEUT	W.E. HAGAN	1 CDN REPAT DEP
Defending Offr	LIEUT	A.J. MACDONALD	1 CDN REPAT DEP

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~no~~ plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsF cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No Sir.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p. 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1) : The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A , initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Sir
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Defending Offrs plea in mitigation attached.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, B.87995 Private Bernard Allan ROBINSON, CIC, on the strength of No. 1 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE

SECTION 15(1)

ARMY ACT

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, illegally absented himself without leave from 2300 hrs 10 Oct 45, until apprehended at Nottingham, by Civil Police at 1430 hrs 4 Jan 46, thereby incurring expenses in returning him to his Unit in the amount of £1-14-6.

Absent: 85 days, 15 hrs, 30 mins.

W B K Jordon Col.

Commanding Officer,
No 1 Cdn Repat Depot
(Lorne Scots)
Cdn Army Overseas.

Field

...24...Jan 46

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
25 Jan 46

(T G RUTHERFORD) Brig
COMD
"E" Gp CRU

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
B 87995	Pte		Bernard Allan	ROBINSON	1 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(X) named above as the accused, being subject to military law, has (have) committed the offence(X) set forth in the Charge Sheet(X) attached and on (date) 25 Jan 46 endorsed by me, [illegible], "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(X) should be tried by an ordinary General Court-Martial; [illegible]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(X), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt Col	CE Woodrow OBE ED		HQ CRU

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by OC 1 Cdn Repat Dep		1 Cdn Repat Dep
Lt	To be detailed by OC 1 Cdn Repat Dep		1 Cdn Repat Dep

WAITING MEMBER.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
[illegible]			

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
[illegible]			

On Active Service in the Fd

in England (Country.)

(Signature personally. RP 105 (c) 2)
(T J RUTHERFORD)
Brig (Rank.)

Dat 25 Jan 46

Commanding "E" Gp CRU
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Ord

NO. 3 CDN MIL PRIS & DETN BKS (A)
DISCIP CENTRE - ALTON

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY THAT I HAVE THIS DATE MEDICALLY EXAMINED Rfn. B A Robinson B87995 AND THAT HE IS FIT TO UNDERGO TRIAL BY COURT MARTIAL.

SIGNED AT ALTON

THIS 28 Jan 46

A.T. Donahoe Capt

(J.E. DONAHOE) CAPT RCAMC
MEDICAL OFFICER
DISCIP CENTRE - ALTON
3CDN MIL PRIS & DETN BKS (A)

Exhibit "A" C.E.E.

SUMMARY OF EVIDENCE

in the case of,

B.87995 Private Bernard Allan ROBINSON CIC, on the strength of No. 1 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas.

"I produce the following documents, pursuant to Overseas Routine Order 5352, which have been read over and shown to the Accused, and which are attached hereto as Exhibits:"

(1) Certified True Extract from No. 1 Canadian General Reinforcement Unit Daily Order Part II No. 14, dated 17 Jan 46, which declares in Section "B" Para 10, Sub-para (j) that B.87995 Pte. Robinson, B.A. absented himself without leave from 2300 hrs 10 Oct 45, and that he was still absent at 2300 hrs 1 Nov 45 (22nd day).

(Marked Exhibit "A")

(2) Certified True Extract from No. 1 Canadian General Reinforcement Unit Daily Order Part II No. 14, dated 17 Jan 46, which declares in Section "B", Para 10, Sub-para (k) that B.87995 Pte. Robinson, B.A. was apprehended by the Civil Police in Nottingham at 1430 hrs 4 Jan 46.
(Marked Exhibit "B")

(3) Expense Voucher (Ref: KR & O (Can) 539) dated 5 Jan 46 and signed by Officer Issuing Railway Warrant and Expense monies No. 6 Area Provost Company, Canadian Provost Corps, London, which declares that expenses were incurred in returning B.87995 Pte Robinson, B.A. to London from Nottingham, in the amount of £1-14-6.
(Marked Exhibit "C")

C.E. Ennis
.....
(C.E. Ennis) Lieut
Officer detailed to take the Summary of Evidence.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The Accused reserves his defence.

The Accused does not call any witnesses.

"I certify that the above Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the Accused, and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with."

C.E. Ennis
.....
(C.E. Ennis) Lieut
Officer detailed to take the Summary of Evidence.

Field

FA Jan 46

Exhibit "A"
Ekin

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order	Daily Part II Order	THIS ORDER
No 13	issued by	NO 14
16 Jan 46	COL R C CLARK DSO COMMANDER	17 Jan 46

Section "B"

10 ABSENT WITHOUT LEAVE

(j) AWL from 2300 hrs 10 Oct 45
22nd day (Still absent) 2300 hrs 1 Nov 45
GEN B 87995 Pte ROBINSON B A

'J.H. Stephen' Capt.
for (R.C. CLARKE) COLONEL
COMMANDER
NO 1 CDN GEN RFT UNIT

CERTIFIED TRUE EXTRACT FROM THE ORIGINAL DOCUMENT HELD IN MY POSSESSION.

C.E. Ennis

23 Jan 46

(C.E. Ennis) Lieut RCA
Officer having custody
of original document.

Exhibit B

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT
Daily Part II Order
issued by
COL R C CLARK DSO COMMANDER

Last Order No 13 16 Jan 46

THIS ORDER NO 14 17 Jan 46

Section "B"

10 ABSENT WITHOUT LEAVE

(k) Apprehended from AWL by Civil Police at 1430 hrs 4 Jan 46 at Nottingham

GEN B 87995 Pte ROBINSON B A

'J.H. Stephen' Capt
for (R.C. CLARKE) COLONEL
COMMANDER
NO 1 CDN GEN RFT UNIT

CERTIFIED TRUE EXTRACT FROM ORIGINAL DOCUMENT HELD IN MY POSSESSION.

23 Jan 46

C.E. Ennis
(C.E. Ennis) Lieut. RCA
Officer having custody
of original document.

Expense Voucher Re— Ref: KR & O (Can) 539

Reg No. [illegible] Rank Pte Name Robertson B.C. Unit #1 C.G.R.U.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit from~~ London from Nottingham

Date	Particulars	Amount		
5 Jan 46	Escorts return fare from LONDON To Nottingham	0	17	0
	Prisoners single fare to LONDON From Nottingham		7	6
	Prisoners fare from to			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		6	
	Total £	1	14	6

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

R.S. Harrison Capt

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

1/35 CMHQ 100/55
40/P & S/483 (6762)

PLEA-IN MITIGATION

Exhibit E.J.
[illegible]

387995 PTE ROBINSON, B.A.

SERVICE.

Enlisted 10 Nov. 39 in R. R. of C.

Iceland 16 June 40

England 29 Oct. 40

Transferred to Recce, and promoted Cpl.

Returned to Canada - 26 Mar 42
as Sgt Instructor

TOS England 24 July 45

Personal.

Married in Canada soon after enlistment, and soon after to Iceland.

Had a letter from wife stating she was pregnant in 1942.

Went home on instructional duties tried for a divorce, but did not get it through.

Since then Robinson has not seemed interested in soldiering, and ~~He has not had all the opportunities~~ possibly lack of home responsibilities has given him an

Restricted B
CEL

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
B.87995	Private	Bernard Allan ROBINSON	No. 1 Cdn Repat Depot

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1955.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* ~~Within last 12 months~~ CEL	* Since Enlistment.
For	AWL AA 15(1) times	16 times
For	AA 10(4) times	1 times
For	AA 46 times	1 times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~ CEL

or

~~There are no entries in the conduct sheets of the accused~~ CEL

2. ~~The accused has not been previously convicted, or~~ CEL

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. ~~or The accused at the present time is under sentence for~~ CEL ~~beginning on the day of~~ CEL

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 24 days in military custody, making a total of 24 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 27 years CEL

6. The date of his ~~commission~~ attestation CEL specified in his ~~attestation paper~~ record of service is 10 Nov 39 CEL

~~7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~ CEL

~~8. The accused is entitled to deferred pay or gratuity in respect of service~~ CEL

~~9. The accused is entitled to reckon service for the purpose of determining his pension, etc~~ CEL

10. The accused ~~is in possession of, or entitled to,~~ no military decoration or military award ~~(or is in possession of or~~ CEL entitled to (*state any military decoration or reward*). CVSM & Clasp

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer was held the regimental rank~~ CEL ~~of~~

~~12. (In the case of an officer.) The accused holds in the army the rank of , dated~~ CEL ~~and in his regiment (or corps or department) the rank of dated~~ CEL

W.L.5767/1519 20M. 5/44. P. Ltd. T51-3.

Exhibit K7
Ed

PLEA-IN MITIGATION

387995 PTE ROBINSON, B.A.

SERVICE.

Enlisted 10 Nov. 39 in K. R. of C.

Iceland 16 June 40

England 29 Oct. 40

Transferred to Reece, and promoted cpl.

Returned to Canada - 26 Mar 42
as Sgt Instructor

TOS England 24 July 45.

Personal.

Married in Canada soon after enlistment, and soon after to Iceland.

Had a letter from wife stating she was pregnant in 1942.

Went home on instructional duties tried for a divorce, but did not get it through.

Since then Robinson has not seemed interested in soldiering, and ~~He has not had all the opportunities~~ possibly lack of home responsibilities has given him an

PTE ROBINSON, RA.

attitude that ~~he~~ nothing matters. Probably if he were discharged at home he would be able to rehabilitate himself successfully.

Exhibit B
CEE

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
B.87995	Private	Bernard Allan ROBINSON	No. 1 Cdn Repat Depot

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* ~~Within last 12 months~~ CEE	* Since Enlistment.
For	AWL AA 15(1) times	16 times
For	AA 10(4) times	1 times
For	AA 46 times	1 times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~, CEE

or

~~There are no entries in the conduct sheets of the accused.~~ CEE

2. ~~The accused has not been previously convicted, or~~ CEE

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ CEE ~~beginning on the day of~~ CEE

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 24 days in military custody, making a total of 24 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his record of service / ~~attestation paper~~ CEE is 27 years

6. The date of his ~~commission~~ CEE / attestation specified in his record of service / ~~attestation paper~~ CEE is 10 Nov 39

~~7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~ CEE

~~8. The accused is entitled to deferred pay or gratuity in respect of service.~~ CEE

~~9. The accused is entitled to reckon service for the purpose of determining his pension, etc.~~ CEE

10. The accused ~~is in possession of, or entitled to, no military decoration or military award (or~~ CEE is in possession of or entitled to (*state any military decoration or reward*). CVSM & Clasp

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~ CEE

~~12. (In the case of an officer.) The accused holds in the army the rank of , dated~~ CEE ~~and in his regiment (or corps or department) the rank of dated~~ CEE

Wt.57637/1319 20M. 5/44. P. Ltd. T51-2.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B.87995 Rank Private Name Robinson, B.A. of 1 Cdn Repat Depot (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
F.G.C.M.	14 Feb 45	AA 15(1) AWL	120 days Detn	40 days remission
F.G.C.M.	20 Jul 45	AA 15(1) AWL	60 days Detn	

333

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28 day of January 46

C. E. Ennis, Lieut, RCA
Legal Officer
4 Wing 1 Cdn. Repat Depot

~~13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date~~ CEE

Date of Promotion

In the rank of years,

In the rank of years,

In the rank of years,

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

No. 887995 Name ROBINSON Bernard Allan | Sqn, Battery, or Company | Corps CIC | Date of enlistment 10Nov39 | Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PA&S/136 (7019)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		AA 15 (1) AWL		5 days F.P.	21-8-40		5 d.p.
Field		Tpr		AA 15 (1) AWL		14 days C.B.	18-1-41		1. d.p.
Field		Cpl		AA 15 (1) AWL		Reprimand	11Dec41		1 d.p.
Field		Cpl		AA 15 (1) AWL			23Dec41		1 d.p.
Field		Tpr		AA 15 (1) AWL			6 Feb42		1.d.p.
Field		Tpr		AA 15 (1) AWL		2 days pay	9 Mar 43		3 d.p.total
Field		Tpr		AA 15 (1) AWL		2 days pay	16Mar 43		3 d.p.total
Field		Tpr		AA 15 (1) AWL		8 days pay	20 Apr 43		12 d.p. tot.
Field		Tpr		AA 15 (1) AWL		14 days detn	27 Apr 43		
Field		Tpr		AA 15 (1) AA 10 (4)		14 days CB	29 Jul 43		1 d.p.
Field		Tpr		AA 15 (1) AWL		14 days FP	22 Nov 43		17 d.p.
Field		Tpr		AA 15 (1) AWL		admonished	5 Jan 44		1 d.p.
Field		Tpr		AA 15 (1) AWL		28 days FP	16 Feb 44		41 d.p.
Field		Tpr		AA 15 (1) AWL		£2-6-3 stoppage			

(P10)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
						14 days FP	11 Aug 44		18 days pay
							29 Sep 44		4 days pay
Field		Tpr		AA 15 (1) AWL					31 days pay
Field		Tpr		AA 46 AA 15 (1) AWL		21 days FP	15 Jan 45		£1-2-7 stoppage
Field		Pte		AA 15 (1) AWL		120 days detn	14 Feb 45	FGCM	129 days pay net
					(40 days remission)	60 days detn	20 Jul 45	FGCM	22 days pay net
Field		Pte		AA 15 (1) AWL					£1-3-0 stoppage
Field		Pte		AA 15 (1) AWL					

Certified true extracts from the original MFW 2 held in my possession.

D C Bignell

18 Jan 46 (D.C. Bignell) Capt
officer having custody
of original document

THE CASE OF B.87995 Pte. Bernard Allan ROBINSON

(i) LIST OF WITNESSES FOR THE PROSECUTION

Nil

(ii) LIST OF WITNESSES FOR THE DEFENCE

Nil

(iii) LIST OF EXHIBITS FOR THE PROSECUTION

(a) Cert True Extract from No. 1 CGRU DO Pt II No. 14 d/17 Jan 46 concerning the absence without leave of B.87995 Pte. Robinson, B.A. (Marked Exhibit "A")

(b) Cert True Extract from No. 1 CGRU DO Pt II No. 14 d/17 Jan 46 concerning the fact that B.87995 Pte. Robinson, B.A. was apprehended by Civil Police. (Marked Exhibit "B")

(c) Expense Voucher d/5 Jan 46 concerning expenses incurred in returning B.87995 Pte. Robinson, B.A. to his Unit. (Marked Exhibit "C")

(iv) LIST OF EXHIBITS FOR THE DEFENCE

Nil

(v) RECEIPT BY ACCUSED FOR COPY OF CHARGE SHEET AND SUMMARY OF EVIDENCE.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence, taken in the Field, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

B.A. Robinson

B.87995 Pte. Robinson, B.A.

(vi) APPLICATION BY ACCUSED FOR DEFENDING OFFICER

I hereby request that the Convening Officer appoint an Officer to represent me at my Trial.

I desire the services of.....
if he is available.

B.A. Robinson

B.87995 Pte. Robinson, B.A.

Signed in the Field

This 24 day of Jan 1946

4V.12L

PTE ROBINSON BA

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B07995 Pte Bernard Allen ROBINSON - CIC - 3 CITR

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd AA Sec 40	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of One Hundred and Twenty (120) days.

(Sgd) ..... 14 Feb 45 (Sgd) [signature] President. (RP 45, 50.)

Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison, or detention barracks, until further ordered.~~ (1. AA 57A. Delete if not used.)

Date 15 Feb 45 (Sgd) [signature] Brig

Commanding Comd 18 Cdn Inf Trg Bde.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B-87995 Private ROBINSON, Bernard Allen	Promulgated 16 Feb 45 Extract D.O. 46 dated 16 February 45	[signature] (E.T. Stewart) Capt. & Adjt. 3 Cdn. Inf. Depot Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4V-126

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA81) 40/P & R/1696 (6144) 4/38B

Convened by Order of Brigadier K.G. Blackader Comd 18 Cdn Inf Trg Bde dated 13 Feb 45 DSO, MC, ED.

RECEIVED 1 MAR 1945 AG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B07995	Pte	Bernard Allen	ROBINSON	CIC 3 CITR

PROCEEDINGS REVIEWED [signature] Major

REVIEWING OFFICER, JA BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the [illegible] (country) England on (date(s)) 14 FEB 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnm ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 26, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1145 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. ~~President to accused : Do you object to ..... as interpreter ?~~ Ans .....

~~The Interpreter is sworn.(1)~~ Do you object to 28126 Sgt Lincoln FH as shorthand writer ? Ans NO

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans .....(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	LT-COL	D.L.	REDMAN	HQ CRU
Member	CAPT	P.N.	BUANETT	1 CITR
Member	LT	E.A.	WELCH	2 CITR
~~Judge-Advocate~~				
Prosecutor	LT	F.C.	GOODMAN	3 CITR
Defending Offr	LT	J.O.	MANCHIB	3 CITR

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO SIR .(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ? ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. 1, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO TRUE evidence NOT AT ALL
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. 5 and Ex. 6 respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. MAY BE SOME TO NOTE AT(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA~~, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 48-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B#7995 Private Bernard Allen ROBINSON, Canadian Infantry Corps, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHILE ON ACTIVE SERVICE, Absenting himself without leave,

Section 15 (1) Army Act

in that he,

In the Field, absented himself without leave while undergoing Field Punishment, from 2230 hours 17 January 1945 until surrendering himself to the Civil Police in Kingston at 2125 hours 6 February 1945. Total absence 19 days, 22 hours, 55 minutes.

SECOND CHARGE — WHILE ON ACTIVE SERVICE, An Act to the Prejudice of Good Order and Military Discipline,

Section 40 Army Act

in that he,

In the Field, when surrendering to the Civil Police in Kingston at 2125 hours 6 February 1945 was in possession of a document purporting to be a genuine pass, well knowing that it was not genuine.

(S.W. Thomson) Colonel
Commander
3 Cdn Inf Trg Regt

IN THE FIELD
10 February 1945

To be tried by Field General Court Martial.

(K. [illegible] Blackader) Brig
Comd
18 Cdn Inf Trg Bde

In the Field
13 Feb 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B87995	Pte		Bernard Allen	ROBINSON	CIC 3 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 Feb 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

LT COL	D L REDMAN, VD	HQ CRU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Captain	to be detailed by Commanding Officer	1 CITR
Lieutenant	to be detailed by Commanding Officer	2 CITR
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Captain	to be detailed by Commanding Officer	1 CITR
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

K G Blackader (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Dat 13 Feb 45

Commanding (K G Blackader) 13 Cdn Inf Trg Bde
Convening Officer

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

Medical Officer's Certificate. 4C/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. B87995

Pte Robinson B. of # 3 C.I.T.R

and in my opinion, he is fit to undergo trial by Court Martial.

Station Field

Date 14-2-45 (Sgd.) J B Crawe Capt
(Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3, para 27, d/6 Jan 42)

CASE OF

B-89995 Pte ROBINSON, G. A. 3 CITR

STATEMENT OF ACCUSED
(UNDER OATH)

Sir I joined the reserves on the 29 August 1939(Lincoln and Welland Regt). When war broke out, September 7 I went Active. From the Lincoln and Welland Regt I was transferred to the Royal Regt of Canada. I done my training in 1939 and in the Spring of 1940 I went to Iceland. I was in Iceland approximately 6 months. From there I came to England in November 1940. I remained in the Royal Regt of Canada for approximately 1 month after I landed in England. Shortly after that they formed what they called the 4th Recce Regt. At that time I was in a squadron called 4th Recce. Later I was transferred to what they called the 8th Recce Regt today. Shortly after my transfer I became a Corporal in the latter part of 1940. I was Corporal for approximately 1 year and 9 months. In March 1942 I went back to Canada and on the 1 April of the same year I became a Sergeant. On my return to Canada I found that I had family troubles. I had been married and my wife was pregnant. Shortly after I returned home I was sent out to the West Coast. I was attached to the 31 Alberta Recce Regt. I was home for approximately 1 year and 4 months and in between that time I wanted to return to England. The only way I could do it was to revert to a Trooper. So I reverted from a confirmed rank of Sergeant to the rank of Trooper on transfer to the 30th Recce Regt which was coming overseas. I came back over in July 1943. On my return back I went to the Legal Aid at Pall Mall Street London to make arrangements for a divorce and it has been well over a year ago and since that time I received a letter saying they could not carry on the proceedings because they had not had the money for the lawyers back in Canada. It started praying on my mind and I started being absent. Finally in December 1944 I was on a civilian charge. Charge was breaking into a club. I was on remand for 2 months at the time and finally released because I had no previous record. On my return from London I was up before the Colonel and awarded 21 days FP

(PTO)

B 87995 Pte Robinson, B.A.

Plea ~~for~~ in mitigation

Accused enlisted in Aug 39 serving in Iceland & England. He was promoted to sjt instructor & returned to Canada in Mar 42 for a tour of duty as instructor. However on return he found his wife pregnant & he tried to get a divorce. The lawyers wanted $125 to proceed with the case & as the accused could not obtain it, the resulting worry coming on top of the previous shock upset his stability which led from one small offence to another. He is anxious to ~~go~~ go to the front immediately & is fed-up with hanging around. The good service record & promotions during the first 3 years in the Army prove that this man can be a good soldier & should now be given the opportunity to redeem himself. I plead that the man be fined & placed on draft.
This man is A cat, grade 11 educ

J.O. Manchip. Lt.
Dy Offr.
E-3
[illegible]

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B#7995 Private Bernard Allen ROBINSON, Canadian Infantry Corps, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary is taken on oath.

FIRST WITNESS

For the Prosecution

Capt E.T. Stewart, General List, on the strength of No 3 Canadian Infantry Training Regiment, an officer of the Canadian Army Overseas, having been duly sworn, states:

I am Capt E.T. Stewart and am Adjutant of No 3 Cdn Inf Depot Bn. I hereby present, marked Exhibit "A", Certified TrueExtract from No 3 Cdn Inf Trg Regt Part II Daily Order No 1# dated 19 Jan 45 which shows that the accused B#7995 Pte Robinson B.A., whom I now recognize, was awarded 21 days F.P. on 15 Jan 45. I present, marked Exhibit "B", Certified True Copy of No 3 Cdn Inf Trg Regt Part II Daily Order No 21 dated 23 Jan 45 which shows that the accused absented himself without leave from 2230 hrs 17 Jan 45. I present, marked Exhibit "C", AFO 1017 dated 7 Feb 45 which shows that the accused surrendered himself to the Civil Police in Kingston at 2125 hrs 6 Feb 45.

E.T. Stewart Capt

(E.T. Stewart) Capt.

The accused declines to cross-examine this witness.

SECOND WITNESS

For the Prosecution

A56#Oo Sgt Hughes B.E., Canadian Provost Corps, on the strength of No 6 (Area) Provost Company, a soldier of the Canadian Army Overseas.

Pursuant to Overseas R.O. 957(4)and R.P. 4 (g) a statement of the witness' evidence purporting to be signed by him has been read over to the accused, B#7995 Private Robinson B.A., and is included in this Summary and marked Appendix "A". This witness will present, marked Exhibit "D", CFA 24. I certify that the attendance of this witness cannot be readily procured owing to the exigencies of the service and to the expense and lss of time involved.

The accused does not demand the attendance of this witness for cross-examination.

W.J. Aglin

(W.J. Aglin) Lieut
Officer detailed to take Summary

The accused was cautioned as follows: Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of TWO pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

IN THE FIELD
10 February 1945

(W.J. Aslin) Lieut
Officer detailed to take Summary

EXAMINED

Statement of EVIDENCE in the case of
B-87995 Pte. Robinson B.A.
No.3 C.I.T.R. (CMU)

Sir;

At London at about 0945 hrs 7-Feb-45, I was on duty as N.C.O. i/c detention Office No 6(Area) Provost Company, when I had occasion to check the documents pertaining to the m/n soldier.

I noticed the attached C.F.A. 24 which did not look genuine.

On questioning the m/n soldier he admitted this document was false.

I informed him that he would be charged accordingly.

London
7-Feb-45.

B.E. Hughes ... Sgt.
A-57806 Hughes B.E.
No.6(Area)Provost Company.

REMARKS

GE

Army Form B 252
(See King's Regulations)

.3 C.I.T.R. (CRU) Regiment

Battery
Squadron
Troop or
Company

CHARGE against No. B-87995 Rank Pte.

Name Robinson B.A.

Place London Date of Offence 7-Feb-45.

OFFENCE W.O.A.S. was in possession of a false document.

N E Birch CAPT.
R. E. BIRCH, D.A.P.M.
C.M.H.Q.

Names of Witnesses:—

Sgt. Hughes B.E. No.6 (Area) Provost Company.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

3 3/44 G.H.Q.F.F. 2000 P.T.O.

NO 3 CANADIAN INFANTRY TRAINING REGIMENT C A (E)

PART II DAILY ORDER

LAST ORDER NO 17 1st JAN 45	Issued by COLONEL S W THOMSON, DSO, MC, COMMANDER	THIS ORDER NO 18 19 JAN 45

13 PUNISHMENTS

(j) On 15 Jan 45, awarded 21 days F.P. and a forf of 21 days pay and placed under stoppages of pay in the amount of £1-2-7 (cost of app) for an offence under AA Sec 15 (1), AWL from 0745 hrs 6 Nov 44 to 1015 hrs 15 Nov 44 (absent 9 days 2 hrs 30 mins) In civil custody from 1015 hrs 15 Nov 44 to 1430 hrs 9 Jan 45 and under close arrest from 1430 hrs 9 Jan 45 to 2400 hrs 14 Jan 45. (60 days 13 hrs 45 mins)
Forf 10 days pay under FR&I 149(1)(a)
Forf 60 days pay under FR&I 149(1)(c)(ii)
Forf 21 days pay under FR&I 149(2)
Forf £1-2-7under FR&I 172(*)
Total forf of 91 days pay and £1-2-7 (Cost of app)

B*7995 PTE ROBINSON B A "CIC"

"D.C. Kennedy Lieut"
.....
for (R.B. Forbes) Major
Admin Officer
No 3 Cdn Inf Trg Regt
C A(E)

Certified True Extract - 10 Feb 45

Officer having custody of Original Record

NO 3 CANADIAN INFANTRY TRAINING REGI ENT C A (E)

PART II DAILY ORDERS

LAST ORDER NO 20 22 JAN 45 — Issued by COLONEL S W THOMSON, DSO, MC, COMMANDER — THIS ORDER NO 21 23 JAN 45

13 ABSENT WITHOUT LEAVE

(a) AWL from hour and date shown

B #7995 PTE ROBINSON B A "CIC" 2230 hrs 17 Jan 45.

"A.C. Kennedy Lieut"
.....
for (R.B. Forbes) Major
Admin Officer,
No 3 Cdn Inf Trg Regt
C A (E)

Certified True Copy - 10 Feb 45

Officer having custody of Original Record

I CERTIFY that the man whose personal description is given below surrendered himself to* N.C. 746 Oliver at Richmond Rd. Kingston (hour) 9.25 a.m. on the 6th day of February as being No. B87995 (Rank and Name) Pte B. A. Dobison a deserter ~~(or absentee~~ without leave) from ..... and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word " to " to be inserted the name and rank of the police officer concerned.

Age 26 Height 5 Feet 8 1/2 Inches

Complexion Sallow Hair Brown

Eyes blue

Marks

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	3rd September 1939 Niagara Falls
Probable Date of Desertion or beginning of absence, and from what place	Aldershot.

[signature] Hon Off 1577

Signature of Officer of Police in charge of Kingston Station

[signature] 4/2/45 Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies only in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of No. ..... who surrendered to the Police at ..... on .....

Payable to .....

CERTIFIED that this statement of expenses is correct.

..... Superintendent or Officer in charge of Police Station at .....

..... Date of Signature.

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depots are shown in the Monthly Army List.

† NOTE.—Special instructions apply in war for the disposal of absentees and deserters from the Army, who surrender to the civil police, *e.g.*, such personnel will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops at the nearest military station. (A.C.I. 480/1940).

(27899) Wt.22801/3248 20,000 7/44 A.& E.W.Ltd. Gp.698

CANADIAN ARMY OVERSEAS

Comp. Leave. LEAVE PASS

Pass No. 3[redacted] Date 6/2/45

No. B87795 Rank Pte Name Robinson D.A.

has permission to be absent from his unit from 0800 hrs 6/2/45

to 0800 hrs 13/2/45 for the purpose of proceeding to

Kingston

Field.

Orderly Room Stamp

Maj.

(Unit Signature Stamp)

3 CANADIAN INFANTRY TRAINING REGIMENT (C.A.O.) 3D/11

10 February 1945 ..194..

I, No. B#7995 Pte Robinson B.A. wish to have
(Rank) (Name)
an Officer defend me at my forthcoming trial by Court Martial.

I desire the services of AN OFFICER.
if he is available.

(Sgd.) B.A. Robinson

LIST OF WITNESSES

In the case of B#7995 Pte Robinson B.A., CIC, on the strength of No 3 Cdn Inf Trg Regt

FOR THE PROSECUTION

1.	Capt	E.T. Stewart	No 3 Cdn Inf Trg Regt
2.	A57#06	Sgt Hughes B.E.	No 6 (Area) Provost Company

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

In the case of B#7995 Pte Robinson B.A., CIC, on the strength of No 3 Cdn Inf Trg Regt

EXHIBIT "A" - Certified True Extract from No 3 Cdn Inf Trg Regt Part II Daily Order No 1# dated 19 Jan 45

EXHIBIT "B" - Certified True Extract from No 3 Cdn Inf Trg Regt Part II Daily Order No 21 dated 21 Jan 45

EXHIBIT "C" - AFO 1617 dated 7 Feb 45

EXHIBIT "D" - CFA 24.

10 February 1945

This is to acknowledge that I have received, free of charge, the following papers in connection with my forthcoming trial by F.G.C.M.

1 Copy of Charge Sheet
1 Copy of Summary of Evidence
1 List of Witnesses
1 List of Exhibits

B.A. Robinson

(B#7995 Pte Robinson B.A.)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B#7995	Private	Bernard Allen ROBINSON	Canadian Infantry Corps (3 CITR)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 15 (1) 10 times.

For A.A. Sec 40 1 times.

~~For~~ ~~times~~

~~For~~ ~~times~~

Date of first entry in Field Conduct Sheet 9 Mar 43

Date of last entry in Field Conduct Sheet 15 Jan 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for 21 days FP beginning on the 15th day of January 1945

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 8 days in military custody, *i.e.*, NIL days in open arrest, 8 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 26 yrs

6. The date of his attestation is 29 Aug 39 ~~calling up for military service~~

7. The service which the accused is allowed to reckon is 5 yrs 5 mos.

‡State the military decorations (if any) held by accused.

8. The accused is in possession of‡ C.V.S.M. & Clasp.

9. ~~(*If the accused is a warrant officer or N.C.O.*). The accused has served continuously~~, without reduction, to the present date—

Date of Promotion.

In the substantive rank of

In the war substantive rank of

~~In the acting rank of~~

Ex B

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*28072) Wt.30721/3701 $2,000 9/44 A.& E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
Civil Court	9 Jan 1945 Field	2 charges of Stealing	Bound over in sum of £5 for 2 years	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ~~10th~~ 14th day of February 1945

F. C. G.

No. 887945 Name [redacted] RA | Sqn, Battery, or Company | Corps CAC | Date of enlistment 10 Nov 41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AAFB 122) WO7FAS/136/1542

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
DUNDURN	4 MAR	L/CPL		AA SEC 15(1) AWL FROM 0630 HRS 6 MAR UNTIL 0200 HRS 9 MAR 43 (19 HRS 30 MIN)	L/CPL STOCKER	REVERTS TO TPR FORF 2 DAYS PAY AWL	9 MAR 43	CAPT HANLEY	FORF 1 DAYS PAY FAD 149(1)(a)
DUNDURN	15 MAR	TPR		AA SEC 15(1) AWL FROM 1400 HRS 14 MAR TO 1530 HRS 15 MAR 43	CPL HISLOP	2 DAYS PAY 2 DAYS CB	16 MAR 43	MAJ J. M. MUNRO	FORF 1 DAYS PAY FAD
DUNDURN	20 APR	TPR		AA SEC 15(1) AWL FROM 0800 HRS 16 APR UNTIL 0600 HRS 20 APR 43 (4 DAYS)	CPL STOCKER	FINED 5 DAYS PAY AA 46.2.D	20 APR 43	LT COL D. P. WARNICH	FORF 4 DAYS PAY FAD 149(1)(a)
DUNDURN	23 APR	TPR		BREAKING OUT OF BARRACKS AA SEC 15(1) AWL FROM 1200 HRS 14 APR UNTIL 0700 HRS 25 APR 43 (14 HRS)	SGN S.M. GREENEY L/CPL STOCKER	14 DAYS DETN	27 APR 43	LT COL WARNICH	FORF 1 DAYS PAY FAD 149(1)(a)
IN THE FIELD	25 JUL	TPR		AA SEC 40(1) NEG TO THE PREJ ETP (NEG TO STAY ON DUTY (2) ABSENT FROM DUTY (1 DAY) (3) BREAKING OUT OF BARRACKS AA SEC 40(4)	CPL STOCKER	AA 46(2)(a)(4) 1 DAYS PAY 14 DAYS C.B.	29 JUL 43	LT COL MUNRO MAJ	FORF 1 DAYS PAY FAD 146(1)(a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
IN THE FIELD	15 NOV 43	TPR		AA SEC 15(1) AWL FROM 2100 HRS ~~NOV~~ 43 UNTIL 2300 HRS 21 NOV 43 (ABS ~~2 DAYS~~ 1 HR)	CPL SNATCH TPR DAMROTH	14 DAYS FP 14 DAYS PAY 3 DAYS PAY FORF	22 NOV 43	LT COL PATERSON	3 DAYS PAY FORF 1 DAY(S) PAY FORF 14 DAYS PAY FORF 14 DAYS PAY FORF

No. B87995 Name ROBINSON BA | Sqn, Battery, or Company | Corps CAC | Date of enlistment 10-11-39 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/130 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	29-9-44	TPR		WOAS AWL FROM 1845 HRS 27 SEP 44 UNTILL 2230 HRS 27 SEP 44 ABSENT FROM PARADE x DETAILED BY SSM LAWSON AA SEC 15(1)	SSM LAWSON CH SGT FOUBERT EN	4 DAYS PAY	29 SEP 44	Col AT PATTERSON	
FIELD	6-11-44	PTE		AA SEC 15(1) AWL FROM 0745 6 NOV 44 UNTIL APP BY CIVIC POLICE IN NOTTINGHAM AT 1015 HRS 15 NOV 44 THEREBY INC COST OF RET TO UNIT £1-2-9 (1 HRS 5 DAYS 2 HRS 30 MIN)	DOCUMENTARY	21 DAYS F P 21 DAYS PAY FR41 149(1)(a) STOPPAGE £1-2-9	15 JAN 45	AM YOUNG LT COL	10 DAYS PAY FR41 (1)(c) STOPPAGES £1-2-9 TOTAL FORF 31 DAYS PAY
FIELD	14 NOV 44			CIVIL CHARGE 2 CHARGES OF STEALING	DOCUMENTARY	BOUND OVER IN SUM OF £5 FOR 2 YEARS	9 JAN 45	CIVIL COURT	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY 10 FEB 45					
						[illegible]			
				OFFR HAVING CUSTODY OF REGT'L BOOKS					

5Q-84

Pte Robinson B.A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-87995 Pte Bernard Allen ROBINSON - CIC - 3 CITR

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under ~~sentence~~ for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF BJ55 or AF B296.)

Time in confinement awaiting present trial—a total of 53 days, of which 3 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF BJ55 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo 4 months para reduced of sixty (60) days and to be put under stoppages of pay until the has made good £1-3-2d. the expenses of his return to his unit

20 JUL/45 — [illegible] A/Col

(Sgd) ..... Judge-Advocate, if any. Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) JWJ

(1. AA 57A. Delete if not used.)

Date 23 Jul 45 (Sgd) T/ Johnson Lt Col

Commanding ~~Comd 13 Cdn Inf Bde~~ Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B 87995 Pte Bernard A llen ROBINSON (CIC) 10 CDN REPAT DEP	PROMULGATED 25 Jul45 Extracts taken from Ft II DO 176B d/22 Jul 45	A C Kassel Major A/CO "A" WING 10 CDN REPAT DEP

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 — 59-54

CFA96 (In lieu of AFA81) 40/P & R/160B (6144) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by ~~Major General~~ Brigadier K G Blackader Comd 13 CITB dated 17 Jul 45

DSO, MC, ED

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-87995	Pte	Bernard Allen	ROBINSON	CIC 3 CITR

PROCEEDINGS REVIEWED

[signature] Capt

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

~~Held~~ Assembled at (place) ..... in (country) England on (date(s)) 20 Jul 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fme ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) ~~and~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(E), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to [illegible] as interpreter? Ans.....~~

~~The Interpreter is sworn.~~(1) Do you object to ~~[illegible]~~ 3126 SGT AH SINCLAIR as shorthand writer? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any,~~ and ~~Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L. REDMAN	AG GHQ
Member	CAPT	W.A. SCHOFIELD	3 CITR
Member	Lt	C.E. CARTHEL	2 CITR
~~Judge-Advocate~~			
Prosecutor	Lt	V.D. HAMILTON	3 CITR
Defending Offr	Lt	A.L. CHANTLER	3 CITR

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused ..... before arraignment make(s) (no) ~~[illegible]~~ plea.(2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO SIR .(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(C). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(1). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO - SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM a. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Byd & M Offr's (NOTE 3.7.79)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any,~~(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B 87995 Private Bernard Allen ROBINSON, Canadian Infantry Corps, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHILE ON ACTIVE SERVICE, Absenting himself without leave,

Section 15(1) Army Act

in that he,

In the Field, absented himself without leave from 2359 hours 19 May 1945 until apprehended by the Civil Police in Nottingham at 1535 hours 16 June 1945, thereby incurring the cost of returning him to his Unit in the amount of £1-3-0. Total absence 27 days, 15 hours, 36 minutes.

(W.D. Whitaker) Colonel
Commander
No 3 Cdn Inf Trg Regt

IN THE FIELD

19 JUNE 1945

To be tried by Field General Court Martial.

(K G Blackader) Brig
Comd
13 Cdn Inf Trg Bde

IN THE FIELD
17 Jul 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-87995	Pte		Bernard Allen	ROBINSON	CIC 3 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 17 Jul 45 endorsed by me, [illegible], "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
LT COL	D L REDMAN, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by Comd	5 CITR
Lieutenant	to be detailed by Comd	2 CITR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	to be detailed by Comd	3 CITR
[illegible]	[illegible]	[illegible]

On Active Service in the Fd

in England *(Country.)*

Dat 17 Jul 45

K G Blackader *(Signed personally. RP 105 fn 2.)*

Brigadier *(Rank.)*

(K G Blackader)
Commanding 13 Cdn Inf Trg Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 66 (In lieu of AFA 3) 40/P & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

Medical Officer's Certificate. 40/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. B77995.....

..Pte. Robinson B. H.... of.....#3. C.I.T.R.....

and in my opinion, he is..fit..... to undergo trial by Court Martial.

Station..In the field.....

Date..20th July 1945..... (Sgd.) Pat B Rose Capt. VM
(Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3, para 27, d/6 Jan 42)

PLEA OF MITIGATION FOR B-E7995 Pte. Robinson, B.A.

EX E-3

Sirs:

In making this plea of mitigation to the Court I would first of all like to draw the attention of the Court to Pte Robinson's length of service. He enlisted in early November 1939, one of the first to volunteer. In June 1940 he went to Iceland for five months, from there he came overseas until April 1942 at which time he returned to Canada as a Sgt. Instructor. It will be noted that up to that time his record was clear. On arrival in Canada he found that his wife was pregnant. This had a strong adverse affect upon him mentally and his usefulness to the army consequently suffered. He has been separated from his wife since prior to his returning to this country in July 1943 and at present his divorce proceedings are not complete. The divorce proceedingsare in civilian hands and are to cost Pte. Robinson $150.00. Pte Robinson has not the $150.00 and does not feel justified to ask for same from his widowed mother who is blind and who he has been supporting since his wife's allowance was cut off in July 1942. This man has a high point score and should soon be returning to Canada. His loyalty to his country from the beginning has unfortunately led to the domestic difficulties which I have already mentioned which in turn has caused his disturbed sense of responsibility. I submit to the Court that in view of the desire of the Canadian Government to rehabilitate the soldier so that he may pick up the threads of life where he left off on enlistment, that leniency in this case

would be of definite advantage to our country as well as to the man.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B 87995 Private Bernard Allen ROBINSON, Canadian Infantry Corps, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

FIRST WITNESS: Capt. F.W. Fraser, Canadian Infantry Corps, on the strength of No 3 Canadian Infantry Training Regiment, an Officer of the Canadian Army Overseas, having been duly sworn, states:

For the prosecution

I am Capt. F.W. Fraser and am Adjutant of No 3 Cdn Inf Depot Bn. Pursuant to Overseas R.O. 5352, I produce the following documents which have been read over and shown to the accused, B 87995 Pte. Robinson, B.A., whom I now recognize and identify, and which are attached hereto as Exhibits. EXHIBIT "A" Certified True Extract of 3 C.I.T.R. Part II D.O. No. 130 d/28 May 45 relating to the accused. EXHIBIT "B" Certified True Extract of 3 C.I.T.R. Part II D.O. No. 150 d/22 Jun 45 relating to the accused. EXHIBIT "C" Certificate in Accordance with Section 163 (1) (m) of the Army Act relating to the accused. EXHIBIT "D" Expense Voucher dated 17 Jun 45 relating to the accused.

(F.W. Fraser) Capt.

The accused declines to cross-examine this Witness.

The accused was cautioned as follows: Do you wish to make a statement or give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on Oath.

I certify that the foregoing Summary of Evidence consisting of ONE (1) page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

(K.W. McNab) Lt
Officer detailed to take Summary

IN THE FIELD

19 JUNE 1945

EXH
"A"

Exhibit "A"
Kwm

NO 3 CANADIAN INFANTRY TRAINING REGIMENT
PART II DAILY ORDERS
Issued by
COLONEL W D WHITAKER, DSO, COMMANDER

LAST ORDER NO 129A 26 MAY 45

THIS ORDER NO 130 26 MAY 45

19. ABSENT WITHOUT LEAVE

(a) AWL from hour and date shown

B 87995 PTE ROBINSON B A "CIC" 1300 hrs 21 May 45

"D C Kennedy Lieut"
for(J.B. Stratton) A/Major,
Regimental Adjutant,
No 3 Cdn Inf Trg Regt.

Certified True Extract - 19 Jun 45

Officer having custody of original record.

Exhibit "B"
Kwm

LAST ORDER NO 149 21 JUN 45	NO 3 CANADIAN INFANTRY TRAINING REGIMENT PART II DAILY ORDERS Issued by COLONEL W D WHITAKER, DSO, COMMANDER	THIS ORDER NO 150 22 JUN 45

11. ABSENT WITHOUT LEAVE

(a) AMENDMENT

D O 130 para 19(a) d/28 May 45, insofar as it refers to the u/m is amended to read "AWL from 2359 hrs 19 May 45"

B 87995 PTE ROBINSON B A "CIC"

"A M Kennedy Lt"
for(J.B. Stratton) A/Major
Regimental Adjutant,
No 3 Cdn Inf Trg Regt.

Certified True Extract

A M Kennedy Lt

Officer having custody of original record.

Arrested by Pc 340 Abbott Exhibit "C"
KWM

CERTIFICATE IN ACCORDANCE WITH SECTION
163 (1) (m) OF THE ARMY ACT.

I certify that the person whose description is given below was arrested at 9 HOTLEY Terrace Nottingham at 3.35 p.m. hours on the 16 day of June 1945.

Regimental Particulars of the soldier referred to above:

No. B 87995
Rank Private
Name BERNARD HENRY ROBINSON
Unit R.S.D. Wing Canadian Infantry Corps Aldershot.

Description:

Age 26
Height 5.7
Complexion Pale
Hair W. Brown
Eyes Blue
Marks

NOTTINGHAM
GUILDHALL STATION
DATE 16-6-45
CITY POLICE

Signature of Officer in Charge of Police Station where the above-named person was taken, or placed in custody, on arrest

In civilian clothes absent 19-5-45
W. Brown Sgt 50
(In charge of Guildhall (Nottingham) Police Station.)

Exhibit "D"
KWM

Expense Voucher Re— Ref: KR & O (Can) 539

Reg No B-87995 Rank Pte. Name Robinson, BA. Unit 3 C I R

The following expenses were incurred in apprehending and returning the M.N Soldier to his Unit from London from Nottingham

Date	Particulars	Amount		
17 June 45	Escorts return fare from LONDON To Nottingham		19	0
	Prisoners single fare to LONDON From Nottingham (own ticket)			
	Prisoners fare from to			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		4	0
	Total £	1	3	—

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

R H Harrison Capt

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

1/35 CMBQ 100-55
40/P & S/463 (6762)

ARMY FORM B 290.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B 87995	Pte.	ROBINSON, B.A.	C.I.C. - 3 Cdn Inf Trg Regt

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA Sec 15(1)	1 times	11 times.
For AA Sec 10(4)	times	1 times.
For AA Sec 40	times	1 times.
Kwm	Kwm	Kwm
Kwm	Kwm	Kwm

~~Number of instances of gallantry or distinguished conduct,~~ Kwm

~~There are no entries in the conduct sheets of the accused.~~ Kwm

2. ~~The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ ~~being on the~~ Kwm

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 33 days in military custody, making a total of 33 days, of which ~~NIL~~ 3 days were spent in hospital.

5. The present age of the accused according to his record of service ~~attestation paper~~ is 26

6. The date of his ~~confirmation~~ attestation specified in his record of service ~~attestation paper~~ is 10 Nov 39

7. ~~The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~

8. The accused is entitled to deferred pay or gratuity in respect of 5 yrs 8 Mos. service.

9. ~~The accused is entitled to reckon~~ service for the ~~purpose of determining his pension, etc.~~

10. The accused ~~is in possession of, or entitled to,~~ no military decoration or military award ~~(or~~ is ~~[illegible]~~ entitled to (*state any military decoration or reward*)). CVSM & CLASP

11. ~~(If the accused is a warrant officer.)~~ The accused before he was made a warrant officer last held the regimental ~~rank of~~ Kwm

12. ~~(In the case of an officer.) The accused holds in the army the rank of~~ Kwm ~~and in his regiment (or corps or department) the rank of~~ Kwm

(*25500) Wt.34595/1730 20,000 10/43 A.& E.W.Ltd. Gp.498
(26906) Wt.55924/1499 12,000 2/44 " "

EX B
[illegible]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B 87995 Rank Pte. Name ROBINSON, B.A. of (CIC) - 3 CITR Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
F.G.C.M.	14 Feb 45 - Field	(1).AA Sec 15(1) - (2).AA Sec 40.	120 days Detention	60 days
Civil Court	9 Jan 45	2 charges of theft.	Bound over for 2 yrs in sum of £5-0-0	N/A

Kwm

Kwm

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13 20 day of July 1945

Kwm Capt Lt.

13. ~~The accused has served as a non-commissioned officer continuously, without reduction, to the present date.~~

		Date of Promotion.
In the rank of		
In the rank of	years,	
In the rank of	years	
In the rank of	years,	

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

No. B 87995 Name ROBINSON B A Sqn, Battery, or Company Corps CIC Date of enlistment 10 Nov 39 Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/FAS/150 (5413)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Dundurn	9 Mar 43	L/Cpl.		AA Sec 15(1) AWL from 0630 hrs 8 Mar 43 until 0200 hrs 9 Mar 43 Absent 19 hrs 30 Mins.	L/Cpl. Stocker, EA	Reverts to Tpr. Forfeits 2 days pay A.A.46 2D	9 Mar 43	Capt. Hanley	Forf 1 days pay FR&I 149 (1) (a).
Dundurn	15 Mar 43	Tpr.		AA Sec 15(1) AWL from 0700 hrs 14 Mar 43 to 1530 hrs 14 Mar 43. Absent 8 hrs 30 Mins.	Cpl. Hislop Cpl. Stocker	2 days pay, 3 days CB.	16 Mar 43	Maj. J.M. Munro	Forf 1 days pay FR&I 149(1)(a)
Dundurn	20 Apr 43			AA Sec 15(1) AWL from 0600 hrs 16 Apr 43 until 0600 hrs 20 Apr 43. Absent 4 days.	Cpl. Stocker	Fined 8 days pay AA.46 2D	20 Apr 43	Lt-Col. DC Warnica	Forfeits 4 days pay FR&I 149(1)(a)
Dundurn	27 Apr 43	Tpr.		AA Sec 15(1) AWL from 1700 hrs 24 Apr 43 until 0700 hrs 24 Apr 43. Absent 14 hours.	SQN. S.M. Bradley L/Cpl. Scott	14 days Detn.	27 Apr	Lt-Col. Warnica	Forf 1 days pay FR&I 149 (1)(a)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or if order dispensing with trial	By whom awarded	Remarks
Field	28 Jul 43	Tpr		AA Sec 40 Neglect to the prej etc Neglected to stay on duty. (2) AA Sec15(1) Absent from duty(1 Hr) (3) AA Sec 10(4) Breaking out of Barracks.	Cpl. Stocker	1 days pay 14 days C.B.	29 Jul 43	Major J.M. Munro.	
Field	19 Nov 43	Tpr		AA Sec 15(1) AWL from 2200 hrs 19 Nov 43 until 2300 hrs 21 Nov 43. Absent 2 days 1 hour.	Cpl.Snutch Tpr.Danroth	14 days F.P. 14 days pay FR&I 149(1)(b)	22 Nov 43	Lt-Col. Paterson	Forf 3 days pay FR&I 149(1)(a)
Field	2 Jan 44	Tpr		AA Sec 15(1) AWL from 2245 hrs 2 Jan 44 until 0700 hrs 3 Jan 44 Absent. 7 hrs 15 Mins.	Cpl.Rainbird H.	Admonished	3 Jan 44	Lt-Col.F.A. Volkes	Forf 1 days pay FR&I 149(1)(a)
Field	1 Feb 44	Tpr		AA Sec 15(1) AWL from 2245 hrs 1 Feb 44 until apprehended by M.P. at Nottingham at 2215 hrs 14 Feb 44. Abs. 13 days 23 hrs 30 Mins.	Cpl.Anderson TR	28 days F.P.	16 Feb44	Maj.B.M. Alway	Cost of appr[illegible]on £2-6-3 15§(2) Forf 14 days pay FR&I 149(1)(a)
Field	26 Mar 44.	Tpr		AA Sec 15(1)AWL 1 hour.	Cpl.Lewis AH	5 days C.B.	27 Mar 44	Maj POW Blyth	

No. B 7995 Name ROBINSON B A | Sqn, Battery, or Company | Corps CIC | Date of enlistment 10 Nov 39 | CIC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40[illegible]

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dissensing with trial	By whom awarded	Remarks
Field	27 Sep 44	Tpr		AA Sec 15(1) AWL from 1845 hrs 27 Sep 44 until 2230 hrs 27 Sep 44,(Absentfrom parade).	SSM Lawson, C.H. Sgt Furbert, E.N.	4 days pay.	29 Sep44	Col.A.T. Patterson.	
Field	6 Nov 44	Pte.		AA Sec 15(1) AWL from 0745 hrs 6 Nov 44 until app by civ police in Nottingham at 1015 hrs 15 Nov 44, incurring cost of app.£1-2-7.abs 9 days, 2 hrs, 30 mins.	Documentary	21 days F.P. 21 days FR&I 149(1)(b) Stoppage:£1-2-7	15 Jan 45	Lt-Col. A.M.Young	Forf 10 days pay FR&I 149 (1)(a) Stopp. of pay £1-2-7.
Field	14 Nov 44			Civil Charge (2 charges of theft)	Docy.	Bound over for 2 yrs in sum of £5-0-0.	9 Jan 45	Civil Court.	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17 Jan 45.	Pte.		(1) AA Sec 15(1) AWL from 2230 hrs 17 Jan 45 while undergoing F.F. until surrendering to Civil Police in Kingston at 2215 hrs 6 Feb 45 abs. 19 days 22 hrs 55 Minutes. (2) AA Sec 40. Conduct to the prej when surrendering to Civil Police in Kingston at 2215 hrs 6 Feb 45 was in possession of a document purporting to be a genuine pass, well knowing that it was not genuine.	Documentary Documentary	To undergo Detention for period of 120 days.	14 Feb 45.	F.G.C.M.	Forf 20 days pay FR&I 149(1)(a)

RELEASED FROM THE DETENTION BARRACK H DOWN ON 4 MAY 1945- SENTENCE HAVING EXPIRED. Remission earned under "Rules for Detention Barracks and Military Prisons" 60 days.
COMMANDANTS Initials "HB"

Certified True Copy - 20 July 1949

Officer having custody of original record.

LIST OF WITNESSES

In the case of B 87995 Pte. Robinson, B.A., (CIC) on the strength of No. 3 Cdn Inf Trg Regt.

FOR THE PROSECUTION

1. Capt. F.W. Fraser — No 3 Cdn Inf Trg Regt

FOR THE DEFENCE

NIL

LIST OF EXHIBITS

In the case of B 87995 Pte. Robinson, B.A., (CIC) on the strength of No. 3 Cdn Inf Trg Regt.

EXHIBIT "A" - Certified True Extract of 3 CITR Part II D.O. No. 130 d/28 May 45.

EXHIBIT "B" - Certified True Extract of 3 CITR Part II D.O. No. 150 d/22 Jun 45.

EXHIBIT "C" - Certificate in Accordance with section 163 (1) (m) of the Army Act.

EXHIBIT "D" - Expense Voucher dated 17 Jun 45.

19 Jun 45.

This is to acknowledge that I have received, free of charge, the following papers in connection with my forthcoming trial by F.G.C.M.

1 Copy of Charge Sheet
1 Copy of Summary of Evidence
1 List of Witnesses
1 List of Exhibits.

B. Robinson

3 CANADIAN INFANTRY TRAINING REGIMENT (C.A.O) 3D/11

I, No. B 87995 (Rank) Pte. ROBINSON, B.A. (Name) Wish to have an Officer defend me at my forthcoming trial by Court Martial.

I desire the services of Army Affairs Detailed if he is available.

(Sgd.) B. Robinson

LIST OF WITNESSES

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FOR THE PROSECUTION

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B7. Robinson

(B 87995 Pte. Robinson, B.A).

3 CANADIAN INFANTRY TRAINING REGIMENT (C.A.O) 3D/11

I, No. B 87995 Pte. ROBINSON, B.A. Wish to have
(Rank) (Name)

an Officer defend me at my forthcoming trial by Court Martial.

I desire the services of Any Officer detailed
if he is available.

(Sgd.) B.A. Robinson

MMM-73

SGT ROBINSON C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G/6021 Sgt Clifford ROBINSON, 3 Cdn A-Tk Regt, RCA

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	GUILTY	
2nd	GUILTY	GUILTY	
3rd	Not GUILTY	GUILTY	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21/4 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: Reduced to the Ranks and to undergo detention for one year and to be put under stoppages of pay until he has made good Sixty Pounds sterling, shelling to make good monies ofstand by [illegible] and One Pound Ten shillings and one penny, and 1 approximately and 1 - R forty dollars and sixty cnp cents, and 1 bar difference

(Sgd) [illegible] Judge-Advocate, if any. 20 Mar 44 Date awarded. (Sgd) J D Baird Maj. RCA President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding & sentence but remit four months detention

I direct that the accused be not committed to ~~[illegible]~~ for detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) R.O.G. Morton

Date 21 March 1944 of Commanding 3 Cdn Div Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
G6021 Sgt Robinson, C.	3 Apr 44	[signature] Capt. for OIC 3rd. ANTI-TANK REGT. R.C.A. (A.F.)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 27 MAY 1944 CMHQ

RECORDED AT CMHQ IN AB 160-2 mmm 3 OPAG (Incl. WAAF) CMP & RHQ 20684

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig R O G Morton, ~~of~~ Comd 3 Cdn Div dated Mar 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G/6021	- Sgt	Clifford	ROBINSON	3 Cdn A-Tk Regt, RCA

PROCEEDINGS REVIEWED Date 5 JAN 1945 DJA Cdn Sec GHQ 2 Echn 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 20 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 6/144

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ DD
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans No

The Interpreter is sworn.(1) Do you object to S/Sgt. Phillips. FH as shorthand writer? Ans No
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J D Baird	13 Cdn Fd Regt, RCA
Member	Capt	T Bond	19 Cdn Fd Regt, RCA
Member	Lieut	A C Gilmour	4 Cdn LAA Regt, RCA
Judge-Advocate	Captain	A.C. Hall	HQ 3 Cdn Inf. Div.
Prosecutor	Lieutenant	J.S. Boeckh	3 Cdn A/Tk Regt. RCH
Defending Offr	Lieutenant	L.N. Ray	3 Cdn A/Tk Regt. RCH

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 2a, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv. Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DJ p 3.)

A8. The accused G/6021 Sgt Clifford ROBINSON before arraignment make(s) (no) ~~and~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 3b, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form CDBYE 106

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the altern. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdr for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to less etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO. (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s).~~ Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex 1., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such paras only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO. (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).~~ (2) ~~The Court is closed, and considers the submission.~~ (3) ~~The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that proceedings the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~ (4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)*

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans make a Statement. Do you intend to call witnesses on your behalf ?
Ans YES. Are they witnesses as to character only ? Ans YES.
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President ~~announces the finding(s) of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans YES.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 1 and Ex 2 respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES. (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 11(9)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, RP 48. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused -- G/6021 Sgt Clifford Robinson, 105th Battery, 3rd Canadian Anti-Tank Regiment, Royal Canadian Artillery, a non-commissioned officer of the Canadian Army placed on active service -- is charged with:

First Charge
Army Act
Sec 41

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY FORGERY

in that he

in the field between 25 and 29 Oct 43, with intent to defraud, forged the name of "F H Ruddock" to a cheque No GD 626890 in the amount of Seven Pounds Seventeen Shillings (£7/17/0) dated 25 Oct 43, drawn on Lloyd's Bank, Ltd, City Office, by the Bank of Montreal, and thereby obtained the said sum of Seven Pounds Seventeen Shillings (£7/17/0).

Second Charge
Army Act
Sec 15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field on 19 Feb 44 absented himself without leave from 2359 hrs 19 Feb 44 until apprehended by civil authority at Worthing at 1445 hrs 28 Feb 44, Costs of apprehension and return to his unit being £1/10/1. (Absent eight days 14 hrs 46 min.)

CHARGE SHEET
(continued)

Third Charge
Army Act
Sec 24(2)

LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING AND REGIMENTAL NECESSARIES

in that he

in the field on 5 Mar 44 was deficient the following:-

Article	Value
2 pr boots, ankle	$ 10.92
2 pr drawers, cellular	.86
1 pr gloves, knitted	.47
1 jersey pullover	1.79
2 shirts, angola	4.06
1 pr shoes, canvas	.65
1 pr braces	.28
1 brush, clothes	.48
1 brush, shoe polishing	.28
1 dressing, first field	.24
1 bottle, water	.82
1 carrier, bottle, water	.52
1 set tins, mess, rectangular	.35
1 packet eye shields, anti-gas	.45
1 respirator, anti-gas, light	4.58
1 jerkin, leather	5.77
1 pr socks, woollen	.37
T O T A L	$ 32.89
75 per cent vocabulary value	$ 24.66

J. P. Phin

In the field
10 March 44

(J.P. Phin)Lt.-Colonel
C.O. 3rd Cdn Anti-Tank Regiment

Approved NR(Can) 540
Hestanson Capt
A/AA for 3rd Cdn Inf Div.
13 Mar 44.

To be tried by Field General Court Martial.

In the field
16 Mar 44

R. O. G. Morton Brigadier
A/Comd 3 Cdn Inf Div.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA5)
40/P&S/1697 (2803)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
G-6021	Sgt		Clifford	ROBINSON	3 A Tk Regt RCA

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~[illegible]~~ committed ~~the~~ offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 Mar 44 endorsed by me, ~~[illegible]~~ "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[illegible]~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.D. BAIRD	13 Fd Regt RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	T. BOND	19 Fd Regt RCA
Lieut	A.C. GILMOUR	4 LAA Regt RCA

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	T.C. WHITE	12 Fd Regt RCA

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	A.C. HALL	HQ 3 Cdn Inf Div

On Active Service in the Fd

in England (Country.)

R.O.G. Morton
(Signed personally. RP 105 (n 2.)

(R.O.G. Morton) Brigadier,
Commanding A/C ond 3 Cdn Inf Div.
Convening Officer.

Date 16 Mar 44

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE
(K.R.)(Can) Para 557

I certify that I have this morning examined:

NUMBER: C 6021 RANK: Sgt. NAME: Robinson, C.

and in my opinion he is fit to undergo Trial by Court Martial.

Date: 20 March 1944

[illegible] Capt.,
RMO 3 Cdn Anti-Tank Regiment.

Opening Address by the Prosecutor:

As the first charge is one of particularly serious nature and as charges of this sort demand a lengthy list of witnesses and exhibits, I would like first to give a rough outline of the prosecution's case.

First we have Sgt F H Ruddock, 105 Bty, the complainant in the case. Sometime early last fall he wired home for money in anticipation of going on leave. He asked for approx $35.00. Toward the end of Oct, when he had every reason to expect that the money would arrive, the main part of the Bty was at Lydd for firing practice. When he returned he found that the money had not arrived. He was back in his lines for a few days and then went on 14 days leave. He returned approx 18 Nov 43. Still there was no sign of the cheque. He wrote to the branch of the Bank of Montreal in London to see if they had any record of it. The next thing he heard was from his unit PMR who had a cheque that had been cashed on 29 Oct 43. As a result Sgt Ruddock saw that the endorsement on the back of the cheque looked familiar to him so he caused certain inquiries to be made. The Pro were called in and as a result of their investigation a number of specimens of handwriting were collected, which we will produce.

To start with there is the paybook of the accused.

There is the cheque with the endorsement on the back which Sgt Ruddock says is not his handwriting.

There is an exchange form which the cashier of the bank had the presenter complete in his presence.

There is a sample of Sgt Ruddock's handwriting to which he will swear.

There is the sample which Sgt Giles took of Sgt Robinson's writing and an exchange form which he also had Sgt Robinson fill out. This exchange form is also completed in the name of "F H Ruddock" and both give the address as "Sandcote Road, Parkstone, 12 Cdn Fd Regt, RCA".

All these samples were sent to the Metropolitan Police Laboratory in London and Mr C G Daubney, the document examiner, made a report on them. As a result of that report the accused was charged as set forth in the charge sheet. I will not at this point give the conclusions to which Mr Daubney came. I will leave that up to him. But they definitely tie the accused very closely to the matter of this cheque.

The third charge is a more common one of loss by neglect. When the accused returned from being AWL in Feb the normal check was made by the BQMS and he was found to be short the list mentioned in the charge. As this list is very lengthy the prosecution takes it there must have been some very special reason why the accused should lose all this kit.

That briefly is the case for the prosecution.

1st Witness for the Prosecution

G/6008 Sgt F H Ruddock, 3 Cdn A-Tk Regt, RCA, having been duly sworn gives evidence as follows:

Q Did you last year sometime send home for money?

A Yes, sir.

Q Would you tell the court briefly in your own words just what happened?

A Last year I sent home for a cheque. It should have arrived the last part of Oct. Shortly after that I went with the Bty to Lydd for firing practice. I was gone a week. I came back and on 5 Nov 43 went on a 16-day leave. After I came back my cheque had still not arrived. I was worried about it and I had the orderly room write in about it to see whether the bank had seen it or not. Three or four days later the unit PMR sent for me. He had a cheque for me that was made out to me on Lloyd's Bank. It was signed in my name but not in my handwriting.

Q Is that the cheque the PMR showed you?

A Yes, sir.

Lloyd's Bank cheque No CD/626890 made out in the name of "G/6008 Sgt Furber H Ruddock" in the amount of £7/17/0 is placed in evidence as Exhibit "A".

Q Go on.

A When I saw the handwriting it looked familiar to me. It looked like Sgt Robinson's. I had seen his handwriting because he had written some addresses for me previously.

Q You say he had written some addresses?

A Yes, sir.

Q Is that what you refer to?

A Yes, sir.

Paper bearing addresses is placed in evidence as Exhibit "B".

Q Did you check Sgt Robinson's writing on these?

A No, sir, but I will point out the ones he wrote.

Witness marks addresses, the first with an "X", the second with a square, the third with a circle, the fourth with a circle with an "X" superimposed, the fifth with a square with an "X" superimposed.

Q Go on.

A I took these to the unit PMR. That is all I can say, sir.

Cross-examination:

Q What is there about the endorsement on Exhibit "A" that is familiar?

A Just the handwriting in general.

Q How many Sgts are there in the Bty?

A About 25, sir.

Q Can you say that you would recognize the handwriting of any one of them?

A Some of them, sir.

Questioned by the Judge Advocate:

Q Is that your signature on the back of the cheque?

A No, sir.

Q When was the first time you saw this cheque?

A When the PMR called me in, sir.

Q Did you ever give anyone authority to write your name for you?

A No, sir.

Re-examination:

Q How long have you known Sgt Robinson?

A Four years in the army and three years before that.

2nd Witness for the Prosecution

Victor Herbert Edward Robinson, cashier of Lloyd's Bank, Charminster Road, Bournemouth, having been duly sworn gives evidence as follows:

Q Do you recognize Exhibit "A"?

A Yes, I recognize it.

Q When did you see it before?

A On a certain day when it was brought in to me and shown to me. That was on the day it was cashed by me.

Q The endorsement on the back of it -- did you see that endorsement written?

A Yes, I did.

Q Did you have any other transaction in the cashing of that cheque?

A Yes, I took the usual exchange form.

Q Is that the exchange form that you used?

A Yes.

Exchange form made out in the name of "F H Ruddock, Sandcote Road, Parkstone, 12 Fd Regt, RCA" and bearing a date stamp "29 Oct 1945" is placed in evidence as Exhibit "C".

Q Did the presenter of the cheque make out the exchange form in your presence?

A He completed it in my presence, yes.

Q Did he have any hesitation about the manner in which he completed it?

A No, no hesitation whatsoever.

Q I see on this a date stamp, 29 Oct 1943. Did you place that on there?

A Yes.

Cross-examination:

Q Would you mind giving me the address of the bank in which you work?

A Lloyd's Bank, Charminster Road, Bournemouth.

Q You are employed there now?

A That is my permanent station bank. But I also attend at the Lower Charminster Sub Branch.

Q This Exhibit "A" you recognize as being the cheque in question -- a branch bank would handle a terrific amount of that business in a month or so?

A Yes, sir.

Q And yet you say that you recognize that item there?

A Yes, because that is the only one that would check against the entry in my book.

Q You would put your stamp on a good many cheques in a month?

A Yes, but we would not have a great number of cheques of that same amount on the same day.

Q How do you recognize it?

A First because it is stamped by my bank, and I remember the amount that was cleared by my bank.

Q The item is recognized then by the amount and by the bank stamp and the endorsement does not lead to the recognition at all?

A No, sir.

Questioned by the Judge Advocate:

Q Do you recall the particular instance of this cheque being presented?

A Yes, but not to be so very definite as to swear to it.

Q Would you recognize the person who presented it if you saw him again?

A I fail to do so.

Q Then the long and short of it is merely that you did cash this cheque for someone?

A Exactly.

Q Is it right that you have a certain standard practice and you conform to that practice essentially, so that when you say this was cashed in such a way you are basing your statement not on this particular case but on a general practice?

C66

A Yes.

Q In other words, you have a drill?

A Yes. What I did there was a bit of an irregular action and according to the bank rules I should not have done it.

Q In such cases do you ask for any identity?

A Yes. We invariably ask for the paybook.

Q Do you think that in this case you asked for a paybook?

A I marked the exchange slip "Identified". I saw some document. I could not tell you what it was at the present moment.

Q You do not recall the particular means of identification?

A No, I cannot recall.

3rd Witness for the Prosecution

H/32052 Sgt T S Giles, 4 Cdn Pro Coy, stationed in Bournemouth, having been duly sworn gives evidence as follows:

Q Toward the end of Dec 43 did you make an investigation at 105 A-Tk Bty in regard to a cheque?

A Yes, sir.

Q Would you tell the court what you did?

A Around 28 Dec 43 I was instr to investigate a cheque alleged to have been forged. It was cashed at Lloyd's Bank, Charminster Road, Bournemouth. I made inquiries there and then went to 105 A-Tk Bty where I saw some members of the unit and obtained specimen copies of their handwriting. Amongst these was that of Sgt Robinson.

Q Do you recognize the accused?

A Yes, sir.

Q Are those the writings you got from Sgt Robinson at that time?

A Yes, sir.

Six copies of the signature "P H Ruddock" written by the accused are placed in evidence as Exhibit "D".

Q Did you actually see him write them?

A Yes, sir. I saw him write them.

Q What else did you see?

A I got a blank exchange form from Lloyd's Bank which Sgt Robinson filled in. He filled it in the same way as when the cheque was cashed.

Q Is that the slip?

A Yes, sir.

Q How do you recognize it?

A My initials are on the back.

Exchange form completed by the accused at the request of Sgt T S Giles is placed in evidence as Exhibit "E".

Q What else did you do?

A I asked for Sgt Robinson's paybook. He produced it. I asked him if the name in it was in his writing. He said "Yes". Also the writing on the following two pages.

Q In his own writing?

A Yes.

Q Did he tell you that?

A When I asked about the signature he said that page was in his writing.

Q Is that the paybook you obtained from him at that time, which he said was his?

A Yes, that is the paybook, sir.

Paybook is placed in evidence as Exhibit "F".

Q Which pages of this did he tell you were in his writing?

A Three, four and five.

Q What did you afterward do with these documents?

A Fwded them to my Coy HQ and asked that they be sent to the SIS in London so that an opinion could be passed on them by a handwriting expert.

Cross-examination:

Q You mention that you started this investigation with regard to infm and instrs you got regarding a forged cheque?

A Yes, sir, alleged to have been forged.

Q You say Sgt Robinson asked you to take his paybook as a sample of his handwriting?

A Yes, sir.

Q Did Sgt Robinson at the time offer to give you his paybook as evidence?

A He offered it to me, sir.

Questioned by the court:

Q Did Sgt Robinson at that time make a statement to you?

A No. He said he had a reason but did not state it, sir.

Q It was a voluntary gesture on his part to give you

the book as a sample of his handwriting?

A Yes, sir.

4th Witness for the Prosecution

Charles Gaspard Daubney, MSc, FIC, Document Examiner, Metropolitan Police Laboratory, London, having been duly sworn gives evidence as follows:

Q Have you had much experience in regard to handwriting?

A Yes, I have been doing that work for about eight years and have had wide experience.

Q Are you often called in on various cases to give evidence?

A Yes, I have been to quite a large number of courts martial and ordinary civil courts to give evidence.

Q Did you early in Jan receive a number of documents from the APM First Cdn Army?

A I did.

Q Would you recognize them again?

A Yes.

Q Did you receive this document, Exhibit "A"?

A Yes.

Q And Exhibit "B"?

A Yes.

Q And Exhibit "C"?

A Yes.

Q And Exhibit "D"?

A Yes, right.

Q And Exhibit "E"?

A Yes.

Q And Exhibit "F"?

A Yes. Those are the documents I received on that particular occasion.

Q In connection with these documents were you given any infm or asked to make any inquiry?

A I was asked to examine the signature on the reverse side of the cheque and on the exchange form and to compare it with the specimen of known handwriting which I was given at the same time.

Q Would you tell the court what the results of your investigation were?

A I examined the questioned and the known writings on the various exhibits. Turning first to the questioned writing on the cheque and on the ex-

186

change form I found that the writing was characterized by a neat style, the upright stance, the heavy shading on the down strokes and that the writing as a whole had been done with confidence and speed. There was no evidence of hesitation nor of any unusual letter forms. This led me to the opinion that there had been no attempt to disguise the writing nor any attempt at copy forgery. The writing had every appearance of being in the normal hand of the writer. I was satisfied that none of this questioned writing had been written by Ruddock. On examining Robinson's writing his specimens fell into two groups -- one the genuine or collected writing which had been written in the ordinary course of his activities; and second the request writing which had been secured in connection with the investigation. The genuine writing appears on pages 3, 4 and 5 of his paybook and in the various names and addresses on the scrap of paper. The request writing comprised the various signatures and the exchange form which had been written out on request. It was quite obvious that the two sets of writings were not in agreement. The request writing is in a much larger flourishing hand with more shading and a fwd slope whereas the genuine writing showed certain variations which are characteristic of normal handwriting. It was in a round hand with heavy shading, in a neat style and containing characteristic forms of letters. I formed the opinion that these collected genuine specimens of writing would represent Robinson's normal hand whereas the request writing is in an altered style and suggests that he has made an attempt to disguise his handwriting. On comparing the genuine with the request writing there is revealed a very close agreement. I would like to submit in evidence this book of photographs. In it you will find two charts, one of which sets out the request writing surrounded by letters and words appearing in the genuine writing. In the other is the genuine writing set out against the request writing and the known writing of Ruddock.

Book of specimens of handwriting is placed in evidence as Exhibit "G".

The comparison of the genuine writing with the requested reveals a close agreement between the two and this applies to the stance, shading and shape of letters and is particularly noticeable in the case of the capital "P" "R" "S" & "F" and the small "g". From these various findings I reached the following conclusions:

(a) That the writing on the cheque and exchange form are in the normal hand of a writer and that he has not attempted to disguise his hand nor copy a forgery.

(b) That the request writing is not the work of Ruddock.

(c) That the request writing by Robinson affords evidence of an attempt to disguise his handwriting.

(d) That the writing on the cheque and exchange form are in the normal handwriting of Robinson.

Cross-examination:

Q Would you tell me if the handwriting on pages 3, 4 and 5 of the paybook offered as an exhibit is a good sample of the handwriting of the accused?

A I was told that that writing was in the handwriting of Robinson and examination of it shows that it has been carefully but normally written without any apparent difficulty or hesitation and I had no reason to regard it as other than a satisfactory specimen of his handwriting.

Q You say that the conclusions you arrived at are based on your opinion?

A Yes.

Q You further state that there has been no attempt to copy forgery?

A No, there was not.

Questioned by the Judge Advocate:

Q In the machinery or mechanics of your analysis do you use the method of the microscope?

A In examining this writing it has been a matter of comparing the general style, the fmn of individual letters, the quality of the writing generally and of individual strokes and generally assessing the value of the findings in the light of my experience. The whole process is not a question of mathematics or exact measurements.

Q What I was referring to is this: I have had in the past experience of handwriting and forgeries and I know that some experts adopt the idea that when a person tries to disguise his handwriting that there are certain sub-conscious strokes in the handwriting which cannot be disguised. Is that right?

A Yes, that is true.

Q You took all those things into consideration?

A Yes.

5th Witness for the Prosecution

G/42503 BQMS M G Gorlick, 3 Cdn A-Tk Regt, RCA, having been duly sworn gives evidence as follows:

Q Will you cast your mind back to the latter part of Oct. When the Bty was at Lydd Camp were you on the rear party?

A Yes, sir.

Q Was Sgt Robinson on the rear party?

A Yes, sir.

Q Do you recognize him?

A Yes, sir.

Q How many were on this rear party?

A Twenty all told, sir.

Q A few weeks ago, as BQMS, did you make a kit inspection of Sgt Robinson's kit when he returned from AWL?

A Yes, on 5 Mar 44 in his quarters.

Q Did you find him deficient?

A Yes, sir.

Q Have you a list that you can produce?

A Yes, sir.

List of kit deficiencies is placed in evidence as Exhibit "H".

Q Did you properly check the kit and find him deficient those articles?

A Yes, sir.

Q Tell the court how you did that.

A I checked with his new MBM 1, Part III, which was a duplicate of his old paybook which he turned into Stores.

Q Where did you obtain the value of those articles?

A From the 1943 price list, sir.

Cross-examination:

Q If a Sgt or senior NCO of the Bty is deficient small articles of kit do you make those up for him? Has that been the practice?

A If he has a good reason why they were lost we try to make up the kit if we can.

Q Your answer is "Yes"?

A Not always, no.

Q Had there been any deficiencies in the kit of Sgt Robinson reported to you prior to the date in question?

A Not to my knowledge, sir.

Q If there had been a deficiency in the case of a NCO it would have been reported to you?

A Yes, sir.

Q But there was not?

A No, sir.

Q Who was with you when you made the inspection on 5 Mar 44?

A I was alone with the two guards.

Q Who were they?

A The escort of Sgt Robinson.

Q Was his room locked at any time?

A I don't know anything about the room, sir.

Questioned by the court:

Q If a Sgt found himself short of certain items of kit, what would be the normal procedure to get it made up or otherwise?

A He would tell his tp storeman and when we got our bulk demand for the month we would try to fix him up.

Q When you made this kit inspection did you tell him he was deficient?

A Yes, sir. We both agreed.

Q Did he explain any of the deficiencies?

A I asked Sgt Robinson at the time if he had any idea where any of the stuff might be. He said "No" and that there was not much sense of having a Bty kit inspection as most of the stuff was not marked and we would not find it.

D5/1

The accused makes a statement not on oath:

It has always been the policy in our unit for personnel proceeding on leave to turn in their kit to the tp stores. It then became the Tp Sgt's responsibility to look after it. I being the Tp Sgt, when I went on leave I locked my room. I was the only inhabitant of it. I locked the room and gave the key to the house orderly. I deem that through the precautions I took, the kit was not lost through negligence.

Prosecutor sums up:

The court has heard the various witnesses for the prosecution and I think they will have decided that on the evidence adduced that there can be no reasonable doubt as to the proof of the charges against the accused.

On the first charge there is the evidence of Sgt Ruddock that he was expecting a cheque of some $35.00. We have his evidence that he was away from camp for two intervals around about the time he was expecting the money. We have his evidence that he never received any such cheque.

We have the evidence of BQMS Gorlick that the accused Sgt Robinson was present on a rear party at the time when the cheque might conceivably have arrived.

The remainder of the prosecution case on this charge depends entirely on the business of handwriting. We have the evidence of Mr Robinson of Lloyd's Bank, Charminster Road, Bournemouth, at which bank the cheque was presented and cashed. He has pointed out that he saw the cheque and that he saw the endorsement made on the cheque. He has stated that it is their practice to have a stranger make out an exchange form and in this case he saw it completed. We have the fact that on the exchange form the address was given as "Sandcote Road, 12 Fd Regt, RCA", which is most misleading. This is most peculiar. This would strongly bear out the words in the charge "with intent to defraud".

It has been sufficiently proven that the various specimens of handwriting were made by the persons concerned, that they were collected and given to Mr Daubney for examination. Mr Daubney is a most competent witness and he is the document examiner at the Metropolitan Police Laboratory in London. He has stated that he has had considerable experience for the past eight years and has given evidence many times in courts martial and in civilian courts.

I would like to draw the attn of the court to MML, Chap VI, Secs 64 and 67, regarding the opinion of a witness. Normally the opinion of a witness is not worth anything but the opinion of an expert is. (Reads)

"64 The chief exception to this rule relates to the evidence of experts. The opinion of an expert, that is to say a person specially skilled in any science or art, is admissible as evidence on any point within the range of his special knowledge."

"67 With respect to handwriting, it is specially provided by statute that comparison of a disputed handwriting with any writing, proved to the satisfaction of the court to be genuine, is permitted to be made by witnesses, and such writings and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute. The comparison may be made either by a person acquainted with the handwriting, or by an expert in handwriting, or by the court itself. A witness may be required to read writing or to write in the presence of the court. But it must be borne in mind that writing made for the special purpose of comparison is not unlikely to be disguised. The im-

portance of an expert's evidence in such cases lies not so much in the opinion which he expresses as in the fact that he draws the attn of the court to similarities and dissimilarities which they might not notice without his assistance, but the value of which (when pointed out) they can fully appraise for themselves. Where a question of forgery is to be decided by comparison of handwritings only, the assistance of an expert is most desirable."

I think the court is satisfied that Mr Daubney is such an expert and therefore they must att great weight to his evidence. He has also told the court how he reached his conclusions. He has concluded most definitely, I think, the following point:

(a) That the questioned handwriting on the cheque and on the exchange form are in the normal hand of Sgt Robinson.

(b) That they are not in the handwriting of Sgt Ruddock.

Also in producing the request writing of Sgt Robinson he shows that the accused has attempted to disguise his handwriting. He says those things quite flatly with no doubt whatsoever. If the court accept Mr Daubney's evidence and his opinion then it must surely follow that the accused was the person who forged the endorsement on the back of the cheque, that he was the one who completed the exchange form in the presence of Mr Robinson in the bank and that he was the one who cashed the cheque. Furthermore when Sgt Robinson was asked for samples of his handwriting he tried to falsify his hand.

Upon the last charge we have the evidence of BQMS Gorlick. In the normal course of events it is inconceivable that a senior NCO would lose that much kit. The accused says that he left it in a locked room. He has not stated that his kit and these articles in question were in that room and he does not offer an explanation of what happened to them. As this last charge is not a particularly serious one in comparison with the others, I might say that the main interest in that is to have some decision by the court as to how they will make up for this kit deficiency. I think payment in the normal method of repayment would be a small thing compared with the punishment for the other offences.

Defence sums up:

The point I want to make clear here is that the BQMS has stated there was no deficiency of kit prior to the granting of the leave pass on 16 Feb; and that if there had been deficiencies they would have been reported to him. Therefore there were no deficiencies at the time of the going away and at that time the accused took due precautions to safeguard his kit.

On the first charge we have successfully discredited the argument that the bank cashier recognized the cheque. He simply recognized an amount and the imprint of a date stamp.

Then we have the evidence of Sgt Ruddock who says that he saw the writing on the back of that cheque and recognized it as being that of the accused. Now he lives in a mess with a number of other senior NCO's and admits he would not be prepared to recognize the handwriting of any one of them. Is it not natural to conclude that he would not be prepared to recognize the handwriting of the accused?

The evidence of Mr Daubney is based on personal opinion.

Lastly we have the evidence of the BQMS who admits that there had been no shortages in Sgt Robinson's kit reported to him before he discovered them. The accused says that he was the Tp Sgt and that he took the normal precautions by leaving his kit in a locked room and leaving the key with an orderly.

Judge Advocate sums up:

Before the court closes I must advise the court what the law is with ref to forgery and also with ref to the second and third charges. I will read from MML, Chap VII, Sec 68:

"Forgery is the making of a false document in order that it may be used as genuine. A document is false if it or any material part of it purports to be made by or on behalf of a person who did not make it or authorize its making and in particular if any material alteration by addition, insertion or obliteration has been made on it, or if the whole or some material part of it purports to have been made by or on behalf of a fictitious or deceased person. A document is also considered to be false, though made by a person in his own name, if it is so made with the intention that it should pass as being made by someone else. These definitions must not be taken to be exhaustive.

"For forgery to constitute an offence, there must be an intent to defraud or deceive; in the case of some documents an intent to defraud is essential; in the case of others an intent either to defraud or to deceive must be charged and proved ....."

Now before you could find the accused guilty of the first charge you must be satisfied beyond a reasonable doubt that the accused acted dishonestly with an intent to defraud. That is when a person makes a misrepresentation with intent to obtain something thereby.

Now regarding the evidence on handwriting the law is well content that that evidence is admissible. The court, however, does not have to accept it. You have seen Mr Daubney, the handwriting expert, here in court. You have noted his demeanor. You may accept his evidence in its entirety or you may refuse it entirely.

Of course if there is any doubt in your minds you must give the benefit of it to the accused.

302

Exhibit 1. Exhibit A

TRANSFER FROM CANADIAN AUTHORISED ACCOUNT

25 OCT 1943

19

London.

No. 626890

Lloyds Bank Limited

City Office, 72, Lombard Street, E.C.3.

Pay G6008 SGT. FURBER H. PUDBOOK or Order

SEVEN POUNDS 17/-

7.17.-.

NOT NEGOTIABLE

LLOYDS BANK
CHARMINSTER ROAD
BOURNEMOUTH.

For BANK OF MONTREAL

Manager

Accountant

T

302

Exhibit A

FOR TRANSFER FROM CANADIAN CURRENCY CLOSED ACCOUNT

No B626890 London. 25 OCT 1945 19

Lloyds Bank Limited

City Office, 72, Lombard Street, E.C.3.

LLOYDS BANK LIMITED CHARMINSTER BOURNEMOUTH

Pay G6008 SGT. FURBER H. RUDDOCK or Order

SEVEN POUNDS 17/-

£ 7.17.-.

NOT NEGOTIABLE

For BANK OF MONTREAL

Manager

Accountant

Exhibit I

3rd CANADIAN ANTI/TANK REGT, R.C.A. Page 1.

Summary of Evidence in the case of G.6021 Sgt. C. Robinson, of the 105th Bty, 3 Cdn A Tk Regt.

The C.O. (Lt.-Col. J.P. Phin) of the 3 Cdn A Tk Regt directs that all evidence shall be taken under oath.

First Witness for the Prosecution: G.6008 Sgt. F.H. Ruddock, 105 Bty, 3 Cdn A Tk Regt, having been duly sworn, states:

I am G.6008 Sgt. F.H. Ruddock of the 105th Bty, 3 Cdn A Tk Regt. Last year I sent home for a cheque for $35.00, and it should have arrived in England no later than Nov. 1st 1943. During the latter part of October, I was away with the greater part of the Battery at Lydd Camp. I went on 10 days leave on Nov. 5th and returned on Nov. 15th, and found that the cheque had not yet arrived. A few nights later, I was talking to Sgt. Robinson, whom I recognize as the accused, in a public house. We had a few drinks together, and he asked me if I had received my cheque. When I told him that I hadn't he mentioned to me that Sgt. Powell, while the Bty. was at Lydd, had borrowed his paybook to get a room in a hotel. He suggested to me that perhaps Sgt. Powell had borrowed his paybook in order to copy his handwriting to put on my cheque. This made me suspicious, so I had the Orderly Room clerk write to the Bank of Montreal in London to see if it had been cashed. A few days later the unit paymaster called me into his office and he showed me a cheque drawn on Lloyds Bank payable to me - numbered CD 6D6890. I identify this same cheque as the one marked exhibit one. The endorsement "F.H. Ruddock" is not in my handwriting. The handwriting looked familiar to me so I brought back a paper with some addresses on it, some of which Sgt. Robinson had written out for me a few months previously. I gave this to the paymaster, as I noticed that this handwriting seemed similar to the endorsement on the back of the cheque. I recognized this list of addresses as those marked exhibit # 6, and being the ones I had given to the paymaster. F.H. Ruddock

The accused declines to cross-examine the witness. R.P. 4 (e) has been complied with.

Second Witness for the Prosecution: Victor Herbert Edward Robinson, Lloyds Bank, Charminster Road Branch, Bournemouth, having been duly sworn, states:

I am Victor Herbert Edward Robinson, cashier of Lloyds Bank, Charminster Branch, Bournemouth. I identify cheque #CD6D6890 in the amount of £7 - 19 - 0 drawn upon Lloyds Bank, City Office by the Bank of Montreal and marked exhibit one as being a cheque cashed by me and crossed by this Branch on the 30th of October 1943, the payee being Sgt. F.H. Ruddock, and the presenter purporting to be the within mentioned payee. I also identify the Bank Exchange Form, marked exhibit 8 as the form handed to the person for whom I cashed this cheque which form was signed by that person in my presence. The smaller date stamp of the 29th Oct. 1943 on the form was placed thereon by me on the date the cheque was cashed.

V.H.E. Robinson

The accused declines to cross-examine the witness. R.P. 4(e) has been complied with.

Summary of Evidence in the case of G.6021 Sgt. C. Robinson, of the 105th Bty, 2 Cdn A Tk Regt.

Third Witness for the Prosecution: R.320582 Sgt. T.S. Giles, No. 4 Cdn Provost Coy, having been duly sworn, states:

I am the NCO in charge of the section of # 4 Cdn Provost Coy stationed in Bournemouth. On the 28th of December 1945, on instructions received, I interviewed several members of the 105th Cdn A Tk Bty which included G.6021 Sgt. C. Robinson, whom I recognize as the accused, regarding cheque #CD0236890 payable to Sgt. F.H. Ruddock. I asked several men for request specimens of their handwriting. I also obtained several specimens of handwriting of Sgt. Robinson which I identify as those marked exhibit # 3. I saw him write them and I initialed them on the back. On the request of Sgt. Robinson I also took his M.B.K. 1 as he said that pages 3, 4 and 5 were in his handwriting. I also had him fill in a blank exchange form of Lloyds Bank Ltd. which I identify as that marked exhibit # 7, and which I initialled on the back, with wording to correspond with exchange form received from Lloyds Bank made out in the name of Sgt. F.H. Ruddock which I recognize as that marked exhibit #8. I forwarded all these handwriting specimens to my company H.Q. with a request that they be sent to the Special Investigation Section in London.

T. S. Giles

The accused declines to cross-examine the witness. R.P. 4 (e) has been complied with.

Summary of Evidence in the case of G.6021 Sgt. C. Robinson, 105th Bty, 3 Cdn A Tk Regt.

Fourth Witness for the Prosecution: G.G. Dunbney, M.Sc., F.I.C., Document Examiner, The Metropolitan Police Laboratory, Hendon, The Hyde, N.W. 9.

The following is a copy of this witness's evidence. His written statement, purporting to be signed by him, has been read to the accused. Having regard to the exigencies of the service, the attendance of this witness cannot, in my opinion, be readily procured. The accused does not demand the attendance of this witness for cross-examination.

"On the 8th January 1944 I received from Major Kidston, A.P.M., Canadian Army, England:

Cheque CD636890 payee Sergt. Ruddock	(1)
Paybook of Robinson	(2)
Six request specimens of writing by Robinson	(3)
Writing by Ruddock	(4)
Writing by Robinson	(5)
Exchange form written by Robinson	(7)
Questioned Exchange form	(8)

The questioned handwriting of the endorsement "F.H.Ruddock" on the cheque CD636890 and of the name and address on the Exchange form dated 29 Oct 1943 have been examined and compared with the request and genuine writings of Ruddock and Robinson.

The questioned writings are characterised by the neat style and upright stance, and the heavy shading of the down strokes and the rounded forms of the letters. Further, there is evidence that the writings have been executed with confidence and speed, there being no sign of hesitancy or the use of unaccustomed letter forms. These qualities at once suggest that there has been no attempt at disguise or copy forgery and that the writings are in the normal handwriting of the author.

Examination of the known handwriting and signature of Ruddock confirms that the questioned writings are not the work of Ruddock.

The submitted specimens of writing by Robinson fall into two groups: (a) genuine or "collected" writings and (b) request writings.

The genuine writings (a) consist of entries on pages 3,4 and 5 of the paybook and the names and addresses on a sheet of paper, whilst the request writings (b) are specimen signatures and a copy of the particulars on the Exchange form. It is at once apparent that these two sets of writing are not in close agreement. The "requests" are in a larger, flourishing style, sloping forward and without shading. The genuine specimens, although shewing certain variations in slope and size, are (with one exception) in a round hand with heavy shading, of neat style together with some characteristic letter formations. These qualities not only reveal Robinson's normal handwriting with its natural variations but shew that the request writings are in an altered style and suggest that in these there has been an attempt at disguise.

Summary of Evidence in the case of G.6021 Sgt. C. Robinson, 105th Bty, 3 Cdn A Tk Regt.

Fourth Witness for the Prosecution: C.G. Daubney, M.Sc., F.I.C., Document Examiner, the Metropolitan Police Laboratory, Hendon The Hyde, N.W. 9.(Cont'd).

A comparison of the genuine writing of Robinson with the questioned reveals close agreement. This applies to the stance and shading, to the general shape of the letters and to the formation of certain letters. This agreement is particularly noticeable in the case of the capitals 'P', 'R', 'F' and 'S' and the small 'g'.

A book of photographs is submitted illustrating these findings.

CONCLUSIONS:
From this examination I am of the opinion that:-

(i) The questioned writings are in the normal handwriting of the author with no attempt at disguise or copy forgery.

(ii) The questioned writings are not the work of Ruddock.

(iii) In producing the request writings, Robinson has attempted to disguise his normal handwriting.

(iv) The questioned writing on the cheque and Exchange form is in the normal handwriting of Robinson.

(signed) C.G. Daubney
M.Sc., F.I.C.
Document Examiner.
for Director.

The original statement of this witness is marked exhibit #9.

The accused does not require the presence of this witness for cross-examination.

(signed) J.S. Beckett Lieut
Offr Taking Summ. of Evidence

Fifth Witness for the Prosecution: L 2676 Cpl. A. Hein., #4 Coy., Cdn Provost Corps, having been duly sworn states:-

I am L 2676 Cpl A. Hein of #4 Coy., Cdn Provost Corps. On 23 Dec. 43 under instructions from my O.C. I obtained a specimen of the handwriting of Sgt. F.H. Ruddock of the 105th Bty., 3rd Cdn ATk Regt. I recognize the writing which is marked exhibit #4 as that which Sgt Ruddock wrote in my presence at that time.

× A. Hein

The accused declines to cross-examine the witness.
R.P. 4(e) has been complied with.

Summary of Evidence in the case of G.6021 Sgt. C. Robinson, 105 Bty, 3 Cdn A Tk Regt.

Sixth Witness for the Prosecution: G.42503 B.Q.M.S. Gorlick N.G. 105 Bty, 3 Cdn A Tk Regt, having been duly sworn, states:

I am B.Q.M.S. Gorlick N.G. of the 105 Bty, 3 Cdn A Tk Regt. During the last week of October I was on the Bty rear party while the main part of the Bty was away at firing camp. This rear party consisted of about 20 all ranks, and included Sgt. Robinson, whom I recognize as the accused.

On 5 March 1944 I held a kit inspection of G.6021 Sgt. C. Robinson in his quarters and found him to be deficient the following articles:-

Article	Quantity	Vocab. rate	Total
Boots ankle	2	$5.46	$10.92
Drawers cellular	2	.43	.86
Gloves, knitted	1	.47	.47
Jersey pullover	1	1.79	1.79
Shirts angola	2	2.03	4.06
Shoes canvas prs	1	.65	.65
Braces prs	1	.28	.28
Brushes clothes	1	.43	.43
Brushes shoe polishing	1	.28	.28
Dressing field	1	.24	.24
Bottles water	1	.82	.82
Carrier water bottle	1	.52	.52
Tins mess rect.	1	.35	.35
Eyeshields A/G	1	.45	.45
Respirator A/G light	1	4.58	4.58
Jerkins leather	1	3.77	3.77
Socks woollen prs	1	.37	.37
			30.89

I certify that the above prices are correct as per "Priced Scales of Issue 1943".

Neil Gorlick

The accused declines to cross-examine the witness. R.P. 4(e) has been complied with.

Summary of Evidence in the case of G.6021 Sgt. C. Robinson, 105 Bty, 3 Cdn A Tk Regt.

Seventh Witness for the Prosecution: G.6154 Bdr. Sypher R.M.B., 105 Bty, 3 Cdn A Tk Regt, having been duly sworn, states:

I am Bdr. Sypher of the 105 Bty, 3 Cdn A Tk Regt. On the night of Feb. 19th 1944 I was Battery Orderly Sgt. At 2359 hrs. Sgt. Robinson who had a pass until that time, had not handed his pass in to me.

R.M.B. Sypher

The accused declines to cross-examine the witness. R.P. 4 (e) has been complied with.

Eighth Witness for the Prosecution: G.6071 L/Sgt. C. Hansen 105 Bty, 3 Cdn A Tk Regt, having been duly sworn, states:

I am G.6071 L/Sgt. C.Hansen, 105 Bty, 3 Cdn A Tk Regt. I assumed the duties of Troop Sgt. of "K" Tp. while Sgt. Robinson was on leave. On the 0900 hour Parade, Sunday Morning 20 Feb. 44, I called the roll and Sgt. Robinson was not present. On succeeding days until Sgt. Walker returned about five days later, I also called the roll and Sgt. Robinson was not present. I did not see him anywhere in the unit area during that time.

C. Hansen

The accused declines to cross-examine the witness. R.P. 4 (e) has been complied with.

Ninth Witness for the Prosecution: Sgt. A.G. Pennitt, i/c Worthing Police Station. The documentary evidence of this witness is attached and marked exhibit # 10. This witness has not been called. Authority: A.A. Sec. 163 (1) (m).

G 6021 Sgt. C. Robinson:
Do you wish to make any statement? or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you may say, or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement or to call any witnesses.

R.P. 4 (c) (d) (e) (f) (g) have been complied with.

Taken down by me in the presence of the accused and in his hearing this 9th day of March 1944 at Southampton, in the County of Hampshire.

J. S. Boeckh Lieut

J.S. Boeckh) Lieut

Exhibit #10
JSA

Certificate in accordance with Section 163 (1) (m) of the Army Act.

I certify that the person whose description is given below was arrested (or surrendered) at WORTHING ,at 2-45 p.m. on the 28th day of February, , 1941.

No...G..6021.....

Regimental particulars of Officer or Soldier referred to above.

Rank.....Sergeant.....

Name.Clifford.ROBINSON.....

Unit.105.Battery,.3rd.Anti.Tank Regt. R.C.A.

Age...36.years.....

Height...5ft.9ins.....

Complexion...Fresh.....

Description.

Hair.....Brown.....

Eyes.....Blue.....

Marks...Nil.....

Signature of Officer of Police in charge of Police Station where the above named person was taken, or placed, in custody on arrest or surrender.

....A. G. Penneys.....Sgt.

(In charge of...WORTHING.....

Police Station.

Following the reading of the summary of evidence, the certificates of cost of apprehension and return to unit (Form CMHQ 1000:55) are placed in evidence and marked Exhibit "H" and I JDB

Mrs Norman Kelson

Exhibit B

J.B.

The Head Teacher,
Townsendfold Council School,
Rawtenstall,
Rossendale.

Miss Joan Griffiths
Red Lion Hotel
Haslingden
Rossendale X
Lancs.
Miss Tess Griffiths

Fred Wren McMullan
W.R.N.S. Training Dept
Tinragon Hotel
Clarence Parade
South Sea
Portsmouth □

Ethel Gibson
221 A Heaview Rd
Wallasey
Lancaster

Mrs Norman Gleason
4 Maplewood Ave
E. Paterson
N.J. ⊗

Dorothy Kirk
708 Newchurch Rd
Higher Cloughfold
Rossendale
Lancs.

28

Exhibit C
JB

EXCHANGE FORM

Exhibit
Item 8.
JSB

Lloyds Bank Limited

29 OCT 1943

Please exchange the items as specified overleaf, and debit my/our account with the amount of any of the articles if returned unpaid or disputed at any time.

Signature F. H. Huddock

Address Sandcroft Rd. Parkstone

12 Field Regt. R.C.C.

Be to nominee Draft

Identified

29 OCT 1943

Date _____ 194__

IN.			OUT.		
Notes			Notes £1	7	
			10/-		10
Cheques, &c.	7	17	Other Notes		
"			Silver		7
"			Copper		
"			Total Cash out	7	17
"			To credit of C/A		
"			" " " D/A		
"			" " " S/B		
Bills and Notes of Hand			Commission		
			Stamps		
£	7	17	£	7	17

Exhibit 6 J&B.
Item 6

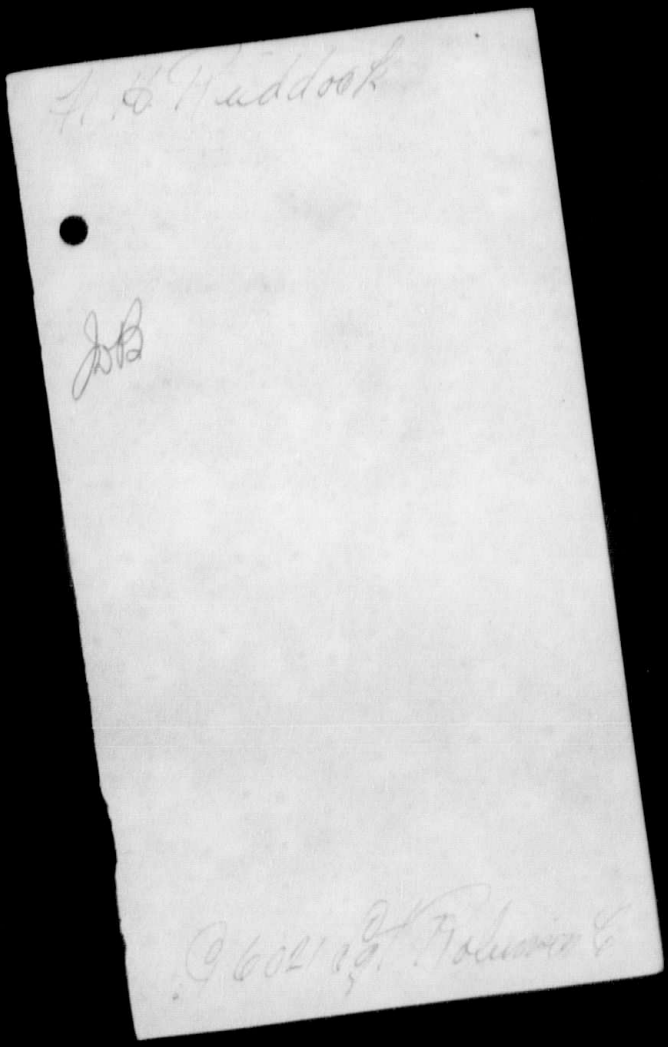
List of addresses written by
G6021 S6T ROBINSON, C.

H H Ruddock

Exhibit D

JB

G 6021 Sgt. Robinson C



H. H. Ruddock

JDB

G 6021 Cg. Robinson C.

H H Ruddock

Exhibit 3
SB

JDB

Cl 21 Sgt. Robinson C

H H Ruddock

Exhibit
Item 3.
J&B

J&B

G 6021 N.R. Robinson C

W. H. Ruddock

JDB

C. 6021 Lgt Robinson Co.

F. H. Ruddock

JDB

C 6021 Lgt. Roland E.

Request writing of E 6021 Sgt Robinson R.E.

28

EXCHANGE FORM

Exhibit Item 7

Exhibit E
J.D.B.

To Lloyds Bank Limited

Please exchange the items as specified overleaf, and debit my/our account with the amount of any of the articles, if returned unpaid or disputed at any time.

Signature [illegible] Ruddock

Address Pond Coats Road
Parkstone
[illegible]
J.E.B.

Date ..... 194 .

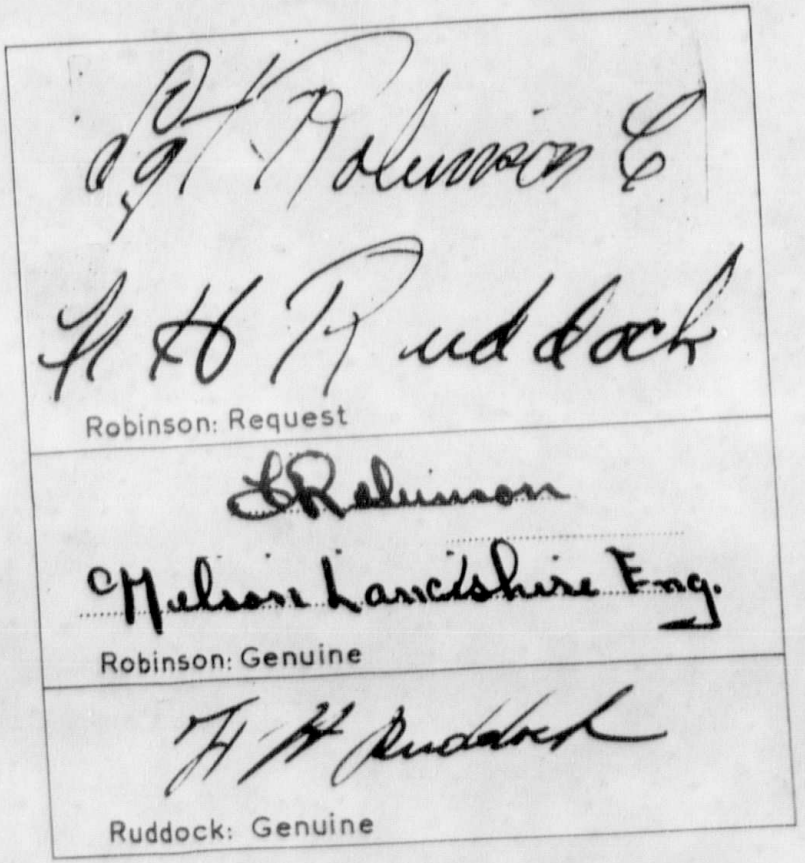
IN.		OUT.	
Notes		Notes £1	
		10/-	
		Other Notes	
Cheques, &c.		Silver	
"		Copper	
		Total Cash out	
		To credit of C/A	
		" " " D/A	
		" " " S/B	
"		Commission	
Bills and Notes of Hand		Stamps	
£		£	

Exhibit 5
JSB

Exhibit G
JSB

Sgt Robinson C

H H Ruddock



Robinson: Request

L Robinson

Nelson Lancashire Eng.

Robinson: Genuine

H H Ruddock

Ruddock: Genuine



Centre Panel: Questioned
Outer Panels: Genuine

[illegible]	Quantity	Vocab. rate	To
Boots ankle	2	$5.46	$10.9h
Drawers cellular	2	.43	.86
Gloves, knitted	1	.47	.47
Jersey pullover	1	1.79	1.79
Shirts angola	2	2.03	4.06
Shoes canvas prs	1	.65	.65
Braces prs	1	.28	.28
Brushes clothes	1	.43	.43
Brushes shoe p[illegible]ishing	1	.28	.28
Dressing field	1	.24	.24
Bottles water	1	.32	.32
Carrier water bottle	1	.52	.52
Tins mess. rect.	1	.35	.35
Eyeshields A/G	1	.45	.45
Respirator A/G light	1	4.56	4.56
Jerkins leather	1	5.77	5.77
Socks woollen prs	1	.37	.37
			32.69

Exhibit H

I certify that the above prices are correct as per "Priced Scales of Issue 1943".

Neil Forbes

The accused declines to cross-examine the witness. R.P. 4(c) has been complied with.

Expense Voucher Re—: Exhibit H JDB. Ref: K.R. & O. (Can) 539 Exhibit #11 JDB

Reg. No. G6021 Rank Sgt. Name Robinson, C. Unit 3 A/T. Regt., R.C.A.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Brighton

Date	Particulars	Amount		
29 Feb 44	Escorts return fare from LONDON To Brighton		7	11
	Prisoners single fare to LONDON From Brighton		4	0
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		11	11

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:55
40/P & S/483

Exhibit H JDB

Exhibit I JDB

Exhibit #11 JSB.

Expense Voucher Re—: Ref. K.R. & O. (Can) 539

Reg. No. G 6021 Rank Sgt. Name Robinson, C. Unit 3A/5 Regt. R.C.A.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
1 March 44	Escorts return fare from LONDON To Southampton		12	1
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Southampton		6	1
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		18	2

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:55
40/P & S/483

Character Evidence

Lieut L N Ray, 3 Cdn A-Tk Regt, RCA, (defending officer), having been duly sworn gives evidence as follows:

This man was born in England. He went to Canada at an early age with his parents and as soon as he became of age he joined the Cdn Army. He was in the NPAM for eight years, most of this time as a NCO in the (then) York Regt. Then he decided he would like to become a Gnr and joined the 105 Bty. There he served for three years. Came the war and Sgt Robinson joined an active unit and was rapidly promoted to the rank he now holds, a full Sgt. That gives you a service of 15 years and most of it as a NCO.

During the last two years occasions have arisen where it has been necessary for the senior W O of the unit to be absent and during those periods of absence the OC Bty has not hesitated to call upon Sgt Robinson to act as BSM. This has not arisen once but a number of times and in and in each case the Officer Commanding has found that Sgt Robinson's record has been good enough to warrant entrusting him with the duties of BSM.

To show further the regard in which this man has been held in the unit, he has been interviewed by the Commanding Officer with regard to vacancies for W O in the unit. The vacancy never occurred, however, and the promotion was never made. As late as last summer Sgt Robinson was recommended for a commission. The recommendation did not go through owing to age.

In Dec 43 I was posted to this Bty as Tp Comd. I was given "K" Tp. I knew the Bty and I knew the Tp. I was very glad I was to have a Tp Sgt with a service such as Sgt Robinson's. I found the Tp had been without a Tp Comd for a time and the Tp had an excellent record due to the work of Sgt Robinson. The discipline was excellent. The eqpt and stores were in good order and I found that Sgt Robinson was absolutely invaluable in putting me in the picture.

I would like you to form your opinion of the character of this man from this evidence -- a long record of service, the last five of it in this unit.

The prosecutor does not wish to cross-examine.

Plea in mitigation:

The accused Sgt Robinson was separated from his legal wife in 1936. During the past two years he has found company with a woman in Worthing and in Nov last year she was found to be pregnant. Late in Jan she suffered a miscarriage and was confined to bed. Sgt Robinson obtained leave in order to arrange for her welfare in that he had an experienced woman to act as nurse for her and administer to the daily needs of this patient. That went along satisfactorily until 16 Feb 44 and it was found that the erstwhile arrangements for this woman's care had fallen through, inasmuch as the woman acting as nurse was too busy to carry out these duties. So Sgt Robinson asked for a leave on compassionate grounds so that he could arrange for the welfare of this woman. That was a 48-hr pass. Now this woman was some 40 years of age. This compassionate leave started on 16 Feb 44. Sgt Robinson visited Worthing. In the short time granted him he was unable to arrange proper care. So he wired to his Commanding Officer for an extension of 24 hrs and it was granted right away. The Commanding Officer had no compunction whatever about granting it. That leave expired and there was still no definite arrangement for the care of this woman. Sgt Robinson was faced with a grave situation. What was he to do: Return to his unit and leave an invalid not properly cared for or stay and look after her himself? Sgt Robinson took the latter course. He knew full well that there were other NCO's in the Tp. His duties would be taken care of when he was away. On the other hand, if he left this girl she would not be properly cared for. So he stayed in Worthing. You have the documentary evidence that he was apprehended in Worthing a few days later and was returned here.

Officer Under Instruction

G.6021 Sgt. C. Robinson

D.124311 Pte L.O. Latreille

20 Mar. 44.

Rank	Name	Unit
LIEUT.	WHITE, T.C.	12 Can. Fd. Regt.
LIEUT.	HOLMES, F.R.	13 Can Fd Regt.
Lieut	Gibson R.F.	18 Can Fd Reg't
CAPT.	GRIER A.D.	3 Cdn. Afth Regt.

MFM 6
(AFH 122)
AAS/136 (8438)

No G.6021 Name ROBINSON, Clifford | Sqn, Battery or Company | Corps R.C.A. | Date of enlistment 7.6.40 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No | Signature OC Company, etc #gd WK Love Major

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet No. 2 destroyed 24.9.41 - Number of cases of drunkenness Nil --	last entry 17.6.41 last instance on --	N/a			
Field	25.2.42	Sgt		Sec 40 AA - an act to the prejudice of good order and military discipline while driving a WD Vehicle in such a manner as to become involved in an accident.	Sgt Barrett	Severe reprimand Stoppage of pay to the amount of $60.00	22.2.42	Lt.-Col Mackenzie Waters	Stoppage of pay $60.00
Field	24.1.44	Sgt		AWL from 0900 hrs 24.1.44 to 2230 hrs 26.1.44 (absent 2 dys 13 hrs 30 mins) AA Sec 15(1)	Sgt Walker Sgt Ruddock	Severe Rep	27.1.44	Lt-Col JP	Phin Forf 3 days pay FRI 149(1)(a)

(OVER)

(PTO)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified true copy of original MFM 6 (E.B.Phair) Lieut., A/Adjt 3 Cdn Anti-Tank Regiment Officer in charge Regimental Documents					

Exhibit J
JdB

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C.6021	Sgt	ROBINSON, Clifford	3 Cdn ATk Regiment

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	AWL	1 times	AA Sec 40	1 times
For		times	AWL	1 times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct nil

or,

There are no entries in the conduct sheets of the accused. ---

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence for ... beginning on the ... day of ...~~

4. The accused has been in confinement awaiting trial on the present charges, for 1/4 days in civil custody, and 21 days in military custody, making a total of 21 1/4 days in custody, of which No days were spent in hospital.

5. The present age of the accused according to his record of service is 32 years 3 months
attestation paper is

6. The date of his commission specified in his record of service is
attestation attestation paper n/a

7. The service which the accused is allowed to reckon towards discharge is 3 years 9 months

8. The accused is entitled to reckon 3 yrs 9 months service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward.
military military military
Canadian Voluntary Service Medal & Clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of n/a

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated N/A, and in his regiment (or corps), the rank of dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

24 June 1941. Date of promotion.

In the rank of Sgt. 2½ years.

In the rank of N/A years.

In the rank of N/A years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~10th~~ 20th day of March 1944

EBP

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

E B Phair Lt

(E.B.Phair) Lieut., A/Adjt.,
Officer i/c Regimental Documents

24 C. Geo Robinson, D.R.

M-10578 Gnr. Robinson, W.R.
No.1 Cdn Arty Hldg Unit.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 4th day of August, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

*[illegible]:—

*(1. [illegible]

*(2. [illegible]

*(3. [illegible]

[illegible]

* Omit if not applicable.

President.

Rank.	Name.	Regiment.
Major	R.S. Hallett	No.1 Cdn Arty Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	O.A. Dodson	No.2 Cdn Arty Hldg Unit
Lieutenant	P.W. Chipsewick	No.2 Cdn Arty Hldg Unit
Lieutenant	T.J. McArthur	No.1 Cdn Inf Hldg Unit

*Signed [signature] Brigadier

Commanding Cdn Base Units, Cdn Army.
Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
M-10578 GNR. ROBINSON, W.R. No.1 Cdn Arty Hldg Unit.	First Charge A.A. sec 12(1)(a)	NOT GUILTY	NOT GUILTY OF DESERTION BUT GUILTY OF ABSENCE WITHOUT LEAVE. TO UNDERGO DETENTION FOR A PERIOD OF TEN MONTHS AND TO BE PUT UNDER STOPPAGES OF PAY UNTIL HE HAS MADE GOOD THE SUM OF £7-5-1 IN RESPECT OF COSTS OF APPREHENSION.	Confirmed B.B. Nelson Brig
	See charge sheet attached.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— NO.

(Signed) B.B. Nelson Brigadier (Signed) R.S. Hallett Maj
Commanding Cdn Base Units, Cdn Army. *Convening Officer* (*e*) 'B' Dty "/. C.A.H.V. *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (*if necessary*) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 6th day of August, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~ Court Stenographer
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 6th day of August 1941.

R.S. Hallett Maj
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19 .

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

Signed this 12th day of August 19 41.

B.B. Nelson Brigadier.
Confirming Officer.

Promulgated and extracts taken in the case of M10578 GNR. Robinson W.R.

(*a*) (Dated) H.Q. No. 185 6/16-8-41 (Signed) Romaine Lint
for (F.J. Cress) Lieut. A/Adj.
No. 1 Canadian Artillery Holding Unit

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(41729) Wt. 40155—893 200 M 1/40 P. St. G. 6/40

CHARGE SHEET

The accused, M-10578 GUNNER WILLIAM ROSS ROBINSON, Royal Canadian Artillery, on the strength of No. 1 Canadian Artillery Holding Unit, a soldier of the Canadian Army (Overseas) is charged with, WHEN ON ACTIVE SERVICE:

FIRST CHARGE SEC 18 (1)(a) ARMY ACT.

DESERTING HIS MAJESTY'S SERVICE,

in that he, at St. Lucia Barracks, Bordon, Hants, absented himself without leave from No. 1 Canadian Artillery Holding Unit from 0700 hours 26 March 1941 until he was apprehended by the Corps of Military Police at Belfast Ireland, at 1945 hours 23rd July 1941, (Absent 119 days 12 hours 45 minutes), thereby incurring costs of apprehension totalling £7-6-1.

Dated at Bordon, Hants
this 1st day of August
1941.

J. Roberts

(J.Roberts) Lieut. Col.
Commanding Officer,
No. 1 Can. Arty. Holding Unit.

To be tried by Field General Court Martial

F.R. Phelan

(F.R. Phelan) Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This 4th day of Aug 41.

R.S. Hallett Maj

MFB 246

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN) PARA 557

I certify that I have, this morning, examined

No. W-10578 QUINTO ROBINSON W.R.

of No. 1 Cdn. Arty. Holding Unit and in my opinion he

is fit ~~unfit~~ to undergo Trial by Court Martial.

Station Borden, Ontario

Date 6 August 1941

Clive McCormack Capt RCAMC
Medical Officer
No. 1 Cdn. Arty. Holding Unit.

M-10578, Gnr. Robinson, W.R., No. 1 Cdn. Arty. Holding Unit, tried by Field General Court-Martial at Bordon, Hants., on the 6th day of August, 1941.

The order convening the Court, the charge-sheet, summary of evidence and medical certificate are laid before the Court.

Prosecutor - Lieut. R.H. Evans
Defending Officer - Lieut. A.E. Bruce

At 1000 hours the Trial commences.

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No, sir.

The President and members are duly sworn.

Q2 - Do you object to M-15577 S/Sgt. Stanley Fidler, The Edmonton Regiment, H.Q., C.B.U., acting as Court Stenographer?
A2 - No, sir.

The Court Stenographer is duly sworn.

The charge-sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge-sheet

Q3 - Are you guilty or not guilty of the charge against you, which you have heard read?
A3 - Not guilty, sir.

Prosecutor -- By agreement with the counsel for the defence the facts in this case are not in dispute as they are covered by a statement by the accused which was voluntary and the defending officer has consented to my placing that before the Court and the only issue before the Court will be whether the facts disclosed by the statement support a charge of desertion or being away without leave. I believe the charge of a.w.l. is admitted by the defence, but not desertion. I produce in evidence the statement signed by the accused. That closed the case for the prosecution.

Lieut. R.H. Evans, No. 1 Cdn. Arty. Holding Unit, is duly sworn and submits in evidence the statement of Gnr. Robinson, W.R., which is accepted by the Court.

Defending Officer -- Sir, the accused is charged with deserting His Majesty's Forces. As the prosecution has pointed out, on a charge of desertion it may be found that he may be found not guilty of desertion but guilty of a.w.l. We are prepared to admit the accused is guilty of a.w.l. but not guilty of desertion. It is distinctly a matter of law and it is laid down in the M.M.L., which is our Bible, that on Page 19 the criterion of desertion is intention. The prosecution has closed its case without attempting to show any intention of desertion and since no intention has been shown I submit that the accused is not guilty of desertion.

Prosecutor -- The only evidence available to the prosecution has been submitted to the Court and the only evidence was purely the length of time the accused was away. With that in mind the charge was laid as desertion and there is no other evidence than length of time.

Defending Officer -- Just to enlarge slightly more I will quote Para. 18, on the same page. The accused certainly went on leave and had quite a considerable sum of money, about £38. He took to drinking and had numerous friends in Ireland and he stayed more or less drunk the best part of the time. I would like to quote Para. 18, Page 19, beginning Line 7. The relevant part is that length of absence should not be taken into consideration to convict this man of desertion. Again I would refer you to Page 26, at the top of the page commencing at line 4.

Prosecutor -- For the Court's guidance, Section 56 of the Army Act covers that.

Defending Officer -- That is all the defence has to say regarding the plea of not guilty. I will place the accused on the stand in mitigation of sentence after the finding of the Court.

The Court is closed for the consideration of the finding.

Lieut. R.H. Evans, No. 1 Cdn. Arty. Holding Unit, is duly sworn.

Q4 - Have you any evidence to produce as to the character and particulars of service of the accused?
A4 - Yes, sir, A.F.B. 296 and M.F.M. 6.
Q5 - Is the accused the person named in the statement which you have heard read?
A5 - Yes, sir.
Q6 - Have you compared the contents of the above statement with the regimental books?
A6 - Yes, sir.
Q7 - Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A7 - Yes, sir.

The accused declines to cross-examine.

Q8 - Do you wish to address the Court?
A8 - (Defending Officer) The accused will make a statement under oath.

M-10578, Gnr. Robinson, W.R., No. 1 Cdn. Arty. Holding Unit, being duly sworn, is examined by the defending officer.

Q9 - I want you to tell the Court in your own words about the circumstances which have arisen and resulted in this court-martial.
A9 - Gentlemen, I have had a lot of family trouble which I tried to clear up in Winnipeg with the Paymaster concerning the misconduct of my wife. I have two children in the Salvation Army Home, Patsy and Margaret and my wife has been receiving an allowance from Ottawa for herself and the two children. Shortly before I came over I received a message to certify that no payments towards the up-keep of these children xxxxx were being made and I have never been settled regarding the welfare of the children. There are two other children, Kathleen and William. William, I had to hand him over to my first wife's brother and Kathleen, who is eighteen, is being taken care of by the Child Welfare, and this woman, this wife of mine, has caused a lot of trouble. I went to Belfast on the 21st March and was drinking very, very heavily. I reported back to Belfast docks on the 22nd July and certified I was a.w.l. and the corporal told me to go to the Northern Counties Railway. There they told me I would have to go by boat and told me to call between seven and seven-thirty on the 23rd. The boat was overloaded. I reported at ten past seven and they gave me an embarkation ticket and then they told me I had to have a ticket and I reported to the R.T.O. to the Military Police, Sgt. Edwards, and he told me he would get in touch with my unit. I would like to know, if possible, if something can be done to settle this dispute between my wife and myself. My sincere intention is to do the right thing. I would like to have some sort of a home when I get back. If she is not paying the home there will be a great bill against me when I get back.
Q10 - Robinson, were you ever charged with anything in civilian life?
A10 - No, sir.
Q11 - I notice you are wearing service stripes.
A11 - Yes, sir, I was overseas from the 28nd November, 1915, to 1919 at Mons and was at Waterloo with the 49th Battalion, sir.
Q12 - You never had a record on your crime sheet?
A12 - No, sir.

The prosecutor declines to cross-examine.

The Court is closed for the consideration of the sentence.

R.H.

Summary of Evidence in the case of M-10578
GUNNER ROBINSON, W.R., Royal Canadian Artillery,
on the strength of No. 1 Canadian Artillery
Holding Unit, a soldier of the Canadian Army
(Overseas).

Statement of
1st Witness: B-6252 BOMBARDIER J.M.STEEL, Royal Canadian Artillery, having been duly sworn, deposed as follows:

I am Bdr. J.M.Steel, B-6252, of Headquarters, No. 1 Canadian Artillery Holding Unit, located at St. Lucia Barracks Bordon, Hants. I am employed in the Legal Office, and therefore have custody of the document which I am about to produce.

I produce in evidence a document, being A.F.B.252, which concerns the accused. This document is a statement of evidence of Sergeant A.English, of the Corps of Military Police and shows that the accused, M-10578 Gunner Robinson, W.R., was apprehended by Sgt. English at Donegall Quay, Belfast, Ireland, at about 1945 hours 23 July 1941. This document purports to be signed by a Captain, commanding NID Provost Company, and further purports to be signed on its face by Captain V.Harriss Goss, D.A.P.M., Canadian Military Police, London, Area.

The accused declined to cross examine this witness.

J.M.Steel

Statement of
2nd Witness: A-34021 B.S.M. J.H.KNOWLES, Royal Canadian Artillery, having been duly sworn, deposed as follows:

I am B.S.M. J.H.Knowles, A-34021, of Headquarters, No. 1 Canadian Artillery Holding Unit, located at St. Lucia Barracks, Bordon, Hants.

I produce in evidence, a document, which is a confession of M-10578 Gunner Robinson, W.R., made before me, in the presence of Bdr. Steel on 1 August 1941. This document is signed by the accused, and by myself as witness, in the presence of Bdr. Steel, and shows that the accused proceeded on leave on or about 21 March 1941 to Belfast Ireland; that he stayed at his sister's home and at the Y.M.C.A. and that he he was arrested by a Sgt. of the Corps of Military Police on the day following the 22nd July 1941.

The accused declined to cross examine this witness.

J.H.Knowles

Statement of
3rd Witness: L-22092 GUNNER P.E.WILLIAMS, Royal Canadian Artillery, having been duly sworn, deposed as follows:

I am L-22092 Gunner Williams, P.E. of No. 1 Canadian Artillery Holding Unit. I am employed as a clerk in the Records Office. I am in charge of all privilege, Landing, and compassionate leaves and of all Free Transportation Warrants. I produce in evidence, a document in my posession, which is a Return of Free Leave Transportation dated for the period ending 31 March 1941. This document purports to be signed by XXXXX Captain P.H.Clarke, Officer Commanding Headquarters Battery, No. 1 C.A.H.U., and shows that the accused, M-10578 Gunner W.R. Robinson was issued with a warrant to proceed on Landing Leave from 19 March 41 until 26 March 41.

The accused declined to cross examine this witness.

P.E.Williams

TO SHEET TWO

224

Statement of 1st Witness: Recalled

B-6252 BOMBARDIER J.M.STEEL, Royal Canadian Artillery, continued his deposition as follows:

I further produce in evidence, a document in my possession, which is a statement of the costs of apprehending the accused, M-10578 Gunner Robinson, W.H. This statement shows that the total costs of apprehending the accused from Belfast to London amount to £7-5-1. This document purports to be signed on its face by Lieut. M.E.Byers, Officer Commanding No. 6 Company, Canadian Provost Corps.

The accused declined to cross examine this witness.

J.M.Steel

The accused, having been duly cautioned in accordance with R.P. 4 (a) declined to make a statement.

Certified that R.P. 4 (c) (d) & (e) have been complied with.

Taken down at Bordon, Hants in the presence and hearing of the accused, this 1st day of August 1941.

R.H.Evans. Lt

(R.H.EVANS) Lieut. R.C.A.

RSA

No. 1 Canadian Artillery Holding Unit.
Canadian Army (England).

Bordon, Hants
1 August 1941

STATEMENT OF WITNESS

NAME - ROBINSON, William Ross

REG.NO. M-10578 RANK - Gunner AGE - 47

UNIT - #1 Cdn. Artillery Holding Unit.

S T A T E M E N T :

I have been cautioned by B.S.M. Knowles, J.H. , No. 1 Canadian Artillery Holding Unit, in the presence of Bdr. STEEL that I need not say anything unless I wish to do so but that anything I do say will be taken down in writing and may be used in evidence and to show that I understand this caution I sign my name here.

W. R. Robinson

I went on nine days' leave, on, I think, the 21st of March, 1941, to Belfast Ireland. I should have returned on about the 30th March, but I did not. I was staying at the Y.M.C.A. in Belfast and was drinking pretty heavy and did not feel like coming back as I was very ill as a result of this.

I continued like this and stayed on at the Y.M.C.A. and at my sister's home - her name is Mrs. McFADDEN and the address is 30 Cornsbrook Ave., Belfast - a few times. I did not go there very much as she was trying to get me to return to my unit. I have never received anything from her.

I had about £38-0-0 in my posession when I left and this lasted me while I have been away. I have always been drinking pretty heavy but seldom had to pay for the drinks as there were plenty of friends to buy it for me.

I stayed around the same section of Belfast all the time and was never asked for a pass. I just spent my time drinking and walking around.

I was married to my first wife, now deceased, in Edmonton, in 1922. We had six children, KATHLEEN, now aged 19, MARGARET, aged 17, PATSY, aged 16, BILLY, aged 8, LORRAINE, aged 7, and JOHN ANDREW who was killed in a playground accident at school in 1933 when he was 8 years old.

My wife died in 1935 on 5th Feb. and about 4 months later a man named Walter STOKES, a conductor on the Canadian Pacific Railway adopted my youngest daughter, LORRAINE, and she has had a very comfortable home. BILLY, my youngest son is being taken care of by my dead wife's brother, David GRIERSON, Lacombe, Alta. MARGARET AND PATSY are being taken care of at the Salvation Army Home, 17th Ave., West, Calgary. KATHLEEN is under the care of the Calgary Child's Welfare Board and is staying with the wife of an employee of the General Post Office. I do not know her address but I write to her in care of Mrs. Clifford RUBY, 424 - 27th Ave.N.W. Calgary who has taken upon herself to be a mother to KATHLEEN.

I married my present wife, LORENDA in September 1936. She was a widow and her first husband was Arthur COLEGRAVE, a Great War Veteran.

(Signature) W. R. Robinson

[illegible]

Continuation of Statement of M-10578, Gnr. ROBINSON, W.R.

She has never been a good wife to me and would not take care of my children, MARGARET, PATSY, and BILLY who were at home when I married her.

Soon after the marriage I sent BILLY to his present home where he is well looked after and later took the other two away and put them in the Salvation Army Home when I saw that she was neglecting them.

I continued to live with my present wife however, until May 1940 when I enlisted for Active Service but since then I have had nothing to do with her.

According to the last reports that I have had, the two children at the Home are not receiving the money allotted to them by the Government, or the benefit of it. My wife is receiving the money and is not handing it over to the Home. I saw the Paymaster of my unit when we were at Winnipeg to see if he could arrange to have the money paid direct to the Home but he told me that it was no concern of his and that any arrangements like that would have to be made between the Home and my wife as she is my legal wife and there is no separation agreement.

I have written to the Salvation Army Home asking them to send me full details of what money they are receiving for the children but as I have been A.W.L. almost ever since I wrote the letter and have therefore received no mail I do not know whether they have answered or not.

During the last ten years or so I have been employed about half the time and when I could secure no work I have been on relief. I have been unable to secure steady employment.

I served 3 years and 7 months in France during the last war, with the 49th Edmonton Regiment and received honourable discharge.

The last I heard of my wife she was living at 523, Spence Street, Winnipeg. I have not written to her since leaving Canada.

I have never intended to desert the Army. I am sorry for my actions of the past months.

On the 22nd of July 1941, I went to the Belfast Docks to try and get a boat to return to my unit. A C.M.P. Sgt. told me that I could not get one that day and told me to come back next day. I came back the next day and was placed under arrest as an absentee by the C.M.P. and held for escort from the Canadian Provost Corps.

This statement has been read over to me and it is true.

Signature W. R. Robinson

Witness to Signature [signature] B.S.M.
(A-34021 J.H.Knowles) H.Q.
No. 1 Can. Arty. Holding Unit.

Statement taken down in writing by [signature] Bdr.
(B-6252 Bdr. STEEL, J.M.) H.Q.
No. 1 Can. Arty. Holding Unit.

RSA

No. 1 Canadian Artillery Holding Unit.
Canadian Army (England).

Bordon, Hants
1 August 1941

STATEMENT OF WITNESS

NAME - ROBINSON, William Ross

REG.NO. M-10578 RANK - Gunner AGE - 47

UNIT - #1 Can. Artillery Holding Unit.

S T A T E M E N T :

I have been cautioned by B.S.M. Knowles, J.H. No. 1 Canadian Artillery Holding Unit, in the presence of Bdr. STEEL that I need not say anything unless I wish to do so but that anything I do say will be taken down in writing and may be used in evidence and to show that I understand this caution I sign my name here.

W. R. Robinson

I went on nine days' leave, on, I think, the 21st of March, 1941, to Belfast Ireland. I should have returned on about the 30th March, but I did not. I was staying at the Y.M.C.A. in Belfast and was drinking pretty heavy and did not feel like coming back as I was very ill as a result of this.

I continued like this and stayed on at the Y.M.C.A. and at my sister's home - her name is Mrs. McFADDEN and the address is 30 Cornsbrook Ave., Belfast - a few times. I did not go there very much as she was trying to get me to return to my unit. I have never received anything from her.

I had about £38-0-0 in my posession when I left and this lasted me while I have been away. I have always been drinking pretty heavy but seldom had to pay for the drinks as there were plenty of friends to buy it for me.

I stayed around the same section of Belfast all the time and was never asked for a pass. I just spent my time drinking and walking around.

I was married to my first wife, now deceased, in Edmonton, in 1922. We had six children, KATHLEEN, now aged 19, MARGARET, aged 17, PATSY, aged 16, BILLY, aged 8, LORRAINE, aged 7, and JOHN ANDREW who was killed in a playground accident at school in 1933 when he was 8 years old.

My wife died in 1935 on 5th Feb. and about 4 months later a man named Walter STOKES, a conductor on the Canadian Pacific Railway adopted my youngest daughter, LORRAINE, and she has had a very comfortable home. BILLY, my youngest son is being taken care of by my dead wife's brother, David GRIERSON, Lacombe, Alta. MARGARET AND PATSY are being taken care of at the Salvation Army Home, 17th Ave., West, Calgary. KATHLEEN is under the care of the Calgary Child's Welfare Board and is staying with the wife of an employee of the General Post Office. I do not know her address but I write to her in care of Mrs. Clifford RUBY, 424 - 27th Ave.N.W. Calgary who has taken upon herself to be a mother to KATHLEEN.

I married my present wife, LORENDA in September 1936. She was a widow and her first husband was Arthur COLEGRAVE, a Great War Veteran.

(Signature) W. R. Robinson

She has never been a good wife to me and would not take care of my children, MARGARET, PATSY, and BILLY who were at home when I married her.

Soon after the marriage I sent BILLY to his present home where he is well looked after and later took the other two away and put them in the Salvation Army Home when I saw that she was neglecting them.

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The last I heard of my wife she was living at 523, Spence Street, Winnipeg. I have not written to her since leaving Canada.

I have never intended to desert the Army. I am sorry for my actions of the past months.

On the 22nd of July 1941, I went to the Belfast Docks to try and get a boat to return to my unit. A C.M.P. Sgt. told me that I could not get one that day and told me to come back next day. I came back the next day and was placed under arrest as an absentee by the C.M.P. and held for escort from the Canadian Provost Corps.

This statement has been read over to me and it is true.

Signature W. R. Robinson

Witness to Signature J. H. Knowles
(A-34021 J.H.Knowles) H.Q. B.S.M.
No. 1 Can. Arty. Holding Unit.

Statement taken down in writing by J. M. Steel
(B.6252 Bdr. STEEL, J.M.) H.Q. Bdr.
No. 1 Can. Arty. Holding Unit.

R.M.

30 Cornshook Av
Strandtown
Belfast

30. 7. 41. N. I.

The Commanding Officer
R. C. C. No 1. H. Unit
Base P.O. Canada

Sir,

My brother Gunner Wm Ross Robinson (M. 10548) arrived in Belfast March 21st or 22nd on leave - as far as I know he has not returned to his unit - I am afraid if thoroughly investigated his absence is due to some family trouble re allowances, his 2 girls are in a Salvation Army Home in Calgary - if this matter was looked into his frame of mind I think would be more at ease - Of course I hope if he has returned you will take into consideration

R.S.H.

it is 25 years since he was home & this is his 2nd war like of course many others but Ireland is no place for Bill, cash or no cash he has too many life long friends who are always able ready to put up the "needful" & I do trust his next leave nowhere far distant will not be to Ireland even I am his sister I say it for his good too much drink & too good natured has always been his downfall & he has been drinking nearly in toto during his leave. Of course he knew when he didn't return in time he need not come near me. Another thing I noticed his health doesn't seem to be too good. headache, trouble with his back & legs & fur. He had been ailing & in bed early in his leave with Jos in attendance.

I am exceptionally sorry to trouble Jos but I'm greatly worried about him (this children) as I've lost touch with him since the last Blitz over here. He may have returned of course as he is a poor correspondant at the best.

So if it would not be troubling
you too much would you investigate
this family trouble which I think
must have taken place before leaving
Canada or all & deal as lightly
with him as is possible.

Believe me
Yrs Sincerely
Rhoma R. McFadden

RSH

Exhibit "B"

Ref: K.R.& O.(Can.)539

Regt.No: M-10578

Rank: Gnr.

Name: Robinson W.R.

Regt: R.C.A.

Unit: No 1.Art.Hol.Unit.

The following expenses were incurred in apprehending and returning the m/n soldier to his unit from Belfast

DATE	PARTICULARS	AMOUNT		
London 30/7/41.	Escorts ~~xxxxxx~~ fare from Glasgow to Belfast		10s	4d
	Escorts fare from belfast to London.	2£	1s	8d
	Escorts fare from London to Glasgow.	1£	10s	10d
	Prisoners single fare to London from Belfast.	2£	1s	8d
	Prisoners single fare from London to			
	Escorts expense for bed, meals, bus fares and meals for the prisoners.	1£		7d
	TOTAL -- £	7£	5s	1d

I certify that the above statement of expenses is correct and that the amounts are fair and just.

M. E. Byers, Lieut.
~~[illegible]~~ O.C. No 6 Pro Coy.
~~[illegible]~~

NOTE.

No reimbursement for this account is to be sent to our office from your goodself, as the amount has been paid from petty cash and charged to Public Funds.

If the accused is found guilty a stoppage of pay should be put through your units Part II Orders.

R.S.H.



The Commanding Officer,
R.C.A.,
No I Holding Unit,
Base P.O.,
Bordon
Hants. England.


POST OFFICE
AU 5
41
247
RECEIVED
AUG 5 P.M.
No. 1 A. H. U.
ORDERLY
ROOM

Description of Court by which trial, or Status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
		Nil.		

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1st day of AUGUST 1941

(W.M.Welsh) Lieut. R.C.A.
Officer i/c Records,
No. 1 Cdn. Arty. Holding Unit.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

M-10578 Gunner Robinson, W.R. of the No. 1 Canadian Artillery Holding Unit.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Para. 664, K.R., 1935.

*The numbers herein stated should correspond with the number of *Entries* in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For	-	times	-	times.
For	-	times	-	times.
For	-	times	-	times.
For	-	times	-	times.

~~Number of instances of gallantry or distinguished conduct,~~

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or,

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.~~

Wt. 43848/664 50,000 2/40 W. 2. Ltd. 51—6001

R.S.N.

3. The accused is not under sentence at the present time,

or,

4. The accused has been in confinement, awaiting trial on the present charges

for [illegible] days in Civil Custody,

and [illegible] days in Military Custody.

Total [illegible] days.

Of which [illegible] days were spent in hospital.

5. The present age of the accused according to his record of service attestation paper is 43 yrs

6. The date of his commission specified in his record of service attestation paper is 30 May 1940

7. The service which the accused is allowed to reckon towards discharge or transer to the reserve is 1 year 2 mos.

8. The accused is entitled to deferred pay or gratuity in respect of 1 & 1/6 years' service.

9. The accused is entitled to reckon 1&1/6 years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [illegible]

[illegible]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name M-10578 Gunner Robinson, W.R. of the No. 1 Canadian Artillery Holding Unit.

Note.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
		Nil		

(Instruction.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Continued overleaf

M.F.M. 6
(A.F.B. 122)
500M—6/39 (1783)
H.Q. 1772-45-18

No. M 10578 Name Robinson, W.R. Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment 30/5/40 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				(CLEAR RECORD)					
				(CERTIFIED TRUE COPY)					
				M.M. Welsh Lieut					
				(M.M. WELSH) Lieut. R.C.A.					
				Officer i/c Records,					
				No. 1 Can. Arty. Holding Unit.					

(P.T.O.)

GCM-B-14

Ple Robinson DJF

CHARGE SHEET

Pates
Pres
W. B. Bate capt
Judge Advocate

The accused, B144333 Pte Donald John Fredrick ROBINSON, Seaforth Highlanders of Canada, presently on strength 2 Canadian Base Reinforcement Battalion, 1 C.B.R.D., a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
Sec. 41
Army Act

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, MURDER

in that he

in the Field, in Italy, on or about 2 Aug 44, when on active service, murdered B138552 Pte Dillon, J. W. M., 3 Cdn Base Rft Bn, 1 C.B.R.D.

P. H. Stehelin
(P. H. STEHELIN) Major,
T/Comd, 2 Cdn Base Rft Bn,
1 C.B.R.D., Cdn Army, C.M.F.

In the Field,
31 August, 1944.

TO BE TRIED BY GENERAL COURT MARTIAL

Approved as to form
W. B. Bate capt
2 Cdn Hq, 1 CBRD

In the Field
In Italy
4 Sep 44

[illegible]
(J. H. [illegible]), Brigadier
Comd 1 Cdn Base Rft Gp
Cdn Army CMF

RECORDED AT CMHQ IN AB 160 GCM-B-14

A

Army Form A 9.

**Form of Proceedings for General ~~xxxxxxxxxx~~ Courts - Martial.

Proceedings of a General Court-Martial held at Sorrento and Avellino, Italy on the 21,22,23,26 and 29 days of September 1944 by order of

Brigadier E.W. Haldenby, MC VD

Commanding 1 Cdn Base Rft Group

Dated the 4th day of September 19 44

President.

Colonel S.A. Lee MC Comd 2 CBRD

Members.

Lt-Col J.G. Vining, ED	(CAC)	5 Bn 2 CBRD
Lt-Col E.R. Gill,	(RCCS)	7 Bn 2 CBRD
Major L.F.MacDonald,	(RCCS)	8 Bn 2 CBRD
Major A.T. Brown	(CIC)	HQ 1 CBRGp

Judge Advocate

Capt W.B. Bate HQ 1 CBRGp

Trial of*

B144333 Pte Donald John Frederick ROBINSON, 2 Bn 1 CBRD

The order convening the Court, the charge-sheet and the summary (~~xxxxxxx~~) of evidence are laid before the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court

Prosecutor, † Capt DW Rose(CIC) HQ 1 CBRGp (Lawyer)

~~xxxxx~~ § or defending officer † Capt NS Bergman 1 Cdn Conv-Depot(Lawyer)

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked X signed by the President, and attached to the proceedings.

The names of the President and members of the Court read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Q.1 Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

A.1 No sir.

(N.B. – If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.

* Here insert No., Rank, full Name, Regiment, and Appointment (if any)
† Here state Rank and Name, and Regiment (if any)
§ Qualification to be stated.

3667 / PMEJ/5.000 - 8.42

RECEIVED 29 NOV 1944 JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED 1 Dec 44 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

L116

Q.2 Do you object to A59769 Sgt Lashbrook, R.E. 8 Bn 2 CB
hand writer ?

A.2 No sir.

The President, members and judge-advocate are duly sworn.

The following officer is under instruction are duly sworn.

Capt J.A. McGowan (CAC) 5 Bn 2 CBRD

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Q.3 Are you guilty or not guilty of the (first) charge against you, which you have heard read ? *Question to the accused.*

A.3 Not guilty, sir. *Answer.*

[illegible] *Question.*

Answer.

[illegible] *Question.*

Answer.

[illegible] *Question.*

Answer.

[illegible]

Instruction. If the trial proceeds upon any charge to which where is a plea of Not Guilty, the Court will not proceed upon the record of a plea of Guilty, until after the finding on that other charge.

Proceedings on Plea Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. Q.4 "Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. A.4 No sir.

The prosecutor makes an opening address (xxxx

SECOND WITNESS (Capt A. Verdicchio, RCAMC, Medical Officer, 2 Bn,
for (1 CMRD, having been duly sworn, is examined by
Prosecution (the Prosecutor

Q.14 Are you a qualified Medical Doctor ?
A.14 Yes sir.

Q.15 Do you recall the 2nd of August ?
A.15 Yes, I do.

By the Judge Advocate:

Q.16 This year ?
A.16 Yes.

Prosecutor:

Q.17 Will you tell the Court in your own words why you recall that particular night ?
A.17 On that particular night after dozing off to sleep, I was suddenly awakened from my sleep on hearing a couple of shots. A few minutes later I was called downstairs to the roadway in front of the entrance to 2 Bn. Officers' Mess, and there saw a soldier lying face downwards on the pavement.

Q.18 Will you point out on this sketch, (Exhibit "C"), the approximate point where you found the soldier lying ?
A.18 This point I am indicating is the spot where I found this Private soldier face downwards. (Marks point X on sketch).

Q.19 How would you describe this approximate position in relation to the Mess ?
A.19 The approximate position is about ten yards from the stairs leading up to the Mess.

Q.20 Will you describe your examination of the body ?
A.20 I examined the man and found his head lying in a pool of blood. I removed his hat and immediately noticed a large wound on his forehead to the right of the mid-line. He was breathing well and his pulse was fair. I examined the remainder of his head and felt a wound at the back of his skull which was dripping blood into my hand. I didn't examine any further then. I called for shell dressings, bandaged his head and called for a stretcher and a vehicle from the unit. A man took him to the MIR. There I examined his chest. The full particulars of the man were noticed on his identity discs. His name was obtained from the discs for the hospital records in order to fill out the admittance slip. The vehicle then arrived and I despatched him with my Corporal to No 3 Cdn Gen Hosp.

Q.21 What time was that ?
A.21 I didn't notice the time at the start, but when the patient had been sent to the hospital, I noticed it to be about 2330 hours.

Q.22 You mentioned a wound in this man's head. Where was that wound ?
A.22 The wound that I saw was on the forehead up close to the hair line to the right of the mid-line.

Q.23 Where was the second wound ?
A.23 The second wound which I felt was in the back of his skull. I didn't see the second wound.

Q.24 What unit did this man belong to ?
A.24 His shoulder flashes showed him as Hastings and Prince Edward Regt.

Prosecutor's Opening Address

There will be put in evidence a plan of Canada Barracks to assist the Court, followed by such medical evidence as is now available. Following the medical evidence, there will be evidence offered to show that the accused was recognized near the scene of the crime a short time before, and when his quarters were searched, a weapon was found hidden away near his bed, that weapon belonging to the accused and showing signs of having been recently fired. There will be evidence offered that one Pte Willcock was held up about an hour before the body of Dillon was found, and his Glengarry and a fountain pen were removed from his person. Evidence will also be adduced to show that the pen taken from Pte Willcock was found on the person of the accused. I think you will find the evidence will more or less flow together to establish the prosecution's case.

Cross-examined:

Q.25 Will you describe a little more fully the description of the body as you saw it first ?

A.25 Yes. As I saw him first, the patient was lying flat on his face: as we say, in a prone position, with his left cheek lying on the pavement in this position. (Indicates).

Q.26 How do you determine which is the point of entry and which is the point of exit of a wound ?

A.26 On detailed examination, the point of entry is usually described as being small fairly clean point on the top of the wound. The point of exit of a through and through wound shows more fragmentation and is larger.

Q.27 What is the first time you examined him to establish his identity ?

A.27 I examined his identity discs in the middle of the road as soon as we got him on the stretcher.

Q.28 That is the only means you had of identifying him ?

A.28 That is all, sir.

Q.29 Did you check his paybook ?

A.29 I did not.

Q.30 I suggest to you that you had something to do with another set of identity discs that evening ?

A.30 That is true. I saw some other identity discs that evening.

Q.31 Where did you see them ?

A.31 I saw them in the hand of Capt McKee.

Q.32 And was that out on the roadway of Canada Barracks or was it some where else ?

A.32 I saw them in my own room.

Q.33 What were the circumstances of your seeing these identity discs ?

A.33 The discs were offered to me as a means of identifying a patient by Capt McKee.

Q.34 Did you handle the identity discs at all ?

A.34 As far as I recall, I did.

Q.35 Is there any possibility that this body was shot while lying on the ground ?

A.35 The possibility always remains, sir.

Q.36 Why do you say that ?

A.36 It could have happened.

Q.37 What opinion did you come to as a result of the examination of the wounds ?

A.37 The opinion I came to was that this man had been shot through the head and fell face downward on the roadway.

Q.38 Having regard to the size of the wound that you saw, is it probable that the wounded man walked for some distance or was thrown right down on the roadway ?

A.38 I would consider it unlikely that he walked for any distance at all.

Q.39 Do you think it possible, from that type of wound, for a man to fall and try and get up again or not ?

A.39 He became unconscious the moment he was wounded.

Q.40 Did you check the fingernails of this man ?

A.40 No, I didn't.

Q.41 Can you tell us what happened to the beret when you took it off ?

A.41 When I took the beret off I held it up and handed it to someone among the bystanders.

Q.42 Where did you see the beret again ?
A.42 After the patient had gone to hospital, the beret was brought into the MIR by a Lieutenant. I believe he was the Guard Commander.

Q.43 What happened to it then ?
A.43 Well, I looked at it, noticed a hole in the back, one in the front. The inside was filled with blood.

Q.44 Now in applying your shell dressing would you touch the wound at the front or rear ?
A.44 I didn't make any attempt to clean up the wound.

Re-examined:

Q.45 The identity discs that you examined on the wounded man, how were they attached to him ?
A.45 They were attached, but I cannot recall whether it was by a piece of string or by a chain. Whether they were attached in the appropriate manner I cannot say. They were around his neck.

Q.46 What did you do with them ?
A.46 I merely looked at them , took the information from them, name and number, and left them in place.

By the Court:

Q.47 Will you indicate on your own head the point of entry and the point of exit on your own head ?
A.47 There was a wound there and a wound there as far as I can remember. (The witness indicates a wound in the forehead and a wound in the back of the head, the latter wound being lower than the former).

Q.48 Were there any other marks on the face or elsewhere ?
A.48 None that I saw or took the trouble to look for.

Q.49 Any powder burns ?
A.49 No, Ididn't see any obvious powder burns.

Q.50 Can you give the Court the approximate time when the wounded man was moved to the hospital ?
A.50 It would be around 2300 hours. That is an approximation.

Q.51 In your opinion, which of the two wounds did you consider to be the wound of entry ?
A.51 My first impression when I saw him and examined him, - not having seen but merely felt the wound at the back - was that the large wound in the forehead was the wound of exit.

Q.52 Have you had any cause to change your opinion from your own examination ?
A.52 I have had no opportunity of examining the patient further.

By the Judge Advocate:

Q.53 Was the wounded man conscious ?
A.53 He was unconscious.

Q.54 Did he regain consciousness when he was in your hands ?
A.54 No.

Q.55 What was the name you saw stamped on the identity discs which were around the wounded man's neck ?
A.55 Pte Dillon.

Q.56 And the number ?
A.56 I don't recall the number.

Q.57 The initials ?
A.57 No.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

THIRD WITNESS for Prosecution (K52039 Cpl Stewart, R. 2 Bn, 1 CBRD (having been duly sworn (is examined by the Prosecutor

Q.58 What are your duties, Corporal ?
A.58 My duties - I am the Medical Corporal in the MIR.

Q.59 Do you recall the night of the 2nd of August, 1944 ?
A.59 I do, sir.

Q.60 Will you tell the Court in your own words what happened that night ?
A.60 As to the approximate time, I think it was around 2330 hours. I was in my bed and shortly after retiring I heard some shots being fired. Of course I didn't think anything of it at the time. Shortly afterwards I was awakened and was told .....

Judge Advocate:

You cannot repeat conversations that you had with anybody unless the accused, Pte Robinson, was present. You can state that you had conversation, and as a result of such conversation you did something or were ordered to do something. You can state that somebody gave you orders and then you can tell what you did after that.

By the Prosecutor:

Q.61 Will you point out to the Court where you were in relation to the spot marked "X" on Exhibit "G" ?
A.61 Here. (Witness indicates the spot where he was).

Q.62 What did you do when you arrived at that spot ?
A.62 I immediately applied a field dressing to the injured man's head. As I put the bandage on, I found there was more blood coming from the back of his head. I then applied another shell dressing to his head at the back. He was then placed on a stretcher and carried into the MIR. When he was in the MIR, we wrote out the admittance slip for him to be admitted to the hospital. I read off from the identity discs the number, rank and name of the wounded man to the Medical Officer. Then when transportation came I went with the patient to the hospital. When we arrived there, I believe it was Major Davidson who looked into the case. I am not certain whether it is Major Davidson or Major Howard. I was opposite Major Davidson when the dressings were taken off.

Q.63 What hospital was this ?
A.63 The hospital was No 3 Cdn Gen Hosp, sir.

Q.64 Where were the identity discs ?
A.64 The identity discs were on his neck, sir.

Q.65 What were the particulars you read off those discs ?
A.65 His number and his rank and name was on it.

Q.66 What was the name ?
A.66 The name was "Dillon".

Q.67 Do you recall the number ?
A.67 No sir, I don't.

Q.68 Why did you read the particulars to the Medical Officer ?
A.68 The light in the MIR is very poor. At the time he couldn't find out who this man was. That was when I looked for his identity discs.

Q.69 Why did you read them out to the Medical Officer ?
A.69 The light was very poor. He couldn't see it.

J.A.G.

Q.70 Did you not read them out to the Medical Officer in order to give the particulars to him ?
A.70 Yes sir.

Cross examined:

Q.71 When you read out those particulars, did Capt Verdicchio fill out the hospital admission slip ?
A.71 Yes sir.

Q.72 The only information that Capt Verdicchio had of the wounded man was something you told him ?
A.72 From the identity discs.

Q.73 You read out the name and number from the identity discs to Capt Verdicchio, is that correct ?
A.73 Yes sir.

Q.74 Then you read out the particulars on the hospital admission slip?
A.74 Yes sir.

Q.75 Then, the only information as to the identity of the wounded man on the hospital slip was something you told Capt Verdicchio ?
A.75 Yes, sir.

Q.76 You say you applied a shell dressing ?
A.76 Yes sir.

Q.77 What was Capt Verdicchio doing ?
A.77 He applied the first one and I applied the second. I saw more blood on the back of his head. I tore up the first shell dressing and gave it to Capt Verdicchio.

Q.78 Did you notice which wound was the larger of the two ?
A.78 The wound on the forehead was larger than the one on the back of the head.

Q.79 You saw that yourself.
A.79 Yes sir.

No Re-examination.

By the Court:

Q.80 In the MIR were you the only one who examined the patient ?
A.80 There was another officer. On account of the bad light he couldn't make head or tail of the identity discs that is when I looked at it myself.

Q.81 Did you see the MO examine the patient ?
A.81 Yes sir.

Q.82 Will you describe to the Court how he examined the patient ?
A.82 When I got there Capt Verdicchio was there ahead of me. That is when we applied the first field dressing.

Q.83 In the MIR ?
A.83 The shell dressings were all on him.

Q.84 Were there any further examinations of the patient at that time ?
A.84 Not that I remember.

Q.85 You mentioned hearing shots fired. Did Pte Dillon have any weapon near him ?
A.85 I didn't see any, sir.

Q.86 Did you see the MO examine the identity discs about the neck of the patient ?
A.86 No sir.

W.G.B.

Q.87 Who did you say applied the first dressing and the second dressing ?
A.87 Capt Verdicchio applied the first one. That is when I saw the blood at the back coming through the bandage.

Q.88 Now describe what you saw on the identity discs ?
A.88 On his identity discs, all I remember seeing was the number, rank and name.

Q.89 You saw his number, rank and name ?
A.89 Yes, sir.

Q.90 Did you recognize the initials ?
A.90 The initials also.

Q.91 Anything else ?
A.91 No sir.

Q.92 Do you recall what initials were on the disc ?
A.92 No, I can't recall that at all.

Q.93 Do you recall how many initials ?
A.93 No, I don't recall that at all.

By the Judge Advocate:

Q.94 Who took charge of the wounded man when he arrived at No 3 Cdn Gen Hosp ?
A.94 Major Davidson took over, I believe, sir.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

FOURTH WITNESS (U1672 Pte Aedy, J.A. 3 Cdn Gen Hosp RCAMC
for (having been duly sworn
Prosecution (is examined by the Prosecution

Q.95 What are your duties in the hospital ?
A.95 A & D Clerk, sir.

Q.96 Will you explain to the Court what "A & D" mean ?
A.96 Admission and despatch of patients, sir.

Q.97 Do you recall the night of the 2nd of August, 1944 ?
A.97 Yes, sir.

Q.98 Why ?
A.98 I was on duty, working nights from 1900 hours to 0700 hours in the morning.

Q.99 What day ?
A.99 The 2nd of August.

Q.100 1944 ?
A.100 Yes sir.

Q.101 What happened that night ?
A.101 At approximately 2330 hours a truck drove up to the A & D and a stretcher patient was brought in. I took his regimental particulars and 'phoned for a Medical Officer, the Surgical Officer, Major Davidson.

Q.102 Where did you get the particulars from ?
A.102 Read the rank, name and initials and religion from the identity discs on the body, sir.

Q.103 Did you examine the discs ?
A.103 No sir.

Q.104 What were the names read out ?
A.104 Pte Dillon.

Q.105 What happened to that patient ?
A.105 He was sent to the Surgical Officer, sir, and then transferred to 65 British Gen Hosp.

Q.106 How did he go to the hospital ?
A.106 He was sent in an ambulance, sir.

Q.107 What is the practice at your hospital when a patient is sent out ?
A.107 His discharge papers are typed, sir, and he is put in the ambulance and sent out. That is all, sir.

Q.108 Will you explain to the Court what happened that night when you admitted that patient ?
A.108 He was brought in the A & D on a stretcher.

Q.109 Who brought him in ?
A.109 I don't know who brought him in, sir.

No Cross-examination.

By the Judge Advocate:

Q.110 Do you know what day it was that this patient was transferred to No 65 British Gen Hosp ?
A.110 Yes.

Q.111 Well, what day ?
A.111 The 2nd of August, sir.

Q.112 That same night ?
A.112 Yes sir, 2355 hours approximately, sir.

Q.113 When a patient is transferred by ambulance fron one hospital to another, does the hospital discharging the patient forward any documents along with the patient ?
A.113 Yes.

Q.114 What documents ?
A.114 The hospital admission slip and any other papers the Surgical Officer writes up.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

FIFTH WITNESS(Major J.R. Davidson, 3 Cdn Gen Hosp RCAMC
for (having been duly sworn
Prosecution (is examined by the Prosecutor

Q.115 You are a qualified Medical Doctor ?
A.115 I am.

Q.116 Do you recall the night of the 2nd of August, 1944 ?
A.116 I do.

Q.117 Will you tell the Court what happened that night ?
A.117 At approximately 2330 hours, I was called to the admitting room to see a man who had suffered from a through and through wound of his skull. He was unconscious. I removed the dressing which had been applied and examined the patient. I found a through and through wound of the skull. Brain tissue was exuding from the wound in the forehead. I re-applied fresh dressings and ordered the man to be taken to No 65 British Gen Hosp.

Q.118 In your opinion what caused the wound.
A.116 In my opinion it was caused by some sharp missile, probably a rifle or a revolver bullet.

90 L.L.

Q.119 Will you point out on your own head where the two wounds in the head were ?
A.119 As closely as I can remember, sir, the one was approximately on the back of the head, and the other was on the forehead. (The witness indicates the position of the two wounds; the one at the back of the head being the lower down than the one on the forehead).

Cross-examined:

Q.120 Do you know who this patient was ?
A.120 No sir. I believe it was Pte Dillon. I just heard his name mentioned from his documents. It is more important for a medical man working in a hospital to treat the patient than to find out who he is.

Q.121 Did you at any time take any specific steps to establish the identity of this patient in your own mind ?
A.121 No sir.

Q.122 How do you determine which is the point of entry and the point of exit ?
A.122 It is generally believed that the wound of entrance of a bullet entering the skull is what might be termed a clean-cut hole, while the wound of exit usually shows fragmented bone.

Q.123 If any difference of opinion arises between the opinion formed by the medical officers first attending a wounded man and the doctor conducting a post-mortem examination, subsequently, which would you suggest to the Court would be more accurate ?
A.123 Do you refer to a man examining the wound after he had been operated on ?
Q.124 If there had been previous interference by a surgeon, would you explain the difference in the wounds then ?
A.124 It is possible, had there been previous treatment, the wounds of exit and entrance might be confused.

Q.125 Now, did you make any other examination of this patient apart from the head injury ?
A.125 Just as to his general condition, checking his pulse.

Q.126 Did you check his fingers or fingernails ?
A.126 No, I did not.

Q.127 What, Doctor Davidson, was the extent of your interference with that wound - the amount of treatment ?
A.127 There was no interference apart from applying fresh dressings to the skull and bandaging the head.

Q.128 Now, for the purpose of getting a little technical information across the Court, is there such a bone as an occiptal bone ?
A.128 That is the bone at the back of the head, part of the skull.

Q.129 How would you describe the right frontal bone ?
A.129 The right frontal bone refers to the case of the skull. The right frontal bone would be on the right side of the mid-line, beneath which lies the frontal lobe of the brain.

Q.130 I would like you to answer the next two questions, if possible, by merely stating "yes" or "no". Have you ever heard of injury by contracoup.
A.130 Yes.

Q.131 Has this injury by contracoup ever been satisfactorily explained by medical science ?
A.131 I cannot answer that question "yes" or "no".

90.6.6.

Q.132 Injury by contracoup is still a contentious question in medical science ?
A.132 I don't think that is a fair way of putting it.

No Re-examination.

By the Judge Advocate:

Q.133 When you were indicating the position of the wound, front and rear, with your finger, am I to assume that at the front that was the approximate position in the wounded man's forehead.

A.133 I cannot state definitely, only approximately.

Q.134 From what medical school did you graduate ?
A.134 McGill.

Q.135 In what year ?
A.135 1929.

Q.136 You have been practising medicine and surgery ever since ?
A.136 Yes.

Q.137 Which of the two wounds was the wound of ~~him~~ entrance?
A.137 In my opinion the entrance was at the back.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

SIXTH WITNESS (B142030 Pte Sheluk, R. 3 Cdn Gen Hosp, RCAMC
for Prosecution (having been duly sworn
(is examined by the Prosecutor

Q.138 What are you employed at in the hospital ?
A.138 As a Nursing Orderly.

Q.139 Do you recall the evening of the 2nd of August, 1944 ?
A.139 Yes, sir.

Q.140 What happened that evening ?
A.140 I was just having supper. At approximately 2330 hours a case came in which we attended to. At approximately 2355 hours we put him in an ambulance, and I went down to 65 British Gen Hosp with him.

Q.141 Who was this patient ?
A.141 According to his papers, it was Pte Dillon.

Q.142 What did you do when you got him at 65 British Gen Hosp ?
A.142 We took him in to the A & D room and they looked after him there.

Q.143 Did you examine this patient ?
A.143 No sir.

Cross-examined:

Q.144 The only way you know who this patient was is from his papers he carried ?
A.144 Yes sir.

Q.145 The only method ?
A.145 Yes sir.

By the Judge Advocate:

Q.146 Did you see the patient when he came into 3 Gen Hosp.
A.146 I wasn't there when he came in.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

SEVENTH WITNESS(4610847 Sgt Fieldhouse, W. RAMC, 65 Brit Gen Hosp
for (having been duly sworn
Prosecution(is examined by the Prosecutor

Q.147 Do you recall the night of the 2/3 August, 1944 ?
A.147 Yes sir.

Q.148 What were you doing that night ?
A.148 I was night wardmaster at 65 Gen Hosp.

Q.149 Did anything happen that night ?
A.149 During the night, about a quarter to two, Pte Dillon was brought into the hospital with a gun shot wound in the head. He was sent to the Duty Officer and admitted to 65 Gen Hosp.

Q.150 Who brought the patient in ?
A.150 An ambulance from 3 Cdn Gen Hosp brought the patient in. I don't quite recall whether there was an orderly or just the driver with him. There was definitely someone who brought him in and handed him over.

Q.151 How did you obtain the particulars of this man ?
A.151 From his documents.

Q.152 And you said the Orderly Officer admitted him ?
A.152 Yes sir. Admitted him from 3 Cdn Gen Hosp.

Q.153 Who is that Orderly Officer ?
A.153 Capt Grossman.

Q.154 Did you ever see this patient again ?
A.154 No sir.

Q.155 Was there anyone else present ?
A.155 I don't think there was sir. I don't recall, sir.
Cross-examined:
Q.156 How did you know this man was Dillon ?
A.156 From the documents.

Q.157 Did you make any other check ?
A.157 No sir.

Q.158 How did you know it was an ambulance from 3 Cdn Gen Hosp ?
A.158 From the transfer slip.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

EIGHTH WITNESS(Capt W. Grossman, RAMC, 4 MPSU
for (having been duly sworn
Prosecution(is examined by the Prosecutor

Q.159 Are you a Medical Officer ?
A.159 Yes sir.

Q.160 Will you state to the Court the University or College you attended?
A.160 The University of Prague.

Q.161 Are you licensed as a Medical Officer ?
A.161 Yes sir.

Q.162 Where ?
A.162 At the General Medical Council in London.

Q.163 When was that ?
A.163 In 1936.

Q.164 Do you recall the night of the 2nd of August, 1944 ?
A.164 Yes.

Q.165 Will you tell the Court what happened that night ?
A.165 At about a quarter to two in the morning I was called to see a patient who was admitted to 65 British Gen Hosp, transferred to that hospital from No 3 Cdn Gen Hosp. The patient was suffering from a through and through gun wound on the right side of his head. He was deeply unconscious. He did not respond to any questions or pain. I arranged his resuscitation and transferred him to the Resuscitation Ward. I also informed the surgeon on duty from the Neurosugical Unit who took over this case immediately.

Q.166 Will you describe to the Court where these wounds were in this man's head, either by pointing out or - - - ?
A.166 I did not disturb his dressings, but the wound appeared to be on the right side of the forehead and the right side of the back of the head.

Q.167 What were your particular duties with this man ?
A.167 Only Orderly Medical Officer.

Q.168 How many cases did you admit that night ?
A.168 I admitted only one case of gun wound of the head.

Cross-examined:

Q.169 If you did not disturb the surgical dressings, Doctor, then you didn't see the actual holes in the head that evening ?
A.169 No.

Q.170 It was some time subsequent to this that you saw the patient again?
A.170 I saw him in his ward the next day.

Q.171 By that time had he had some treatment to his head ?
A.171 Yes.

Q.172 How do you determine which is the point of entry and the point of exit of a bullet ?
A.172 The exit wound is usually far bigger than the entry wound. The exit wound is more extensive than the entry wound. You can also sometimes determine the entry wound by finding powder grains from the actual bullet.

Q.173 Those are the characteristics of pistol or revolver wounds ?
A.173 Yes sir.

Q.174 Did you get any information about the wounds after the surgical dressings were removed ?
A.174 No sir.

Q.175 What X-Rays did you actually order for this patient ?
A.175 I ordered him for immediate X-Ray.

Q.176 X-Ray of the head ?
A.176 Only the head.

Q.177 How did you identify this patient ?
A.177 He had a slip of paper with his name on it.

Q.178 You identified him from his medical documents ?
A.178 Yes sir.

Q.179 Did you take any other steps to identify him except from his medical documents.
A.179 No.

No Re-examination.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

W.B.L.

NINTH WITNESS (R/Capt J. Tootell, CFRC
for (Having been duly sworn
Prosecution (is examined by the Prosecutor

Q.180 What is your appointment, padre?
A.180 I am RC Chaplain for 65 British Gen Hosp.

Q.181 Do you recall the evening of the 2nd of August, 1944?
A.181 I don't just recall the day. According to my diary it was on the night of the 2nd of August. I don't just remember the day as I say. I saw the boy on the 2nd of August.

Q.182 Do you recall what time?
A.182 I can't remember the time I was called to him.

Q.183 To whom were you called to see?
A.183 Dillon.

Q.184 Did you see Dillon again?
A.184 I was called to the boy Dillon. I attended to him. He was unconscious. I visited him frequently until I went to bed.

Q.185 What hospital was this?
A.185 He was in No 65 British Gen Hosp.

Q.186 What ward was he in?
A.186 He was in Ward I and later was moved to Ward 3.

Q.187 Did you have anything further to do with this man Dillon?
A.187 Nothing at all.

Q.188 When did you cease to see the patient?
A.188 I saw him on the 2nd of August. We always keep visiting a patient until he regains consciousness. The actual time of his death, I can't remember.

Q.189 Do you recall the date of his death?
A.189 The date I have for his death - the 7th, the day he was buried. I buried him on the 7th.

Q.190 Where did you bury him?
A.190 At the new British Military Hospital Burial Grounds outside Naples.

Q.191 Under what name did you bury him?
A.191 Dillon.

Cross-examined:

Q.192 Padre, are you positive that it was the 2nd of August that you saw him?
A.192 I looked in my diary after seeing the patient and made the entry.

Q.193 Did you make this entry in the diary either at the time you saw him or shortly afterwards?
A.193 I make the entries immediately or fairly soon afterwards. The date is the 2nd of August.

Q.194 That entry that you have made there, is a reasonably accurate entry? I want you to be satisfied that it is right in your own mind?
A.194 Yes.

Q.195 In making up your entries in your diary, does a new day start after midnight, or if you made an entry a few minutes after midnight, would you make the date of the entry the day before?
A.195 As soon as I attend to the patient, if it is that day, the 2nd of August, I should say the 2nd of August. If it was three o'clock in the morning, I would make the entry as the third.

Sd B.B.

Q.196 But the individual or patient that you saw on the 2nd of August, is that the patient you buried on the 8th?
A.196 Yes.

Q.197 Then, did you bury him on the 7th?
A.197 Yes.

Q.198 Have you a record of the burial?
A.198 When I buried him I signed the form.

Q.199 Did you make an entry in your diary?
A.199 Yes.

Q.200 I suggest to you that you made that burial statement on the 8th. I am suggesting to you that he was buried on the 8th of August?
A.200 Yes.

Q.201 Would that be correct?
A.201 I took it as the 7th of August.

Q.202 I'll show you your original statement on the Summary of Evidence .....
A.202 From memory this morning, I thought it was the 7th. I attended to him on the 7th. I don't remember the record in the diary of the day I buried him. I abide by my writing.

Q.203 You are stating to the Court that the body you saw on the 2nd of August is the one you buried on the 8th?
A.203 Yes.

Q.204 You are reasonably certain you saw him on the 2nd of August?
A.204 Yes.

Q.205 You are certain that the man you saw on the 2nd of August is the man you buried on the 8th. Is that correct?
A.205 Yes sir.

No Re-examination.

By the Court:

Q.206 What time on the 2nd did you visit this man Dillon?
A.206 I can't remember. I don't make reference in my diary to time.

Q.207 You do not refer to your watch when making entries in your diary. Then, if it was during the night how do you know it was before or after midnight to establish the 2nd? You wouldn't know if it was a minute to 12 or a minute after 12?
A.207 I do not wish to make a definite statement as to the time when I saw the patient.

By the Defending Officer: (with the Court's permission)

Q.208 I want the Court to be satisfied that there is no mistake in the entry in his date book. He has already stated to the Court that it was the 3rd of August. If you saw that man at two o'clock in the morning, you would make that entry on the 3rd?
A.208 Yes sir.

Q.209 You are very satisfied that you saw this body sometime prior to the 3rd of August?
A.209 Yes.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

The Court adjourned at 1210 hrs.

The Court re-opened at 1430 hrs, the same members being present.

By the Court: (to the accused)

Q.210 Do you object to K.68696, Sgt Brown, F.C., H.Q., 1 CBR Gp, as shorthand writer?

A.210 No sir.

The shorthand writer is duly sworn.

TENTH WITNESS for Prosecution (H.72921, Pte Wilcock, A.H. (48 Highrs) 3 Bn 1 CBRD (having been duly sworn (is examined by the Prosecutor

Q.211 Do you recall the night of 2nd August, 1944?

A.211 Yes sir.

Q.212 Would you tell the Court what happened on that night?

A.212 On the night of 2nd August at about 2015 o'clock I was walking along the west side of the Petawawa Bldg going south. About half way down a fellow came up and put a gun in my side. Then, he looked at me and saw my Glengarry and said, "I could do .....

Q.213 Before you go too far will you tell the Court exactly what happened when you met with this other fellow?

A.213 He stepped up to me, spoke, and looking at my Glengarry, took it from my head. He took my fountain pen out of my pocket and then marched me on towards 3 Bn MIR. Then I saw a fellow coming along by the garage. I hollered at him and he came over. We walked on until we got as far as 1 Bn Offrs' Mess. Then I didn't feel the gun in my back.

Q.214 Will you describe the Glengarry to the Court?

A.214 My Glengarry is a red diced one. It had air holes in it. My name "Wilcock" was inside. The badge is rounded and punched out.

Q.215 I produce and show you a Glengarry. Would you examine it?

A.215 This is my Glengarry, sir. (48 Highrs Glengarry with name "A.H. Wilcock" inside, admitted and marked Exhibit "H")

Q.216 Will you describe to the Court the fountain pen that was taken that night?

A.216 My fountain pen was a grey pen with white running through it. It has tooth marks at one end. The original name has been scratched off.

Q.217 I now produce to you two fountain pens. Would you examine them?

A.217 This is my pen, sir. (Holding up one)

Q.218 Will you show the Court any identification marks?

A.218 Yes. (Witness points out to the Court the teeth marks on the pen. Fountain pen admitted and marked Exhibit "I".)

Q.219 Can you describe this man?

A.219 The only thing I recall is the Seaforth flashes. This is all I remember.

Q.220 Did you see the weapon?

A.220 All I saw was the gun and I cannot tell you ----

Q.221 What did you do?

A.221 I went to the Guard Room and reported.

Q.222 Whom did you report to?

A.222 I reported to the Sgt in the Guard Room.

Q.223 What did you do after you reported?

A.223 After I reported I looked around outside in the area around the Ottawa Bldg and found nobody. I then went to bed. At 0200 hrs, Capt Cameron and Capt Mills awakened me and took me to the Guard House.

40.66.

Cross-examined:

Q.224 What kind of a night was it?
A.224 It was a fairly dark night.

Q.225 Do you remember a moon?
A.225 It wasn't shining.

Q.226 Approximately what would be the normal area distance of vision that evening?
A.226 I don't know.

Q.227 Estimate it?
A.227 Maybe 50 yards.

Q.228 Did you get a chance to get away? You were marching some distance without having any weapon in your back?
A.228 I got to 1 Bn Offrs' Mess and didn't feel it any more.

Q.229 Are you sure you were going towards 1 Bn MIR?
A.229 Yes sir.

Q.230 What were you doing at the Offrs' Mess?
A.230 He came back with me.

Q.231 I now show you Exhibit "C", a sketch of Canada Bks. Point out the approximate position where you were held up?
A.231 Approximately here. (The witness marks point with an "A" on sketch.) This is the place where he held me up.

Q.232 Continue from where he held you up?
A.232 We proceeded down this way (indicates southward) to the MIR walking along the Petawawa block, turned left, proceeded east, then north and then east over to approximately the Offrs' Mess.

Q.233 Indicate with the letter "B" where the man left you?
A.233 Here sir. (Witness marks point with letter "B" on sketch)

Q.234 Does it not strike you as a little queer that he should march you in the direction of the Main Guard Room?
A.234 I happened to turn that way.

Q.235 When did you stop feeling the weapon in your back?
A.235 I didn't feel ---- I thought it was a good thing to keep walking.

Q.236 You had the courage to call for assistance?
A.236 Yes sir.

Q.237 What gave you this new found courage?
A.237 I wasn't very far from the chap who was walking towards the Offrs' Mess.

Q.238 Was the individual who held you up wearing a hat?
A.238 He wasn't sir.

Q.239 Was he wearing Seaforth flashes?
A.239 Yes sir.

Q.240 What were you doing out at 2215 hrs?
A.240 Out getting air.

Q.241 Do you usually go out to get air at that time?
A.241 Not usually, no sir.

Q.242 Did you hear any shots that night?
A.242 No sir.

Q.243 You said after the incident you went to bed?
A.243 We left the Guard Room to go to bed.

Q.244 How long did the incident take from the time you were held up until you got into bed?
A.244 15 minutes.

Q.245 How much did you have to drink that evening?
A.245 A few drinks.

Q.246 What of?
A.246 Vermouth.

Q.247 How many glasses?
A.247 About five glasses, sir.

Q.248 You were sober were you?
A.248 I wasn't exactly sober nor drunk.

Q.249 Did you feel the drinks?
A.249 No sir.

Q.250 Have you any idea as to how many Seaforths were at Canada Bks at that time?
A.250 I have no idea.

Q.251 Do you remember a draft coming in just before this incident?
A.251 Yes sir.

Q.252 Was this a few days before the incident?
A.252 I don't know sir.

Q.253 Do you remember if there were any Seaforths in the camp that particular day?
A.253 There may have been.

Q.254 Do you know?
A.254 There might have been.

Q.255 Did you not notice several?
A.255 Yes.

Q.256 Were there many around on parade on this day?
A.256 There were a few.

Q.257 So it wasn't unusual?
A.257 No.

Q.258 You must have gone to sleep very quickly?
A.258 I wasn't very long.

Q.259 Did the incident bother you a great deal?
A.259 It scared the living daylights out of me.

Q.260 You recovered very quickly. Were you in fear of your mortal life?
A.260 I would not say that. No sir.

Q.261 It didn't bother you very much?
A.261 No.

Q.262 How long have you been in the 48 Highrs?
A.262 Five years.

Q.263 Ever been court martialled?
A.263 Never.

Q.264 Are you rft or PE?
A.264 Rft.

Q.265 Now what happened to the man whose assistance you called?
A.265 After I called him over he walked away.

Q.266 Did he accompany you to the Guard Room?
A.266 No sir, he didn't. I just turned around to him and then said "good-night" to him.

Q.267 Didn't you feel a little foolish when nobody was there?
A.267 I didn't worry very much.

Q.268 Didn't you want anyone to substantiate your story?
A.268 I didn't worry. I reported to the Guard Room.

Q.269 Was such conduct normal?
A.269 No sir.

Q.270 Would you act accordingly if you hadn't been drinking?
A.270 No sir.

By the Court:

Q.271 Would you recognize the gun; the one the man extended when he held you up?
A.271 No sir, I couldn't say.

Q.272 Was it large or small?
A.272 It looked like an automatic revolver. (Witness is shown sketch, Exhibit "C".)

Q.273 You were walking in that direction (North)?
A.273 Yes sir.

Q.274 Where did you first see the other man?
A.274 When we got here. (Witness marks point with a "C" on sketch.) The other man was here. (Witness marks point with a "D" on sketch.) The man at point "D" came towards me. I called out to him. He hesitated and stopped as he came towards me.

Q.275 Was there any conversation between the man you met and the man who held you up?
A.275 No sir.

Q.276 Was there any conversation between the man who held you up and yourself?
A.276 No sir.

Q.277 Did you indicate to the man you met that you were held up?
A.277 I said that a fellow held me up with a gun and he chuckled. I emphasized it to him again but he just laughed and walked beside me on the right.

Q.278 Did you feel the pressure of the gun in your back, still, as you walked along?
A.278 Part of the way to the Offrs' Mess.

Q.279 Did you hear any footsteps to indicate to you that the man was leaving the two of you?
A.279 No sir.

Q.280 You remember what type of footwear he wore?
A.280 No sir.

Q.281 How far from the man were you when you met him at the corner?
A.281 About 25 feet when I first saw him.

Q.282 Did he come up to you or were you going towards him?
A.282 I just seemed to run bump into him.

Q.283 You didn't notice him?
A.283 No sir.

Q.284 He confronted you face to face?
A.284 Yes sir.

W.A.B.

By the Judge Advocate:

Q.285 Would you point out on Exhibit "G" the location of the Guard Room to which you went?
A.285 Here sir. (Witness indicates point "E" on sketch.)

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83 (B).

ELEVENTH WITNESS (K.30716 Sgt Whynot, R.H. (WEST NSR) 1 Bn 1 CBRD
for (having been duly sworn
Prosecution (is examined by the Prosecutor

Q.286 What duties do you perform at your unit?
A.286 Provost Sgt 1 Bn.

Q.287 Do you recall the evening of 2 Aug 44?
A.287 Yes sir.

Q.288 What happened?
A.288 At approximately 2245 hrs on the 2nd Aug 44, I was in my Guard Room making out my Guard Report. I heard one shot fired. I immediately left my work and ran from the Guard Room.

Q.289 Where did the shot come from?
A.289 From my estimation it seemed to come from the direction of the Carleton & York and Hast PER Bks.

Q.290 Would you point out where these bks are, please?
A.290 (The witness points to the Kingston Block.) I thought the shots came from the Kingston Block.

Q.291 Where were you at that time?
A.291 I was here. (Marks point with an "E" on the sketch.)

Q.292 After you left the Guard Room what happened?
A.292 When I was outside I heard two more shots fired.

Q.293 Where did they come from?
A.293 The same direction I thought.

Q.294 When you got outside did you notice anything unusual?
A.294 No sir. There were quite a few drunks around that night.

Q.295 What did you do then?
A.295 I stopped for a moment at the entrance of the Borden Block looking around to see what I could see. It was then I noticed a soldier in front of 2 Bn Offrs' Mess trying to get up.

Q.296 What did you do?
A.296 Well, due to the fact that there were a good many drunks that evening I didn't do anything immediately.

Q.297 Did you further investigate this body?
A.297 Yes sir.

Q.298 What did you find out in the investigation?
A.298 When I saw everyone running towards the body, I ran to the body myself.

Q.299 Who was present?
A.299 The Guard Commander and the Cpl of the Guard were present.

Q.300 Where was this body?
A.300 The body was at the main entrance of 2 Bn Offrs' Mess in the Ottawa Bldg.

Q.301 Was it right at the entrance?
A.301 It was towards the Borden Block.

Q.302 How far?
A.302 About 15 feet from the entrance.

30 Ab.

Q.303 Will you point this spot out on Exhibit "G"?
A.303 Here sir. (Witness points to Point "X" on the sketch.)

Q.304 Did you find out who this man was from your own investigation?
A.304 The Guard Comd and Cpl of the Guard had the situation well in hand.

Q.305 Did you recognize the man?
A.305 No sir, I didn't.

Q.306 What type of a night was it?
A.306 A moonlit night, sir.

Q.307 How far could you see?
A.307 I could see approximately 100 yards that night, sir.

Cross-examined:

Q.308 From where you were standing at the entrance of the Guard Room, did you have a fairly clear view to the front of the parade square?
A.308 Definitely, sir.

Q.309 Were you out of the Guard Room on hearing the second and third shots?
A.309 No sir.

Q.310 Were you still inside?
A.310 I was on my way out.

Q.311 Were you in motion?
A.311 I was.

Q.312 How long did it take to get a clear view?
A.312 Approximately 15 seconds to get a clear view.

Q.313 How long to get into the area?
A.313 A matter of seconds.

Q.314 How many?
A.314 About 10 seconds.

Q.315 You were in motion leaving the Guard Room. How soon would you have a view of the scene and be able to see any person running away from the area in which the body was found?
A.315 In the first place I didn't know where the body was. It would take at least 30 seconds to focus.

Q.316 Leaving the office at point "E" on the sketch, I suggest to you that it would be still impossible to take 15 seconds before getting a view of the square. How long did you take?
A.316 10 or 15 seconds. I was walking at the time.

Q.317 You told the Court you were in motion. Are you still satisfied that you would take 15 seconds to get a view after you were in motion on the way out?
A.317 After hearing the first shot it wouldn't take that long. I would think it would take me from 5 to 10 seconds to get out of there.

Q.318 Do you know whether or not there had been a pay day on that evening or before that evening?
A.318 I know that there was one on the 30th of the month.

Q.319 You suggested that there were a lot of drunks about. Does that give you any stimulus to bring back the recollection of a pay day?
A.319 In 1 Bn there are a good many drunks at all times at night; not during parade hours.

Q.320 You have told the Court you saw a body fall?
A.320 No sir, I didn't say that.

W.A.S.

Q.321 What did you say?
A.321 I told the Court that I saw a body trying to get up.

Q.322 Are you sure you didn't see a body falling?
A.322 No sir, it wasn't falling.

Q.323 What makes you so sure?
A.323 I could see the body.

Q.324 Are you positive?
A.324 Yes sir, definitely.

Q.325 How can you suggest to the Court, when it took so long to get your eyes focused?
A.325 I didn't say that.

Q.326 What did you say?
A.326 It took five or ten seconds.

Q.327 What particular stimulus was registered in your mind when you first saw this man getting up?
A.327 In my mind I thought he had been drinking.

Q.328 Then thinking he had been drinking, you immediately turned to see if you could see anyone running away from this particular area?
A.328 No sir, I didn't say that.

Q.329 Having seen this body crouched, and having come to the conclusion it was a drunk, you immediately went towards the Borden Block?
A.329 Yes sir.

Q.330 Why were you so anxious to see if anyone was running away if you thought he was drunk?
A.330 I always search the area of 1 Bn.

Q.331 Why do you do it?
A.331 I said I was searching it to find some one.

Q.332 Do you remember giving evidence in the Summary of Evidence?
A.332 Yes sir.

Q.333 You stated in the Summary, "I didn't know there was a drunk about. I looked around to see if there was anything." Do you want to change it?
A.333 No sir.

Q.334 Have you one reason why you thought someone was running away from this particular scene?
A.334 Because I heard a shot fired.

Q.335 Did you happen to see any of the drunks around the gate the day of the firing?
A.335 No sir.

Q.336 Did it occur to you as a possibility?
A.336 No sir.

Q.337 I suggest to you that it is not unusual to hear shots fired?
A.337 It is not unusual.

Q.338 A common occurrence?
A.338 It has happened before, sir.

Q.339 What did you do after you found that the man was injured?
A.339 After the body was picked up, sir?

Q.340 By how many people?
A.340 There was confusion, sir.

Q.341 How soon after was the body lying there? Did you go over to it?
A.341 I was there when it was picked up.

Q.342 Then you were satisfied that the Guard Comd still had the situation well in hand?
A.342 Yes sir.

Q.343 What investigation did you make? Did you find weapons or missiles of any kind or empty cartridge cases?
A.343 I searched the area where the body was found and never found anything.

Q.344 How soon after hearing the shots was your search made?
A.344 Approximately five or 10 minutes after.

Q.345 Was it a thorough search of the immediate vicinity?
A.345 As thorough as a flashlight would allow.

Q.346 And what distance from the body did you search?
A.346 I searched right around the entrance of the Sgts' Mess 1 Bn.

Q.347 Where would that be?
A.347 Right here, sir. (The witness marks the point with an "F" on sketch.)

Q.348 What were you searching for at the time?
A.348 I was searching for a weapon and also empty cartridges.

Q.349 Did you find any?
A.349 No sir.

Q.350 Now, do you remember whether a draft had recently arrived prior to the 2nd of August, 1944?
A.350 I am pretty sure there was, sir.

Re-examination:

Q.351 To your knowledge did anyone else search the area before you made your search?
A.351 No sir.

By the Court:

Q.352 You stated you went from your Guard Room to the entrance of the Borden Block direct?
A.352 That is right, sir.

Q.353 What direction did you take, to go from the Guard Room to the Borden Block?
A.353 I am sorry sir, my Guard Room is in the Borden Block and not in the Ottawa Bldg.

By the Judge Advocate:

Q.354 Did you or did you not examine the man whom you found lying on the ground?
A.354 No sir, I did not.

Q.355 When you told Capt Rose in re-examination that to your knowledge no other search was made prior to the search which you made, did you mean that you knew that no other search had been made or that you didn't know?
A.355 I didn't know, but to my knowledge nobody had.

Q.356 How did you arrive at your estimate of the approximate time that you heard the shots?
A.356 There had been a few instances of men jumping or falling out of windows. I had made it a point of looking at anything that happened, so I looked at my watch.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83 (B).

TWELFTH WITNESS(Lt (A/Capt) T.E. McKee (PPCLI) 8 Bn 1 CBRD
for (having been duly sworn
Prosecution(is examined by the Prosecutor

Q.357 Do you recall the evening of the 2nd of August, 1944?
A.357 I do.

Q.358 Will you tell the Court what happened on that evening?
A.358 On the 2nd of Aug 44, at about 2250 hrs, I was in 2 Bn Offrs' Mess 1 CBRD having a lunch. I heard two shots fired outside. They sounded to be quite close. I got up and walked out to the porch outside. I could smell powder burning. I looked around and saw a body lying on the pavement about eight yds from the porch.

Q.359 I show you Exhibit "G". Would you point out that spot on the sketch?
A.359 The porch is here and the body was lying there. (The witness marks the point with an "H" on the sketch.)

I saw the body lying on the pavement. So I went down to the body. It was a man lying face downwards with his arms stretched out at his side.

Q.360 Would you demonstrate?
A.360 Like this. (Witness demonstrates)

Q.361 What was his condition?
A.361 He was breathing. It sounded quite heavily to me. There was some blood on the pavement which was coming from a hole in his head. I immediately went to 2 Bn RAP and sent the orderly for the Medical Offr. Then I returned to the scene of the accident. There was a number of offrs and men around there by now. I thought the man may have shot himself so I took a look for the weapon. I found nothing. In his left hand I found a set of identity discs which I took and put in my pocket. By this time the MO was removing the body to the MIR. I went into the MIR where I turned the identity discs over to the Adjt 2 Bn, Capt Snell. I just glanced at the discs and saw the name "Robinson" on them.

Q.362 I produce two identity discs. Do you recognize them?
A.362 I would say they are the same discs.

Q.363 Would you read to the Court the name on the discs?
A.363 B.144333, Pte Robinson, Presbyterian, Canadian. (One red and one green identity disc, admitted and marked Exhibit "J".)

Q.364 How were these discs found in the wounded man's hand?
A.364 They were in the left hand of the man who had been shot, clenched tight, with the fingers closed.

Q.365 Were the discs entwined in his hand?
A.365 I could not say, sir, that they were both in his hand. There was one in his hand, and I take it both were held by the string.

Q.366 What did you use a light for?
A.366 I had no light. The moon was shining. It wasn't very dark. I could see the name on the discs.

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Q.367 What was the light outside?
A.367 It was a full moon. The stars were shining and the moon was out. You could see a man walking about 100 yards away.

Cross-examined:

Q.368 How much time had elapsed from the time you heard the shots until the time you got outside on the porch?
A.368 It would not be over a minute.

Q.369 Which part of the Mess were you in?
A.369 I was in the part where we eat/at the end table.
sitting

Q.370 And that is in the part of the Mess nearest the door?
A.370 That is right.

Q.371 Would you have taken a minute to get outside?
A.371 No, it would not if I had jumped right up. I got up and walked out the door.

Q.372 About how many feet was it from where you were sitting to the door?
A.372 Approximately 16 feet.

Q.373 Did you estimate the paces taken as you walked out of the door?
A.373 I just walked over at a normal pace to the door.

Q.374 Did you take about five seconds?
A.374 Not any more.

Q.375 Did it take another second or two to open the door?
A.375 It would take another second or two to get on the porch?

Q.376 Did that not take 15 seconds?
A.376 It wouldn't take more than 15 seconds from the time I started moving until I got out.

Q.377 Why do you say you could have seen a man who was running away from the immediate vicinity of the body?
A.377 If a man had been close - very close - and running out in the open across the parade square, I think I could have seen him.

Q.378 You told the Court you could see a man 100 yds away?
A.378 Right.

Q.379 So within the 15 seconds you could have seen a man running away?
A.379 If he had run along by the building, I may not have seen him.

Q.380 Have you studied ballistics to any extent?
A.380 No.

Q.381 Have you studied the normal amount of ballistics in the "Weapon Training" pamphlet?
A.381 That's right.

Q.382 Was it a very still night or was there any breeze at all?
A.382 I don't think there was very much because I didn't notice it windy at all.

Q.383 I suggest to you that if you were able to smell powder recently burnt from the time you got out on the porch, it would have been fired from the spot on which you were standing. Do you agree with that suggestion?
A.383 I would say that it hadn't been fired very far away from the doorway. It could have been up to 25 yds away.

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Q.384 I suggest that you are imagining the smell of that powder. As a result of the information you subsequently learned, you are imagining you smelledit and didn't actually smell it?
A.384 I am convinced that I smelled powder.

Q.385 I suggest that it was a physical impossibility to smell it; impossible according to ballistic ------
A.385 I still say I smelled it.

Q.386 Then you suggest to the Court that it was powder from the bullets you heard fired?
A.386 I cannot say what bullet the smell of the powder came out of as I didn't see it fired.

Q.387 Were you in a particularily mentally alert stage when you were on the porch?
A.387 I would say that I was in my normal mental condition.

Q.388 Was it influenced by a considerable quantity of liquor?
A.388 It was not.

Q.389 I suggest that you had quite a bit to drink prior to the shooting incident, is that correct?
A.389 On the evening of the shooting incident, I had very little to drink.

Q.390 I am not trying to discredit you. Will you tell the Court what quantity you had that evening?
A.390 Throughout the evening I would say I had possibly four drinks of gin and lime.

Q.391 Doubles or singles?
A.391 Singles. I think I could have had four.

Q.392 What directed you to the identity discs?
A.392 In the man's hand?

Q.393 You found a set of identity discs?
A.393 I was actually looking for a weapon. I thought the man had shot himself. While looking for a weapon I was kneeling down at his left side. I saw his hand and something in his hand. When I pulled it, I found a set of identity discs.

Q.394 Did you have any definite instructions for removing the set of identity discs?
A.394 No.

Q.395 They came out easily?
A.395 Fairly easily.

Q.396 Can you, by taking this (hands witness Exhibit "J"), show the Court by putting your hand on the floor, the approximate position of the string?
A.396 I cannot actually sir. His hand was lying right at his left side. I noticed something in it and pulled it out and it was a set of identity discs. (Witness demonstrates the manner in which he found the identity discs in the hand of the injured man.)

Q.397 How much of the string outside of the man's hand was visible to you?
A.397 I cannot say.

Q.398 Are you sure you noticed the identity discs prior to pulling the string?
A.398 I said there was something in his hand. I didn't know they were discs.

Q.399 The string directed you?
A.399 I didn't know there was a string.

W.B.B.

Q.400 Would you describe to the Court whether the string was all in his hand or all out?
A.400 I can't.

Q.401 Describe to the Court whether it was all in or all out?
A.401 That it was all pulled from his hand, no.

Q.402 The normal action of a man struck from behind is to fall forward with his hands stretched, isn't it?
A.402 Yes, I would think that if you were struck from behind you might fall with your hands outstretched on being shot from behind with a .45.

Q.403 You are estimating?
A.403 Yes.

Q.404 Is it normal for a man being struck from behind to have his hands stretched out?
A.404 Yes, it is normal.

Q.405 Now what gave you the idea that this man was shot with a.45?
A.405 The reason I had the idea that he was shot with a .45 was that he had a hole in his head - the doctor states two holes - and some of them found .45 slugs in the area. That is the only reason I have for assuming it.

Q.406 Was your reason for coming to that conclusion based on your own investigations?
A.406 No.

Q.407 You didn't know for sure?
A.407 The doctor said so in the MIR to the others and to myself while a number of men were in there. The .45 shells, I referred to, were shown to me that evening as having been picked up on the scene of the incident.

Q.408 Something like this? (Defending Officer produces a brass casing.)
A.408 Something like it.

Q.409 Anything like this? (Defending Officer produces a steel casing.)
A.409 Yes. (42 WCC brass casing and 42 steel casing admitted and marked Exhibits "K" and "L", respectively.)

Q.410 Did you examine those casings very carefully?
A.410 I don't know.

Q.411 Now were the identity discs held in a very firm grip, as if the wounded individual was hanging on to them for dear life?
A.411 No, I didn't need to exert pressure to remove them.

Q.412 Was it possible that someone could have put or forced anything into his hand?
A.412 It is quite possible.

Q.413 Why did you say these (indicates Exhibit "J") are the same discs you gave to Capt Snell?
A.413 I still say they look like the same discs.

Q.414 Similar?
A.414 Yes.

Q.415 Did you mark the discs when you found them in the hand of the wounded man for purposes of identification?
A.415 I did not.

Q.416 When you found these discs on him did you attach any importance to them?
A.416 No. When I took them, I thought they belonged to the man that was shot.

w.t.b.

Q.417 And what did you do?
A.417 I put them in my pocket.

Q.418 And how long afterwards - that evening - was it that you again produced them?
A.418 It would be, I would say, not over three-quarters of an hour.

Q.419 How do you know they are the same ones you took from the hand of the wounded man?
A.419 Because I had taken them from his hand and put them in my pocket. They were still there when I took them out again.

Q.420 What was the impulse that caused you to take them out again?
A.420 When they were trying to find out the names of different people. The Medical Offr said that he had checked the discs of the man who had been shot, and his name was "Dillon". Then I recalled the discs I had in my pocket and turned them over to the Adjt of 2 Bn, Capt Snell. I saw the name "Robinson" on the discs.

Q.421 I suggest to you that you didn't find the identity discs in the hand of the wounded man: that they became apparent to you only at such time as they started to move the body. Do you agree?
A.421 No, I had nothing to do with the moving of the body. I had the discs in my pocket when they started to move the body.

Q.422 Then, if I am under the impression that they were about to move the body when you took the identity discs, I am labouring under a misapprehension?
A.422 They could have been about to move the body, for they did so shortly after.

Q.423 How shortly after, moments, seconds?
A.423 A matter of minutes because they carried the body out on a stretcher after I had the discs.

Q.424 After you got the discs, what amount of time elapsed before the body was moved or carried away?
A.424 I can't say the exact time.

Q.425 Do you know what happened to the beret that the wounded man was wearing?
A.425 I do not.

No re-examination.

By the Court:

Q.426 At the scene of the accident - how many people were around the body?
A.426 I would say there would be six or seven at least. There could have been more around, but right beside the body I would say at least six or seven.

Q.427 Did you speak to anybody about the discs or draw them to their attention?
A.427 No sir.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83 (B).

THIRTEENTH WITNESS (Lt A.J.B. Mills (Perth R) 3 Bn 1 CBRD
for (having been duly sworn
Prosecution (is examined by the Prosecutor

Q.428 Do you recall the night of 2 Aug 44?
A.428 Yes sir.

Q.429 Will you tell the Court what you were doing?
A.429 I was having lunch in the 2 and 3 combined Offrs' Mess when I heard three shots. I went outside to see what was going on. On the steps I found a Glengarry with a 48 Highrs badge on it.

Q.430 Would you describe this Glengarry?
A.430 It was an ordinary 48th Glengarry with red dice checks on it.

Q.431 Did you examine the Glengarry immediately?
A.431 I went over and looked at the wounded man. I saw him lying on the ground. Someone handed me a beret which I took to be the wounded man's as there was blood dripping from it. Then I looked at the Glengarry closer and saw the name "A.H. Wilcock" on it.

Q.432 I produce a Glengarry, (Prosecutor shows Exhibit "H") do you recognize it?
A.432 That is the same Glengarry.

Q.433 Where was the man that you saw lying?
A.433 Approximately 15 feet from the door leading into the Mess.

Q.434 I show you Exhibit "G". Would you look at it closely and point out where you saw the body lying?
A.434 About here. (The witness marks point with an "H" on the sketch.)

Q.435 Did you examine the body?
A.435 No, I just looked at the man and saw a pool of blood around his head.

Q.436 At what time was that?
A.436 2240 hrs approximately.

Q.437 As a result of finding the Glengarry what did you do?
A.437 I took it to Capt Cameron, the Coy Comd, and then accompanied Capt Cameron to the 48 Highrs quarters where Wilcock was brought to me and later turned over to the 2 Bn Guard.

Q.438 Did you examine the scene of the accident?
A.438 Yes, quite thoroughly.

Q.439 Did you find anything?
A.439 I didn't find anything myself. I noticed blood on the ground everywhere, and on the steps going into the Mess where I picked up the Glengarry.

Q.440 When you had the beret in your hands, did you examine it?
A.440 I did not examine the beret. I just looked at it and then turned it over to the Guard Comd.

Q.441 Where did you turn it over?
A.441 Outside, at the scene of the accident.

Cross-examined:

Q.442 Did you see the blood on the steps where the Glengarry was found at the same time as you saw the Glengarry?
A.442 No, when I went back.

Q.443 Was that on returning from the body?
A.443 No, on my return from having seen Capt Cameron and Pte Wilcock.

Q.444 Can you tell the Court whether or not the blood was there when you found the beret?
A.444 I am sure I saw the blood. I cannot make a definite statement as to that.

Q.445 What lead you to that conclusion?
A.445 The only thing I can say is that the beret was not carried up the steps by myself or anyone else. The blood may have been there from some other reason.

Q.446 Then your explanation of the blood on the steps is that it did not come from the beret?
A.446 Yes.

Q.447 Did you go out on the porch?
A.447 Yes sir, the porch of 2 and 3 Bn Offrs' Mess.

Q.448 Where was Capt McKee when you got to the beret?
A.448 I didn't see him myself.

Q.449 How long after you heard the shots did youappear on the scene?
A.449 Roughly three minutes.

Q.450 Can you tell us why you did not take less than three minutes?
A.450 Yes. I made a sandwich. After I had the sandwich made, I started to eat it and then walked out of the Mess.

Q.451 What were the ingredients of the sandwich?
A.451 It was ------

Q.452 What was the base of the sandwich?
A.452 Bread.

Q.453 Were there any onions in it?
A.453 Yes.

Q.454 A large amount or small?
A.454 A large amount.

Q.455 Do you remember whether or not there was any bully beef?
A.455 Definitely. There was no bully beef.

Q.456 What time is lunch served for offrs of 2 and 3 Bns?
A.456 It is put on the table at 9 o'clock.

Q.457 When you got on the porch, could you smell any powder burning?
A.457 No sir.

Q.458 How did you arrive at the conclusion it was 2240 hrs when you heard the shots?
A.458 The Mess closes at 2230 hrs. It was closed when I started to make the sandwich.

Q.459 Is there any other method of identifying the Glengarry and badge except for the name on the inside?
A.459 The name on the inside is the way I identified it.

Q.460 Did you see a set of identification discs removed from the hand of the wounded man?
A.460 No, I didn't.

Q.461 How many people were around the body when you arrived?
A.461 Quite a number.

Q.462 Could you give us any help as to the number?
A.462 I would say about ten or twelve.

Q.463 Was there a certain amount of confusion around the body? Was there chaos and excitement?
A.463 Oh yes.

Q.464 How close were the people coming to the body when they were having a look around?
A.464 Not more than a foot from the body.

Q.465 Would it be very difficult for any of the people around to put anything in the hands of the wounded man?
A.465 I would say it would be very difficult without anyone seeing it.

Q.466 Would it have been possible for others to come up to the body without being noticed by those around?
A.466 Yes, there is a possibility.

10.6.60.

Q.467 Do you know of any fights that might have taken place in the area of 2 or 3 Bn Mess?
A.467 No sir.

Q.468 Do you know what happened to the beret?
A.468 After I had it, it was turned over to Capt Snell, Adjt 2 Bn.

Q.469 You say you saw one drop of blood at the door. Is that correct?
A.469 Yes, that is correct.

Q.470 On the floor of the door or on the door?
A.470 On the ground at the base of the door.

Q.471 Could you assist us by stating whether it was a drop or trail of blood or a pattern?
A.471 It appeared to be a trail of blood part way up the steps, then there was no blood and one drop right at the base of the door.

Q.472 What kind of a night was it as you recollect?
A.472 Very bright.

Q.473 And what was the normal visibility for seeing - across or towards the parade square?
A.473 You could see right across the parade square.

Q.474 Could you have distinguished people, if there had been any between the Ottawa Bldg and the Kingston Bldg? Could you see immediately north?
A.474 Yes.

Q.475 On the left, as you stood on the porch, could you distinguish bodies between yourself and that building?
A.475 Yes.

Q.476 Could you distinguish bodies between yourself and the Borden Block?
A.476 Yes.

Q.477 If you had arrived at the scene where the body was within a matter of seconds of the shooting, could you have seen anyone running across the parade square?
A.477 I could have seen anyone that was running, yes.

Q.478 What type of weapon did you think had been fired when you heard the shots?
A.478 I thought it was a Tommy Gun.

Q.479 Why did you think it was a Tommy Gun?
A.479 From the sound.

Q.480 Any other reason?
A.480 No.

Q.481 Had there been any Tommy Gun firing prior to this on the evening of 2nd August?
A.481 Not that I know of.

Q.482 Had you not heard of any weapon firing at nights?
A.482 Yes, I have heard weapons firing at nights on occasions.

Q.483 In the area of Canada Bks?
A.483 Yes and outside the area of Canada Bks.

Q.484 Is it unusual for shots to be fired at that hour of the night?
A.484 It is unusual, but it has happened.

1.66

Q.485 It could not have been very unusual if it took you three minutes to get out to see it?
A.485 I wasn't terribly startled.

Q.486 When you had the beret, did you notice how many holes in it?
A.486 No, I didn't.

Q.487 How long had you been in Canada Bks prior to the 2nd of Aug?
A.487 About one month.

Q.488 Were 48 Highrs' Glengarries unusual sights around that area at that time?
A.488 No.

Q.489 And around the parade/square on 2 Aug, was it unusual to see Seaforth flashes?
A.489 No.

Q.490 Have you been having any previous trouble or heard of any previous trouble or holdups prior to this evening?
A.490 I had not heard of anything.

Q.491 Will you tell the Court whether or not there had been a draft in prior to 2nd Aug 44?
A.491 Yes.

Q.492 And were there quite a number of rfts at the time or a dearth such as now?
A.492 Quite a number.

Q.493 Now can you give us any opinion as what value .45 pistols were in the eyes of the rfts at that time?
A.493 I have no information as to that.

Q.494 In your eyes has an American .45 pistol a certain souvenir value?
A.494 Yes sir.

Q.495 In your experience had you noticed they have a greater value to the rfts recently arrived than to the rfts who have been over for a month or two?
A.495 Yes they have.

Q.496 Did you form any opinion as to what direction these shots were fired from?
A.496 I never formed any opinion.

Q.497 Did you, yourself, make a search for anything in the immediate vicinity immediately after the shooting for a weapon, or did you ignore the issue?
A.497 Yes, we made a search.

Q.498 Can you tell the Court how dilligently that search was conducted?
A.498 There were several members of the Guard and a couple of offrs conducting it. The search was quite thorough.

Q.499 Have you any opinion as to whether or not Thompson Sub Machine Carbines were in good supply around 2 Aug - that is to the personnel of Canada Bks?
A.499 We fired Tommy Guns on the ranges almost daily at that particular time.

Re-examination:

Q.500 What type of ammunition does a Tommy Gun generally fire?
A.500 .45 rimless.

Q.501 I show you Exhibits "K" and "L". Will you examine them? What type of ammunition is that?
A.501 .45.

p.66.

Q.502 Is that the type you use in a Tommy Gun?
A.502 Yes sir.

Q.503 Do you know anything about ballistics?
A.503 No.

Q.504 Do you know anything about a Colt automatic?
A.504 No.

Q.505 Have you fired one?
A.505 Only a .45.

Q.506 What type of ammunition does it use?
A.506 Same as a Tommy Gun.

Q.507 Therefore, that type and that used by Colt are the same?
A.507 Yes sir.

Q.508 In your cross-examination you said that there was "excitement" around the body. Would you tell the Court what you meant?
A.508 I didn't mean excitement. There was quite a number of people around the body, and until the Guard Comd dispersed the crowd there was some confusion.

Q.509 What do you mean by confusion?
A.509 People talking; walking here and there. Nobody seemed to be doing anything.

Q.510 Did you see the Medical Offr arrive?
A.510 I wasn't there when the Medical Offr came.

Q.511 Did you mention in the cross-examination that the blood on the steps could have been caused by someone walking through the pool of blood and on up the steps?
A.511 No, it did not appear so.

By the Court:

Q.512 Did you examine the floor inside the doorway for evidence of blood?
A.512 Yes sir.

Q.513 And what did you find?
A.513 There was none.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83 (B).

Court adjourned at 1655 hrs.

Court re-opened at 1000 hrs, 22 Sep 44, the same members being present.

Prosecution produced Medical Certificate.

FOURTEENTH WITNESS for Prosecution (B.51982 Cpl Ferguson E. Carlt & York R, 1 Bn, (1 CBRD, having been duly sworn, is examined by the Prosecutor

Q.514 Do you recall the evening of 2 Aug 44?
A.514 Yes sir.

Q.515 What were you doing on that evening?
A.515 On that evening I was .....

Q.516 Will you tell the Court what happened that night?
A.516 At approximately 2230 hrs a man from the 48th Highrs Coy, Pte Wilcock, reported to the Guard Room. I took Pte Wilcock to the Seaforth Coy Office where I spoke to the Coy Sgt Major. I came back downstairs and showed Pte Wilcock where his billets were.

WBS.

Q.517 Where were his billets?
A.517 At the far end of the camp. I do not know the name of the building. the 48th Highrs were stationed there.

Q.518 I show you Exhibit "G". Where were you when Pte Wilcock reported?
A.518 Here sir. (Witness points to spot "E" on the sketch.)

Q.519 Where did you take Pte Wilcock after he reported to you?
A.519 To the Coy Office of the Seaforths on the second floor of the Petawawa Bldg. (Witness marks spot with letter "I" on sketch.)

Q.520 From there where did you take Wilcock?
A.520 After I spoke to the Sgt Major of the Seaforths I brought Pte Wilcock to the opposite side of the Petawawa Bldg. I told him the way to his billets.

Q.521 Where were they?
A.521 The Debert Block. (Indicates on Exhibit "G")

Q.522 Are you sure those are the billets?
A.522 I am not exactly sure, but I took him there to his billets.

Q.523 What else happened that night?
A.523 I was on that side of the building. Pte Wilcock had just left me when I heard two shots fired.

Q.524 Could you say whether it was some distance away or quite close?
A.524 It came from the direction of 2 Bn Offrs' Mess.

Q.525 What did you do then?
A.525 I returned to the Guard Room.

Q526 What did you do when you returned to the Guard Room?
A.526 I went to where a man had been injured.

Q.527 Where was that?
A.527 In front of 2 Bn Offrs' Mess.

Q.528 What did you do when you went to 2 Bn Offrs' Mess?
A.528 When I got to 2 Bn Offrs' Mess, I saw a pool of blood in front of the steps and half of a sandwich amongst the blood.

Q.529 I show you a sketch, Exhibit "G". Point out where you saw this pool of blood?
A.529 Here sir. (Witness points to point "H" on sketch.)

Q.530 When you arrived there what did you do?
A.530 Well, I tried to determine where the shots had been fired.

Q.531 Did you determine that?
A.531 No, in my hunt I found a .45 casing.

Q.532 What type of casing?
A.532 A .45 calibre.

Q.533 Can you describe the marks on it?
A.533 There weren't any but there was a dark colour on it.

Defending Officer:

I am not satisfied with the method in which the Exhibits are being presented. I feel that there is going to be a lot of irregularity here. I would like the Prosecuting Offr to have the witness properly describe each Exhibit to my satisfaction before it is presented in evidence.

Prosecutor:

There is no doubt in my mind that certain articles were found. I feel that the witness, having found some article, has a right to identify that article if possible.

Subb.

Judge Advocate:

Capt Rose, could you get the witness to describe, if possible, in every detail, the article which he found before producing it to him in Court?

Prosecutor:

Q.534 Will you describe to the Court where you found this article?
A.534 I picked up a .45 casing about ten feet from the steps of 2 Bn Offrs' Mess. It was lying against the curb.

Q.535 Will you point out on the sketch, Exhibit "G", where you found this casing?
A.535 I found it right about there. (Witness marks point with letter "J" on sketch.)

Q.536 Will you describe in detail to the Court the casing that you found?
A.536 There was no difference between it and any other .45 casing. No special marks that I can identify it with.

Prosecutor:

In view of the fact that he cannot describe it correctly I cannot ask the witness to identify it.

Judge Advocate:

He may be able to identify the casing.

Prosecutor:

Q.537 I show you two cartridge cases: marked EC 43 and EC respectively. The number on the latter is unreadable. Are they similar to the ones you found?
A.537 This one is sir.

Q.538 Is this the one you picked up?
A.538 This is the one, yes sir. (Steel casing marked EC 43 admitted and marked Exhibit "M".)

By the Court:

Could I see the two casings shown to the witness? I am fairly certain that later in the proceedings the Court will be able to see them.

Judge Advocate:

It is not permitted to see the other one at this stage. It is not yet in evidence, Major Brown.

Court:

I have a particular reason. There are two distinct types that any witness could identify; a steel casing and a brass casing. The point I wish to establish is whether these two cartridge casings that were shown to the witness were both brass or one brass and one steel.

Judge Advocate:

The witness was shown two casings which were described by number. He picked out one which is marked Exhibit "M". The other, unless identified and produced in evidence, cannot be seen by the Court.

Prosecutor:

Q.539 After you found this casing what action did you take?
A.539 I turned the casing over to the Offr of the Guard.

Q.540 Who was that?
A.540 Lt Dolan who was present at the time.

Q.541 What else did you do?
A.541 After turning over the casing, I reported to the Guard Room.

Q.542 What time was this?
A.542 Approximately 2230 hrs.

Q.543 How did you establish the time?
A.543 Well, I am not sure. At nine o'clock the guard relief came on. From then until one o'clock we act as Regtl Police. Men coming in after curfew, approximately 10 or 10:15 o'clock, report to the Guard Room. About 10 minutes after curfew Pte Wilcock reported to the Guard Room.

Q.544 What time was it when you found the casing?
A.544 About 2245 hrs.

Q.545 After you returned to the Guard Room where did you go?
A.545 Well, after I returned to the Guard Room, we went out in different groups to look over the Camp and see if the hold-up man could be found.

Q.546 Did you find him?
A.546 No sir.

Q.547 Then what did you do?
A.547 We came back to the Guard Room. I proceeded back to the scene of the shooting.

Q.548 What did you do there?
A.548 There were several guards and offrs still around. One of the guards was still looking around and found a second .45 casing.

Q.549 What else happened?
A.549 It was turned over to one of the offrs present.

Q.550 What did you do about it?
A.550 I did nothing as the offrs seemed to take charge.

Q.551 What did you do after that?
A.551 We returned to the Guard Room. The following morning Lt Dolan sent me to the Seaforth Bldg to get Pte Wilcock's number and name.

Q.552 Did you go to the Seaforth Office?
A.552 Yes, but I did not obtain the number.

Q.553 Did you find anything there?
A.553 I reported and then I went down the steps of the bldg where I picked up a second .45 casing.

Q.554 I show you Exhibit "G". Where did you find the second casing?
A.554 On the steps going out of the billets in the Petawawa Bldg. I was coming out of the building, going down the steps. I found it on the steps about here. (Witness marks point with letter "I" on sketch.)

Q.555 Will you describe to the Court the casing you picked up?
A.555 The casing I picked up was not perfect. It had been stepped on. It was similar to the first casing except that it had been stepped on.

Q.556 I now show you a cartridge casing EC, apparently steel. Is that the casing you found?
A.556 Yes sir, I would say it was. (Admitted and marked Exhibit "N".)

Q.557 What did you do with that casing?
A.557 I brought it back to the Guard Room and reported to my offr, Lt Dolan.

Cross-examined:

Q.558 Why did you say so definitely that this (Exhibit "N") is the casing you found?
A.558 I am not saying that it was.

Q.559 Your words were, "That is the casing I found"?
A.559 I don't believe I said that.

Q.560 Then you say it is similar to the casing you found?
A.560 Yes.

Q.561 I show you Exhibits "M" and "N". By looking at the base can you notice any similarity of manufacture by company and by year?
A.561 It doesn't look like it.

Q.562 When you looked at the base of them did you notice the initials of the manufacturer on the back?
A.562 Both have the same number and year on the back.

Q.563 You saw that they are of the same manufacture, and that they apparently came in the same package?
A.563 Yes sir.

Q.564 In unloading a magazine isn't it usual to pick out cartridges bearing the same number and year?
A.564 Yes sir.

Q.565 Do you realize that when an automatic pistol is fired the empty cartridge is ejected?
A.565 Yes sir.

Q.566 You heard two shots?
A.566 Yes sir.

Q.567 Did you make any estimate as to the distance of the ejection from the automatic weapon?
A.567 No sir.

Q.568 Did you know that if you fired two shots from the same weapon the distance of ejection of the casings would be the same?
A.568 Yes sir.

Q.569 What is the distance between points "J" and "I" on Exhibit "G"?
A.569 I would say about 100 yds.

Q.570 Right. Then would you say that the person firing the pistol had sufficient time to get from one spot to the other?
A.570 Well sir ------

Q.571 Was there sufficient time for the man to cover that distance between the two explosions?
A.571 No sir, not over that distance.

Q.572 So that there could not be any relation between the two casings and the two shots?
A.572 That depends if it was the last shot of the weapon.

Q.573 You do not know. You said the time elapsing between the firing of the two shots was not sufficient for a person to cover the distance between the two casings. Was there sufficient time?
A.573 No sir.

hdb.

Q.574 You showed Wilcock where his billets were?
A.574 Yes sir.

Q.575 Did he require your assistance?
A.575 Pte Wilcock had been drinking and was excited.

Q.576 Was he a little bit irrational?
A.576 Yes sir.

Q.577 Were you in the building when you heard the shots?
A.577 I was in the open when I heard the shots fired.

Q.578 From where you were standing when you heard the shots fired, did you have a clear view of the entrance of 2 Bn Offrs' Mess?
A.578 No sir.

Q.579 You were outside of the Petawawa Bldg?
A.579 Yes sir.

Q.580 How long did it take you to get around to have a view of the front of the building?
A.580 About half a minute, sir.

Q.581 30 seconds is a long time?
A.581 Yes sir.

Q.582 Did you speed up?
A.582 Yes sir.

Q.583 Then you still think it took 30 seconds?
A.583 I imagine it was about that.

Q.584 What type of a night was it?
A.584 A medium night - neither bright nor dark.

Q.585 What would be the approximate distance of visibility for moving bodies?
A.585 From about 40 to 50 yards.

Q.586 What were your duties as Guard Comd at Canada Bks with reference to unusual occurrences?
A.586 My duties are to see that something is being done about it. At that time I had an Offr of the Guard and Guard Sgt.

Q.587 What were your duties when you heard the shots? Did you do the things you ought to have done?
A.587 When I heard the shots I went in the direction of the shots.

Q.588 Did you go to the entrance of Canada Bks at that time?
A.588 Yes sir. I went to the Guard Room first and then to 2 Bn Offrs' Mess.

Q.589 Was it unusual to hear shots fired at that time?
A.589 No sir, it wasn't.

Q.590 It might have been fired by any gun or might have been fired by the Guard at Italians?
A.590 No sir. They have nothing to do with the Italians except if they come through the gate. The guard has to help look after the gate and the Regtl Police picquet the walls of the Camp.

Q.591 We have been told there were a number of drunks coming in. Is that right?
A.591 It is generally that way every night. There was no difference that night.

Q.592 Were there a number of drunks?
A.592 I don't know sir. I wasn't on the gate.

10th.

Q.593 I suggest to you that when you saw the casings, Exhibits "M" and "N", that it was apparent to you that they had both been exposed to the elements for some time?

A.593 I didn't tell you that.

Q.594 Take Exhibit "M" which I show you. Why do you say that is the first one you found that night in the bks?

A.594 Yes sir.

Q.595 Would you examine it? Is it apparent to you that it had been exposed to the elements and lying on the ground for some time?

A.595 I didn't examine it closely.

Q.596 I show you Exhibit "N" which you picked up the following morning. I suggest that it was apparent to you that it had been exposed to the elements for some considerable time?

A.596 I can't answer that. I don't know.

Q.597 (Witness is shown Exhibits "M" and "N".) Will you examine the marks made by the firing pin and tell the Court if there is any similarity between the marks of the two firings?

A.597 Both marks are similar except one is very deep.

Defending Officer:

I don't want to labour the Court but I want facts. I suggested before that there is no similarity between the cartridge casings. I am endeavouring to explain to the Court by this examination of the witness. I leave it to you, gentlemen.

Cross-examination (continued):

Q.598 Have you taken your normal common-to-all-arms training in the infantry?

A.598 Yes sir.

Q.599 Are you acquainted with the lessons on the theory of small arms fire?

A.599 Fairly well, sir.

Q.600 Therefore, you know that the firing pin of a pistol will make an identical mark on any cartridge case fired from that particular pistol?

Prosecutor:

It is not proved that this soldier knows anything about a .45 pistol. That doesn't come in "Small Arms Training".

The Court:

I don't think there is much harm done.

Defending Officer:

Q.601 You know that every firing pin, when fired, makes the same kind of a mark?

A.601 I never said so, sir.

Q.602 Will you state from your military knowledge whether or not the firing pin is the same in all guns?

A.602 No sir. The firing pin in weapons don't all look the same.

Q.603 I am speaking of a specific weapon. Will it or will it not leave an identical mark on the casing of the cartridge it expels, other things being equal?

A.603 I don't know sir.

W.D.H.

Q.604 When you found the sandwich by the pool of blood what was your reaction?
A.604 Well, I presumed the man had dropped it there when he had been attacked by the other man.

Q.605 Did you make any check to ascertain if this was so?
A.605 No sir.

Q.606 Is it possible that a man could eat a sandwich with one hand and pull the identity discs off with the other?
A.606 No sir.

Q.607 When that sandwich was found, approximately how many inches was it away from the body?
A.607 There were several pieces, some in the blood and some away from it.

Q.608 How far were the farthest pieces away from the body?
A.608 About four or five inches.

Q.609 Did you examine the body on any occasion?
A.609 I did not see the body.

Q.610 You did not see the body?
A.610 No sir.

Q.611 Do you know of anyone who reported this matter, or anyone who suggested that an investigation should be made?
A.611 No sir.

Q.612 Did you report the matter of this shooting that evening for investigation?
A.612 No sir, I did not.

Re-examined:

Q.613 What light did you use when you were looking about the front of 2 Bn Offrs' Mess?
A.613 Well, I used a few matches that I had. There were also flashlights there.

Q.614 When you found the cartridge casing, Exhibit "M", what light did you use?
A.614 I forget whether it was a flashlight or match. I don't know.

By the Court:

Q.615 Was Pte Wilcock wearing any headgear when he reported to you?
A.615 No sir.

Q.616 Have you ever before seen casings lying about Canada Bks similar to those which you found?
A.616 Yes sir.

Q.617 When you took Pte Wilcock to the Coy Office and reported the incident to the WO, why was it necessary to accompany him to his own billets?
A.617 I took him to the Seaforths office.

Q.618 Why was it necessary to show him to his billets?
A.618 He did not seem to know how to get to his billets.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

W.B.W.

FIFTEENTH WITNESS (B.73385 Cpl De Harte, WL (48 Highrs) 3 Bn 1 CBRD for Prosecution (having been duly sworn (is examined by the Prosecutor

Q.619 Do you recall the evening of the 2nd August, 1944?
A.619 Yes sir.

Q.620 What happened on that evening?
A.620 At about 2130 hrs I entered the Main Gate of 1 CBRD with two of my friends. We had been downtown and had a few drinks. When we got to the gate, we met a man from the Hast & PER who stopped us and started to talk to us. He appeared to be quite drunk. After a minute or two an argument started between the Hasty P and one of my friends.

Q.621 Do you know the name of this Hast & PER man?
A.621 Yes sir.

Q.622 What was his name?
A.622 His name was "Dillon".

Q.623 What happened then?
A.623 As it appeared that a fight might start, I soon got my friends to their billets and then tried to persuade the Hasty P man to go to his billets. He seemed to be on his way so I went to my Orderly Room and reported to my duty NCO. Then I returned to my billets which, at that time, were in 1 Bn Bldg.

Q.624 What was the name of the building?
A.624 I don't know the name of the building. The people of 1 Bn were in it.

Q.625 I show you Exhibit "G", a sketch of Canada Bks. Will you point out the building?
A.625 This is the building. (Witness indicates the Borden Block.)

Q.626 Will you carry on with your statement?
A.626 While crossing the main parade square to the Borden Block, I ran into the Hasty P man again. He was just starting an argument with a stranger. I sent the stranger to his billets. While I was doing so, the Hasty P man ran into another party and started to argue with him. I also sent this other party to his billets, and once more tried to convince the Hasty P man to go to his billets. After a few minutes a man came up who was wearing Seaforth flashes and a Glengarry with a 48 Highrs badge.

Q.627 Now, do you know this man you saw?
A.627 The new man sir.

Q.628 Yes?
A.628 Yes sir.

Q.629 Who was the new man?
A.629 He was the accused, sir.

Q.630 Is he in Court?
A.630 Yes sir.

Q.631 Where?
A.631 Sitting at this table, sir. (Indicates the table where the accused and Defending Offr are sitting.)

Q.632 What happened then?
A.632 The accused said, "Have you any money?".

Q.633 Who did he say that to?
A.633 The Hasty P man, sir.

W.A.B.

Q.634 What happened after that?
A.634 The Hasty P man asked "Why"? The Seaforth man then said "Give me a buck, I want a Buck" in a demanding voice.

Q.635 What did you do about this?
A.635 I decided that another argument was about to start. As I was having too much trouble trying to get the Hasty P man to keep out of trouble; and that seemed impossible, I returned to my billets. A few moments after I was in my room I heard a shot fired, followed by another. As that was frequent around Canada Bks at night, I paid no attention to it.

Q.636 What was the light like that night?
A.636 The moon was out. While I was on the parade square it was shining brightly.

Q.637 Do you recall what state of moon it was?
A.637 No sir.

Q.638 Could you recognize the Glengarry the accused was wearing that night?
A.638 You mean the Glengarry ..... ?

Q.639 Yes.
A.639 No sir.

Cross-examined:

Q.640 Cpl, why did you look around the room before stating that the accused was on my left? Was he the man on the parade square in this little part of your story?
A.640 I was asked if the accused was in the room. I have never been in this room before so I looked around to make sure that the man was in it and had not left it by another door.

Q.641 Why did you start looking from the right? The first person you looked at was the accused. Then you came back and looked to my left. Why that performance?
A.641 I did not at first notice that the accused was sitting on your left, sir.

Q.642 How often have you seen the accused since the night of 2 Aug?
A.642 Four or five times sir.

Q.643 Now tell the Court the first time you saw him?
A.643 The first time was at the Court of Inquiry on the morning of Aug 3rd.

Q.644 What time in the morning ?
A.644 Somewhere between 0930 and 1030 hrs.

Q.645 Where was the accused?
A.645 Standing between his escort in the hallway of the Admin Wing of 1 CBRD.

Q.646 He didn't have a hat on?
A.646 Yes sir.

Q.647 Did you not observe him for at least 30 to 45 minutes?
A.647 Yes sir.

Q.648 Then there should be no difficulty in identifying the accused?
A.648 No sir.

Q.649 How often have you seen him since?
A.649 I saw him again at the Summary of Evidence which was held in the Guard Comd's Room at 1 CBRD a few days later.

Q.650 Now to go back to the morning of the 3rd of Aug; you knew him as the accused before you knew him as "Robinson"?
A.650 Yes sir.

Q.651 Were you ever asked to identify him at a proper identification parade?
A.651 Yes sir. Major Morgan paraded five or six men into the CO's Office of 3 Bn and asked me to identify the man.

Q.652 You had seen him several times before this identification parade?
A.652 Yes sir.

Q.653 How much information about the accused did you have prior to the identification parade?
A.653 He was involved in some transaction on the 2nd of Aug. I had heard that a Hast & PER man had been shot on the night of the 2nd of Aug, and that a 48 Highrs Glengarry had been found at the scene of the shooting. So I reported to my Comd that I had left a Hast & PER man and a Seaforth man wearing a Glengarry in an argument on 1 Bn parade square.

Q.654 After you left Dillon arguing on the parade square, did you see the other man again?
A.654 No sir.

Q.655 Were you ever asked to identify him?
A.655 No sir.

Q.656 Howwell did you know Dillon?
A.656 While trying to argue him into going back to his billets I said I would meet him the next day and try to go into this idea he had that everyone was against him. I asked him his name and arranged to meet him the next day. He said his name was "Dillon".

Q.657 Then you can't tell the Court you were the last person who saw the man who was arguing with the man who gave his name as "Dillon"?
A.657 No sir.

Q.658 Then in point of fact there was no relationship that you could give between the argument and the incident of the shooting?
A.658 Yes sir.

Q.659 Why do you say "yes"?
A.659 Because the 48th Glengarry had been found at the scene of the shooting.

Q.660 Are you sure it was at the scene of the shooting?
A.660 Certainly sir.

Q.661 How did you find out it had been found on the parade square?
A.661 I had been told that a Hasty P man had been shot and the 48th Glengarry was found at the scene of the shooting. I had also been told that Pte Wilcock had been robbed of a Glengarry the night before. The combination of a Seaforth flash and a 48th hat badge appeared to me the answer.

Q.662 You told the Court quite clearly that you had the accused under observation before being asked to identify him on a proper identification parade, is that correct?
A.662 Yes sir.

Q.663 Then there is no excuse for making any mistake about it?
A.663 No sir.

Defending Officer:

I seek the advice of the Judge Advocate. I wish to register a complaint about the method by which the accused was identified.

b.b.b.

Judge Advocate:

That is more a matter for argument. You have a strong talking point.

Defending Officer:

Q.664 When you left the last two men arguing on the parade square, there was never any thought in your mind that any violence would ensue?
A.664 None other than fisti-cuffs.

Q.665 There was nothing in the conduct of these two individuals which in your opinion would warrant you, as a reasonable NCO, to stay and see that nothing happened?
A.665 No sir.

Q.666 Can you give me the approximate time you left the two men arguing?
A.666 Some time about 2230 hrs.

Q.667 Now you, as an NCO, are responsible to see the soldiers get in on time. Is that not true?
A.667 I was not on duty at that time.

Q.668 Do you not do anything but what you are told to do? Have you no initiative of your own?
A.668 Yes sir.

Q.669 Can you tell the Court whether or not this incident was after the normal body check or roll call at Canada Bks?
A.669 After sir.

Q.670 How much after?
A.670 Half an hour after.

Q.671 Are you sure you are not getting stuck with something and are qualifying your answers?
A.671 I don't understand.

Q.672 Why do you say it was half an hour after the body check?
A.672 Normal Tattoo is at 2145 hrs and takes until approximately 2200 hrs. It was at 2230 hrs that I left the two soldiers on the parade square.

Q.673 When you saw this individual wearing the Glengarry on his head, did you see articles in his hands or on his person?
A.673 No sir.

Q.674 Was there anything to indicate that he might be carrying a weapon?
A.674 No sir.

Q.675 Could you tell the Court whether or not a new draft arrived from England a few days before the 2nd Aug?
A.675 Yes sir.

Q.676 It did?
A.676 Yes sir.

Q.677 Were the billets at Canada Bks rather crowded at that time?
A.677 Yes sir.

Q.678 What would you say that the normal visibility was at 10 o'clock that night?
A.678 There was a bright moon.

Q.679 You mentioned a bright moon. Elaborate?
A.679 I would say the visibility of a moving body would be 75 to 100 yds. Detailed recognition at 10 to 15 yds.

W.B.B.

Q.680 Visibility of a normal moving body at 75 to 100 yds?
A.680 Yes sir. Silhouette.

Q.681 Are the times you gave the Court, estimates?
A.681 That is right.

Q.682 What was your condition? Had you been drinking?
A.682 Yes sir.

Q.683 You and your companions were in a happy mood?
A.683 No sir. We had only four or five glasses of vermouth.

Q.684 Were you not in a jovial frame of mind?
A.684 No sir.

Q.685 Were you completely cold sober?
A.685 Yes sir.

Q.686 How much had you had to drink?
A.686 Four or five glasses of vermouth at 10 lire a glass.

Q.687 When did you arrive at Canada Bks? How long have you been there?
A.687 From 26 Jun 44 sir.

Q.688 Have you noticed that new drafts coming to this country are anxious to obtain weapons or souvenirs?
A.688 No sir.

Q.689 You have had no experience?
A.689 No sir.

Q.690 Have you had any requests from soldiers for American or Italian weapons?
A.690 No sir. Only from men of my unit who work with field units.

Q.691 Would you say that at Base there is a desire on the part of soldiers to obtain German or American weapons?
A.691 I have not had any such experience. I had heard of men of the Merchant Navy wanting them.

Q.692 Not Canadians?
A.692 No sir.

Q.693 Do you get around very much?
A.693 No sir.

Q.694 Did you notice the condition of any of the soldiers returning to Canada Bks while you were returning - whether there were many drunks or not?
A.694 There were quite a few men coming back to camp under the influence of liquor of some sort.

Q.695 The time limit, you gave in evidence, was from 10 to 10:30 o'clock?
A.695 No sir, 9:30 to 10:30 o'clock.

Q.696 Would you say the men under the influence were happy and carefree?
A.696 Yes sir.

No re-examination.

By the Court:

Q.697 What time elapsed from the time you left the two arguing until the time the shots were fired?
A.697 Three or four minutes.

wkb

Q.698 You left them walking across the parade square and walked to your room on the third floor?
A.698 Yes sir.

Q.699 What were you doing when you heard the shots?
A.699 Getting into bed.

Q.700 Can you point out on Exhibit "G" where the conversation took place between the man you said was "Dillon" and the other individual who you stated had on a 48 Highrs Glengarry and Seaforth flashes?
A.700 Yes sir. They were on 1 Bn Sports Field. (Witness marks point with letter "K" on sketch.)

Q.701 Also you stated that you were talking to a Hast & PER man at the gate who was in an argument with one of your friends?
A.701 Yes sir.

Q.702 Later you were crossing the parade square when you saw this person whom you believed to be the same individual in another argument?
A.702 Yes sir.

Q.703 Didn't you state that there was another argument with the individual you identified wearing a 48th Glengarry and Seaforth badges?
A.703 That was a fourth man.

Q.704 That was the fourth argument you had with the person presumed to be Dillon that night? You are a Cpl, but you didn't feel he was sufficiently under the influence of liquor or behaving in a manner to warrant assistance?
A.704 No sir.

Q.705 Had you ever seen or had the occasion to observe the accused prior to the night of 2 Aug 44?
A.705 No sir.

By the Judge Advocate:

Q.706 In your evidence, Cpl, you stated that you had been downtown with friends on the 2nd Aug. What place do you refer/as downtown?
A.706 Along the main street of Avellino. to

Q.707 How close were you standing to the two persons you stated got into an argument at the point on Exhibit "G" which you indicated by the letter "K"? How close were you?
A.707 About three feet.

Q.708 What was the condition of the accused at the time?
A.708 He appeared to have been drinking but not drunk.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83 (B).

Judge Advocate:

I am directed by the President to state that the Members of the Court, the Offr Under Instruction, the Judge Advocate, the Prosecutor and Defending Offr, the Accused and his escort will assemble at the Main Entrance of Canada Bks at 1400 hrs today to view the scene. During this inspection no questions will be asked of any witnesses.

Court adjourned at 1143 hrs.

At 1400 hrs the Court, Offr Under Instruction, Judge Advocate, Prosecutor, Defending Offr, and the Accused, attended at Canada Bks to view the scene of the alleged shooting.

Court re-opened at 1425 hrs, the same members being present.

SIXTEENTH WITNESS for Prosecution (K.42576 Cpl Shaw G.C. (Seaforth of Can) 2 Bn 1 CSRD having been duly sworn is examined by the Prosecutor

Q.709 Do you recall the night of 2 Aug 44?
A.709 Yes sir.

Q.710 What were you employed as?
A.710 Orderly Cpl.

Q.711 Which Coy?
A.711 B Coy

Q.712 Do you recall what happened that night?
A.712 Yes sir.

Q.713 Will you tell the Court what happened that night?
A.713 That night I was up late writing letters in the Orderly Room. At 2330 hrs Lt Snell and Major Bernier came into the Orderly Room. Lt Snell said .....

Q.714 What happened when Lt Snell and Major Bernier came into the Orderly Room?
A.714 I was told .....

Q.715 To get at it another way, what did you do after they came into the Orderly Room?
A.715 I didn't do anything. These two offrs talked to me.

Q.716 As a result of that, what did you do?
A.716 I told them "Yes".

Q.717 Don't repeat conversations. After that what did you do?
A.717 I showed the Major and the Capt in which bay and bed Robinson slept.

Q.718 Is Robinson in this room?
A.718 There sir. (pointing to the accused)

Q.719 What happened in the bed or around the bed of Pte Robinson?

Judge Advocate:

For the benefit of the Court it might be well to establish the location of the bed and bay.

Prosecutor:

Q.720 How did you show them?
A.720 I looked at the chart in the Orderly Room and took the two offrs to the bay and bed.

Q.721 Where is the bay and bed?
A.721 In the Petawawa Bldg on the 2nd floor. The bay is the fourth bay and the bed is the first on the left.

Q.722 What type of bed was it?
A.722 Just blankets on a ground sheet on the floor, sir.

Q.723 In your presence and in the presence of the accused, did you see anything happen?

Defending Offr:

I am not satisfied that in the initial stage the accused was not sleeping. On that basis the accused to all intents and purposes was not there.

Prosecutor:

Q.724 Who was in the bed?
A.724 Robinson was in the bed.

Q.725 In what condition was he?
A.725 He was lying on his stomach. I believe Capt Snell turned him over and said .....

Defending Offr:

I object.

Prosecutor:

Q.726 Can you describe the accused's appearance?
A.726 There was blood on his face. His lips were swollen. There were scratches on his neck.

Q.727 Did you examine the accused?
A.727 I noticed him just before he was taken to the Guard House.

Q.728 I repeat the question, did you examine the accused?
A.728 Yes sir.

Q.729 What did your examination disclose?
A.729 That he had apparently been fighting.

Q.730 What did you see on the examination? You say you examined him. What did you find?
A.730 He had no identity discs.

Q.731 What kind of an examination did you make?
A.731 I searched his kit afterwards.

Q.732 After what?
A.732 After the accused was taken to the Guard Room.

Q.733 What were the appearances of the scratches, bruises, and blood on the accused's face and neck?
A.733 Just splotched on the face. The lips were swollen. The scratches on the neck looked as if they might have been from fingernails.

Cross-examination:

Q.734 Have you told the Court everything about that evening?
A.734 There were other things I had done that night, sir.

Q.735 There is much more you could have told the Court apart from what you have given about the accused, is there not?
A.735 No, only what I carried out that night.

Q.736 You were responsible to make a body check at Tattoo?
A.736 No sir.

Q.737 Did you?
A.737 No sir.

Q.738 When did you?
A.738 No sir.

Q.739 Whose duty is it to report a man who is absent?
A.739 The Coy Orderly Sgt.

Q.740 Whose responsibility is it to make the Tattoo check?
A.740 The Coy Orderly Sgts'.

Q.741 I suggest to you, on that night, you reported Robinson in bed at roll call?
A.741 Not myself.

1088.

Q.742 Did you have occasion to report to any offr that Robinson was present and in bed on the evening bed check?
A.742 As far as I know the Tattoo Report showed that he was present at roll call.

Q.743 Cpl, have you any specific desire to find the accused guilty?
A.743 No, not on my own behalf.

Q.744 On whose behalf have you that desire?
A.744 I know little about the accused.

Q.745 What desire have you as regards the finding of the accused guilty of the charge laid?
A.745 (Witness makes no reply.)

Q.746 I suggest to you that you are anxious to see the accused found guilty?
A.746 No sir.

Q.747 Did you have occasion that evening, prior to 2330 hrs, to report to an offr that Pte Robinson was absent at 2200 hrs?
A.747 From the Tattoo Report?

Q.748 Did you have occasion to report him present? You had a witness as to that, correct?
A.748 Right.

Q.749 His name was Pte Piggott?
A.749 Right.

Q.750 Why did Capt Snell have to turn Robinson over? Was he asleep?
A.750 I don't know sir. I was just obeying an order.

Q.751 Was the accused Robinson asleep?
A.751 Asleep?

Q.752 Was Robinson asleep?
A.752 I cannot say sir.

Q.753 In your opinion?
A.753 I don't know.

Q.754 I don't want to labour this. I suggest you answer. Do you understand?
A.754 I am trying to, sir.

Q.755 Was Robinson asleep?
A.755 Capt Snell asked me to see whether thisman was asleep, and afterwards ordered me to place this man under close arrest.

Q.756 Why did Capt Snell have to turn the accused over?
A.756 I don't know.

Q.757 Did Robinson have the appearance of a man asleep when you first saw him at 2330 hrs?
A.757 (Witness makes no reply.)

Q.758 I want you to realize one thing. A man may be hanged by the neck as the result of your evidence. Did Robinson, when you first saw him around 2320 hrs in the company of Capt Snell and Major Bernier, have the appearance of being asleep?
A.758 In my opinion he had been asleep.

Q.759 Now, you have told the Court that the scratches that you saw appeared to have been made by fingernails?
A.759 It looked like it.

10.6.8.

Q.760 There were no distinct scratches?
A.760 No sir.

Q.761 They gave you the appearance of scratches?
A.761 Yes sir.

Q.762 Was the accused present when you made a search of his kit?
A.762 No sir.

Q.763 Is it usual at Canada Bks to have a soldier absent when a search is made of his kit?
A.763 No sir.

Q.764 You made a report that evening reporting Robinson to be in bed at Tattoo?
A.764 No sir, I did not.

Judge Advocate:

He made a report to some offr that, according to the Tattoo report, the accused was present, in bed, at roll call.

Defending Offr:

Q.765 What words did you use when you made a report to the offr?
A.765 When the battalion report is turned in to the RSM. That was the only report.

Q.766 What did you say to the offr?
A.766 I said that he was present in bed.

Re-examination:

Q.767 What time was the Tattoo roll call made?
A.767 Ten o'clock.

Q.768 Who made the Tattoo Report?
A.768 The Sgt of that Platoon.

Q.769 What was the Sgt's name?
A.769 Sgt Larson.

Q.770 What platoon was Sgt Larson in?
A.770 No. 1 Platoon.

Q.771 What platoon is the accused in?
A.771 No. 1 Platoon, sir.

By the Court:

Q.772 Was the report made to the offr in words or was it a document?
A.772 I just told the offr that I had seen the Tattoo Report.

Q.773 At what time did you tell this to the offr?
A.773 It was when I was interviewed by him that night in the Detention Bks.

Q.774 You arrived with Capt Snell and the Paymaster to the bed of Pte Robinson?
A.774 Right sir.

Q.775 What I would like to know is, did you receive any instructions at that time from these offrs?
A.775 The only instructions were to point out the bed and lay of Pte Robinson.

Q.776 Any other instructions?
A.776 Later I had other instructions, sir.

D.A.G.

Q.777 How was the accused dressed or was he dressed when you saw him in his bay?
A.777 At the time he was lying in his bed?

Q.778 Yes?
A.778 His socks, shoes and pants were on the floor. He had a shirt on. I think so, but I am not sure.

Defending Offr:

Here is an opportunity of questioning the witness as to whether he felt the socks inside the shoes to see how long they had been on or off.

By the Judge Advocate:

Q.779 Did you or did you not examine the boots, socks, or any other articles of clothing that belonged to Pte Robinson?
A.779 No sir.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 85(B).

SEVENTEENTH WITNESS (Capt J.H. Snell, 2 Bn 1 CBRD
for (having been duly sworn
Prosecution (is examined by the Prosecutor.

Q.780 Will you state to the Court your appointment and unit?
A.780 I am the Adjt of 2 Bn.

Q.781 Do you recall the evening of 2 Aug 44?
A.781 Yes sir. I recall it.

Q.782 Will you tell the Court, to your knowledge, what happened that evening?
A.782 I returned to Canada Bks at approximately 2315 hrs and found a few soldiers and offrs crowding around the entrance of the 2 Bn Offrs' Mess. I went to the 2 Bn MIR where I found Capt Verdicchio, 2 Bn MO, and Capt McKee, PPCLI. From information I received, I ascertained that a soldier had been shot on the main square outside the entrance of the Offrs' Mess. While still in the MIR, Capt McKee gave me a set of identity discs bearing the name of "Pte Robinson", number - "B.144333".

Q.783 I show you Exhibit "J". Do you recognize this?
A.783 I recognize the discs as the ones given to me by Capt. McKee.

Q.784 What did you do then?
A.784 Major Bernier, Paymaster, 2 Bn, who was present at the MIR, and I, endeavoured to find the owner of the discs through the card index system of 3 Bn. It appeared that they would have some bearing on the incident. We found the owner of the discs to be a Seaforth soldier. The number corresponded to one of the Seaforth cards in the 2 Bn Card Index. Major Bernier accompanied me to the Seaforth Office in the Seaforth billets. I found that Pte Robinson was billeted in the Seaforth quarters. The NCO got a candle as there was not sufficient light, and we went to the soldier's bed, which was an outside bed in one of the bays where the soldiers were sleeping. I found the soldier asleep on his face on the bed. I awakened him and asked him his name.

Q.785 Is that soldier in this Court Room?
A.785 Yes, I recognize Pte Robinson as the soldier I awakened on finding him in the Seaforth building. I noticed at the time that Pte Robinson's lips were cut and his face scratched. I told the Orderly NCO, Cpl Shaw, to take Pte Robinson to the 2 Bn RP. Major Bernier and myself searched the kit of Pte Robinson while he was still there. We found a .45 automatic, Army pattern, at the top of Pte Robinson's bed. I observed the magazine, finding that the gun was empty. I smelled the gun and detected a smell of cordite powder as if it had been recently fired.

Q.786 Will you fully describe the pistol in question?
A.786 The pistol was a .45 model; American make, .45 automatic. It was rusted slightly and not in very good condition. The number I first took from it was M.1911 which I later found was the model number only. The pistol was identical with an Army pattern .45. The only distinct feature I can recollect is that it was slightly rusted and did not appear in good shape. The number I ascertained xxxxxxxxxx at a later time. The pistol remained in my possession for a period of time. I am sure it was the same pistol.

Q.787 What was the number of the pistol?
A.787 I don't recall.

Q.788 Have you got any memoranda on your person?
A.788 I jotted down a few points; the number of the pistol and a few witnesses present on the evening of the Incident.

Q.789 When did you make these notes?
A.789 I made these notes in the Bn Orderly Room while the Summary of Evidence was being prepared.

Q.790 Was the pistol out of your possession at that time?
A.790 Yes. The pistol was turned over to Major Morgan of 3 Bn who completed the Court of Inquiry. It was returned to me personally with the exhibits on completion of the Court of Inquiry. The exhibits were then placed under lock and key and specifically turned over to Lt Murphy who had them at various times until the completion of the Summary of Evidence. They were then returned for safe-keeping to 2 Bn.

Q.791 I am producing this weapon for your inspection. I want you to state to the Court if that weapon is the one you found on the night of the incident or not?
A.791 To the best of my knowledge that pistol is the same pistol I found on the night of the incident.

Q.792 How do you identify the pistol?
A.792 I recognize the pistol from its rusty appearance, also the corrosion contained in the barrel which I originally noticed at the time the pistol was found. (.45 automatic pistol, stamped "United States Property M1911 AI US Army No.948416 Remington Rand Inc, Syracuse, N.Y., USA", admitted and marked Exhibit "Q".)

Q.793 After the revolver was found did you make any further inspections?
A.793 Yes, we searched the kit.

Q.794 Was the accused present at the time?
A.794 Yes, to the best of my knowledge the accused was present.

Q.795 Did you find anything?
A.795 The holster was found.

Q.796 Did you find the holster?
A.796 Major Bernier found the holster.

Q.797 Was the accused present at the time?
A.797 As far as I can recall the accused was present.

Q.798 Would you describe the holster?
A.798 To the best of my knowledge, the holster was a typical American one.

Defending Offr:

It is important to note that the witness eludes the Court by answering "To the best of my knowledge". I am convinced, myself, that the kit inspection was not carried out in the presence of the accused.

Judge Advocate:

I think the Court will object if they feel convinced that the manner in which a witness answers is unfair to the accused.

Defending Offr:

I am a little anxious that the Court should find out why he says "To the best of my knowledge".

Judge Advocate:

Will the witness please give specific answers? Capt Rose, would you establish whether or not the accused was present when his kit was searched?

Prosecutor:

Q.799 Was the accused present when you searched the kit alleged to belong to the accused?
A.799 Yes.

Defending Offr:

This witness was not present and did not search thekit himself. If the Court were to adjourn, the Court would see from the .....

A.799 (continued):

The accused was lying on his bed. I was standing near his bed. I awakened the accused. Major Bernier was going to search his kit. I was questioning the accused as to who he was. I assisted Major Bernier in the search of the man's kit. The man was present.

Q.800 To whom do you refer when you say, "The man was present"?.
A.800 Pte Robinson.

Q.801 What did you find in his kit?
A.801 I found it was the ordinary soldier's kit. I didn't find the pistol. I didn't find the holster.

Q.802 Who was present when either the pistol or the holster were found?
A.802 Major Bernier and Cpl Shaw of the Seaforths were present.

Q.803 Where were you and where was the accused?
A.803 The accused was sitting up on his bed. I was sitting down on the left side of his bed. Major Bernier was on my left. The NCO was standing behind Major Bernier, to his left, in the hallway between the bays.

Q.804 Did you see either the automatic or the holster found?
A.804 I saw Major Bernier find the pistol at the top of Pte Robinson's bed.

A.B.to.

Q.805 Did you see the holster found?
A.805 I didn't see it found, the spot, but Major Bernier produced the holster there. It was found in the kit.

Q.806 After these articles were found what did you do?
A.806 I told the Cpl to place Pte Robinson under close arrest and take him to the RP of 2 Bn, informing him I would be over later.

Q.807 Did you see the accused later?
A.807 Yes.

Q.808 Where?
A.808 At the RP 2 Bn.

Q.809 What happened at that time?
A.809 Major Bernier and I proceeded to the RP 2 Bn and tried to find out more about this incident. I got hold of the RP Sgt - Sgt Leclerc, and told him to bring the accused to me. The accused was brought to me.

Q.810 What did you do then?
A.810 I warned Pte Robinson. This was in 2 Bn Detn Room.

Q.811 Where were you sitting?
A.811 I was sitting at the table in the office of the detn barrack. The accused was standing in front of me.

Q.812 What did you say to the accused?
A.812 Major Bernier was sitting on my left. Sgt Leclerc was standing to the left of the accused. I warned the accused or said to the accused that he could make a voluntary statement under oath, and that it would be taken down in writing and perhaps later be used as evidence. As far as I can recall, these are the words I used.

Q.813 Were any threats made to the accused?
A.813 No threats or promises were made to the accused with the exception that I offered him some cigarettes which he smoked.

Q.814 Was any violence offered to the accused?
A.814 No.

Q.815 Was the accused in any manner, shape or form given any indication that if he made a statement things would be easier for him?
A.815 No.

Q.816 Was there a statement made?
A.816 I prepared a statement in pencil.

Q.817 Will you detail to the Court exactly what you did?
A.817 I asked the accused if he minded telling some of the events that happened during the evening. He made no objection. I asked the accused if he was aware of the order concerning the wearing of identity discs.

Defending Offr:

I object to the answers of the accused being admitted because the witness must have made up his mind to lay a charge against the accused at this stage. The statement must have been obtained in accordance with "The Judges Rules" as set out in para 78 MML p.81. I also object to any verbal answers the accused made as they are equally a part of the statement made by the accused.

Judge Advocate:

Do you object to both written and oral statements?

w.h.b.

Defending Offr:

Yes sir.

Judge Advocate:

Capt Snell, the result of the objection is that at this stage you may not, until the Court decides it is admissable, tell the Court what were the contents of the written statement the accused made. The Court may hear what went on between you and the accused when making the statement. Nothing he said or the contents of the statement can be given in evidence until the Court rules that they are admissable.

Prosecutor:

Q.818 Will you tell the Court in what manner you obtained this statement or any statement from the accused?
A.818 I obtained the statement by asking the accused two or three questions which I wrote down. I received answers to those questions which I wrote down in the accused's own words. On the completion of the statement, I read it back to the accused in the presence of the witnesses I have mentioned. Then I asked him to sign it.

Q.819 Did you cross-examine the accused on his statement?
A.819 No I did not.

Prosecutor:

I submit that the statement of the accused given to the witness should be admitted into evidence.

Judge Advocate:

The Defending Offr has the right to cross-examine this witness on the manner of obtaining the statement. You may call other witnesses who were present at the time of the taking of the statement. The accused has the right to give evidence if he so wishes. This is what is known as a "Trial within a Trial".

Cross-examined:

Q.820 Have you seen the statement since you first took it on the night of 2 August?
A.820 Yes.

Q.821 Do you recall it? It seems to be in four or five different paras?
A.821 Yes.

Q.822 And each of these paras is the answer to a specific question you wrote down?
A.822 Yes.

Q.823 These questions were not asked by you merely to clear up an ambiguity or were they to .....
A.823 Clarify please.

Q.824 The questions you asked were not questions to clear up something you had learned of the incident from what the accused had just told you?
A.824 No.

10.8.80.

Q.825 What was the condition of the accused? Had he been drinking?
A.825 Yes.

No re-examination.

By the Court:

Q.826 You say he had been drinking: to what extent in your opinion?
A.826 I say he had been drinking because I could smell liquor on his person. But he was standing perfectly upright and was in full possession of his faculties. Therefore, I took the statement.

Defending Offr:

I would like to ask a couple of questions of the witness.

Judge Advocate:

I have a few to ask myself. I will question the witness. If I do not cover the precise points you have in mind, the Court will put your questions for you.

By the Judge Advocate:

Q.827 When the accused was brought to you by Sgt Leclerc in the Detn Room office, did you explain to him that you were investigating the shooting which occurred in Canada Bks earlier that evening?
A.827 Yes. First I warned the accused. I told him there had been a shooting. After the warning, I asked him what he knew of it. He didn't .....

Q.828 I take it there was a reply to this preliminary question?
A.828 Yes.

Q.829 Did you at any time form an opinion in your mind as to the accused being guilty or likely guilty of doing this shooting?
A.829 No. I wouldn't say that sir. I had a confused impression of the whole affair and was merely investigating.

Q.830 What period of time elapsed from the time that Cpl Shaw took the accused away from his quarters until the accused was brought before you again?
A.830 I would say a matter of five or ten minutes, fifteen minutes at the outside.

Q.831 Did you or did you not, before you asked the accused to sign this statement, ask him to read it over in order to make any corrections in it if he so wished?
A.831 I read the statement I had written to the accused and asked him if he wanted to say anything else or put anything else down.

By the Court:

Q.832 In the presence of the accused at the bedside, was there any confusion regarding ownership of the pistol?
A.832 I don't remember.

Defending Offr:

I would like the Court to put a question to the witness - whether or not he had made up his mind to lay a charge.

A.B.B.

By the Court:

Q.833 Capt Snell, did you make up your mind to lay a charge against the accused when you found the pistol in the bed clothes of the accused's bed?

A.833 No, I felt that in my capacity as Adjt, an investigation should ensue before any charges could be laid. At the time we merely held Robinson in safe custody.

Q.834 Do you know whether or not a charge was laid against the accused for being improperly in possession of the pistol?

A.834 Yes.

Q.835 When was it laid?
A.835 On the completion of the Court of Inquiry?

Q.836 When did that take place?
A.836 I don't remember - about one or two days later.

Q.837 Who laid the charge?
A.837 We laid it - 2 Bn. I laid it.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

EIGHTEENTH WITNESS(Major J. Bernier, RCAPC, 2 Bn 1 CERD,
for (having been duly sworn,
Prosecution (is examined by the Prosecutor.

Judge Advocate:

Major Bernier, the Court at this moment is only concerned with ascertaining the facts leading up to the obtaining of a certain statement or statements from the accused. The previous witness has given evidence that a statement was obtained. He has described or given his version of the manner he obtained it. The Defending Offr has objected to the admissibility of the accused's answers and the statement. So we are only concerned with what transpired up to the obtaining of the statement.

Q.838 Will you give the Court your appointment?
A.838 I am Paymaster of 2 Bn.

Q.839 Do you recall the evening of the 2nd Aug 44?
A.839 I do.

Q.840 Were you in 2 Bn Detn Bks that night?
A.840 I was.

Q.841 Who else was there?
A.841 Capt Snell, the Adjt of 2 Bn, along with several witnesses in connection with the accident that happened that night and the accused whom I now recognize in this Court Room.

Q.842 Will you tell the Court what was said to the accused but not what the accused said in reply? You were in this room; where were you?
A.842 I was sitting next to Mr Snell at a desk in the Guard Room.

Q.843 You spoke to the accused?
A.843 I didn't. No sir.

Q.844 Did anyone else speak to the accused?
A.844 Capt Snell told the accused that he could make a statement or give evidence on oath, and that what he would say was to be taken down in writing and used in evidence.

W.B.B.

Q.845 Were any threats made to the accused?
A.845 No.

Q.846 Were any promises held out?
A.846 No.

Q.847 Was there any duress of any sort whatever?
A.847 No, none at all.

Q.848 Was there a suggestion that if he made a statement things might become easier for him?
A.848 Nothing like that, that I recall.

Q.849 After the statement was made, did Lt Snell read it to the accused?
A.849 I don't recall whether he read/or showed it to the accused to read before signing. it

Q.850 Was there any inducement made to the accused to sign the statement?
A.850 None that I recall.

Cross-examined:

Q.851 What words did Capt Snell use when he wanted the signature?
A.851 I cannot recall the actual words.

Q.852 I suggest to you it was in the form of a command, "You sign here".
A.852 No, I would not say it was in the form of a command. It was shown to him.

Q.853 Were those words used?
A.853 No, I don't recall that.

Q.854 Do you recall anything of the methods used in obtaining the signature?
A.854 As far as I recall, it was pointed out to him that it was a rather important document, and that it would be better for him to sign it.

Q.855 The information which Capt Snell wrote down after he gave the caution was obtained by asking the accused questions and listing answers, was it not?
A.855 Yes.

Q.856 The questions were not put merely for the purpose of clearing up any misunderstanding in Capt Snell's mind but to elicit specific information?
A.856 Yes.

Q.857 Had the accused been drinking?
A.857 Yes.

Q.858 Capt Snell has told the Court the relevant positions of himself, yourself, the Sgt, and the accused. Would you tell the Court the relevant positions?
A.858 Capt Snell was sitting at the desk. The accused was immediately in front of him. I was sitting at Capt Snell's right. I am not sure of the Sgt, but I believe he was sitting fairly well back near the door which was on the right of the desk.

W.B.L.

Q.859 Some cigarettes were offered to the accused while the information was obtained from him?
A.859 Yes.

Re-examination:

Q.860 Who stated that it might be better for the accused to sign this statement?
A.860 I don't recall that that was exactly my answer. The Offr for the Defence asked me in what way the demand was made. As far as I recall it was made in the line of advice.

Q.861 Who gave this advice?
A.861 Capt Snell.

By the Court:

Q.862 Had the accused been told before he started to give his statement that it would be taken down in writing, and he would be expected to sign it?
A.862 He was warned.

Q.863 But not told that he had to sign it?
A.863 Not that I recall.

Q.864 You stated the accused had been drinking?
A.864 Yes sir.

Q.865 Do you think that his reasoning or understanding was affected at that time?
A.865 Not in my opinion.

By the Judge Advocate:

Q.866 Were the cigarettes offered to the accused or did he ask for them?
A.866 They were offered.

Q.867 By whom?
A.867 By Capt Snell.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

Judge Advocate:

Does the accused wish to give evidence?

Defending Offr:

No sir.

Defending Offr's Submission:

Sir, I object to the statement being put in evidence on the basis that the information obtained was made after the Bn Adjt - the investigator - decided to lay a charge or charges against the accused. The caution was not properly administered, and it was not a proper caution. From the evidence, the Court can readily infer that the statement was given under duress. Consider that a private soldier, who, in the opinion of the interrogator had been drinking, was awakened and marched, under the escort of a Sgt, no less, to the Guard Room. In any event the Sgt was available throughout the interrogation. It was not sufficient for them to obtain merely a L/Cpl from the unit to get the statement. Capt Snell must also have the assistance of a Field Offr to help

him. All of these things must have thrown a little fright into the accused. Therefore he was under duress. There is evidence of Capt Snell being the "big brother" of the accused. There is evidence of an inducement, the giving of the cigarettes. Major Bernier states that Capt Snell tried to influence the accused with the advice that it might be better if the accused signed it. This is sufficient evidence from which the Court can draw the inference that there was a threat. I would like to draw the Court's attention specifically to sub-para 7 on page 92 in MML which covers the accused's particular case. This statement is a set question and answer statement and, therefore, inadmissable. I quote: (reads MML Chap VI p.91 sub-para 7). I would draw the Court's attention to the fact that the accused, in the eyes of the person obtaining the answers, had been drinking. Great care must be taken in demanding statements from people who have been drinking, whether little or much. I refer to MML p.93 para 79 which reads as follows: (reads para 79). I wish the statement thrown out.

Prosecutor's Answer:

There is no evidence before the Court from which it can be inferred that a charge was to be laid against the accused. I suggest that the statement was obtained in accordance with the rules laid down by the Judges of the King's Bench Division, found in para 78 at p.91 of MML. In particular, I quote: (reads sub-para 1, MML, p.91). There is no indication, either, in the evidence that the accused was cross-examined as the Defending Counsel suggested. I will read you sub-para 7 on p.92 of MML again. (reads sub-para 7) In any event the caution which was given, I believe, comes well within the ruling of the Court, which in the past decided the form in which the caution should be given. This individual offr gave the exact words used. His failure to put the caution in the exact words of the Rule indicates merely he was not qualified, you might say, in obtaining confessions. He is, you might find, in the capacity of a police offr. There is no evidence of any inducement, threat or promise made to the accused. It was between ten and fifteen minutes from the time he was placed under close arrest in his billets before he was questioned in the detn room of 2 Bn. He was given cigarettes. In fact the attitude of the offr taking the statement was, as far as the accused was concerned, in my opinion, a helpful one. He wanted to make the accused as comfortable as possible. The cigarettes were not offered - there is no suggestion they were offered as an inducement to the accused. There is no evidence before the Court to indicate that the accused was, in any shape or form, drunk. There is some evidence that he had been drinking which is the most ambiguous term. The signature was obtained after the accused had made the statement and had either read it over or had it read over to him. At that time he had the opportunity to delete or make any corrections in the statement if he so desired. I submit that the statement should be admitted in evidence.

The Defending Offr made no reply.

The Court closed to consider the Submission. The Court was re-opened.

Judge Advocate:

Pte Robinson, I am directed by the Court to advise you that the submission made by your Defending Offr has been allowed. In consequence of that, the statement will not be admitted in evidence, and no answers to questions which were put to you during the investigation at 2 Bn Detn Room Office will be admitted.

W.A.B.

SEVENTEENTH WITNESS for Prosecution (Capt J.H. Snell, 2 Bn 1 CBRD, recalled, already sworn, is examined by the Prosecutor.

Q.868 Did you make any examination of the accused's person at the time you awakened him?
A.868 Yes.

Q.869 Will you describe to the Court what you found?
A.869 I noticed the accused's lips were bruised and cut and that there were scratches on the front of his neck below the chin.

Q.870 Describe these bruises, cuts and scratches?
A.870 Well, the bruises on his face were similar to bruises or cuts one would get in a fight. I would not say he had been in a fight that night. The scratches on his neck were two or three long scratches running diagonally down from his chin and approximately 2½ inches long.

Q.871 Do you recall how many scratches there were?
A.871 Two or three.

Q.872 Was the accused properly dressed when you saw him?

Defending Offr:

I object to the form of that question.

Prosecutor:

Q.873 Describe how the accused was dressed at the time or a few minutes after he was awakened?
A.873 The accused was dressed in trousers with his boots off but his socks on. I would say he also had on some sort of undershirt.

Q.874 Did the accused put on any article of dress at the time you were with him there?
A.874 I don't remember.

Q.875 Could you tell the Court of any other article of dress that the accused had on at the time?
A.875 He might have had on a pair of shorts.

Q.876 You said he had trousers on?
A.876 Trousers, socks and a white undershirt.

Q.877 What were the condition of the clothes?
A.877 His clothes were quite dirty.

Q.878 When you next saw the accused, will you describe his dress?
A.878 The accused had on a bush shirt and shoes but no hat.

Q.879 Will you describe the condition of the bush shirt?
A.879 The bush shirt was dirty. That is all I recall.

Judge Advocate:

Capt Bergman, do you wish to proceed with your cross-examination now? Would it prejudice your case if the Court were to adjourn until tomorrow morning?

Defending Offr:

I have made fairly complete notes which I wish to study tonight. I won't be prejudiced if the Court is adjourned until tomorrow.

Court adjourned at 1355 hrs.

Court re-opened at 1000 hrs, 23 Sep 44, the same members being present.

Prosecutor produced Medical Certificate.

Cross-examined:

Q.880 Capt Snell, when did you make up your mind that serious charges would be laid as a result of the shooting?
A.880 On completion of the Court of Inquiry at 3 Bn.

Q.881 Had you not formed a complete conclusion as to the guilt of the accused when you found the pistol and identity discs during your investigation?
A.881 I was confused about the evidence. I had formed no definite opinion.

Q.882 What made you place him under arrest?
A.882 I placed him under arrest because of the circumstances surrounding him. He might be involved. I placed him in safe custody to further the investigation.

Q.883 How soon after the shooting did you make up your mind that this was not a case of suicide ?
A.883 I didn't arrive at that conclusion.

Q.884 Didn't you consider that a possibility?
A.884 I didn't consider any possibilities. My mind was confused - muddled.

Q.885 Didn't you think it was a little ridiculous that decision?
A.885 My opinion was my own opinion. I heard a lot of things. I was not present at the body or even near the shooting. I found a Seaforth soldier who had been drinking with a pistol in his possession, the .45 automatic which I identified. Certain empty .45 calibre casings were found. All of which seemed to point to the fact that he was lying.

Q.886 You came to the conclusion that he was lying?
A.886 That was my opinion. As it was so late, I thought I had better place him in safe custody. I thought, in my own mind, that he might have been lying.

Q.887 It was a definite conclusion on your part?
A.887 Yes.

Q.888 It was a definite conclusion that he was very closely linked with the shooting?
A.888 Yes.

Q.889 Can you tell the Court how soon after the incident the Court of Inquiry was in your hands?
A.889 The Court of Inquiry was delivered to me the night of the following day, 3 Aug 44.

Q.890 How soon after the shooting did you say the charge was laid against the accused for being improperly in possession of the weapon?
A.890 I received the Court of Inquiry. As it seemed quite a long case and in my opinion it would come to a Summary of Evidence, the charge was placed against Robinson.

A.Bfb.

Q.891 Was he dealt with and punished?
A.891 Yes he was charged and given 28 days.

Q.892 Detention?
A.892 Detention.

Q.893 When you read the Court of Inquiry, did you see the recommendations made by the offr of 3 Bn?
A.893 I did.

Q.894 In view of these recommendations, you still felt you should lay the charge of improper possession?
A.894 Yes.

Q.895 In view of what was contained therein, hadn't you now come to the conclusion that the accused was guilty of the shooting?
A.895 No.

Q.896 Have you ever received instructions in your capacity as Adjt, or heard that the Judge Advocate does not want a multitude of charges laid?
A.896 Yes.

Q.897 Did you think that laying a charge against the accused was in accordance with those instructions?
A.897 Yes I do.

Q.898 How long have you been in the Army, Capt Snell?
A.898 I have been in the Army for about four years.

Q.899 Who was your Commanding Offr on the 2nd of Aug?
A.899 Colonel Lent.

Q.900 Did you know whether or not he has legal qualifications?
A.900 Yes he was a lawyer.

Q.901 Did you consult him?
A.901 I did.

Q.902 How often have you read the evidence you gave at the Summary of Evidence?
A.902 I have read it very little. I read it yesterday morning.

Q.903 Just prior to coming into Court?
A.903 Yesterday, not this morning.

Q.904 This morning?
A.904 No, not this morning.

Q.905 You did, in your evidence yesterday, identify Exhibit "J", the identity discs handed to you by Capt McKee. Are you convinced that they are the same or different?
A.905 I state specifically, they are the same.

Q.906 On what identifying marks, do you base this opinion?
A.906 The cord is similar.

Q.907 The type?
A.907 No. The cord is the same cord. It is short and won't go around a person's neck. The marking and stamping on the discs is rough. The name is the same. The way the discs are tied is exactly the same as they were tied. It bears the same number, rank and name as before. They are the same discs.

wbb.

Q.908 There is one distinct peculiarity about the identity discs in connection with the letters of the name. Can you tell the Court what that peculiarity is?

A.908 I don't recall.

Q.909 You examined them and you didn't see this distinct peculiarity? There is something peculiar about one of these discs - something in connection with the numbering which is not very often found on identity discs?

A.909 Possibly.

Q.910 Do you still say you gave them a microscopic inspection?

A.910 I didn't give them a microscopic inspection. I examined them.

Q.911 Still you gave the Court a microscopic description of them as you recalled them, did you not?

A.911 I stated that I recalled them.

Q.912 Examine Exhibit "J". Will you tell the Court how the initial on the top disc is placed in relation to the one on the bottom disc?

A.912 They are joined. The "D" runs into the "PTE".

Defending Offr:

The initial and the "PTE" run into one another. I draw the Court's attention to Exhibit "J" - to the top identification disc and to the lettering "PTED".

Q.913 When you received a copy of the Court of Inquiry, did you implement any of the recommendations made by the Commanding Offr of 3 Bn?

A.913 Yes there were. I have seen the Court of Inquiry very little. As I recall in the findings several charges were suggested. From that it was decided in 2 Bn to place a charge of improper possession against Pte Robinson. The Commanding Offr, 3 Bn, recommended the investigation of several rather serious offences.

Q.914 Did you or did you not take steps to implement these recommendations?

A.914 Yes. After Pte Robinson was charged, it was suggested that we send the pistol to some ballistic experts in Rome. Major Morgan of 3 Bn contacted them through Pd Security. That fell through.

Q.915 How did it fall through?

A.915 Apparently they could not find or locate this ballistic expert in Rome. The pistol was returned to 3 Bn and turned over to him again. This took a certain period of time. It was decided that a Summary of Evidence would have to be taken. Mr Murphy was detailed to round up any persons who might have information concerning the event.

Q.916 Is there any MP force in your Bn?

A.916 Yes.

Q.917 Were there any MP offrs and personnel available to assist you in the investigation?

A.917 Yes.

Q.918 Did you request such assistance?

A.918 No.

Q.919 Why did you not obtain the assistance of their trained personnel?

A.919 I had a variety of reasons. I was very busy with the drafts at the time.

W.G.B.

Q.920 You were busy with drafts?
A.920 I was very busy. I had an offr working at 2 Bn Orderly Room who devoted his whole time to the preparation of Summaries of Evidence, Courts of Inquiry, etc. I had an administrative offr to assist me. I turned over the investigation to this offr as I could not spare the time myself to help Mr Murphy.

Q.921 What is the other of the two reasons?
A.921 I suggested to Mr Murphy that he contact the Judge Advocate which I know he did - due to the seriousness of these charges.

Q.922 Is it the duty of the Judge Advocate to assist in advising you as to whether or not there is sufficient evidence or to assist in investigating the case?
A.922 He is there to clarify certain points. It is not the Judge Advocate's job to direct police investigations.

Q.923 The impression I got was that on various points that arose, on points of law, the Judge Advocate assisted -----

Judge Advocate:

To clarify this for the benefit of the Court: I was not then acting as a Judge Advocate. I was acting in my capacity as ADJA Gp HQ. I am here today as Judge Advocate.

Defending Offr:

Q.924 When did you first consult Capt Bate, ADJA Gp HQ?
A.924 I cannot give you the date. It was four or five days afterwards. Mr Murphy could tell you better.

Q.925 And when Capt Bate was first consulted, was Mr Murphy in possession of any of the information given to the Court these last three days?
A.925 No.

Q.926 You are satisfied in your mind that Mr Murphy sought the best advice that he could obtain and was capable of completing a murder investigation?
A.926 Yes.

Q.927 Had Mr Murphy any recent experience to your knowledge?
A.927 No.

Q.928 Had Mr Murphy any previous experience in murder investigations?
A.928 Not to my knowledge. Mr Murphy spent a period in England and here on Courts of Inquiry and Courts Martial work. He has turned in very efficient work with few repercussions of any sort, and he was quite qualified to deal with this case.

Q.929 You gave evidence yesterday that you and Major Bernier decided to obtain particulars of the owner of the discs that were handed to you by Capt McKee?
A.929 Yes.

Q.930 What did Major Bernier have to do with the discs?
A.930 The decision to pursue the tracing of the discs was simultaneous. He was to check the Pay records and I was to check the Card Index which were in the Bn offices.

Q.931 So you and Major Bernier set yourselves up as an amateur detective office?
A.931 Yes.

J.A.B.

Q.932 When you first went to the bed in which you found the accused that night, you stated that it was by candle light?
A.932 ~~xxxxxxxxxxxx~~ I think there were two candles.

Q.933 You were not in a particularly observant mood that night?
A.933 Quite. Yes.

Q.934 The NCO who was present previously told the Court that he brought a lantern along. Is he right or are you?
A.934 He may have been right. He might have gone back for the lantern, but there were candles when we first went to the bed.

Q.935 What do you say? When you first got there with the NCO, was there a lantern or candles?
A.935 Candles when I first went in as far as I can remember.

Q.936 You are not sure?
A.936 (Witness makes no reply.)

Q.937 If you are not sure of such a small detail, how could you be sure that your specific identification of the discs is any more accurate?
A.937 Yes, I am. My attention was centered on them. My attention was not centered on the light. There was light around the bed.

Q.938 How can you tell the Court you saw scratches on the face or the neck of the accused when you saw him on 2 Aug 44? What conclusion did you come as to how these scratches were incurred?
A.938 My impression?

Q.939 Yes?
A.939 In the RP the soldier ------

Q.940 At the bed?
A.940 When this soldier, who was lying on his face, turned over, his face was bruised - lips bruised and face damaged. On his neck were scratches that had no significance at the time. He was not wearing discs when found in bed. As he was Robinson and I had Robinson's discs, it occurred to me on the way over to the RP that his scratches had some significance. On arrival at the RP I asked Cpl Shaw, in the presence of the accused, if he had noticed scratches on Pte Robinson around his neck. He said "No". I sent the Cpl into the cell where Pte Robinson was. I said take a look at his neck. He came back and I -------

Q.941 You first stated you had this conversation in the presence of the accused. Now which is it?
A.941 Not in his presence. We were told by Cpl Shaw that the scratches resembled scratches which might have been put on his neck by fingernails.

Q.942 Was there any difference in the length and width of the individual scratches? Were they of the appearance of having been put on by fingernails?
A.942 Yes. They looked like scratches.

Q.943 Now, to the best of your knowledge, was any attempt ever made to examine Dillon's fingernails to see if any blood was clotted in them?
A.943 To the best of my knowledge I never heard of any.

Q.944 Don't you think that would be the best way to link Dillon with the accused?
A.944 I would say that that would be a very good method.

W.B.G.

Q.945 Do you agree that that would be the usual police method?
A.945 I am not versed with police methods.

Q.946 Would you tell the Court if a draft had arrived recently from England - just prior to the 2nd Aug?
A.946 Yes.

Q.947 Was there a fair number of Seaforths in camp around 2 Aug 44?
A.947 Yes, there was quite a number.

Q.948 A number of 48th Highrs?
A.948 Yes.

Q.949 And quite a few Hast & PER?
A.949 Yes.

Q.950 When you found the accused asleep in bed with the pistol, was any attempt made to find out whether the accused had been recently seen in possession of the pistol by any of the people in the Bks?
A.950 Taking into consideration .....

Q.951 Forget the time limit that evening. Were any specific steps taken to determine whether or not the accused was seen in possession of that particular pistol?
A.951 I don't know.

Q.952 Did you yourself give that any consideration?
A.952 Mr Murphy and I discussed it.

Q.953 Did you discuss the investigation with him?
A.953 I don't remember what matters were discussed.

Q.954 Did you, in that discussion, consider obtaining the assistance of the police?
A.954 Yes, I 'phoned the Fd Security Offr with reference to the pistol: asked if he had anything to report on it and found out this expert was not available. I frequently asked Mr Murphy how the Summary was getting on and if further assistance was needed. I don't remember telling him specifically to contact the Local Provost or any other police personnel.

Q.955 Who suggested the trip to Rome for ballistic purposes?
A.955 3 Bn instigated it if I remember correctly.

Q.956 Who is Capt Allan, W.C.?
A.956 I think he is OC or 2IC of the Fd Security Sec.

Q.957 Did you ever hear of the American ballistics people at Naples?
A.957 No. We were endeavouring to find out.

Q.958 Did you contact the DAPM, the L of C Pro or the SIB of the CMP?
A.958 No.

Q.959 I would like to direct the Court's attention to the next one or two questions and ask them to try and recall the method in which Exhibit "O" was put in by this witness yesterday. When you were handed the pistol, Exhibit "O", yesterday by the Prosecuting Offr, do you recall the method in which you presented it to the Court - how much you handled it?
A.959 Fairly well.

Q.960 Capt Rose handed it to you; then you identified it and then you looked at it?
A.960 I broke it.

J.O.B.

Q.961 Will you take it and break it exactly the same as you did yesterday?
A.961 If I didn't I should have.

Q.962 You made a statement that you did?
A.962 I don't think I did. I looked at it.

Q.963 You looked at it and could see the corrosion on it?
A.963 I examined the features of the pistol and noticed it was corroded.

Q.964 Can you tell from there that the barrel is corroded?
A.964 The light was shining on it. I can see it.

Q.965 How much did you see? Did you look at it that closely?
A.965 I did. I also recall seeing it on the table, and on examination it had corrosion in the barrel.

Q.966 Did you inspect it in the same manner?
A.966 It is not hard to see the corrosion.

Q.967 Can you examine a barrel without looking down it?
A.967 Not in the true sense of the word, not to examine it.

Q.968 The amount of examination in detail that you did is evidence on which someone may be convicted of a serious offence. If the evidence is going to be as sloppy as that identification of yours, there will be a miscarriage of justice. Now, what do you say?
A.968 I identified the pistol.

Q.969 You smelled the gun on the night of 2 Aug?
A.969 Yes.

Q.970 And as a result of that smell you came to the conclusion that the pistol had been recently fired?
A.970 Yes.

Q.971 Take Exhibit "O" and tell the Court if the smells from it are any different than those of 2nd Aug?
A.971 It smells of oil now and didn't the other day.

Q.972 How would the oil get there?
A.972 I assume it has been cleaned.

Q.973 How would the oil get there?
A.973 A certain amount of oil remains on certain parts of the mechanism for some time.

Q.974 Now, when you told the Court the pistol had been recently fired, what period of time do you mean by "recently"?
A.974 Recently fired?

Q.975 What do you mean by "recently fired"?
A.975 Recently fired could be a short period.

Q.976 Would it be less than an hour?
A.976 Possibly.

Q.977 Take the time you want .....
A.977 1½ hours.

Q.978 What is the time you meant?
A.978 No one could state the exact time that cordite in any weapon would last.

W.B.Bo.

Q.979 How could you say it was recently fired?
A.979 It smelled quite fresh. The impression I got was that it had been recently fired.

Q.980 You say it had been recently fired. I want an estimate as to how recently?
A.980 The smell of powder from a weapon that had been fired might last a day or only two hours. I would think, from my experience, that where a weapon had been fired the smell would last for some time. My impression from smelling it, when handing it to Major Bernier, was that it had been fired within the last three or four hours.

Q.981 The shooting only occurred approximately one hour before the pistol was in your hands?
A.981 Possibly.

Q.982 Did you look for any other pistols that may have been fired that evening?
A.982 Yes. We enquired about any .45 automatics around. There were a few around the barracks. Several offrs had them. Their pistols were not fired.

Q.983 How and when did you make that check?
A.983 In conversation. I saw two pistols.

Q.984 Don't you feel ridiculous about the way you made your check?
A.984 It was hard to find pistols in all the various places.

Q.985 There were lots around?
A.985 Not of that particular type.

Q.986 There were a lot of souvenir weapons in the hands of soldiers at that time. It was a very popular pastime to collect weapons, was it not?
A.986 Yes.

Q.987 Did you find any difference in the souvenir value of weapons to soldiers just here for the first few days and two or three months after? Are they more anxious to obtain pistols when they first arrive?
A.987 I would say so. I would say that they had it in mind to collect a pistol and carry it as long as they possibly could.

Q.988 If I were to tell you that a pistol fired at 0845 hrs has the same smell at 1000 hrs as it would have at 4:30 o'clock, would you agree that was possible?
A.988 Everything is possible.

Q.989 I only want your opinion from your military experience. Would you agree to the possibility?
A.989 There is the possibility. In my experience, a fresh smell of cordite departs and afterwards you smell corrosion.

Q.990 Was the soldier you found in bed at 2230 hrs asleep?
A.990 He was lying on his face. I assumed he was asleep.

Q.991 Did you turn him over?
A.991 I awakened him.

Q.992 Did he have the appearance of a sleeping man? Did you come to the conclusion he had been sleeping? Did you have to awaken him?
A.992 Yes. I assumed he had been sleeping. My first impression was that he was drunk. I smelled liquor on his breath when he was talking.

W.B.B.

Q.993 When was the first identification parade to let the witnesses pick out the accused?
A.993 Major Morgan held the identification parade preceding the Court of Inquiry.

Q.994 Who found the pistol?
A.994 To the best of my memory Major Bernier found the pistol at the top of the bed in the clothing the accused used as a pillow. It was a simultaneous finding. I was searching the kit, and he probably got his hands on it first.

Q.995 Was it in the man's pillow or by his head or in his kit?
A.995 Underneath the clothing used for a pillow on top of his head.

Q.996 Why did you arrange a second kit inspection?
A.996 Because our inspection had been cursory so I decided that a thorough search should be made. The kit was taken to the RP so that nothing could be taken away from it.

Q.997 You took the regular Infantry Training for an offr?
A.997 Yes.

Q.998 Have you handled rifles or pistols to any great extent?
A.998 Yes.

Q.999 Have you fired a large number of shots from a rifle or pistol or some weapon? Is it not correct that the firing pin on the explosion of the cartridge makes an identical mark on each cartridge?
A.999 Yes.

Q.1000 In order to get the casings out, the ejector is used?
A.1000 Yes.

Q.1001 The ejector makes marks on the cartridge as it ejects the cartridge?
A.1001 Yes.

Q.1002 Have you at any time examined the firing pin mark on cartridges after shots have been fired?
A.1002 I have.

Q.1003 Did you notice any similarity in the marks made in the firing?
A.1003 Yes, three.

Q.1004 I show you Exhibits "M" and "N". Is there any similarity in the firing pin marks?
A.1004 There is a difference.

Q.1005 From your experience, is there anything here to make you come to the conclusion that these cartridges were fired by different weapons?
A.1005 There are two possibilities. One is that they were fired by different weapons. The other is that the spring firing the trip, due possibly to the condition of the pistol, didn't strike hard enough on that particular cartridge.

Q.1006 Examine Exhibits "M" and "N". Is the head the same in each casing or different?
A.1006 There is a difference.

Q.1007 You admit there is a difference?
A.1007 It appears that way.

L.B.B.

Q.1008 That being the case, the conclusion to come to is that they were fired from different weapons?
A.1008 I am not a pistol expert. I cannot say.

Q.1009 Did you examine any of the cartridges for ejector marks?
A.1009 No, I did not.

Q.1010 Supposing you did not find the pistol on Robinson's bed but found it in some other place; is there any way in which you could have linked up that particular pistol with the accused?
A.1010 I am not sure -----

Q.1011 Had the pistol not been found in or near Robinson's bed but found elsewhere, would there have been any possibility of connecting the pistol with the accused?
A.1011 Not unless he attempted to conceal it.

Q.1012 Is there any way to prove it?
A.1012 By fingerprints?

Q.1013 Was it tested for fingerprints?
A.1013 No, I don't think so.

Q.1014 Did you give any such instructions?
A.1014 No.

Q.1015 Do the police have such facilities available in this theatre?
A.1015 If the pistol hadn't been handled by about 20 individuals we could have tried it.

Q.1016 The pistol was not on charge to Robinson?
A.1016 No.

Q.1017 Did you examine Dillon's conduct sheet?
A.1017 No.

Q.1018 Did you check to find out if there had been any previous bad feeling between Dillon and Robinson?
A.1018 No.

Q.1019 Was it given consideration by anyone you knew of?
A.1019 I heard that 3 Bn gave it consideration. It was only hearsay.

Q.1020 So that, if the weapon had been found in the middle of the parade square, there wouldn't have been any link between the body of Dillon and the accused?
A.1020 No.

Q.1021 If the identity discs were not found near or by the body of Dillon, you would not have any way of linking Robinson with this incident whatever?
A.1021 No.

Q.1022 Can you suggest to the Court any motive for this shooting on the part of Robinson or anyone else?
A.1022 The motive?

Q.1023 The motive. Can you suggest any motive which you found in your investigation?
A.1023 Any one of several.

Q.1024 I want you to be very careful in answering that. Did you find any motive, to your knowledge, of linking the accused with the shooting of Dillon?
A.1024 No.

R.B.B.

Q.1025 In your opinion was the argument they had, the motive?
A.1025 No.

Q.1026 Was any consideration given as to how this shooting took place, having reference to the position of the body and the shots fired?
A.1026 Yes.

Q.1027 What consideration that you know of?
A.1027 Various theories. Lots of people mentioned them and most of them were discarded.

Q.1028 Would you tell the Court one of your theories?
A.1028 The theory that he was fired at and shot in the front of the head. There was a discussion by the MOs, but they couldn't make up their minds as to the correct theory. Another theory was that he was shot while running away.

Q.1029 When you considered that the man might have been shot from the front while standing, did you try to find out where the other person might have stood to fire the shot?
A.1029 I did.

Q.1030 And did you take into consideration that the first empty cartridge casing, Exhibit "M", was found approximately some eight feet from the body? Realizing where the cartridge casing was found and that it was fired from an automatic weapon, did you try to reconstruct that? What did you find, was the normal ejection distance?
A.1030 A .45 throws right. The casing is ejected straight up and drops three or four feet from the pistol.

Q.1031 What if it fell on a hard surface?
A.1031 It might bounce.

Q.1032 You said you carried out a test?
A.1032 I said I fired several .45s.

Q.1033 What I am trying to do now is to keep to the specific case dealing with the incident on the 2nd of Aug. You said several theories were advanced. I want to test whether you agree with these theories of this shooting. Were any of these theories discarded?
A.1033 We have been discarding them.

Q.1034 Did you reconstruct the shooting out in front of the Offrs' Mess in the area where the body was found?
A.1034 We reconstructed the shooting at the time and discussed how he was shot, in front or rear. It was thought at that time it was from behind. We were merely investigating the scene of the shooting for more information.

Q.1035 Did you examine any walls for slugs?
A.1035 We did.

Q.1036 Did you go over those walls very closely?
A.1036 We did.

Q.1037 What walls?
A.1037 The walls in front of the Offrs' Mess.

Q.1038 Did you go over carefully the west side of the Borden Block? I show you Exhibit "G" for reference.
A.1038 I examined the wall of the Ottawa Bldg, but I didn't examine the wall of the Borden Block. The reason I examined the side of the Ottawa Bldg and the Offrs' Mess was because I thought that the shots had been fired from the sports ground in front of the Ottawa Bldg. Another reason for examing the wall was the position of the pool of blood. We happened to find a bullet in the wall of the bldg. There were several bullet holes, all of which might have been made by .45 slugs. It was impossible to find out which was the bullet.

W.R.B.

Q.1039 Did you find any .45 slugs?
A.1039 No.

Q.1040 Did the bullet taken from the man's head give you any indication as to where the shot was fired from?
A.1040 I didn't know that a bullet came from his head.

Q.1041 Did you ask for information on those lines?
A.1041 I assumed it would be included in the medical interpretation.

Q.1042 Did you come to any conclusion as to the distance from which the shot was fired?
A.1042 I would say close up.

Q.1043 On what did you base this conclusion?
A.1043 From the size of the bullet-hole in the head.

Q.1044 A case of largeness or smallness?
A.1044 Largeness.

Q.1045 Are you suggesting to the Court that the size of the bullet-hole related to the distance from which the shot was fired?
A.1045 Definitely. A steel bullet makes a small hole and a lead bullet makes a large hole. It was a case of the size of the bullet-hole.

Q.1046 You came to the conclusion that it was fired from close range?
A.1046 Not having seen the body but knowing a small part of the evidence given by the doctors .....

Q.1047 You didn't know the size of the hole?
A.1047 No.

Q.1048 So you jumped to conclusions. When you and Major Bernier found the identity discs and the pistol which you linked closely with the accused, you both jumped to the conclusion that he was guilty?
A.1048 No, I would not say that.

Q.1049 Whether or not you jumped to that conclusion, it appeared to have something to do with the incident, something closely to do with the incident?
A.1049 It would appear that way.

Q.1050 Were any steps taken to find out whether or not Dillon was left handed or right handed?
A.1050 I don't recall.

Q.1051 Wouldn't it have been of some assistance, seeing that the identity discs were in his left hand to determine whether he was left handed or not?
A.1051 I was not there.

Q.1052 Did anyone make inquiries to find out what room Dillon slept in or whether he wore a wrist watch or not?
A.1052 I don't think so.

Q.1053 Was Pte Robinson told he didn't have to give evidence at the Court of Inquiry?
A.1053 I think Major Morgan told him that. I wasn't present.

Q.1054 To your knowledge, was any assistance given Robinson as far as his legal rights were concerned, apart from your own advice?
A.1054 I can't tell you that.

Q.1055 You don't know?
A.1055 No.

W.B.L.

Q.1056 You have the Orderly Offr's Report for the 3rd of Aug?
A.1056 No.

Q.1057 Have you examined it to see what information it contained?
A.1057 The Orderly Offr's Report?

Q.1058 Yes. Did you examine it - the Orderly Offr's Report for 3rd Aug? Have you examined it?
A.1058 Some time ago.

Q.1059 Do you recall if Lt Manahan was Duty Offr that day?
A.1059 He was.

Q.1060 Was there any report of this incident made in the Orderly Offr's Report for the night of 2/3 Aug 44?
A.1060 No, there was no reason for it.

Q.1061 Give a reason why there wasn't one?
A.1061 Taking into consideration the fact that there were the proper lengthy notes incorporated in the Court of Inquiry, made .....

Q.1062 Do you think that the Court will believe that? Is that the reason?
A.1062 Clarify the question.

Q.1063 You are trying to tell us about something that was done much later. I suggest to you that there was no Orderly Offr's Report. I suggest to you that it was some time later that he made a specific report of the incident?
A.1063 He made a written statement of the incident, I believe, the next morning.

Q.1064 I suggest it didn't come in with the Orderly Offr's Report?
A.1064 I don't remember. Everyone was quite aware that there had been a shooting.

Q.1065 Are you suggesting seriously that because everyone knew about it, no report was made? You are aware that it is evidence you must give in this Court. Don't make silly remarks.
A.1065 (Witness does not answer.)

Q.1066 Where was the holster found?
A.1066 In the kit of Pte Robinson.

Q.1067 Did you find it?
A.1067 No.

Q.1068 Doesn't it strike you as rather queer that the pistol and the holster were not in the kit together?
A.1068 It strikes me that he wanted it under his pillow.

Q.1069 This accused?
A.1069 Yes. It strikes me that he wanted it under his pillow.

Q.1070 Doesn't it strike you as queer that the holster was found in the kit bag and the pistol found by the pillow or articles used as a pillow?
A.1070 Not queer.

Q.1071 Does it strike you as unusual?
A.1071 It doesn't strike me as unusual.

Q.1072 You are trying to be a big help .....
A.1072 You are asking me. Some people don't keep their pistols in their holsters and others do.

W.B.L.

Q.1073 I suggest to you that after the pistol and holster and identity discs were found, you were trying to prove him guilty?
A.1073 The evidence seemed very certain from the sequence of events that came out that evening.

Q.1074 Wouldn't it be quite unusual for Robinson to keep the pistol, assuming he was connected with the shooting that evening?
A.1074 Yes.

Q.1075 Doesn't it strike you as unusual that you found it under his pillow and not in his kit?
A.1075 It might be -----

Q.1076 Was it found when he was asleep?
A.1076 If he was asleep.

Q.1077 Don't be technical. Do you dislike the accused?
A.1077 I have no feelings one way or the other.

Q.1078 You had been looking after the investigation right throughout. Apart from the medical assistance - there had been no provost assistance - were you not trying to find a solution to the shooting without any professional assistance?
A.1078 No, I don't think so.

No re-examination.

By the Court:

Q.1079 You stated yesterday that you took the smell of cordite as evidence that the revolver had been recently fired. At what time did you smell it?
A.1079 Shortly after it was found. A matter of minutes.

Q.1080 At approximately what time did you smell it?
A.1080 It took 10 or 15 minutes to find out about Robinson. We went directly to Robinson's bed, and it was somewhere between 11:25 and 11:45 o'clock when the pistol was found - around that time approximately.

Q.1081 In other words 2355 hrs?
A.1081 Approximately.

Q.1082 You specifically examined the Orderly Offr's Report after this incident?
A.1082 Yes sir.

Q.1083 Did you see the Tattoo Roll Call for the night 2/3 Aug 44?
A.1083 I saw it the following morning. I didn't see it that night. I don't recall now if Robinson was marked as in that night or not. We checked on it the following morning.

Q.1084 Why the check in the following morning? Was Pte Robinson marked absent at Tattoo Roll Call?
A.1084 I can't verify that from memory.

By the Judge Advocate:

Q.1085 I think, Capt Snell, you said that when you saw the accused in bed his clothing was dirty?
A.1085 Yes sir. I remember they were dirty.

Q.1086 What do you mean by dirty? Oily, muddy, dusty or what?
A.1086 I would say dusty but I can't verify the type of dirt.

W.B.B.

Q.1087 You have in the course of your evidence referred to the accused's kit. How do you know it was his kit?
A.1087 I am not positive that it was his kit, but it was in his bed and around his bed. It is normal to find a man's kit around his bed.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

EIGHTEENTH WITNESS (Major J. Bernier, RCAPC, 2 Bn 1 CBRD, recalled, for Prosecution (already sworn, is examined by the Prosecutor.

Judge Advocate:

Major Bernier, the decision of the Court was that the written statement and the answers by the accused to the questions when he was before Capt Snell in the 2 Bn Detn Room would not be admitted in evidence. So don't repeat any part of them, please.

Prosecutor:

Q.1088 Do you recall the evening of 2 Aug 44?
A.1088 I do.

Q.1089 Will you tell the Court, as simply as possible, what happened on that evening?
A.1089 On the night of 2 Aug 44 I was reading in my room, immediately above the 2 Bn Offrs' Mess.

Q.1090 I think it might be important if the Court were shown just where Major Bernier's room is on the sketch, Exhibit "G".
A.1090 My room is facing the one storey wing of the Ottawa Bldg on the second floor - the last room. (Witness marks spot with letter "L" on sketch.)

Q.1091 Carry on?
A.1091 At approximately 2300 hrs I heard a shot and then two other shots. I jumped up: went downstairs and found a group of offrs standing around a body sprawled in front of 2 Bn Mess entrance.

Q.1092 I would like you to indicate on Exhibit "G" the position of the body?
A.1092 Here. (Witness points to letter "H" on sketch.)

Q.1093 Will you tell the Court what was the attitude of the body?
A.1093 I only saw him for a brief moment. I remember the man was lying on his stomach. It seems to me his arms were outstretched and not at his side.

Q.1094 In what direction was he facing?
A.1094 His head was facing the Borden Bldg and his feet towards the Petawawa Bldg.

Q.1095 Will you carry on, please?
A.1095 The 2 Bn Orderly Offr, Lt Manahan, seemed to have the situation well in had so I left the scene. As I thought there might be an armed robbery, I went to my office and found everything in order. Then I returned to the general area of the incident. I was shown a set of identity discs by Lt McKee, who said .....

Q.1096 Carry on, but don't repeat conversations.
A.1096 The discs appeared to belong to B.144333 Pte D. Robinson and had the abbreviation for "Presbyterian" and "Canadian" on them.

Q.1097 Was there anything else, any other points of identification on these discs?
A.1097 They were two normal discs, tied together the way they should be, but the cord or string had been broken and, if I remember correctly, the discs had different information as to initials or rank. One had full initials and one had just one initial. I am not sure of this.

Q.1098 I now produce to you Exhibit "J". Can you identify these discs?
A.1098 Yes, these are the discs I was shown on that night.

Q.1099 Carry on, please.
A.1099 I went to Nos 1, 2 and 3 Bns to see if they had any record of Pte Robinson. We finally traced him at the Seaforth Coy Office of 2 Bn. I reported the fact to Capt Snell who had also found out the same information. I accompanied Capt Snell to the Seaforth billets. We found Pte Robinson in his proper bay, sleeping in his blankets. We awakened him. Pte Robinson's face and lips were bruised. There were scratches on his neck and his face. I went through his kit and found an American model .45 calibre revolver under the part of his blankets which formed a pillow. The revolver was empty and had, from the smell of powder, been recently fired.

Q.1100 Will you give to the Court any information you know about that revolver?
A.1100 It was American - I did not notice the make - of .45 calibre. It was in a rusty condition or unpolished in appearance. The number, model or issue was blurred. It had 1911 on it but I did not take the number until the following day. That is about all the information I know except that the magazine was on and was empty. There were no cartridges in the chamber.

Q.1101 Could you identify the revolver if you saw it again?
A.1101 I could.

Q.1102 How?
A.1102 From its general appearance and from its condition because I have a good memory.

Q.1103 I produce Exhibit "O". Will you examine this exhibit and tell the Court whether that is the same revolver or not?
A.1103 (Witness examines pistol) Yes, that is the same revolver.

Q.1104 At what time did you find this revolver?
A.1104 Approximately 2330 to 2345 hrs.

Q.1105 What did you do then?
A.1105 I looked through the rest of the kit and found a holster, presumably the one for the revolver in question. I found it in Pte Robinson's kit bag. I found no other fire arms or ammunition except his rifle which was hanging on the wall and had not been fired. I handed the revolver and holster to Capt Snell for safe custody.

Q.1106 How do you know the kit belonged to Pte Robinson?
A.1106 Because when he was sitting up in his bed, he acknowledged the fact that it was his kit.

Q.1107 How did he acknowledge it?
A.1107 I told him I was going to look through his kit. I asked him if it was his kit and he said, "Yes".

R.G.B.

Q.1108 What was the holster like?
A.1108 It was a light brown holster, not well polished. It had quite a few stains on it but no marks that I recall, no issue or serial number of any sort.

Q.1109 I produce a holster. Can you identify it?

Defending Offr:

In my opinion the methods of introducing the exhibit is objectional. The witness has not identified it by a proper description.

Judge Advocate:

He was only asked whether he was able to identify it or not. The Court will decide on the sufficiency of the identification, in due course.

(examination cont'd)

A.1109 I identify it from its badly polished condition.

Q.1110 Do you recognize that holster?
A.1110 I do recognize it.

Q.1111 What holster is it?
A.1111 That is the holster I found in the kit. (Brown leather holster stamped "US", admitted and marked Exhibit "P".)

Q.1112 Did you make any examination or search of the person of the accused?
A.1112 I did not.

Q.1113 What did you do then?
A.1113 Capt Snell had the accused placed under close arrest. Then the Cpl on duty was ordered to take Pte Robinson to the 2 Bn Guard Room and make a methodical search of the general area where Pte Robinson slept. I later accompanied Capt Snell to 2 Bn Guard Room while he questioned the accused and other witnesses as to the shooting.

Q.1114 Can you point out the accused in this Court Room?
A.1114 The accused is here (pointing) sitting by the Offr for the Defence.

Cross-examined:

Q.1115 Major Bernier, giving evidence before this Court has caused you considerable worry, hasn't it?
A.1115 I call it nervousness.

Q.1116 You have been worried about giving evidence?
A.1116 I am not used to the formality of the Court.

Q.1117 You are a little bit worried about the questions I am about to ask you?
A.1117 If I tell the truth I have nothing to worry about.

Q.1118 Since you found out I was the Defending Offr, haven't you been a little bit nervous and worried about the questions I would ask?
A.1118 I knew it would mean a lot of cross-examination.

Judge Advocate:

Capt Bergman, you wouldn't be flattering yourself by any chance?

W.B.B.

Defending Offr:

May I have that on the record, sir?

Q.1119 With the result that you have, since the taking of the Summary, read and re-read the evidence you gave in the Summary?
A.1119 I read it only once.

Q.1120 Thoroughly?
A.1120 Just once was the only time. I probably asked other witnesses ....

Q.1121 Have you ever referred to it in an attempt to refresh your memory?
A.1121 Just that once.

Q.1122 Did you memorize the statement you gave at the Summary?
A.1122 No. I had already repeated the story I knew five or six times. I have a photographic memory for certain of the details of what happened.

Q.1123 You saw the accused on his bed on the night of the incident, on the 2nd of Aug. What happened that night since you have such a photographic memory for detail?
A.1123 Only for certain details.

Q.1124 Have you the same photographic memory of what happened between 1130 and 1140 hrs this morning?
A.1124 Partly, yes.

Q.1125 Apart from the conversation you had in the presence of Capt Rose and myself, did you have a conversation with anyone else out there?
A.1125 I talked to the Cpl about the duration of the trial.

Q.1126 Did you talk to Capt Snell at all or have any words with him?
A.1126 I asked him whether he had been sitting down when giving his evidence.

Q.1127 Did you discuss the identification of the exhibits?
A.1127 No.

Q.1128 Did you discuss the questions asked him?
A.1128 No.

Q.1129 Why did you so anxiously point out the difference of a letter in the identity discs in the initials of the two discs?
A.1129 As far as I can recall, I noticed it on the night of 2 Aug when I was trying to find the initials for record purposes. I didn't get all the actual details.

Q.1130 Is that the only peculiarity in the initials on either one of them?
A.1130 That is all I remember. I have only seen the discs a few times.

Q.1131 You had the discs in your hand a few moments ago .....
A.1131 The only way I remember them is by the difference in the initials and rank on both of the discs.

Q.1132 What is the difference of initials and rank? Specify it?
A.1132 One has no initial or only has the initial "D".

Q.1133 Are you sure there is no difference in the type of the "PTE" or the position of the initials?
A.1133 I cannot say.

Q.1134 Will you tell the Court if when you first saw the identity discs you examined the string to see whether it was cut or broken?
A.1134 I did not.

Q.1135 Did you examine the type of knot?
A.1135 I did not.

Q.1136 You gave these identity discs a close examination?
A.1136 I gave them an examination as to rank, name and initials.

Q.1137 Then you can't say that these are the same identity discs because of any other mark of identification?
A.1137 They only bore the same number and name. In my opinion they are the same discs I saw that night.

Q.1138 That is a big difference. Now the holster, the only way you can identify it is that the holster is not polished?
A.1138 Yes.

Q.1139 How could you pick it out of a thousand holsters?
A.1139 By its form.

Q.1140 Could you be sure?
A.1140 Yes.

Q.1141 Are you prepared to state that that is the specific holster you took out of the kit of the accused - identify it specifically? Are you prepared to have your identification checked? Could you pick it out of a large group of holsters of the same size, shape and quality?
A.1141 Frankly, no.

Q.1142 So you cannot identify it specifically?
A.1142 Frankly, no.

Q.1143 Now, if I gave you a number of American .45 pistols of the same type and army serial numbers as Exhibit "O", all a little rusty and dirty and which had been fired, could you pick that one (points to Exhibit "O") out of a very large number?
A.1143 Yes.

Q.1144 And what is the specific thing you would use to identify it?
A.1144 One side of the grip is smooth and the other rough.

Q.1145 Is that unusual?
A.1145 Both sides should be the same.

Q.1146 When did you first memorize the number of the identity discs?
A.1146 The next morning I knew that I would have to establish the number in identifying the discs so I examined them thoroughly.

Q.1147 Capt Snell told us he asked the accused questions. Is that not true?
A.1147 Yes.

Q.1148 How did Robinson have a chance to tell you which was his kit - which kit to examine?
A.1148 As far as I recall there were only a few questions asked him. I had time to ask him a few.

Q.1149 Did you ask him during the actual questioning, before the questioning started or after the questions were asked?
A.1149 I can't say.

W.B.B.

Q.1150 Are you sure you can't remember?
A.1150 I remember I asked the accused where his large pack was. His large pack was at his head and his small pack to the left. I asked him which part of the kit belonged to him and made him show me where it was. He said, "Yes".

Q.1151 How did you and Capt Snell go about doing this?
A.1151 I don't know. I asked the questions.

Q.1152 In Capt Snell's presence?
A.1152 Yes.

Q.1153 As soon as you got hold of the identity discs and looked at the pistol, you made up your mind the accused was guilty, didn't you?
A.1153 No, I did not.

Q.1154 You didn't make up your mind. When did you first decide the accused was guilty?
A.1154 I would like to reserve my opinion. It was a matter of investigation.

Q.1155 Did you form a definite opinion that the accused was guilty of something or other?
A.1155 Yes, of something.

Q.1156 On what occasion did you change your opinion?
A.1156 I would not say.

Q.1157 When you first arrived at the body would you say there was a group around it?
A.1157 Yes.

Q.1158 How many?
A.1158 Five or six.

Q.1159 Were there any offrs?
A.1159 Some were offrs and some were guards and others.

Q.1160 Were there any spectators?
A.1160 Some of the offrs had rushed out of the Mess and there were people from the Guard Room. Whether there was anyone who had nothing to do with the business, I couldn't say.

Q.1161 You say the offrs rushed out?
A.1161 I don't know. I was on the second floor.

Q.1162 How long did it take you to get out?
A.1162 Less than a minute.

Q.1163 When you arrived at the doorway of the Offrs' Mess did you go right to the point where the body was?
A.1163 Yes.

Q.1164 What made you think that you were going to have a burglary in the Pay Office?
A.1164 I have always been safety-conscious. That has been stamped into me.

Q.1165 Did you check up other Pay Offices as well as your own?
A.1165 No, I was concerned with my own only.

Q.1166 You told the Court that in your opinion the revolver had been recently fired?
A.1166 Yes.

Q.1167 Do you know anything about revolver ballistics?
A.1167 No, I don't.

A.G.L.

Q.1168 Can you tell the Court the approximate time that elapsed between the firing and when you found the pistol?
A.1168 No.

Q.1169 Have you any evidence to link up the revolver with the shooting?
A.1169 The strong smell of burning powder.

Q.1170 Are you sure of the smell?
A.1170 Yes.

Q.1171 Can you estimate how recently the pistol had been fired?
A.1171 No.

Q.1172 Then there is no way of linking the shooting up with the pistol?
A.1172 No.

Q.1173 What makes you think the revolver you found had been fired?
A.1173 There was a smell of powder about that pistol that made me come to the conclusion that it had been fired.

Q.1174 Did you examine the accused's rifle?
A.1174 Yes.

Q.1175 How many cartridges were in the magazine?
A.1175 Ten.

Q.1176 What did you find on the examination of the barrel? Was it a thorough examination?
A.1176 Nothing. I didn't examine the barrel thoroughly.

Q.1177 You know the only way you could find out whether the barrel had been recently cleaned was from an examination of the pull-through?
A.1177 No.

Q.1178 You must have been particularly observant?
A.1178 (Witness makes no reply.)

Q.1179 Why was it that you took such a prominent part in this investigation?
A.1179 I don't call it prominent. I found whose identity discs they were and where he was from.

Q.1180 You were a bright investigator weren't you?
A.1180 I was helping out.

Q.1181 You were helping out and took an extensive part in the investigation?
A.1181 I would not say that.

Q.1182 Why was there such a further kit inspection after you had taken the gun from the kit yourself?
A.1182 Because we just went through the kit. There were other men sleeping in the bay and we didn't want the other men disturbed.

Q.1183 Did you examine the scratches on the accused?
A.1183 I saw them.

Q.1184 Were they scratches which might have been made by fingernails?
A.1184 Yes.

Q.1185 Was there any attempt, to find out from Dillon's body, whether he had any blood under his fingernails?
A.1185 Not that I know of.

Q.1186 Did you know if the MPs or the DAPM or the British Special Investigation Bureau were sent for to assist in this case?
A.1186 I don't know.

R.H.B.

Q.1187 Do you know if any ballistic's information was received from the American ballistic people in Naples?
A.1187 I don't know.

Q.1188 Don't you agree that it was strictly an amateurish job as far as investigation was concerned?
A.1188 It was a preliminary investigation of the shooting.

Q.1189 Don't you agree it was amateurish?
A.1189 Other people took it up the next morning.

Q.1190 Don't you think it was an amateur investigation?
A.1190 It was a rough examination.

Q.1191 You have no specific qualifications?
A.1191 I report facts.

Q.1192 Have you any special experience or qualifications in conducting investigations?
A.1192 No.

Q.1193 Could you tell by an examination of Exhibit "J", the identification discs, whether or not the cord attached to them has been broken in the way which a string would break if pulled from the neck of a person wearing it?
A.1193 I would say it is possible.

Q.1194 Do you know how long the string is?
A.1194 Ten inches or a foot.

Q.1195 You have never measured it yourself, have you?
A.1195 No.

Q.1196 Do you suggest it was broken?
A.1196 Here and here is the point of two breaks; one here and one here. (witness indicates on cord of Exhibit "J")

Q.1197 Then you are stating that there are two breaks, one here and one at the other end. By that do you mean there is a piece missing?
A.1197 I don't know if a piece is missing.

Q.1198 The cord is not long enough to go around a man's neck? (demonstrates)
A.1198 No.

Q.1199 Then there is a piece of the string missing?
A.1199 Possibly.

Q.1200 Is it possible that this piece of string is the only part of the string that was around his neck?
A.1200 No, it isn't.

Q.1201 There must be a piece missing?
A.1201 Yes.

Q.1202 Therefore on a pull of the identity discs from the neck, there is apt to be only one break?
A.1202 That depends on the condition of the string.

Q.1203 The point of the string where the first force is exerted, is where the break occurs, isn't it?
A.1203 Yes, or also where there had been a knot and where the cord may have ....

Q.1204 Then, where there is a knot there will likely be a break?
A.1204 (Witness does not answer.)

9086.

Q.1205 I want an answer to the question?
A.1205 As I am not an expert .....

Q.1206 Do you know anything about it?
A.1206 I don't know.

Q.1207 Did you examine the shoes and socks of the accused when you got to his bed?
A.1207 I don't ..... no.

Q.1208 You can't tell how recently they had been taken off?
A.1208 No.

Q.1209 Did you go into that?
A.1209 No.

Q.1210 What light was used when you first got to the accused's bed?
A.1210 Candle light.

Q.1211 The Orderly Cpl says he got a lantern and took you and Capt Snell to the bay. Is that correct?
A.1211 I can't remember. I only remember what I said.

Q.1212 You don't remember about the light?
A.1212 No.

Q.1213 Then your photographic memory doesn't recall what kind of light there was on the 2nd of Aug 44?
A.1213 I don't remember.

Q.1214 I also suggest to you that you are not sure of the quarters in which you found Robinson - that it was the correct one as to bay and bed?
A.1214 I am sure.

Q.1215 Did a new draft come in recently?
A.1215 Yes.

Q.1216 Was it a fairly large draft?
A.1216 Not too large. We had had two drafts; one from the UK and one from the Armoured Corps - tradesmen and drivers from every arm of the service - transfers.

Q.1217 Wasn't it correct that Capt Snell had been out a good part of the night of the shooting and was a little "happy" when he came home?
Q.1217 He didn't appear that way.

Q.1218 He had had a few drinks?
A.1218 Yes.

Q.1219 What about you?
A.1219 I had not had a drink.

Q.1220 You had not?
A.1220 No.

Q.1221 Did you have a fairly clear view of Dillon's body as it lay on the parade square?
A.1221 No.

Q.1222 Did you have a chance to examine him?
A.1222 No.

W.B.L.

Q.1223 Were his sleeves up or down?
A.1223 I don't know.

Q.1224 Were his hands outstretched?
A.1224 Slightly clenched like this (witness indicates). I can't remember other details.

Q.1225 Were you able to see his wrist watch on his left wrist?
A.1225 No.

Q.1226 The finding of the body didn't excite or arouse you to remember details?
A.1226 There were five or six offrs present, and they had just called the doctor. It wasn't my business to interfere.

Q.1227 With your photographic memory, do you recall the condition of the body?
A.1227 Just the position of the body.

Q.1228 The only way you link the pistol with the accused is by the finding of it by or near his body, right?
A.1228 No.

Q.1229 Was there any difference in the type of scratches on the neck of the accused when you saw them? Did you see them?
A.1229 Yes, I did.

Q.1230 Were they a type of scratch that would have been made by fingernails?
A.1230 Yes.

Q.1231 There was no difference in length or width?
A.1231 Yes.

Q.1232 They were all scratches?
A.1232 Yes.

Q.1233 Were these three shots you heard fired in fairly rapid order?
A.1233 No, I would say they would be about three seconds apart.

Q.1234 Would you say that they sounded like the normal sound of a shot fired from a Tommy Gun?
A.1234 Not being an expert .....

Q.1235 You have fired weapons?
A.1235 Yes.

Q.1236 Was there some space or time that would elapse between the normal firing of a Tommy Gun?
A.1236 Yes.

Q.1237 What kind of books do you like reading?
A.1237 Anything - detective stories, travel and adventure stories.

Q.1238 You like detective stories?
A.1238 Yes.

Q.1239 Do you read Conan-Doyle?
A.1239 Not for a long time.

Q.1240 Can you estimate the period of time you stood at or near the body lying outside 2 Bn Offrs' Mess that particular evening?
A.1240 About half a minute. As I said before, the Duty Offr seemed to have everything in order; the MO was coming so I ran over to see that my money was all right.

W.B.B.

Q.1241 What clothing mainly did you find in the accused's kit?
A.1241 I didn't find anything unusual.

By the Court:

Q.1242 Would you describe how the accused was dressed when you found him?
A.1242 He was sitting up in bed so I can only give what appeared above the bed clothes. His underwear appeared to have been torn. He had no discs. That is all I can say.

Q.1243 You say there were three shots that you heard?
A.1243 As far as I can recall.

Q.1244 Were they close together?
A.1244 A spacing of one, two or three seconds.

By the Judge Advocate:

Q.1245 Major Bernier, there has been some questioning of your methods and of the part in which you played in the investigation. Did you do it from your sense of duty?
A.1245 Yes I did.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

The Court adjourned at 1245 hrs.

The Court re-opened at Sorrento at 1400 hrs, 28 Sep 44, the same members being present.

Prosecutor produced Medical Certificate.

NINETEENTH WITNESS for Prosecution (Capt R.P. Jepson, 5 Mobile Neuro-Surgical Unit, RAMC, having been duly sworn, is examined by the Prosecutor.

Q.1246 You are attached to 65 Brit Gen Hosp. Is that right?
A.1246 That is right.

Q.1247 That hospital is located where?
A.1247 Naples.

Q.1248 Are you a Medical Doctor?
A.1248 Yes. I have medical degrees.

Q.1249 From what University?
A.1249 The University of Manchester.

Q.1250 Are you a licensed practitioner?
A.1250 Yes.

Q.1251 Will you give the Court your degrees?
A.1251 MB Manchester and BSc Manchester.

Q.1252 Are you licensed by the Medical Association?
A.1252 Yes.

Q.1253 Do you recall the night of 2/3 Aug 44?
A.1253 The early morning of the 3rd of August.

Q.1254 What happened that morning?
A.1254 I was sleeping in my flat, situated not far from the Hospital, and a message came which called me to the Hospital. I then went to the Hospital and examined a patient who was referred to me as Dillon. He was suffering from a through and through bullet wound of his head which had entered the right frontal bone and came out through the right occipital bone.

Q.1255 What time was this?
A.1255 I saw him at 0230 hrs on the 3rd of August, according to my notes.

Defending Offr:

I wish to raise an objection. The witness said, "I see from my notes". What evidence is there that these are the notes in question?

Judge Advocate:

Q.1256 When were those notes made?
A.1256 At the time I first saw the man.

Defending Offr:

When did he last see the notes he made?

Judge Advocate:

Q.1257 When did you last see those notes?
A.1257 The notes were completed on the day he died. I think he died on the 7th or 8th of August.

Defending Offr:

This matter should be cleared up to the satisfaction of the Court. You will notice that the witness has in his hand a certain document - certain memoranda - and has not the permission of the Court to refer to them.

Prosecutor:

The witness has not referred to them in the Court.

Defending Offr:

The witness used the words, "I see by my notes", and referred to the notes in his hand.

Judge Advocate:

Q.1258 Is the document, which you are holding in your hand, the notes which you mentioned?
A.1258 Yes.

Q.1259 Who made them?
A.1259 They are not the original notes.

Q.1260 Who copied them?
A.1260 Col. Ashcroft.

Defending Offr:

The witness is not entitled to refer to that document.

Prosecutor:

His is not referring to it except to refresh his memory.

Defending Offr:

I don't wish to be difficult, but I know the witness received these particular notes outside this Court Room and carried them in .....

Prosecutor:

I am not intending to establish .....

Defending Offr:

The evidence, this witness is giving, is evidence that he has got from certain pieces of paper which he did not have a hand in making.

(examination continued)

Q.1261 Would you mind pointing out to the Court on your own head where the wound of entry was and where the wound of exit was?
A.1261 The wound of entry was roughly here and the exit roughly here: the line between the two being more or less horizontal. (the witness pointed first to the middle of the right forehead and then to the back of his head in line with the first point)

Q.1262 What caused this wound?
A.1262 A high velocity missile.

Q.1263 What happened to the patient after you first saw him?
A.1263 He was given a blood injection and was recussitated by having a tube put into his stomach for the purpose of administration of fluid.

Q.1264 Did you have anything more to do with the patient?
A.1264 Yes, I saw him again at 8:30 in the morning and operated on him at 0900 hrs.

Q.1265 What further attention did you give him?
A.1265 I saw him afterwards, perhaps two or times a day until he died.

Q.1266 What did he die from?
A.1266 He died from the effects of a severe brain injury and secondary bronchial-pneumonia.

Q.1267 Is bronchial-pneumonia a common sequence to a severe head injury?
A.1267 Where a patient is in a ~~comma~~ coma. from an injury to the head, you frequently get a lung condition which becomes infected causing pneumonia.

Q.1268 Do you know whether or not any person was treated in that hospital that night for wounds of that nature?
A.1268 Not to my knowledge. I would certainly have been called to see him if he had come in.

Q.1269 After the patient died, did you have any further dealings with him?
A.1269 No.

Cross-examined:

Q.1270 Apart from this particular head injury which you described as caused by a high velocity missile entering the right frontal bone, were there any other wounds in the head or body of the person you examined?
A.1270 No.

Q.1271 None apparent to you?
A.1271 No.

Q.1272 Did he have any bruises on his face or body?
A.1272 Not that I know of.

R.B.B.

Q.1273 Is secondary bronchial-pneumonia caused by a bug or a bullet?
A.1273 A combination of the two.

Q.1274 Does the bullet bring the bug?
A.1274 No.

Q.1275 You stated to the Court that the bullet travelled through the head of this person in a horizontal line?
A.1275 Yes.

Q.1276 Can you tell whether the front or rear bone was on a horizontal plane?
A.1276 No, I cannot answer that.

Q.1277 Would you say there was the slightest difference in that line?
A.1277 I didn't pay that much attention to it.

Q.1278 You realize how important it is to the Court in testifying what was the actual line from the standpoint of the entry of the wound?
A.1278 Yes.

Q.1279 I suggest this to you; that if a bullet is fired from a pistol, from a reasonably close range, at someone else, the entry wound would be slightly higher if he were shot from the rear than if shot from in front?
A.1279 It would depend on the angle of the head. If his neck was flexed and the man was holding the pistol down here (indicates), it would be in a perfect horizontal line.

Q.1280 How could it be a perfect horizontal line if he fired from behind and the head is forward at an angle? Then, if the shot was fired from behind, the wound of exit would be much higher?
A.1280 If the man was firing from behind, yes.

Q.1281 I am meaning with regard to the normal position of the bodies?
A.1281 Then, if his head is bent forward, the exit wound would be higher than the entry wound. You realize that by horizontal plane is meant the line taken between the ear and the eye.

Q.1282 Could you describe to the Court the type of wound that a piece of string would leave on a reasonably tender part of the skin if the piece of string were jerked from the neck?
A.1282 It depends on the violence of the jerking.

Q.1283 Would you say that, if it were a violent jerk, the resulting wound would be a scratch or a welt?
A.1283 If it was a violent jerk it would be a burn.

Q.1284 Doctor, I want to assume that you have a set of identity discs around your neck, and that they are pulled sharply away from your throat. Would the string, in breaking, leave two or more identical burns on the skin?
A.1284 It again depends on the amount of friction between the string and the skin. If it were a very good piece of string that would not break without a great pull; if it required great violence, you probably would get burns on both sides of the neck.

Q.1285 Could you tell the Court - describe the amount or type of burns which you referred to? Would it be a burn or a welt?
A.1285 In which order?

Q.1286 You realize perhaps that you are giving evidence before a Canadian Court, and you may be using the word "burn" in a different sense than the Court would understand it?
A.1286 Perhaps if I gave an example: say a rock climber, who after falling, say five or ten yards, is brought to a sudden stop by the rope, he would get second degree burns.

Q.1287 A second degree burn leaves quite a scar?
A.1287 No scar. Just a bruise.

Q.1288 And that would be .....
A.1288 That depends on the amount of skin surface covered by the string.

Q.1289 Could you tell the Court anything as to the range at which this missile was fired?
A.1289 No, I don't remember seeing powder marks on the skin.

Q.1290 Do you know how far away the pistol has to be held - how close to the body to leave powder marks?
A.1290 No.

Q.1291 How many doctors were there in the staff of 65 Brit Gen Hosp on the 2nd of Aug 44?
A.1291 You mean the whole of 65 Gen Hosp, both medical and surgical?

Q.1292 Yes, approximately how many?
A.1292 I would say about ten or twelve.

Q.1293 Did you notice any bruises on the left forehead of the person you examined?
A.1293 No.

Q.1294 What is the usual medical method of determining which is the point of entry, and which is the point of exit in a case of this kind?
A.1294 I always tell by ascertaining where there is greater fragmentation of bone.

Q.1295 But had you seen the wound immediately after being inflicted, what would you look for to find the wound of entry and exit?
A.1295 Firstly, powder marks on the skin and then the relative size of the exit and entry wounds.

Q.1296 Which would be the larger?
A.1296 The exit wound is usually the larger.

Q.1297 If one wound is smaller than the other, both are exuding blood, then that would indicate to you that the small wound is the wound of entry and the larger is the wound of exit?
A.1297 Yes, it would be.

Q.1298 Now, is this small wound of entry and large wound of exit characteristic of both pistol and rifle bullet wounds?
A.1298 I believe so.

Q.1299 If there had been previous interference; if the wound had been previously dressed on the night of 2/3 Aug 44 by a surgeon; would it be possible that you could make a mistake as to which was the wound of entry or exit?
A.1299 I had no doubt at the time.

Q.1300 I used the word "interference"?
A.1300 That depends as to what you mean by "interference".

W.B.B.

Q.1301 If there had been interference in the surface dressings or inside the wound itself? If both front and rear wounds had been cleaned up?
A.1301 After a complete and formal operation, I could not tell.

Q.1302 How far would a complete and formal operation have to go?
A.1302 Would you like the details?

Q.1303 When you first treated this patient, you concentrated on the head injury?
A.1303 His general condition was first seen to .....

Q.1304 How far did you go?
A.1304 Took his pulse, checked his blood pressure and response to pain, and if he could talk.

Q.1305 When did you first examine his chest?
A.1305 At the time when I first saw him.

Q.1306 How far did you go?
A.1306 The usual examination was made.

Q.1307 With a stethescope?
A.1307 Yes, with a stethescope.

Q.1308 When you say you examined the patient referred to you as Dillon, you gained that information from a medical document?
A.1308 Yes.

Q.1309 Did you take any other steps for the identification of that particular body?
A.1309 No.

Q.1310 Did you take any further notice of the body?
A.1310 Not particularily, no.

Q.1311 Did you find any foreign skin or blood substance under his fingernails?
A.1311 No.

Re-examined:

Q.1312 What were the comparative sizes of the wounds of entry and exit?
A.1312 From memory I should say the entry wound size was about the size of a sixpence and the exit would was between the size of a shilling and a florin.

By the Court :

Q.1313 Doctor, from the appearance of the wound, did it seem if the shot was fired from a short or long distance away?
A.1313 I don't think you could tell.

By the Judge Advocate:

Q.1314 What was the date of this patient's death?
A.1314 The 7th or 8th.

Q.1315 Of August 1944?
A.1315 Yes.

W.B.B.

Q.1316 If we were to suppose that this patient had received no medical treatment before you saw him except to have two field dressings applied to his head on the occasion when he was discovered shot and then later had these dressings renewed, would you be able to determine the wound of entry and the wound of exit?

A.1316 At the time of the operation, yes.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

TWENTIETH WITNESS (Lt B.J. Dolan, 3 Bn 1 CBRD, for Prosecution (having been duly sworn, (is examined by the Prosecutor.

Q.1317 Do you recall the evening of 2 Aug 44?

A.1317 Yes sir.

Q.1318 What were you doing that evening?

A.1318 On 2 Aug 44 I was Gd Comd, 1 CBRD.

Q.1319 What, if anything, happened that evening?

A.1319 At approximately between 1030 and 1100 o'clock in the evening I heard a shot, I immediately ordered the guard to stand to. While this was happening two more shots were fired. I got a party together to investigate the shooting. In front of 2 and 3 Bn Offrs' Mess, I saw a body lying there. There was an offr in charge. He had the situation under control. I immediately took my party to investigate the buildings in the area. I found nothing out of the ordinary. I came back where the body was lying. He had been evacuated. We looked around the area and the Cpl of the Guard found an empty .45 casing. He turned it over to me. Later I turned the casing over to the Adjt, 2 Bn. That's all, sir.

Q.1320 Was that the only incident that night?

A.1320 No sir. Later I was called out again to investigate the case of a Sgt from the Cdn Dental Corps who had fallen out of an upstairs window in his quarters.

Q.1321 What was the name of the Cpl of the Guard?

A.1321 Cpl Ferguson, sir.

Q.1322 Will you describe the casing which he turned over to you?

A.1322 It was a casing that had been scraped, greyish in colour and not the ordinary .45 casing.

Q.1323 What type of a .45 casing was it?

A.1323 I do not know.

Q.1324 If there were several casings handed to you, similar in colour, would you be able to pick out the casing Cpl Ferguson handed to you?

A.1324 I have sworn by Almighty God, about two minutes ago, to tell the truth. I don't think I am capable of doing so, sir.

Cross-examined:

Q.1325 You told the Court that a Dental Sgt had fallen out of a window in the barracks?

A.1325 I don't believe I said inside Canada Bks. The Dental Barracks are immediately outside on the road to Montefore.

Q.1326 That is outside, just at the end of the west wall of Canada Bks?

A.1326 It is immediately outside the west wall.

W.B.G.

Q.1327 On the road to Naples?
A.1327 Yes.

Q.1328 Did you form the opinion that the Dental Sgt had been drunk?
A.1328 When I got over there the Medical Offr was there. I questioned the men and found out what had happened.

Q.1329 As a result of the questioning, were you able to form any opinion?
A.1329 No sir.

Q.1330 You knew at that time there had been a shooting at Canada Bks?
A.1330 Yes sir.

Q.1331 Did you make any attempt to search the barracks of this Sgt to find a pistol?
A.1331 No sir.

Q.1332 Did you try to connect this incident of the fall of the Sgt with the shooting incident?
A.1332 No sir.

Q.1333 By that time the shooting was old history was it?
A.1333 Yes sir.

Q.1334 You say that you heard three shots fired?
A.1334 Yes sir.

Q.1335 Did you or did you not hear one and then two more?
A.1335 I heard one shot and called the guard. There was one or more after that.

Q.1336 How long did it take you to get the guard called out after the first shot?
A.1336 Approximately a couple of minutes, sir.

Q.1337 The main idea was for you and your guard to identify the person and catch him?
A.1337 We did not know what it was. In the past month in that barracks there had been shooting every night. We thought it was another case of a guard shooting at a man going over the fence or something.

Q.1338 It wasn't unusual to hear shots at this time?
A.1338 No sir.

Q.1339 Do you remember handling three cartridge casings?
A.1339 No sir.

Q.1340 How many did you handle?
A.1340 On the 2nd of Aug one was found. The next morning my Cpl passed me another one he found in the area.

Q.1341 He told you he found them?
A.1341 Yes sir.

Q.1342 Were you present with the Cpl when he found the first casing?
A.1342 Yes sir.

Q.1343 How close were you to him when he found it?
A.1343 Approximately two feet.

Q.1344 While you had the casings in your possession did you at any time mark them for specific identification?
A.1344 No sir.

W.B.B.

Q.1345 Did you handle any identification discs that evening?
A.1345 No sir. I recall something about some identification discs, but I didn't see them.

Q.1346 You made a search in the Records Office of the Seaforths for a certain name and number?
A.1346 Yes sir.

Q.1347 Where did you get the information as to the name and number?
A.1347 There was a Senior Offr present.

Q.1348 Did someone tell you what was on the identity discs?
A.1348 Yes sir.

Q.1349 That is the only way you got the information?
A.1349 Yes sir.

Q.1350 Now, having information as to the finding of the identity discs, did you come to the conclusion that the person referred to on the identity discs was guilty of the shooting?
A.1350 No sir.

Q.1351 Did you keep an open mind?
A.1351 Yes sir.

Q.1352 Did you form the conclusion that he had a strong connection with the case?
A.1352 No sir.

Q.1353 No conclusion at all?
A.1353 No sir.

Q.1354 Were there any fights in and around the gate at that time?
A.1354 No sir.

Q.1355 Apart from the Sgt falling out of the window and the shots you heard fired, was there anything unusual that evening?
A.1355 No sir.

Re-examined:

Q.1356 How far away was the building the Sgt fell out of from the Gd Room?
A.1356 At least 500 yards.

Q.1357 In what direction?
A.1357 On the road to Monteforte.

Defending Offr:

I think there is some confusion. We should refer to the sketch.

By the Court:

Q.1358 The building is on the road to Monteforte between Canada Bks and 3 Cdn Gen Hosp?
A.1358 Yes sir. Between Canada Bks and 3 Cdn Gen Hosp on the road to Montefore.

Q.1359 You stated there was shooting every night?
A.1359 Yes sir.

Q.1360 On what do you base that statement?
A.1360 From what I have seen.

Q.1361 Are you in the Barracks every night?
A.1361 No sir. I have been in the Barracks for a month.

Q.1362 You stated that it might have been one of the guards firing at somebody going over the fence?
A.1362 Yes sir.

Q.1363 To your knowledge has that ever happened?
A.1363 I could not swear to it, but I believe it has happened.

Q.1364 You don't know?
A.1364 No sir.

Defending Offr:

Sir, your questions were limited to soldiers. Was there any incident of Italians being fired at?

By the Court:

Q.1365 Were there any instructions given to you as Guard Commander that you keep out civilians or unrecognized persons from entering the front of Canada Bks?
A.1365 Not to my knowledge; no sir.

Q.1366 In other words the sentry uses his own judgment?
A.1366 Yes sir.

Q.1367 Can you tell the difference between a car back-firing and a shot?
A.1367 No sir.

By the Judge Advocate:

Q.1368 Lt Dolan, do you know the name of the offr whom you said had the situation under control where the body was found in front of the 3 Bn Offrs' Mess?
A.1368 Truthfully, no sir.

Q.1369 Do you know the name of the 2 Bn Adjt to whom you gave the .45 casing?
A.1369 Yes sir.

Q.1370 Who was it?
A.1370 At that time, Lt Snell, sir.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

TWENTY-FIRST WITNESS (Lt H.J. MacComb (48 Highrs), 3 Bn 1 CBRD
for Prosecution (having been duly sworn,
(is examined by the Prosecutor.

Q.1371 Do you recall 3 Aug 44?
A.1371 Yes I do.

Q.1372 To what unit did you belong at that time?
A.1372 3 Bn 1 CBRD.

Q.1373 What happened that day as far as you were concerned?
A.1373 I was on a Court of Inquiry.

Q.1374 Will you tell the Court what you did as a result of receiving instructions from the President of that Court of Inquiry?
A.1374 I went over to the Gd Room.

Q.1375 What did you do in the Gd Room?
A.1375 I searched the belongings of the accused and the accused's person. I found two fountain pens which I turned over to the President of the Court.

W.B.B.

Q.1376 Who was this person you searched?
A.1376 I don't know his name but I would know him to see him.

Q.1377 Is that person in this Court Room?
A.1377 Yes he is.

Q.1378 Will you point him out to the Court?
A.1378 There sir. (witness points to the accused)

Q.1379 Will you describe to the Court the fountain pens that you took off the accused on the morning of 3 Aug 44?
A.1379 I cannot describe them closely. I know that they were two grey pens. One was light grey and one darker grey.

Q.1380 By "light grey" what do you mean?
A.1380 Fairly light; nearly white.

Q.1381 I propose to show you two pens, and all you are required to do is to say "yes" or "no".

Defending Offr:

I am going to object to the witness being shown the pens on the ground that there is not a real test being made. Have him pick these pens out of a group of pens. I am going to object to his answering "yes" and "no". If he feels the proper answer is not "yes" or "no", he is allowed, I believe, to give his answer as he sees fit. The person asking the witness is bound by the whole of the reply which is elucidated from the question.

Judge Advocate:

Capt Bergman, I see no objection to the witness being shown two pens and asked if he is able to identify them. He has described two pens which he claims to have found in the accused's kit or person - one being light grey in colour and the other being dark grey in colour. The witness is not prepared to go further in his identification. The Court will give due regard to the sufficiency of his identification. If the witness is prepared to identify them, I think the pens should be admitted,- if you like, subject to your objection.

Defending Offr:

I want the identification to be subject to my objection, sir.

Prosecutor:

Q.1382 I now show you three pens. Can you identify any of them?
A.1382 This is definitely one. (witness indicates light pearl grey fountain pen) These two I can't be sure of. (witness indicates fountain pen marked Exhibit "I" and a grey fountain pen similar in appearance to Exhibit "I")

Q.1383 These two you cannot be sure of?
A.1383 No. (fountain pen, light pearl grey in colour admitted and marked Exhibit "Q")

Q.1384 Where did you find these pens?
A.1384 They were on the accused's person. He gave them to me himself.

Q.1385 When you said you could not be sure what did you mean?
A.1385 The other two pens look alike. I cannot swear to either one of them.

K.B.B.

Cross-examined:

Q.1386 Why did you say that the pen, Exhibit "Q", is definitely one that you could identify?

A.1386 I do not understand.

Q.1387 Why did you say, "this is definitely one"?

A.1387 It is the same pen I picked up that day. That is the only pen I have ever seen of that colour. I am pretty sure that this is the same one.

Q.1388 Did you mark either of the two pens specifically for future identification?

A.1388 There is one definite mark on one of the pens. One had tooth marks on it.

Q.1389 On the bright white pen?

A.1389 Yes.

Q.1390 On the white pen?

A.1390 I don't know. I think it is on the white pen. It is so long ago that I -----

Q.1391 Did you yourself put any specific identification mark on either of these two pens?

A.1391 I didn't.

Q.1392 Who handled the two pens next?

A.1392 The President of the Court.

Q.1393 Who was that?

A.1393 Major Morgan.

Q.1394 Did you ever see the pens again before to-day?

A.1394 I saw them the next day.

Q.1395 Under what circumstances?

A.1395 Pte Wilcock, a 48 Highr, claimed he had had one stolen from him and wanted to identify his.

Q.1396 Was that in connection with your duties on the Court of Inquiry?

A.1396 Yes sir.

Q.1397 Did you see them again after that?

A.1397 No, I didn't.

Q.1398 You never have?

A.1398 I have never seen them since.

Q.1399 When were you first told you would be giving evidence on a subsequent trial?

A.1399 I was never told I was going to give evidence.

Q.1400 Were you advised by Capt Snell as to what evidence you were going to give?

A.1400 No.

Q.1401 How did he know what you were going to say in Court to-day?

A.1401 That is right, there was a 'phone call to Naples that I would have to identify the pens.

Q.1402 If I put the pen, Exhibit "Q", in with a group of 15 or 20 other identical pens, would you definitely be able to pick it out?

A.1402 I would not be sure.

A.A.G.

Q.1403 Now, when you went to the accused to get these pens, you had him indicated to you at the Court of Inquiry?
A.1403 I don't remember whether it was before or after.

Q.1404 Had you seen the accused or had him under observation for some little time prior to to-day?
A.1404 I just saw him the day I went to the Court of Inquiry; the day we had him at the Court of Inquiry.

Q.1405 The accused was given quite a grilling at your Court wasn't he?
A.1405 The Major asked him a few questions.

Q.1406 What do you mean by "a few"?
A.1406 About 15 or 20, I imagine.

Q.1407 Did Major Morgan or any member of the Court administer the caution to the accused that he need not answer questions that would criminate him at any time prior to giving evidence?
A.1407 I don't remember.

Q.1408 Would you have remembered if that had been done?
A.1408 I cannot say.

Q.1409 Wasn't the accused at that time ever told by any members of the Court that he was under oath when giving evidence?
A.1409 Not that I remember.

Q.1410 You didn't let Robinson go until you were satisfied that you had got all the information out of him? Is that not correct?
A.1410 That is correct.

Re-examined:

Q.1411 In your cross-examination, you stated that Wilcock identified the pen. Was the accused present when Wilcock made the identification?
A.1411 No, I don't think so.

Q.1412 You stated that one of the pens had a tooth mark on the nib, right?
A.1412 That is right.

Judge Advocate:

He did not say that. I think he just said tooth marks and nothing about a nib.

Defending Offr:

Having asked the last question, it is rather useless to ask it in a different way now.

By the Court:

Q.1413 When the accused was being searched by you in the presence of the other people in the Gd Room, was there any conversation between you and him when the pens were found?
A.1413 No, there wasn't.

By the Judge Advocate:

Q.1414 You mentioned a Court of Inquiry which was held on 3 Aug 44, and you also stated that Major Morgan was President of a Court. Is that the same Court of Inquiry you first mentioned?
A.1414 Yes.

908

Q.1415 When you went to the Gd Room to make this search, was that before or after the accused had given evidence at the Court of Inquiry?
A.1415 I am not sure. I think it was after.

Q.1416 What particular Gd Room was it that you went to?
A.1416 2 Bn Gd Room.

Q.1417 And I think you told the Court you found these two pens on the person of the accused?
A.1417 That is right.

Q.1418 In what manner?
A.1418 They were handed to me by the accused himself.

Q.1419 Where did he get them?
A.1419 He took them out of his inside pocket.

Q.1420 What did you say to the accused that made him reach into his pocket and hand them to you?
A.1420 I asked him to empty his pockets. He did.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

The Prosecution is closed.

Court adjourned at 1540 hrs.

Court re-opened at Avellino at 1000 hrs, 29 Sep 44, the same members being present.

Prosecutor produced Medical Certificate.

Defence did not require Major J.R.H. Morgan for cross-examination.

Defending Offr's Submission:

Mr. President, I wish to make a motion pursuant to the provisions of fn 1 to RP 40. The evidence adduced by the Prosecution has not established a prima facie case against the accused, having regards to the facts alleged in the charge sheet. The accused, therefore, should not be put upon his defence. At this time, as the Judge Advocate will probably advise you, the only question which the Court has to consider is whether or not the offence alleged has been proven. The question of a special finding or conviction of a lesser offence does not arise. I will, in the course of my remarks, make certain allegations against the Prosecution. I would, at this time like the Court to be firmly convinced that these allegations are not against the Prosecuting Offr in this case. When I use the term "Prosecution", I refer to the investigation which started on the night of the 2nd of August and which lead to the evidence which has been submitted to the Court in the past few days. I would further state that the conduct of the Prosecuting Offr, in my mind and in the mind of the accused, has been most fair. When I use a loose expression, such as "the Prosecution", I refer entirely to the history of this case which started some time between 2330 hrs and 2345 hrs, 2 Aug 44, and also to the amount of investigation, both legal and special, which is on the record and which the Court must examine. I may also state that both I, as Defending Offr, and the accused, who is on trial, consider that the Court which is judging the guilt or innocence of the accused has been completely fair. The Defence has not been hampered by the Court in any way shape or form. The accused has had a considerate and kindly hearing. However, I intend to castigate the prosecution for their sins of omission, rather than their sins of

W.B.B.

commission. These remarks I hope the Court will interpret as a castigation of the individuals who first took charge of this investigation. You have had one reference by a witness for the Prosecution that legal advice was sought in completing or preparing the case against the accused. That reference deals entirely with the assistance sought of Capt Bate in his capacity as ADJA at HQ 1 CBRGp. The whole Court has sufficient Army experience to know that Capt Bate, in his official capacity as ADJA, considers the Summary of Evidence and charge sheet before trial. Therefore, the Court must accept the fact that his responsibility is the technical and legal responsibility to decide that the written or typewritten sheets discloses an alleged offence. The ADJA on any HQ is neither an amateur or professional detective. He is the legal assistant to the Comd. Therefore, any evidence as to the assistance which the Prosecution sought from his department should naturally be depricated. When one considers that he is not, nor ever was intended to be, a "Sherlock Holmes", I submit that the reference which the witness, namely Capt Snell, made to his "assistance" should be discarded completely. Capt Bate gave his assistance to these incompetents by virtue of the kindness of his heart and not because of the duties which naturally flow from his particular appointment. The evidence submitted by the Prosecution is purely circumstantial. It may be felt by the Court to be quite strong circumstantial evidence. I refer the Court to MML Chap VI, para 42, pp 91-2. (reads para 42) The entire history of this case has been full of sins of omission, perhaps the grossest of which is the failure of supposedly competent and qualified offrs, with normal mental capacity and education, to call upon any military police - either Canadian, British, or American to assist them. Had this been done, the Court would undoubtedly have been supplied with certain expert ballistic evidence as to whether the pistol, Exhibit "O", had been recently fired and whether or not the two empty cartridge casings, Exhibits "M" and "N", had been ejected from that pistol. At this stage in the trial, the cartridge casings have not been connected with the pistol in any way. In view of the evidence before the Court, the normal assumption must be that they were, in fact, not fired from the same weapon. It does not take expert evidence to see that the mark made by the firing pin on Exhibit "M" is different from the mark on Exhibit "N". Nor does it take expert evidence to see that had Exhibits "M" and "N" been the spent cartridge casings which were ejected as a result of the last two shots that were fired that night from the same weapon, the person firing the weapon must have been flying a Spitfire in order to cover the distance between the places the casings were found - a space of some 200 to 250 yards in approximately two seconds. I suggest to the Court it is a matter of their common knowledge, and a matter of which they can take judicial notice; that a pistol ejecting two spent cartridge casings would eject them in roughly the same area, providing no mechanical defects between the first and second shots. The Prosecution has made no attempt to explain the relevancy of the cartridge casings, Exhibits "M" and "N", either to the specific weapon or to the specific shooting. This tends to confuse rather than to assist the Court. Until such time as Exhibits "M" and "N" are related in some way to the accused and to the offence charged, these exhibits should not be admitted in evidence. In fact, from the evidence before the Court, it is much more likely that these cartridge casings came from some other weapon and from a prior shooting. The evidence before the Court shows that the firing of weapons in Canada Bks at that time of night was not unusual; that according to the only Guard Commander examined, apart from Lt Dolan, shooting at 2200 hrs nightly was a notorious fact; that there were a large number of drunks around the gates and in the area of Canada Bks on the night of the 2nd of Aug 44; that around the 2nd of August, Thompson Machine Carbines were being fired daily on the ranges; and that Thompson Machine Carbines

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were in good supply at that time. Therefore, any soldier who had surplus ammunition and who did not fill his magazine completely could have quite easily put some extra rounds into his pocket. There has been a certain amount of cross-examination on what might be termed ballistics evidence. Yet in my cross-examination I have attempted, on this point, to limit it to that type of ballistics evidence which could be defined as matters that come within the Court's general military knowledge. In that way I have avoided the calling of expert ballistic witnesses. As the Judge Advocate will probably advise you later, ballistic evidence comes well within the general military knowledge of the members of the Court, who are commissioned offrs of the Canadian Army. Therefore, that evidence complies with RP 74. The Court has three specific problems to decide in the matter of identification alone. First they must have a corpus delecti, and he must be identified as the person described in the charge sheet. Secondly, the accused must be identified with the offence. Thirdly, there must be specific identification of the exhibits tendered in evidence. This has not been done in the case of any of the three. Dealing with the first; the Court only has evidence that a set of identity discs were buried. There is no proper identification of the person described in the charge sheet with the person who was certified dead and subsequently buried. Without labouring this particular point, if the Court will only refer to the evidence concerning a certain medical document; the document which admits a soldier to hospital, it will recall that the name and number of the person on that document was put on it by Capt Verdicchio as a result of what someone told him. The certificate concerning the person treated and the certificate as to the person buried is an identification only by virtue of what someone told someone else - statement made not in the presence of the accused. Look at Capt Tootell's evidence. The Court can well remember that I examined him as to the time he saw the patient as recorded in his diary. He gave a fairly unsatisfactory explanation. He could not have seen that person before 0200 hrs 3 Aug 44 as the admission paper shows it was at 0145 hrs. He has told you that he buried someone whose name he assumed was Dillon, by virtue of information he received concerning a person admitted on the 2nd of August 44. He was checked carefully as to this. Therefore, according to his evidence, the person he buried on 8 Aug 44 is a person who was admitted to 65 Brit Gen Hosp prior to the time the person who was shot at Canada Bks could have got there.

One observation I would like to make is, that it is not the duty of the Court either to correct the mistakes made by the Prosecution or to fill in the gaps left by either the Defence or the Prosecution when you have persons with legal qualifications assisting the Court in presenting the evidence to it. It is well known that it is a principle of British justice that it is better that nine to ten guilty men should go free than for one innocent man to be hung. The Court must look to the Prosecuting Offr and to the Defending Offr to assist them in examining all the angles involved in any offence; particularly in a case like this which presents more than the usual difficulties encountered in ordinary Field General Courts Martial. The Defending and Prosecuting Offrs are charged with presenting a case, properly investigated, to the best of their ability. The Court will decide on the guilt or innocence of the accused person on the evidence adduced and admitted on the record. To carry on with the identification details encountered in this particular case; there is only one instance of any specific identification of the accused with the alleged shooting of Dillon. This is evidence of Cpl De Harte. Cpl De Harte stated that he saw the accused on the parade square arguing with the man who supposedly gave his name as "Dillon".

De Hart went further. He identified the accused specifically as the man who was arguing with this nebulous Dillon. De Harte's evidence shows that the argument between Dillon and the accused was the third argument, I believe I am correct, with which he had occasion to interfere that evening. He could not identify the other two people that he stopped arguing before he had words with the person he identified as the accused. Why? I ask the Court to disregard completely the identification evidence given by Cpl De Harte, especially in view of the subsequent history of that identification he gave in cross-examination. De Harte has himself told the Court that before he was asked to identify the accused he had the accused under observation for some 45 minutes while the accused was waiting to give evidence at the Court of Inquiry. There the accused stood between two escorts, without a hat on. So that, before De Harte was called on specifically to identify the accused, he had had him under observation for some time. According to his own evidence, he came to the conclusion that the accused was closely linked with the shooting on the night of 2 Aug 44. Bearing in mind this period of observation, the Judge Advocate will advise you as to the degree of reliability to be attached to such identification evidence. I submit the accused should be granted all the rights and privileges afforded an accused by the civil and criminal courts in Canada. When a man puts on a uniform and becomes a soldier, nevertheless, when charged under Sec 41 of the Army Act of committing a civil offence, he should be given the benefit of the rights extended to him in Canadian civil and criminal courts. He should not be deprived of his civil rights merely by virtue of the fact that he has offered his services to his country and now wears khaki and not zombie garb. Dealing more specifically with De Harte's evidence;- let us analyse the psychological features of the human mind. You are acquainted with people who, as a result of subsequent consideration of what they saw, come to the conclusion that because certain facts should be so, they are so. As a result of that subsequent consideration, they suffer from the hallucination that it actually is so. I throw a challenge to you as individuals, to consider whether you are satisfied in your minds that De Harte saw the accused, as he said, or came to that conclusion as a result of having the accused under observation subsequent to 2 Aug 44. Can you, as reasonable individuals, accept his statement beyond a reasonable doubt? I strongly protest against the unfair and incompetent manner in which the accused was handled prior to the proper identification parade. I protest against the manner in which the accused was publically paraded under escort before a proper identification was made. The Court must consider very carefully the amount of reliability which can be placed on De Harte's identification. I submit that there is a sufficiently strong doubt to disregard that identification entirely. Its reliability has been completely upset. I request the Judge Advocate, in his summing up, to refer to the usual proper criminal methods of identification in civilian courts and specifically to mention the number of cases and the type of cases which the Courts have thrown out because of improper and incompetent identification. The identification of the exhibits is unreliable and incomplete. In only one instance has a specific exhibit been identified. That was when Major Bernier identified the pistol, Exhibit "O", by means of the difference in the sides of the handle or butt grip. The right hand grip, as you noticed, is smooth; whereas, the left hand grip is rough - the ordinary grip. Major Bernier, however, did not bring out that specific means of identification in his examination. It was not until he was closely questioned in cross-examination that he finally remembered. That pistol passed through many hands. That pistol, in the hands of competent people, would have been closely studied for any specific features as well as the serial

number. No one yet has identified that pistol in the proper manner by its serial number. Major Bernier, as an after thought, imagined the difference in the sides of the butt plate. Never, at any time prior to the taking of the Summary of Evidence, were any of the exhibits specifically marked . No one, therefore, can say that the exhibits, that have been tendered in evidence, are the objects found on the 2nd or 3rd of August. The Court is now in the position of having before it exhibit evidence of no specific or substantial value. The doubt which must arise in their minds negatives the evidentiary value of those exhibits. Therefore, they are valueless in linking the accused with the offence alleged in the charge sheet. You will, no doubt, be advised by the Judge Advocate that no matter how amateur our Canadian Police are - how amateur they may be in investigating an offence - they always tag an exhibit. It is immediately marked for identification and kept in safe custody until it is presented in evidence at trial. I refer to a case at which the present Judge Advocate sat as Judge Advocate; which I think was tried on the 21st or 22nd of December, 1943. I was defending. There were two main exhibits, one of which was a beer bottle. The original handling of that exhibit was incompetent. It was a question of identifying certain fingerprints on that bottle as having been made by the accused. The bottle was not marked by the first person finding it. It subsequently came into the hands of the civilian police and was properly kept in safe custody until the trial. But its evidentiary value was negatived because of the incompetence of the first person examining it. In the English Courts - I say this from personal knowledge - it seems that exhibits do not have to be marked with the same care that they do in the Canadian Courts. But I draw your attention to the fact that you, as president and members of this Court, are Canadians trying a Canadian soldier. Therefore, you should allow him the same consideration which a Canadian criminal court would allow him in deciding him guilty or not guilty of this offence. The history of this case indicates that the handling of these exhibits has been amateurish. I submit that the prosecution witnesses had seen them time and time again before they identified them before this Court. There is evidence that a Court of Inquiry was held prior to this trial. You had a Summary of Evidence taken and you have had this trial. There may have been some check made, but there has been no instance of a proper identification. The Court will realize that, because the Prosecutor and the Defending Offr had neither the chance nor the opportunity of controlling the type of investigation these individuals conducted, the evidence has not been presented as it would be in civilian life. Some of you may consider that we give up these civil rights and privileges by virtue of serving our King and Country. It does not matter one iota whether a man serves with a base unit or serves for months in the front line. The fact that he has signed an attestation paper makes him liable to be sent into any theatre of operations if His Majesty, through his representatives, deems fit. I don't want the Court to be prejudiced for one minute because this individual came from a Base Unit, or that he should be given any different consideration because this incident did not happen within a few yards of the German trenches. Without labouring too much the identification of the exhibits - the guilt or innocence of the accused is to be determined by offrs who have had normal training: what is known as "training common-to-all-arms". So without going into

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expert ballistic evidence, let us deal specifically with Exhibits "M" and "N", the spent cartridge casings. The distinct features in the identification of spent cartridge casings are the company which manufactured them; the year in which they were manufactured; the mark made by the firing pin, especially its size and position; and the marks made when the empty casings are ejected. There are many other ways in which an expert can identify a spent casing, but the ways I have cited are known to the amateur. There are also matters which come well within the Court's general knowledge, and, therefore, judicial notice can be taken of them pursuant to RP 74. The absence of proper identification, under any of the three headings I have mentioned, would be sufficient for a Judge of a Canadian Criminal Court to refuse to admit such exhibits in evidence. Then consider the ridiculous evidence that was tendered to the Court the other morning by Capt Snell and Major Bernier when they stated that the pistol which was found in the area of the accused's bed had been fired. Yet the Court is left hanging in the air because they could not state specifically or even attempt to explain in hours what they meant by "recently fired". None of us has any idea as to time elapsed or assumed time elapsed from the word "recently". Yet according to their evidence, had the pistol which was found been the pistol which was used in the firing of the shots which the witnesses refer to in their evidence, it must have been in their hands in less than 45 minutes from the firing of that particular weapon. Any person with the slightest knowledge of weapons and who has made tests will realize that a pistol smells identically the same four hrs after it has been fired as it smells 15 or 20 minutes later. These two witnesses dare to offer their evidence, in spite of the fact that one is a member of the Pay Corps, completely lacking the experience of a normal regimental offr in the field; while the second, Capt Snell, had been on a party and had been drinking. That Capt Snell drinks is not unusual - but he had been at a party. No reflection is intended in referring to that drinking. Yet it is a notorious fact according to medical science that indulgence in alcoholic stimulants dulls all senses, including the sense of smell. The responsibility of passing a death sentence based on the nebulous memories of these two witnesses as to the events of the evening of 2 Aug 44 is a responsibility not to be taken lightly. If such a sentence were put into effect, it might well be the cause of nightmares and many future sleepless hours for the members of the Court. Dealing with certain parts of the medical evidence - the Court must give careful consideration as to the cause of the death of Pte Dillon, the person named in the charge sheet. That consideration must include whether or not the wound of entry was in the front or in the back of the head. Here again the Court must look to the Defence and not to the Prosecution for assistance. No attempt has been made to establish which was the wound of entry and which the wound of exit. It is important for the Court to determine whether this person was shot from behind while walking in an upright position, by someone across the roadway at Canada Bks, or was he knocked down by an assailant, and when falling, reached out, grabbing at the assailant and clutched the set of identity discs, pulling them off and was he still holding them firmly while unconscious after having been shot? The presence of the identity discs must be satisfactorily explained by the Prosecution. What is the interpretation that is to be placed on it, taking into consideration the marks on the neck, and under the chin of the accused that were observed when he was subsequently examined?

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The latter seems to be the theory of the Prosecution. Yet it has one inconsistency. It is, as suggested, Dillon, in his last moment of consciousness, grasped these identity discs from the neck or throat of the accused at the time he was shot. I think there is medical evidence to the effect that he would have held on to them for dear life. Capt McKee would have found them tightly clenched in his hands and would not have had too easy a time removing them. Had they been grasped a moment or two before the shot was fired then the shot must have been fired from behind as the man fell forward on his face. The evidence of Capt Verdicchio and Major Davidson was that he was shot from in front. Had the deceased first got hold of the discs and had afterwards been hit by the bullet he would have instinctively made a last movement - put his hands out to break his fall. The evidence is that the identification discs were found in his hand, but ordinarily if his fingers had been outstretched to break his fall, the identity discs would have dropped and fallen in close proximity to his left hand. Then consideration must be given to the manner in which Capt McKee told the Court the way in which the identity discs were found in the hands of the deceased. You will recall that he could not say definitely whether both identity discs were covered by the palm, but he made a point of holding them in this manner, indicating that they had been picked up or handled some time prior to the bullet entering Dillon's head. What other explanation can the Court reasonably take of the manner in which these identification discs came into the hand of the deceased? In order to make it easier for the Court to reach a satisfactory determination, let us consider the effect of seven, eight or 12 people milling around that body when it was first found. You will well realize the confusion which must happen over the finding of a body seriously wounded at a base area where enemy action is not expected or contemplated. Did or did not someone who came within a foot of the body lean down, examine the body and put the identity discs there? That is something that must be given consideration and only discarded on specific evidence and for specific reasons. The Court must reconstruct this shooting. They must find a satisfactory answer as to what happened and come to a conclusion beyond a reasonable doubt. The explanation, which the Court must make as to the finding of these identity discs, must be an explanation, not only that the accused committed the crime, but one that is inconsistent with any other rational conclusion. This may not be in strictly chronological order, but let me draw your attention to two even greater inconsistencies respecting the identity discs in order to show you that they could not have been pulled from the neck of Robinson by Dillon immediately prior to the alleged shooting. If you examine the string you will see that the part that would go round the neck is only 11½ inches long. To verify this measurement the Court may take a ruler and check. That obviously is not long enough to go around the neck of the accused. Therefore, the string must have been broken in two places. If it was broken when pulled from the accused's neck, then only one break would occur . It is a matter of notoriety that, when a piece of string is pulled sharply, it breaks at the point of resistance, normally. It may also break at a point close to a knot. This string shows no presence of a knot. The first resistance would normally be at the back of the neck equidistant from the top of the identity discs and, all other things being equal, would break at that point of first resistance. I suggest that this

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piece of string is not broken sufficiently close to the knot to have been broken in two places at the same time. Therefore, had the string been broken in two places by the deceased, Dillon, in his last dying grasp, the other piece of string which is missing should have been readily found. Now dealing with the next point, the Court must bear in mind that I knew we were going to have an adjournment. The Judge Advocate will probably tell you that as Defending Offr it is up to me to represent the accused in the best manner I can and therefore, in doing that, I must save my ammunition as long as I can. That must be apparent to the Court from my examination of Capt Jepson, the last medical witness. In order that I might not indicate to the Prosecution too clearly what I was searching for in establishing the type of wounds observed on the neck of the accused on the night of the 2nd of August, I refrained from asking questions as to the type of scar or burn or wound which would be left by a piece of string being pulled sharply against a piece of tender skin. It does not matter whose evidence the Court believes. All the people who gave evidence as to the type of bruises or scratches on the neck of the accused, stated that they were of the type of scar or wound left by fingernails.. They also stated that, apart from the length and width of these scratches, there was no difference in them. Therefore, there is no evidence before the Court that the deceased pulled these identity discs from the neck of the accused. Therefore by virtue of the lack of that evidence, the Court cannot find that Dillon grasped these identity discs and pulled them from the accused's neck on the night of the incident. Without labouring the point any further, the medical evidence tendered yesterday by Capt Jepson was that there were no marks or bruises or scratches on Dillon when he examined him. It is rather ridiculous to say that he could have beaten up the accused, Robinson, and put all these scratches, marks and bruises on his face and not have received one blow in return. Yet the inference is there;- that, in spite of all that, Robinson shot him while standing face to face with him. That is a conclusion which cannot be rationally substantiated. The people who examined Robinson were unanimous that the scratches were of the same type. There was no welt suggested, such as would be produced by the string being pulled sharply across his skin. I suggest to the Court that any competent police offr, once having found the scratches on the neck and throat of the accused, would immediately have an investigation made to find the wounded individual and examine his fingernails in order to see if any foreign substance, such as skin or blood, was found under his fingernails. This was not done and the Court has been deprived of the opportunity of having this evidence to assist them in deciding the guilt or innocence of the accused. To complete the remarks on the medical evidence, I feel that a post mortem report should have been submitted in evidence by the Prosecution. The Court well knows there was a post mortem report. I have it. It was readily available. On that post mortem report and according to Capt Jepson, there were two causes of death. Has the first, the pneumonia been satisfactorily explained? Did Dillon have the pneumonia bug prior to the examination at 65 Brit Gen Hosp? Neither Verdicchio, Davidson or Grossman, as medical offrs examined the chest and lungs of Dillon. All I can say in this regard is that pneumonia is caused by a bug and not by a bullet. It is now the Court's responsibility to decide, from the evidence adduced, what part was played by pneumonia in the death of Dillon. There are several medical features to the case which have not been explained. It has not been satisfactorily established what the medical terms imply. The medical evidence is completely unsatis-

factory. The sins of omission in the medical case history of the deceased must prevent the Court's coming to a definite finding beyond a reasonable doubt. Assuming for a moment that the accused handled the lethal weapon that evening, his subsequent conduct, knowing that he had committed a felonious act, is inconsistent with the normal and rational conduct of any human individual in the circumstances. Could he have been found on the parade square at 2250 hrs with a lethal weapon and, after committing a felony, be found asleep at 2350 hrs when he was found by Capt Snell and Major Bernier? I draw the Court's attention to the way in which Capt Snell and Major Bernier gave their evidence as to whether or not the accused was asleep. They, as individuals, were not prepared to give the accused the benefit of the doubt. They became technical and said that he appeared to be sleeping. I think it a fair conclusion to say that once the identity discs, and the pistol had been found by Major Bernier and Capt Snell, the accused, in the eyes of these two offrs, had been found guilty and hung, drawn, and quartered. There is no other rational explanation as to why he should be placed under immediate arrest by Capt Snell when the pistol was found. Now the Court must also consider the place where the pistol was found and must bear in mind that the holster which seemed to relate to that pistol, allegedly was found in the kit of the accused. The holster, sir, is usually used to keep a pistol in. Therefore, if the pistol had been taken out that night and brought back, it would normally have been placed in the holster. The only reason that the pistol would have been taken out and placed under the pillow was that the accused probably carried a considerable amount of money with him. This was not given in evidence - the results of searching the accused. Therefore, your normal assumption would be that he would take the pistol out, bring it back and replace it in the holster. The important point to consider about the pistol is that, in Army phraseology, it was a buckshee weapon. It is not on charge to the accused and apart from the serial number, cannot be linked with the accused. Therefore, the normal reaction of the accused, following the shot or shots and knowing that someone had been injured, would be to throw away or get rid of that particular weapon. He is certainly not going to keep it so close to him that he is immediately connected with the shooting when it is found. That is, however, an inconsistency that the Court must consider. The general investigating offr, Capt Snell, has made no attempt to check the conduct sheet of the deceased at any time. Yet it is a firmly established fact that he ought to have done so. I refer to page 177, Phipson on Evidence, 8th Edition. There has been no attempt to investigate the bed and quarters of the deceased in spite of the fact that evidence has been given that the person by the name of Dillon was belligerent and drunk on the parade square at Canada Bks on the night of 2 Aug 44.

Prosecutor:

I think that the defence should quote the section he is referring to.

Defending Offr:

I have found it. I refer to para (3) at p.177, headed "Character as Affecting States of Mind" (reads para). The members of the Court have been in this theatre of operations long enough to know that one of the first things the new, shall I say, private arriving in this theatre wants is a souvenir to send home. I think one of the first souvenirs

R.B.B.

they want to get is an enemy weapon, and with them must be included the weapons of our co-belligerents, the Italians. Another popular type of weapon is the American .45 automatic which at one time in this area the Americans seemed to have in particularly good supply. Therefore, consideration must be given to the fact that a new draft had arrived at Canada Bks a few days prior to this incident, and any one of them might have had occasion to beg, borrow, buy, or steal anyone of these types of weapons. Next consider the effect that Italian liquor, commonly described as "Mussolini's secret weapon", has on the individual when drinking it for the first time. A new draft arrival, having borrowed, bought, or stolen an automatic weapon and coming back to Canada Bks after indulgence in Italian stimulants, might well have carelessly discharged his weapon thus causing the wounding of Dillon: especially when you realize that it seems to be a notorious fact that the shots at Canada Bks or discharging of weapons at Canada Bks around and after tattoo roll call are a common practice. With that evidence it seems hard to find, beyond a reasonable doubt, that the accused fired the weapon which caused the wound. In order to convict the accused, that is the decision which the Court must reach beyond a reasonable doubt. The question of "reasonable doubt" the Judge Advocate will explain later. I can not, in fairness to the accused, omit to draw the Court's attention to the evidence respecting the action taken by the C.O. of 2 Bn 1 CBRD, Col Lent. It has been established that he is a man of legal qualifications. He, above all others, should realize the duties and responsibilities affecting a person accused of a serious crime. He decided, after getting the proceedings of the Court of Inquiry, to have the accused up on a charge of improper possession of a pistol, part of the incident of the night of the 2nd of August, and to sentence the accused to 28 days' detention: done apparently with the sole purpose of keeping the accused in custody. Had this happened in civilian life, if any magistrate or judge of a criminal or quasi criminal Court had dealt with the accused in such manner, such injustice would have been screamed from the editorials of every leading paper in Canada. But apparently Col Lent sought sanctuary in the Army Act and MML. He found the accused guilty of an offence, in connection with the same transaction out of which rose the present charge. He apparently felt the accused was guilty, although the accused had not yet had the benefit of a trial by a competent Court.

Prosecutor:

There is no evidence before the Court as to what Colonel Lent felt.

Defending Offr:

I said apparently, sir. It is a question of interpretation. In summing up I can only interpret these things as I see them. I expect the Judge Advocate will deal with certain witnesses, and the amount of reliability to be attached to their evidence. I don't propose to take any more time in dealing with it. The Court has a transcription of the evidence, apart from the evidence heard yesterday, which is sufficiently fresh in their minds, and can refer to it to see what is proved and what is not proved. However, I have dealt with one of these four witnesses. The remaining three I shall deal with now. I want to draw attention particularly to Cpl Shaw's evidence. The Court will have to consider his mentality and size up the reliability of his evidence. He said, as I

W.D.B.

recollect it, without special reference to the transcript, although he was loath to tell the Court - that he had reported the accused to be in bed. Cross-examination specifically proved that he had reported the accused in bed at tattoo which was very shortly before the shots were heard. When questions were put to him, he also seemed to have a personal desire to see the accused convicted of this offence. That is an example of the attitude of the people at Canada Bks resulting from their preliminary investigations. I have tried - and I think it is realized by certain members of the Court - not to throw too much mud in this trial. But I think it is reasonable to show up the attitude of the witnesses from the evidence they gave. As a result of finding the identity discs and pistol, they came to the irrevocable conclusion that the accused was guilty of the alleged offence. It was not necessary to do much more. They convicted him before he ever got before the Court, without the benefit of a finding. I want to take up the activities of Capt Snell and Major Bernier before I go on. The next point I think is one that occurred to every member of the Court as well as myself, and that is, why no military police assistance was called in in this case. The incident happened on 2 Aug 44. The Summary of Evidence was completed by 30 Aug 44. Yet in all that time no one at 2 Bn had occasion to call in the assistance of the MP or the SIB. Why had they not done it? We all know that that is what they are for. They are usually called to assist the offrs of a unit in obtaining the evidence in any criminal investigation. The unfairness to the accused for this omission, naturally may result in a miscarriage of British justice. The accused had been called before a Court of Inquiry. He was apparently given no information as to his rights. Lt MacComb stated on cross-examination that the accused was not allowed to leave after giving his evidence until the Court was satisfied that they had obtained all the information that they wished to obtain from him. The manner of taking the evidence before that Court of Inquiry, and the interrogation of the accused can be justified only on the technical ground that evidence taken in a Court of Inquiry is not admissible at a Court Martial. Now the accused gave evidence at that Court of Inquiry without the benefit of legal assistance. The Court knows and I know that if the defence is called on, the evidence for the defence must be exactly that contained in the Court of Inquiry, because the accused gave evidence on oath. The accused has been forced to disclose his defence in advance. It is again unheard of that, because a person assumes new obligations on joining the Army, he should lose his civilian right of having the benefit of legal assistance and can be compelled at a Court of Inquiry to answer questions which in civil lefe he would not have to answer. Capt Snell stated that the only reason he didn't call in military police assistance was because he was too busy with drafts. The lack of interest he has taken in the legal and technical investigation of this case shows either a complete lack of mental competence and responsibility of his duties as adjutant or a persecuting complex which gave no benefit of the doubt to the accused. I don't propose to say any more about that, sir. I would like to point out one particular feature in the conduct of this case. That is the lapse between some of the witnesses giving their evidence and the others. When evidence is a little cold it has lost a great deal of its value. I would like to draw the Court's attention to the excuses offered for pushing this case on at the time it was - namely, it was necessary to get people away on draft. Some of the people they were so anxious to get away on draft were still

W.B.W.

in Canada Bks as recently as 24 hrs ago. I feel that is to the prejudice of both the Court and myself. Therefore, I feel that the Court should take these things into consideration in deciding the guilt or innocence of the accused. I want the Court to understand that the accused has pleaded not guilty to this offence. Should he be called on for his defence, in all probability the case for the Prosecution will be weakened considerably. That, however, does not justify the Court in calling on the accused for his defence. They must make up their minds where there is sufficient evidence without a reasonable doubt to convict. To find the accused guilty on a charge of murder, there must be evidence of malice of forethought. There is no evidence of such malice in any of the evidence brought out by the Prosecutor. Such malice is not necessarily presumed from a mere unethical act. Now because the accused was found with a pistol under his pillow, which is an offence only under Routine Orders, is it proper to assume that the only conclusion from that act is that the accused fired the pistol used in the killing of Dillon? The witness who claims to identify the accused on the parade square saw no evidence of any violence, nor suspected any violence, nor did he see any sign of any lethal weapon in possession of the person he claimed was the accused. I refer you to Archbald's "Criminal Pleading, etc", 31st edit, p.900, under the heading: "Evidence for the Defence". (quotes: "The prisoner may show ------ or witnesses called by the Defence.") I contend that my cross-examination has elicited enough evidence to prove either that the murder was not committed by the accused or that it is doubtful if the offence alleged was murder. Only the evidence which has been submitted by the Prosecution ~~that~~ can be taken into consideration. Referring again to Archbald, p.64, under the heading "Express Malice" (quotes: "To amount to murder the killing --------- aforethought"). I contend that there is no evidence whatsoever of any malice aforethought which can connect the accused with the shooting incident on the night of the 2nd of August. I am not going to deal with the facts any further. I merely wish to remark upon certain things - certain irregularities, in connection with Canada Bks that night:- the evidence respecting shots being fired and the prevalence of drunks. The conduct of a particular commanding offr is not a matter which concerns the Court or which it must explain. If irregularities are occurring then it is not your function either to justify them or cover them up. You must decide the guilt or innocence of the accused on this charge of murder solely on the evidence before you. You should not consider how it may read to some Offr in superior authority. The Prosecution has given you facts; the Defence has tested those facts. Is Pte Robinson guilty of murder according to those facts? - guilty beyond a reasonable doubt? I have throughout made reference to the Prosecution. I would like to state that the accused is quite satisfied that he has had a very fair trial, and that every consideration has been given to his Defending Offr. I would also like to state that the Prosecutor has been exceptionally fair to the Defence, and the Court has been exceptionally patient all through the trial.

Court adjourned at 1245 hrs.

Court re-opened at 1400 hrs, the same members being present.

Prosecutor's Answer:

Mr. President, I would like to make it a point at this moment to bring your attention to the fact that this morning in Court it was said the Prosecution was rather unfair to the accused in that it hastened this trial. Yet certain witnesses had not left until yesterday morning. That is quite true. But at that time Higher Authority were demanding the presence of these personnel at their field units. It was only fair in the interests of the service to expedite their return. This was done at the earliest possible moment; the men going out on the first draft after the adjournment of the Court on Saturday morning. It is, sir, the duty of the Prosecutor to bring out every fact available in the case to assist the Court in every way possible. It matters not to the Prosecutor whether, having obtained all these facts in evidence, what the decision of the Court may be. We only represent the Crown. It is a well known fact that the Crown is only interested in justice being done. The Court must be guided solely by the laws of England which you will find referred to in Army Act, Sec 41. The law of Canada, while similar, is not the law under which the accused is being tried. All the Prosecution has to do at this stage of the proceedings is to establish a prima facie case. It does not have to do anything except prove the accused guilty of the crime charged: merely to bring sufficient evidence before the Court to satisfy you that the accused is guilty of the offence, the offence he is charged with. It may be weak; it may be overwhelming. For this proposition I draw your attention to MML, p.644, RP 40, fn 1. With regard to circumstantial evidence, I draw your attention to MML, Chap VI, para 4, p.70, which in effect states that circumstantial evidence is indirect evidence. I shall read it for the benefit of the Court. (quotes: "There is no difference ------ did or did not happen (indirect evidence)".) This again is referred to in MML at p.81, para 41. (quotes: "In connection with the rule ------- not of degree but of kind.") It is a recognized practice for Courts to accept substantial evidence. I think from the para I have just read, there is really no doubt about that. Now as to the action taken by the Commanding Offr of 2 Bn 1 CBRD with reference to the accused of having in his possession a weapon without authority and sentencing him to 28 days, that is a recognized procedure in the Civil Courts. I can refer you to one case in the Courts in Ontario in 1939. I cannot cite the exact report, but it was known as Rex vs. Thompson in which the accused man was sentenced to 18 months for perjury on obtaining a marriage certificate. He said he was a single man. His wife was still living and was found some months later brutally murdered. It was established that her death was caused within several days after the marriage license was obtained. He was charged with perjury and sentenced to, I believe, 18 months, in order really, to allow the police to gather sufficient evidence to bring him before the Courts later on a charge of murder. The action, therefore, taken by Col Lent was without doubt entirely right. There is, in this case, evidence of malice. Evidence has been given that the accused shortly before Dillon's death demanded from Dillon "a buck" in a rather surly manner, indicative of a hold-up. I feel there has been a slur cast upon the offrs of 2 Bn in this case. The Court can come to no other conclusion that these offrs acted with the best of intentions. While they may not have been wise in not calling in police assistance, nevertheless, their actions were, I believe, beyond reproach.

W.R.B.

Now, coming to the identity of the deceased, it is normal practice - the recognized practice in the Canadian Army - to identify a deceased or wounded soldier by his identity discs. This is particularily applicable to actual fighting - to the field. The evidence of Capt Verdicchio and Cpl Ferguson, Medical Offr and Medical Cpl respectively, of 2 Bn, was to the effect that they had both examined the discs around the neck of the deceased person while in the MI Room of that Bn. There can be no doubt from the evidence that this body was taken to 3 Cdn Gen Hosp and later to 65 Brit Gen Hosp in Naples. The admitting doctor, Capt Grossman, stated that no other patient, suffering from a gun-shot wound in the head, was admitted to that hospital either that night or early in the morning of 3 Aug 44, while he was on duty as Medical Orderly Offr. He stated that he would have seen any such admission. Capt Jepson's evidence indicates that he attended, as he says, the only person admitted on the night of 2/3 Aug 44 that was suffering from a gun-shot wound in the head; that he knew this person from the records as Dillon, and that that patient whom he attended regularly from 0230 hrs in the morning of the 3rd of August until he died either on the 7th or 8th of August was the same man whom he knew as Dillon. He stated the cause of this man's death was a gun-shot wound of the head and bronchial-pneumonia. He stated that the bronchial-pneumonia is directly caused as a result of the gun-shot wound in the head. It may happen to persons suffering from a head wound, due to the fact that they lie upon their backs and the respiration is affected by the head wound. In short, the gun-shot wound that Dillon suffered from, was directly the cause of his death. The question as to whether or not the shot entered the head from in front or behind is, I think, more likely to be decided correctly by the medical offr who operated and attended the wounded man. A more correct and detailed study of the wound would, of necessity, have to be made by that doctor. Neither Capt Verdicchio nor Major Davidson could or would have been expected to make a very thorough check of the wound. They realized that they would not be in a position to assist the man, and that it was their duty to get that man to a brain specialist, who, apparently, was stationed at 65 Brit Gen Hosp. In short, they were more interested in helping the wounded man than trying to determine the size of the various wounds. Let us briefly go over the evidence of the various witnesses, other than the medical witnesses. We have Pte Wilcock going into the Gd Room and stating that his Glengarrry, with the 48th Highr badge on it, had been removed from his head somewhere around 2215 hrs on the night of 2 Aug 44 by a man wearing Seaforth flashes and carrying a gun, what he believed, was an automatic. We have the evidence of Lieut Mills who tells of finding the Glengarry , which Wilcock identified, on the steps of the Offr's Mess. Mills also states that Pte Dillon was lying within a few yards of these steps. We have the evidence of the Gd Cpl who states that he accompanied Pte Wilcock in the direction of the latter's billets: that on his way back from this trip he heard a shot or shots fired, and a very few minutes later was at the scene of the shooting. Therefore, Wilcock cannot, in any way, be connected with the crime. We have the evidence of Cpl De Harte. While some of his actions may well be criticized, there is one thing established, namely, that this Cpl on the morning of the 3rd, after hearing of the shooting, went to his superior offr and offered certain information. He stated in Court that he had seen Pte Dillon at approximately 2230 hrs embroiled in an argument with a man whom he recognized as the accused. Why did he recognize him? Simply and solely because he saw him wearing Seaforth flashes and a Glengarry which had a 48th Highrs badge on it. You will recall

R.A.B.

that Cpl De Harte was a member of the 48th Highrs. The most normal and natural thing is for any soldier to take a very good look at someone he finds wearing his own regiment's headdress and badge and yet wearing different shoulder flashes. De Harte states that within three or four minutes after arriving in his billets he heard some shots. I suggest to the Court it is a fair inference from the evidence in which only two or three shots were mentioned as having been fired during the period in question, that these were the shots that De Harte heard and were responsible for the wounding of Dillon. We come to Capt McKee's evidence. I don't think that the Court could conclude that he was giving it for any other reason than it was his duty to tell what he knew to this Court. You will recall that he could not say the exact way Dillon was holding the identity discs that had the name 'Robinson' on them and he refused to be tied down. He was sure of one thing; that at least one disc was firmly in the hand of Dillon. His was the only medical evidence, if such you might call it, as to how a man shot through the head would fall. Cpl Shaw, one had to admit, was not the best of witnesses, but his attitude was the same in reply to the Prosecution, in reply to the Defence, and, I might say, in reply to the Court. Whether he held any grudge against the accused, neither I nor any other person can tell. But he did state that he saw scratches and other marks upon the accused's face and neck. He got into quite a bit of difficulty about the tattoo report. It is clear from his evidence that he did not call the roll, and that he had no knowledge of the accuracy of the tattoo report turned in by the various platoon sergeants. He did, however, state that tattoo roll call is made about ten o'clock or 2200 hrs. The evidence of Capt Snell is to the effect that at 2330 hrs, 2 Aug 44, he, together with Major Bernier, went to the bedside of the accused. The accused was lying down, face down, on his bed. Neither Capt Snell nor Major Bernier, in fact, Cpl Shaw could say more than that the accused was apparently asleep. I do not think that it calls for any argument to prove that point. If a person desires to feign sleep, few people can prove otherwise. An automatic, .45 colt, was found under the blankets at the head of the accused's bed or as the witnesses described it, if I recall it right, under some clothes that were used as a pillow. They found that the accused was suffering from scratches and bruises, and that he was not wearing his identity discs. On looking at the revolver they both stated that they smelled burnt powder from it. By the smell of burnt powder the identification of that automatic is firmly established. It was established even more firmly on the cross-examination of Major Bernier. The Court may well consider that cross-examination. The evidence given by the witness on his cross-examination is even better evidence than that given on his examination-in-chief. Lieut Bolan gave certain evidence. His evidence, however, was of very little value. He, however, admitted that he could not tell the difference between a back-fire and shots. Now there are certain theories which I propose to advance. I forgot to mention that Major Bernier, in addition to finding the automatic, also found a holster of the type used to carry an automatic similar to that which was found under the head of the accused's bed. He also stated that the undershirt of the accused was torn. Now there is a theory which I suggest in deciding the reason why the holster and the pistol became separated. The accused, coming into his billet, no doubt agitated by what he had just done, afraid to be seen by other men putting the pistol into the holster along with his kit, jammed it under the head of his bed, climbed into bed and made every effort to appear asleep. To do so he lay face downwards. I suggest that in his haste to hide that automatic he placed it under his blankets and, as a result, the fumes of burning powder remained in the barrel

of that pistol long enough for them to be smelled by Capt Snell and Major Bernier. As to the question of the identity discs: it is, I think, a fair inference from the evidence we have heard from Cpl De Harte, that the accused and Dillon got into a struggle, maybe not punching particularly, but they were struggling. I suggest that in the course of that struggle, Dillon grabbed at the accused's throat, laying hold of his identity discs and yanked them. As the Court will notice the cord on these discs is old and rather worn. They broke away. As they were breaking away the accused grabbed the string. In a further struggle the second piece of string broke off. The accused retained it in his hand and later threw it away. The theory that I put forward to the Court is that in this struggle Dillon, somehow, picked the Glengarry off the head of the accused and threw it away. It landed on the steps of the Offrs' Mess or near them. In the struggle to break away, Dillon staggered backwards with Robinson's identity discs in his hand. Whether or not he fell or remained upright I cannot say. The accused, who was carrying a revolver in his pocket, pulled it out and fired it. Dillon on being hit would no doubt spin around and fall face downwards. There is no possible suggestion in the medical evidence as to how the man was wounded when he fell. I feel the members of the Court must, in their military experience, have seen men shot: have seen them spin partly around as a result of a heavy slug entering the head. How the accused got away is not difficult to understand. I will attempt to explain it. It is true that he had something like 100 yards to go across the parade square to his billets. But I suggest to the Court that there are four buildings around the parade square, near the Offrs' Mess to which the accused might well have got to. In fact he might well have gone to the corner of the Offrs' Mess, a matter of only 10 yards. Once in the shadow of the buildings, he could easily have walked back to his billets without being seen. Admittedly, the evidence does not show the actual manner in which Dillon was murdered. Rarely is the guilty person seen to do the act. In fact, I suggest to the Court that it would be an exception to the usual rule to get any direct evidence of the actual slaying of a person. I suggest to the Court that there has been ample evidence adduced to put the accused on his defence. That is all that the prosecution at this stage is required to do. The Prosecution has produced the necessary evidence to call upon the Defence to offer evidence to rebutt it. The Court is not at this time determining the guilt or innocence of the accused. It is merely asked to decide whether or not the Prosecution has produced enough evidence to indicate that the accused, Robinson, did, on or about 2250 hrs, on the night of 2 Aug 44, so wound one Pte Dillon, that this Pte Dillon did, on or about 7 Aug 44, die as a direct result of that wounding.

Defending Offr's Reply:

Sir, the opening remarks of the Prosecutor seem to be in defence of the Offrs and certain other personnel of 2 Bn 1 CBRD. They are not on trial before this Court. He is not responsible for their conduct, and he need not apologize for their incompetence or misdemeanours. I also stated in my opening argument that I had no fault to find in the Prosecutor in his conduct of this case. He acted in good faith. He was given instructions by Higher Authority. But such Higher Authority has no place in judging the guilt or innocence of the accused unless a member of the proper Military Court. Their conduct does not come within the jurisdiction of the Court. I strongly feel, however, that the Prosecutor has misled the Court by his remarks. I trust the Judge Advocate will remark upon the statement that the accused is being tried in accordance with the laws of England. This was true up to the year 1867. But reference to Section 69 of the Militia Act, which is Appendix I to K.R. (Can)

states that the Army Act, only insofar as it is consistent with the provisions of K.R. (Can) and Cdn law, applies. Therefore the rules of evidence, by which this Court is governed, are those rules laid down in the Canada "Evidence Act". This Court is a Canadian Court. Then there is the suggestion that all the Prosecution has to do is to establish a prima facie case against the accused: that his guilt or innocence is not to be decided at this stage. I do not agree. That is a matter on which you will receive full and complete instructions from the Judge Advocate. I suggest we are in this position. If I were to stop now, offering no evidence in defence, you cannot deny my motion unless you are prepared to find the accused guilty of murder on the evidence which you have heard. The Prosecutor cited the case of Rex vs. Thompson. From the facts which he gave you, it seems that the accused, Thompson, was convicted on a charge of perjury as a result of improperly obtaining a marriage certificate, and that, subsequent to obtaining the marriage certificate, he was accused of brutally murdering his wife. These were two separate prosecutions and not connected in any way apart from the fact that the facts respecting the improper obtaining of the marriage certificate might be acceptable in evidence before a Court trying the murder charge. The Prosecutor did not seem to think an investigation into the character of the deceased was in point - that it had no bearing on the possible guilt of the accused. He omitted, however, to tell you that the purpose in presenting the character of the deceased in evidence was to determine whether or not he had been guilty of any previous acts of violence or if there had been any previous exhibitions of quarreling between the deceased and the accused.

Prosecutor:

I may be mistaken, but the impression I got was that the Defending Offr said that was a matter for the Defence.

Defending Offr:

It is not a question for the Defence at this time. It might be later. The reference to Phipson on Evidence shows that this is one of the matters to be investigated by the proper investigating authorities.

Prosecutor:

Such an investigation was indicated by the evidence of Cpl De Harte.

Defending Offr:

What has Cpl De Harte to do with the case?

Prosecutor:

He gave evidence that the accused demanded "a buck" from the deceased.

Defending Offr:

What has that to do with the character of the deceased? I am dealing with his previous history. I am not dealing with any incident alleged in connection with this case. If the Court accepts that "a buck" was demanded by the accused of the deceased,

w.b.b.

then they must also accept De Harte's statement there was never any question of any violence between them. When the Prosecutor used the word "embroiled" to describe the argument that took place, he is using a word which I don't think he meant. The Prosecutor also stated that the identity of the deceased was properly established by means of the identity discs because it is done that way in the field. I presume by that he meant in action. There, with the bullets falling right and left; in the midst of heavy shell fire we accept certain practices, but we also know that mistakes in identification are made. But when you are back as far as we are, we must, in fairness to the accused, be a little more thorough in our identification. Which was the point of entry and the point of exit of the gun-shot wound will cause the Court a great deal of concern, for the simple reason that the theory suggested by the Prosecutor, indicates that the wound of entry must be in the right frontal bone or forehead, and the wound of exit in the right occipital bone. He stated that there is no evidence as to what would happen to a person on receiving a wound of this kind. I checked Capt Verdicchio's evidence. I refer to the transcript of evidence, question and answer, no. 38. (quotes) That is the only fair inference which the Court may accept. The body either twisted or spun around at the moment of impact of the bullet. According to the Prosecution, the accused was agitated and, in his moment of agitation, slipped the pistol under some blankets or clothing. Yet right afterwards the accused climbed into bed and went to sleep. The Court must examine the evidence of the witnesses called by the Prosecution in the light of their method of giving evidence. It was highly prejudiced against the Defence. They have stated the accused appeared to be asleep. Now to go to sleep so soon after consciously shooting another person is absolutely inexplainable. References were made to Capt McKee's evidence. I think the Court was favourably impressed by his evidence in most instances; but did the Court fail to notice one very weak point in his method of giving evidence? In order to protect himself and give himself loads of time to think before giving his answer, he turned to the Court stenographer, spoke slowly, chose his words carefully, and made sure he said the right thing. Has the Court, along with all these other matters, considered the significance of the Dental Sgt falling out of the window? The Court, from an examination of Exhibit "G", can readily see that the bullet that wounded Dillon might have been fired from that house providing Dillon was walking in the direction of the Borden Building and was shot from behind. The Court cannot accept the theory advanced by the Prosecutor as to how Dillon was shot without finding obvious faults with that theory. Had Dillon taken that hat from the head of his assailant, he would more likely have held on to it instead of throwing it away. The fact that he had time to throw it away shows that he must have been shot by someone who was not standing directly in front of him. Otherwise he would not have had time to throw the hat some considerable distance. Then there is the suggestion that the accused carried the pistol in his pocket. We know that a pistol raises a considerable bulge. De Harte was cross-examined as to whether or not any pistol or weapon was apparent in the hands or clothing of the person talking to Dillon. He said "No". The whole assumption in the theory advanced by the Prosecution is that Dillon was shot through the front of the head. You must consider the evidence of the first persons who superficially examined him. They saw a small hole at the back and a larger hole at the front from which brain tissue was protruding. Obviously he was shot from behind. It is now the Court's problem to decide which was the wound of entry and which was the wound of exit. I feel that the Prosecutor has apologized

sufficiently for his presentation of the case. I strongly suggest that the Court accept these apologies and throw this case out. They cannot find the accused guilty on circumstantial evidence unless they are satisfied, not only that the circumstances are consistent with the accused having committed the act, but that they are inconsistent with any other rational conclusion. I submit the Prosecution has failed to link the accused with the offence alleged.

Judge Advocate's Summing Up:

Mr President and gentlemen, it is not laid down, as far as I know, in the Rules of Procedure that the Judge Advocate should sum up in open Court at the conclusion of a motion of this nature. But since the Court wishes it, and, in view of the serious nature of the charge which the accused is facing , I feel that it is not only desirable, but my duty to do so. The accused is charged under Sec 41 of the Army Act with committing the civil offence of murder, the allegation being that on the 2nd of August of this year, he murdered one Pte Dillon, J.W.M. A charge of murder can be tried by Court Martial when we are out of the United Kingdom by virtue of Sec 41 of the Army Act. This raises a point mentioned by the Defending Offr. I quote Sec 69 of the Militia Act, R.S.C. 1927, Chap 132, found in K.R. (Can) at p.292 (reads). Now the effect of that is that the accused is to be tried by the English Criminal Law and, according to the English law of evidence, not by the Canadian Criminal Code nor Canadian Law respecting evidence. The Defending Offr contends that the Prosecution has failed to establish a prima face case. What does that mean? I refer to the MML, Chap VI, para 12 and part of para 13, pp 72-3. (quotes para 12 and lines 1-3 of para 13) It goes on to give examples which are not applicable to this case. It should not be necessary for me to remind the Court that it is the sole judge of the facts; that is to say, the evidence which has been adduced before this Court and only that evidence. If the Court has in its mind a reasonable doubt as to the accused's guilt then it must find him not guilty. A reasonable doubt is not one based on whimsy sentiment or anything of that nature, but it is a doubt such as the members of the Court might entertain in the conduct of their own personal affairs. It is the duty of the Judge Advocate to advise the Court, to the best of his ability, of the law involved. Any opinion which he has or expresses with respect to the facts are not binding on the Court. The accused is charged with having committed murder. I refer the Court to MML, Chap VII, para 42, p.115. (reads) I also refer the Court to Archbold "Criminal Pleading Evidence & Practice", 1943 edit, p.859. (reads para headed 'Murder') Then on the same page, the para headed "The Person Killing". (reads lines 1-4 of the para) I refer you also to Archbold, p.860, the para headed "The Person Killed", (quotes lines 1-3 of the para): also on p.861 to the para headed "The Manner of Killing" (quotes lines 1-3 of the para). I would refer you also to the opening sentence of the second para on p.864 of Archbold (reads). Also at p.879 under the heading "Killing without intention whilst doing another act" (reads lines 1-3 of the para). In order to find a person guilty of murder it is essential to prove malice on the part of the alleged murderer. I refer the Court to Archbold p.864 (reads para: "Express malice") and to p.865 under the heading "Implied malice" (reads lines 1-8 of para). Referring again to Archbold pp 868-9 under the heading of "Quarrels" (reads lines 1-4 of para). Now we are not, at this stage, concerned with the defences to a charge of murder. You have to consider the Prosecution's case in order to decide whether or not the

A.G.B.

Defending Offr's submission should be allowed. I have endeavoured to prepare a time table, if you wish to call it that, which may be of some assistance to the Court. On 2 Aug 44 at 2130 hrs Cpl De Harte and some of his comrades entered the main gate at Canada Bks. There they met a Hast & PER soldier who was drunk and argumentative. Cpl De Harte ascertained that this soldier's name was Dillon. At 2215 hrs Pte Wilcock was held up by another soldier wearing Seaforth flashes. He was robbed of his Glengarry with the name "A.H. Wilcock" inside (Exhibit "H") and his fountain pen which bore some tooth marks (Exhibit "I"). Sometime between 2215 hrs and 2230 hrs, Cpl De Harte came upon this soldier Dillon arguing with two other soldiers on two separate occasions, and then he found Dillon and the accused in an argument. The accused made a demand for money. Cpl De Harte says that he recognized the accused because it was not usual to see a man with Seaforth flashes wearing a 48 Highrs Glengarry. At 2230 hrs Cpl De Harte left them still arguing. At the same time Pte Wilcock reported to Cpl Ferguson in the Gd Room and was then shown to his billets. Sometime between 2230 hrs and 2250 hrs, two or three shots were heard by the following people: Sgt Whynot, who was in the Gd Room, Capt McKee who was in 2 Bn Offrs' Mess, Lt Mills who was also in 2 Bn Offrs' Mess, Cpl Ferguson, Cpl De Harte who was in his billets, Major Bernier who was in 2 Bn Offrs' Mess, and Lt Dolan who was in the Gd Room. Certain of these people went promptly to 2 Bn Offrs' Mess where they found a body, wounded in the head, allegedly identified as Pte Dillon, lying face downwards. Capt McKee stated that he smelled powder burning as he left the Mess. Lt Mills found the Glengarry (Exhibit "H") on the Mess steps. Cpl Ferguson found a .45 casing on the point "J" on Exhibit "G". Major Bernier, Lt Dolan, Capt Verdicchio, and Sgt Whynot were also on the scene around that time. Sometime after 2250 hrs, Capt McKee discovered the identity discs with the broken cord (Exhibit "J") and turned them over to Capt Snell. Lt Mills found blood spots on the steps of 2 Bn Offrs' Mess. Major Bernier and Capt Snell set off to trace the owner of the discs that Capt McKee said he found in the injured man's hand. The injured man was taken to 2 Bn MIR and from there to 3 Cdn Gen Hosp by Cpl Stewart. About the same time Major Bernier and Capt Snell had completed their investigations. They got Cpl Shaw who took them to the accused's quarters, which they reached at approximately 2340 hrs. In other words, about one hour after the shots were first heard fired, Major Bernier and Capt Snell arrived at the accused's bedside and stated they awakened him as he appeared to be asleep. His kit was searched and also his blankets. The .45 automatic (Exhibit "O") was found. Major Bernier and Capt Snell stated that in their opinion it had been recently fired. Major Bernier also found a United States type holster (Exhibit "P") in the accused's kit, the kit which the accused admitted was his own. The accused had scratches on his neck similar to fingernail scratches; no identity discs, and his face appeared bruised. He was placed under arrest at 2355 hrs. Pte Stewart took the patient, named Dillon, from 3 Cdn Gen Hosp in an ambulance to 65 Brit Gen Hosp in Naples. Sometime after 2250 hrs Lt Dolan investigated the case of the Dental Sgt who had fallen out of a window of his billets near Canada Bks. At 0145 hrs, 3 Aug 44, a patient named Dillon, conveyed in an ambulance from 3 Cdn Gen Hosp and suffering from a through-and-through gun-shot wound in the head, was admitted to 65 Brit Gen Hosp. The evidence in support of that is the testimony of Sgt Fieldhouse, Capt Grossman and, to some extent, H/Capt Tootell, the padre. At 0230 hrs a patient named Dillon was examined by Capt Jepson, who stated that there were no other persons admitted to the hospital that night with similar injuries. Later that day, the Court of Inquiry, at which the

accused gave evidence, was held. Lt Dolan searched the accused and his kit in 2 Bn Gd Room. The accused, on being ordered to empty his pockets, handed over two fountain pens of which the light grey one (Exhibit "Q") was identified by Mr Dolan. He was unable to identify the other one beyond stating that it had tooth marks on it. Capt Jepson, who had been attending the patient Dillon, stated that he died on the 7th or 8th of Aug. Padre Tootell said he buried him in the British Military Cemetery in Naples. I think that is a fair summing up of the evidence brought out by the Prosecution. Now as the Defending Offr has quite properly pointed out, that evidence is largely circumstantial. In that connection I would like to refer the Court to MML, Chap VI, para 42, pp 81-2. (reads para 42) The Defending Offr has asked me to say something to the Court about the identification of exhibits and about the proper method of identifying an accused person. As to the latter, the usual civil practice is to have the suspect picked out of a line-up of persons who are, as nearly as possible, similar to him in size, appearance and dress by the person who is called on to identify him. The suspected person must be given an opportunity of changing his place in the line-up if more than one person is called upon to identify him. In this case, as far as Cpl De Harte is concerned, any identification that he made was made before any such parade took place. In other words, one of the things that you will have to decide is whether Cpl De Harte's identification of the accused is due to his recalling the oddity of seeing a Seaforth soldier with a 48 Highrs Glengarry or whether, as the Defence contends, it was due to the fact that he had ample opportunity to memorize the features of the accused while he had him under observation prior to the Court of Inquiry on the morning of 3 Aug 44. Now as to the identification of the discs: I refer the Court to MML, Chap VI, para 112, p.100. (reads) Reference has also been made in argument to what is called "Judicial knowledge" - "Military experience" and similar expressions. I would refer the Court to MML, Chap VI, para 11, p.72. (reads para) In other words, the examples quoted are all examples of things which are of general knowledge. They do not apply to particular evidence which is of an expert or quasi-expert nature. I have nothing further to add, sir, except that I think I should again call your attention to the final sentence of para 12 on p.72 of MML (quotes). If you think that has not been done in this case, then you must allow the submission of the Defending Offr and find the accused "Not Guilty".

Judge Advocate (to Defending Offr):

Is there anything else you wish me to add?

Defending Offr:

I asked you, sir, to make some reference to the method with which Capt Rose introduced the exhibits. You read a para in MML, but I think it would be better --------

Judge Advocate:

I take it you are referring to the civil police methods?

Defending Offr:

I am referring to the police methods of obtaining exhibits and submitting them in Court.

W.B.D.

Judge Advocate:

The practice, as I understand it, is that once an article is taken into possession by the police it should be marked in some way by the person who finds it. It may be tagged: it may be initialled - some mark may be scratched on it - something of that nature. The point is that this should be done as soon after the finding as possible. Otherwise, a proper identification becomes a difficult matter if the article passes from one hand to another before being submitted to the Court.

E

Findings.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty"

The Court is closed for the consideration of the finding.

The Court find that the accused B. 144333 Pte Donald John Frederick Robinson 2 Bn 1 CBRD not guilty of the first charge

In the Field
In Italy
29 Sep 44

[signature] Col
Pres.

D. B. Bate Capt
Judge Advocate.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

Proceedings on Conviction before Sentence

*The Court being re-opened, the accused is again brought before it

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by Witness.*

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

Instruction – If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to this fact, and the Court must inquire into the nature and amount of that additional punishment.

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence

Army Form A 47 X

COURTS - MARTIAL

Form of Order for the assembly of a General or District COURT - MARTIAL

Orders by Brig E W Haldenby MC VD
Commanding 1 Cdn Base Rft Group
In the Field 4th day of Sep 1944

W. B. Bate Capt Judge Advocate

B144333 Pte Donald John Frederick ROBINSON 2 Bn 1 CBRD

The detail of officers as mentioned below will assemble at Shilo Bks, Avellino, Italy, on the 21st day of Sep 1944 at 1000 hrs for the purpose of trying by a General Court-Martial the accused person named in the margin (and such other person or persons as may be brought before them)

PRESIDENT

Colonel S A LEE MC Comd 2 CBRD is appointed President

MEMBERS

Lt-col J G VINING ED	(CAC)	5 Bn 2 CBRD
Lt-col E R GILL	(RCCS)	7 Bn 2 CBRD
Major L F MacDONALD	(RCCS)	8 Bn 2 CBRD
Major A T BROWN	(CLC)	HQ 1 CBRGp

WAITING MEMBER

Capt J A McGOWAN	(CAC)	5 Bn 2 CBRD

JUDGE-ADVOCATE

Capt W B BATE ADJA HQ 1 CBRGp is hereby appointed Judge-Advocate.

The accused will be warned and all witnesses duly required to attend.

The Proceedings will be forwarded to HQ 1 C B R Gp.

Signed this 4th day of Sep 1944.

E W Haldenby

(E. W. HALDENBY) Brigadier
Commander
1 Cdn Base Rft Group

2 BN 1 CBN MASS EFT DEPOT

I certify that I have this morning examined

B144323 PTE ROBINSON D.S.F.

and he is fit to undergo trial by Court Martial.

21 SEP 44

[signature]

M.O. 2 Bn. 1 C.B.R.D.

[signature] Pres.

W. B. Bate Capt
Judge Advocate

oOo MEDICAL OFFICER'S CERTIFICATE oOo

I hereby certify that I have this day examined

No. B144333 Rank PTE Name ROBINSON D.T.F.

and in my opinion is fit to undergo trial by Field General Court Martial.

[signature] Capt

(Medical Officer)

Date

22 SEP 44

[signature] Col

Pres.

W. B. Bate Capt

Judge Advocate.

ooo MEDICAL OFFICER'S CERTIFICATE ooo

I hereby certify that I have this day examined

No. B144333 Rank. PTE Name. ROBINSON D.J.F.

and in my opinion is fit to undergo trial by Field General Court Martial.

W Bailey Capt

(Medical Officer)

Date

2 Sept 44

Pete Col

Pres

W. B. Bate Capt
Judge Advocate

oOo MEDICAL OFFICER'S CERTIFICATE oOo

I hereby certify that I have this day examined

No. 8144333 Rank PTE Name Robinson D.J.F.

and in my opinion is fit to undergo trial by Field General Court Martial.

[signature] Capt
(Medical Officer)

Date

SEPT 28/44

[signature] Col
Pres

N. B. Bate Capt
Judge Advocate.

MEDICAL OFFICER'S CERTIFICATE

I hereby certify that I have this day examined

No B.144333 Rank Pte. Name Robinson D.J.F.

and in my opinion is fit to undergo trial by

Court Martial.

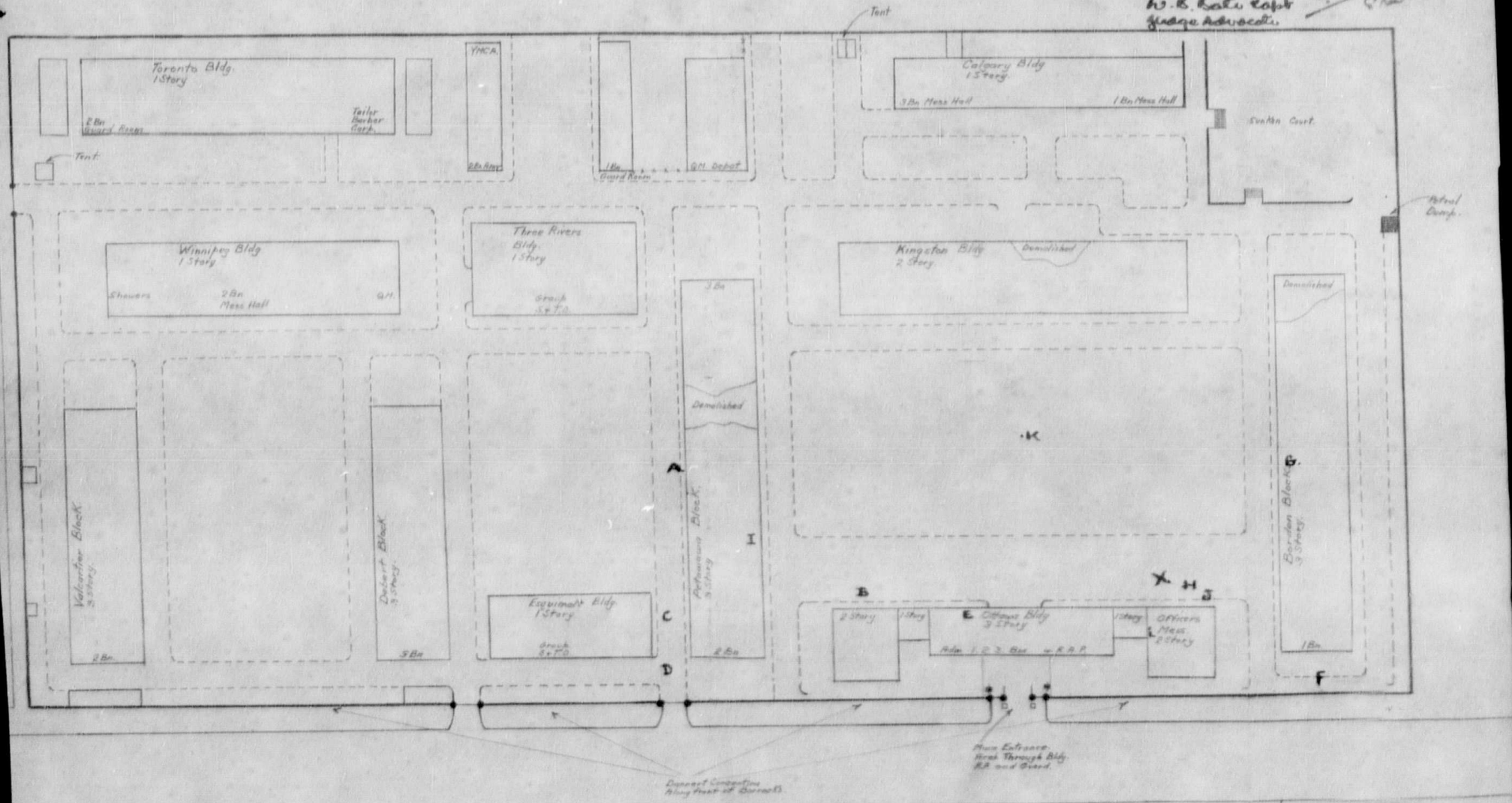
Date 29-9-44

(Medical Officer)

W. B. Bates Capt
Deputy Advocate.

EXHIBIT G

W. B. Bates Capt
Judge Advocate.



CANADA BRKS.

Scale 1/8" = 1' Date 12 Sept 44

J Lowe R.C.E.

TWO INDENTIFATION DISC ATTACHED
DISCARDED NOT ABLE TO MICROFLIM

EXHIBIT "J"

[signature] Pres

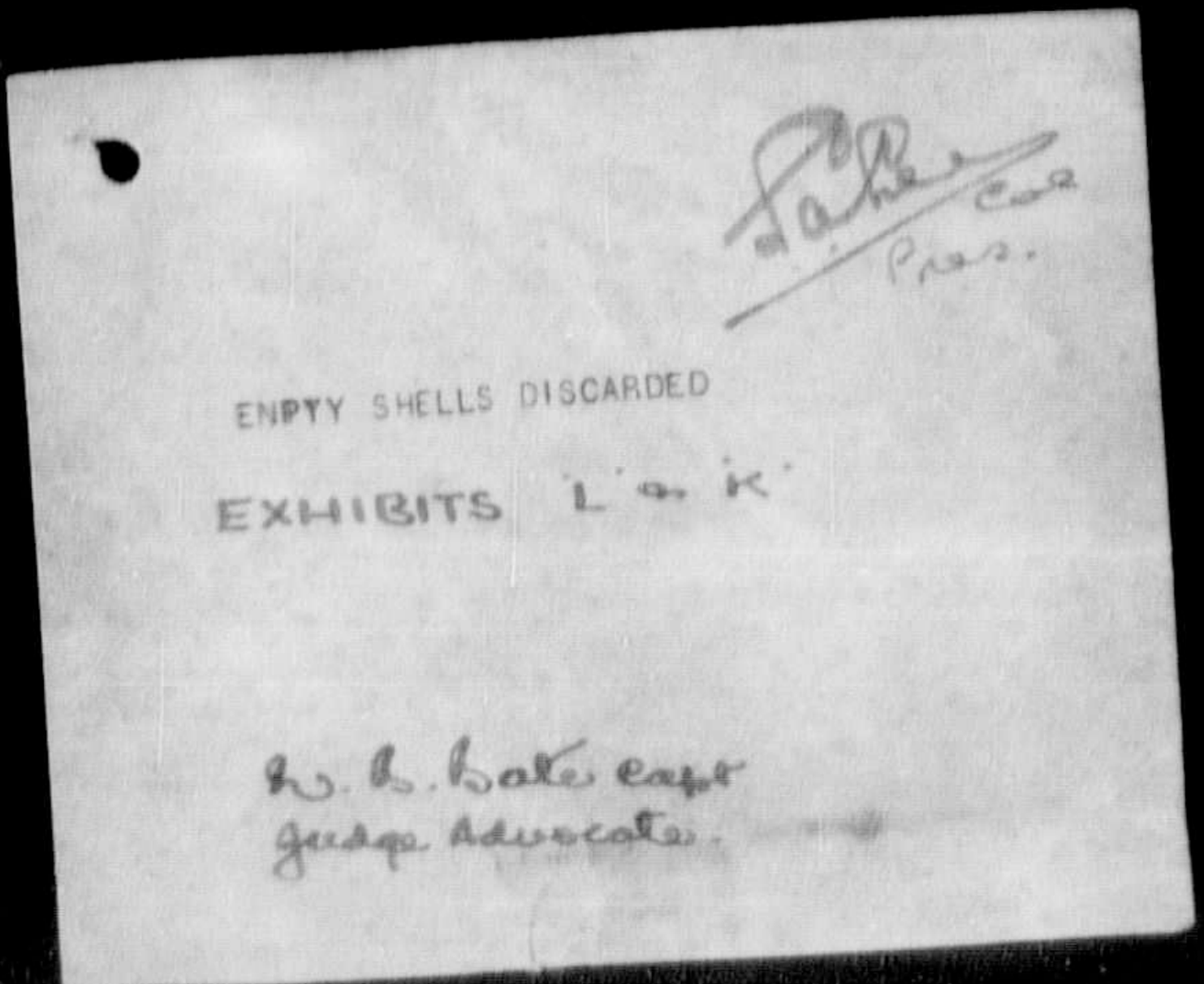
W. B. Bate Capt
Judge Advocate.

Lake Coe
Pres

EMPTY SHELLS DISCARDED

EXHIBITS M & N

W. B. Lake Capt
Judge Advocate



Pres.

EMPTY SHELLS DISCARDED

EXHIBITS L & K

R. B. Bakewell
Jesup Advocate.

Summary of Evidence

Summary of Evidence in the case of B144 333 Pte Robinson, D.J.F., of the Seaforth Highlanders of Canada, on strength of 2 Canadian Base Reinforcement Battalion, 1CBRD, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

First Witness for the Prosecution.

B72921 Pte Wilcock, A.H., 3 Cdn Base Rft Bn, 1CBRD, having been duly sworn, states

"I am B72921 Pte Wilcock, A.H. of the 3 Cdn. Base Rft. Bn, 1CBRD. On the night of August 2nd 1944 at approximately 2215 hrs I was over on the west side of the Petawawa Building, about half way down, and a chap appeared to put a gun against my left side and I turned around and saw a Seaforth Flash. He took off my Glengarry. I can recognize my Glengarry by my name inside and the checks in the hat have the appearance of pin pricks (Glengarry produced and marked Exhibit "A"). I recognize the Glengarry marked Exhibit "A" as the Glengarry that was taken from me on the night of 2nd August 1944. He also took my Waterman's pen, a grey one. I can recognize my pen because the original name has been scratched off and there is a tooth mark on the nib. (Waterman's pen produced and

marked Exhibit "B". I recognize the Waterman's pen marked Exhibit "B" as my pen. It is the pen that was taken from me on 2nd August 1944. After taking my Glengarry and pen he turned around and walked behind me towards the M.I. Room. I saw some chap walking over from the garage to the Main Gate. I hollered to the chap. He just hollered back something and then started to walk away and I hollered again. He came over to my right side and I grabbed his arm and held him close to me. We were walking just about in front of 1 Bn Officers' Mess, and I could not feel the gun any more, so I turned around and the chap who had the gun had disappeared. Then I went right over and reported the incident at the Guard Room. The officer in charge was Lt. Dolan. Then a Guard and myself went outside and searched the area and found nobody around the vicinity of the Officers' Mess, 1 Bn. I then went to my billet and went to bed. I was awakened in the morning about 0200 hrs by Capt Mills and Capt. Cameron, and proceeded to No. 2 Bn. Guard Room and stayed there the night. I do not recognize the accused as the man who held me up with

the gun."

Cross examined by the accused:

Q.1. "The gun that you recognized as yours, do you consider it grey in colour?"

A.1. "It is not all grey, it is streaked with white. I have always called it a "grey gun."

Second Witness for the Prosecution.

F39716 Sgt. Whynot, R.H., 1 Cdn Base Rft Bn., 1 C.B.R.D. having been duly sworn, states:

"I am F39716 Sgt. Whynot, R.H., 1 Cdn Base Rft Bn., 1 C.B.R.D. At approximately 2245 hrs, 2nd August 1944 while in No 1 Guard Room making out my Guard report, I heard a shot fired in the direction of the main parade square outside of Borden building. I immediately ran out of the Guard Room, and on my way out I heard two more shots fired. Just as I arrived at the main entrance to Borden building I could see a body lying in front of the Officers' Mess, 2 Bn. I did not know whether it was a drunk, so I looked around to see if I could see anyone running, and could see nobody. I then proceeded to where the body lay, and when arriving there the Corporal of the Guard, Cpl Ferguson, and the Officer of the Guard, Lt. Dolan were there. In my estimation the shots sounded like they had

come from the direction of the S.L.I. and C.Y.R. quarters. Then I first saw out I saw a man in a crouched position trying to get up. It was the same man I saw later."

The accused declines to cross-examine this witness.

Third Witness for the Prosecution

Capt. G.E. McKee, "6" Coy, 2 Cdn Base Rft. Bn., 1 C.B.R.D. having been duly sworn, states:

"I am Capt. G.E. McKee, "6" Coy, 2 Cdn. Base Rft. Bn., 1 C.B.R.D. On the night of August 2nd, 1944 about 2250 hrs. I was sitting in the Officers' Mess, 2 Bn, 1 CBRD. I heard two shots fired outside. They sounded to be very close, so I got up and walked out of the Mess to have a look around. When I arrived at the porch outside the door of the Mess I saw a body lying on the pavement about eight yards from the porch. I walked over to see a man lying face down on the pavement with his hands stretched out at his side. He was not dead but was bleeding from two ~~holes~~ in the head, one in the front and one in the back. I went over to 2 Bn. M.I.R. and sented an orderly for the Medical Officer. I

then went back to the scene of the accident. By this time there was a number of officers and men collected around the wounded man. I thought the man may have shot himself, so I started to look for a weapon. I found no weapon, but in his left hand I found a set of identity discs. These discs I turned over to the Adjutant, 2 Bn. 1 CBRD, Capt. Snell. I just glanced at the discs and saw the name "Robinson" on them but cannot remember the number. (Identity discs produced and marked Exhibit "C"). I would say that the discs marked exhibit "C" are the same discs I took from the hand of the man that was shot and gave to Capt. Snell. By this time the Medical Officer was there and had moved the body to the M.S.R. I stayed there until the man was placed in a vehicle and then went to my quarters."

Cross examined by the accused:

Q.1. "Sir, you said that you recognize the name on the discs. Are you positive?"

A.1. "Yes"

Q.2. "Was it dark outside when you saw the discs.

A.2. "Yes, it was dark outside. I looked at the discs inside the M.S.R. when I gave them to Capt Snell the adjutant."

Thos. C. McFee

Fourth Witness for the Prosecution.

Capt. A. Verdicchio, Medical Officer at 2 Cdn. Base Rft. Bn, IC.B.R.D. having been duly sworn, states:

"I am Capt A. Verdicchio Medical Officer at 2 Cdn. Base Rft. Bn, ICBRD On the night of the 2nd August 1944 I was in bed dozing off to sleep and was suddenly awakened and heard gun shots. I think there were two shots. As a result of information received I went down stairs and out to the road in front of 2 Bn Officers' Mess and there found a soldier lying face down about ten yards from the entrance to the Mess. His head was lying in a pool of blood. He was breathing quite well and his pulse was fair. I removed his beret and as I did I noticed that it was filled with blood. I examined his head and found a fairly large wound on his forehead with brain tissue exposed. I then felt around the rest of his skull, including the back of his head and felt a smaller wound which was dropping blood into my hand. I came to the conclusion, then, that the wounds were apparently Gun Shot in origin. I called for some shell dressings and dressed the wounds and asked someone to get a vehicle from the unit. Whilst waiting I took the injured man to the M.D.R. on a stretcher.

While in the M.D.R. adjusting his dressings his identity discs were examined for information for hospital records. The name on the discs was Pte Dillon. His shoulder flashes revealed the name of the Hastings and Prince Edward Regiment. The vehicle arrived in a very few minutes and I sent the man to No 3 Canadian General Hospital, accompanied by Cpl. Stewart. After I had despatched him to the hospital I noticed the time to be about 2330 hrs"

A Verdicchio Capt.

The accused declines to cross-examine this witness.

Fifth Witness for the Prosecution

K52039 Cpl Stewart, R., 2 Cdn. Base Rft. Bn., having been duly sworn, states:

"I am K52039 Cpl Stewart. R, medical Corporal at M.D.R, 2 Cdn. Base Rft Bn. ICBRD. On the night of 2nd August 1944 I was awakened out of my bed and as a result of information received I immediately got up got a stretcher and medical supplies. I went to a spot immediately in front of 2 Bn. Officers' Mess and found a soldier lying on the ground.

When I first saw him he had a wound on his forehead, to which I immediately applied a shell dressing. I noticed later that the blood was saturating through the bandage at the back of his head. I then applied another shell dressing on the back of his head. He was then put on a stretcher and carried into the M. I. R. The Medical Officer made out his hospital Admission slip from his identity discs. I read off his particulars from his identity discs. He then evacuated him to the 3 Canadian General Hospital. I accompanied him. When we arrived at the hospital I assisted the admitting Officer, Major Davidson, in removing the bandages. I saw a few small fragments of brain tissue on the shell dressing. After he had received further dressings I returned to Canada Barracks. The particulars I read from the identity discs were "B 138552 Pte Dillon, J."

C. R. Stewart R.

The accused declines to cross-examine this witness.

Sixth Witness for the Prosecution.

Major J. R. Davidson, 3 Cdn. General Hospital, having been duly sworn, states:

"I am Major J. R. Davidson, in charge of surgery No. 3. Can. Gen. Hospital. On the 2 August 1944 at approximately 2330 hrs I was called to the admitting room

to see a patient who was suffering from a compound fracture of the skull. The patient was unconscious. There was a wound of entry over the occiput and a wound of exit in the middle of the frontal bone. Some brain tissue was exuding from the wound of exit. I would be of the opinion that the wound was caused by a high explosive missile. After examination of the patient's general condition the wounds were re-dressed and I called the Roman Catholic padre to administer the last rites. The patient was immediately transferred by ambulance to No. 65 British General Hospital.

J. Davidson
Major

The accused declines to cross-examine this witness.

Seventh Witness for the Prosecution

W 1672 Pte Aedy, J.A., 3 Cdo. Gen. Hosp. having been duly sworn, states:

"I am W 1672 Pte Aedy, J.A. on strength of 3 Cdo. Gen. Hosp. On the night of 2 August 1944 I was employed as night clerk in the admitting room. At approximately 2330 hrs. a patient was brought in with a head wound. I took his particulars from

his identity discs. The particulars I took were: "B138252 Pte Dillon, J.W.M.", (R.C.) Romans Catholic" I saw Major Davidson examine the patient. I saw the patient, Pte Dillon, placed in an ambulance for transfer to 65 Br. Gen. Hospital at approximately 2355 hrs, 2 August 1944. I saw Pte Shelusk enter the ambulance to accompany the patient as medical orderly.

The accused declines to cross-examine this witness.

Eighth Witness for the Prosecution

B142030 Pte Shelusk, R., 3 Cdn. Gen. Hosp. having been duly sworn, states:

"I am B142030 Pte Shelusk, R. on strength of 3 Cdn. Gen. Hosp. On the night of 2 August 1944 at approximately 2355 hrs. I entered an ambulance to accompany a patient with a head wound to 65 Br. Gen. Hosp. as medical orderly. From the documents I carried I found his particulars to be "B138252 Pte Dillon, J.W.M." On arrival at 65 Br. Gen. Hosp. I delivered the patient to the admitting room and then returned to 3 Cdn. Gen. Hosp."

R Shelusk

The accused declines to cross-examine this witness.

Ninth Witness for the Prosecution.

#610847 Sgt. Fieldhouse, W., 65 British General Hospital, R.A.M.C., having been duly sworn, states:

"I am #610847 Sgt. Fieldhouse, W. on strength of 65 British General Hospital. On the night of 2/3 aug. 1944 I was night warder master. At approximately 0145 hrs on 3 August 1944 I admitted a patient with head wounds. I received a transfer slip from the orderly from 3 Can. Gen. Hosp. From this I found that he was a Canadian and that his particulars were "R138552 Pte Dillon, J.W.M." Capt. Grossman examined him and the patient was sent to X-ray."

W. Fieldhouse Sgt.
(No. 4610847 RAMC)

The accused declines to cross-examine this witness.

Tenth Witness for the Prosecution.

Capt W. Grossman, 65 British General Hospital, R.A.M.C., having been duly sworn, states:

"At approximately 0130 hrs. 3 August 1944 I admitted a patient with a head wound. After examination I diagnosed the injury

as a Gun Shot wound of the head. X-Ray examination was made and he was transferred to a ressucitation ward.

W. Sonnemann
Capt RAMC.

The accused declines to cross-examine this witness.

Eleventh Witness for the Prosecution

Capt R.P. Jepson, 65 British General Hospital, R.A.M.C., having been duly sworn, states:

"I am Capt R.P. Jepson, 65 Br Gen. Hosp, R.A.M.C. At approximately 0230 hrs., 3 August 1944 I was called to examine a patient. He had a through and through wound with the entry right frontal bone and the exit right occipital bone. The wound being caused by a high velocity missile, roughly by a .303 or shrapnel of that size. I operated on the patient at approximately 0900 hrs. 3 Aug. 1944. I only knew the patient as "Dillon". The patient died on the 7 August 1944. I certified the death of the patient."

R P Jepson
Capt RAMC.

The accused declines to cross-examine this witness.

Twelfth Witness for the Prosecution

Rev J Footell, C.F.R.C., having been duly sworn, states:

"I am Rev J Footell C.F.R.C., Roman Catholic chaplain for 65 British General Hospital. On the 2 August 1944 I attended a soldier by the name of "Dillon". I buried at a British Military Cemetery, Naples on the morning of the 3 Aug 1944 the same soldier by the name of "Dillon".

Footell C.F.R.C.

The accused declines to cross-examine this witness.

Thirteenth Witness for the Prosecution

Lieut A J B Mills, 3 Cdn. Base Rft Bn., 1 C.B.R.D, having been duly sworn, states:

"I am Lieut A.J.B. Mills, 3 Cdn Base Rft Bn., 1 C.B.R.D. At approximately 2240 hrs, 2 Aug 1944 I was having lunch in the Officers' Mess when I heard three shots. I went out to see what was going on and on the steps going out of the Mess I picked up a Glengarry with a 1/8th Highlander badge on it. I recognize the Glengarry marked exhibit "A" as the one found on the steps on the 2 Aug 1944. I then had a look at the wounded man, who was lying face down approximately twenty feet from the entrance to the 2 and 3 Bns. Officers' Mess. He

had been shot through the head and there was quite a pool of blood where he was lying. A crowd had gathered, including the Guard Commander, Lt Dolan and the Guard Corporal, Cpl Ferguson, also the Provost Sgt. from 1 Bn, Sgt. Whynot. Someone handed me a beret with a Hastings and Prince Edward Regiment badge on it which apparently belonged to the wounded man as there was blood dripping from it. I handed the beret over to Lt. Dolan. Lt. Dolan dispersed the crowd and I aided him in a search of the area. One .45" calibre casing was found approximately eight feet from where the wounded man had been lying. On further investigation of the Glengarry which I had found on the steps of 2 Bn. Officers' Mess I found the name of "H.H. Wilcock" on the inside. After investigation I went to Capt. Cameron's quarters and turned the Glengarry over to him. He immediately got dressed and I accompanied him to the 48th Highlanders' quarters where Wilcock was brought to him and was later turned over to the 2 Bn. Guard Room. I returned to the scene where the wounded man had been lying and in company with

some of the Guard made a further search for empty cartridge casings. During the search one more .45 calibre casing was found by the Guard. As Lt. Dolan was not available the casing was turned over to the Orderly Officer of 3 Bn with instructions to take same over to the Adjutant of 2 Bn, Capt Snell, who by this time was in possession of the other casing which had been found. During the second search I noticed a few drops of blood on the steps of the Officers' Mess and also one drop of blood right at the door of the officers' Mess. Two of the casings marked exhibit "D." are similar to the two found at the scene of the shooting.

R.J.B. Mills.

The accused declines to cross-examine this witness

Fourteenth Witness for the Prosecution

Lieut B.J. Dolan, 3 Cdn Base Rft Bn, 1 C.B.R.D., having been duly sworn, states:

"I am Lieut B.J. Dolan, 3 Cdn Base Rft Bn, 1 CBRD. I was officer in charge of the Guard from 0700 hrs, 2 Aug 1944 to 0700 hrs 3 Aug 1944. At approximately 2240 hrs, 2 Aug 1944, a soldier later identified as Pte Wilcock of the 48th Highlanders entered the Guard Room. He was quite excited. I sent a corporal out with Wilcock to investigate the matter. A few minutes later I heard a shot. I told the Guard to "stand to" and then heard two more shots. I took

the sergeant and two men and started out to investigate the matter. I saw a group of people standing in front of 2 Bn Officers' Mess. Going in that direction I saw a man laying on the ground. I continued my investigation and tried to find out where the shots came from. I made a tour of all the buildings in 1 Bn area and discovered nothing. Going back to where the man was lying I found that quite a crowd had gathered. I sent those not on duty to bed. Looking further a .45" empty casing was found by Cpl. Ferguson. He turned it over to me. A set of identity discs bearing the inscription "B 144 333 Pte Robinson D." were found. On the suggestion of Capt. Snell we went to Head Records Office of 1 CBRD. We discovered the record of a man fitting the inscription of the identity discs at 2 Bn. Later Capt. Snell entered the Guard Room and upon obtaining a receipt I turned over to him the .45 casing. One of the casings produced and marked Exhibit "D" is similar to the one I turned over to Capt. Snell."

B J Nolan Lieut

The accused declines to cross-examine this witness.

Fifteenth Witness for the Prosecution

B51982 Cpl Ferguson, E., 1 Cdn Base Rft. Bn., 1 C.B.R.D. having been duly sworn, states:

I am B51982 Cpl Ferguson, E., 1 Cdn Base Rft Bn, 1 C.B.R.D. On the night of 2 August 1944 at approximately 2230 hrs. a 48th soldier reported to the Guard Room. I took the soldier, whom I learnt to be Pte Wilcock, to the Seaforth coy office. I made arrangements there that any man carrying an unauthorised weapon be reported to the Guard Room. Pte Wilcock and myself came back downstairs from the Seaforth office. I showed him the way down to his billets. I was on the other side of the Petawawa Building when I heard two shots fired. The shots seemed to come from the direction of 2 Bn. Officers' Mess. I came back to the Guard Room and then proceeded to the scene of the shooting. I saw a pool of blood and a half-eaten sandwich of onions. I tried to find where the shots had come from and I found a spent .45 cartridge casing, approximately ten feet away from the steps of the Officers' Mess. I handed this over to Lt. Dolan who was officer of the Guard. Later a second casing was found by one of the guards about fifteen paces from where the first one had been found. The following morning I was sent by Lt. Dolan to the Seaforth coy office to get Pte Wilcock's name and number, which I did not obtain. On my way down from the Seaforth office I picked up a

spent .45 casing on the steps leading out of the Petewawa Building. I reported this to L. Dolan on my return to the Guard Room. (Casings produced and marked Exhibit " ").

I recognize two of the casings produced as exhibit "D." as the ones I found. The bent one I found on the stairs of the Petewawa Building.

J. Ferguson E.

The accused declines to cross-examine this witness.

Sixteenth Witness for the Prosecution.

Major J. Bernier, R.C.A.P.C., Paymaster of 2 Cdn Base Rft. Bn., 1 C.B.R.D., having been duly sworn, states: "I am Major J. Bernier, R.C.A.P.C., paymaster of 2 Cdn Base Rft. Bn, 1 C.B.R.D. On the night of the 2nd August 1944 I was reading in my room above 2 Bn. Officers' Mess. At approximately 2300 hrs. I heard a shot, then a second shot, then another. They seemed to be revolver shots in the immediate vicinity of the Mess. I slipped my trousers over my pyjamas and went down to investigate. Several officers were standing around the body, sprawled on the road immediately in front of 2 Bn Officers' Mess entrance. It was the body of a man who had been wounded by

Gun Shot. The Bn. Orderly Officer, Lt. Manahan, seemed to have the situation well in hand, so I left the scene. I then went to my office as I thought there might have been an attempted robbery of my cash. I found everything in order. I then returned to the scene of the accident and was shown a set of identity discs by Capt. T. E. McKee, P.P.C.L.I. They were not the wounded man's. They bore the following information: "B144333 Robinson, D., Pres., C.D.N." I now recognize the discs marked Exhibit 'C' as the discs shown to me by Capt McKee. I then went to nos. 1, 2, and 3 Bns' Pay Offices to find out if Robinson belonged to any of these Bns. We traced him to the Seaforth Coy of No. 2 Edm Base R.R. Bn. I then accompanied Capt. Snell, Adjutant of 2 Bn. to the Seaforth billets at approximately 2330 hrs. We found Pte Robinson, whom I now recognize as the accused, apparently sleeping in his blankets. We woke him up. He had been drinking but in my opinion was in full possession of his faculties. His lips and nose were bruised.

There were scratches on his neck and his vest was torn. He was not wearing identity discs. On searching his kit I found under the head of his blankets an empty .45 calibre automatic revolver, the property of the United States Army, bearing the serial 978416 and the figures M1911 which I presumed to be the model or issue no. (Revolver produced and marked exhibit "E".) I recognize the revolver marked Exhibit "E" as the one I found in Pte Robinson's kit. From the smell of powder I would say that the revolver had been fired recently. I found the holster of the revolver in Pte Robinson's kit bag. (Holster produced and marked Exhibit "F"). I recognize the holster marked Exhibit "F" as the one I found in Pte Robinson's kit bag on the night of the 2nd August 1944. I handed both the revolver and the holster to Capt. Snell for safe custody. Pte Robinson's rifle was hanging on a nail by his bed. It had not been fired. I found no other fire arms, ammunition, cleaning rods, etc. Capt. Snell had Pte Robinson placed under

close arrest and sent to 2 Bn. Guard Room. The duty Corporal of the Seaforth Coy was ordered to make a minute search of Pte Robinson's bed and of the area in which he slept. I then accompanied Capt Snell as witness when he took statements from Pte Robinson and other persons involved in the shooting. I was present when Capt. Snell cautioned Pte Robinson as follows: "Do you wish to make a statement or give evidence on oath, you are not obliged to do so but if you do it will be taken down in writing and may be given as evidence." Pte Robinson made a statement. (Statement produced and marked Exhibit "G".) I recognize the statement marked as Exhibit "G" as that which was taken down by Capt. Snell and which was signed by Pte Robinson in my presence. I recognize both signatures as the accused's. The accused was not forced to give the statement. In fact he was given cigarettes to smoke while he made his statement.

Cross-examined by the accused:

Q1. Where did you find my holster?

A.I. I found it in your kit bag by your bed.

Jan Bernier Major.

The accused declines to cross-examine this witness further.

Seventeenth Witness for the Prosecution

Capt. J. H. Snell, Adjutant, 2 Cdn Base Rft Bn, 1 C.B.R.D. having been duly sworn, states:

"I am Capt J. H. Snell adjutant, 2 Cdn Base Rft Bn., 1 CBRD. At approximately 2315 hrs., 2 August 1944 I entered Canada Barracks and because of information received I contacted the Guard Commander, Lt. Dolan, and the Orderly Officer, Lt Marsden, to get information and instigate an investigation. I met Major Bernier, Paymaster, 2 Bn., 1 CBRD and as a result of what he told me I contacted Capt. Mc Kee, P.P.C.L.I., who gave me a set of identity discs bearing the name of a soldier "B 144 333 Pte Robinson, D." Major Bernier and I went through the card index systems of all three Bns to ascertain the whereabouts of the soldier whose name was on the identity discs. I recognize the discs marked Exhibit "C"

as the pair handed to me by Capt McKee, on the night of 2nd August 1944. I e found that Pte Robinson was on strength 2 Bn, Seaforth Coy. I contacted the Orderly Corporal on duty at Seaforth Coy and he directed me to Pte Robinson's bed. I placed the soldier, whom I now recognize as the accused under close arrest, directing that he be taken to the Regimental Police, 2 Bn. ICARD I noticed at the time that the accused's face was bruised, his lips were cut, and there were several scratches on his neck. I searched the kit of the accused and I found a .45" automatic pistol, M1911 / 948416, under his pillow. I recognize the pistol marked Exhibit 'E' as the one found by me on the night 2nd August 1944 under Pte Robinson's pillow. The holster for the pistol was found in the small pack of the accused. I recognize the holster marked Exhibit "F" as the one found in the small pack of the accused. The pistol was empty but I would say it was fired recently because the barrel was

corroded and smelt of powder. I instructed the Orderly Corporal, Cpl Shaw, to bring the complete kit of Pte Robinson to 2 Bn. Guard Room. I paraded Pte Robinson, cautioning him as follows:

"Do you wish to make any statement or give any evidence on oath, You are not obliged to say anything or give any evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

No promises, violence, or duress of any kind was made to the accused with the exception of cigarettes offered to him whilst I was taking down his statement. I recognize the statement marked Exhibit "G" as the signed statement taken down by me on the night 2nd August 1944. I recognize both signatures as those of the accused. I read the statement back to the soldier and had him sign it. The accused was not wearing a set of identity discs. He recognized

the pistol M1911/948416 as his property. He acknowledged knowing the order concerning the wearing of identity discs as contained in the statement signed by him. On returning to the scene of the incident one casing of a .45 calibre bullet was turned over to me by Lt. Dolan. At approximately 0730 hrs. 3 Aug 1944, two other .45 calibre casings were turned over to me by the Assistant adjutant, Lt. Rumbaell., of 3 Bn. I recognize the casings marked Exhibit "D" as the casings turned over to me. I instructed the Orderly Officer Lt. Marshon, to report the incident through the proper channels.

Cross examined by the accused:

Q1. Where did you find my holster?

A1. The holster was found in the small pack of the accused."

J.H. Hull Capt Adj'

Twenty-six

Eighteenth Witness for the Prosecution.

Major J R H Morgan, 2nd in command, 3 Cdn Base Rft Bn, 1 CBRD's, having been duly sworn, states:

"As President of a Court of Inquiry on the 3 August 1944 I heard evidence and as a result had the effects of Pte Robinson, whom I now recognize as the accused, searched. Two fountain pens were discovered on his person. The two pens marked Exhibit "B" are the same two pens taken from the person of the accused on the 3rd August 1944."

J R H Morgan Maj.

Pte Edwards

Nineteenth Witness for the Prosecution

B73385 Cpl. DeHarte, W. L., 3 Cdn. Base Rft Bn., 1 C.B.R.D., having been duly sworn, states:

"I am B73385 Cpl. DeHarte W.L., 3 Cdn Base Rft. Bn., 1 CBR.D. On the night of 2 August 1944 at approximately 2130 hrs I entered the Main Gate of 1 CBRD in the company of two friends. We met a Hastings and Prince Edward soldier and stopped to talk. The three of us had been

drinking a little and the Hastings man appeared quite drunk. I persuaded my two friends to go to their billets and tried to convince the Hastings and Prince Edward man to return to his. I then proceeded to my Coy Orderly Room and checked in with my Coy Orderly N.C.O. Returning across 1 Bn Parade Square to my billets, which were then in 1 Bn. building I encountered the Hastings and Prince Edward man again in attempting to pick an argument with a stranger. I persuaded the stranger to proceed to his billets. Then while doing so the Hastings and Prince Edward man became involved in an argument with another man and I chased him to his billets also. I argued with the Hastings and Prince Edward man for some time, endeavoring to make him return to his billets. While I was asking him to leave the square another

shop approached, wearing Seaforth shoulder flashes and a Glengarry with a 4/8th Highlanders badge. I now recognize the accused as this man. This man's first words were: "Have you any money?" The Hastings and Prince Edward man answered, "Why?" The Seaforth, the accused, replied, "Give me a buck. I want a buck," in a demanding tone. I decided it was useless to try to keep the Hastings and Prince Edward man out of trouble and returned to my billets. This last meeting took place in the centre of 1 Bn's Sports Field. I had just returned to my billets when I heard a shot fired, followed shortly by another shot. I took no notice of these shots as such sounds are fairly frequent in the barracks. At the last meeting the

strange appearance of a 48th Highlanders badge and the Seaforth Highlander flashes caused me to look very closely at the man and because of that I can recognize him again."

Cross examined by the accused:

Q1. On the night of 2 August 1944 you state that you could recognize a Seaforth wearing a 48th Glengarry and Seaforth flashes.

A1. "Yes."

Q2. In what way could you recognize the man?"

A2. By his general features.

Q.3. Explain general features.

A.3. A man of medium height, quite huskily built. I have a good memory for faces and remember a man's face.

Q.4. To get a good look at a man's face on the 2 August 1944

was it moonlight night or a dark night?

A.4. It was a bright moonlight night.

Q.5. Was there nothing about the man that you saw on 2 August 1944 that would stand out.

A.5. Yes, there was a dark mark running upward from the left hand corner of his mouth.

Q.6. In your statement you said you had been drinking and that you more or less admitted you were feeling better than your friends. So how could you say by the light of the moon that the party was the man that you identified on 2 August 1944.

A.6. I said in my statement that my friends and I had been drinking and that the Hastings and Prince Edward men appeared to be quite drunk. I was sober enough to know everything that was going on and had all my

faculties about me.

Q.7. How can you identify a man by the light of the moon when you have been drinking.

A.7. I had not had sufficient to drink to dull any of my senses and further I was quite able to see this man and his face, and remember it.

Q.8. Would you or would you not sooner take a man's word when he is sober rather than when he has been drinking on an identification.

A.8. That depends upon the amount the man has been drinking. If he is still in full possession of his faculties it makes no difference.

Q.9. Would you commit yourself to say that you had full control of yourself when you have been drinking.

A.9 If moderately, yes. On the night in question I had had three or four ten litre glasses of vermouth.

Q.10. Did you identify any of the other men who were engaged with the Hastings and Prince Edward soldier on the night of the 2 Aug 1944 other than the accused?

A.10. I have had no opportunity of seeing all the men at I.C.B.R.D. Neither of these men were wearing shoulder flashes and I cannot identify their units.

Q.11. Do you identify everyone by their shoulder flashes?

A.11. No.

Q.12. How is it that you identified the accused by his shoulder flashes?

A.12. The fact that the man was wearing Seaforth flashes and a 48th badge caused me to look at him more closely than I might have otherwise.

Q.13. How close were you to the man you saw wearing Seaforth flashes and 48th Highlander Glengarry?

A.13. From two to three feet.

Q.14. Was the man you saw wearing Seaforth flashes and 48th Highlander Glengarry on the 2 August 1944 drunk?

A.14. He appeared to have been drinking but was not drunk.

Cpl. [illegible] DeHart

The accused was cautioned as follows:

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give any evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given as evidence."

Thirty-four.

The accused declines to make any statement or give evidence on oath.

Certified that Rules of Procedure 4(c), (d), (e), (f), ~~[illegible]~~ have been complied with. J.J.M.

I certify that the foregoing Summary of Evidence, consisting of thirty-four pages, was taken down by me in the presence and hearing of the accused.

J.J. Murphy, Lieut.

Officer detailed to take Summary.

In the Field
30th August 1944

NOTICE PURSUANT TO R.P. 76

K42576 Cpl Shaw, G. C., "S" Coy, 2 Cdn Base Rft Bn, 1 C.B.R.D., will give evidence as follows:

"On the night of 2nd August 1944 I was employed as Coy Orderly Corporal and at approximately 2330 hours Capt Snell and the Paymaster came into "S" Coy Orderly Room. I was shown a set of identity discs. I looked at them and checked them with our nominal roll and found that they corresponded with the name and number of Pte Robinson, the accused, whom I now recognize. I then directed Capt Snell and the Paymaster to the bed of Robinson where I saw him sleeping. On instructions, I awoke Robinson and noticed that his lips were swollen; there was blood on his face, scratches on his neck and his identity discs were missing. Capt Snell ordered me to place him under close arrest and I had him taken to 2 Bn Detention Room. I was also directed to check this man's full kit and place it in the custody of the Regimental Police of 2 C.B.R.Bn. I checked the kit in "S" Coy Orderly Room and found nothing but a normal kit."

31 August 1944

J. H. Snell, Capt.,
Adjutant, 2 C.B.R.Bn., 1 C.B.R.D.

NOTICE PURSUANT TO R.P. 76

Lieut H. J. MacComb, "15" Coy, 3 Cdn Base Rft Bn, 1 C.B.R.D., will give evidence as follows:

"As a member of a Court of Inquiry on 3rd August 1944 I went over to the Guard Room and searched the personal effects of the accused, Pte Robinson, for ammunition. While searching the accused himself, two fountain pens were brought to light, which I took. The fountain pens marked Exhibit "B" are the same pens I took from the accused on the 3rd August 1944."

31 August 1944

J. H. Snell, Capt.,
Adjutant, 2 C.B.R.Bn., 1 C.B.R.D.

Notice Pursuant to R P 76 to the accused
R144333 Pte Robinson W J F 2 Bn 1 C B R D

R25304 Spr Lowe J 7 Fd R C E R D will give evidence that he prepared sketch marked Ex 'H' on the 12 Sep 44 of Canada Barracks, Avellino.

D W Rose

(D. W. Rose) Capt
HQ 1 C B R Gp

14 Sep 44

I certify that I have been given gratis, a copy of the Notice Pursuant to R P 76 dated Sep 44.

R144333 Pte Robinson W J F

Sep 44

LIST of WITNESSES
in the case of
B144333 Pte Robinson, D.J.F.

For the Prosecution:

(1)	B72921 Pte Wilcock, A. H.	3 Cdn Base Rft Bn, 1 C.B.R.D.
(2)	F39716 Sgt Whynot, R. H.	1 Cdn Base Rft Bn, 1 C.B.R.D.
(3)	Capt T. E. McKee	2 Cdn Base Rft Bn, 1 C.B.R.D.
(4)	Capt A. Verdicchio	2 Cdn Base Rft Bn, 1 C.B.R.D.
(5)	K52093 Cpl Stewart, R.	2 Cdn Base Rft Bn, 1 C.B.R.D.
(6)	U1672 Pte Aedy, J. A.	3 Cdn General Hospital
(7)	Major J. R. Davidson	3 Cdn General Hospital
(8)	B142030 Pte Sheluk, R.	3 Cdn General Hospital
(9)	4610847 Sgt Fieldhouse, W.	65 British General Hospital
(10)	Capt W. Grossman	65 British General Hospital
(11)	Capt R. P. Jepson	65 British General Hospital
(12)	H/Capt J. Tootell	65 British General Hospital
(13)	Lieut B. J. Dolan	3 Cdn Base Rft Bn, 1 C.B.R.D.
(14)	Lieut A.J.B. Mills	3 Cdn Base Rft Bn, 1 C.B.R.D.
(15)	B51982 Cpl Ferguson, E.	1 Cdn Base Rft Bn, 1 C.B.R.D.
(16)	Major J. Bernier	2 Cdn Base Rft Bn, 1 C.B.R.D.
(17)	Capt J. H. Snell,	2 Cdn Base Rft Bn, 1 C.B.R.D.
(18)	Major J.R.H. Morgan	3 Cdn Base Rft Bn, 1 C.B.R.D.
(19)	B73385 Cpl DeHarte, W. L.	3 Cdn Base Rft Bn, 1 C.B.R.D.
(20)	K42576 Cpl Shaw, G. C.	2 Cdn Base Rft Bn, 1 C.B.R.D.
(21)	Lieut H. J. MacComb,	3 Cdn Base Rft Bn, 1 C.B.R.D.

For the Defence:

N I L

LIST of EXHIBITS
in the case of
B144333 Pte Robinson, D.J.F.

Exhibit "A"	-	Glengarry lost by B72921 Pte Wilcock, A. H.
Exhibit "B"	-	Two pens obtained from Pte Robinson.
Exhibit "C"	-	Identity discs belonging to Pte Robinson.
Exhibit "D"	-	3 .45 calibre cartridge casings.
Exhibit "E"	-	Pistol No. M1911/948416.
Exhibit "F"	-	Holster belonging to Pte Robinson.
Exhibit "G"	-	Written statement of Pte Robinson.

I, B144333 Pte Robinson, D. J. F., Seaforth Highlanders of Canada, 2 Cdn Base Rft Bn, 1 C.B.R.D. request that Capt. Burgess (or) an officer be appointed to represent me at my trial by Court Martial.

Date 21 Aug 44 ..... Robinson D.J.F. (B144333 Pte Robinson, D.J.F.)

I certify that I have been given gratis, a copy of the Charge Sheet, a copy of the Summary of Evidence, a copy of the List of Witnesses, and a copy of the List of Exhibits pertaining to my trial by Court Martial.

Date 21 Aug 44 ..... Robinson D.J.F. (B144333 Pte Robinson, D.J.F.)

Spare copy - Sent to 14

Army Form A 9.

**All printed matter not applicable to the particular Court, being held should be struck out and initialled by the President.

**Form of Proceedings of a General ~~District~~ Court-Martial.

Proceedings of a General Court-Martial held at Avellino, Sorrento and Italy on the 21,22,23,25 and 29 days of September 1944 by order of

Brigadier E.W. Haldenby, MC VD

Commanding 1 Cdn Base Rft Group

Dated the 4th day of September 1944

President.

Colonel S.A. Lee MC Comd 2 CBRD

Members.

Lt-Col J.G. Vining, ED (CAC) 5 Bn 2 CBRD

Lt-Col E.R. Gill, (RCCS) 7 Bn 2 CBRD

Major L.F.MacDonald, (RCCS) 8 Bn 2 CBRD

Major A.T. Brown (CIC) HQ 1 CBRGp

Judge Advocate

Capt W.B. Bate HQ 1 CBRGp

Trial of*

B144335 Pte Donald John Frederick ROBINSON, 2 Bn 1 CBRD

The order convening the Court, the charge-sheet and the summary (~~of evidence~~) of evidence are laid before the Court.

~~The accused is asked whether he objects to be tried by any officer named in the order convening the Court, and he answers that he does not object to be tried by any officer named in the order convening the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court

Prosecutor, † Capt DW Rose(CIC) HQ 1 CBRGp (Lawyer)

§ or defending officer † Capt NS Bergman 1 Cdn Conv Depot(Lawyer)

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked X signed by the President, and attached to the proceedings.

The names of the President and members of the Court read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Q.1 Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

A.1 No sir.

(N.B. — If objection is made it should be recorded, together with the decision of the Court, on a separate sheet).

* Here insert No., Rank, full Name, Regiment, and Appointment (if any)

† Here state Rank and Name, and Regiment (if any)

§ Qualification to be stated.

2667. PMEJ/5.000 - 8/42

CERTIFIED TO BE A TRUE COPY EXCLUSIVE OF EXHIBITS.

Ho. B. Bate Capt.

DEA BR ICBRG

L116

Q.2 Do you object to A59769 [illegible] Lashbrook, R.E. 8 Bn 2 CBRD as hand writer ?

A.2 No sir.

The President, members and judge-advocate are duly sworn.

The following officer~~s~~ under instruction ~~are~~ is duly sworn.

Capt J.A. McGowan (CAC) 5 Bn 2 CBRD

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Q.3 Are you guilty or not guilty of the (first) charge against you, which you have heard read ?

Question to the accused

A.3 Not guilty, sir.

Answer.

[illegible]

Question.

Answer.

[illegible]

Question.

Answer.

[illegible]

Question.

Answer.

[illegible]

If the trial proceeds upon any charge to which where is a plea of Not Guilty, the Court will not proceed upon the record of a plea of Guilty, until after the finding on that other charge.

Instruction.

P Y

CHARGE SHEET

(SGD) S A LEE Col
Pres

(Sgd) W B BATE Capt
Judge Advocate

The accused, B144332 Pte Donald John Frederick ROBINSON, Seaforth Highlanders of Canada, presently on strength 2 Canadian Base Reinforcement Battalion, 1 C. B. R. D., a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
Sec. 41

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, MURDER

in that he

In the Field, in Italy, on or about 2 Aug 44, when on active service, murdered B136052 Pte Dillon, J. W. H., 3 Cdn Base Rft Bn, 1 C.B.R.D.

(SGD) P H Stphelin
(P. H. STPHELIN) Major,
T/Comd, 2 Cdn Base Rft Bn.,
1 C.B.R.D., Cdn Army, C.M.F.

In the Field
31 August 1944.

TO BE TRIED BY GENERAL COURT MARTIAL

Approved as to form
(SGD) W B Bate Capt
ADJA HQ 1 CBROp

In the Field
In Italy
4 Sep 44

(SGD) E. W. Haldenby)
(E. W. HALDENBY) Brigadier
Comd 1 Cdn Base Rft Gp
Cdn Army-CMF

C

Proceedings on Plea Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. Q.4 *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. A.4 No sir.

The prosecutor makes an opening address (~~[illegible]~~ WB13 ~~[illegible]~~ WB13 ~~[illegible]~~ WB13 ~~[illegible]~~ (See page C1)

The prosecutor proceeds to call witnesses.

First witness for prosecution. B25304 Spr Low, J. (RCE) 7 Bn 2 CBRD

being duly sworn, is examined by the prosecutor.

Q.5 What are your duties at 7 Bn ?
A.5 Draughtsman and sign painting.

Q.6 Did you prepare a sketch of Canada Barracks ?
A.6 I did, sir.

Q.7 I show you a sketch here. Is that the sketch you prepared of Canada Barracks ?
A.7 It is, sir.

Q.8 Is that according to the plan of the barracks ?
A.8 Yes sir.

Q.9 Is it reasonably accurate ?
Q.10 Yes sir.

Q.11 There are two copies ?
A.11 Yes sir.

Q.12 Will you describe to the Court the meaning of the part coloured pink ?
A.12 The pink is the roadway.

Q.13 And the dotted lines ?
A.13 The dotted lines show where the roadway is, and these three spots here are parade squares. The dotted lines include the parade squares. The straight lines are the buildings themselves.

(Sketch of Canada Barracks admitted and marked Exhibit "G")

No cross-examination.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

C 2

SECOND WITNESS for Prosecution (Capt A. Verdicchio, RCAMC, Medical Officer, 2 Bn (1 CBRD, having been duly sworn, is examined by (the Prosecutor

Q.14 Are you a qualified Medical Doctor ?
A.14 Yes sir.

Q.15 Do you recall the 2nd of August ?
A.15 Yes, I do.

By the Judge Advocate:

Q.16 This year ?
A.16 Yes.

Prosecutor:

Q.17 Will you tell the Court in your own words why you recall that particular night ?
A.17 On that particular night after dozing off to sleep, I was suddenly awakened from my sleep on hearing a couple of shots. A few minutes later I was called downstairs to the roadway in front of the entrance to 2 Bn. Officers' Mess, and there saw a soldier lying face downwards on the pavement.

Q.18 Will you point out on this sketch, (Exhibit "G"), the approximate point where you found the soldier lying ?
A.18 This point I am indicating is the spot where I found this Private soldier face downwards. (Marks point X on sketch).

Q.19 How would you describe this approximate position in relation to the Mess ?
A.19 The approximate position is about ten yards from the stairs leading up to the Mess.

Q.20 Will you describe your examination of the body ?
A.20 I examined the man and found his head lying in a pool of blood. I removed his hat and immediately noticed a large wound on his forehead to the right of the mid-line. He was breathing well and his pulse was fair. I examined the remainder of his head and felt a wound at the back of his skull which was dripping blood into my hand. I didn't examine any further then. I called for shell dressings, bandaged his head and called for a stretcher and a vehicle from the unit. A man took him to the MIR. There I examined his chest. The full particulars of the man were noticed on his identity discs. His name was obtained from the discs for the hospital records in order to fill out the admittance slip. The vehicle then arrived and I despatched him with my Corporal to No 3 Cdn Gen Hosp.

Q.21 What time was that ?
A.21 I didn't notice the time at the start, but when the patient had been sent to the hospital, I noticed it to be about 2330 hours.

Q.22 You mentioned a wound in this man's head. Where was that wound ?
A.22 The wound that I saw was on the forehead up close to the hair line to the right of the mid-line.

Q.23 Where was the second wound ?
A.23 The second wound which I felt was in the back of his skull. I didn't see the second wound.

Q.24 What unit did this man belong to ?
A.24 His shoulder flashes showed him as Hastings and Prince Edward Regt.

7

Prosecutor's Opening Address

There will be put in evidence a plan of Canada Barracks to assist the Court, followed by such medical evidence as is now available. Following the medical evidence, there will be evidence offered to show that the accused was recognized near the scene of the crime a short time before, and when his quarters were searched, a weapon was found hidden away near his bed, that weapon belonging to the accused and showing signs of having been recently fired. There will be evidence offered that one Pte Willcock was held up about an hour before the body of Dillon was found, and his Glengarry and a fountain pen were removed from his person. Evidence will also be adduced to show that the pen taken from Pte Willcock was found on the person of the accused. I think you will find the evidence will more or less flow together to establish the prosecution's case.

Cross-examined:

Q.25 Will you describe a little more fully the description of the body as you saw it first ?
A.25 Yes. As I saw him first, the patient was lying flat on his face; as we say, in a prone position, with his left cheek lying on the pavement in this position. (Indicates).

Q.26 How do you determine which is the point of entry and which is the point of exit of a wound ?
A.26 On detailed examination, the point of entry is usually described as being small fairly clean point on the top of the wound. The point of exit of a through and through wound shows more fragmentation and is larger.

Q.27 What is the first time you examined him to establish his identity ?
A.27 I examined his identity discs in the middle of the road as soon as we got him on the stretcher.

Q.28 That is the only means you had of identifying him ?
A.28 That is all, sir.

Q.29 Did you check his paybook ?
A.29 I did not.

Q.30 I suggest to you that you had something to do with another set of identity discs that evening ?
A.30 That is true. I saw some other identity discs that evening.

Q.31 Where did you see them ?
A.31 I saw them in the hand of Capt McKee.

Q.32 And was that out on the roadway of Canada Barracks or was it some where else ?
A.32 I saw them in my own room.

Q.33 What were the circumstances of your seeing these identity discs ?
A.33 The discs were offered to me as a means of identifying a patient by Capt McKee.

Q.34 Did you handle the identity discs at all ?
A.34 As far as I recall, I did.

Q.35 Is there any possibility that this body was shot while lying on t ground ?
A.35 The possibility always remains, sir.

Q.36 Why do you say that ?
A.36 It could have happened.

Q.37 What opinion did you come to as a result of the examination of the wounds ?
A.37 The opinion I came to was that this man had been shot through the head and fell face downward on the roadway.

Q.38 Having regard to the size of the wound that you saw, is it probable that the wounde man walked for some distance or was thrown right down on the roadw
A.38 I would consider it unlikely that he walked for any distance at al

Q.39 Do you think it possible, from that type of wound, for a man to fa and try and get up again or not ?
A.39 He became unconscious the moment he was wounded.

Q.40 Did you check the fingernails of this man ?
A.40 No, I didn't.

Q.41 Can you tell us what happened to the beret when you took it off ?
A.41 When I took the beret off I held it up and handed it to someone a the bystanders.

Q.42 Where did you see the beret again ?
A.42 After the patient had gone to hospital, the beret was brought into the MIR by a Lieutenant. I believe he was the Guard Commander.

Q.43 What happened to it then ?
A.43 Well, I looked at it, noticed a hole in the back, one in the front, The inside was filled with blood.

Q.44 Now in applying your shell dressing would you touch the wound at the front or rear ?
A.44 I didn't make any attempt to clean up the wound.

Re-examined:

Q.45 The identity discs that you examined on the wounded man, how were they attached to him ?
A.45 They were attached, but I cannot recall whether it was by a piece of string or by a chain. Whether they were attached in the appropriate manner I cannot say. They were around his neck.

Q.46 What did you do with them ?
A.46 I merely looked at them , took the information from them, name and number, and left them in place.

By the Court:

WB13 Q.47 Will you indicate ~~on your own head~~ the point of entry and the point of exit on your own head ?
A.47 There was a wound there and a wound there as far as I can remember. (The witness indicates a wound in the forehead and a wound in the back of the head, the latter wound being lower than the former).

Q.48 Were there any other marks on the face or elsewhere ?
A.48 None that I saw or took the trouble to look for.

Q.49 Any powder burns ?
A.49 No, Ididn't see any obvious powder burns.

Q.50 Can you give the Court the approximate time when the wounded man was moved to the hospital ?
A.50 It would be around 2300 hours. That is an approximation.

Q.51 In your opinion, which of the two wounds did you consider to be the wound of entry ?
A.51 My first impression when I saw him and examined him, - not having seen but merely felt the wound at the back - was that the large wound in the forehead was the wound of exit.

Q.52 Have you had any cause to change your opinion from your own examination ?
A.52 I have had no opportunity of examining the patient further.

By the Judge Advocate:

Q.53 Was the wounded man conscious ?
A.53 He was unconscious.

Q.54 Did he regain consciousness when he was in your hands ?
A.54 No.

Q.55 What was the name you saw stamped on the identity discs which were around the wounded man's neck ?
A.55 Pte Dillon.

Q.56 And the number ?
A.56 I don't recall the number.

Q.57 The initials ?
A.57 No.

WB

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of R/ 83(B).

THIRD WITNESS(K58039 Cpl Stewart, H. 2 Bn, 1 CBRD
for (having been duly sworn
Prosecution (is examined by the Prosecutor

Q.58 What are your duties, Corporal ?
A.58 My duties - I am the Medical Corporal in the MIR.

Q.59 Do you recall the night of the 2nd of August, 1944 ?
A.59 I do, sir.

Q.60 Will you tell the Court in your own words what happened that night ?
A.60 As to the approximate time, I think it was around 2330 hours. I was in my bed and shortly after retiring I heard some shots being fired. Of course I didn't think anything of it at the time. Shortly afterwards I was awakened and was told .....

Judge Advocate:

You cannot repeat conversationsthat you had with anybody unless the accused, Pte Robinson, was present. You can state that you had conversation, and as a result of such conversation you did something or were ordered to do something. You can state that somebody gave you orders and then you can tell what you did after that.

By the Prosecutor:

Q.61 Will you point out to the Court where you were in relation to the spot marked "X" on Exhibit "G" ?
A.61 Here. (Witness indicates the spot where he was).

Q.62 What did you do when you arrived at that spot ?
A.62 I immediately applied a field dressing to the injured man's head. As I put the bandage on, I found there was more blood coming from the back of his head. I then applied another shell dressing to his head at the back. He was then placed on a stretcher and carried into the MIR. When he was in the MIR, we wrote out the admittance slip for him to be admitted to the hospital. I read off from the identity discs the number, rank and name of the wounded man to the Medical Officer. Then when transportation came I went with the patient to the hospital. When we arrived there, I believe it was Major Davidson who looked into the case. I am not certain whether it is Major Davidson or Major Howard. I was opposite Major Davidson when the dressings were taken off.

Q.63 What hospital was this ?
A.63 The hospital was No 3 Cdn Gen Hosp, sir.

Q.64 Where were the identity discs ?
A.64 The identity discs were on his neck, sir.

Q.65 What were the particulars you read off those discs ?
A.65 His number and his rank and name was on it.

Q.66 What was the name ?
A.66 The name was "Dillon".

Q.67 Do you recall the number ?
A.67 No sir, I don't.

Q.68 Why did you read the particulars to the Medical Officer ?
A.68 The light in the MIR is very poor. At the time he couldn't find out who this man was. That was when I looked for his identity discs.

Q.69 Why did you read them out to the Medical Officer ?
A.69 The light was very poor. He couldn't see it.

Q.70 Did you not read them out to the Medical Officer in order to give the particulars to him ?
A.70 Yes sir.

Cross examined:

Q.71 When you read out those particulars, did Capt Verdicchio fill out the hospital admission slip ?
A.71 Yes sir.

Q.72 The only information that Capt Verdicchio had of the wounded man was something you told him ?
A.72 From the identity discs.

Q.73 You read out the name and number from the identity discs to Capt Verdicchio, is that correct ?
A.73 Yes sir.

Q.74 Then you read out the particulars on the hospital admission slip?
A.74 Yes sir.

Q.75 Then, the only information as to the identity of the wounded man on the hospital slip was something you told Capt Verdicchio ?
A.75 Yes, sir.

Q.76 You say you applied a shell dressing ?
A.76 Yes sir.

Q.77 What was Capt Verdicchio doing ?
A.77 He applied the first one and I applied the second. I saw more blood on the back of his head. I tore up the first shell dressing and gave it to Capt Verdicchio.

Q.78 Did you notice which wound was the larger of the two ?
A.78 The wound on the forehead was larger than the one on the back of the head.

Q.79 You saw that yourself.
A.79 Yes sir.

No Re-examination.

By the Court:

Q.80 In the MIR were you the only one who examined the patient ?
A.80 There was another officer. On account of the bad light he couldn't make head or tail of the identity discs that is when I looked at it myself.

Q.81 Did you see the MO examine the patient ?
A.81 Yes sir.

Q.82 Will you describe to the Court how he examined the patient ?
A.82 When I got there Capt Verdicchio was there ahead of me. That is when we applied the first field dressing.

Q.83 In the MIR ?
A.83 The shell dressings were all on him.

Q.84 Were there any further examinations of the patient at that time ?
A.84 Not that I remember.

Q.85 You mentioned hearing shots fired. Did Pte Dillon have any weapon near him ?
A.85 I didn't see any, sir.

Q.86 Did you see the MO examine the identity discs about the neck of the patient ?
A.86 No sir.

Q.87 Who did you say applied the first dressing and the second dressing ?
A.87 Capt Verdicchio applied the first one. That is when I saw the blood at the back coming through the bandage.

Q.88 Now describe what you saw on the identity discs ?
A.88 On his identity discs, all I remember seeing was the number, rank and name.

Q.89 You saw his number, rank and name ?
A.89 Yes, sir.

Q.90 Did you recognize the initials ?
A.90 The initials also.

Q.91 Anything else ?
A.91 No sir.

Q.92 Do you recall what initials were on the disc ?
A.92 No, I can't recall that at all.

Q.93 Do you recall how many initials ?
A.93 No, I don't recall that at all.

By the Judge Advocate:

Q.94 Who took charge of the wounded man when he arrived at No 3 Cdn Gen Hosp ?
A.94 Major Davidson took over, I believe, sir.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(3).

FOURTH WITNESS (U1672 Pte Aedy, J.A. 3 Cdn Gen Hosp RCAMC for Prosecution (having been duly sworn or affirmed (is examined by the Prosecutor

Q.95 What are your duties in the hospital ?
A.95 A & D Clerk, sir.

Q.96 Will you explain to the Court what "A & D" mean ?
A.96 Admission and despatch of patients, sir.

Q.97 Do you recall the night of the 2nd of August, 1944 ?
A.97 Yes, sir.

Q.98 Why ?
A.98 I was on duty, working nights from 1900 hours to 0700 hours in the morning.

Q.99 What day ?
A.99 The 2nd of August.

Q.100 1944 ?
A.100 Yes sir.

Q.101 What happened that night ?
A.101 At approximately 2330 hours a truck drove up to the A & D and a stretcher patient was brought in. I took his regimental particulars and 'phoned for a Medical Officer, the Surgical Officer, Major Davidson.

Q.102 Where did you get the particulars from ?
A.102 Read the rank, name and initials and religion from the identity discs on the body, sir.

Q.103 Did you examine the discs ?
A.103 No sir.

Q.104 What were the names read out ?
A.104 Pte Dillon.

Q.105 What happened to that patient ?
A.105 He was sent to the Surgical Officer, sir, and then transferred to 65 British Gen Hosp.

Q.106 How did he go to the hospital ?
A.106 He was sent in an ambulance, sir.

Q.107 What is the practice at your hospital when a patient is sent out ?
A.107 His discharge papers are typed, sir, and he is put in the ambulance and sent out. That is all, sir.

Q.108 Will you explain to the Court what happened that night when you admitted that patient ?
A.108 He was brought in the A & D on a stretcher.

Q.109 Who brought him in ?
A.109 I don't know who brought him in, sir.

No Cross-examination.

By the Judge Advocate:

Q.110 Do you know what day it was that this patient was transferred to No 65 British Gen Hosp ?
A.110 Yes.

Q.111 Well, what day ?
A.111 The 2nd of August, sir.

Q.112 That same night ?
A.112 Yes sir, 2355 hours approximately, sir.

Q.113 When a patient is transferred by ambulance from one hospital to another, does the hospital discharging the patient forward any documents along with the patient ?
A.113 Yes.

Q.114 What documents ?
A.114 The hospital admission slip and any other papers the Surgical Officer writes up.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

FIFTH WITNESS for Prosecution (Major J.R. Davidson, 3 Cdn Gen Hosp RCAMC (having been duly sworn (is examined by the Prosecutor

Q.115 You are a qualified Medical Doctor ?
A.115 I am.

Q.116 Do you recall the night of the 2nd of August, 1944 ?
A.116 I do.

Q.117 Will you tell the Court what happened that night ?
A.117 At approximately 2330 hours, I was called to the admitting room to see a man who had suffered from a through and through wound of his skull. He was unconscious. I removed the dressing which had been applied and examined the patient. I found a through and through wound of the skull. Brain tissue was exuding from the wound in the forehead. I re-applied fresh dressings and ordered the man to be taken to No 65 British Gen Hosp.

Q.118 In your opinion what caused the wound.
A.118 In my opinion it was caused by some sharp missile, probably a rifle or a revolver bullet.

LT3B

Q.119 Will you point out on your own head where the two wounds in the head were ?
A.119 As closely as I can remember, sir, the one was approximately on the back of the head, and the other was on the forehead. (The witness indicates the position of the two wounds; the one at the back of the head being the lower down than the one on the forehead).

Cross-examined:

Q.120 Do you know who this patient was ?
A.120 No sir. I believe it was Pte Dillon. I just heard his name mentioned from his documents. It is more important for a medical man working in a hospital to treat the patient than to find out who he is.

Q.121 Did you at any time take any specific steps to establish the identity of this patient in your own mind ?
A.121 No sir.

Q.122 How do you determine which is the point of entry and the point of exit ?
A.122 It is generally believed that the wound of entrance of a bullet entering the skull is what might be termed a clean-cut hole, while the wound of exit usually shows fragmented bone.

Q.123 If any difference of opinion arises between the opinion formed by the medical officers first attending a wounded man and the doctor conducting a post-mortem examination, subsequently, which would you suggest to the Court would be more accurate ?
A.123 Do you refer to a man examining the wound after he had been operated on ?
Q.124 If there had been previous interference by a surgeon, would you explain the difference in the wounds then ?
A.124 It is possible, had there been previous treatment, the wounds of exit and entrance might be confused.

Q.125 Now, did you make any other examination of this patient apart from the head injury ?
A.125 Just as to his general condition, checking his pulse.

Q.126 Did you check his fingers or fingernails ?
A.126 No, I did not.

Q.127 What, Doctor Davidson, was the extent of your interference with that wound - the amount of treatment ?
A.127 There was no interference apart from applying fresh dressings to the skull and bandaging the head.

Q.128 Now, for the purpose of getting a little technical information across the Court, is there such a bone as an occipital bone ?
A.128 That is the bone at the back of the head, part of the skull.

Q.129 How would you describe the right frontal bone ?
A.129 The right frontal bone refers to the case of the skull. The right frontal bone would be on the right side of the mid-line, beneath which lies the frontal lobe of the brain.

Q.130 I would like you to answer the next two questions, if possible, by merely stating "yes" or "no". Have you ever heard of injury by contracoup.
A.130 Yes.

Q.131 Has this injury by contracoup ever been satisfactorily explained by medical science ?
A.131 I cannot answer that question "yes" or "no".

WPB

Q.132 Injury by contrecoup is still a contentious question in medical science ?
A.132 I don' think that is a fair way of putting it.

No Re-examination.

By the Judge Advocate:

Q.133 When you were indicating the position of the wound, front and rear, with your finger, am I to assume that at the front that was the approximate position in the wounded man's forehead.
A.133 I cannot state definitely, only approximately.

Q.134 From what medical school did you graduate ?
A.134 McGill.

Q.135 In what year ?
A.135 1929.

Q.136 You have been practising medicine and surgery ever since ?
A.136 Yes.

Q.137 Which of the two wounds was the wound of entrance?
A.137 In my opinion the entrance was at the back.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

SIXTH WITNESS(S142030 Pte Shaluk, R. 3 Cdn Gen Hosp, RCAMC for Prosecution) (having been duly sworn) is examined by the Prosecutor

Q.138 What are you employed at in the hospital ?
A.138 As a Nursing Orderly.

Q.139 Do you recall the evening of the 2nd of August, 1944 ?
A.139 Yes, sir.

Q.140 What happened that evening ?
A.140 I was just having supper. At approximately 2330 hours a case came in which we attended to. At approximately 2355 hours we put him in an ambulance, and I went down to 65 British Gen Hosp with him.

Q.141 Who was this patient ?
A.141 According to his papers, it was Pte Dillon.

Q.142 What did you do when you got him at 65 British Gen Hosp ?
A.142 We took him in to the A & D room and they looked after him there.

Q.143 Did you examine this patient ?
A.143 No sir.

Cross-examined:

Q.144 The only way you know who this patient was is from his papers he carried ?
A.144 Yes sir.

Q.145 The only method ?
A.145 Yes sir.

By the Judge Advocate:

Q.146 Did you see the patient when he came into 3 Gen Hosp.
A.146 I wasn't there when he came in.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

SEVENTH WITNESS (4610847 Sgt Fieldhouse, W. RAMC, 65 Brit Gen Hosp
for (having been duly sworn
Prosecution (is examined by the Prosecutor

Q.147 Do you recall the night of the 2/3 August, 1944 ?
A.147 Yes sir.

Q.148 What were you doing that night ?
A.148 I was night wardmaster at 65 Gen Hosp.

Q.149 Did anything happen that night ?
A.149 During the night, about a quarter to two, Pte Dillon was brought into the hospital with a gun shot wound in the head. He was sent to the Duty Officer and admitted to 65 Gen Hosp.

Q.150 Who brought the patient in ?
A.150 An ambulance from 3 Cdn Gen Hosp brought the patient in. I don't quite recall whether there was an orderly or just the driver with him. There was definitely someone who brought him in and handed him over.

Q.151 How did you obtain the particulars of this man ?
A.151 From his documents.

Q.152 And you said the Orderly Officer admitted him ?
A.152 Yes sir. Admitted him from 3 Cdn Gen Hosp.

Q.153 Who is that Orderly Officer ?
A.153 Capt Grossman.

Q.154 Did you ever see this patient again ?
A.154 No sir.

Q.155 Was there anyone else present ?
A.155 I don't think there was sir. I don't recall, sir.
Cross-examined:
Q.156 How did you know this man was Dillon ?
A.156 From the documents.

Q.157 Did you make any other check ?
A.157 No sir.

Q.158 How did you know it was an ambulance from 3 Cdn Gen Hosp ?
A.158 From the transfer slip.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

EIGHTH WITNESS (Capt W. Grossman, RAMC, 4 MPSU
for (having been duly sworn
Prosecution (is examined by the Prosecutor

Q.159 Are you a Medical Officer ?
A.159 Yes sir.

Q.160 Will you state to the Court the University or College you attended?
A.160 The University of Prague.

Q.161 Are you licensed as a Medical Officer ?
A.161 Yes sir.

Q.162 Where ?
A.162 At the General Medical Council in London.

Q.163 When was that ?
A.163 In 1936.

Q.164 Do you recall the night of the End of August, 1944 ?
A.164 Yes.

Q.165 Will you tell the Court what happened that night ?
A.165 At about a quarter to two in the morning I was called to see a patient who was admitted to 65 British Gen Hosp, transferred to that hospital from No 3 Gdn Gen Hosp. The patient was suffering from a through and through gun wound on the right side of his head. He was deeply unconscious. He did not respond to any questions or pain. I arranged his resuscitation and transferred him to the Resuscitation Ward. I also informed the surgeon on duty from the Neurosugical Unit who took over this case immediately.

Q.166 Will you describe to the Court where these wounds were in this man's head, either by pointing out or - - - ?
A.166 I did not disturb his dressings, but the wound appeared to be on the right side of the forehead and the right side of the back of the head.

Q.167 What were your particular duties with this man ?
A.167 Only Orderly Medical Officer.

Q.168 How many cases did you admit that night ?
A.168 I admitted only one case of gun wound of the head.

Cross-examined:

Q.169 If you did not disturb the surgical dressings, Doctor, then you didn't see the actual holes in the head that evening ?
A.169 No.

Q.170 It was some time subsequent to this that you saw the patient again?
A.170 I saw him in his ward the next day.

Q.171 By that time had he had some treatment to his head ?
A.171 Yes.

Q.172 How do you determine which is the point of entry and the point of exit of a bullet ?
A.172 The exit wound is usually far bigger than the entry wound. The exit wound is more extensive than the entry wound. You can also sometimes determine the entry wound by finding powder grains from the actual bullet.

Q.173 Those are the characteristics of pistol or revolver wounds ?
A.173 Yes sir.

Q.174 Did you get any information about the wounds after the surgical dressings were removed ?
A.174 No sir.

Q.175 What X-Rays did you actually order for this patient ?
A.175 I ordered him for immediate X-Ray.

Q.176 X-Ray of the head ?
A.176 Only the head.

Q.177 How did you identify this patient ?
A.177 He had a slip of paper with his name on it.

Q.178 You identified him from his medical documents ?
A.178 Yes sir.

Q.179 Did you take any other steps to identify him except from his medical documents.
A.179 No.

No Re-examination.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

47318

NINTH WITNESS (R/Capt J. Tootell, CFRC
for Prosecution (Having been duly sworn
(is examined by the Prosecutor

Q.180 What is your appointment, padre?
A.180 I am RC Chaplain for 65 British Gen Hosp.

Q.181 Do you recall the evening of the End of August, 1944?
A.181 I don't just recall the day. According to my diary it was on the night of the End of August. I don't just remember the day as I say. I saw the boy on the End of August.

Q.182 Do you recall what time?
A.182 I can't remember the time I was called to him.

Q.183 To whom were you called to see?
A.183 Dillon.

Q.184 Did you see Dillon again?
A.184 I was called to the boy Dillon. I attended to him. He was unconscious. I visited him frequently until I went to bed.

Q.185 What hospital was this?
A.185 He was in No 65 British Gen Hosp.

Q.186 What ward was he in?
A.186 He was in Ward I and later was moved to Ward 5.

Q.187 Did you have anything further to do with this man Dillon?
A.187 Nothing at all.

Q.188 When did you cease to see the patient?
A.188 I saw him on the End of August. We always keep visiting a patient until he regains consciousness. The actual time of his death, I can't remember.

Q.189 Do you recall the date of his death?
A.189 The date I have for his death - the 7th, the day he was buried. I buried him on the 7th.

Q.190 Where did you bury him?
A.190 At the new British Military Hospital Burial Grounds outside Naples.

Q.191 Under what name did you bury him?
A.191 Dillon.

Cross-examined:

Q.192 Padre, are you positive that it was the End of August that you saw him?
A.192 I looked in my diary after seeing the patient and made the entry.

Q.193 Did you make this entry in the diary either at the time you saw him or shortly afterwards?
A.193 I make the entries immediately or fairly soon afterwards. The date is the 2nd of August.

Q.194 That entry that you have made there, is a reasonably accurate entry? I want you to be satisfied that it is right in your own mind?
A.194 Yes.

Q.195 In making up your entries in your diary, does a new day start after midnight, or if you made an entry a few minutes after midnight, would you make the date of the entry the day before?
A.195 As soon as I attend to the patient, if it is that day, the End of August, I should say the End of August. If it was three o'clock in the morning, I would make the entry as the third.

W1313

Q.196 But the individual or patient that you saw on the 2nd of August, is that the patient you buried on the 8th?
A.196 Yes.

Q.197 Then, did you bury him on the 7th?
A.197 Yes.

Q.198 Have you a record of the burial?
A.198 When I buried him I signed the form.

Q.199 Did you make an entry in your diary?
A.199 Yes.

Q.200 I suggest to you that you made that burial statement on the 8th. I am suggesting to you that he was buried on the 8th of August?
A.200 Yes.

Q.201 Would that be correct?
A.201 I took it as the 7th of August.

Q.202 I'll show you your original statement on the Summary of Evidence .....
A.202 From memory this morning, I thought it was the 7th. I attended to him on the 7th. I don't remember the record in the diary of the day I buried him. I abide by my writing.

Q.203 You are stating to the Court that the body you saw on the 2nd of August is the one you buried on the 8th?
A.203 Yes.

Q.204 You are reasonably certain you saw him on the 2nd of August?
A.204 Yes.

Q.205 You are certain that the man you saw on the 2nd of August is the man you buried on the 8th. Is that correct?
A.205 Yes sir.

No Re-examination.

By the Court:

Q.206 What time on the 2nd did you visit this man Dillon?
A.206 I can't remember. I don't make reference in my diary to time.

Q.207 You do not refer to your watch when making entries in your diary. Then, if it was during the night how do you know it was before or after midnight to establish the 2nd? You wouldn't know if it was a minute to 12 or a minute after 12?
A.207 I do not wish to make a definite statement as to the time when I saw the patient.

By the Defending Officer: (with the Court's permission)

Q.208 I want the Court to be satisfied that there is no mistake in the entry in his date book. He has already stated to the Court that it was the 3rd of August. If you saw that man at two o'clock in the morning, you would make that entry on the 3rd?
A.208 Yes sir.

Q.209 You are very satisfied that you saw this body sometime prior to the 3rd of August?
A.209 Yes.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 62(B).

The Court adjourned at 1510 hrs.

The Court re-opened at 1430 hrs, the same members being present.

By the Court: (to the accused)

Q.210 Do you object to K.68696, Sgt Brown, F.O., H.Q., 1 CBR Gp, as shorthand writer?

A.210 No sir.

The shorthand writer is duly sworn.

TENTH WITNESS (B.72921, Pte Wilcock, A.H. (48 Highrs) 3 Bn 1 CBRD
for (having been duly sworn
Prosecution (is examined by the Prosecutor

Q.211 Do you recall the night of 2nd August, 1944?

A.211 Yes sir.

Q.212 Would you tell the Court what happened on that night?

A.212 On the night of 2nd August at about 2015 o'clock I was walking along the west side of the Petawawa Bldg going south. About half way down a fellow came up and put a gun in my side. Then, he looked at me and saw my Glengarry and said, "I could do .....

Q.213 Before you go too far will you tell the Court exactly what happened when you met with this other fellow?

A.213 He stepped up to me, spoke, and looking at my Glengarry, took it from my head. He took my fountain pen out of my pocket and then marched me on towards 3 Bn MIR. Then I saw a fellow coming along by the garage. I hollered at him and he came over. We walked on until we got as far as 1 Bn Offrs' Mess. Then I didn't feel the gun in my back.

Q.214 Will you describe the Glengarry to the Court?

A.214 My Glengarry is a red diced one. It had air holes in it. My name "Wilcock" was inside. The badge is rounded and punched out.

Q.215 I produce and show you a Glengarry. Would you examine it?

A.215 This is my Glengarry, sir. (48 Highrs Glengarry with name "A.H. Wilcock" inside, admitted and marked Exhibit "N")

Q.216 Will you describe to the Court the fountain pen that was taken that night?

A.216 My fountain pen was a grey pen with white running through it. It has tooth marks at one end. The original name has been scratched off.

Q.217 I now produce to you two fountain pens. Would you examine them?

A.217 This is my pen, sir. (Holding up one)

Q.218 Will you show the Court any identification marks?

A.218 Yes. (Witness points out to the Court the teeth marks on the pen. Fountain pen admitted and marked Exhibit "I".)

Q.219 Can you describe this man?

A.219 The only thing I recall is the Seaforth flashes. This is all I remember.

Q.220 Did you see the weapon?

A.220 All I saw was the gun and I cannot tell you ----

Q.221 What did you do?

A.221 I went to the Guard Room and reported.

Q.222 Whom did you report to?

A.222 I reported to the Sgt in the Guard Room.

Q.223 What did you do after you reported?

A.223 After I reported I looked around outside in the area around the Ottawa Bldg and found nobody. I then went to bed. At 0200 hrs, Capt Cameron and Capt Mills awakened me and took me to the Guard House.

WT3B

Cross-examined:

Q.224 What kind of a night was it?
A.224 It was a fairly dark night.

Q.225 Do you remember a moon?
A.225 It wasn't shining.

Q.226 Approximately what would be the normal area distance of vision that evening?
A.226 I don't know.

Q.227 Estimate it?
A.227 Maybe 50 yards.

Q.228 Did you get a chance to get away? You were marching some distance without having any weapon in your back?
A.228 I got to 1 Bn Offrs' Mess and didn't feel it any more.

Q.229 Are you sure you were going towards 1 Bn MIR?
A.229 Yes sir.

Q.230 What were you doing at the Offrs' Mess?
A.230 He came back with me.

Q.231 I now show you Exhibit "G", a sketch of Canada Bks. Point out the approximate position where you were held up?
A.231 Approximately here. (The witness marks point with an "A" on sketch.) This is the place where he held me up.

Q.232 Continue from where he held you up?
A.232 We proceeded down this way (indicates southward) to the MIR walking along the Petawawa block, turned left, proceeded east, then north and then east over to approximately the Offrs' Mess.

Q.233 Indicate with the letter "B" where the man left you?
A.233 Here sir. (Witness marks point with letter "B" on sketch)

Q.234 Does it not strike you as a little queer that he should march you in the direction of the Main Guard Room?
A.234 I happened to turn that way.

Q.235 When did you stop feeling the weapon in your back?
A.235 I didn't feel ---- I thought it was a good thing to keep walking.

Q.236 You had the courage to call for assistance?
A.236 Yes sir.

Q.237 What gave you this new found courage?
A.237 I wasn't very far from the chap who was walking towards the Offrs' Mess.

Q.238 Was the individual who held you up wearing a hat?
A.238 He wasn't sir.

Q.239 Was he wearing Seaforth flashes?
A.239 Yes sir.

Q.240 What were you doing out at 2215 hrs?
A.240 Out getting air.

Q.241 Do you usually go out to get air at that time?
A.241 Not usually, no sir.

Q.242 Did you hear any shots that night?
A.242 No sir.

Q.243 You said after the incident you went to bed?
A.243 We left the Guard Room to go to bed.

WBB

Q.244 How long did the incident take from the time you were held up until you got into bed?
A.244 15 minutes.

Q.245 How much did you have to drink that evening?
A.245 A few drinks.

Q.246 What of?
A.246 Vermouth.

Q.247 How many glasses?
A.247 About five glasses, sir.

Q.248 You were sober were you?
A.248 I wasn't exactly sober nor drunk.

Q.249 Did you feel the drinks?
A.249 No sir.

Q.250 Have you any idea as to how many Seaforths were at Canada Ehs at that time?
A.250 I have no idea.

Q.251 Do you remember a draft coming in just before this incident?
A.251 Yes sir.

Q.252 Was this a few days before the incident?
A.252 I don't know sir.

Q.253 Do you remember if there were any Seaforths in the camp that particular day?
A.253 There may have been.

Q.254 Do you know?
A.254 There might have been.

Q.255 Did you not notice several?
A.255 Yes.

Q.256 Were there many around on parade on this day?
A.256 There were a few.

Q.257 So it wasn't unusual?
A.257 No.

Q.258 You must have gone to sleep very quickly?
A.258 I wasn't very long.

Q.259 Did the incident bother you a great deal?
A.259 It scared the living daylights out of me.

Q.260 You recovered very quickly. Were you in fear of your mortal life?
A.260 I would not say that. No sir.

Q.261 It didn't bother you very much?
A.261 No.

Q.262 How long have you been in the 48 Highrs?
A.262 Five years.

Q.263 Ever been court martialled?
A.263 Never.

Q.264 Are you rft or PE?
A.264 Rft.

Q.265 Now what happened to the man whose assistance you called?
A.265 After I called him over he walked away.

Q.266 Did he accompany you to the Guard Room?
A.266 No sir, he didn't. I just turned around to him and then said "good- to him.

Q.267 Didn't you feel a little foolish when nobody was there?
A.267 I didn't worry very much.

Q.268 Didn't you want anyone to substantiate your story?
A.268 I didn't worry. I reported to the Guard Room.

Q.269 Was such conduct normal?
A.269 No sir.

Q.270 Would you act accordingly if you hadn't been drinking?
A.270 No sir.

By the Court:

Q.271 Would you recognize the gun; the one the man extended when he held you up?
A.271 No sir, I couldn't say.

Q.272 Was it large or small?
A.272 It looked like an automatic revolver. (Witness is shown sketch, Exhibit "G".)

Q.273 You were walking in that direction (North)?
A.273 Yes sir.

Q.274 Where did you first see the other man?
A.274 When we got here. (Witness marks point with a "C" on sketch.) The other man was here. (Witness marks point with a "D" on sketch.) The man at point "D" came towards me. I called out to him. He hesitated and stopped as he came towards me.

Q.275 Was there any conversation between the man you met and the man who held you up?
A.275 No sir.

Q.276 Was there any conversation between the man who held you up and yourself?
A.276 No sir.

Q.277 Did you indicate to the man you met that you were held up?
A.277 I said that a fellow held me up with a gun and he chuckled. I emphasized it to him again but he just laughed and walked beside me on the right.

Q.278 Did you feel the pressure of the gun in your back, still, as you walked along?
A.278 Part of the way to the Offrs' Mess.

Q.279 Did you hear any footsteps to indicate to you that the man was leaving the two of you?
A.279 No sir.

Q.280 You remember what type of footwear he wore?
A.280 No sir.

Q.281 How far from the man were you when you met him at the corner?
A.281 About 25 feet when I first saw him.

Q.282 Did he come up to you or were you going towards him?
A.282 I just seemed to run bump into him.

Q.283 You didn't notice him?
A.283 No sir.

Q.284 He confronted you face to face?
A.284 Yes sir.

WBB

By the Judge Advocate:

Q.285 Would you point out on Exhibit "G" the location of the Guard Room to which you went?
A.285 Here sir. (Witness indicates point "E" on sketch.)

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83 (B).

ELEVENTH WITNESS (K.30716 Sgt Whynot, R.H. (WEST MSR) 1 Bn 1 CBRD
for (having been duly sworn
Prosecution (is examined by the Prosecutor

Q.286 What duties do you perform at your unit?
A.286 Provost Sgt 1 Bn.

Q.287 Do you recall the evening of 2 Aug 44?
A.287 Yes sir.

Q.288 What happened?
A.288 At approximately 2245 hrs on the 2nd Aug 44, I was in my Guard Room making out my Guard Report. I heard one shot fired. I immediately left my work and ran from the Guard Room.

Q.289 Where did the shot come from?
A.289 From my estimation it seemed to come from the direction of the Carleton & York and Hast PER Bks.

Q.290 Would you point out where these bks are, please?
A.290 (The witness points to the Kingston Block.) I thought the shots came from the Kingston Block.

Q.291 Where were you at that time?
A.291 I was here. (Marks point with an "E" on the sketch.)

Q.292 After you left the Guard Room what happened?
A.292 When I was outside I heard two more shots fired.

Q.293 Where did they come from?
A.293 The same direction I thought.

Q.294 When you got outside did you notice anything unusual?
A.294 No sir. There were quite a few drunks around that night.

Q.295 What did you do then?
A.295 I stopped for a moment at the entrance of the Borden Block looking around to see what I could see. It was then I noticed a soldier in front of 2 Bn Offrs' Mess trying to get up.

Q.296 What did you do?
A.296 Well, due to the fact that there were a good many drunks that evening I didn't do anything immediately.

Q.297 Did you further investigate this body?
A.297 Yes sir.

Q.298 What did you find out in the investigation?
A.298 When I saw everyone running towards the body, I ran to the body myself.

Q.299 Who was present?
A.299 The Guard Commander and the Cpl of the Guard were present.

Q.300 Where was this body?
A.300 The body was at the main entrance of 2 Bn Offrs' Mess in the Ottawa Bldg.

Q.301 Was it right at the entrance?
A.301 It was towards the Borden Block.

Q.302 How far?
A.302 About 15 feet from the entrance.

WBB

COUNTER NUMBER 572505

HOUR 14.35

OPERATOR'S INITIALS E.M.

RELIEVING OPERATOR _____

END

FIRST

SIDE

44.87

START OF RETAKE

THE IMAGES APPEARING BETWEEN THIS POINT AND THE "END OF RETAKE" ARE TRUE COPIES OF RECORDS, MICROPHOTOGRAPHS OF WHICH WERE MISSING OR PROVED UNSATISFACTORY ON INSPECTION OF THE ORIGINAL MICROFILM REEL.

THE ABOVE MENTIONED RECORDS WERE REPHOTOGRAPHED AS AN ADDENDUM TO THE ORIGINAL REEL.

FOR DESCRIPTION OF REPHOTOGRAPHED MATERIAL SEE THE OPERATOR'S "RETAKE CERTIFICATE" AT END OF THIS RETAKE SECTION.

47-54

Pte. Robichaud L. F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F-52375 Pte Louis Frederick Robicheau 36th R.C., Highrs

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 15(1)	Guilty	Guilty	
2nd 15(1)	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 462 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... of ..... beginning on (date) .....~~ (1) 12

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 24 days, of which N/A days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of eighteen (18) months.

(Sgd) ..... 25 Jan 45 ..... (Sgd) D. Eastwood, Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) J. C. Rochfort-Boyd, Brig

Date 26 Jan 45

Commanding 9 Cdn Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F-52375 Pte Louis Frederick Robicheau North Nova Scotia Highlanders	29 Jan 45	J. McPherson, Capt/Adjt North Nova Scotia Highlanders

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4T-54

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA81) 40/P & S/1688 (M601) 4/38B

Convened by Order of Eric L.W. Rockingham DSO Comd 9 C.I.B. dated 21 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-52375	Pte	Louis Frederick	Robicheau	N.N.S.H. Highrs

Certified true copy

A.D.J. Capt.

Con. Sec. G.H.Q. 2 Echelon

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Holland on (*date(s)*) 25 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 19/147

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr~~ DE, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) ~~The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.~~(3) DE DE

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 0940 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2) DE

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. ~~President to accused : Do you object to ..... as interpreter ? Ans .....~~

~~The Interpreter is sworn.~~(1) ~~Do you object to ..... as shorthand writer ? Ans .....~~

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr~~ DE, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	D. Eastwood	R.W.S.T.
Member	Capt	J.P. Palmer	S.D. & S. Highrs
Member	Lt	C.F. Pollard	W.L.I. of C
Judge-Advocate			
Prosecutor	Lieut	W.Z. Smith	N.N.S. Highrs
Defending Offr	Lieut	A.W. Harper	N.N.S. Highrs

Questions by President : Is the Prosecutor a lawyer ? Ans No. Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused F-52375 Louis Frederick Robicheau before arraignment make(s) (no) (a) plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) DE arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) DE not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ DE considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form E .....

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No Sir (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (~~their~~ DE) plea(s) of Guilty to Not Guilty on the charge(s). The accused is (~~are~~ DE) so informed, ~~and he (they)~~ DE ~~change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~ DE
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1) DE
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 para 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 80(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. Do you intend to call witnesses on your behalf?
Ans. Are they witnesses as to character only? Ans.
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No Sir
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) DE as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s) DE, purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) DE having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Through My Defending Officer (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

D.E.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 22, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-52375	Pte		Louis Frederick Robicheau		Nth N S Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 21 Jan 45 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D. Eastwood	Nth NS Highrs

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J.P. Palmer	SD&G Highrs
Lt	G.W. Pollard	WLI of C

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	J.E. Gillespie	HQ 9 Cdn Inf Bde

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in (Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)
Holland	J.M. Rockingham	Brig

Date 21 Jan 5 Commanding 9 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

D.E.

CHARGE SHEET

The accused, H-52375 Pte Louis Frederick Robicheau North Nova Scotia Highlanders, a soldier of the Canadian Army Overseas , is charged with:

First Charge
Army Act
Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE,

in that he

in the Field, absented himself without leave from 0700 hours 9 Nov 44 until surrendering to the R.P. 11 Bn 2 CBRG at 2115 hours 30 Dec 44. (Total absence 51 days, 14 hrs 15 mins)

Second Charge
Army Act
Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE,

in that he

in the Field, when in close arrest, did absent himself without leave from 0235 hours 8 Jan 45 until apprehended by Cdn Provost Corps at 2145 hours 8 Jan 45.(Total absence 19 hrs 10 mins)

In the Field
19 Jan 45

(sgd) D.F. Forbes, Lt-Col
Commanding
North Nova Scotia Highlanders

To be tried by Field General Court Martial

In the Field
21 Jan 45

(sgd) J.M. Rockingham, Brig
Comd 9 Can Inf Bde.

C.72375 Pte Louis Frederick ROBICHEAU NNS

NOTE E.3

In the case of accused, I wish to bring before the court, Pte Robicheau enlisted in April 43. From that itme until present he has 5 crimes. All these occured while in England. He came to his unit on 13th Oct 44 during fighting in Sheld Estuary. He served with the unit until Div moved to Ghent for rest. While in Ghent with unit he decided that he would spend French money in his possesion, so crossed border to France and came back on 9 Nov to rejoin unit. The unit had moved. Accused heard that unit had moved to HOLLAND so followed but found no trace. He returned to Ghent and heard rumour, that unit was at St Deinz which is about 20 kil from Ghent. The unit had moved again so accused returned to Ghent where he stayed until surrendering on 30th Dec 44 to R.P. This story ~~that he was absent for the~~ shows that it was not intentional that he was absent for the first time, but that he made an honest effort to rejoin his unit.

Pte Robicheau is single but has dependent mother. He wishes to return to his coy as soon as possible so I offer this plea to the court, that his story be considered and that he be granted his wish.

(R. of P. 83 (B) complied with.)

ADDITIONAL SUMMARY OF EVIDENCE in the case of F.52375 Pte Louis Frederick ROBICHEAU, "B" Company North Nova Scotia Highlanders, B.A.E.F. a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS For the Prosecution — F.55326 L/Cpl Upton, J.D., sworn states: I am F.55326 L/Cpl Upton, J.D., Regimental Police, North Nova Scotia Highlanders. While in charge of the accused in close arrest, on 8 Jan 45, at approximately 0235 hrs, I checked the room in which the accused had been detained, and found him absent. I checked the area of the detention rooms and could not find him. I then awakened L/Cpl Lowden, of the Regimental Police and we proceeded to the Nijmegen Bridge and checked with Corps Provost on duty then, advising them of the escape of the accused. I also reported his absence to HQ No. 4 Cdn Provost Coy. I next saw the accused when he was returned to my custody, under close arrest, at approximately 1830 hrs 16 Jan 45. I hereby present as evidence certificate under the Army Act Section 163 (1) (jj), signed by Lt. R.O. Dunn, No 7 Cdn Provost Coy, officer in charge Antwerp Detachment, relating to the accused F.52375 Pte Robicheau, L.F. and marked Exhibit "A".

(Sgd) J.D. Upton L/Cpl
North Nova Scotia Highrs.

The accused declines to cross-examine this witness.

Question to the accused

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be used as evidence against you.

A. No, sir.

Q. Do you wish to call any witnesses in your defence at this point?

A. No, sir.

Rules of procedure 4 (c)(d)(e)(f)(g) have beencomplied with.

I certify that the foregoing summary of evidence was taken down by me in writing in the presence of the accused and consisting of two pages, this 9 day of January, 1945.

(Sgd) M.J. Hefferman Capt
NNSH Officer i/c Summary

In the Field
19 Jan 45.

EXHIBIT "A" DE

SUMMARY OF EVIDENCE IN the case of F.42375 Pte L. ROBICHEAU, "B" Company North Nova Scotia Highlanders, B.A.E.F., a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS For the Prosecution

C.19605 L/Cpl. Larocque, D.N., sworn states: "I am C.190605 L/Cpl Larocque, D.N., B Company, North Nova Scotia Highlanders. On 9 Nov 1944 I was a member of No. 12 platoon B Company and have been in the platoon ever since. At approximately 0730 hrs I went to the quarters of Pte Robicheau L.F. to get him out as we were leaving Ghent and moving to a new area. I went to his quarters on three different occasions but I could not find him. Pte Robicheau L.F. has not been on parade with the Platoon since 9 November, 1944.

(Sgd) D.N. Larocque L/Cpl
North Nova Scotia Highrs.

The accused declines to cross-examine this witness.

SECOND WITNESS For the Prosecution

C.19605 L/Cpl Larocque, D.N. sworn states: "I hereby present the original certificate in accordance with AA section 163 (1)(j) dated 30 December, 1944 and signed by an officer for the officer Commanding 10 CBR An relating to the accused, F.52375 Pte Robicheau, L.F.

(Sgd) D.N. Larocque, L/Cpl
North Nova Scotia Highrs.

The accused declines to cross-examine this witness.

Question to the accused

A. Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be used as evidence against you.

A. No, sir.

Q. Do you wish to call any witnesses in your defence at this point?

A. No, sir.

Rules of procedure 4 (c)(d)(e)(f)(g) have been complied with.

I certify that the foregoing summary of evidance consisting of two pages was taken down by me in writing in the presence of the accused, this 7 day of January, 1945.

(Sgd) M.A. McTague Capt
NNSH Officer i/c summary

In the Field
7 Jan 45.

DE

CERTIFICATE UNDER ARMY ACT SECTION 163 (i) (j)

Certified that No F.52375 Rank Pte Name ROBICHEAU, L.F.
of the North Nova Scotia Highrs Regt, surrendered to No E0090
Rank Pte Name De Ste Croix L. of the R.P.
11 Bn at 2 C.B.R.G. at 2115 hrs, on the 30th
day of Dec 1944 as an absentee without leave.
He was wearing Military Uniform at the time of his Surrender.
Place Leopold Barracks
Date Dec 30, 1944 (Sgd) ??????????Major
A/C. C. 10 C.B.R. Bn.

Exhibit "A"

CERTIFICATE UNDER SECTION 163 (1)(j) OF THE ARMY ACT DE

I certify that No. F.52375 Rank Pte Name Robicheau, L.F. of
North Nova Scotia Highlanders Regiment was arrested in Antwerp at
2145 hrs on Date 8 Jan 45 and at the time of his arrest he was wear-
ing Military Uniform

(Sgd) R.O. Dunn Lieut
No. 7 Gdn Prov Coy
i/c Antwerp Det.

Folio 154 Exhibit "B".

B.H.

MEDICAL CERTIFICATE

I certify that I have this morning examined

No. H-32375 Rank Pte Name Robicheau Initials L.F. Unit NNS Highrs

and in my opinion he is fit to undergo trial by Court-Martial

Station In the Field

Date 25 Jan 45

(sgd) K.A. Campbell, Capt
Medical Officer
North Nova Scotia Highlanders

EXHIBIT "B" ARMY FORM B 296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F.52375	Pte	Robicheau, L.F.	North Nova Scotia Highrs

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For 5 times.

[illegible] MJH times.

[illegible] MJH times. MJH

[illegible] MJH times. MJH

Date of first entry in Field Conduct Sheet [illegible]

Date of last entry in Field Conduct Sheet [illegible]

2. [illegible] MJH

*3. [illegible] MJH

[illegible] MJH day. MJH

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for [illegible] and for 24 days in military custody, *i.e.*, [illegible] days in open arrest, [illegible] days in close arrest; of which [illegible] days were spent in hospital.

5. The present age of the accused is 24

6. The date of his attestation is 28-4-43

7. [illegible] MJH

8. The accused is in possession of‡ C.V.S.M.

‡State the military decorations (if any) held by accused.

9. [illegible] MJH

[illegible] MJH

[illegible] MJH

[illegible] MJH

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*28972) Wt.20721/3701 32,000 9.44 A.& E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		--------NIL-------		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this _____ day of _____

(Sgd) M.J. Heffenan Capt & Adjt
North Nova Scotia Highlanders
Officer i/c records.

EXHIBIT "C"

No. F.52375 Name ROBICHEAU, L.F. Sqn, Battery, or Company — Corps RCOC CIC — Date of enlistment 28/4/43 — QC Badges — Service or Proficiency Pay — DE 3/17 MFM 6 (AFB 122) 40-P-85/136 (5423)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17 Dec 43	Pte		Sec 15(1) AWL from 0615 hrs 17 Dec 43 till 0635 hrs 17 Dec 43 (Absent 20 mins)	Sgt Cornett V.	7 days C.B.	17 Dec 43	GH William Major	
Crookham	20-3-44	Pte		Sec 15(1) AWL from 1900 hrs to 2100 hours 20-3-44 Absent 3 hrs	CSM Holland Sgt Emerson	3 days C.B.	21-3-44	Capt RH Simpson	
Crookham	19-3-44	Pte		Sec 15(1) AWL from 2359 hrs 13 Apr 44 till 2145 hrs 19 Apr 44 Absent 5 days 21 hrs 46 min	Documentary	14 days FP Auto forft 6 days pay cost of sapp. £1-10-7	21 Apr 44	Major RC Kelly	
Field	29-4-44	Pte		Sec 15(1) AWL from 1200 hrs 29 Apr 44 until 2359 hrs 2 May 44 absent 3 days 11 hrs 59 mins.	Documentary	27 days det.	4 May 44	Major RC Kelly	Auto for 32 day py

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	22 Aug 44	Pte		AA Sec 15(1) AWL from 1600 hrs 22 Aug 44 to 2245 hrs 28 Aug 44	Sgt Webster Documentary	forf 15 days pay PR&I 149 (2)	28 Aug 44	Lt-Col A.F.MacPherson	For 5 days pay PR&I 149(1)a

Certified true copy of M.F.M. 6 in my possession

(Sgd) M.J. Heffernan Capt & Adjt
North Nova Scotia Highlanders.
Officer i/c Records.

JOB NUMBER 44 REEL NUMBER 27

RETAKE CERTIFICATE

I HEREBY CERTIFY THAT THE MICROPHOTOGRAPHS APPEARING BETWEEN "START OF RETAKE" AND THIS "RETAKE CERTIFICATE" ARE TRUE COPIES OF THE RECORDS DESCRIBED BELOW.

"A" SIDE.

ROBICHEAU, L.F.

DATE SIGNATURE OF CAMERA OPERATOR

DEC. 8 1958 Gisèle Giasson

Book No. 7-5 R.F.
END OF RETAKE


44.87

START

SECOND

SIDE

DCM-B-14

Pl: Robinson DVF

B2.

CHARGE SHEET

Pres

W. B. Bate Capt
Judge Advocate

The accused, B144333 Pte Donald John Fredrick ROBINSON, Seaforth Highlanders of Canada, presently on strength 2 Canadian Base Reinforcement Battalion, 1 C.B.R.D., a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
Sec. 41
Army Act

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, MURDER

in that he

in the Field, in Italy, on or about 2 Aug 44, when on active service, murdered B138552 Pte Dillon, J. W. M., 3 Cdn Base Rft Bn, 1 C.B.R.D.

P. H. Stehelin
(P. H. STEHELIN) Major,
T/Comd, 2 Cdn Base Rft Bn,
1 C.B.R.D., Cdn Army, C.M.F.

In the Field,
31 August, 1944.

Approved as to form
W. B. Bate Capt
Adv Hq 1 Cdn Dep

TO BE USED BY GENERAL COURT MARTIAL

In the Field
In Italy
4 Sep 44

E W Haldenby
(E. W. HALDENBY) Brigadier
Comd 1 Cdn Base Rft Cp
Cdn Army-CMF

Q.2 Do you object to A59769 Sgt Lashbrook, R.E. 8 Bn 2 CB[illegible] hand writer ?

A.2 No sir.

The President, members and judge-advocate are duly sworn.

The following officer under instruction is duly sworn.

Capt J.A. McGowan (CAC) 5 Bn 2 CBRD

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Q.3 Are you guilty or not guilty of the (first) charge against you, which you have heard read ?

Question to the accused

A.3 Not guilty, sir.

Answer.

[illegible] *Question.*

Answer.

[illegible] *Question*

Answer.

[illegible] *Question.*

Answer.

[illegible]

Instruction.

If the trial proceeds upon any charge to which where is a plea of Not Guilty, the Court will not proceed upon the record of a plea of Guilty, until after the finding on that other charge.

RECORDED AT CMHQ IN AB 160 GCM-B-14

A

Army Form A 9.

**Form of Proceedings for General ~~Division~~ Courts-Martial.

Proceedings of a General Court-Martial held at Avellino, Italy and ~~Sorrento~~ on the 21, 22, 25, 26 and 28 days of September 1944 by order of

Brigadier E.W. Haldenby, MC VD

Commanding 1 Cdn Base Rft Group

Dated the 4th day of September 1944

President. 2D 87

Colonel S.A. Lee MC Comd 2 CBRD

Members.

Lt-Col J.G. Vining, ED (CAC) 5 Bn 2 CBRD

Lt-Col E.R. Gill, (RCCS) 7 Bn 2 CBRD

Major L.F.MacDonald, (RCCS) 8 Bn 2 CBRD

Major A.T. Brown (CIC) HQ 1 CBRGp

Judge Advocate

Capt W.B. Bate HQ 1 CBRGp

Trial of*

B144333 Pte Donald John Frederick ROBINSON, 2 Bn 1 CBRD

The order convening the Court, the charge-sheet and the summary (~~of evidence~~) are laid before the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court

Prosecutor, † Capt DW Rose (CIC) HQ 1 CBRGp (Lawyer)

~~Prisoner~~ § or defending officer † Capt NS Bergman 1 Cdn Conv Depot (Lawyer)

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked X signed by the President, and attached to the proceedings.

The names of the President and members of the Court read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Q.1 Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

A.1 No sir.

(N.B. – If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.

* Here insert No., Rank, full Name, Regiment, and Appointment (if any)

† Here state Rank and Name, and Regiment (if any)

§ Qualification to be stated.

3667 / PMEJ / 5,000 - 8/43

RECEIVED 29 NOV 1944 JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED

REVIEWING OFFICER JAG BRANCH C.M.H.Q.

L 116

SECOND WITNESS for Prosecution (Capt A. Verdicchio, RCAMC, Medical Officer, 2 Bn, (1 CBRD, having been duly sworn, is examined by (the Prosecutor

Q.14 Are you a qualified Medical Doctor ?
A.14 Yes sir.

Q.15 Do you recall the 2nd of August ?
A.15 Yes, I do.

By the Judge Advocate:

Q.16 This year ?
A.16 Yes.

Prosecutor:

Q.17 Will you tell the Court in your own words why you recall that particular night ?
A.17 On that particular night after dozing off to sleep, I was suddenly awakened from my sleep on hearing a couple of shots. A few minutes later I was called downstairs to the roadway in front of the entrance to 2 Bn. Officers' Mess, and there saw a soldier lying face downwards on the pavement.

Q.18 Will you point out on this sketch, (Exhibit "G"), the approximate point where you found the soldier lying ?
A.18 This point I am indicating is the spot where I found this Private soldier face downwards. (Marks point X on sketch).

Q.19 How would you describe this approximate position in relation to the Mess ?
A.19 The approximate position is about ten yards from the stairs leading up to the Mess.

Q.20 Will you describe your examination of the body ?
A.20 I examined the man and found his head lying in a pool of blood. I removed his hat and immediately noticed a large wound on his forehead to the right of the mid-line. He was breathing well and his pulse was fair. I examined the remainder of his head and felt a wound at the back of his skull which was dripping blood into my hand. I didn't examine any further then. I called for shell dressings, bandaged his head and called for a stretcher and a vehicle from the unit. A man took him to the MIR. There I examined his chest. The full particulars of the man were noticed on his identity discs. His name was obtained from the discs for the hospital records in order to fill out the admittance slip. The vehicle then arrived and I despatched him with my Corporal to No 3 Cdn Gen Hosp.

Q.21 What time was that ?
A.21 I didn't notice the time at the start, but when the patient had been sent to the hospital, I noticed it to be about 2330 hours.

Q.22 You mentioned a wound in this man's head. Where was that wound ?
A.22 The wound that I saw was on the forehead up close to the hair line to the right of the mid-line.

Q.23 Where was the second wound ?
A.23 The second wound which I felt was in the back of his skull. I didn't see the second wound.

Q.24 What unit did this man belong to ?
A.24 His shoulder flashes showed him as Hastings and Prince Edward Regt.

Proceedings on Plea Not Guilty.

*Instruction. (See R. P. 39 (A))

Question: Q.4 *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer: A.4 No sir.

The prosecutor makes an opening address (xxxx

Prosecutor's Opening Address

There will be put in evidence a plan of Canada Barracks to assist the Court, followed by such medical evidence as is now available. Following the medical evidence, there will be evidence offered to show that the accused was recognized near the scene of the crime a short time before, and when his quarters were searched, a weapon was found hidden away near his bed, that weapon belonging to the accused and showing signs of having been recently fired. There will be evidence offered that one Pte Willcock was held up about an hour before the body of Dillon was found, and his Glengarry and a fountain pen were removed from his person. Evidence will also be adduced to show that the pen taken from Pte Willcock was found on the person of the accused. I think you will find the evidence will more or less flow together to establish the prosecution's case.

Cross-examined:

Q.25 Will you describe a little more fully the description of the body as you saw it first ?
A.25 Yes. As I saw him first, the patient was lying flat on his face: as we say, in a prone position, with his left cheek lying on the pavement in this position. (Indicates).

Q.26 How do you determine which is the point of entry and which is the point of exit of a wound ?
A.26 On detailed examination, the point of entry is usually described as being small fairly clean point on the top of the wound. The point of exit of a through and through wound shows more fragmentation and is larger.

Q.27 What is the first time you examined him to establish his identity ?
A.27 I examined his identity discs in the middle of the road as soon as we got him on the stretcher.

Q.28 That is the only means you had of identifying him ?
A.28 That is all, sir.

Q.29 Did you check his paybook ?
A.29 I did not.

Q.30 I suggest to you that you had something to do with another set of identity discs that evening ?
A.30 That is true. I saw some other identity discs that evening.

Q.31 Where did you see them ?
A.31 I saw them in the hand of Capt McKee.

Q.32 And was that out on the roadway of Canada Barracks or was it some where else ?
A.32 I saw them in my own room.

Q.33 What were the circumstances of your seeing these identity discs ?
A.33 The discs were offered to me as a means of identifying a patient by Capt McKee.

Q.34 Did you handle the identity discs at all ?
A.34 As far as I recall, I did.

Q.35 Is there any possibility that this body was shot while lying on the ground ?
A.35 The possibility always remains, sir.

Q.36 Why do you say that ?
A.36 It could have happened.

Q.37 What opinion did you come to as a result of the examination of the wounds ?
A.37 The opinion I came to was that this man had been shot through the head and fell face downward on the roadway.

Q.38 Having regard to the size of the wound that you saw, is it probable that the wounded man walked for some distance or was thrown right down on the roadway ?
A.38 I would consider it unlikely that he walked for any distance at all.

Q.39 Do you think it possible, from that type of wound, for a man to fall and try and get up again or not ?
A.39 He became unconscious the moment he was wounded.

Q.40 Did you check the fingernails of this man ?
A.40 No, I didn't.

Q.41 Can you tell us what happened to the beret when you took it off ?
A.41 When I took the beret off I held it up and handed it to someone among the bystanders.

COUNTER NUMBER 5725-73

HOUR 14.50

OPERATOR'S INITIALS E.M.

RELIEVING OPERATOR _____

COUNTER NUMBER 5720-73

HOUR 14.50

OPERATOR'S INITIALS E.M.

RELIEVING OPERATOR R.D.

Q.42 Where did you see the beret again ?
A.42 After the patient had gone to hospital, the beret was brought into the MIR by a Lieutenant. I believe he was the Guard Commander.

Q.43 What happened to it then ?
A.43 Well, I looked at it, noticed a hole in the back, one in the front, The inside was filled with blood.

Q.44 Now in applying your shell dressing would you touch the wound at the front or rear ?
A.44 I didn't make any attempt to clean up the wound.

Re-examined:

Q.45 The identity discs that you examined on the wounded man, how were they attached to him ?
A.45 They were attached, but I cannot recall whether it was by a piece of string or by a chain. Whether they were attached in the appropriate manner I cannot say. They were around his neck.

Q.46 What did you do with them ?
A.46 I merely looked at them , took the information from them, name and number, and left them in place.

By the Court:

Q.47 Will you indicate on your head the point of entry and the point of exit on your own head ?
A.47 There was a wound there and a wound there as far as I can remember. (The witness indicates a wound in the forehead and a wound in the back of the head, the latter wound being lower than the former).

Q.48 Were there any other marks on the face or elsewhere ?
A.48 None that I saw or took the trouble to look for.

Q.49 Any powder burns ?
A.49 No, Ididn't see any obvious powder burns.

Q.50 Can you give the Court the approximate time when the wounded man was moved to the hospital ?
A.50 It would be around 2300 hours. That is an approximation.

Q.51 In your opinion, which of the two wounds did you consider to be the wound of entry ?
A.51 My first impression when I saw him and examined him, - not having seen but merely felt the wound at the back - was that the large wound in the forehead was the wound of exit.

Q.52 Have you had any cause to change your opinion from your own examination ?
A.52 I have had no opportunity of examining the patient further.

By the Judge Advocate:

Q.53 Was the wounded man conscious ?
A.53 He was unconscious.

Q.54 Did he regain consciousness when he was in your hands ?
A.54 No.

Q.55 What was the name you saw stamped on the identity discs which were around the wounded man's neck ?
A.55 Pte Dillon.

Q.56 And the number ?
A.56 I don't recall the number.

Q.57 The initials ?
A.57 No.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

THIRD WITNESS (K52039 Cpl Stewart, R. 2 Bn, 1 CBRD
for Prosecution (having been duly sworn
(is examined by the Prosecutor

Q.58 What are your duties, Corporal ?
A.58 My duties - I am the Medical Corporal in the MIR.

Q.59 Do you recall the night of the 2nd of August, 1944 ?
A.59 I do, sir.

Q.60 Will you tell the Court in your own words what happened that night ?
A.60 As to the approximate time, I think it was around 2330 hours. I was in my bed and shortly after retiring I heard some shots being fired. Of course I didn't think anything of it at the time. Shortly afterwards I was awakened and was told .....

Judge Advocate:

You cannot repeat conversations that you had with anybody unless the accused, Pte Robinson, was present. You can state that you had conversation, and as a result of such conversation you did something or were ordered to do something. You can state that somebody gave you orders and then you can tell what you did after that.

By the Prosecutor:

Q.61 Will you point out to the Court where you were in relation to the spot marked "X" on Exhibit "G" ?
A.61 Here. (Witness indicates the spot where he was).

Q.62 What did you do when you arrived at that spot ?
A.62 I immediately applied a field dressing to the injured man's head. As I put the bandage on, I found there was more blood coming from the back of his head. I then applied another shell dressing to his head at the back. He was then placed on a stretcher and carried into the MIR. When he was in the MIR, we wrote out the admittance slip for him to be admitted to the hospital. I read off from the identity discs the number, rank and name of the wounded man to the Medical Officer. Then when transportation came I went with the patient to the hospital. When we arrived there, I believe it was Major Davidson who looked into the case. I am not certain whether it is Major Davidson or Major Howard. I was opposite Major Davidson when the dressings were taken off.

Q.63 What hospital was this ?
A.63 The hospital was No 3 Cdn Gen Hosp, sir.

Q.64 Where were the identity discs ?
A.64 The identity discs were on his neck, sir.

Q.65 What were the particulars you read off those discs ?
A.65 His number and his rank and name was on it.

Q.66 What was the name ?
A.66 The name was "Dillon".

Q.67 Do you recall the number ?
A.67 No sir, I don't.

Q.68 Why did you read the particulars to the Medical Officer ?
A.68 The light in the MIR is very poor. At the time he couldn't find out who this man was. That was when I looked for his identity discs.

Q.69 Why did you read them out to the Medical Officer ?
A.69 The light was very poor. He couldn't see it.

P.W.C.

Q.70 Did you not read them out to the Medical Officer in order to give the particulars to him ?
A.70 Yes sir.

Cross examined:

Q.71 When you read out those particulars, did Capt Verdicchio fill out the hospital admission slip ?
A.71 Yes sir.

Q.72 The only information that Capt Verdicchio had of the wounded man was something you told him ?
A.72 From the identity discs.

Q.73 You read out the name and number from the identity discs to Capt Verdicchio, is that correct ?
A.73 Yes sir.

Q.74 Then you read out the particulars on the hospital admission slip?
A.74 Yes sir.

Q.75 Then, the only information as to the identity of the wounded man on the hospital slip was something you told Capt Verdicchio ?
A.75 Yes, sir.

Q.76 You say you applied a shell dressing ?
A.76 Yes sir.

Q.77 What was Capt Verdicchio doing ?
A.77 He applied the first one and I applied the second. I saw more blood on the back of his head. I tore up the first shell dressing and gave it to Capt Verdicchio.

Q.78 Did you notice which wound was the larger of the two ?
A.78 The wound on the forehead was larger than the one on the back of the head.

Q.79 You saw that yourself.
A.79 Yes sir.

No Re-examination.

By the Court:

Q.80 In the MIR were you the only one who examined the patient ?
A.80 There was another officer. On account of the bad light he couldn't make head or tail of the identity discs. That is when I looked at it myself.

Q.81 Did you see the MO examine the patient ?
A.81 Yes sir.

Q.82 Will you describe to the Court how he examined the patient ?
A.82 When I got there Capt Verdicchio was there ahead of me. That is when we applied the first field dressing.

Q.83 In the MIR ?
A.83 The shell dressings were all on him.

Q.84 Were there any further examinations of the patient at that time ?
A.84 Not that I remember.

Q.85 You mentioned hearing shots fired. Did Pte Dillon have any weapon near him ?
A.85 I didn't see any, sir.

Q.86 Did you see the MO examine the identity discs about the neck of the patient ?
A.86 No sir.

W.B.

Q.87 Who did you say applied the first dressing and the second dressing ?
A.87 Capt Verdicchio applied the first one. That is when I saw the blood at the back coming through the bandage.

Q.88 Now describe what you saw on the identity discs ?
A.88 On his identity discs, all I remember seeing was the number, rank and name.

Q.89 You saw his number, rank and name ?
A.89 Yes, sir.

Q.90 Did you recognize the initials ?
A.90 The initials also.

Q.91 Anything else ?
A.91 No sir.

Q.92 Do you recall what initials were on the disc ?
A.92 No, I can't recall that at all.

Q.93 Do you recall how many initials ?
A.93 No, I don't recall that at all.

By the Judge Advocate:

Q.94 Who took charge of the wounded man when he arrived at No 3 Cdn Gen Hosp ?
A.94 Major Davidson took over, I believe, sir.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

FOURTH WITNESS (U1672 Pte Aedy, J.A. 3 Cdn Gen Hosp RCAMC for Prosecution (having been duly sworn (is examined by the Prosecution

Q.95 What are your duties in the hospital ?
A.95 A & D Clerk, sir.

Q.96 Will you explain to the Court what "A & D" mean ?
A.96 Admission and despatch of patients, sir.

Q.97 Do you recall the night of the 2nd of August, 1944 ?
A.97 Yes, sir.

Q.98 Why ?
A.98 I was on duty, working nights from 1900 hours to 0700 hours in the morning.

Q.99 What day ?
A.99 The 2nd of August.

Q.100 1944 ?
A.100 Yes sir.

Q.101 What happened that night ?
A.101 At approximately 2330 hours a truck drove up to the A & D and a stretcher patient was brought in. I took his regimental particulars and 'phoned for a Medical Officer, the Surgical Officer, Major Davidson.

Q.102 Where did you get the particulars from ?
A.102 Read the rank, name and initials and religion from the identity discs on the body, sir.

Q.103 Did you examine the discs ?
A.103 No sir.

Q.104 What were the names read out ?
A.104 Pte Dillon.

J.A.A.

Q.105 What happened to that patient ?
A.105 He was sent to the Surgical Officer, sir, and then transferred to 65 British Gen Hosp.

Q.106 How did he go to the hospital ?
A.106 He was sent in an ambulance, sir.

Q.107 What is the practice at your hospital when a patient is sent out ?
A.107 His discharge papers are typed, sir, and he is put in the ambulance and sent out. That is all, sir.

Q.108 Will you explain to the Court what happened that night when you admitted that patient ?
A.108 He was brought in the A & D on a stretcher.

Q.109 Who brought him in ?
A.109 I don't know who brought him in, sir.

No Cross-examination.

By the Judge Advocate:

Q.110 Do you know what day it was that this patient was transferred to No 65 British Gen Hosp ?
A.110 Yes.

Q.111 Well, what day ?
A.111 The 2nd of August, sir.

Q.112 That same night ?
A.112 Yes sir, 2355 hours approximately, sir.

Q.113 When a patient is transferred by ambulance fron one hospital to another, does the hospital discharging the patient forward any documents along with the patient ?
A.113 Yes.

Q.114 What documents ?
A.114 The hospital admission slip and any other papers the Surgical Officer writes up.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

FIFTH WITNESS(Major J.R. Davidson, 3 Cdn Gen Hosp RCAMC for Prosecution (having been duly sworn (is examined by the Prosecutor

Q.115 You are a qualified Medical Doctor ?
A.115 I am.

Q.116 Do you recall the night of the 2nd of August, 1944 ?
A.116 I do.

Q.117 Will you tell the Court what happened that night ?
A.117 At approximately 2330 hours, I was called to the admitting room to see a man who had suffered from a through and through wound of his skull. He was unconscious. I removed the dressing which had been applied and examined the patient. I found a through and through wound of the skull. Brain tissue was exuding from the wound in the forehead. I re-applied fresh dressings and ordered the man to be taken to No 65 British Gen Hosp.

Q.118 In your opinion what caused the wound.
A.118 In my opinion it was caused by some sharp missile, probably a rifle or a revolver bullet.

Q.119 Will you point out on your own head where the two wounds in the head were ?
A.119 As closely as I can remember, sir, the one was approximately on the back of the head, and the other was on the forehead. (The witness indicates the position of the two wounds; the one at the back of the head being the lower down than the one on the forehead).

Cross-examined:

Q.120 Do you know who this patient was ?
A.120 No sir. I believe it was Pte Dillon. I just heard his name mentioned from his documents. It is more important for a medical man working in a hospital to treat the patient than to find out who he is.

Q.121 Did you at any time take any specific steps to establish the identity of this patient in your own mind ?
A.121 No sir.

Q.122 How do you determine which is the point of entry and the point of exit ?
A.122 It is generally believed that the wound of entrance of a bullet entering the skull is what might be termed a clean-cut hole, while the wound of exit usually shows fragmented bone.

Q.123 If any difference of opinion arises between the opinion formed by the medical officers first attending a wounded man and the doctor conducting a post-mortem examination, subsequently, which would you suggest to the Court would be more accurate ?
A.123 Do you refer to a man examining the wound after he had been operated on ?
Q.124 If there had been previous interference by a surgeon, would you explain the difference in the wounds then ?
A.124 It is possible, had there been previous treatment, the wounds of exit and entrance might be confused.

Q.125 Now, did you make any other examination of this patient apart from the head injury ?
A.125 Just as to his general condition, checking his pulse.

Q.126 Did you check his fingers or fingernails ?
A.126 No, I did not.

Q.127 What, Doctor Davidson, was the extent of your interference with that wound - the amount of treatment ?
A.127 There was no interference apart from applying fresh dressings to the skull and bandaging the head.

Q.128 Now, for the purpose of getting a little technical information across the Court, is there such a bone as an occiptal bone ?
A.128 That is the bone at the back of the head, part of the skull.

Q.129 How would you describe the right frontal bone ?
A.129 The right frontal bone refers to the case of the skull. The right frontal bone would be on the right side of the mid-line, beneath which lies the frontal lobe of the brain.

Q.130 I would like you to answer the next two questions, if possible, by merely stating "yes" or "no". Have you ever heard of injury by contracoup.
A.130 Yes.

Q.131 Has this injury by contracoup ever been satisfactorily explained by medical science ?
A.131 I cannot answer that question "yes" or "no".

Q.132 Injury by contracoup is still a contentious question in medical science ?
A.132 I don't think that is a fair way of putting it.

No Re-examination.

By the Judge Advocate:

Q.133 When you were indicating the position of the wound, front and rear, with your finger, am I to assume that at the front that was the approximate position in the wounded man's forehead.
A.133 I cannot state definitely, only approximately.

Q.134 From what medical school did you graduate ?
A.134 McGill.

Q.135 In what year ?
A.135 1929.

Q.136 You have been practising medicine and surgery ever since ?
A.136 Yes.

Q.137 Which of the two wounds was the wound of entrance?
A.137 In my opinion the entrance was at the back.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

SIXTH WITNESS (B142030 Pte Sheluk, R. 3 Cdn Gen Hosp, RCAMC for Prosecution) having been duly sworn is examined by the Prosecutor

Q.138 What are you employed at in the hospital ?
A.138 As a Nursing Orderly.

Q.139 Do you recall the evening of the 2nd of August, 1944 ?
A.139 Yes, sir.

Q.140 What happened that evening ?
A.140 I was just having supper. At approximately 2330 hours a case came in which we attended to. At approximately 2355 hours we put him in an ambulance, and I went down to 65 British Gen Hosp with him.

Q.141 Who was this patient ?
A.141 According to his papers, it was Pte Dillon.

Q.142 What did you do when you got him at 65 British Gen Hosp ?
A.142 We took him in to the A & D room and they looked after him there.

Q.143 Did you examine this patient ?
A.143 No sir.

Cross-examined:

Q.144 The only way you know who this patient was is from his papers he carried ?
A.144 Yes sir.

Q.145 The only method ?
A.145 Yes sir.

By the Judge Advocate:

Q.146 Did you see the patient when he came into 3 Gen Hsop.
A.146 I wasn't there when he came in.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

SEVENTH WITNESS(4610847 Sgt Fieldhouse, W. RAMC, 65 Brit Gen Hosp
for (having been duly sworn
Prosecution(is examined by the Prosecutor

Q.147 Do you recall the night of the 2/3 August, 1944 ?
A.147 Yes sir.

Q.148 What were you doing that night ?
A.148 I was night wardmaster at 65 Gen Hosp.

Q.149 Did anything happen that night ?
A.149 During the night, about a quarter to two, Pte Dillon was brought into the hospital with a gun shot wound in the head. He was sent to the Duty Officer and admitted to 65 Gen Hosp.

Q.150 Who brought the patient in ?
A.150 An ambulance from 3 Cdn Gen Hosp brought the patient in. I don't quite recall whether there was an orderly or just the driver with him. There was definitely someone who brought him in and handed him over.

Q.151 How did you obtain the particulars of this man ?
A.151 From his documents.

Q.152 And you said the Orderly Officer admitted him ?
A.152 Yes sir. Admitted him from 3 Cdn Gen Hosp.

Q.153 Who is that Orderly Officer ?
A.153 Capt Grossman.

Q.154 Did you ever see this patient again ?
A.154 No sir.

Q.155 Was there anyone else present ?
A.155 I don't think there was sir. I don't recall, sir.
Cross-examined:
Q.156 How did you know this man was Dillon ?
A.156 From the documents.

Q.157 Did you make any other check ?
A.157 No sir.

Q.158 How did you know it was an ambulance from 3 Cdn Gen Hosp ?
A.158 From the transfer slip.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

EIGHTH WITNESS(Capt W. Grossman, RAMC, 4 MFSU
for (having been duly sworn
Prosecution(is examined by the Prosecutor

Q.159 Are you a Medical Officer ?
A.159 Yes sir.

Q.160 Will you state to the Court the University or College you attended?
A.160 The University of Prague.

Q.161 Are you licensed as a Medical Officer ?
A.161 Yes sir.

Q.162 Where ?
A.162 At the General Medical Council in London.

Q.163 When was that ?
A.163 In 1936.

Q.164 Do you recall the night of the 2nd of August, 1944 ?
A.164 Yes.

W.B.B.

Q.165 Will you tell the Court what happened that night ?
A.165 At about a quarter to two in the morning I was called to see a patient who was admitted to 65 British Gen Hosp, transferred to that hospital from No 3 Cdn Gen Hosp. The patient was suffering from a through and through gun wound on the right side of his head. He was deeply unconscious. He did not respond to any questions or pain. I arranged his resuscitation and transferred him to the Resuscitation Ward. I also informed the surgeon on duty from the Neurosugical Unit who took over this case immediately.

Q.166 Will you describe to the Court where these wounds were in this man's head, either by pointing out or - - - ?
A.166 I did not disturb his dressings, but the wound appeared to be on the right side of the forehead and the right side of the back of the head.

Q.167 What were your particular duties with this man ?
A.167 Only Orderly Medical Officer.

Q.168 How many cases did you admit that night ?
A.168 I admitted only one case of gun wound of the head.

Cross-examined;

Q.169 If you did not disturb the surgical dressings, Doctor, then you didn't see the actual holes in the head that evening ?
A.169 No.

Q.170 It was some time subsequent to this that you saw the patient again?
A.170 I saw him in his ward the next day.

Q.171 By that time had he had some treatment to his head ?
A.171 Yes.

Q.172 How do you determine which is the point of entry and the point of exit of a bullet ?
A.172 The exit wound is usually far bigger than the entry wound. The exit wound is more extensive than the entry wound. You can also sometimes determine the entry wound by finding powder grains from the actual bullet.

Q.173 Those are the characteristics of pistol or revolver wounds ?
A.173 Yes sir.

Q.174 Did you get any information about the wounds after the surgical dressings were removed ?
A.174 No sir.

Q.175 What X-Rays did you actually order for this patient ?
A.175 I ordered him for immediate X-Ray.

Q.176 X-Ray of the head ?
A.176 Only the head.

Q.177 How did you identify this patient ?
A.177 He had a slip of paper with his name on it.

Q.178 You identified him from his medical documents ?
A.178 Yes sir.

Q.179 Did you take any other steps to identify him except from his medical documents.
A.179 No.

No Re-examination.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

J.A.G.

NINTH WITNESS (H/Capt J. Tootell, CFRC
for (Having been duly sworn
Prosecution (is examined by the Prosecutor

Q.180 What is your appointment, padre?
A.180 I am RC Chaplain for 65 British Gen Hosp.

Q.181 Do you recall the evening of the 2nd of August, 1944?
A.181 I don't just recall the day. According to my diary it was on the night of the 2nd of August. I don't just remember the day as I say. I saw the boy on the 2nd of August.

Q.182 Do you recall what time?
A.182 I can't remember the time I was called to him.

Q.183 To whom were you called to see?
A.183 Dillon.

Q.184 Did you see Dillon again?
A.184 I was called to the boy Dillon. I attended to him. He was unconscious. I visited him frequently until I went to bed.

Q.185 What hospital was this?
A.185 He was in No 65 British Gen Hosp.

Q.186 What ward was he in?
A.186 He was in Ward I and later was moved to Ward 3.

Q.187 Did you have anything further to do with this man Dillon?
A.187 Nothing at all.

Q.188 When did you cease to see the patient?
A.188 I saw him on the 2nd of August. We always keep visiting a patient until he regains consciousness. The actual time of his death, I can't remember.

Q.189 Do you recall the date of his death?
A.189 The date I have for his death - the 7th, the day he was buried. I buried him on the 7th.

Q.190 Where did you bury him?
A.190 At the new British Military Hospital Burial Grounds outside Naples.

Q.191 Under what name did you bury him?
A.191 Dillon.

Cross-examined:

Q.192 Padre, are you positive that it was the 2nd of August that you saw him?
A.192 I looked in my diary after seeing the patient and made the entry.

Q.193 Did you make this entry in the diary either at the time you saw him or shortly afterwards?
A.193 I make the entries immediately or fairly soon afterwards. The date is the 2nd of August.

Q.194 That entry that you have made there, is a reasonably accurate entry? I want you to be satisfied that it is right in your own mind?
A.194 Yes.

Q.195 In making up your entries in your diary, does a new day start after midnight, or if you made an entry a few minutes after midnight, would you make the date of the entry the day before?
A.195 As soon as I attend to the patient, if it is that day, the 2nd of August, I should say the 2nd of August. If it was three o'clock in the morning, I would make the entry as the third.

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Q.196 But the individual or patient that you saw on the 2nd of August, is that the patient you buried on the 8th?
A.196 Yes.

Q.197 Then, did you bury him on the 7th?
A.197 Yes.

Q.198 Have you a record of the burial?
A.198 When I buried him I signed the form.

Q.199 Did you make an entry in your diary?
A.199 Yes.

Q.200 I suggest to you that you made that burial statement on the 8th. I am suggesting to you that he was buried on the 8th of August?
A.200 Yes.

Q.201 Would that be correct?
A.201 I took it as the 7th of August.

Q.202 I'll show you your original statement on the Summary of Evidence .....
A.202 From memory this morning, I thought it was the 7th. I attended to him on the 7th. I don't remember the record in the diary of the day I buried him. I abide by my writing.

Q.203 You are stating to the Court that the body you saw on the 2nd of August is the one you buried on the 8th?
A.203 Yes.

Q.204 You are reasonably certain you saw him on the 2nd of August?
A.204 Yes.

Q.205 You are certain that the man you saw on the 2nd of August is the man you buried on the 8th. Is that correct?
A.205 Yes sir.

No Re-examination.

By the Court:

Q.206 What time on the 2nd did you visit this man Dillon?
A.206 I can't remember. I don't make reference in my diary to time.

Q.207 You do not refer to your watch when making entries in your diary. Then, if it was during the night how do you know it was before or after midnight to establish the 2nd? You wouldn't know if it was a minute to 12 or a minute after 12?
A.207 I do not wish to make a definite statement as to the time when I saw the patient.

By the Defending Officer: (with the Court's permission)

Q.208 I want the Court to be satisfied that there is no mistake in the entry in his date book. He has already stated to the Court that it was the 3rd of August. If you saw that man at two o'clock in the morning, you would make that entry on the 3rd?
A.208 Yes sir.

Q.209 You are very satisfied that you saw this body sometime prior to the 3rd of August?
A.209 Yes.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

The Court adjourned at 1210 hrs.

The Court re-opened at 1430 hrs, the same members being present.

By the Court: (to the accused)

Q.210 Do you object to K.68696, Sgt Brown, F.C., H.Q., 1 CBR Gp, as shorthand writer?
A.210 No sir.

The shorthand writer is duly sworn.

TENTH WITNESS (B.72921, Pte Wilcock, A.H. (48 Highrs) 3 Bn 1 CBRD for Prosecution (having been duly sworn is examined by the Prosecutor

Q.211 Do you recall the night of 2nd August, 1944?
A.211 Yes sir.

Q.212 Would you tell the Court what happened on that night?
A.212 On the night of 2nd August at about 2015 o'clock I was walking along the west side of the Petawawa Bldg going south. About half way down a fellow came up and put a gun in my side. Then, he looked at me and saw my Glengarry and said, "I could do .....

Q.213 Before you go too far will you tell the Court exactly what happened when you met with this other fellow?
A.213 He stepped up to me, spoke, and looking at my Glengarry, took it from my head. He took my fountain pen out of my pocket and then marched me on towards 3 Bn MIR. Then I saw a fellow coming along by the garage. I hollered at him and he came over. We walked on until we got as far as 1 Bn Offrs' Mess. Then I didn't feel the gun in my back.

Q.214 Will you describe the Glengarry to the Court?
A.214 My Glengarry is a red diced one. It had air holes in it. My name "Wilcock" was inside. The badge is rounded and punched out.

Q.215 I produce and show you a Glengarry. Would you examine it?
A.215 This is my Glengarry, sir. (48 Highrs Glengarry with name "A.H. Wilcock" inside, admitted and marked Exhibit "H")

Q.216 Will you describe to the Court the fountain pen that was taken that night?
A.216 My fountain pen was a grey pen with white running through it. It has tooth marks at one end. The original name has been scratched off.

Q.217 I now produce to you two fountain pens. Would you examine them?
A.217 This is my pen, sir. (Holding up one)

Q.218 Will you show the Court any identification marks?
A.218 Yes. (Witness points out to the Court the teeth marks on the pen. Fountain pen admitted and marked Exhibit "I".)

Q.219 Can you describe this man?
A.219 The only thing I recall is the Seaforth flashes. This is all I remember.

Q.220 Did you see the weapon?
A.220 All I saw was the gun and I cannot tell you ----

Q.221 What did you do?
A.221 I went to the Guard Room and reported.

Q.222 Whom did you report to?
A.222 I reported to the Sgt in the Guard Room.

Q.223 What did you do after you reported?
A.223 After I reported I looked around outside in the area around the Ottawa Bldg and found nobody. I then went to bed. At 0200 hrs, Capt Cameron and Capt Mills awakened me and took me to the Guard House.

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Cross-examined:

Q.224 What kind of a night was it?
A.224 It was a fairly dark night.

Q.225 Do you remember a moon?
A.225 It wasn't shining.

Q.226 Approximately what would be the normal area distance of vision that evening?
A.226 I don't know.

Q.227 Estimate it?
A.227 Maybe 50 yards.

Q.228 Did you get a chance to get away? You were marching some distance without having any weapon in your back?
A.228 I got to 1 Bn Offrs' Mess and didn't feel it any more.

Q.229 Are you sure you were going towards 1 Bn MIR?
A.229 Yes sir.

Q.230 What were you doing at the Offrs' Mess?
A.230 He came back with me.

Q.231 I now show you Exhibit "C", a sketch of Canada Bks. Point out the approximate position where you were held up?
A.231 Approximately here. (The witness marks point with an "A" on sketch.) This is the place where he held me up.

Q.232 Continue from where he held you up?
A.232 We proceeded down this way (indicates southward) to the MIR walking along the Petawawa block, turned left, proceeded east, then north and then east over to approximately the Offrs' Mess.

Q.233 Indicate with the letter "B" where the man left you?
A.233 Here sir. (Witness marks point with letter "B" on sketch)

Q.234 Does it not strike you as a little queer that he should march you in the direction of the Main Guard Room?
A.234 I happened to turn that way.

Q.235 When did you stop feeling the weapon in your back?
A.235 I didn't feel ---- I thought it was a good thing to keep walking.

Q.236 You had the courage to call for assistance?
A.236 Yes sir.

Q.237 What gave you this new found courage?
A.237 I wasn't very far from the chap who was walking towards the Offrs' Mess.

Q.238 Was the individual who held you up wearing a hat?
A.238 He wasn't sir.

Q.239 Was he wearing Seaforth flashes?
A.239 Yes sir.

Q.240 What were you doing out at 2215 hrs?
A.240 Out getting air.

Q.241 Do you usually go out to get air at that time?
A.241 Not usually, no sir.

Q.242 Did you hear any shots that night?
A.242 No sir.

Q.243 You said after the incident you went to bed?
A.243 We left the Guard Room to go to bed.

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Q.244 How long did the incident take from the time you were held up until you got into bed?
A.244 15 minutes.

Q.245 How much did you have to drink that evening?
A.245 A few drinks.

Q.246 What of?
A.246 Vermouth.

Q.247 How many glasses?
A.247 About five glasses, sir.

Q.248 You were sober were you?
A.248 I wasn't exactly sober nor drunk.

Q.249 Did you feel the drinks?
A.249 No sir.

Q.250 Have you any idea as to how many Seaforths were at Canada Bks at that time?
A.250 I have no idea.

Q.251 Do you remember a draft coming in just before this incident?
A.251 Yes sir.

Q.252 Was this a few days before the incident?
A.252 I don't know sir.

Q.253 Do you remember if there were any Seaforths in the camp that particular day?
A.253 There may have been.

Q.254 Do you know?
A.254 There might have been.

Q.255 Did you not notice several?
A.255 Yes.

Q.256 Were there many around on parade on this day?
A.256 There were a few.

Q.257 So it wasn't unusual?
A.257 No.

Q.258 You must have gone to sleep very quickly?
A.258 I wasn't very long.

Q.259 Did the incident bother you a greadeal?
A.259 It scared the living daylights out of me.

Q.260 You recovered very quickly. Were you in fear of your mortal life?
A.260 I would not say that. No sir.

Q.261 It didn't bother you very much?
A.261 No.

Q.262 How long have you been in the 48 Highrs?
A.262 Five years.

Q.263 Ever been court martialled?
A.263 Never.

Q.264 Are you rft or PE?
A.264 Rft.

Q.265 Now what happened to the man whose assistance you called?
A.265 After I called him over he walked away.

Q.266 Did he accompany you to the Guard Room?
A.266 No sir, he didn't. I just turned around to him and then said "good-night" to him.

Q.267 Didn't you feel a little foolish when nobody was there?
A.267 I didn't worry very much.

Q.268 Didn't you want anyone to substantiate your story?
A.268 I didn't worry. I reported to the Guard Room.

Q.269 Was such conduct normal?
A.269 No sir.

Q.270 Would you act accordingly if you hadn't been drinking?
A.270 No sir.

By the Court;
Q.271 Would you recognize the gun; the one the man extended when he held you up?
A.271 No sir, I couldn't say.

Q.272 Was it large or small?
A.272 It looked like an automatic revolver. (Witness is shown sketch, Exhibit "G".)

Q.273 You were walking in that direction (North)?
A.273 Yes sir.

Q.274 Where did you first see the other man?
A.274 When we got here. (Witness marks point with a "C" on sketch.) The other man was here. (Witness marks point with a "D" on sketch.) The man at point "D" came towards me. I called out to him. He hesitated and stopped as he came towards me.

Q.275 Was there any conversation between the man you met and the man who held you up?
A.275 No sir.

Q.276 Was there any conversation between the man who held you up and yourself?
A.276 No sir.

Q.277 Did you indicate to the man you met that you were held up?
A.277 I said that a fellow held me up with a gun and he chuckled. I emphasized it to him again but he just laughed and walked beside me on the right.

Q.278 Did you feel the pressure of the gun in your back, still, as you walked along?
A.278 Part of the way to the Offrs' Mess.

Q.279 Did you hear any footsteps to indicate to you that the man was leaving the two of you?
A.279 No sir.

Q.280 You remember what type of footwear he wore?
A.280 No sir.

Q.281 How far from the man were you when you met him at the corner?
A.281 About 25 feet when I first saw him.

Q.282 Did he come up to you or were you going towards him?
A.282 I just seemed to run bump into him.

Q.283 You didn't notice him?
A.283 No sir.

Q.284 He confronted you face to face?
A.284 Yes sir.

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By the Judge Advocate:

Q.285 Would you point out on Exhibit "G" the location of the Guard Room to which you went?
A.285 Here sir. (Witness indicates point "E" on sketch.)

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83 (B).

ELEVENTH WITNESS (K.30716 Sgt Whynot, R.H. (WEST NSR) 1 Bn 1 CBRD for Prosecution) (having been duly sworn) (is examined by the Prosecutor

Q.286 What duties do you perform at your unit?
A.286 Provost Sgt 1 Bn.

Q.287 Do you recall the evening of 2 Aug 44?
A.287 Yes sir.

Q.288 What happened?
A.288 At approximately 2245 hrs on the 2nd Aug 44, I was in my Guard Room making out my Guard Report. I heard one shot fired. I immediately left my work and ran from the Guard Room.

Q.289 Where did the shot come from?
A.289 From my estimation it seemed to come from the direction of the Carleton & York and Hast PER Bks.

Q.290 Would you point out where these bks are, please?
A.290 (The witness points to the Kingston Block.) I thought the shots came from the Kingston Block.

Q.291 Where were you at that time?
A.291 I was here. (Marks point with an "E" on the sketch.)

Q.292 After you left the Guard Room what happened?
A.292 When I was outside I heard two more shots fired.

Q.293 Where did they come from?
A.293 The same direction I thought.

Q.294 When you got outside did you notice anything unusual?
A.294 No sir. There were quite a few drunks around that night.

Q.295 What did you do then?
A.295 I stopped for a moment at the entrance of the Borden Block looking around to see what I could see. It was then I noticed a soldier in front of 2 Bn Offrs' Mess trying to get up.

Q.296 What did you do?
A.296 Well, due to the fact that there were a good many drunks that evening I didn't do anything immediately.

Q.297 Did you further investigate this body?
A.297 Yes sir.

Q.298 What did you find out in the investigation?
A.298 When I saw everyone running towards the body, I ran to the body myself.

Q.299 Who was present?
A.299 The Guard Commander and the Cpl of the Guard were present.

Q.300 Where was this body?
A.300 The body was at the main entrance of 2 Bn Offrs' Mess in the Ottawa Bldg.

Q.301 Was it right at the entrance?
A.301 It was towards the Borden Block.

Q.302 How far?
A.302 About 15 feet from the entrance.

Q.303 Will you point this spot out on Exhibit "G"?
A.303 Here sir. (Witness points to Point "X" on the sketch.)

Q.304 Did you find out who this man was from your own investigation?
A.304 The Guard Comd and Cpl of the Guard had the situation well in hand.

Q.305 Did you recognize the man?
A.305 No sir, I didn't.

Q.306 What type of a night was it?
A.306 A moonlit night, sir.

Q.307 How far could you see?
A.307 I could see approximately 100 yards that night, sir.

Cross-examined:

Q.308 From where you were standing at the entrance of the Guard Room, did you have a fairly clear view to the front of the parade square?
A.308 Definitely, sir.

Q.309 Were you out of the Guard Room on hearing the second and third shots?
A.309 No sir.

Q.310 Were you still inside?
A.310 I was on my way out.

Q.311 Were you in motion?
A.311 I was.

Q.312 How long did it take to get a clear view?
A.312 Approximately 15 seconds to get a clear view.

Q.313 How long to get into the area?
A.313 A matter of seconds.

Q.314 How many?
A.314 About 10 seconds.

Q.315 You were in motion leaving the Guard Room. How soon would you have a view of the scene and be able to see any person running away from the area in which the body was found?
A.315 In the first place I didn't know where the body was. It would take at least 30 seconds to focus.

Q.316 Leaving the office at point "E" on the sketch, I suggest to you that it would be still impossible to take 15 seconds before getting a view of the square. How long did you take?
A.316 10 or 15 seconds. I was walking at the time.

Q.317 You told the Court you were in motion. Are you still satisfied that you would take 15 seconds to get a view after you were in motion on the way out?
A.317 After hearing the first shot it wouldn't take that long. I would think it would take me from 5 to 10 seconds to get out of there.

Q.318 Do you know whether or not there had been a pay day on that evening or before that evening?
A.318 I know that there was one on the 30th of the month.

Q.319 You suggested that there were a lot of drunks about. Does that give you any stimulus to bring back the recollection of a pay day?
A.319 In 1 Bn there are a good many drunks at all times at night; not during parade hours.

Q.320 You have told the Court you saw a body fall?
A.320 No sir, I didn't say that.

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Q.321 What did you say?
A.321 I told the Court that I saw a body trying to get up.

Q.322 Are you sure you didn't see a body falling?
A.322 No sir, it wasn't falling.

Q.323 What makes you so sure?
A.323 I could see the body.

Q.324 Are you positive?
A.324 Yes sir, definitely.

Q.325 How can you suggest to the Court, when it took so long to get your eyes focused?
A.325 I didn't say that.

Q.326 What did you say?
A.326 It took five or ten seconds.

Q.327 What particular stimulus was registered in your mind when you first saw this man getting up?
A.327 In my mind I thought he had been drinking.

Q.328 Then thinking he had been drinking, you immediately turned to see if you could see anyone running away from this particular area?
A.328 No sir, I didn't say that.

Q.329 Having seen this body crouched, and having come to the conclusion it was a drunk, you immediately went towards the Borden Block?
A.329 Yes sir.

Q.330 Why were you so anxious to see if anyone was running away if you thought he was drunk?
A.330 I always search the area of 1 Bn.

Q.331 Why do you do it?
A.331 I said I was searching it to find some one.

Q.332 Do you remember giving evidence in the Summary of Evidence?
A.332 Yes sir.

Q.333 You stated in the Summary, "I didn't know there was a drunk about. I looked around to see if there was anything." Do you want to change it?
A.333 No sir.

Q.334 Have you one reason why you thought someone was running away from this particular scene?
A.334 Because I heard a shot fired.

Q.335 Did you happen to see any of the drunks around the gate the day of the firing?
A.335 No sir.

Q.336 Did it occur to you as a possibility?
A.336 No sir.

Q.337 I suggest to you that it is not unusual to hear shots fired?
A.337 It is not unusual.

Q.338 A common occurrence?
A.338 It has happened before, sir.

Q.339 What did you do after you found that the man was injured?
A.339 After the body was picked up, sir?

Q.340 By how many people?
A.340 There was confusion, sir.

Q.341 How soon after was the body lying there? Did you go over to it?
A.341 I was there when it was picked up.

Q.342 Then you were satisfied that the Guard Comd still had the situation well in hand?
A.342 Yes sir.

Q.343 What investigation did you make? Did you find weapons or missiles of any kind or empty cartridge cases?
A.343 I searched the area where the body was found and never found anything.

Q.344 How soon after hearing the shots was your search made?
A.344 Approximately five or 10 minutes after.

Q.345 Was it a thorough search of the immediate vicinity?
A.345 As thorough as a flashlight would allow.

Q.346 And what distance from the body did you search?
A.346 I searched right around the entrance of the Sgts' Mess 1 Bn.

Q.347 Where would that be?
A.347 Right here, sir. (The witness marks the point with an "P" on sketch.)

Q.348 What were you searching for at the time?
A.348 I was searching for a weapon and also empty cartridges.

Q.349 Did you find any?
A.349 No sir.

Q.350 Now, do you remember whether a draft had recently arrived prior to the 2nd of August, 1944?
A.350 I am pretty sure there was, sir.

Re-examination:

Q.351 To your knowledge did anyone else search the area before you made your search?
A.351 No sir.

By the Court:

Q.352 You stated you went from your Guard Room to the entrance of the Borden Block direct?
A.352 That is right, sir.

Q.353 What direction did you take, to go from the Guard Room to the Borden Block?
A.353 I am sorry sir, my Guard Room is in the Borden Block and not in the Ottawa Bldg.

By the Judge Advocate:

Q.354 Did you or did you not examine the man whom you found lying on the ground?
A.354 No sir, I did not.

Q.355 When you told Capt Rose in re-examination that to your knowledge no other search was made prior to the search which you made, did you mean that you knew that no other search had been made or that you didn't know?
A.355 I didn't know, but to my knowledge nobody had.

Q.356 How did you arrive at your estimate of the approximate time that you heard the shots?
A.356 There had been a few instances of men jumping or falling out of windows. I had made it a point of looking at anything that happened, so I looked at my watch.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83 (B).

TWELFTH WITNESS(Lt (A/Capt) T.E. McKee (PPCLI) 8 Bn 1 CBRD
for (having been duly sworn
Prosecution(is examined by the Prosecutor

Q.357 Do you recall the evening of the 2nd of August, 1944?
A.357 I do.

Q.358 Will you tell the Court what happened on that evening?
A.358 On the 2nd of Aug 44, at about 2250 hrs, I was in 2 Bn Offrs' Mess 1 CBRD having a lunch. I heard two shots fired outside. They sounded to be quite close. I got up and walked out to the porch outside. I could smell powder burning. I looked around and saw a body lying on the pavement about eight yds from the porch.

Q.359 I show you Exhibit "G". Would you point out that spot on the sketch?
A.359 The porch is here and the body was lying there. (The witness marks the point with an "H" on the sketch.)

I saw the body lying on the pavement. So I went down to the body. It was a man lying face downwards with his arms stretched out at his side.

Q.360 Would you demonstrate?
A.360 Like this. (Witness demonstrates)

Q.361 What was his condition?
A.361 He was breathing. It sounded quite heavily to me. There was some blood on the pavement which was coming from a hole in his head. I immediately went to 2 Bn RAP and sent the orderly for the Medical Offr. Then I returned to the scene of the accident. There was a number of offrs and men around there by now. I thought the man may have shot himself so I took a look for the weapon. I found nothing. In his left hand I found a set of identity discs which I took and put in my pocket. By this time the MO was removing the body to the MIR. I went into the MIR where I turned the identity discs over to the Adjt 2 Bn, Capt Snell. I just glanced at the discs and saw the name "Robinson" on them.

Q.362 I produce two identity discs. Do you recognize them?
A.362 I would say they are the same discs.

Q.363 Would you read to the Court the name on the discs?
A.363 B.144333, Pte Robinson, Presbyterian, Canadian. (One red and one green identity disc, admitted and marked Exhibit "J".)

Q.364 How were these discs found in the wounded man's hand?
A.364 They were in the left hand of the man who had been shot, clenched tight, with the fingers closed.

Q.365 Were the discs entwined in his hand?
A.365 I could not say, sir, that they were both in his hand. There was one in his hand, and I take it both were held by the string.

Q.366 What did you use a light for?
A.366 I had no light. The moon was shining. It wasn't very dark. I could see the name on the discs.

Q.367 What was the light outside?
A.367 It was a full moon. The stars were shining and the moon was out. You could see a man walking about 100 yards away.

Cross-examined:

Q.368 How much time had elapsed from the time you heard the shots until the time you got outside on the porch?
A.368 It would not be over a minute.

Q.369 Which part of the Mess were you in?
A.369 I was in the part where we eat/at the end table.
sitting

Q.370 And that is in the part of the Mess nearest the door?
A.370 That is right.

Q.371 Would you have taken a minute to get outside?
A.371 No, it would not if I had jumped right up. I got up and walked out the door.

Q.372 About how many feet was it from where you were sitting to the door?
A.372 Approximately 16 feet.

Q.373 Did you estimate the paces taken as you walked out of the door?
A.373 I just walked over at a normal pace to the door.

Q.374 Did you take about five seconds?
A.374 Not any more.

Q.375 Did it take another second or two to open the door?
A.375 It would take another second or two to get on the porch?

Q.376 Did that not take 15 seconds?
A.376 It wouldn't take more than 15 seconds from the time I started moving until I got out.

Q.377 Why do you say you could have seen a man who was running away from the immediate vicinity of the body?
A.377 If a man had been close - very close - and running out in the open across the parade square, I think I could have seen him.

Q.378 You told the Court you could see a man 100 yds away?
A.378 Right.

Q.379 So within the 15 seconds you could have seen a man running away?
A.379 If he had run along by the building, I may not have seen him.

Q.380 Have you studied ballistics to any extent?
A.380 No.

Q.381 Have you studied the normal amount of ballistics in the "Weapon Training" pamphlet?
A.381 That's right.

Q.382 Was it a very still night or was there any breeze at all?
A.382 I don't think there was very much because I didn't notice it windy at all.

Q.383 I suggest to you that if you were able to smell powder recently burnt from the time you got out on the porch, it would have been fired from the spot on which you were standing. Do you agree with that suggestion?
A.383 I would say that it hadn't been fired very far away from the doorway. It could have been up to 25 yds away.

Q.384 I suggest that you are imagining the smell of that powder. As a result of the information you subsequently learned, you are imagining you smelledit and didn't actually smell it?
A.384 I am convinced that I smelled powder.

Q.385 I suggest that it was a physical impossibility to smell it; impossible according to ballistic ------
A.385 I still say I smelled it.

Q.386 Then you suggest to the Court that it was powder from the bullets you heard fired?
A.386 I cannot say what bullet the smell of the powder came out of as I didn't see it fired.

Q.387 Were you in a particularily mentally alert stage when you were on the porch?
A.387 I would say that I was in my normal mental condition.

Q.388 Was it influenced by a considerable quantity of liquor?
A.388 It was not.

Q.389 I suggest that you had quite a bit to drink prior to the shooting incident, is that correct?
A.389 On the evening of the shooting incident, I had very little to drink.

Q.390 I am not trying to discredit you. Will you tell the Court what quantity you had that evening?
A.390 Throughout the evening I would say I had possibly four drinks of gin and lime.

Q.391 Doubles or singles?
A.391 Singles. I think I could have had four.

Q.392 What directed you to the identity discs?
A.392 In the man's hand?

Q.393 You found a set of identity discs?
A.393 I was actually looking for a weapon. I thought the man had shot himself. While looking for a weapon I was kneeling down at his left side. I saw his hand and something in his hand. When I pulled it, I found a set of identity discs.

Q.394 Did you have any definite instructions for removing the set of identity discs?
A.394 No.

Q.395 They came out easily?
A.395 Fairly easily.

Q.396 Can you, by taking this (hands witness Exhibit "J"), show the Court by putting your hand on the floor, the approximate position of the string?
A.396 I cannot actually sir. His hand was lying right at his left side. I noticed something in it and pulled it out and it was a set of identity discs. (Witness demonstrates the manner in which he found the identity discs in the hand of the injured man.)

Q.397 How much of the string outside of the man's hand was visible to you?
A.397 I cannot say.

Q.398 Are you sure you noticed the identity discs prior to pulling the string?
A.398 I said there was something in his hand. I didn't know they were discs.

Q.399 The string directed you?
A.399 I didn't know there was a string.

W.G.

Q.400 Would you describe to the Court whether the string was all in his hand or all out?
A.400 I can't.

Q.401 Describe to the Court whether it was all in or all out?
A.401 That it was all pulled from his hand, no.

Q.402 The normal action of a man struck from behind is to fall forward with his hands stretched, isn't it?
A.402 Yes, I would think that if you were struck from behind you might fall with your hands outstretched on being shot from behind with a .45.

Q.403 You are estimating?
A.403 Yes.

Q.404 Is it normal for a man being struck from behind to have his hands stretched out?
A.404 Yes, it is normal.

Q.405 Now what gave you the idea that this man was shot with a.45?
A.405 The reason I had the idea that he was shot with a .45 was that he had a hole in his head - the doctor states two holes - and some of them found .45 slugs in the area. That is the only reason I have for assuming it.

Q.406 Was your reason for coming to that conclusion based on your own investigations?
A.406 No.

Q.407 You didn't know for sure?
A.407 The doctor said so in the MIR to the others and to myself while a number of men were in there. The .45 shells, I referred to, were shown to me that evening as having been picked up on the scene of the incident.

Q.408 Something like this? (Defending Officer produces a brass casing.)
A.408 Something like it.

Q.409 Anything like this? (Defending Officer produces a steel casing.)
A.409 Yes. (42 WCC brass casing and 42 steel casing admitted and marked Exhibits "K" and "L", respectively.)

Q.410 Did you examine those casings very carefully?
A.410 I don't know.

Q.411 Now were the identity discs held in a very firm grip, as if the wounded individual was hanging on to them for dear life?
A.411 No, I didn't need to exert pressure to remove them.

Q.412 Was it possible that someone could have put or forced anything into his hand?
A.412 It is quite possible.

Q.413 Why did you say these (indicates Exhibit "J") are the same discs you gave to Capt Snell?
A.413 I still say they look like the same discs.

Q.414 Similar?
A.414 Yes.

Q.415 Did you mark the discs when you found them in the hand of the wounded man for purposes of identification?
A.415 I did not.

Q.416 When you found these discs on him did you attach any importance to them?
A.416 No. When I took them, I thought they belonged to the man that was shot.

W.F.B.

Q.417 And what did you do?
A.417 I put them in my pocket.

Q.418 And how long afterwards - that evening - was it that you again produced them?
A.418 It would be, I would say, not over three-quarters of an hour.

Q.419 How do you know they are the same ones you took from the hand of the wounded man?
A.419 Because I had taken them from his hand and put them in my pocket. They were still there when I took them out again.

Q.420 What was the impulse that caused you to take them out again?
A.420 When they were trying to find out the names of different people. The Medical Offr said that he had checked the discs of the man who had been shot, and his name was "Dillon". Then I recalled the discs I had in my pocket and turned them over to the Adjt of 2 Bn, Capt Snell. I saw the name "Robinson" on the discs.

Q.421 I suggest to you that you didn't find the identity discs in the hand of the wounded man: that they became apparent to you only at such time as they started to move the body. Do you agree?
A.421 No, I had nothing to do with the moving of the body. I had the discs in my pocket when they started to move the body.

Q.422 Then, if I am under the impression that they were about to move the body when you took the identity discs, I am labouring under a misapprehension?
A.422 They could have been about to move the body, for they did so shortly after.

Q.423 How shortly after, moments, seconds?
A.423 A matter of minutes because they carried the body out on a stretcher after I had the discs.

Q.424 After you got the discs, what amount of time elapsed before the body was moved or carried away?
A.424 I can't say the exact time.

Q.425 Do you know what happened to the beret that the wounded man was wearing?
A.425 I do not.

No re-examination.

By the Court:

Q.426 At the scene of the accident - how many people were around the body?
A.426 I would say there would be six or seven at least. There could have been more around, but right beside the body I would say at least six or seven.

Q.427 Did you speak to anybody about the discs or draw them to their attention?
A.427 No sir.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83 (B).

THIRTEENTH WITNESS for Prosecution (Lt A.J.S. Mills (Perth R) 3 Bn 1 CBRD (having been duly sworn (is examined by the Prosecutor

Q.428 Do you recall the night of 2 Aug 44?
A.428 Yes sir.

Q.429 Will you tell the Court what you were doing?
A.429 I was having lunch in the 2 and 3 combined Offrs' Mess when I heard three shots. I went outside to see what was going on. On the steps I found a Glengarry with a 48 Highrs badge on it.

Q.430 Would you describe this Glengarry?
A.430 It was an ordinary 48th Glengarry with red dice checks on it.

Q.431 Did you examine the Glengarry immediately?
A.431 I went over and looked at the wounded man. I saw him lying on the ground. Someone handed me a beret which I took to be the wounded man's as there was blood dripping from it. Then I looked at the Glengarry closer and saw the name "A.H. Wilcock" on it.

Q.432 I produce a Glengarry, (Prosecutor shows Exhibit "H") do you recognize it?
A.432 That is the same Glengarry.

Q.433 Where was the man that you saw lying?
A.433 Approximately 15 feet from the door leading into the Mess.

Q.434 I show you Exhibit "G". Would you look at it closely and point out where you saw the body lying?
A.434 About here. (The witness marks point with an "H" on the sketch.)

Q.435 Did you examine the body?
A.435 No, I just looked at the man and saw a pool of blood around his head.

Q.436 At what time was that?
A.436 2240 hrs approximately.

Q.437 As a result of finding the Glengarry what did you do?
A.437 I took it to Capt Cameron, the Coy Comd, and then accompanied Capt Cameron to the 48 Highrs quarters where Wilcock was brought to me and later turned over to the 2 Bn Guard.

Q.438 Did you examine the scene of the accident?
A.438 Yes, quite thoroughly.

Q.439 Did you find anything?
A.439 I didn't find anything myself. I noticed blood on the ground everywhere, and on the steps going into the Mess where I picked up the Glengarry.

Q.440 When you had the beret in your hands, did you examine it?
A.440 I did not examine the beret. I just looked at it and then turned it over to the Guard Comd.

Q.441 Where did you turn it over?
A.441 Outside, at the scene of the accident.

Cross-examined:

Q.442 Did you see the blood on the steps where the Glengarry was found at the same time as you saw the Glengarry?
A.442 No, when I went back.

Q.443 Was that on returning from the body?
A.443 No, on my return from having seen Capt Cameron and Pte Wilcock.

Q.444 Can you tell the Court whether or not the blood was there when you found the beret?
A.444 I am sure I saw the blood. I cannot make a definite statement as to that.

Q.445 What lead you to that conclusion?
A.445 The only thing I can say is that the beret was not carried up the steps by myself or anyone else. The blood may have been there from some other reason.

Q.446 Then your explanation of the blood on the steps is that it did not come from the beret?
A.446 Yes.

Q.447 Did you go out on the porch?
A.447 Yes sir, the porch of 2 and 3 Bn Offrs' Mess.

Q.448 Where was Capt McKee when you got to the beret?
A.448 I didn't see him myself.

Q.449 How long after you heard the shots did youappear on the scene?
A.449 Roughly three minutes.

Q.450 Can you tell us why you did not take less than three minutes?
A.450 Yes. I made a sandwich. After I had the sandwich made, I started to eat it and then walked out of the Mess.

Q.451 What were the ingredients of the sandwich?
A.451 It was ------

Q.452 What was the base of the sandwich?
A.452 Bread.

Q.453 Were there any onions in it?
A.453 Yes.

Q.454 A large amount or small?
A.454 A large amount.

Q.455 Do you remember whether or not there was any bully beef?
A.455 Definitely. There was no bully beef.

Q.456 What time is lunch served for offrs of 2 and 3 Bns?
A.456 It is put on the table at 9 o'clock.

Q.457 When you got on the porch, could you smell any powder burning?
A.457 No sir.

Q.458 How did you arrive at the conclusion it was 2240 hrs when you heard the shots?
A.458 The Mess closes at 2230 hrs. It was closed when I started to make the sandwich.

Q.459 Is there any other method of identifying the Glengarry and badge except for the name on the inside?
A.459 The name on the inside is the way I identified it.

Q.460 Did you see a set of identification discs removed from the hand of the wounded man?
A.460 No, I didn't.

Q.461 How many people were around the body when you arrived?
A.461 Quite a number.

Q.462 Could you give us any help as to the number?
A.462 I would say about ten or twelve.

Q.463 Was there a certain amount of confusion around the body? Was there chaos and excitement?
A.463 Oh yes.

Q.464 How close were the people coming to the body when they were having a look around?
A.464 Not more than a foot from the body.

Q.465 Would it be very difficult for any of the people around to put anything in the hands of the wounded man?
A.465 I would say it would be very difficult without anyone seeing it.

Q.466 Would it have been possible for others to come up to the body without being noticed by those around?
A.466 Yes, there is a possibility.

Q.467 Do you know of any fights that might have taken place in the area of 2 or 3 Bn Mess?
A.467 No sir.

Q.468 Do you know what happened to the beret?
A.468 After I had it, it was turned over to Capt Snell, Adjt 2 Bn.

Q.469 You say you saw one drop of blood at the door. Is that correct?
A.469 Yes, that is correct.

Q.470 On the floor of the door or on the door?
A.470 On the ground at the base of the door.

Q.471 Could you assist us by stating whether it was a drop or trail of blood or a pattern?
A.471 It appeared to be a trail of blood part way up the steps, then there was no blood and one drop right at the base of the door.

Q.472 What kind of a night was it as you recollect?
A.472 Very bright.

Q.473 And what was the normal visibility for seeing - across or towards the parade square?
A.473 You could see right across the parade square.

Q.474 Could you have distinguished people, if there had been any between the Ottawa Bldg and the Kingston Bldg? Could you see immediately north?
A.474 Yes.

Q.475 On the left, as you stood on the porch, could you distinguish bodies between yourself and that building?
A.475 Yes.

Q.476 Could you distinguish bodies between yourself and the Borden Block?
A.476 Yes.

Q.477 If you had arrived at the scene where the body was within a matter of seconds of the shooting, could you have seen anyone running across the parade square?
A.477 I could have seen anyone that was running, yes.

Q.478 What type of weapon did you think had been fired when you heard the shots?
A.478 I thought it was a Tommy Gun.

Q.479 Why did you think it was a Tommy Gun?
A.479 From the sound.

Q.480 Any other reason?
A.480 No.

Q.481 Had there been any Tommy Gun firing prior to this on the evening of 2nd August?
A.481 Not that I know of.

Q.482 Had you not heard of any weapon firing at nights?
A.482 Yes, I have heard weapons firing at nights on occasions.

Q.483 In the area of Canada Bks?
A.483 Yes and outside the area of Canada Bks.

Q.484 Is it unusual for shots to be fired at that hour of the night?
A.484 It is unusual, but it has happened.

J.A.B.

Q.485 It could not have been very unusual if it took you three minutes to get out to see it?
A.485 I wasn't terribly startled.

Q.486 When you had the beret, did you notice how many holes in it?
A.486 No, I didn't.

Q.487 How long had you been in Canada Bks prior to the 2nd of Aug?
A.487 About one month.

Q.488 Were 48 Highrs' Glengarries unusual sights around that area at that time?
A.488 No.

Q.489 And around the parade/square on 2 Aug, was it unusual to see Seaforth flashes?
A.489 No.

Q.490 Have you been having any previous trouble or heard of any previous trouble or holdups prior to this evening?
A.490 I had not heard of anything.

Q.491 Will you tell the Court whether or not there had been a draft in prior to 2nd Aug 44?
A.491 Yes.

Q.492 And were there quite a number of rfts at the time or a dearth such as now?
A.492 Quite a number.

Q.493 Now can you give us any opinion as what value .45 pistols were in the eyes of the rfts at that time?
A.493 I have no information as to that.

Q.494 In your eyes has an American .45 pistol a certain souvenir value?
A.494 Yes sir.

Q.495 In your experience had you noticed they have a greater value to the rfts recently arrived than to the rfts who have been over for a month or two?
A.495 Yes they have.

Q.496 Did you form any opinion as to what direction these shots were fired from?
A.496 I never formed any opinion.

Q.497 Did you, yourself, make a search for anything in the immediate vicinity immediately after the shooting for a weapon, or did you ignore the issue?
A.497 Yes, we made a search.

Q.498 Can you tell the Court how dilligently that search was conducted?
A.498 There were several members of the Guard and a couple of offrs conducting it. The search was quite thorough.

Q.499 Have you any opinion as to whether or not Thompson Sub Machine Carbines were in good supply around 2 Aug - that is to the personnel of Canada Bks?
A.499 We fired Tommy Guns on the ranges almost daily at that particular time.

Re-examination:

Q.500 What type of ammunition does a Tommy Gun generally fire?
A.500 .45 rimless.

Q.501 I show you Exhibits "K" and "L". Will you examine them? What type of ammunition is that?
A.501 .45.

466.

Q.502 Is that the type you use in a Tommy Gun?
A.502 Yes sir.

Q.503 Do you know anything about ballistics?
A.503 No.

Q.504 Do you know anything about a Colt automatic?
A.504 No.

Q.505 Have you fired one?
A.505 Only a .45.

Q.506 What type of ammunition does it use?
A.506 Same as a Tommy Gun.

Q.507 Therefore, that type and that used by Colt are the same?
A.507 Yes sir.

Q.508 In your cross-examination you said that there was "excitement" around the body. Would you tell the Court what you meant?
A.508 I didn't mean excitement. There was quite a number of people around the body, and until the Guard Comd dispersed the crowd there was some confusion.

Q.509 What do you mean by confusion?
A.509 People talking; walking here and there. Nobody seemed to be doing anything.

Q.510 Did you see the Medical Offr arrive?
A.510 I wasn't there when the Medical Offr came.

Q.511 Did you mention in the cross-examination that the blood on the steps could have been caused by someone walking through the pool of blood and on up the steps?
A.511 No, it did not appear so.

By the Court:

Q.512 Did you examine the floor inside the doorway for evidence of blood?
A.512 Yes sir.

Q.513 And what did you find?
A.513 There was none.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83 (B).

Court adjourned at 1655 hrs.

Court re-opened at 1000 hrs, 22 Sep 44, the same members being present.

Prosecution produced Medical Certificate.

FOURTEENTH WITNESS (B.51982 Cpl Ferguson E. Carlt & York R, 1 Bn, for (1 CBRD, having been duly sworn, Prosecution (is examined by the Prosecutor

Q.514 Do you recall the evening of 2 Aug 44?
A.514 Yes sir.

Q.515 What were you doing on that evening?
A.515 On that evening I was .....

Q.516 Will you tell the Court what happened that night?
A.516 At approximately 2230 hrs a man from the 48th Highrs Coy, Pte Wilcock, reported to the Guard Room. I took Pte Wilcock to the Seaforth Coy Office where I spoke to the Coy Sgt Major. I came back downstairs and showed Pte Wilcock where his billets were.

Q.517 Where were his billets?
A.517 At the far end of the camp. I do not know the name of the building. the 48th Highrs were stationed there.

Q.518 I show you Exhibit "G". Where were you when Pte Wilcock reported?
A.518 Here sir. (Witness points to spot "E" on the sketch.)

Q.519 Where did you take Pte Wilcock after he reported to you?
A.519 To the Coy Office of the Seaforths on the second floor of the Petawawa Bldg. (Witness marks spot with letter "I" on sketch.)

Q.520 From there where did you take Wilcock?
A.520 After I spoke to the Sgt Major of the Seaforths I brought Pte Wilcock to the opposite side of the Petawawa Bldg. I told him the way to his billets.

Q.521 Where were they?
A.521 The Debert Block. (Indicates on Exhibit "G")

Q.522 Are you sure those are the billets?
A.522 I am not exactly sure, but I took him there to his billets.

Q.523 What else happened that night?
A.523 I was on that side of the building. Pte Wilcock had just left me when I heard two shots fired.

Q.524 Could you say whether it was some distance away or quite close?
A.524 It came from the direction of 2 Bn Offrs' Mess.

Q.525 What did you do then?
A.525 I returned to the Guard Room.

Q526 What did you do when you returned to the Guard Room?
A.526 I went to where a man had been injured.

Q.527 Where was that?
A.527 In front of 2 Bn Offrs' Mess.

Q.528 What did you do when you went to 2 Bn Offrs' Mess?
A.528 When I got to 2 Bn Offrs' Mess, I saw a pool of blood in front of the steps and half of a sandwich amongst the blood.

Q.529 I show you a sketch, Exhibit "G". Point out where you saw this pool of blood?
A.529 Here sir. (Witness points to point "H" on sketch.)

Q.530 When you arrived there what did you do?
A.530 Well, I tried to determine where the shots had been fired.

Q.531 Did you determine that?
A.531 No, in my hunt I found a .45 casing.

Q.532 What type of casing?
A.532 A .45 calibre.

Q.533 Can you describe the marks on it?
A.533 There weren't any but there was a dark colour on it.

Defending Officer:

I am not satisfied with the method in which the Exhibits are being presented. I feel that there is going to be a lot of irregularity here. I would like the Prosecuting Offr to have the witness properly describe each Exhibit to my satisfaction before it is presented in evidence.

Prosecutor:

There is no doubt in my mind that certain articles were found. I feel that the witness, having found some article, has a right to identify that article if possible.

Adj.

Judge Advocate:

Capt Rose, could you get the witness to describe, if possible, in every detail, the article which he found before producing it to him in Court?

Prosecutor:

Q.534 Will you describe to the Court where you found this article?
A.534 I picked up a .45 casing about ten feet from the steps of 2 Bn Offrs' Mess. It was lying against the curb.

Q.535 Will you point out on the sketch, Exhibit "G", where you found this casing?
A.535 I found it right about there. (Witness marks point with letter "J" on sketch.)

Q.536 Will you describe in detail to the Court the casing that you found?
A.536 There was no difference between it and any other .45 casing. No special marks that I can identify it with.

Prosecutor:

In view of the fact that he cannot describe it correctly I cannot ask the witness to identify it.

Judge Advocate:

He may be able to identify the casing.

Prosecutor:

Q.537 I show you two cartridge cases: marked EC 43 and EC respectively. The number on the latter is unreadable. Are they similar to the ones you found?
A.537 This one is sir.

Q.538 Is this the one you picked up?
A.538 This is the one, yes sir. (Steel casing marked EC 43 admitted and marked Exhibit "M".)

By the Court:

Could I see the two casings shown to the witness? I am fairly certain that later in the proceedings the Court will be able to see them.

Judge Advocate:

It is not permitted to see the other one at this stage. It is not yet in evidence, Major Brown.

Court:

I have a particular reason. There are two distinct types that any witness could identify; a steel casing and a brass casing. The point I wish to establish is whether these two cartridge casings that were shown to the witness were both brass or one brass and one steel.

Judge Advocate:

The witness was shown two casings which were described by number. He picked out one which is marked Exhibit "M". The other, unless identified and produced in evidence, cannot be seen by the Court.

Prosecutor:

Q.539 After you found this casing what action did you take?
A.539 I turned the casing over to the Offr of the Guard.

Q.540 Who was that?
A.540 Lt Dolan ~~who was present~~ at the time.

Q.541 What else did you do?
A.541 After turning over the casing, I reported to the Guard Room.

Q.542 What time was this?
A.542 Approximately 2230 hrs.

Q.543 How did you establish the time?
A.543 Well, I am not sure. At nine o'clock the guard relief came on. From then until one o'clock we act as Regtl Police. Men coming in after curfew, approximately 10 or 10:15 o'clock, report to the Guard Room. About 10 minutes after curfew Pte Wilcock reported to the Guard Room.

Q.544 What time was it when you found the casing?
A.544 About 2245 hrs.

Q.545 After you returned to the Guard Room where did you go?
A.545 Well, after I returned to the Guard Room, we went out in different groups to look over the Camp and see if the hold-up man could be found.

Q.546 Did you find him?
A.546 No sir.

Q.547 Then what did you do?
A.547 We came back to the Guard Room. I proceeded back to the scene of the shooting.

Q.548 What did you do there?
A.548 There were several guards and offrs still around. One of the guards was still looking around and found a second .45 casing.

Q.549 What else happened?
A.549 It was turned over to one of the offrs present.

Q.550 What did you do about it?
A.550 I did nothing as the offrs seemed to take charge.

Q.551 What did you do after that?
A.551 We returned to the Guard Room. The following morning Lt Dolan sent me to the Seaforth Bldg to get Pte Wilcock's number and name.

Q.552 Did you go to the Seaforth Office?
A.552 Yes, but I did not obtain the number.

Q.553 Did you find anything there?
A.553 I reported and then I went down the steps of the bldg where I picked up a second .45 casing.

Q.554 I show you Exhibit "G". Where did you find the second casing?
A.554 On the steps going out of the billets in the Petawawa Bldg. I was coming out of the building, going down the steps. I found it on the steps about here. (Witness marks point with letter "I" on sketch.)

Q.555 Will you describe to the Court the casing you picked up?
A.555 The casing I picked up was not perfect. It had been stepped on. It was similar to the first casing except that it had been stepped on.

W.B.B.

Q.556 I now show you a cartridge casing EC, apparently steel. Is that the casing you found?
A.556 Yes sir, I would say it was. (Admitted and marked Exhibit "N".)

Q.557 What did you do with that casing?
A.557 I brought it back to the Guard Room and reported to my offr, Lt Dolan.

Cross-examined:

Q.558 Why did you say so definitely that this (Exhibit "N") is the casing you found?
A.558 I am not saying that it was.

Q.559 Your words were, "That is the casing I found"?
A.559 I don't believe I said that.

Q.560 Then you say it is similar to the casing you found?
A.560 Yes.

Q.561 I show you Exhibits "M" and "N". By looking at the base can you notice any similarity of manufacture by company and by year?
A.561 It doesn't look like it.

Q.562 When you looked at the base of them did you notice the initials of the manufacturer on the back?
A.562 Both have the same number and year on the back.

Q.563 You saw that they are of the same manufacture, and that they apparently came in the same package?
A.563 Yes sir.

Q.564 In unloading a magazine isn't it usual to pick out cartridges bearing the same number and year?
A.564 Yes sir.

Q.565 Do you realize that when an automatic pistol is fired the empty cartridge is ejected?
A.565 Yes sir.

Q.566 You heard two shots?
A.566 Yes sir.

Q.567 Did you make any estimate as to the distance of the ejection from the automatic weapon?
A.567 No sir.

Q.568 Did you know that if you fired two shots from the same weapon the distance of ejection of the casings would be the same?
A.568 Yes sir.

Q.569 What is the distance between points "J" and "I" on Exhibit "G"?
A.569 I would say about 100 yds.

Q.570 Right. Then would you say that the person firing the pistol had sufficient time to get from one spot to the other?
A.570 Well sir ------

Q.571 Was there sufficient time for the man to cover that distance between the two explosions?
A.571 No sir, not over that distance.

Q.572 So that there could not be any relation between the two casings and the two shots?
A.572 That depends if it was the last shot of the weapon.

Q.573 You do not know. You said the time elapsing between the firing of the two shots was not sufficient for a person to cover the distance between the two casings. Was there sufficient time?
A.573 No sir.

W.B.

Q.574 You showed Wilcock where his billets were?
A.574 Yes sir.

Q.575 Did he require your assistance?
A.575 Pte Wilcock had been drinking and was excited.

Q.576 Was he a little bit irrational?
A.576 Yes sir.

Q.577 Were you in the building when you heard the shots?
A.577 I was in the open when I heard the shots fired.

Q.578 From where you were standing when you heard the shots fired, did you have a clear view of the entrance of 2 Bn Offrs' Mess?
A.578 No sir.

Q.579 You were outside of the Petawawa Bldg?
A.579 Yes sir.

Q.580 How long did it take you to get around to have a view of the front of the building?
A.580 About half a minute, sir.

Q.581 30 seconds is a long time?
A.581 Yes sir.

Q.582 Did you speed up?
A.582 Yes sir.

Q.583 Then you still think it took 30 seconds?
A.583 I imagine it was about that.

Q.584 What type of a night was it?
A.584 A medium night - neither bright nor dark.

Q.585 What would be the approximate distance of visibility for moving bodies?
A.585 From about 40 to 50 yards.

Q.586 What were your duties as Guard Comd at Canada Bks with reference to unusual occurrences?
A.586 My duties are to see that something is being done about it. At that time I had an Offr of the Guard and Guard Sgt.

Q.587 What were your duties when you heard the shots? Did you do the things you ought to have done?
A.587 When I heard the shots I went in the direction of the shots.

Q.588 Did you go to the entrance of Canada Bks at that time?
A.588 Yes sir. I went to the Guard Room first and then to 2 Bn Offrs' Mess.

Q.589 Was it unusual to hear shots fired at that time?
A.589 No sir, it wasn't.

Q.590 It might have been fired by any gun or might have been fired by the Guard at Italians?
A.590 No sir. They have nothing to do with the Italians except if they come through the gate. The guard has to help look after the gate and the Regtl Police picquet the walls of the Camp.

Q.591 We have been told there were a number of drunks coming in. Is that right?
A.591 It is generally that way every night. There was no difference that night.

Q.592 Were there a number of drunks?
A.592 I don't know sir. I wasn't on the gate.

10856

Q.593 I suggest to you that when you saw the casings, Exhibits "M" and "N", that it was apparent to you that they had both been exposed to the elements for some time?

A.593 I didn't tell you that.

Q.594 Take Exhibit "M" which I show you. Why do you say that is the first one you found that night in the bks?

A.594 Yes sir.

Q.595 Would you examine it? Is it apparent to you that it had been exposed to the elements and lying on the ground for some time?

A.595 I didn't examine it closely.

Q.596 I show you Exhibit "N" which you picked up the following morning. I suggest that it was apparent to you that it had been exposed to the elements for some considerable time?

A.596 I can't answer that. I don't know.

Q.597 (Witness is shown Exhibits "M" and "N".) Will you examine the marks made by the firing pin and tell the Court if there is any similarity between the marks of the two firings?

A.597 Both marks are similar except one is very deep.

Defending Officer:

I don't want to labour the Court but I want facts. I suggested before that there is no similarity between the cartridge casings. I am endeavouring to explain to the Court by this examination of the witness. I leave it to you, gentlemen.

Cross-examination (continued):

Q.598 Have you taken your normal common-to-all-arms training in the infantry?

A.598 Yes sir.

Q.599 Are you acquainted with the lessons on the theory of small arms fire?

A.599 Fairly well, sir.

Q.600 Therefore, you know that the firing pin of a pistol will make an identical mark on any cartridge case fired from that particular pistol?

Prosecutor:

It is not proved that this soldier knows anything about a .45 pistol. That doesn't come in "Small Arms Training".

The Court:

I don't think there is much harm done.

Defending Officer:

Q.601 You know that every firing pin, when fired, makes the same kind of a mark?

A.601 I never said so, sir.

Q.602 Will you state from your military knowledge whether or not the firing pin is the same in all guns?

A.602 No sir. The firing pin in weapons don't all look the same.

Q.603 I am speaking of a specific weapon. Will it or will it not leave an identical mark on the casing of the cartridge it expels, other things being equal?

A.603 I don't know sir.

W.D.B.

Q.604 When you found the sandwich by the pool of blood what was your reaction?
A.604 Well, I presumed the man had dropped it there when he had been attacked by the other man.

Q.605 Did you make any check to ascertain if this was so?
A.605 No sir.

Q.606 Is it possible that a man could eat a sandwich with one hand and pull the identity discs off with the other?
A.606 No sir.

Q.607 When that sandwich was found, approximately how many inches was it away from the body?
A.607 There were several pieces, some in the blood and some away from it.

Q.608 How far were the farthest pieces away from the body?
A.608 About four or five inches.

Q.609 Did you examine the body on any occasion?
A.609 I did not see the body.

Q.610 You did not see the body?
A.610 No sir.

Q.611 Do you know of anyone who reported this matter, or anyone who suggested that an investigation should be made?
A.611 No sir.

Q.612 Did you report the matter of this shooting that evening for investigation?
A.612 No sir, I did not.

Re-examined:

Q.613 What light did you use when you were looking about the front of 2 Bn Offrs' Mess?
A.613 Well, I used a few matches that I had. There were also flashlights there.

Q.614 When you found the cartridge casing, Exhibit "M", what light did you use?
A.614 I forget whether it was a flashlight or match. I don't know.

By the Court:

Q.615 Was Pte Wilcock wearing any headgear when he reported to you?
A.615 No sir.

Q.616 Have you ever before seen casings lying about Canada Bks similar to those which you found?
A.616 Yes sir.

Q.617 When you took Pte Wilcock to the Coy Office and reported the incident to the WO, why was it necessary to accompany him to his own billets?
A.617 I took him to the Seaforths office.

Q.618 Why was it necessary to show him to his billets?
A.618 He did not seem to know how to get to his billets.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

W.B.L.

FIFTEENTH WITNESS(B.73385 Cpl De Harte, WL (48 Highrs) 3 Bn 1 CBRD
for (having been duly sworn
Prosecution(is examined by the Prosecutor

Q.619 Do you recall the evening of the 2nd August, 1944?
A.619 Yes sir.

Q.620 What happened on that evening?
A.620 At about 2130 hrs I entered the Main Gate of 1 CBRD with two of my friends. We had been downtown and had a few drinks. When we got to the gate, we met a man from the Hast & PER who stopped us and started to talk to us. He appeared to be quite drunk. After a minute or two an argument started between the Hasty P and one of my friends.

Q.621 Do you know the name of this Hast & PER man?
A.621 Yes sir.

Q.622 What was his name?
A.622 His name was "Dillon".

Q.623 What happened then?
A.623 As it appeared that a fight might start, I soon got my friends to their billets and then tried to persuade the Hasty P man to go to his billets. He seemed to be on his way so I went to my Orderly Room and reported to my duty NCO. Then I returned to my billets which, at that time, were in 1 Bn Bldg.

Q.624 What was the name of the building?
A.624 I don't know the name of the building. The people of 1 Bn were in it.

Q.625 I show you Exhibit "G", a sketch of Canada Bks. Will you point out the building?
A.625 This is the building. (Witness indicates the Borden Block.)

Q.626 Will you carry on with your statement?
A.626 While crossing the main parade square to the Borden Block, I ran into the Hasty P man again. He was just starting an argument with a stranger. I sent the stranger to his billets. While I was doing so, the Hasty P man ran into another party and started to argue with him. I also sent this other party to his billets, and once more tried to convince the Hasty P man to go to his billets. After a few minutes a man came up who was wearing Seaforth flashes and a Glengarry with a 48 Highrs badge.

Q.627 Now, do you know this man you saw?
A.627 The new man sir.

Q.628 Yes?
A.628 Yes sir.

Q.629 Who was the new man?
A.629 He was the accused, sir.

Q.630 Is he in Court?
A.630 Yes sir.

Q.631 Where?
A.631 Sitting at this table, sir. (Indicates the table where the accused and Defending Offr are sitting.)

Q.632 What happened then?
A.632 The accused said, "Have you any money?".

Q.633 Who did he say that to?
A.633 The Hasty P man, sir.

W.t.P.

Q.634 What happened after that?
A.634 The Hasty P man asked "Why"? The Seaforth man then said "Give me a buck, I want a Buck" in a demanding voice.

Q.635 What did you do about this?
A.635 I decided that another argument was about to start. As I was having too much trouble trying to get the Hasty P man to keep out of trouble; and that seemed impossible, I returned to my billets. A few moments after I was in my room I heard a shot fired, followed by another. As that was frequent around Canada Bks at night, I paid no attention to it.

Q.636 What was the light like that night?
A.636 The moon was out. While I was on the parade square it was shining brightly.

Q.637 Do you recall what state of moon it was?
A.637 No sir.

Q.638 Could you recognize the Glengarry the accused was wearing that night?
A.638 You mean the Glengarry ..... ?

Q.639 Yes.
A.639 No sir.

Cross-examined:

Q.640 Cpl, why did you look around the room before stating that the accused was on my left? Was he the man on the parade square in this little part of your story?
A.640 I was asked if the accused was in the room. I have never been in this room before so I looked around to make sure that the man was in it and had not left it by another door.

Q.641 Why did you start looking from the right? The first person you looked at was the accused. Then you came back and looked to my left. Why that performance?
A.641 I did not at first notice that the accused was sitting on your left, sir.

Q.642 How often have you seen the accused since the night of 2 Aug?
A.642 Four or five times sir.

Q.643 Now tell the Court the first time you saw him?
A.643 The first time was at the Court of Inquiry on the morning of Aug 3rd.

Q.644 What time in the morning?
A.644 Somewhere between 0930 and 1030 hrs.

Q.645 Where was the accused?
A.645 Standing between his escort in the hallway of the Admin Wing of 1 CBRD.

Q.646 He didn't have a hat on?
A.646 Yes sir.

Q.647 Did you not observe him for at least 30 to 45 minutes?
A.647 Yes sir.

Q.648 Then there should be no difficulty in identifying the accused?
A.648 No sir.

Q.649 How often have you seen him since?
A.649 I saw him again at the Summary of Evidence which was held in the Guard Cond's Room at 1 CBRD a few days later.

JvBC

Q.650 Now to go back to the morning of the 3rd of Aug; you knew him as the accused before you knew him as "Robinson"?
A.650 Yes sir.

Q.651 Were you ever asked to identify him at a proper identification parade?
A.651 Yes sir. Major Morgan paraded five or six men into the CO's Office of 3 Bn and asked me to identify the man.

Q.652 You had seen him several times before this identification parade?
A.652 Yes sir.

Q.653 How much information about the accused did you have prior to the identification parade?
A.653 He was involved in some transaction on the 2nd of Aug. I had heard that a Hast & PER man had been shot on the night of the 2nd of Aug, and that a 48 Highrs Glengarry had been found at the scene of the shooting. So I reported to my Comd that I had left a Hast & PER man and a Seaforth man wearing a Glengarry in an argument on 1 Bn parade square.

Q.654 After you left Dillon arguing on the parade square, did you see the other man again?
A.654 No sir.

Q.655 Were you ever asked to identify him?
A.655 No sir.

Q.656 How well did you know Dillon?
A.656 While trying to argue him into going back to his billets I said I would meet him the next day and try to go into this idea he had that everyone was against him. I asked him his name and arranged to meet him the next day. He said his name was "Dillon".

Q.657 Then you can't tell the Court you were the last person who saw the man who was arguing with the man who gave his name as "Dillon"?
A.657 No sir.

Q.658 Then in point of fact there was no relationship that you could give between the argument and the incident of the shooting?
A.658 Yes sir.

Q.659 Why do you say "yes"?
A.659 Because the 48th Glengarry had been found at the scene of the shooting.

Q.660 Are you sure it was at the scene of the shooting?
A.660 Certainly sir.

Q.661 How did you find out it had been found on the parade square?
A.661 I had been told that a Hasty P man had been shot and the 48th Glengarry was found at the scene of the shooting. I had also been told that Pte Wilcock had been robbed of a Glengarry the night before. The combination of a Seaforth flash and a 48th hat badge appeared to me the answer.

Q.662 You told the Court quite clearly that you had the accused under observation before being asked to identify him on a proper identification parade, is that correct?
A.662 Yes sir.

Q.663 Then there is no excuse for making any mistake about it?
A.663 No sir.

Defending Officer:

I seek the advice of the Judge Advocate. I wish to register a complaint about the method by which the accused was identified.

G.G.G.

Judge Advocate:

That is more a matter for argument. You have a strong talking point.

Defending Officer:

Q.664 When you left the last two men arguing on the parade square, there was never any thought in your mind that any violence would ensue?
A.664 None other than fisti-cuffs.

Q.665 There was nothing in the conduct of these two individuals which in your opinion would warrant you, as a reasonable NCO, to stay and see that nothing happened?
A.665 No sir.

Q.666 Can you give me the approximate time you left the two men arguing?
A.666 Some time about 2230 hrs.

Q.667 Now you, as an NCO, are responsible to see the soldiers get in on time. Is that not true?
A.667 I was not on duty at that time.

Q.668 Do you not do anything but what you are told to do? Have you no initiative of your own?
A.668 Yes sir.

Q.669 Can you tell the Court whether or not this incident was after the normal body check or roll call at Canada Bks?
A.669 After sir.

Q.670 How much after?
A.670 Half an hour after.

Q.671 Are you sure you are not getting stuck with something and are qualifying your answers?
A.671 I don't understand.

Q.672 Why do you say it was half an hour after the body check?
A.672 Normal Tattoo is at 2145 hrs and takes until approximately 2200 hrs. It was at 2230 hrs that I left the two soldiers on the parade square.

Q.673 When you saw this individual wearing the Glengarry on his head, did you see articles in his hands or on his person?
A.673 No sir.

Q.674 Was there anything to indicate that he might be carrying a weapon?
A.674 No sir.

Q.675 Could you tell the Court whether or not a new draft arrived from England a few days before the 2nd Aug?
A.675 Yes sir.

Q.676 It did?
A.676 Yes sir.

Q.677 Were the billets at Canada Bks rather crowded at that time?
A.677 Yes sir.

Q.678 What would you say that the normal visibility was at 10 o'clock that night?
A.678 There was a bright moon.

Q.679 You mentioned a bright moon. Elaborate?
A.679 I would say the visibility of a moving body would be 75 to 100 yds. Detailed recognition at 10 to 15 yds.

W.B.B.

Q.680 Visibility of a normal moving body at 75 to 100 yds?
A.680 Yes sir. Silhouette.

Q.681 Are the times you gave the Court, estimates?
A.681 That is right.

Q.682 What was your condition? Had you been drinking?
A.682 Yes sir.

Q.683 You and your companions were in a happy mood?
A.683 No sir. We had only four or five glasses of vermouth.

Q.684 Were you not in a jovial frame of mind?
A.684 No sir.

Q.685 Were you completely cold sober?
A.685 Yes sir.

Q.686 How much had you had to drink?
A.686 Four or five glasses of vermouth at 10 lire a glass.

Q.687 When did you arrive at Canada Bks? How long have you been there?
A.687 From 26 Jun 44 sir.

Q.688 Have you noticed that new drafts coming to this country are anxious to obtain weapons or souvenirs?
A.688 No sir.

Q.689 You have had no experience?
A.689 No sir.

Q.690 Have you had any requests from soldiers for American or Italian weapons?
A.690 No sir. Only from men of my unit who work with field units.

Q.691 Would you say that at Base there is a desire on the part of soldiers to obtain German or American weapons?
A.691 I have not had any such experience. I had heard of men of the Merchant Navy wanting them.

Q.692 Not Canadians?
A.692 No sir.

Q.693 Do you get around very much?
A.693 No sir.

Q.694 Did you notice the condition of any of the soldiers returning to Canada Bks while you were returning - whether there were many drunks or not?
A.694 There were quite a few men coming back to camp under the influence of liquor of some sort.

Q.695 The time limit, you gave in evidence, was from 10 to 10:30 o'clock?
A.695 No sir, 9:30 to 10:30 o'clock.

Q.696 Would you say the men under the influence were happy and carefree?
A.696 Yes sir.

No re-examination.

By the Court:

Q.697 What time elapsed from the time you left the two arguing until the time the shots were fired?
A.697 Three or four minutes.

Wkb.

Q.698 You left them walking across the parade square and walked to your room on the third floor?
A.698 Yes sir.

Q.699 What were you doing when you heard the shots?
A.699 Getting into bed.

Q.700 Can you point out on Exhibit "G" where the conversation took place between the man you said was "Dillon" and the other individual who you stated had on a 48 Highrs Glengarry and Seaforth flashes?
A.700 Yes sir. They were on 1 Bn Sports Field. (Witness marks point with letter "K" on sketch.)

Q.701 Also you stated that you were talking to a Hast & PER man at the gate who was in an argument with one of your friends?
A.701 Yes sir.

Q.702 Later you were crossing the parade square when you saw this person whom you believed to be the same individual in another argument?
A.702 Yes sir.

Q.703 Didn't you state that there was another argument with the individual you identified wearing a 48th Glengarry and Seaforth badges?
A.703 That was a fourth man.

Q.704 That was the fourth argument you had with the person presumed to be Dillon that night? You are a Cpl, but you didn't feel he was sufficiently under the influence of liquor or behaving in a manner to warrant assistance?
A.704 No sir.

Q.705 Had you ever seen or had the occasion to observe the accused prior to the night of 2 Aug 44?
A.705 No sir.

By the Judge Advocate:

Q.706 In your evidence, Cpl, you stated that you had been downtown with friends on the 2nd Aug. What place do you refer as downtown?
A.706 Along the main street of Avellino.

Q.707 How close were you standing to the two persons you stated got into an argument at the point on Exhibit "G" which you indicated by the letter "K"? How close were you?
A.707 About three feet.

Q.708 What was the condition of the accused at the time?
A.708 He appeared to have been drinking but not drunk.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83 (B).

Judge Advocate:

I am directed by the President to state that the Members of the Court, the Offr Under Instruction, the Judge Advocate, the Prosecutor and Defending Offr, the Accused and his escort will assemble at the Main Entrance of Canada Bks at 1400 hrs today to view the scene. During this inspection no questions will be asked of any witnesses.

Court adjourned at 1143 hrs.

At 1400 hrs the Court, Offr Under Instruction, Judge Advocate, Prosecutor, Defending Offr, and the Accused, attended at Canada Bks to view the scene of the alleged shooting.

Court re-opened at 1425 hrs, the same members being present.

WBB.

SIXTEENTH WITNESS(K.42576 Cpl Shaw G.C. (Seaforth of Can) 2 Bn 1 CBRD
for (having been duly sworn
Prosecution(is examined by the Prosecutor

Q.709 Do you recall the night of 2 Aug 44?
A.709 Yes sir.

Q.710 What were you employed as?
A.710 Orderly Cpl.

Q.711 Which Coy?
A.711 B Coy -

Q.712 Do you recall what happened that night?
A.712 Yes sir.

Q.713 Will you tell the Court what happened that night?
A.713 That night I was up late writing letters in the Orderly Room. At 2330 hrs Lt Snell and Major Bernier came into the Orderly Room. Lt Snell said .....

Q.714 What happened when Lt Snell and Major Bernier came into the Orderly Room?
A.714 I was told .....

Q.715 To get at it another way, what did you do after they came into the Orderly Room?
A.715 I didn't do anything. These two offrs talked to me.

Q.716 As a result of that, what did you do?
A.716 I told them "Yes".

Q.717 Don't repeat conversations. After that what did you do?
A.717 I showed the Major and the Capt in which bay and bed Robinson slept.

Q.718 Is Robinson in this room?
A.718 There sir. (pointing to the accused)

Q.719 What happened in the bed or around the bed of Pte Robinson?

Judge Advocate:

For the benefit of the Court it might be well to establish the location of the bed and bay.

Prosecutor:

Q.720 How did you show them?
A.720 I looked at the chart in the Orderly Room and took the two offrs to the bay and bed.

Q.721 Where is the bay and bed?
A.721 In the Petawawa Bldg on the 2nd floor. The bay is the fourth bay and the bed is the first on the left.

Q.722 What type of bed was it?
A.722 Just blankets on a ground sheet on the floor, sir.

Q.723 In your presence and in the presence of the accused, did you see anything happen?

Defending Offr:

I am not satisfied that in the initial stage the accused was not sleeping. On that basis the accused to all intents and purposes was not there.

W.H.B.

Prosecutor:

Q.724 Who was in the bed?
A.724 Robinson was in the bed.

Q.725 In what condition was he?
A.725 He was lying on his stomach. I believe Capt Snell turned him over and said .....

Defending Offr:

I object.

Prosecutor:

Q.726 Can you describe the accused's appearance?
A.726 There was blood on his face. His lips were swollen. There were scratches on his neck.

Q.727 Did you examine the accused?
A.727 I noticed him just before he was taken to the Guard House.

Q.728 I repeat the question, did you examine the accused?
A.728 Yes sir.

Q.729 What did your examination disclose?
A.729 That he had apparently been fighting.

Q.730 What did you see on the examination? You say you examined him. What did you find?
A.730 He had no identity discs.

Q.731 What kind of an examination did you make?
A.731 I searched his kit afterwards.

Q.732 After what?
A.732 After the accused was taken to the Guard Room.

Q.733 What were the appearances of the scratches, bruises, and blood on the accused's face and neck?
A.733 Just splotched on the face. The lips were swollen. The scratches on the neck looked as if they might have been from fingernails.

Cross-examination:

Q.734 Have you told the Court everything about that evening?
A.734 There were other things I had done that night, sir.

Q.735 There is much more you could have told the Court apart from what you have given about the accused, is there not?
A.735 No, only what I carried out that night.

Q.736 You were responsible to make a body check at Tattoo?
A.736 No sir.

Q.737 Did you?
A.737 No sir.

Q.738 When did you?
A.738 No sir.

Q.739 Whose duty is it to report a man who is absent?
A.739 The Coy Orderly Sgt.

Q.740 Whose responsibility is it to make the Tattoo check?
A.740 The Coy Orderly Sgts'.

Q.741 I suggest to you, on that night, you reported Robinson in bed at roll call?
A.741 Not myself.

1068.

Q.742 Did you have occasion to report to any offr that Robinson was present and in bed on the evening bed check?
A.742 As far as I know the Tattoo Report showed that he was present at roll call.

Q.743 Cpl, have you any specific desire to find the accused guilty?
A.743 No, not on my own behalf.

Q.744 On whose behalf have you that desire?
A.744 I know little about the accused.

Q.745 What desire have you as regards the finding of the accused guilty of the charge laid?
A.745 (Witness makes no reply.)

Q.746 I suggest to you that you are anxious to see the accused found guilty?
A.746 No sir.

Q.747 Did you have occasion that evening, prior to 2330 hrs, to report to an offr that Pte Robinson was absent at 2200 hrs?
A.747 From the Tattoo Report?

Q.748 Did you have occasion to report him present? You had a witness as to that, correct?
A.748 Right.

Q.749 His name was Pte Piggott?
A.749 Right.

Q.750 Why did Capt Snell have to turn Robinson over? Was he asleep?
A.750 I don't know sir. I was just obeying an order.

Q.751 Was the accused Robinson asleep?
A.751 Asleep?

Q.752 Was Robinson asleep?
A.752 I cannot say sir.

Q.753 In your opinion?
A.753 I don't know.

Q.754 I don't want to labour this. I suggest you answer. Do you understand?
A.754 I am trying to, sir.

Q.755 Was Robinson asleep?
A.755 Capt Snell asked me to see whether thisman was asleep, and afterwards ordered me to place this man under close arrest.

Q.756 Why did Capt Snell have to turn the accused over?
A.756 I don't know.

Q.757 Did Robinson have the appearance of a man asleep when you first saw him at 2330 hrs?
A.757 (Witness makes no reply.)

Q.758 I want you to realize one thing. A man may be hanged by the neck as the result of your evidence. Did Robinson, when you first saw him around 2320 hrs in the company of Capt Snell and Major Bernier, have the appearance of being asleep?
A.758 In my opinion he had been asleep.

Q.759 Now, you have told the Court that the scratches that you saw appeared to have been made by fingernails?
A.759 It looked like it.

40 B.B.

Q.760 There were no distinct scratches?
A.760 No sir.

Q.761 They gave you the appearance of scratches?
A.761 Yes sir.

Q.762 Was the accused present when you made a search of his kit?
A.762 No sir.

Q.763 Is it usual at Canada Bks to have a soldier absent when a search is made of his kit?
A.763 No sir.

Q.764 You made a report that evening reporting Robinson to be in bed at Tattoo?
A.764 No sir, I did not.

Judge Advocate:

He made a report to some offr that, according to the Tattoo report, the accused was present, in bed, at roll call.

Defending Offr:

Q.765 What words did you use when you made a report to the offr?
A.765 When the battalion report is turned in to the RSM. That was the only report.

Q.766 What did you say to the offr?
A.766 I said that he was present in bed.

Re-examination:

Q.767 What time was the Tattoo roll call made?
A.767 Ten o'clock.

Q.768 Who made the Tattoo Report?
A.768 The Sgt of that Platoon.

Q.769 What was the Sgt's name?
A.769 Sgt Larson.

Q.770 What platoon was Sgt Larson in?
A.770 No. 1 Platoon.

Q.771 What platoon is the accused in?
A.771 No. 1 Platoon, sir.

By the Court:

Q.772 Was the report made to the offr in words or was it a document?
A.772 I just told the offr that I had seen the Tattoo Report.

Q.773 At what time did you tell this to the offr?
A.773 It was when I was interviewed by him that night in the Detention Bks.

Q.774 You arrived with Capt Snell and the Paymaster to the bed of Pte Robinson?
A.774 Right sir.

Q.775 What I would like to know is, did you receive any instructions at that time from these offrs?
A.775 The only instructions were to point out the bed and bay of Pte Robinson.

Q.776 Any other instructions?
A.776 Later I had other instructions, sir.

Q.777 How was the accused dressed or was he dressed when you saw him in his bay?
A.777 At the time he was lying in his bed?

Q.778 Yes?
A.778 His socks, shoes and pants were on the floor. He had a shirt on. I think so, but I am not sure.

Defending Offr:

Here is an opportunity of questioning the witness as to whether he felt the socks inside the shoes to see how long they had been on or off.

By the Judge Advocate:

Q.779 Did you or did you not examine the boots, socks, or any other articles of clothing that belonged to Pte Robinson?
A.779 No sir.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

SEVENTEENTH WITNESS(Capt J.H. Snell, 2 Bn I CBRD
for (having been duly sworn
Prosecution(is examined by the Prosecutor.

Q.780 Will you state to the Court your appointment and unit?
A.780 I am the Adjt of 2 Bn.

Q.781 Do you recall the evening of 2 Aug 44?
A.781 Yes sir. I recall it.

Q.782 Will you tell the Court, to your knowledge, what happened that evening?
A.782 I returned to Canada Bks at approximately 2315 hrs and found a few soldiers and offrs crowding around the entrance of the 2 Bn Offrs' Mess. I went to the 2 Bn MIR where I found Capt Verdicchio, 2 Bn MO, and Capt McKee, PPCLI. From information I received, I ascertained that a soldier had been shot on the main square outside the entrance of the Offrs' Mess. While still in the MIR, Capt McKee gave me a set of identity discs bearing the name of "Pte Robinson", number - "B.144333".

Q.783 I show you Exhibit "J". Do you recognize this?
A.783 I recognize the discs as the ones given to me by Capt. McKee.

Q.784 What did you do then?
A.784 Major Bernier, Paymaster, 2 Bn, who was present at the MIR, and I, endeavoured to find the owner of the discs through the card index system of 3 Bn. It appeared that they would have some bearing on the incident. We found the owner of the discs to be a Seaforth soldier. The number corresponded to one of the Seaforth cards in the 2 Bn Card Index. Major Bernier accompanied me to the Seaforth Office in the Seaforth billets. I found that Pte Robinson was billeted in the Seaforth quarters. The NCO got a candle as there was not sufficient light, and we went to the soldier's bed, which was an outside bed in one of the bays where the soldiers were sleeping. I found the soldier asleep on his face on the bed. I awakened him and asked him his name.

Q.785 Is that soldier in this Court Room?
A.785 Yes, I recognize Pte Robinson as the soldier I awakened on finding him in the Seaforth building. I noticed at the time that Pte Robinson's lips were cut and his face scratched. I told the Orderly NCO, Cpl Shaw, to take Pte Robinson to the 2 Bn RP. Major Bernier and myself searched the kit of Pte Robinson while he was still there. We found a .45 automatic, Army pattern, at the top of Pte Robinson's bed. I observed the magazine, finding that the gun was empty. I smelled the gun and detected a smell of cordite powder as if it had been recently fired.

Q.786 Will you fully describe the pistol in question?
A.786 The pistol was a .45 model: American make, .45 automatic. It was rusted slightly and not in very good condition. The number I first took from it was M.1911 which I later found was the model number only. The pistol was identical with an Army pattern .45. The only distinct feature I can recollect is that it was slightly rusted and did not appear in good shape. The number I ascertained ~~xxxxxxxxxx~~ at a later time. The pistol remained in my possession for a period of time. I am sure it was the same pistol.

Q.787 What was the number of the pistol?
A.787 I don't recall.

Q.788 Have you got any memoranda on your person?
A.788 I jotted down a few points: the number of the pistol and a few witnesses present on the evening of the incident.

Q.789 When did you make these notes?
A.789 I made these notes in the Bn Orderly Room while the Summary of Evidence was being prepared.

Q.790 Was the pistol out of your possession at that time?
A.790 Yes. The pistol was turned over to Major Morgan of 3 Bn who completed the Court of Inquiry. It was returned to me personally with the exhibits on completion of the Court of Inquiry. The exhibits were then placed under lock and key and specifically turned over to Lt Murphy who had them at various times until the completion of the Summary of Evidence. They were then returned for safe-keeping to 2 Bn.

Q.791 I am producing this weapon for your inspection. I want you to state to the Court if that weapon is the one you found on the night of the incident or not?
A.791 To the best of my knowledge that pistol is the same pistol I found on the night of the incident.

Q.792 How do you identify the pistol?
A.792 I recognize the pistol from its rusty appearance, also the corrosion contained in the barrel which I originally noticed at the time the pistol was found. (.45 automatic pistol, stamped "United States Property M1911 A1 US Army No.948416 Remington Rand Inc, Syracuse, N.Y., USA", admitted and marked Exhibit "C".)

Q.793 After the revolver was found did you make any further inspections?
A.793 Yes, we searched the kit.

Q.794 Was the accused present at the time?
A.794 Yes, to the best of my knowledge the accused was present.

Q.795 Did you find anything?
A.795 The holster was found.

Q.796 Did you find the holster?
A.796 Major Bernier found the holster.

Q.797 Was the accused present at the time?
A.797 As far as I can recall the accused was present.

Q.798 Would you describe the holster?
A.798 To the best of my knowledge, the holster was a typical American one.

Defending Offr:

It is important to note that the witness eludes the Court by answering "To the best of my knowledge". I am convinced, myself, that the kit inspection was not carried out in the presence of the accused.

Judge Advocate:

I think the Court will object if they feel convinced that the manner in which a witness answers is unfair to the accused.

Defending Offr:

I am a little anxious that the Court should find out why he says "To the best of my knowledge".

Judge Advocate:

Will the witness please give specific answers? Capt Rose, would you establish whether or not the accused was present when his kit was searched?

Prosecutor:

Q.799 Was the accused present when you searched the kit alleged to belong to the accused?
A.799 Yes.

Defending Offr:

This witness was not present and did not search the kit himself. If the Court were to adjourn, the Court would see from the .....

A.799 (continued):

The accused was lying on his bed. I was standing near his bed. I awakened the accused. Major Bernier was going to search his kit. I was questioning the accused as to who he was. I assisted Major Bernier in the search of the man's kit. The man was present.

Q.800 To whom do you refer when you say, "The man was present"?.
A.800 Pte Robinson.

Q.801 What did you find in his kit?
A.801 I found it was the ordinary soldier's kit. I didn't find the pistol. I didn't find the holster.

Q.802 Who was present when either the pistol or the holster were found?
A.802 Major Bernier and Cpl Shaw of the Seaforths were present.

Q.803 Where were you and where was the accused?
A.803 The accused was sitting up on his bed. I was sitting down on the left side of his bed. Major Bernier was on my left. The MCO was standing behind Major Bernier, to his left, in the hallway between the bays.

Q.804 Did you see either the automatic or the holster found?
A.804 I saw Major Bernier find the pistol at the top of Pte Robinson's bed.

A.A.G.

Q.805 Did you see the holster found?
A.805 I didn't see it found, the spot, but Major Bernier produced the holster there. It was found in the kit.

Q.806 After these articles were found what did you do?
A.806 I told the Col to place Pte Robinson under close arrest and take him to the RP of 2 Bn, informing him I would be over later.

Q.807 Did you see the accused later?
A.807 Yes.

Q.808 Where?
A.808 At the RP 2 Bn.

Q.809 What happened at that time?
A.809 Major Bernier and I proceeded to the RP 2 Bn and tried to find out more about this incident. I got hold of the RP Sgt - Sgt Leclerc, and told him to bring the accused to me. The accused was brought to me.

Q.810 What did you do then?
A.810 I warned Pte Robinson. This was in 2 Bn Detn Room.

Q.811 Where were you sitting?
A.811 I was sitting at the table in the office of the detn barrack. The accused was standing in front of me.

Q.812 What did you say to the accused?
A.812 Major Bernier was sitting on my left. Sgt Leclerc was standing to the left of the accused. I warned the accused or said to the accused that he could make a voluntary statement under oath, and that it would be taken down in writing and perhaps later be used as evidence. As far as I can recall, those are the words I used.

Q.813 Were any threats made to the accused?
A.813 No threats or promises were made to the accused with the exception that I offered him some cigarettes which he smoked.

Q.814 Was any violence offered to the accused?
A.814 No.

Q.815 Was the accused in any manner, shape or form given any indication that if he made a statement things would be easier for him?
A.815 No.

Q.816 Was there a statement made?
A.816 I prepared a statement in pencil.

Q.817 Will you detail to the Court exactly what you did?
A.817 I asked the accused if he minded telling some of the events that happened during the evening. He made no objection. I asked the accused if he was aware of the order concerning the wearing of identity discs.

Defending Offr:

I object to the answers of the accused being admitted because the witness must have made up his mind to lay a charge against the accused at this stage. The statement must have been obtained in accordance with "The Judges Rules" as set out in para 76 MML p.81. I also object to any verbal answers the accused made as they are equally a part of the statement made by the accused.

Judge Advocate:

Do you object to both written and oral statements?

W.B.to.

Defending Offr:

Yes sir.

Judge Advocate:

Capt Snell, the result of the objection is that at this stage you may not, until the Court decides it is admissable, tell the Court what were the contents of the written statement the accused made. The Court may hear what went on between you and the accused when making the statement. Nothing he said or the contents of the statement can be given in evidence until the Court rules that they are admissable.

Prosecuter:

Q.818 Will you tell the Court in what manner you obtained this statement or any statement from the accused?
A.818 I obtained the statement by asking the accused two or three questions which I wrote down. I received answers to those questions which I wrote down in the accused's own words. On the completion of the statement, I read it back to the accused in the presence of the witnesses I have mentioned. Then I asked him to sign it.

Q.819 Did you cross-examine the accused on his statement?
A.819 No I did not.

Prosecutor:

I submit that the statement of the accused given to the witness should be admitted into evidence.

Judge Advocate:

The Defending Offr has the right to cross-examine this witness on the manner of obtaining the statement. You may call other witnesses who were present at the time of the taking of the statement. The accused has the right to give evidence if he so wishes. This is what is known as a "Trial within a Trial".

Cross-examined:

Q.820 Have you seen the statement since you first took it on the night of 2 August?
A.820 Yes.

Q.821 Do you recall it? It seems to be in four or five different paras?
A.821 Yes.

Q.822 And each of these paras is the answer to a specific question you wrote down?
A.822 Yes.

Q.823 These questions were not asked by you merely to clear up an ambiguity or were they to .....
A.823 Clarify please.

Q.824 The questions you asked were not questions to clear up something you had learned of the incident from what the accused had just told you?
A.824 No.

10.8.80

Q.825 What was the condition of the accused? Had he been drinking?
A.825 Yes.

No re-examination.

By the Court:

Q.826 You say he had been drinking: to what extent in your opinion?
A.826 I say he had been drinking because I could smell liquor on his person. But he was standing perfectly upright and was in full possession of his faculties. Therefore, I took the statement.

Defending Offr:

I would like to ask a couple of questions of the witness.

Judge Advocate:

I have a few to ask myself. I will question the witness. If I do not cover the precise points you have in mind, the Court will put your questions for you.

By the Judge Advocate:

Q.827 When the accused was brought to you by Sgt Leclerc in the Detn Room office, did you explain to him that you were investigating the shooting which occurred in Canada Bks earlier that evening?
A.827 Yes. First I warned the accused. I told him there had been a shooting. After the warning, I asked him what he knew of it. He didn't .....

Q.828 I take it there was a reply to this preliminary question?
A.828 Yes.

Q.829 Did you at any time form an opinion in your mind as to the accused being guilty or likely guilty of doing this shooting?
A.829 No. I wouldn't say that sir. I had a confused impression of the whole affair and was merely investigating.

Q.830 What period of time elapsed from the time that Cpl Shaw took the accused away from his quarters until the accused was brought before you again?
A.830 I would say a matter of five or ten minutes, fifteen minutes at the outside.

Q.831 Did you or did you not, before you asked the accused to sign this statement, ask him to read it over in order to make any corrections in it if he so wished?
A.831 I read the statement I had written to the accused and asked him if he wanted to say anything else or put anything else down.

By the Court:

Q.832 In the presence of the accused at the bedside, was there any confusion regarding ownership of the pistol?
A.832 I don't remember.

Defending Offr:

I would like the Court to put a question to the witness - whether or not he had made up his mind to lay a charge.

W.B.H.

By the Court:

Q.833 Capt Snell, did you make up your mind to lay a charge against the accused when you found the pistol in the bed clothes of the accused's bed?
A.833 No, I felt that in my capacity as Adjt, an investigation should ensue before any charges could be laid. At the time we merely held Robinson in safe custody.

Q.834 Do you know whether or not a charge was laid against the accused for being improperly in possession of the pistol?
A.834 Yes.

Q.835 When was it laid?
A.835 On the completion of the Court of Inquiry?

Q.836 When did that take place?
A.836 I don't remember - about one or two days later.

Q.837 Who laid the charge?
A.837 We laid it - 2 Bn. I laid it.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 82(B).

EIGHTEENTH WITNESS for Prosecution (Major J. Bernier, RCAPC, 2 Bn 1 CERD, having been duly sworn, is examined by the Prosecutor.

Judge Advocate:

Major Bernier, the Court at this moment is only concerned with ascertaining the facts leading up to the obtaining of a certain statement or statements from the accused. The previous witness has given evidence that a statement was obtained. He has described or given his version of the manner he obtained it. The Defending Offr has objected to the admissibility of the accused's answers and the statement. So we are only concerned with what transpired up to the obtaining of the statement.

Q.838 Will you give the Court your appointment?
A.838 I am Paymaster of 2 Bn.

Q.839 Do you recall the evening of the 2nd Aug 44?
A.839 I do.

Q.840 Were you in 2 Bn Detn Bks that night?
A.840 I was.

Q.841 Who else was there?
A.841 Capt Snell, the Adjt of 2 Bn, along with several witnesses in connection with the accident that happened that night and the accused whom I now recognize in this Court Room.

Q.842 Will you tell the Court what was said to the accused but not what the accused said in reply? You were in this room; where were you?
A.842 I was sitting next to Mr Snell at a desk in the Guard Room.

Q.843 You spoke to the accused?
A.843 I didn't. No sir.

Q.844 Did anyone else speak to the accused?
A.844 Capt Snell told the accused that he could make a statement or give evidence on oath, and that what he would say was to be taken down in writing and used in evidence.

w.b.b.

Q.845 Were any threats made to the accused?
A.845 No.

Q.846 Were any promises held out?
A.846 No.

Q.847 Was there any duress of any sort whatever?
A.847 No, none at all.

Q.848 Was there a suggestion that if he made a statement things might become easier for him?
A.848 Nothing like that, that I recall.

Q.849 After the statement was made, did Lt Snell read it to the accused?
A.849 I don't recall whether he read/or showed it to the accused to read before signing. it

Q.850 Was there any inducement made to the accused to sign the statement?
A.850 None that [redacted]

Cross-examined:

Q.851 What words did Capt Snell use when he wanted the signature?
A.851 I cannot recall the actual words.

Q.852 I suggest to you it was in the form of a command, "You sign here".
A.852 No, I would not say it was in the form of a command. It was shown to him.

Q.853 Were those words used?
A.853 No, I don't recall that.

Q.854 Do you recall anything of the methods used in obtaining the signature?
A.854 As far as I recall, it was pointed out to him that it was a rather important document, and that it would be better for him to sign it.

Q.855 The information which Capt Snell wrote down after he gave the caution was obtained by asking the accused questions and listing answers, was it not?
A.855 Yes.

Q.856 The questions were not put merely for the purpose of clearing up any misunderstanding in Capt Snell's mind but to elicit specific information?
A.856 Yes.

Q.857 Had the accused been drinking?
A.857 Yes.

Q.858 Capt Snell has told the Court the relevant positions of himself, yourself, the Sgt, and the accused. Would you tell the Court the relevant positions?
A.858 Capt Snell was sitting at the desk. The accused was immediately in front of him. I was sitting at Capt Snell's right. I am not sure of the Sgt, but I believe he was sitting fairly well back near the door which was on the right of the desk.

N.Z.S.A.

Q.859 Some cigarettes were offered to the accused while the information was obtained from him?
A.859 Yes.

Re-examination:

Q.860 Who stated that it might be better for the accused to sign this statement?
A.860 I don't recall that that was exactly my answer. The Offr for the Defence asked me in what way the demand was made. As far as I recall it was made in the line of advice.

Q.861 Who gave this advice?
A.861 Capt Snell.

By the Court:

Q.862 Had the accused been told before he started to give his statement that it would be taken down in writing, and he would be expected to sign it?
A.862 He was warned.

Q.863 But not told that he had to sign it?
A.863 Not that I recall.

Q.864 You stated the accused had been drinking?
A.864 Yes sir.

Q.865 Do you think that his reasoning or understanding was affected at that time?
A.865 Not in my opinion.

By the Judge Advocate:

Q.866 Were the cigarettes offered to the accused or did he ask for them?
A.866 They were offered.

Q.867 By whom?
A.867 By Capt Snell.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

Judge Advocate:

Does the accused wish to give evidence?

Defending Offr:

No sir.

Defending Offr's Submission:

Sir, I object to the statement being put in evidence on the basis that the information obtained was made after the Bn Adjt - the investigator - decided to lay a charge or charges against the accused. The caution was not properly administered, and it was not a proper caution. From the evidence, the Court can readily infer that the statement was given under duress. Consider that a private soldier, who, in the opinion of the interrogator had been drinking, was awakened and marched, under the escort of a Sgt, no less, to the Guard Room. In any event the Sgt was available throughout the interrogation. It was not sufficient for them to obtain merely a L/Cpl from the unit to get the statement. Capt Snell must also have the assistance of a Field Offr to help

him. All of these things must have thrown a little fright into the accused. Therefore he was under duress. There is evidence of Capt Snell being the "big brother" of the accused. There is evidence of an inducement, the giving of the cigarettes. Major Bernier states that Capt Snell tried to influence the accused with the advice that it might be better if the accused signed it. This is sufficient evidence from which the Court can draw the inference that there was a threat. I would like to draw the Court's attention specifically to sub-para 7 on page 92 in MML which covers the accused's particular case. This statement is a set question and answer statement and, therefore, inadmissable. I quote: (reads MML Chap VI p.91 sub-para 7). I would draw the Court's attention to the fact that the accused, in the eyes of the person obtaining the answers, had been drinking. Great care must be taken in demanding statements from people who have been drinking, whether little or much. I refer to MML p.93 para 79 which reads as follows: (reads para 79). I wish the statement thrown out.

Prosecutor's Answer:

There is no evidence before the Court from which it can be inferred that a charge was to be laid against the accused. I suggest that the statement was obtained in accordance with the rules laid down by the Judges of the King's Bench Division, found in para 78 at p.91 of MML. In particular, I quote: (reads sub-para 1, MML, p.91). There is no indication, either, in the evidence that the accused was cross-examined as the Defending Counsel suggested. I will read you sub-para 7 on p.92 of MML again. (reads sub-para 7) In any event the caution which was given, I believe, comes well within the ruling of the Court, which in the past decided the form in which the caution should be given. This individual offr gave the exact words used. His failure to put the caution in the exact words of the Rule indicates merely he was not qualified, you might say, in obtaining confessions. He is, you might find, in the capacity of a police offr. There is no evidence of any inducement, threat or promise made to the accused. It was between ten and fifteen minutes from the time he was placed under close arrest in his billets before he was questioned in the detn room of 2 Bn. He was given cigarettes. In fact the attitude of the offr taking the statement was, as far as the accused was concerned, in my opinion, a helpful one. He wanted to make the accused as comfortable as possible. The cigarettes were not offered - there is no suggestion they were offered as an inducement to the accused. There is no evidence before the Court to indicate that the accused was, in any shape or form, drunk. There is some evidence that he had been drinking which is the most ambiguous term. The signature was obtained after the accused had made the statement and had either read it over or had it read over to him. At that time he had the opportunity to delete or make any corrections in the statement if he so desired. I submit that the statement should be admitted in evidence.

The Defending Offr made no reply.

The Court closed to consider the Submission. The Court was re-opened.

Judge Advocate:

Pte Robinson, I am directed by the Court to advise you that the submission made by your Defending Offr has been allowed. In consequence of that, the statement will not be admitted in evidence, and no answers to questions which were put to you during the investigation at 2 Bn Detn Room Office will be admitted.

W.H.B.

SEVENTEENTH WITNESS (Capt J.H. Snell, 2 Bn 1 CBRD, recalled,
for (already sworn,
Prosecution (is examined by the Prosecutor.

Q.868 Did you make any examination of the accused's person at the time you awakened him?
A.868 Yes.

Q.869 Will you describe to the Court what you found?
A.869 I noticed the accused's lips were bruised and cut and that there were scratches on the front of his neck below the chin.

Q.870 Describe these bruises, cuts and scratches?
A.870 Well, the bruises on his face were similar to bruises or cuts one would get in a fight. I would not say he had been in a fight that night. The scratches on his neck were two or three long scratches running diagonally down from his chin and approximately 2½ inches long.

Q.871 Do you recall how many scratches there were?
A.871 Two or three.

Q.872 Was the accused properly dressed when you saw him?

Defending Offr:

I object to the form of that question.

Prosecutor:

Q.873 Describe how the accused was dressed at the time or a few minutes after he was awakened?
A.873 The accused was dressed in trousers with his boots off but his socks on. I would say he also had on some sort of undershirt.

Q.874 Did the accused put on any article of dress at the time you were with him there?
A.874 I don't remember.

Q.875 Could you tell the Court of any other article of dress that the accused had on at the time?
A.875 He might have had on a pair of shorts.

Q.876 You said he had trousers on?
A.876 Trousers, socks and a white undershirt.

Q.877 What were the condition of the clothes?
A.877 His clothes were quite dirty.

Q.878 When you next saw the accused, will you describe his dress?
A.878 The accused had on a bush shirt and shoes but no hat.

Q.879 Will you describe the condition of the bush shirt?
A.879 The bush shirt was dirty. That is all I recall.

Judge Advocate:

Capt Bergman, do you wish to proceed with your cross-examination now? Would it prejudice your case if the Court were to adjourn until tomorrow morning?

Defending Offr:

I have made fairly complete notes which I wish to study tonight. I won't be prejudiced if the Court is adjourned until tomorrow.

Court adjourned at 1655 hrs.

Court re-opened at 1000 hrs, 23 Sep 44, the same members being present.

Prosecuter produced Medical Certificate.

Cross-examined:

Q.880 Capt Snell, when did you make up your mind that serious charges would be laid as a result of the shooting?
A.880 On completion of the Court of Inquiry at 3 Bn.

Q.881 Had you not formed a complete conclusion as to the guilt of the accused when you found the pistol and identity discs during your investigation?
A.881 I was confused about the evidence. I had formed no definite opinion.

Q.882 What made you place him under arrest?
A.882 I placed him under arrest because of the circumstances surrounding him. He might be involved. I placed him in safe custody to further the investigation.

Q.883 How soon after the shooting did you make up your mind that this was not a case of suicide ?
A.883 I didn't arrive at that conclusion.

Q.884 Didn't you consider that a possibility?
A.884 I didn't consider any possibilities. My mind was confused - muddled.

Q.885 Didn't you think it was a little ridiculous that decision?
A.885 My opinion was my own opinion. I heard a lot of things. I was not present at the body or even near the shooting. I found a Seaforth soldier who had been drinking with a pistol in his possession, the .45 automatic which I identified. Certain empty .45 calibre casings were found. All of which seemed to point to the fact that he was lying.

Q.886 You came to the conclusion that he was lying?
A.886 That was my opinion. As it was so late, I thought I had better place him in safe custody. I thought, in my own mind, that he might have been lying.

Q.887 It was a definite conclusion on your part?
A.887 Yes.

Q.888 It was a definite conclusion that he was very closely linked with the shooting?
A.888 Yes.

Q.889 Can you tell the Court how soon after the incident the Court of Inquiry was in your hands?
A.889 The Court of Inquiry was delivered to me the night of the following day, 3 Aug 44.

Q.890 How soon after the shooting did you say the charge was laid against the accused for being improperly in possession of the weapon?
A.890 I received the Court of Inquiry. As it seemed quite a long case and in my opinion it would come to a Summary of Evidence, the charge was placed against Robinson.

A.Bfs.

Q.891 Was he dealt with and punished?
A.891 Yes he was charged and given 28 days.

Q.892 Detention?
A.892 Detention.

Q.893 When you read the Court of Inquiry, did you see the recommendations made by the offr of 3 Bn?
A.893 I did.

Q.894 In view of these recommendations, you still felt you should lay the charge of improper possession?
A.894 Yes.

Q.895 In view of what was contained therein, hadn't you now come to the conclusion that the accused was guilty of the shooting?
A.895 No.

Q.896 Have you ever received instructions in your capacity as Adjt, [illegible] that the Judge Advocate does not want a multitude of charges laid?
A.896 Yes.

Q.897 Did you think that laying a charge against the accused was in accordance with those instructions?
A.897 Yes I do.

Q.898 How long have you been in the Army, Capt Snell?
A.898 I have been in the Army for about four years.

Q.899 Who was your Commanding Offr on the 2nd of Aug?
A.899 Colonel Lent.

Q.900 Did you know whether or not he has legal qualifications?
A.900 Yes he was a lawyer.

Q.901 Did you consult him?
A.901 I did.

Q.902 How often have you read the evidence you gave at the Summary of Evidence?
A.902 I have read it very little. I read it yesterday morning.

Q.903 Just prior to coming into Court?
A.903 Yesterday, not this morning.

Q.904 This morning?
A.904 No, not this morning.

Q.905 You did, in your evidence yesterday, identify Exhibit "J", the identity discs handed to you by Capt McKee. Are you convinced that they are the same or different?
A.905 I state specifically, they are the same.

Q.906 On what identifying marks, do you base this opinion?
A.906 The cord is similar.

Q.907 The type?
A.907 No. The cord is the same cord. It is short and won't go around a person's neck. The marking and stamping on the discs is rough. The name is the same. The way the discs are tied is exactly the same as they were tied. It bears the same number, rank and name as before. They are the same discs.

wbb.

Q.908 There is one distinct peculiarity about the identity discs in connection with the letters of the name. Can you tell the Court what that peculiarity is?

A.908 I don't recall.

Q.909 You examined them and you didn't see this distinct peculiarity? There is something peculiar about one of these discs - something in connection with the numbering which is not very often found on identity discs?

A.909 Possibly.

Q.910 Do you still say you gave them a microscopic inspection?
A.910 I didn't give them a microscopic inspection. I examined them.

Q.911 Still you gave the Court a microscopic description of them as you recalled them, did you not?

A.911 I stated that I recalled them.

Q.912 Examine Exhibit "J". Will you tell the Court how the initial on the top disc is placed in relation to the one on the bottom disc?

A.912 They are joined. The "P" runs into the "PTE".

Defending Offr:

The initial and the "PTE" run into one another. I draw the Court's attention to Exhibit "J" - to the top identification disc and to the lettering "PTED".

Q.913 When you received a copy of the Court of Inquiry, did you implement any of the recommendations made by the Commanding Offr of 3 Bn?

A.913 Yes there were. I have seen the Court of Inquiry very little. As I recall in the findings several charges were suggested. From that it was decided in 2 Bn to place a charge of improper possession against Pte Robinson. The Commanding Offr, 3 Bn, recommended the investigation of several rather serious offences.

Q.914 Did you or did you not take steps to implement these recommendations?

A.914 Yes. After Pte Robinson was charged, it was suggested that we send the pistol to some ballistic experts in Rome. Major Morgan of 3 Bn contacted them through Fd Security. That fell through.

Q.915 How did it fall through?
A.915 Apparently they could not find or locate this ballistic expert in Rome. The pistol was returned to 3 Bn and turned over to him again. This took a certain period of time. It was decided that a Summary of Evidence would have to be taken. Mr Murphy was detailed to round up any persons who might have information concerning the event.

Q.916 Is there any MP force in your Bn?
A.916 Yes.

Q.917 Were there any MP offrs and personnel available to assist you in the investigation?

A.917 Yes.

Q.918 Did you request such assistance?
A.918 No.

Q.919 Why did you not obtain the assistance of their trained personnel?
A.919 I had a variety of reasons. I was very busy with the drafts at the time.

W.A.B.

Q.920 You were busy with drafts?
A.920 I was very busy. I had an offr working at 2 Bn Orderly Room who devoted his whole time to the preparation of Summaries of Evidence, Courts of Inquiry, etc. I had an administrative offr to assist me. I turned over the investigation to this offr as I could not spare the time myself to help Mr Murphy.

Q.921 What is the other of the two reasons?
A.921 I suggested to Mr Murphy that he contact the Judge Advocate which I know he did - due to the seriousness of these charges.

Q.922 Is it the duty of the Judge Advocate to assist in advising you as to whether or not there is sufficient evidence or to assist in investigating the case?
A.922 He is there to clarify certain points. It is not the Judge Advocate's job to direct police investigations.

Q.923 The impression I got was that on various points that arose, on points of law, the Judge Advocate assisted -----

Judge Advocate:

To clarify this for the benefit of the Court; I was not then acting as a Judge Advocate. I was acting in my capacity as ADJA Gp HQ. I am here today as Judge Advocate.

Defending Offr:

Q.924 When did you first consult Capt Bate, ADJA Gp HQ?
A.924 I cannot give you the date. It was four or five days afterwards. Mr Murphy could tell you better.

Q.925 And when Capt Bate was first consulted, was Mr Murphy in possession of any of the information given to the Court these last three days?
A.925 No.

Q.926 You are satisfied in your mind that Mr Murphy sought the best advice that he could obtain and was capable of completing a murder investigation?
A.926 Yes.

Q.927 Had Mr Murphy any recent experience to your knowledge?
A.927 No.

Q.928 Had Mr Murphy any previous experience in murder investigations?
A.926 Not to my knowledge. Mr Murphy spent a period in England and here on Courts of Inquiry and Courts Martial work. He has turned in very efficient work with few repercussions of any sort, and he was quite qualified to deal with this case.

Q.929 You gave evidence yesterday that you and Major Bernier decided to obtain particulars of the owner of the discs that were handed to you by Capt McKee?
A.929 Yes.

Q.930 What did Major Bernier have to do with the discs?
A.930 The decision to pursue the tracing of the discs was simultaneous. He was to check the Pay records and I was to check the Card Index which were in the Bn offices.

Q.931 So you and Major Bernier set yourselves up as an amateur detective office?
A.931 Yes.

W.B.

Q.932 When you first went to the bed in which you found the accused that night, you stated that it was by candle light?
A.932 ~~xxxxxxxxxxx~~ I think there were two candles.

Q.933 You were not in a particularly observant mood that night?
A.933 Quite. Yes.

Q.934 The NCO who was present previously told the Court that he brought a lantern along. Is he right or are you?
A.934 He may have been right. He might have gone back for the lantern, but there were candles when we first went to the bed.

Q.935 What do you say? When you first got there with the NCO, was there a lantern or candles?
A.935 Candles when I first went in as far as I can remember.

Q.936 You are not sure?
A.936 (Witness makes no reply.)

Q.937 If you are not sure of such a small detail, how could you be sure that your specific identification of the discs is any more accurate?
A.937 Yes, I am. My attention was centered on them. My attention was not centered on the light. There was light around the bed.

Q.938 How can you tell the Court you saw scratches on the face or the neck of the accused when you saw him on 2 Aug 44? What conclusion did you come as to how these scratches were incurred?
A.938 My impression?

Q.939 Yes?
A.939 In the RP the soldier ------

Q.940 At the bed?
A.940 When this soldier, who was lying on his face, turned over, his face was bruised - lips bruised and face damaged. On his neck were scratches that had no significance at the time. He was not wearing discs when found in bed. As he was Robinson and I had Robinson's discs, it occurred to me on the way over to the RP that his scratches had some significance. On arrival at the RP I asked Cpl Shaw, in the presence of the accused, if he had noticed scratches on Pte Robinson around his neck. He said "No". I sent the Cpl into the cell where Pte Robinson was. I said take a look at his neck. He came back and I -------

Q.941 You first stated you had this conversation in the presence of the accused. Now which is it?
A.941 Not in his presence. We were told by Cpl Shaw that the scratches resembled scratches which might have been put on his neck by fingernails.

Q.942 Was there any difference in the length and width of the individual scratches? Were they of the appearance of having been put on by fingernails?
A.942 Yes. They looked like scratches.

Q.943 Now, to the best of your knowledge, was any attempt ever made to examine Dillon's fingernails to see if any blood was clotted in them?
A.943 To the best of my knowledge I never heard of any.

Q.944 Don't you think that would be the best way to link Dillon with the accused?
A.944 I would say that that would be a very good method.

W.B.G.

Q.945 Do you agree that that would be the usual police method?
A.945 I am not versed with police methods.

Q.946 Would you tell the Court if a draft had arrived recently from England - just prior to the 2nd Aug?
A.946 Yes.

Q.947 Was there a fair number of Seaforths in camp around 2 Aug 44?
A.947 Yes, there was quite a number.

Q.948 A number of 48th Highrs?
A.948 Yes.

Q.949 And quite a few Hast & PER?
A.949 Yes.

Q.950 When you found the accused asleep in bed with the pistol, was any attempt made to find out whether the accused had been recently seen in possession of the pistol by any of the people in the Bks?
A.950 Taking into consideration .....

Q.951 Forget the time limit that evening. Were any specific steps taken to determine whether or not the accused was seen in possession of that particular pistol?
A.951 I don't know.

Q.952 Did you yourself give that any consideration?
A.952 Mr Murphy and I discussed it.

Q.953 Did you discuss the investigation with him?
A.953 I don't remember what matters were discussed.

Q.954 Did you, in that discussion, consider obtaining the assistance of the police?
A.954 Yes, I 'phoned the Pd Security Offr with reference to the pistol; asked if he had anything to report on it and found out this expert was not available. I frequently asked Mr Murphy how the Summary was getting on and if further assistance was needed. I don't remember telling him specifically to contact the Local Provost or any other police personnel.

Q.955 Who suggested the trip to Rome for ballistic purposes?
A.955 I instigated it if I remember correctly.

Q.956 Who is Capt Allan, W.C.?
A.956 I think he is OC or 2IC of the Pd Security Sec.

Q.957 Did you ever hear of the American ballistics people at Naples?
A.957 No. We were endeavouring to find out.

Q.958 Did you contact the DAPM, the L of C Pro or the SIB of the CMP?
A.958 No.

Q.959 I would like to direct the Court's attention to the next one or two questions and ask them to try and recall the method in which Exhibit "O" was put in by this witness yesterday. When you were handed the pistol, Exhibit "O", yesterday by the Prosecuting Offr, do you recall the method in which you presented it to the Court - how much you handled it?
A.959 Fairly well.

Q.960 Capt Rose handed it to you; then you identified it and then you looked at it?
A.960 I broke it.

W.B.

Q.961 Will you take it and break it exactly the same as you did yesterday?
A.961 If I didn't I should have.

Q.962 You made a statement that you did?
A.962 I don't think I did. I looked at it.

Q.963 You looked at it and could see the corrosion on it?
A.963 I examined the features of the pistol and noticed it was corroded.

Q.964 Can you tell from there that the barrel is corroded?
A.964 The light was shining on it. I can see it.

Q.965 How much did you see? Did you look at it that closely?
A.965 I did. I also recall seeing it on the table, and on examination it had corrosion in the barrel.

Q.966 Did you inspect it in the same manner?
A.966 It is not hard to see the corrosion.

Q.967 Can you examine a barrel without looking down it?
A.967 Not in the true sense of the word, not to examine it [redacted]

Q.968 The amount of examination in detail that you did is evidence on which someone may be convicted of a serious offence. If the evidence is going to be as sloppy as that identification of yours, there will be a miscarriage of justice. Now, what do you say?
A.968 I identified the pistol.

Q.969 You smelled the gun on the night of 2 Aug?
A.969 Yes.

Q.970 And as a result of that smell you came to the conclusion that the pistol had been recently fired?
A.970 Yes.

Q.971 Take Exhibit "O" and tell the Court if the smells from it are any different than those of 2nd Aug?
A.971 It smells of oil now and didn't the other day.

Q.972 How would the oil get there?
A.972 I assume it has been cleaned.

Q.973 How would the oil get there?
A.973 A certain amount of oil remains on certain parts of the mechanism for some time.

Q.974 Now, when you told the Court the pistol had been recently fired, what period of time do you mean by "recently"?
A.974 Recently fired?

Q.975 What do you mean by "recently fired"?
A.975 Recently fired could be a short period.

Q.976 Would it be less than an hour?
A.976 Possibly.

Q.977 Take the time you want .....
A.977 1½ hours.

Q.978 What is the time you meant?
A.978 No one could state the exact time that cordite in any weapon would last.

W.B.Bo.

Q.979 How could you say it was recently fired?
A.979 It smelled quite fresh. The impression I got was that it had been recently fired.

Q.980 You say it had been recently fired. I want an estimate as to how recently?
A.980 The smell of powder from a weapon that had been fired might last a day or only two hours. I would think, from my experience, that where a weapon had been fired the smell would last for some time. My impression from smelling it, when handing it to Major Bernier, was that it had been fired within the last three or four hours.

Q.981 The shooting only occurred approximately one hour before the pistol was in your hands?
A.981 Possibly.

Q.982 Did you look for any other pistols that may have been fired that evening?
A.982 Yes. We enquired about any .45 automatics around. There were a few around the barracks. Several offrs had them. Their pistols were not fired.

Q.983 How and when did you make that check?
A.983 In conversation. I saw two pistols.

Q.984 Don't you feel ridiculous about the way you made your check?
A.984 It was hard to find pistols in all the various places.

Q.985 There were lots around?
A.985 Not of that particular type.

Q.986 There were a lot of souvenir weapons in the hands of soldiers at that time. It was a very popular pastime to collect weapons, was it not?
A.986 Yes.

Q.987 Did you find any difference in the souvenir value of weapons to soldiers just here for the first few days and two or three months after? Are they more anxious to obtain pistols when they first arrive?
A.987 I would say so. I would say that they had it in mind to collect a pistol and carry it as long as they possibly could.

Q.988 If I were to tell you that a pistol fired at 0845 hrs has the same smell at 1000 hrs as it would have at 4:30 o'clock, would you agree that was possible?
A.988 Everything is possible.

Q.989 I only want your opinion from your military experience. Would you agree to the possibility?
A.989 There is the possibility. In my experience, a fresh smell of cordite departs and afterwards you smell corrosion.

Q.990 Was the soldier you found in bed at 2230 hrs asleep?
A.990 He was lying on his face. I assumed he was asleep.

Q.991 Did you turn him over?
A.991 I awakened him.

Q.992 Did he have the appearance of a sleeping man? Did you come to the conclusion he had been sleeping? Did you have to awaken him?
A.992 Yes. I assumed he had been sleeping. My first impression was that he was drunk. I smelled liquer on his breath when he was talking.

R.B.B.

Q.993 When was the first identification parade to let the witnesses pick out the accused?
A.993 Major Morgan held the identification parade preceding the Court of Inquiry.

Q.994 Who found the pistol?
A.994 To the best of my memory Major Bernier found the pistol at the top of the bed in the clothing the accused used as a pillow. It was a simultaneous finding. I was searching the kit, and he probably got his hands on it first.

Q.995 Was it in the man's pillow or by his head or in his kit?
A.995 Underneath the clothing used for a pillow on top of his head.

Q.996 Why did you arrange a second kit inspection?
A.996 Because our inspection had been cursory so I decided that a thorough search should be made. The kit was taken to the RP so that nothing could be taken away from it.

Q.997 You took the regular Infantry Training for an offr?
A.997 Yes.

Q.998 Have you handled rifles or pistols to any great extent?
A.998 Yes.

Q.999 Have you fired a large number of shots from a rifle or pistol or some weapon? Is it not correct that the firing pin on the explosion of the cartridge makes an identical mark on each cartridge?
A.999 Yes.

Q.1000 In order to get the casings out, the ejector is used?
A.1000 Yes.

Q.1001 The ejector makes marks on the cartridge as it ejects the cartridge?
A.1001 Yes.

Q.1002 Have you at any time examined the firing pin mark on cartridges after shots have been fired?
A.1002 I have.

Q.1003 Did you notice any similarity in the marks made in the firing?
A.1003 Yes, three.

Q.1004 I show you Exhibits "M" and "N". Is there any similarity in the firing pin marks?
A.1004 There is a difference.

Q.1005 From your experience, is there anything here to make you come to the conclusion that these cartridges were fired by different weapons?
A.1005 There are two possibilities. One is that they were fired by different weapons. The other is that the spring firing the trip, due possibly to the condition of the pistol, didn't strike hard enough on that particular cartridge.

Q.1006 Examine Exhibits "M" and "N". Is the head the same in each casing or different?
A.1006 There is a difference.

Q.1007 You admit there is a difference?
A.1007 It appears that way.

W.B.B.

Q.1008 That being the case, the conclusion to come to is that they were fired from different weapons?
A.1008 I am not a pistol expert. I cannot say.

Q.1009 Did you examine any of the cartridges for ejector marks?
A.1009 No, I did not.

Q.1010 Supposing you did not find the pistol on Robinson's bed but found it in some other place; is there any way in which you could have linked up that particular pistol with the accused?
A.1010 I am not sure -----

Q.1011 Had the pistol not been found in or near Robinson's bed but found elsewhere, would there have been any possibility of connecting the pistol with the accused?
A.1011 Not unless he attempted to conceal it.

Q.1012 Is there any way to prove it?
A.1012 By fingerprints?

Q.1013 Was it tested for fingerprints?
A.1013 No, I don't think so.

Q.1014 Did you give any such instructions?
A.1014 No.

Q.1015 Do the police have such facilities available in this theatre?
A.1015 If the pistol hadn't been handled by about 20 individuals we could have tried it.

Q.1016 The pistol was not on charge to Robinson?
A.1016 No.

Q.1017 Did you examine Dillon's conduct sheet?
A.1017 No.

Q.1018 Did you check to find out if there had been any previous bad feeling between Dillon and Robinson?
A.1018 No.

Q.1019 Was it given consideration by anyone you knew of?
A.1019 I heard that 3 Bn gave it consideration. It was only hearsay.

Q.1020 So that, if the weapon had been found in the middle of the parade square, there wouldn't have been any link between the body of Dillon and the accused?
A.1020 No.

Q.1021 If the identity discs were not found near or by the body of Dillon, you would not have any way of linking Robinson with this incident whatever?
A.1021 No.

Q.1022 Can you suggest to the Court any motive for this shooting on the part of Robinson or anyone else?
A.1022 The motive?

Q.1023 The motive. Can you suggest any motive which you found in your investigation?
A.1023 Any one of several.

Q.1024 I want you to be very careful in answering that. Did you find any motive, to your knowledge, of linking the accused with the shooting of Dillon?
A.1024 No.

A.B.G.

Q.1025 In your opinion was the argument they had, the motive?
A.1025 No.

Q.1026 Was any consideration given as to how this shooting took place, having reference to the position of the body and the shots fired?
A.1026 Yes.

Q.1027 What consideration that you know of?
A.1027 Various theories. Lots of people mentioned them and most of them were discarded.

Q.1028 Would you tell the Court one of your theories?
A.1028 The theory that he was fired at and shot in the front of the head. There was a discussion by the MOs, but they couldn't make up their minds as to the correct theory. Another theory was that he was shot while running away.

Q.1029 When you considered that the man might have been shot from the front while standing, did you try to find out where the other person might have stood to fire the shot?
A.1029 I did.

Q.1030 And did you take into consideration that the first empty cartridge casing, Exhibit "G", was found approximately some eight feet from the body? Realizing where the cartridge casing was found and that it was fired from an automatic weapon, did you try to reconstruct that? What did you find, was the normal ejection distance?
A.1030 A .45 throws right. The casing is ejected straight up and drops three or four feet from the pistol.

Q.1031 What if it fell on a hard surface?
A.1031 It might bounce.

Q.1032 You said you carried out a test?
A.1032 I said I fired several .45s.

Q.1033 What I am trying to do now is to keep to the specific case dealing with the incident on the 2nd of Aug. You said several theories were advanced. I want to test whether you agree with these theories of this shooting. Were any of these theories discarded?
A.1033 We have been discarding them.

Q.1034 Did you reconstruct the shooting out in front of the Offrs' Mess in the area where the body was found?
A.1034 We reconstructed the shooting at the time and discussed how he was shot, in front or rear. It was thought at that time it was from behind. We were merely investigating the scene of the shooting for more information.

Q.1035 Did you examine any walls for slugs?
A.1035 We did.

Q.1036 Did you go over those walls very closely?
A.1036 We did.

Q.1037 What walls?
A.1037 The walls in front of the Offrs' Mess.

Q.1038 Did you go over carefully the west side of the Borden Block? I show you Exhibit "B" for reference.
A.1038 I examined the wall of the Ottawa Bldg, but I didn't examine the wall of the Borden Block. The reason I examined the side of the Ottawa Bldg and the Offrs' Mess was because I thought that the shots had been fired from the sports ground in front of the Ottawa Bldg. Another reason for examing the wall was the position of the pool of blood. We happened to find a bullet in the wall of the bldg. There were several bullet holes, all of which might have been made by .45 slugs. It was impossible to find out which was the bullet.

H.A.R.

Q.1039 Did you find any .45 slugs?
A.1039 No.

Q.1040 Did the bullet taken from the man's head give you any indication as to where the shot was fired from?
A.1040 I didn't know that a bullet came from his head.

Q.1041 Did you ask for information on those lines?
A.1041 I assumed it would be included in the medical interpretation.

Q.1042 Did you come to any conclusion as to the distance from which the shot was fired?
A.1042 I would say close up.

Q.1043 On what did you base this conclusion?
A.1043 From the size of the bullet-hole in the head.

Q.1044 A case of largeness or smallness?
A.1044 Largeness.

Q.1045 Are you suggesting to the Court that the size of the bullet-hole related to the distance from which the shot was fired?
A.1045 Definitely. A steel bullet makes a small hole and a lead bullet makes a large hole. It was a case of the size of the bullet-hole.

Q.1046 You came to the conclusion that it was fired from close range?
A.1046 Not having seen the body but knowing a small part of the evidence given by the doctors .....

Q.1047 You didn't know the size of the hole?
A.1047 No.

Q.1048 So you jumped to conclusions. When you and Major Bernier found the identity discs and the pistol which you linked closely with the accused, you both jumped to the conclusion that he was guilty?
A.1048 No, I would not say that.

Q.1049 Whether or not you jumped to that conclusion, it appeared to have something to do with the incident, something closely to do with the incident?
A.1049 It would appear that way.

Q.1050 Were any steps taken to find out whether or not Dillon was left handed or right handed?
A.1050 I don't recall.

Q.1051 Wouldn't it have been of some assistance, seeing that the identity discs were in his left hand to determine whether he was left handed or not?
A.1051 I was not there.

Q.1052 Did anyone make inquiries to find out what room Dillon slept in or whether he wore a wrist watch or not?
A.1052 I don't think so.

Q.1053 Was Pte Robinson told he didn't have to give evidence at the Court of Inquiry?
A.1053 I think Major Morgan told him that. I wasn't present.

Q.1054 To your knowledge, was any assistance given Robinson as far as his legal rights were concerned, apart from your own advice?
A.1054 I can't tell you that.

Q.1055 You don't know?
A.1055 No.

WBL

Q.1056 You have the Orderly Offr's Report for the 3rd of Aug?
A.1056 No.

Q.1057 Have you examined it to see what information it contained?
A.1057 The Orderly Offr's Report?

Q.1058 Yes. Did you examine it - the Orderly Offr's Report for 3rd Aug? Have you examined it?
A.1058 Some time ago.

Q.1059 Do you recall if Lt Menahan was Duty Offr that day?
A.1059 He was.

Q.1060 Was there any report of this incident made in the Orderly Offr's Report for the night of 2/3 Aug 44?
A.1060 No, there was no reason for it.

Q.1061 Give a reason why there wasn't one?
A.1061 Taking into consideration the fact that there were the proper lengthy notes incorporated in the Court of Inquiry, made .....

Q.1062 Do you think that the Court will believe that? Is that the reason?
A.1062 Clarify the question.

Q.1063 You are trying to tell us about something that was done much later. I suggest to you that there was no Orderly Offr's Report. I suggest to you that it was some time later that he made a specific report of the incident?
A.1063 He made a written statement of the incident, I believe, the next morning.

Q.1064 I suggest it didn't come in with the Orderly Offr's Report?
A.1064 I don't remember. Everyone was quite aware that there had been a shooting.

Q.1065 Are you suggesting seriously that because everyone knew about it, no report was made? You are aware that it is evidence you must give in this Court. Don't make silly remarks.
A.1065 (Witness does not answer.)

Q.1066 Where was the holster found?
A.1066 In the kit of Pte Robinson.

Q.1067 Did you find it?
A.1067 No.

Q.1068 Doesn't it strike you as rather queer that the pistol and the holster were not in the kit together?
A.1068 It strikes me that he wanted it under his pillow.

Q.1069 This accused?
A.1069 Yes. It strikes me that he wanted it under his pillow.

Q.1070 Doesn't it strike you as queer that the holster was found in the kit bag and the pistol found by the pillow or articles used as a pillow?
A.1070 Not queer.

Q.1071 Does it strike you as unusual?
A.1071 It doesn't strike me as unusual.

Q.1072 You are trying to be a big help .....
A.1072 You are asking me. Some people don't keep their pistols in their holsters and others do.

W.L.R.

Q.1073 I suggest to you that after the pistol and holster and identity discs were found, you were trying to prove him guilty?
A.1073 The evidence seemed very certain from the sequence of events that came out that evening.

Q.1074 Wouldn't it be quite unusual for Robinson to keep the pistol, assuming he was connected with the shooting that evening?
A.1074 Yes.

Q.1075 Doesn't it strike you as unusual that you found it under his pillow and not in his kit?
A.1075 It might be -----

Q.1076 Was it found when he was asleep?
A.1076 If he was asleep.

Q.1077 Don't be technical. Do you dislike the accused?
A.1077 I have no feelings one way or the other.

Q.1078 You had been looking after the investigation right throughout. Apart from the medical assistance - there had been no provost assistance - were you not trying to find a solution to the shooting without any professional assistance?
A.1078 No, I don't think so.

No re-examination.

By the Court:

Q.1079 You stated yesterday that you took the smell of cordite as evidence that the revolver had been recently fired. At what time did you smell it?
A.1079 Shortly after it was found. A matter of minutes.

Q.1080 At approximately what time did you smell it?
A.1080 It took 10 or 15 minutes to find out about Robinson. We went directly to Robinson's bed, and it was somewhere between 11:25 and 11:45 o'clock when the pistol was found - around that time approximately.

Q.1081 In other words 2355 hrs?
A.1081 Approximately.

Q.1082 You specifically examined the Orderly Offr's Report after this incident?
A.1082 Yes sir.

Q.1083 Did you see the Tattoo Roll Call for the night 2/3 Aug 44?
A.1083 I saw it the following morning. I didn't see it that night. I don't recall now if Robinson was marked as in that night or not. We checked on it the following morning.

Q.1084 Why the check in the following morning? Was Pte Robinson marked absent at Tattoo Roll Call?
A.1084 I can't verify that from memory.

By the Judge Advocate:

Q.1085 I think, Capt Snell, you said that when you saw the accused in bed his clothing was dirty?
A.1085 Yes sir. I remember they were dirty.

Q.1086 What do you mean by dirty? Oily, muddy, dusty or what?
A.1086 I would say dusty but I can't verify the type of dirt.

Neb.R.

Q.1087 You have in the course of your evidence referred to the accused's kit. How do you know it was his kit?
A.1087 I am not positive that it was his kit, but it was in his bed and around his bed. It is normal to find a man's kit around his bed.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

EIGHTEENTH WITNESS (Major J. Bernier, RCAPC, 2 Bn 1 CBRD, recalled, for Prosecution (already sworn, (is examined by the Prosecutor.

Judge Advocate:

Major Bernier, the decision of the Court was that the written statement and the answers by the accused to the questions when he was before Capt Snell in the 2 Bn Detn Room would not be admitted in evidence. So don't repeat any part of them, please.

Prosecutor:

Q.1088 Do you recall the evening of 2 Aug 44?
A.1088 I do.

Q.1089 Will you tell the Court, as simply as possible, what happened on that evening?
A.1089 On the night of 2 Aug 44 I was reading in my room, immediately above the 2 Bn Offrs' Mess.

Q.1090 I think it might be important if the Court were shown just where Major Bernier's room is on the sketch, Exhibit "G".
A.1090 My room is facing the one storey wing of the Ottawa Bldg on the second floor - the last room. (Witness marks spot with letter "L" on sketch.)

Q.1091 Carry on?
A.1091 At approximately 2300 hrs I heard a shot and then two other shots. I jumped up: went downstairs and found a group of offrs standing around a body sprawled in front of 2 Bn Mess entrance.

Q.1092 I would like you to indicate on Exhibit "G" the position of the body?
A.1092 Here. (Witness points to letter "H" on sketch.)

Q.1093 Will you tell the Court what was the attitude of the body?
A.1093 I only saw him for a brief moment. I remember the man was lying on his stomach. It seems to me his arms were outstretched and not at his side.

Q.1094 In what direction was he facing?
A.1094 His head was facing the Berden Bldg and his feet towards the Petawawa Bldg.

Q.1095 Will you carry on, please?
A.1095 The 2 Bn Orderly Offr, Lt Manahan, seemed to have the situation well in had so I left the scene. As I thought there might be an armed robbery, I went to my office and found everything in order. Then I returned to the general area of the incident. I was shown a set of identity discs by Lt McKee, who said .....

Q.1096 Carry on, but don't repeat conversations.
A.1096 The discs appeared to belong to B.144333 Pte D. Robinson and had the abbreviation for "Presbyterian" and "Canadian" on them.

Q.1097 Was there anything else, any other points of identification on these discs?
A.1097 They were two normal discs, tied together the way they should be, but the cord or string had been broken and, if I remember correctly, the discs had different information as to initials or rank. One had full initials and one had just one initial. I am not sure of this.

Q.1098 I now produce to you Exhibit "J". Can you identify these discs?
A.1098 Yes, these are the discs I was shown on that night.

Q.1099 Carry on, please.
A.1099 I went to Nos 1, 2 and 3 Bns to see if they had any record of Pte Robinson. We finally traced him at the Seaforth Coy Office of 2 Bn. I reported the fact to Capt Snell who had also found out the same information. I accompanied Capt Snell to the Seaforth billets. We found Pte Robinson in his proper bay, sleeping in his blankets. We awakened him. Pte Robinson's face and lips were bruised. There were scratches on his neck and his face. I went through his kit and found an American model .45 calibre revolver under the part of his blankets which formed a pillow. The revolver was empty and had, from the smell of powder, been recently fired.

Q.1100 Will you give to the Court any information you know about that revolver?
A.1100 It was American - I did not notice the make - of .45 calibre. It was in a rusty condition or unpolished in appearance. The number, model or issue was blurred. It had 1911 on it but I did not take the number until the following day. That is about all the information I know except that the magazine was on and was empty. There were no cartridges in the chamber.

Q.1101 Could you identify the revolver if you saw it again?
A.1101 I could.

Q.1102 How?
A.1102 From its general appearance and from its condition because I have a good memory.

Q.1103 I produce Exhibit "O". Will you examine this exhibit and tell the Court whether that is the same revolver or not?
A.1103 (Witness examines pistol) Yes, that is the same revolver.

Q.1104 At what time did you find this revolver?
A.1104 Approximately 2330 to 2345 hrs.

Q.1105 What did you do then?
A.1105 I looked through the rest of the kit and found a holster, presumably the one for the revolver in question. I found it in Pte Robinson's kit bag. I found no other fire arms or ammunition except his rifle which was hanging on the wall and had not been fired. I handed the revolver and holster to Capt Snell for safe custody.

Q.1106 How do you know the kit belonged to Pte Robinson?
A.1106 Because when he was sitting up in his bed, he acknowledged the fact that it was his kit.

Q.1107 How did he acknowledge it?
A.1107 I told him I was going to look through his kit. I asked him if it was his kit and he said, "Yes".

W.B.B.

Q.1108 What was the holster like?
A.1108 It was a light brown holster, not well polished. It had quite a few stains on it but no marks that I recall, no issue or serial number of any sort.

Q.1109 I produce a holster. Can you identify it?

Defending Offr:

In my opinion the methods of introducing the exhibit is objectional. The witness has not identified it by a proper description.

Judge Advocate:

He was only asked whether he was able to identify it or not. The Court will decide on the sufficiency of the identification, in due course.

(examination cont'd)

A.1109 I identify it from its badly polished condition.

Q.1110 Do you recognize that holster?
A.1110 I do recognize it.

Q.1111 What holster is it?
A.1111 That is the holster I found in the kit. (Brown leather holster stamped "UG", admitted and marked Exhibit "P".)

Q.1112 Did you make any examination or search of the person of the accused?
A.1112 I did not.

Q.1113 What did you do then?
A.1113 Capt Snell had the accused placed under close arrest. Then the Cpl on duty was ordered to take Pte Robinson to the 2 Bn Guard Room and make a methodical search of the general area where Pte Robinson slept. I later accompanied Capt Snell to 2 Bn Guard Room while he questioned the accused and other witnesses as to the shooting.

Q.1114 Can you point out the accused in this Court Room?
A.1114 The accused is here (pointing) sitting by the Offr for the Defence.

Cross-examined:

Q.1115 Major Bernier, giving evidence before this Court has caused you considerable worry, hasn't it?
A.1115 I call it nervousness.

Q.1116 You have been worried about giving evidence?
A.1116 I am not used to the formality of the Court.

Q.1117 You are a little bit worried about the questions I am about to ask you?
A.1117 If I tell the truth I have nothing to worry about.

Q.1118 Since you found out I was the Defending Offr, haven't you been a little bit nervous and worried about the questions I would ask?
A.1118 I knew it would mean a lot of cross-examination.

Judge Advocate:

Capt Bergman, you wouldn't be flattering yourself by any chance?

S.A.B.

Defending Offr:

May I have that on the record, sir?

Q.1119 With the result that you have, since the taking of the Summary, read and re-read the evidence you gave in the Summary?
A.1119 I read it only once.

Q.1120 Thoroughly?
A.1120 Just once was the only time. I probably asked other witnesses ....

Q.1121 Have you ever referred to it in an attempt to refresh your memory?
A.1121 Just that once.

Q.1122 Did you memorize the statement you gave at the Summary?
A.1122 No. I had already repeated the story I knew five or six times. I have a photographic memory for certain of the details of what happened.

Q.1123 You saw the accused on his bed on the night of the incident, on the 2nd of Aug. What happened that night since you have such a photographic memory for detail?
A.1123 Only for certain details, [redacted]

Q.1124 Have you the same photographic memory of what happened between 1130 and 1140 hrs this morning?
A.1124 Partly, yes.

Q.1125 Apart from the conversation you had in the presence of Capt Rose and myself, did you have a conversation with anyone else out there?
A.1125 I talked to the Cpl about the duration of the trial.

Q.1126 Did you talk to Capt Snell at all or have any words with him?
A.1126 I asked him whether he had been sitting down when giving his evidence.

Q.1127 Did you discuss the identification of the exhibits?
A.1127 No.

Q.1128 Did you discuss the questions asked him?
A.1128 No.

Q.1129 Why did you so anxiously point out the difference of a letter in the identity discs in the initials of the two discs?
A.1129 As far as I can recall, I noticed it on the night of 2 Aug when I was trying to find the initials for record purposes. I didn't get all the actual details.

Q.1130 Is that the only peculiarity in the initials on either one of them?
A.1130 That is all I remember. I have only seen the discs a few times.

Q.1131 You had the discs in your hand a few moments ago ....
A.1131 The only way I remember them is by the difference in the initials and rank on both of the discs.

Q.1132 What is the difference of initials and rank? Specify it?
A.1132 One has no initial or only has the initial "D".

Q.1133 Are you sure there is no difference in the type of the "PTE" or the position of the initials?
A.1133 I cannot say.

W.B.B.

Q.1134 Will you tell the Court if when you first saw the identity discs you examined the string to see whether it was cut or broken?
A.1134 I did not.

Q.1135 Did you examine the type of knot?
A.1135 I did not.

Q.1136 You gave these identity discs a close examination?
A.1136 I gave them an examination as to rank, name and initials.

Q.1137 Then you can't say that these are the same identity discs because of any other mark of identification?
A.1137 They only bore the same number and name. In my opinion they are the same discs I saw that night.

Q.1138 That is a big difference. Now the holster, the only way you can identify it is that the holster is not polished?
A.1138 Yes.

Q.1139 How could you pick it out of a thousand holsters?
A.1139 By its form.

Q.1140 Could you be sure?
A.1140 Yes.

Q.1141 Are you prepared to state that that is the specific holster you took out of the kit of the accused - identify it specifically? Are you prepared to have your identification checked? Could you pick it out of a large group of holsters of the same size, shape and quality?
A.1141 Frankly, no.

Q.1142 So you cannot identify it specifically?
A.1142 Frankly, no.

Q.1143 Now, if I gave you a number of American .45 pistols of the same type and army serial numbers as Exhibit "O", all a little rusty and dirty and which had been fired, could you pick that one (points to Exhibit "O") out of a very large number?
A.1143 Yes.

Q.1144 And what is the specific thing you would use to identify it?
A.1144 One side of the grip is smooth and the other rough.

Q.1145 Is that unusual?
A.1145 Both sides should be the same.

Q.1146 When did you first memorize the number of the identity discs?
A.1146 The next morning I knew that I would have to establish the number in identifying the discs so I examined them thoroughly.

Q.1147 Capt Snell told us he asked the accused questions. Is that not true?
A.1147 Yes.

Q.1148 How did Robinson have a chance to tell you which was his kit - which kit to examine?
A.1148 As far as I recall there were only a few questions asked him. I had time to ask him a few.

Q.1149 Did you ask him during the actual questioning, before the questioning started or after the questions were asked?
A.1149 I can't say.

WBB.

Q.1150 Are you sure you can't remember?
A.1150 I remember I asked the accused where his large pack was. His large pack was at his head and his small pack to the left. I asked him which part of the kit belonged to him and made him show me where it was. He said, "Yes".

Q.1151 How did you and Capt Snell go about doing this?
A.1151 I don't know. I asked the questions.

Q.1152 In Capt Snell's presence?
A.1152 Yes.

Q.1153 As soon as you got hold of the identity discs and looked at the pistol, you made up your mind the accused was guilty, didn't you?
A.1153 No, I did not.

Q.1154 You didn't make up your mind. When did you first decide the accused was guilty?
A.1154 I would like to reserve my opinion. It was a matter of investigation.

Q.1155 Did you form a definite opinion that the accused was guilty of something or other?
A.1155 Yes, of something.

Q.1156 On what occasion did you change your opinion?
A.1156 I would not say.

Q.1157 When you first arrived at the body would you say there was a group around it?
A.1157 Yes.

Q.1158 How many?
A.1158 Five or six.

Q.1159 Were there any offrs?
A.1159 Some were offrs and some were guards and others.

Q.1160 Were there any spectators?
A.1160 Some of the offrs had rushed out of the Mess and there were people from the Guard Room. Whether there was anyone who had nothing to do with the business, I couldn't say.

Q.1161 You say the offrs rushed out?
A.1161 I don't know. I was on the second floor.

Q.1162 How long did it take you to get out?
A.1162 Less than a minute.

Q.1163 When you arrived at the doorway of the Offrs' Mess did you go right to the point where the body was?
A.1163 Yes.

Q.1164 What made you think that you were going to have a burglary in the Pay Office?
A.1164 I have always been safety-conscious. That has been stamped into me.

Q.1165 Did you check up other Pay Offices as well as your own?
A.1165 No, I was concerned with my own only.

Q.1166 You told the Court that in your opinion the revolver had been recently fired?
A.1166 Yes.

Q.1167 Do you know anything about revolver ballistics?
A.1167 No, I don't.

W.B.B.

Q.1168 Can you tell the Court the approximate time that elapsed between the firing and when you found the pistol?
A.1168 No.

Q.1169 Have you any evidence to link up the revolver with the shooting?
A.1169 The strong smell of burning powder.

Q.1170 Are you sure of the smell?
A.1170 Yes.

Q.1171 Can you estimate how recently the pistol had been fired?
A.1171 No.

Q.1172 Then there is no way of linking the shooting up with the pistol?
A.1172 No.

Q.1173 What makes you think the revolver you found had been fired?
A.1173 There was a smell of powder about that pistol that made me come to the conclusion that it had been fired.

Q.1174 Did you examine the accused's rifle?
A.1174 Yes.

Q.1175 How many cartridges were in the magazine?
A.1175 Ten.

Q.1176 What did you find on the examination of the barrel? Was it a thorough examination?
A.1176 Nothing. I didn't examine the barrel thoroughly.

Q.1177 You know the only way you could find out whether the barrel had been recently cleaned was from an examination of the pull-through?
A.1177 No.

Q.1178 You must have been particularly observant?
A.1178 (Witness makes no reply.)

Q.1179 Why was it that you took such a prominent part in this investigation?
A.1179 I don't call it prominent. I found whose identity discs they were and where he was from.

Q.1180 You were a bright investigator weren't you?
A.1180 I was helping out.

Q.1181 You were helping out and took an extensive part in the investigation?
A.1181 I would not say that.

Q.1182 Why was there such a further kit inspection after you had taken the gun from the kit yourself?
A.1182 Because we just went through the kit. There were other men sleeping in the bay and we didn't want the other men disturbed.

Q.1183 Did you examine the scratches on the accused?
A.1183 I saw them.

Q.1184 Were they scratches which might have been made by fingernails?
A.1184 Yes.

Q.1185 Was there any attempt, to find out from Dillon's body, whether he had any blood under his fingernails?
A.1185 Not that I know of.

Q.1186 Did you know if the MPs or the DAPM or the British Special Investigation Bureau were sent for to assist in this case?
A.1186 I don't know.

Q.1187 Do you know if any ballistic's information was received from the American ballistic people in Naples?
A.1187 I don't know.

Q.1188 Don't you agree that it was strictly an amateurish job as far as investigation was concerned?
A.1188 It was a preliminary investigation of the shooting.

Q.1189 Don't you agree it was amateurish?
A.1189 Other people took it up the next morning.

Q.1190 Don't you think it was an amateur investigation?
A.1190 It was a rough examination.

Q.1191 You have no specific qualifications?
A.1191 I report facts.

Q.1192 Have you any special experience or qualifications in conducting investigations?
A.1192 No.

Q.1193 Could you tell by an examination of Exhibit "J", the identification discs, whether or not the cord attached to them has been broken in the way which a string would break if pulled from the neck of a person wearing it?
A.1193 I would say it is possible.

Q.1194 Do you know how long the string is?
A.1194 Ten inches or a foot.

Q.1195 You have never measured it yourself, have you?
A.1195 No.

Q.1196 Do you suggest it was broken?
A.1196 Here and here is the point of two breaks; one here and one here. (witness indicates on cord of Exhibit "J")

Q.1197 Then you are stating that there are two breaks, one here and one at the other end. By that do you mean there is a piece missing?
A.1197 I don't know if a piece is missing.

Q.1198 The cord is not long enough to go around a man's neck? (demonstrates)
A.1198 No.

Q.1199 Then there is a piece of the string missing?
A.1199 Possibly.

Q.1200 Is it possible that this piece of string is the only part of the string that was around his neck?
A.1200 No, it isn't.

Q.1201 There must be a piece missing?
A.1201 Yes.

Q.1202 Therefore on a pull of the identity discs from the neck, there is apt to be only one break?
A.1202 That depends on the condition of the string.

Q.1203 The point of the string where the first force is exerted, is where the break occurs, isn't it?
A.1203 Yes, or also where there had been a knot and where the cord may have ....

Q.1204 Then, where there is a knot there will likely be a break?
A.1204 (Witness does not answer.)

WJRB.

Q.1205 I want an answer to the question?
A.1205 As I am not an expert .....

Q.1206 Do you know anything about it?
A.1206 I don't know.

Q.1207 Did you examine the shoes and socks of the accused when you got to his bed?
A.1207 I don't ..... no.

Q.1208 You can't tell how recently they had been taken off?
A.1208 No.

Q.1209 Did you go into that?
A.1209 No.

Q.1210 What light was used when you first got to the accused's bed?
A.1210 Candle light.

Q.1211 The Orderly Cpl says he got a lantern and took you and Capt Snell to the bay. Is that correct?
A.1211 I can't remember. I only remember what I said.

Q.1212 You don't remember about the light?
A.1212 No.

Q.1213 Then your photographic memory doesn't recall what kind of light there was on the 2nd of Aug 44?
A.1213 I don't remember.

Q.1214 I also suggest to you that you are not sure of the quarters in which you found Robinson - that it was the correct one as to bay and bed?
A.1214 I am sure.

Q.1215 Did a new draft come in recently?
A.1215 Yes.

Q.1216 Was it a fairly large draft?
A.1216 Not too large. We had had two drafts; one from the UK and one from the Armoured Corps - tradesmen and drivers from every arm of the service - transfers.

Q.1217 Wasn't it correct that Capt Snell had been out a good part of the night of the shooting and was a little "happy" when he came home?
Q.1217 He didn't appear that way.

Q.1218 He had had a few drinks?
A.1218 Yes.

Q.1219 What about you?
A.1219 I had not had a drink.

Q.1220 You had not?
A.1220 No.

Q.1221 Did you have a fairly clear view of Dillon's body as it lay on the parade square?
A.1221 No.

Q.1222 Did you have a chance to examine him?
A.1222 No.

W.B.

Q.1223 Were his sleeves up or down?
A.1223 I don't know.

Q.1224 Were his hands outstretched?
A.1224 Slightly clenched like this (witness indicates). I can't remember other details.

Q.1225 Were you able to see his wrist watch on his left wrist?
A.1225 No.

Q.1226 The finding of the body didn't excite or arouse you to remember details?
A.1226 There were five or six offrs present, and they had just called the doctor. It wasn't my business to interfere.

Q.1227 With your photographic memory, do you recall the condition of the body?
A.1227 Just the position of the body.

Q.1228 The only way you link the pistol with the accused is by the finding of it by or near his body, right?
A.1228 No.

Q.1229 Was there any difference in the type of scratches on the neck of the accused when you saw them? Did you see them?
A.1229 Yes, I did.

Q.1230 Were they a type of scratch that would have been made by fingernails?
A.1230 Yes.

Q.1231 There was no difference in length or width?
A.1231 Yes.

Q.1232 They were all scratches?
A.1232 Yes.

Q.1233 Were these three shots you heard fired in fairly rapid order?
A.1233 No, I would say they would be about three seconds apart.

Q.1234 Would you say that they sounded like the normal sound of a shot fired from a Tommy Gun?
A.1234 Not being an expert .....

Q.1235 You have fired weapons?
A.1235 Yes.

Q.1236 Was there some space or time that would elapse between the normal firing of a Tommy Gun?
A.1236 Yes.

Q.1237 What kind of books do you like reading?
A.1237 Anything - detective stories, travel and adventure stories.

Q.1238 You like detective stories?
A.1238 Yes.

Q.1239 Do you read Conan-Doyle?
A.1239 Not for a long time.

Q.1240 Can you estimate the period of time you stood at or near the body lying outside 2 Bn Offrs' Mess that particular evening?
A.1240 About half a minute. As I said before, the Duty Offr seemed to have everything in order; the MO was coming so I ran over to see that my money was all right.

W.B.B.

Q.1241 What clothing mainly did you find in the accused's kit?
A.1241 I didn't find anything unusual.

By the Court:

Q.1242 Would you describe how the accused was dressed when you found him?
A.1242 He was sitting up in bed so I can only give what appeared above the bed clothes. His underwear appeared to have been torn. He had no discs. That is all I can say.

Q.1243 You say there were three shots that you heard?
A.1243 As far as I can recall.

Q.1244 Were they close together?
A.1244 A spacing of one, two or three seconds.

By the Judge Advocate:

Q.1245 Major Bernier, there has been some questioning of your methods and of the part in which you played in the investigation. Did you do it from your sense of duty?
A.1245 Yes I did.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

The Court adjourned at 1245 hrs.

The Court re-opened at Sorrento at 1400 hrs, 28 Sep 44, the same members being present.

Prosecutor produced Medical Certificate.

NINETEENTH WITNESS for Prosecution (Capt R.P. Jepson, 5 Mobile Neuro-Surgical Unit, RAMC, having been duly sworn, is examined by the Prosecutor.

Q.1246 You are attached to 65 Brit Gen Hosp. Is that right?
A.1246 That is right.

Q.1247 That hospital is located where?
A.1247 Naples.

Q.1248 Are you a Medical Doctor?
A.1248 Yes. I have medical degrees.

Q.1249 From what University?
A.1249 The University of Manchester.

Q.1250 Are you a licensed practitioner?
A.1250 Yes.

Q.1251 Will you give the Court your degrees?
A.1251 MB Manchester and BSc Manchester.

Q.1252 Are you licensed by the Medical Association?
A.1252 Yes.

Q.1253 Do you recall the night of 2/3 Aug 44?
A.1253 The early morning of the 3rd of August.

Q.1254 What happened that morning?
A.1254 I was sleeping in my [illegible] situated not far from the Hospital, and a message came which called me to the Hospital. I then went to the Hospital and examined a patient who was referred to me as Dillon. He was suffering from a through and through bullet wound of his head which had entered the right frontal bone and came out through the right occipital bone.

W.G.K.

Q.1255 What time was this?
A.1255 I saw him at 0230 hrs on the 3rd of August, according to my notes.

Defending Offr:

I wish to raise an objection. The witness said, "I see from my notes". What evidence is there that these are the notes in question?

Judge Advocate:

Q.1256 When were those notes made?
A.1256 At the time I first saw the man.

Defending Offr:

When did he last see the notes he made?

Judge Advocate:

Q.1257 When did you last see those notes?
A.1257 The notes were completed on the day he died. I think he died on the 7th or 8th of August.

Defending Offr:

This matter should be cleared up to the satisfaction of the Court. You will notice that the witness has in his hand a certain document - certain memoranda - and has not the permission of the Court to refer to them.

Prosecutor:

The witness has not referred to them in the Court.

Defending Offr:

The witness used the words, "I see by my notes", and referred to the notes in his hand.

Judge Advocate:

Q.1258 Is the document, which you are holding in your hand, the notes which you mentioned?
A.1258 Yes.

Q.1259 Who made them?
A.1259 They are not the original notes.

Q.1260 Who copied them?
A.1260 Col. Ashcroft.

Defending Offr:

The witness is not entitled to refer to that document.

Prosecutor:

His is not referring to it except to refresh his memory.

Defending Offr:

I don't wish to be difficult, but I know the witness received these particular notes outside this Court Room and carried them in .....

W.B.B.

Prosecutor:

I am not intending to establish .....

Defending Offr:

The evidence, this witness is giving, is evidence that he has got from certain pieces of paper which he did not have a hand in making.

(examination continued)

Q.1261 Would you mind pointing out to the Court on your own head where the wound of entry was and where the wound of exit was?
A.1261 The wound of entry was roughly here and the exit roughly here: the line between the two being more or less horizontal. (the witness pointed first to the middle of the right forehead and then to the back of his head in line with the first point)

Q.1262 What caused this wound?
A.1262 A high velocity missile.

Q.1263 What happened to the patient after you first saw him?
A.1263 He was given a blood injection and was recussitated by having a tube put into his stomach for the purpose of administration of fluid.

Q.1264 Did you have anything more to do with the patient?
A.1264 Yes, I saw him again at 8:30 in the morning and operated on him at 0900 hrs.

Q.1265 What further attention did you give him?
A.1265 I saw him afterwards, perhaps two or times a day until he died.

Q.1266 What did he die from?
A.1266 He died from the effects of a severe brain injury and secondary bronchial-pneumonia.

Q.1267 Is bronchial-pneumonia a common sequence to a severe head injury?
A.1267 Where a patient is in a ~~comma~~ coma from an injury to the head, you frequently get a lung condition which becomes infected causing pneumonia.

Q.1268 Do you know whether or not any person was treated in that hospital that night for wounds of that nature?
A.1268 Not to my knowledge. I would certainly have been called to see him if he had come in.

Q.1269 After the patient died, did you have any further dealings with him?
A.1269 No.

Cross-examined:

Q.1270 Apart from this particular head injury which you described as caused by a high velocity missile entering the right frontal bone, were there any other wounds in the head or body of the person you examined?
A.1270 No.

Q.1271 None apparent to you?
A.1271 No.

Q.1272 Did he have any bruises on his face or body?
A.1272 Not that I know of.

W.B.D.

Q.1273 Is secondary bronchial-pneumonia caused by a bug or a bullet?
A.1273 A combination of the two.

Q.1274 Does the bullet bring the bug?
A.1274 No.

Q.1275 You stated to the Court that the bullet travelled through the head of this person in a horizontal line?

A.1275 Yes.

Q.1276 Can you tell whether the front or rear bone was on a horizontal plane?

A.1276 No, I cannot answer that.

Q.1277 Would you say there was the slightest difference in that line?
A.1277 I didn't pay that much attention to it.

Q.1278 You realize how important it is to the Court in testifying what was the actual line from the standpoint of the entry of the wound?

A.1278 Yes.

Q.1279 I suggest this to you; that if a bullet is fired from a pistol, from a reasonably close range, at someone else, the entry wound would be slightly higher if he were shot from the rear than if shot from in front?

A.1279 It would depend on the angle of the head. If his neck was flexed and the man was holding the pistol down here (indicates), it would be in a perfect horizontal line.

Q.1280 How could it be a perfect horizontal line if he fired from behind and the head is forward at an angle? Then, if the shot was fired from behind, the wound of exit would be much higher?

A.1280 If the man was firing from behind, yes.

Q.1281 I am meaning with regard to the normal position of the bodies?
A.1281 Then, if his head is bent forward, the exit wound would be higher than the entry wound. You realize that by horizontal plane is meant the line taken between the ear and the eye.

Q.1282 Could you describe to the Court the type of wound that a piece of string would leave on a reasonably tender part of the skin if the piece of string were jerked from the neck?

A.1282 It depends on the violence of the jerking.

Q.1283 Would you say that, if it were a violent jerk, the resulting wound would be a scratch or a welt?

A.1283 If it was a violent jerk it would be a burn.

Q.1284 Doctor, I want to assume that you have a set of identity discs around your neck, and that they are pulled sharply away from your throat. Would the string, in breaking, leave two or more identical burns on the skin?

A.1284 It again depends on the amount of friction between the string and the skin. If it were a very good piece of string that would not break without a great pull; if it required great violence, you probably would get burns on both sides of the neck.

Q.1285 Could you tell the Court - describe the amount or type of burns which you referred to? Would it be a burn or a welt?

A.1285 In which order?

L.L.B.

Q.1286 You realize perhaps that you are giving evidence before a Canadian Court, and you may be using the word "burn" in a different sense than the Court would understand it?
A.1286 Perhaps if I gave an example: say a rock climber, who after falling, say five or ten yards, is brought to a sudden stop by the rope, he would get second degree burns.

Q.1287 A second degree burn leaves quite a scar?
A.1287 No scar. Just a bruise.

Q.1288 And that would be .....
A.1288 That depends on the amount of skin surface covered by the string.

Q.1289 Could you tell the Court anything as to the range at which this missile was fired?
A.1289 No, I don't remember seeing powder marks on the skin.

Q.1290 Do you know how far away the pistol has to be held - how close to the body to leave powder marks?
A.1290 No.

Q.1291 How many doctors were there in the staff of 65 Brit Gen Hosp on the 2nd of Aug 44?
A.1291 You mean the whole of 65 Gen Hosp, both medical and surgical?

Q.1292 Yes, approximately how many?
A.1292 I would say about ten or twelve.

Q.1293 Did you notice any bruises on the left forehead of the person you examined?
A.1293 No.

Q.1294 What is the usual medical method of determining which is the point of entry, and which is the point of exit in a case of this kind?
A.1294 I always tell by ascertaining where there is greater fragmentation of bone.

Q.1295 But had you seen the wound immediately after being inflicted, what would you look for to find the wound of entry and exit?
A.1295 Firstly, powder marks on the skin and then the relative size of the exit and entry wounds.

Q.1296 Which would be the larger?
A.1296 The exit wound is usually the larger.

Q.1297 If one wound is smaller than the other, both are exuding blood, then that would indicate to you that the small wound is the wound of entry and the larger is the wound of exit?
A.1297 Yes, it would be.

Q.1298 Now, is this small wound of entry and large wound of exit characteristic of both pistol and rifle bullet wounds?
A.1298 I believe so.

Q.1299 If there had been previous interference; if the wound had been previously dressed on the night of 2/3 Aug 44 by a surgeon; would it be possible that you could make a mistake as to which was the wound of entry or exit?
A.1299 I had no doubt at the time.

Q.1300 I used the word "interference"?
A.1300 That depends as to what you mean by "interference".

W.B.B.

Q.1301 If there had been interference in the surface dressings or inside the wound itself? If both front and rear wounds had been cleaned up?
A.1301 After a complete and formal operation, I could not tell.

Q.1302 How far would a complete and formal operation have to go?
A.1302 Would you like the details?

Q.1303 When you first treated this patient, you concentrated on the head injury?
A.1303 His general condition was first seen to .....

Q.1304 How far did you go?
A.1304 Took his pulse, checked his blood pressure and response to pain, and if he could talk.

Q.1305 When did you first examine his chest?
A.1305 At the time when I first saw him.

Q.1306 How far did you go?
A.1306 The usual examination was made.

Q.1307 With a stethescope?
A.1307 Yes, with a stethescope.

Q.1308 When you say you examined the patient referred to you as Dillon, you gained that information from a medical document?
A.1308 Yes.

Q.1309 Did you take any other steps for the identification of that particular body?
A.1309 No.

Q.1310 Did you take any further notice of the body?
A.1310 Not particularily, no.

Q.1311 Did you find any foreign skin or blood substance under his fingernails?
A.1311 No.

Re-examined:

Q.1312 What were the comparative sizes of the wounds of entry and exit?
A.1312 From memory I should say the entry wound size was about the size of a sixpence and the exit would was between the size of a shilling and a florin.

By the Court :

Q.1313 Doctor, from the appearance of the wound, did it seem if the shot was fired from a short or long distance away?
A.1313 I don't think you could tell.

By the Judge Advocate:

Q.1314 What was the date of this patient's death?
A.1314 The 7th or 8th.

Q.1315 Of August 1944?
A.1315 Yes.

Q.1316 If we were to suppose that this patient had received no medical treatment before you saw him except to have two field dressings applied to his head on the occasion when he was discovered shot and then later had these dressings renewed, would you be able to determine the wound of entry and the wound of exit?

A.1316 At the time of the operation, yes.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

TWENTIETH WITNESS (Lt B.J. Dolan, 3 Bn 1 CBRD, for (having been duly sworn, Prosecution (is examined by the Prosecutor.

Q.1317 Do you recall the evening of 2 Aug 44?
A.1317 Yes sir.

Q.1318 What were you doing that evening?
A.1318 On 2 Aug 44 I was Gd Comd, 1 CBRD.

Q.1319 What, if anything, happened that evening?
A.1319 At approximately between 1030 and 1100 o'clock in the evening I heard a shot, I immediately ordered the guard to stand to. While this was happening two more shots were fired. I got a party together to investigate the shooting. In front of 2 and 3 Bn Offrs' Mess, I saw a body lying there. There was an offr in charge. He had the situation under control. I immediately took my party to investigate the buildings in the area. I found nothing out of the ordinary. I came back where the body was lying. He had been evacuated. We looked around the area and the Cpl of the Guard found an empty .45 casing. He turned it over to me. Later I turned the casing over to the Adjt, 2 Bn. That's all, sir.

Q.1320 Was that the only incident that night?
A.1320 No sir. Later I was called out again to investigate the case of a Sgt from the Cdn Dental Corps who had fallen out of an upstairs window in his quarters.

Q.1321 What was the name of the Cpl of the Guard?
A.1321 Cpl Ferguson, sir.

Q.1322 Will you describe the casing which he turned over to you?
A.1322 It was a casing that had been scraped, greyish in colour and not the ordinary .45 casing.

Q.1323 What type of a .45 casing was it?
A.1323 I do not know.

Q.1324 If there were several casings handed to you, similar in colour, would you be able to pick out the casing Cpl Ferguson handed to you?

A.1324 I have sworn by Almighty God, about two minutes ago, to tell the truth. I don't think I am capable of doing so, sir.

Cross-examined:

Q.1325 You told the Court that a Dental Sgt had fallen out of a window in the barracks?

A.1325 I don't believe I said inside Canada Bks. The Dental Barracks are immediately outside on the road to Montefort.

Q.1326 That is outside, just at the end of the west wall of Canada Bks?

A.1326 It is immediately outside the west wall.

10.6.46

Q.1327 On the road to Naples?
A.1327 Yes.

Q.1328 Did you form the opinion that the Dental Sgt had been drunk?
A.1328 When I got over there the Medical Offr was there. I questioned the men and found out what had happened.

Q.1329 As a result of the questioning, were you able to form any opinion?
A.1329 No sir.

Q.1330 You knew at that time there had been a shooting at Canada Bks?
A.1330 Yes sir.

Q.1331 Did you make any attempt to search the barracks of this Sgt to find a pistol?
A.1331 No sir.

Q.1332 Did you try to connect this incident of the fall of the Sgt with the shooting incident?
A.1332 No sir.

Q.1333 By that time the shooting was old history was it?——.
A.1333 Yes sir.

Q.1334 You say that you heard three shots fired?
A.1334 Yes sir.

Q.1335 Did you or did you not hear one and then two more?
A.1335 I heard one shot and called the guard. There was one or more after that.

Q.1336 How long did it take you to get the guard called out after the first shot?
A.1336 Approximately a couple of minutes, sir.

Q.1337 The main idea was for you and your guard to identify the person and catch him?
A.1337 We did not know what it was. In the past month in that barracks there had been shooting every night. We thought it was another case of a guard shooting at a man going over the fence or something.

Q.1338 It wasn't unusual to hear shots at this time?
A.1338 No sir.

Q.1339 Do you remember handling three cartridge casings?
A.1339 No sir.

Q.1340 How many did you handle?
A.1340 On the 2nd of Aug one was found. The next morning my Cpl passed me another one he found in the area.

Q.1341 He told you he found them?
A.1341 Yes sir.

Q.1342 Were you present with the Cpl when he found the first casing?
A.1342 Yes sir.

Q.1343 How close were you to him when he found it?
A.1343 Approximately two feet.

Q.1344 While you had the casings in your possession did you at any time mark them for specific identification?
A.1344 No sir.

W.B.P.

Q.1345 Did you handle any identification discs that evening?
A.1345 No sir. I recall something about some identification discs, but I didn't see them.

Q.1346 You made a search in the Records Office of the Seaforths for a certain name and number?
A.1346 Yes sir.

Q.1347 Where did you get the information as to the name and number?
A.1347 There was a Senior Offr present.

Q.1348 Did someone tell you what was on the identity discs?
A.1348 Yes sir.

Q.1349 That is the only way you got the information?
A.1349 Yes sir.

Q.1350 Now, having information as to the finding of the identity discs, did you come to the conclusion that the person referred to on the identity discs was guilty of the shooting?
A.1350 No sir.

Q.1351 Did you keep an open mind?
A.1351 Yes sir.

Q.1352 Did you form the conclusion that he had a strong connection with the case?
A.1352 No sir.

Q.1353 No conclusion at all?
A.1353 No sir.

Q.1354 Were there any fights in and around the gate at that time?
A.1354 No sir.

Q.1355 Apart from the Sgt falling out of the window and the shots you heard fired, was there anything unusual that evening?
A.1355 No sir.

Re-examined:

Q.1356 How far away was the building the Sgt fell out of from the Gd Room?
A.1356 At least 500 yards.

Q.1357 In what direction?
A.1357 On the road to Monteforte.

Defending Offr:

I think there is some confusion. We should refer to the sketch.

By the Court:

Q.1358 The building is on the road to Monteforte between Canada Bks and 3 Cdn Gen Hosp?
A.1358 Yes sir. Between Canada Bks and 3 Cdn Gen Hosp on the road to Montefore.

Q.1359 You stated there was shooting every night?
A.1359 Yes sir.

Q.1360 On what do you base that statement?
A.1360 From what I have seen.

Q.1361 Are you in the Barracks every night?
A.1361 No sir. I have been in the Barracks for a month.

W.L.S.

Q.1362 You stated that it might have been one of the guards firing at somebody going over the fence?
A.1362 Yes sir.

Q.1363 To your knowledge has that ever happened?
A.1363 I could not swear to it, but I believe it has happened.

Q.1364 You don't know?
A.1364 No sir.

Defending Offr:

Sir, your questions were limited to soldiers. Was there any incident of Italians being fired at?

By the Court:

Q.1365 Were there any instructions given to you as Guard Commander that you keep out civilians or unrecognized persons from entering the front of Canada Bks?
A.1365 Not to my knowledge; no sir.

Q.1366 In other words the sentry uses his own judgment?
A.1366 Yes sir.

Q.1367 Can you tell the difference between a car back-firing and a shot?
A.1367 No sir.

By the Judge Advocate:

Q.1368 Lt Dolan, do you know the name of the offr whom you said had the situation under control where the body was found in front of the 3 Bn Offrs' Mess?
A.1368 Truthfully, no sir.

Q.1369 Do you know the name of the 2 Bn Adjt to whom you gave the .45 casing?
A.1369 Yes sir.

Q.1370 Who was it?
A.1370 At that time, Lt Snell, sir.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(8).

TWENTY-FIRST WITNESS(Lt H.J. MacComb (48 Highrs), 3 Bn 1 CBRD for Prosecution (having been duly sworn, (is examined by the Prosecutor.

Q.1371 Do you recall 3 Aug 44?
A.1371 Yes I do.

Q.1372 To what unit did you belong at that time?
A.1372 3 Bn 1 CBRD.

Q.1373 What happened that day as far as you were concerned?
A.1373 I was on a Court of Inquiry.

Q.1374 Will you tell the Court what you did as a result of receiving instructions from the President of that Court of Inquiry?
A.1374 I went over to the Gd Room.

Q.1375 What did you do in the Gd Room?
A.1375 I searched the belongings of the accused and the accused's person. I found two fountain pens which I turned over to the President of the Court.

Q.1376 Who was this person you searched?
A.1376 I don't know his name but I would know him to see him.

Q.1377 Is that person in this Court Room?
A.1377 Yes he is.

Q.1378 Will you point him out to the Court?
A.1378 There sir. (witness points to the accused)

Q.1379 Will you describe to the Court the fountain pens that you took off the accused on the morning of 3 Aug 44?
A.1379 I cannot describe them closely. I know that they were two grey pens. One was light grey and one darker grey.

Q.1380 By "light grey" what do you mean?
A.1380 Fairly light; nearly white.

Q.1381 I propose to show you two pens, and all you are required to do is to say "yes" or "no".

Defending Offr:

I am going to object to the witness being shown the pens on the ground that there is not a real test being made. Have him pick these pens out of a group of pens. I am going to object to his answering "yes" and "no". If he feels the proper answer is not "yes" or "no", he is allowed, I believe, to give his answer as he sees fit. The person asking the witness is bound by the whole of the reply which is elucidated from the question.

Judge Advocate:

Capt Bergman, I see no objection to the witness being shown two pens and asked if he is able to identify them. He has described two pens which he claims to have found in the accused's kit or person - one being light grey in colour and the other being dark grey in colour. The witness is not prepared to go further in his identification. The witness is not prepared to go to the sufficiency of his identification. The Court will give due regard prepared to identify them, I think the pens should be admitted,- if you like, subject to your objection.

Defending Offr:

I want the identification to be subject to my objection, sir.

Prosecutor:

Q.1382 I now show you three pens. Can you identify any of them?
A.1382 This is definitely one. (witness indicates light pearl grey fountain pen) These two I can't be sure of. (witness indicates fountain pen marked Exhibit "I" and a grey fountain pen similar in appearance to Exhibit "I")

Q.1383 These two you cannot be sure of?
A.1383 No. (fountain pen, light pearl grey in colour admitted and marked Exhibit "Q")

Q.1384 Where did you find these pens?
A.1384 They were on the accused's person. He gave them to me himself.

Q.1385 When you said you could not be sure what did you mean?
A.1385 The other two pens look alike. I cannot swear to either one of them.

Cross-examined:

Q.1386 Why did you say that the pen, Exhibit "Q", is definitely one that you could identify?
A.1386 I do not understand.

Q.1387 Why did you say, "this is definitely one"?
A.1387 It is the same pen I picked up that day. That is the only pen I have ever seen of that colour. I am pretty sure that this is the same one.

Q.1388 Did you mark either of the two pens specifically for future identification?
A.1388 There is one definite mark on one of the pens. One had tooth marks on it.

Q.1389 On the bright white pen?
A.1389 Yes.

Q.1390 On the white pen?
A.1390 I don't know. I think it is on the white pen. It is so long ago that I -----

Q.1391 Did you yourself put any specific identification mark on either of these two pens?
A.1391 I didn't.

Q.1392 Who handled the two pens next?
A.1392 The President of the Court.

Q.1393 Who was that?
A.1393 Major Morgan.

Q.1394 Did you ever see the pens again before to-day?
A.1394 I saw them the next day.

Q.1395 Under what circumstances?
A.1395 Pte Wilcock, a 48 Highr, claimed he had had one stolen from him and wanted to identify his.

Q.1396 Was that in connection with your duties on the Court of Inquiry?
A.1396 Yes sir.

Q.1397 Did you see them again after that?
A.1397 No, I didn't.

Q.1398 You never have?
A.1398 I have never seen them since.

Q.1399 When were you first told you would be giving evidence on a subsequent trial?
A.1399 I was never told I was going to give evidence.

Q.1400 Were you advised by Capt Snell as to what evidence you were going to give?
A.1400 No.

Q.1401 How did he know what you were going to say in Court to-day?
A.1401 That is right, there was a 'phone call to Naples that I would have to identify the pens.

Q.1402 If I put the pen, Exhibit "Q", in with a group of 15 or 20 other identical pens, would you definitely be able to pick it out?
A.1402 I would not be sure.

90 L.b.

Q.1403 Now, when you went to the accused to get these pens, you had him indicated to you at the Court of Inquiry?
A.1403 I don't remember whether it was before or after.

Q.1404 Had you seen the accused or had him under observation for some little time prior to to-day?
A.1404 I just saw him the day I went to the Court of Inquiry; the day we had him at the Court of Inquiry.

Q.1405 The accused was given quite a grilling at your Court wasn't he?
A.1405 The Major asked him a few questions.

Q.1406 What do you mean by "a few"?
A.1406 About 15 or 20, I imagine.

Q.1407 Did Major Morgan or any member of the Court administer the caution to the accused that he need not answer questions that would criminate him at any time prior to giving evidence?
A.1407 I don't remember.

Q.1408 Would you have remembered if that had been done?
A.1408 I cannot say.

Q.1409 Wasn't the accused at that time ever told by any members of the Court that he was under oath when giving evidence?
A.1409 Not that I remember.

Q.1410 You didn't let Robinson go until you were satisfied that you had got all the information out of him? Is that not correct?
A.1410 That is correct.

Re-examined:

Q.1411 In your cross-examination, you stated that Wilcock identified the pen. Was the accused present when Wilcock made the identification?
A.1411 No, I don't think so.

Q.1412 You stated that one of the pens had a tooth mark on the nib, right?
A.1412 That is right.

Judge Advocate:

He did not say that. I think he just said tooth marks and nothing about a nib.

Defending Offr:

Having asked the last question, it is rather useless to ask it in a different way now.

By the Court:

Q.1413 When the accused was being searched by you in the presence of the other people in the Gd Room, was there any conversation between you and him when the pens were found?
A.1413 No, there wasn't.

By the Judge Advocate:

Q.1414 You mentioned a Court of Inquiry which was held on 3 Aug 44, and you also stated that Major Morgan was President of a Court. Is that the same Court of Inquiry you first mentioned?
A.1414 Yes.

Q.1415 When you went to the Gd Room to make this search, was that before or after the accused had given evidence at the Court of Inquiry?
A.1415 I am not sure. I think it was after.

Q.1416 What particular Gd Room was it that you went to?
A.1416 2 Bn Gd Room.

Q.1417 And I think you told the Court you found these two pens on the person of the accused?
A.1417 That is right.

Q.1418 In what manner?
A.1418 They were handed to me by the accused himself.

Q.1419 Where did he get them?
A.1419 He took them out of his inside pocket.

Q.1420 What did you say to the accused that made him reach into his pocket and hand them to you?
A.1420 I asked him to empty his pockets. He did.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

The Prosecution is closed.

Court adjourned at 1540 hrs.

Court re-opened at Avellino at 1000 hrs, 29 Sep 44, the same members being present.

Prosecutor produced Medical Certificate.

Defence did not require Major J.R.H. Morgan for cross-examination.

Defending Offr's Submission:

Mr. President, I wish to make a motion pursuant to the provisions of fn 1 to RP 40. The evidence adduced by the Prosecution has not established a prima facie case against the accused, having regards to the facts alleged in the charge sheet. The accused, therefore, should not be put upon his defence. At this time, as the Judge Advocate will probably advise you, the only question which the Court has to consider is whether or not the offence alleged has been proven. The question of a special finding or conviction of a lesser offence does not arise. I will, in the course of my remarks, make certain allegations against the Prosecution. I would, at this time like the Court to be firmly convinced that these allegations are not against the Prosecuting Offr in this case. When I use the term "Prosecution", I refer to the investigation which started on the night of the 2nd of August and which lead to the evidence which has been submitted to the Court in the past few days. I would further state that the conduct of the Prosecuting Offr, in my mind and in the mind of the accused, has been most fair. When I use a loose expression, such as "the Prosecution", I refer entirely to the history of this case which started some time between 2330 hrs and 2345 hrs, 2 Aug 44, and also to the amount of investigation, both legal and special, which is on the record and which the Court must examine. I may also state that both I, as Defending Offr, and the accused, who is on trial, consider that the Court which is judging the guilt or innocence of the accused has been completely fair. The Defence has not been hampered by the Court in any way shape or form. The accused has had a considerate and kindly hearing. However, I intend to castigate the prosecution for their sins of omission, rather than their sins of

W.B.B.

commission. These remarks I hope the Court will interpret as a castigation of the individuals who first took charge of this investigation. You have had one reference by a witness for the Prosecution that legal advice was sought in completing or preparing the case against the accused. That reference deals entirely with the assistance sought of Capt Bate in his capacity as ADJA at HQ 1 CBRGp. The whole Court has sufficient Army experience to know that Capt Bate, in his official capacity as ADJA, considers the Summary of Evidence and charge sheet before trial. Therefore, the Court must accept the fact that his responsibility is the technical and legal responsibility to decide that the written or typewritten sheets discloses an alleged offence. The ADJA on any HQ is neither an amateur or professional detective. He is the legal assistant to the Comd. Therefore, any evidence as to the assistance which the Prosecution sought from his department should naturally be depricated. When one considers that he is not, nor ever was intended to be, a "Sherlock Holmes", I submit that the reference which the witness, namely Capt Snell, made to his "assistance" should be discarded completely. Capt Bate gave his assistance to these incompetents by virtue of the kindness of his heart and not because of the duties which naturally flow from his particular appointment. The evidence submitted by the Prosecution is purely circumstantial. It may be felt by the Court to be quite strong circumstantial evidence. I refer the Court to MML Chap VI, para 42, pp 91-2. (reads para 42) The entire history of this case has been full of sins of omission, perhaps the grossest of which is the failure of supposedly competent and qualified offrs, with normal mental capacity and education, to call upon anymilitary police - either Canadian, British, or American to assist them. Had this been done, the Court would undoubtedly have been supplied with certain expert ballistic evidence as to whether or not the two empty cartridge casings, Exhibits "M" and "N", had been recently fired and whether or pistol, Exhibit "O", had been ejected from that pistol. At this stage in the trial, the cartridge casings have not been connected with the pistol in any way. In view of the evidence before the Court, the normal assumption must be that they were, in fact, not fired from the same weapon. It does not take expert evidence to see that the mark made by the firing pin on Exhibit "M" is different from the mark on Exhibit "N". Nor does it take expert evidence to see that had Exhibits "M" and "N" been the spent cartridge casings which were ejected as a result of the last two shots that were fired that night from the same weapon, the person firing the weapon must have been flying a Spitfire in order to cover the distance between the places the casings were found - a space of some 200 to 250 yards in approximately two seconds. I suggest to the Court it is a matter of their common knowledge, and a matter of which they can take judicial notice; that a pistol ejecting two spent cartridge casings would eject them in roughly the same area, providing no mechanical defects between the first and second shots. The Prosecution has made no attempt to explain the relevancy of the cartridge casings, Exhibits "M" and "N", either to the specific weapon or to the specific shooting. This tends to confuse rather than to assist the Court. Until such time as Exhibits "M" and "N" are related in some way to the accused and to the offence charged, these exhibits should not be admitted in evidence. In fact, from the evidence before the Court, it is much more likely that these cartridge casings came from some other weapon and from a prior shooting. The evidence before the Court shows that the firing of weapons in Canada Bks at that time of night was not unusual; that according to the only Guard Commander examined, apart from Lt Dolan, shooting at 2200 hrs nightly was a notorious fact; that there were a large number of drunks around the gates and in the area of Canada Bks on the night of the 2nd of Aug 44; that around the 2nd of August, Thompson Machine Carbines were being fired daily on the ranges; and that Thompson Machine Carbines

were in good supply at that time. Therefore, any soldier who had surplus ammunition and who did not fill his magazine completely could have quite easily put some extra rounds into his pocket. There has been a certain amount of cross-examination on what might be termed ballistics evidence. Yet in my cross-examination I have attempted, on this point, to limit it to that type of ballistics evidence which could be defined as matters that come within the Court's general military knowledge. In that way I have avoided the calling of expert ballistic witnesses. As the Judge Advocate will probably advise you later, ballistic evidence comes well within the general military knowledge of the members of the Court, who are commissioned offrs of the Canadian Army. Therefore, that evidence complies with RP 74. The Court has three specific problems to decide in the matter of identification alone. First they must have a corpus delecti, and he must be identified as the person described in the charge sheet. Secondly, the accused must be identified with the offence. Thirdly, there must be specific identification of the exhibits tendered in evidence. This has not been done in the case of any of the three. Dealing with the first; the Court only has evidence that a set of identity discs were buried. There is no proper identification of the person described in the charge sheet with the person who was certified dead and subsequently buried. Without labouring this particular point, if the Court will only refer to the evidence concerning a certain medical document; the document which admits a soldier to hospital, it will recall that the name and number of the person on that document was put on it by Capt Verdicchio as a result of what someone told him. The certificate concerning the person treated and the certificate as to the person buried is an identification only by virtue of what someone told someone else - statement made not in the presence of the accused. Look at Capt Tootell's evidence. The Court can well remember that I examined him as to the time he saw the patient as recorded in his diary. He gave a fairly unsatisfactory explanation. He could not have seen that person before 0200 hrs 3 Aug 44 as the admission paper shows it was at 0145 hrs. He has told you that he buried someone whose name he assumed was Dillon, by virtue of information he received concerning a person admitted on the 2nd of August 44. He was checked carefully as to this. Therefore, according to his evidence, the person he buried on 8 Aug 44 is a person who was admitted to 65 Brit Gen Hosp prior to the time the person who was shot at Canada Bks could have got there.

One observation I would like to make is, that it is not the duty of the Court either to correct the mistakes made by the Prosecution or to fill in the gaps left by either the Defence or the Prosecution when you have persons with legal qualifications assisting the Court in presenting the evidence to it. It is well known that it is a principle of British justice that it is better that nine to ten guilty men should go free than for one innocent man to be hung. The Court must look to the Prosecuting Offr and to the Defending Offr to assist them in examining all the angles involved in any offence: particularly in a case like this which presents more than the usual difficulties encountered in ordinary Field General Courts Martial. The Defending and Prosecuting Offrs are charged with presenting a case, properly investigated, to the best of their ability. The Court will decide on the guilt or innocence of the accused person on the evidence adduced and admitted on the record. To carry on with the identification details encountered in this particular case; there is only one instance of any specific identification of the accused with the alleged shooting of Dillon. This is evidence of Cpl De Harte. Cpl De Harte stated that he saw the accused on the parade square arguing with the man who supposedly gave his name as "Dillon".

De Hart went further. He identified the accused specifically as the man who was arguing with this nebulous Dillon. De Harte's evidence shows that the argument between Dillon and the accused was the third argument, I believe I am correct, with which he had occasion to interfere that evening. He could not identify the other two people that he stopped arguing before he had words with the person he identified as the accused. Why? I ask the Court to disregard completely the identification evidence given by Cpl De Harte, especially in view of the subsequent history of that identification he gave in cross-examination. De Harte has himself told the Court that before he was asked to identify the accused he had the accused under observation for some 45 minutes while the accused was waiting to give evidence at the Court of Inquiry. There the accused stood between two escorts, without a hat on. So that, before De Harte was called on specifically to identify the accused, he had had him under observation for some time. According to his own evidence, he came to the conclusion that the accused was closely linked with the shooting on the night of 2 Aug 44. Bearing in mind this period of observation, the Judge Advocate will advise you as to the degree of reliability to be attached to such identification evidence. I submit the accused should be granted all the rights and privileges afforded an accused by the civil and criminal courts in Canada. When a man puts on a uniform and becomes a soldier, nevertheless, when charged under Sec 41 of the Army Act of committing a civil offence, he should be given the benefit of the rights extended to him in Canadian civil and criminal courts. He should not be deprived of his civil rights merely by virtue of the fact that he has offered his services to his country and now wears khaki and not zombie garb. Dealing more specifically with De Harte's evidence;- let us analyse the psychological features of the human mind. You are acquainted with people who, as a result of subsequent consideration of what they saw, come to the conclusion that because certain facts should be so, they are so. As a result of that subsequent consideration, they suffer from the hallucination that it actually is so. I throw a challenge to you as individuals, to consider whether you are satisfied in your minds that De Harte saw the accused, as he said, or came to that conclusion as a result of having the accused under observation subsequent to 2 Aug 44. Can you, as reasonable individuals, accept his statement beyond a reasonable doubt? I strongly protest against the unfair and incompetent manner in which the accused was handled prior to the proper identification parade. I protest against the manner in which the accused was publically paraded under escort before a proper identification was made. The Court must consider very carefully the amount of reliability which can be placed on De Harte's identification. I submit that there is a sufficiently strong doubt to disregard that identification entirely. Its reliability has been completely upset. I request the Judge Advocate, in his summing up, to refer to the usual proper criminal methods of identification in civilian courts and specifically to mention the number of cases and the type of cases which the Courts have thrown out because of improper and incompetent identification. The identification of the exhibits is unreliable and incomplete. In only one instance has a specific exhibit been identified. That was when Major Bernier identified the pistol, Exhibit "O", by means of the difference in the sides of the handle or butt grip. The right hand grip, as you noticed, is smooth; whereas, the left hand grip is rough - the ordinary grip. Major Bernier, however, did not bring out that specific means of identification in his examination. It was not until he was closely questioned in cross-examination that he finally remembered. That pistol passed through many hands. That pistol, in the hands of competent people, would have been closely studied for any specific features as well as the serial

number. No one yet has identified that pistol in the proper manner.by its serial number. Major Bernier, as an after thought, imagined the difference in the sides of the butt plate. Never, at any time prior to the taking of the Summary of Evidence, were any of the exhibits specifically marked . No one, therefore, can say that the exhibits, that have been tendered in evidence, are the objects found on the 2nd or 3rd of August. The Court is now in the position of having before it exhibit evidence of no specific or substantial value. The doubt which must arise in their minds negatives the evidentiary value of those exhibits. Therefore, they are valueless in linking the accused with the offence alleged in the charge sheet. You will, no doubt, be advised by the Judge Advocate that no matter how amateur our Canadian Police are - how amateur they may be in investigating an offence - they always tag an exhibit. It is immediately marked for identification and kept in safe custody until it is presented in evidence at trial. I refer to a case at which the present Judge Advocate sat as Judge Advocate; which I think was tried on the 21st or 22nd of December, 1943. I was defending. There were two main exhibits, one of which was a beer bottle. The original handling of that exhibit was incompetent. It was a question of identifying certain fingerprints on that bottle as having been made by the accused. The bottle was not marked by the first person finding it. It subsequently came into the hands of the civilian police and was properly kept in safe custody until the trial. But its evidentiary value was negatived because of the incompetence of the first person examining it. In the English Courts - I say this from personal knowledge - it seems that exhibits do not have to be marked with the same care that they do in the Canadian Courts. But I draw your attention to the fact that you, as president and members of this Court, are Canadians trying a Canadian soldier. Therefore, you should allow him the same consideration which a Canadian criminal court would allow him in deciding him guilty or not guilty of this offence. The history of this case indicates that the handling of these exhibits has been amateurish. I submit that the prosecution witnesses had seen them time and time again before they identified them before this Court. There is evidence that a Court of Inquiry was held prior to this trial. You had a Summary of Evidence taken and you have had this trial. There may have been some check made, but there has been no instance of a proper identification. The Court will realize that, because the Prosecutor and the Defending Offr had neither the chance nor the opportunity of controlling the type of investigation these individuals conducted, the evidence has not been presented as it would be in civilian life. Some of you may consider that we give up these civil rights and privileges by virtue of serving our King and Country. It does not matter one iota whether a man serves with a base unit or serves for months in the front line. The fact that he has signed an attestation paper makes him liable to be sent into any theatre of operations if His Majesty, through his representatives, deems fit. I don't want the Court to be prejudiced for one minute because this individual came from a Base Unit, or that he should be given any different consideration because this incident did not happen within a few yards of the German trenches. Without labouring too much the identification of the exhibits - the guilt or innocence of the accused is to be determined by offrs who have had normal training: what is known as "training common-to-all-arms". So without going into

W.B.B.

expert ballistic evidence, let us deal specifically with Exhibits "M" and "N", the spent cartridge casings. The distinct features in the identification of spent cartridge casings are the company which manufactured them; the year in which they were manufactured; the mark made by the firing pin, especially its size and position; and the marks made when the empty casings are ejected. There are many other ways in which an expert can identify a spent casing, but the ways I have cited are known to the amateur. There are also matters which come well within the Court's general knowledge, and, therefore, judicial notice can be taken of them pursuant to RP 74. The absence of proper identification, under any of the three headings I have mentioned, would be sufficient for a Judge of a Canadian Criminal Court to refuse to admit such exhibits in evidence. Then consider the ridiculous evidence that was tendered to the Court the other morning by Capt Snell and Major Bernier when they stated that the pistol which was found in the area of the accused's bed had been fired. Yet the Court is left hanging in the air because they could not state specifically or even attempt to explain in hours what they meant by "recently fired". None of us has any idea as to time elapsed or assumed time elapsed from the word "recently". Yet according to their evidence, had the pistol which was found been the pistol which was used in the firing of the shots which the witnesses refer to in their evidence, it must have been in their hands in less than 45 minutes from the firing of that particular weapon. Any person with the slightest knowledge of weapons and who has made tests will realize that a pistol smells identically the same four hrs after it has been fired as it smells 15 or 20 minutes later. These two witnesses dare to offer their evidence, in spite of the fact that one is a member of the Pay Corps, completely lacking the experience of a normal regimental offr in the field; while the second, Capt Snell, had been on a party and had been drinking. That Capt Snell drinks is not unusual - but he had been at a party. No reflection is intended in referring to that drinking. Yet it is a notorious fact according to medical science that indulgence in alcoholic stimulants dulls all senses, including the sense of smell. The responsibility of passing a death sentence based on the nebulous memories of these two witnesses as to the events of the evening of 2 Aug 44 is a responsibility not to be taken lightly. If such a sentence were put into effect, it might well be the cause of nightmares and many future sleepless hours for the members of the Court. Dealing with certain parts of the medical evidence - the Court must give careful consideration as to the cause of the death of Pte Dillon, the person named in the charge sheet. That consideration must include whether or not the wound of entry was in the front or in the back of the head. Here again the Court must look to the Defence and not to the Prosecution for assistance. No attempt has been made to establish which was the wound of entry and which the wound of exit. It is important for the Court to determine whether this person was shot from behind while walking in an upright position, by someone across the roadway at Canada Bks, or was he knocked down by an assailant, and when falling, reached out, grabbing at the assailant and clutched the set of identity discs, pulling them off and was he still holding them firmly while unconscious after having been shot? The presence of the identity discs must be satisfactorily explained by the Prosecution. What is the interpretation that is to be placed on it, taking into consideration the marks on the neck, and under the chin of the accused that were observed when he was subsequently examined?

The latter seems to be the theory of the Prosecution. Yet it has one inconsistency. It is, as suggested, Dillon, in his last moment of consciousness, grasped these identity discs from the neck or throat of the accused at the time he was shot. I think there is medical evidence to the effect that he would have held on to them for dear life. Capt McKee would have found them tightly clenched in his hands and would not have had too easy a time removing them. Had they been grasped a moment or two before the shot was fired then the shot must have been fired from behind as the man fell forward on his face. The evidence of Capt Verdicchio and Major Davidson was that he was shot from in front. Had the deceased first got hold of the discs and had afterwards been hit by the bullet he would have instinctively made a last movement - put his hands out to break his fall. The evidence is that the identification discs were found in his hand, but ordinarily if his fingers had been outstretched to break his fall, the identity discs would have dropped and fallen in close proximity to his left hand. Then consideration must be given to the manner in which Capt McKee told the Court the way in which the identity discs were found in the hands of the deceased. You will recall that he could not say definitely whether both identity discs were covered by the palm, but he made a point of holding them in this manner, indicating that they had been picked up or handled some time prior to the bullet entering Dillon's head. What other explanation can the Court reasonably take of the manner in which these identification discs came into the hand of the deceased? In order to make it easier for the Court to reach a satisfactory determination, let us consider the effect of seven, eight or 12 people milling around that body when it was first found. You will well realize the confusion which must happen over the finding of a body seriously wounded at a base area where enemy action is not expected or contemplated. Did or did not some one who came within a foot of the body lean down, examine the body and put the identity discs there? That is something that must be given consideration and only discarded on specific evidence and for specific reasons. The Court must reconstruct this shooting. They must find a satisfactory answer as to what happened and come to a conclusion beyond a reasonable doubt. The explanation, which the Court must make as to the finding of these identity discs, must be an explanation, not only that the accused committed the crime, but one that is inconsistent with any other rational conclusion. This may not be in strictly chronological order, but let me draw your attention to two even greater inconsistencies respecting the identity discs in order to show you that they could not have been pulled from the neck of Robinson by Dillon immediately prior to the alleged shooting. If you examine the string you will see that the part that would go round the neck is only 11½ inches long. To verify this measurement the Court may take a ruler and check. That obviously is not long enough to go around the neck of the accused. Therefore, the string must have been broken in two places. If it was broken when pulled from the accused's neck, then only one break would occur . It is a matter of notoriety that, when a piece of string is pulled sharply, it breaks at the point of resistance, normally. It may also break at a point close to a knot. This string shows no presence of a knot. The first resistance would normally be at the back of the neck equidistant from the top of the identity discs and, all other things being equal, would break at that point of first resistance. I suggest that this

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piece of string is not broken sufficiently close to the knot to have been broken in two places at the same time. Therefore, had the string been broken in two places by the deceased, Dillon, in his last dying grasp, the other piece of string which is missing should have been readily found. Now dealing with the next point, the Court must bear in mind that I knew we were going to have an adjournment. The Judge Advocate will probably tell you that as Defending Offr it is up to me to represent the accused in the best manner I can and therefore, in doing that, I must save my ammunition as long as I can. That must be apparent to the Court from my examination of Capt Jepson, the last medical witness. In order that I might not indicate to the Prosecution too clearly what I was searching for in establishing the type of wounds observed on the neck of the accused on the night of the 2nd of August, I refrained from asking questions as to the type of scar or burn or wound which would be left by a piece of string being pulled sharply against a piece of tender skin. It does not matter whose evidence the Court believes. All the people who gave evidence as to the type of bruises or scratches on the neck of the accused, stated that they were of the type of scar or wound left by fingernails.. They also stated that, apart from the length and width of these scratches, there was no difference in them. Therefore, there is no evidence before the Court that the deceased pulled these identity discs from the neck of the accused. Therefore by virtue of the lack of that evidence, the Court cannot find that Dillon grasped these identity discs and pulled them from the accused's neck on the night of the incident. Without labouring the point any further, the medical evidence tendered yesterday by Capt Jepson was that there were no marks or bruises or scratches on Dillon when he examined him. It is rather ridiculous to say that he could have beaten up the accused, Robinson, and put all these scratches, marks and bruises on his face and not have received one blow in return. Yet the inference is there;- that, in spite of all that, Robinson shot him while standing face to face with him. That is a conclusion which cannot be rationally substantiated. The people who examined Robinson were unanimous that the scratches were of the same type. There was no welt suggested, such as would be produced by the string being pulled sharply across his skin. I suggest to the Court that any competent police offr, once having found the scratches on the neck and throat of the accused, would immediately have an investigation made to find the wounded individual and examine his fingernails in order to see if any foreign substance, such as skin or blood, was found under his fingernails. This was not done and the Court has been deprived of the opportunity of having this evidence to assist them in deciding the guilt or innocence of the accused. To complete the remarks on the medical evidence, I feel that a post mortem report should have been submitted in evidence by the Prosecution. The Court well knows there was a post mortem report. I have it. It was readily available. On that post mortem report and according to Capt Jepson, there were two causes of death. Has the first, the pneumonia been satisfactorily explained? Did Dillon have the pneumonia bug prior to the examination at 65 Brit Gen Hosp? Neither Verdicchio, Davidson or Grossman, as medical offrs examined the chest and lungs of Dillon. All I can say in this regard is that pneumonia is caused by a bug and not by a bullet. It is now the Court's responsibility to decide, from the evidence adduced, what part was played by pneumonia in the death of Dillon. There are several medical features to the case which have not been explained. It has not been satisfactorily established what the medical terms imply. The medical evidence is completely unsatis-

factory. The sins of omission in the medical case history of the deceased must prevent the Court's coming to a definite finding beyond a reasonable doubt. Assuming for a moment that the accused handled the lethal weapon that evening, his subsequent conduct, knowing that he had committed a felonious act, is inconsistent with the normal and rational conduct of any human individual in the circumstances. Could he have been found on the parade square at 2250 hrs with a lethal weapon and, after committing a felony, be found asleep at 2350 hrs when he was found by Capt Snell and Major Bernier? I draw the Court's attention to the way in which Capt Snell and Major Bernier gave their evidence as to whether or not the accused was asleep. They, as individuals, were not prepared to give the accused the benefit of the doubt. They became technical and said that he appeared to be sleeping. I think it a fair conclusion to say that once the identity discs, and the pistol had been found by Major Bernier and Capt Snell, the accused, in the eyes of these two offrs, had been found guilty and hung, drawn, and quartered. There is no other rational explanation as to why he should be placed under immediate arrest by Capt Snell when the pistol was found. Now the Court must also consider the place where the pistol was found and must bear in mind that the holster which seemed to relate to that pistol, allegedly was found in the kit of the accused. The holster, sir, is usually used to keep a pistol in. Therefore, if the pistol had been taken out that night and brought back, it would normally have been placed in the holster. The only reason that the pistol would have been taken out and placed under the pillow was that the accused probably carried a considerable amount of money with him. This was not given in evidence - the results of searching the accused. Therefore, your normal assumption would be that he would take the pistol out, bring it back and replace it in the holster. The important point to consider about the pistol is that, in Army phraseology, it was a buckshee weapon. It is not on charge to the accused and apart from the serial number, cannot be linked with the accused. Therefore, the normal reaction of the accused, following the shot or shots and knowing that someone had been injured, would be to throw away or get rid of that particular weapon. He is certainly not going to keep it so close to him that he is immediately connected with the shooting when it is found. That is, however, an inconsistency that the Court must consider. The general investigating offr, Capt Snell, has made no attempt to check the conduct sheet of the deceased at any time. Yet it is a firmly established fact that he ought to have done so. I refer to page 177, Phipson on Evidence, 8th Edition. There has been no attempt to investigate the bed and quarters of the deceased in spite of the fact that evidence has been given that the person by the name of Dillon was belligerent and drunk on the parade square at Canada Bks on the night of 2 Aug 44.

Prosecutor:

I think that the defence should quote the section he is referring to.

Defending Offr:

I have found it. I refer to para (3) at p.177, headed "Character as Affecting States of Mind" (reads para). The members of the Court have been in this theatre of operations long enough to know that one of the first things the new, shall I say, private arriving in this theatre wants is a souvenir to send home. I think one of the first souvenirs

D.G.G.

they want to get is an enemy weapon, and with them must be included the weapons of our co-belligerents, the Italians. Another popular type of weapon is the American .45 automatic which at one time in this area the Americans seemed to have in particularly good supply. Therefore, consideration must be given to the fact that a new draft had arrived at Canada Bks a few days prior to this incident, and any one of them might have had occasion to beg, borrow, buy, or steal anyone of these types of weapons. Next consider the effect that Italian liquor, commonly described as "Mussolini's secret weapon", has on the individual when drinking it for the first time. A new draft arrival, having borrowed, bought, or stolen an automatic weapon and coming back to Canada Bks after indulgence in Italian stimulants, might well have carelessly discharged his weapon thus causing the wounding of Dillon: especially when you realize that it seems to be a notorious fact that the shots at Canada Bks or discharging of weapons at Canada Bks around and after tattoo roll call are a common practice. With that evidence it seems hard to find beyond a reasonable doubt, that the accused fired the weapon which caused the wound. In order to convict the accused, that is the decision which the Court must reach beyond a reasonable doubt. The question of "reasonable doubt" the Judge Advocate will explain later. I can not, in fairness to the accused, omit to draw the Court's attention to the evidence respecting the action taken by the C.O. of 2 Bn 1 CBRD, Col Lent. It has been established that he is a man of legal qualifications. He, above all others, should realize the duties and responsibilities affecting a person accused of a serious crime. He decided, after getting the proceedings of the Court of Inquiry, to have the accused up on a charge of improper possession of a pistol, part of the incident of the night of the 2nd of August, and to sentence the accused to 28 days' detention; done apparently with the sole purpose of keeping the accused in custody. Had this happened in civilian life, if any magistrate or judge of a criminal or quasi criminal Court had dealt with the accused in such manner, such injustice would have been screamed from the editorials of every leading paper in Canada. But apparently Col Lent sought sanctuary in the Army Act and MML. He found the accused guilty of an offence, in connection with the same transaction out of which rose the present charge. He apparently felt the accused was guilty, although the accused had not yet had the benefit of a trial by a competent Court.

Prosecutor:

There is no evidence before the Court as to what Colonel Lent felt.

Defending Offr:

I said apparently, sir. It is a question of interpretation. In summing up I can only interpret these things as I see them. I expect the Judge Advocate will deal with certain witnesses, and the amount of reliability to be attached to their evidence. I don't propose to take any more time in dealing with it. The Court has a transcription of the evidence, apart from the evidence heard yesterday, which is sufficiently fresh in their minds, and can refer to it to see what is proved and what is not proved. However, I have dealt with one of these four witnesses. The remaining three I shall deal with now. I want to draw attention particularly to Cpl Shaw's evidence. The Court will have to consider his mentality and size up the reliability of his evidence. He said, as I

W.B.B.

recollect it, without special reference to the transcript, although he was loath to tell the Court - that he had reported the accused to be in bed. Cross-examination specifically proved that he had reported the accused in bed at tattoo which was very shortly before the shots were heard. When questions were put to him, he also seemed to have a personal desire to see the accused convicted of this offence. That is an example of the attitude of the people at Canada Bks resulting from their preliminary investigations. I have tried - and I think it is realized by certain members of the Court - not to throw too much mud in this trial. But I think it is reasonable to show up the attitude of the witnesses from the evidence they gave. As a result of finding the identity discs and pistol, they came to the irrevocable conclusion that the accused was guilty of the alleged offence. It was not necessary to do much more. They convicted him before he ever got before the Court, without the benefit of a finding. I want to take up the activities of Capt Snell and Major Bernier before I go on. The next point I think is one that occurred to every member of the Court as well as myself, and that is, why no military police assistance was called in in this case. The incident happened on 2 Aug 44. The Summary of Evidence was completed by 30 Aug 44. Yet in all that time no one at 2 Bn had occasion to call in the assistance of the MP or the SIB. Why had they not done it? We all know that that is what they are for. They are usually called to assist the offrs of a unit in obtaining the evidence in any criminal investigation. The unfairness to the accused for this omission, naturally may result in a miscarriage of British justice. The accused had been called before a Court of Inquiry. He was apparently given no information as to his rights. Lt MacComb stated on cross-examination that the accused was not allowed to leave after giving his evidence until the Court was satisfied that they had obtained all the information that they wished to obtain from him. The manner of taking the evidence before that Court of Inquiry, and the interrogation of the accused can be justified only on the technical ground that evidence taken in a Court of Inquiry is not admissible at a Court Martial. Now the accused gave evidence at that Court of Inquiry without the benefit of legal assistance. The Court knows and I know that if the defence is called on, the evidence for the defence must be exactly that contained in the Court of Inquiry, because the accused gave evidence on oath. The accused has been forced to disclose his defence in advance. It is again unheard of that, because a person assumes new obligations on joining the Army, he should lose his civilian right of having the benefit of legal assistance and can be compelled at a Court of Inquiry to answer questions which in civil lefe he would not have to answer. Capt Snell stated that the only reason he didn't call in military police assistance was because he was too busy with drafts. The lack of interest he has taken in the legal and technical investigation of this case shows either a complete lack of mental competence and responsibility of his duties as adjutant or a persecuting complex which gave no benefit of the doubt to the accused. I don't propose to say any more about that, sir. I would like to point out one particular feature in the conduct of this case. That is the lapse between some of the witnesses giving their evidence and the others. When evidence is a little cold it has lost a great deal of its value. I would like to draw the Court's attention to the excuses offered for pushing this case on at the time it was - namely, it was necessary to get people away on draft. Some of the people they were so anxious to get away on draft were still

W.A.B.

in Canada Bks as recently as 24 hrs ago. I feel that is to the prejudice of both the Court and myself. Therefore, I feel that the Court should take these things into consideration in deciding the guilt or innocence of the accused. I want the Court to understand that the accused has pleaded not guilty to this offence. Should he be called on for his defence, in all probability the case for the Prosecution will be weakened considerably. That, however, does not justify the Court in calling on the accused for his defence. They must make up their minds where there is sufficient evidence without a reasonable doubt to convict. To find the accused guilty on a charge of murder, there must be evidence of malice of forethought. There is no evidence of such malice in any of the evidence brought out by the Prosecutor. Such malice is not necessarily presumed from a mere unethical act. Now because the accused was found with a pistol under his pillow, which is an offence only under Routine Orders, is it proper to assume that the only conclusion from that act is that the accused fired the pistol used in the killing of Dillon? The witness who claims to identify the accused on the parade square saw no evidence of any violence, nor suspected any violence, nor did he see any sign of any lethal weapon in possession of the person he claimed was the accused. I refer you to Archbald's "Criminal Pleading, etc", 31st edit, p.900, under the heading: "Evidence for the Defence". (quotes: "The prisoner may show ------ or witnesses called by the Defence.") I contend that my cross-examination has elicited enough evidence to prove either that the murder was not committed by the accused or that it is doubtful if the offence alleged was murder. Only the evidence which has been submitted by the Prosecution can be taken into consideration. Referring again to Archbald, p.64, under the heading "Express Malice" (quotes: "To amount to murder the killing --------- aforethought"). I contend that there is no evidence whatsoever of any malice aforethought which can connect the accused with the shooting incident on the night of the 2nd of August. I am not going to deal with the facts any further. I merely wish to remark upon certain things - certain irregularities, in connection with Canada Bks that night:- the evidence respecting shots being fired and the prevalence of drunks. The conduct of a particular commanding offr is not a matter which concerns the Court or which it must explain. If irregularities are occurring then it is not your function either to justify them or cover them up. You must decide the guilt or innocence of the accused on this charge of murder solely on the evidence before you. You should not consider how it may read to some Offr in superior authority. The Prosecution has given you facts; the Defence has tested those facts. Is Pte Robinson guilty of murder according to those facts? - guilty beyond a reasonable doubt? I have throughout made reference to the Prosecution. I would like to state that the accused is quite satisfied that he has had a very fair trial, and that every consideration has been given to his Defending Offr. I would also like to state that the Prosecutor has been exceptionally fair to the Defence, and the Court has been exceptionally patient all through the trial.

Court adjourned at 1245 hrs.

Court re-opened at 1400 hrs, the same members being present.

Prosecutor's Answer:

Mr. President, I would like to make it a point at this moment to bring your attention to the fact that this morning in Court it was said the Prosecution was rather unfair to the accused in that it hastened this trial. Yet certain witnesses had not left until yesterday morning. That is quite true. But at that time Higher Authority were demanding the presence of these personnel at their field units. It was only fair in the interests of the service to expedite their return. This was done at the earliest possible moment; the men going out on the first draft after the adjournment of the Court on Saturday morning. It is, sir, the duty of the Prosecutor to bring out every fact available in the case to assist the Court in every way possible. It matters not to the Prosecutor whether, having obtained all these facts in evidence, what the decision of the Court may be. We only represent the Crown. It is a well known fact that the Crown is only interested in justice being done. The Court must be guided solely by the laws of England which you will find referred to in Army Act, Sec 41. The law of Canada, while similar, is not the law under which the accused is being tried. All the Prosecution has to do at this stage of the proceedings is to establish a prima facie case. It does not have to do anything except prove the accused guilty of the crime charged: merely to bring sufficient evidence before the Court to satisfy you that the accused is guilty of the offence, the offence he is charged with. It may be weak; it may be overwhelming. For this proposition I draw your attention to MML, p.644, RP 40, fn 1. With regard to circumstantial evidence, I draw your attention to MML, Chap VI, para 4, p.70, which in effect states that circumstantial evidence is indirect evidence. I shall read it for the benefit of the Court. (quotes: "There is no difference ------ did or did not happen (indirect evidence)".) This again is referred to in MML at p.81, para 41. (quotes: "In connection with the rule ------- not of degree but of kind.") It is a recognized practice for Courts to accept substantial evidence. I think from the para I have just read, there is really no doubt about that. Now as to the action taken by the Commanding Offr of 2 Bn 1 CBRD with reference to the accused of having in his possession a weapon without authority and sentencing him to 28 days, that is a recognized procedure in the Civil Courts. I can refer you to one case in the Courts in Ontario in 1939. I cannot cite the exact report, but it was known as Rex vs. Thompson in which the accused man was sentenced to 18 months for perjury on obtaining a marriage certificate. He said he was a single man. His wife was still living and was found some months later brutally murdered. It was established that her death was caused within several days after the marriage license was obtained. He was charged with perjury and sentenced to, I believe, 18 months, in order really, to allow the police to gather sufficient evidence to bring him before the Courts later on a charge of murder. The action, therefore, taken by Col Lent was without doubt entirely right. There is, in this case, evidence of malice. Evidence has been given that the accused shortly before Dillon's death demanded from Dillon "a buck" in a rather surly manner, indicative of a hold-up. I feel there has been a slur cast upon the offrs of 2 Bn in this case. The Court can come to no other conclusion that these offrs acted with the best of intentions. While they may not have been wise in not calling in police assistance, nevertheless, their actions were, I believe, beyond reproach.

W.R.B.

Now, coming to the identity of the deceased, it is normal practice - the recognized practice in the Canadian Army - to identify a deceased or wounded soldier by his identity discs. This is particularly applicable to actual fighting - to the field. The evidence of Capt Verdicchio and Cpl Ferguson, Medical Offr and Medical Cpl respectively, of 2 Bn, was to the effect that they had both examined the discs around the neck of the deceased person while in the MI Room of that Bn. There can be no doubt from the evidence that this body was taken to 3 Cdn Gen Hosp and later to 65 Brit Gen Hosp in Naples. The admitting doctor, Capt Grossman, stated that no other patient, suffering from a gun-shot wound in the head, was admitted to that hospital either that night or early in the morning of 3 Aug 44, while he was on duty as Medical Orderly Offr. He stated that he would have seen any such admission. Capt Jepson's evidence indicates that he attended, as he says, the only person admitted on the night of 2/3 Aug 44 that was suffering from a gun-shot wound in the head; that he knew this person from the records as Dillon, and that that patient whom he attended regularly from 0230 hrs in the morning of the 3rd of August until he died either on the 7th or 8th of August was the same man whom he knew as Dillon. He stated the cause of this man's death was a gun-shot wound of the head and bronchial-pneumonia. He stated that the bronchial-pneumonia is directly caused as a result of the gun-shot wound in the head. It may happen to persons suffering from a head wound, due to the fact that they lie upon their backs and the respiration is affected by the head wound. In short, the gun-shot wound that Dillon suffered from, was directly the cause of his death. The question as to whether or not the shot entered the head from in front or behind is, I think, more likely to be decided correctly by the medical offr who operated and attended the wounded man. A more correct and detailed study of the wound would, of necessity, have to be made by that doctor. Neither Capt Verdicchio nor Major Davidson could or would have been expected to make a very thorough check of the wound. They realized that they would not be in a position to assist the man, and that it was their duty to get that man to a brain specialist, who, apparently, was stationed at 65 Brit Gen Hosp. In short, they were more interested in helping the wounded man than trying to determine the size of the various wounds. Let us briefly go over the evidence of the various witnesses, other than the medical witnesses. We have Pte Wilcock going into the Gd Room and stating that his Glengarrry, with the 48th Highr badge on it, had been removed from his head somewhere around 2215 hrs on the night of 2 Aug 44 by a man wearing Seaforth flashes and carrying a gun, what he believed, was an automatic. We have the evidence of Lieut Mills who tells of finding the Glengarry , which Wilcock identified, on the steps of the Offr's Mess. Mills also states that Pte Dillon was lying within a few yards of these steps. We have the evidence of the Gd Cpl who states that he accompanied Pte Wilcock in the direction of the latter's billets: that on his way back from this trip he heard a shot or shots fired, and a very few minutes later was at the scene of the shooting. Therefore, Wilcock cannot, in any way, be connected with the crime. We have the evidence of Cpl De Harte. While some of his actions may well be criticized, there is one thing established, namely, that this Cpl on the morning of the 3rd, after hearing of the shooting, went to his superior offr and offered certain information. He stated in Court that he had seen Pte Dillon at approximately 2230 hrs embroiled in an argument with a man whom he recognized as the accused. Why did he recognize him? Simply and solely because he saw him wearing Seaforth flashes and a Glengarry which had a 48th Highrs badge on it. You will recall

R.A.B.

that Cpl De Harte was a member of the 48th Highrs. The most normal and natural thing is for any soldier to take a very good look at someone he finds wearing his own regiment's head-dress and badge and yet wearing different shoulder flashes. De Harte states that within three or four minutes after arriving in his billets he heard some shots. I suggest to the Court it is a fair inference from the evidence in which only two or three shots were mentioned as having been fired during the period in question, that these were the shots that De Harte heard and were responsible for the wounding of Dillon. We come to Capt McKee's evidence. I don't think that the Court could conclude that he was giving it for any other reason than it was his duty to tell what he knew to this Court. You will recall that he could not say the exact way Dillon was holding the identity discs that had the name 'Robinson' on them and he refused to be tied down. He was sure of one thing; that at least one disc was firmly in the hand of Dillon. His was the only medical evidence, if such you might call it, as to how a man shot through the head would fall. Cpl Shaw, one had to admit, was not the best of witnesses, but his attitude was the same in reply to the Prosecution, in reply to the Defence, and, I might say, in reply to the Court. [illegible] held any grudge against the accused, neither I nor any other person can tell. But he did state that he saw scratches and other marks upon the accused's face and neck. He got into quite a bit of difficulty about the tattoo report. It is clear from his evidence that he did not call the roll, and that he had no knowledge of the accuracy of the tattoo report turned in by the various platoon sergeants. He did, however, state that tattoo roll call is made about ten o'clock or 2200 hrs. The evidence of Capt Snell is to the effect that at 2330 hrs, 2 Aug 44, he, together with Major Bernier, went to the bedside of the accused. The accused was lying down, face down, on his bed. Neither Capt Snell nor Major Bernier, in fact, Cpl Shaw could say more than that the accused was apparently asleep. I do not think that it calls for any argument to prove that point. If a person desires to feign sleep, few people can prove otherwise. An automatic, .45 colt, was found under the blankets at the head of the accused's bed or as the witnesses described it, if I recall it right, under some clothes that were used as a pillow. They found that the accused was suffering from scratches and bruises, and that he was not wearing his identity discs. On looking at the revolver they both stated that they smelled burnt powder from it. By the smell of burnt powder the identification of that automatic is firmly established. It was established even more firmly on the cross-examination of Major Bernier. The Court may well consider that cross-examination. The evidence given by the witness on his cross-examination is even better evidence than that given on his examination-in-chief. Lieut Dolan gave certain evidence. His evidence, however, was of very little value. He, however, admitted that he could not tell the difference between a back-fire and shots. Now there are certain theories which I propose to advance. I forgot to mention that Major Bernier, in addition to finding the automatic, also found a holster of the type used to carry an automatic similar to that which was found under the head of the accused's bed. He also stated that the undershirt of the accused was torn. Now there is a theory which I suggest in deciding the reason why the holster and the pistol became separated. The accused, coming into his billet, no doubt agitated by what he had just done, afraid to be seen by other men putting the pistol into the holster along with his kit, jammed it under the head of his bed, climbed into bed and made every effort to appear asleep. To do so he lay face downwards. I suggest that in his haste to hide that automatic he placed it under his blankets and, as a result, the fumes of burning powder remained in the barrel

of that pistol long enough for them to be smelled by Capt Snell and Major Bernier. As to the question of the identity discs; it is, I think, a fair inference from the evidence we have heard from Cpl De Harte, that the accused and Dillon got into a struggle, maybe not punching particularly, but they were struggling. I suggest that in the course of that struggle, Dillon grabbed at the accused's throat, laying hold of his identity discs and yanked them. As the Court will notice the cord on these discs is old and rather worn. They broke away. As they were breaking away the accused grabbed the string. In a further struggle the second piece of string broke off. The accused retained it in his hand and later threw it away. The theory that I put forward to the Court is that in this struggle Dillon, somehow, picked the Glengarry off the head of the accused and threw it away. It landed on the steps of the Offrs' Mess or near them. In the struggle to break discs in his hand. Whether or not he fell or remained upright I cannot say. The accused, who was carrying a revolver in his pocket, pulled it out and fired it. Dillon on being hit would no doubt spin around and fall face downwards. There is no possible suggestion in the medical evidence as to how the man was wounded when he fell. I feel the members of the Court must, in their military experience, have seen men shot; have seen them spin partly around as a result of a heavy slug entering the head. How the accused got away is not difficult to understand. I will attempt to explain it. It is true that he had something like 100 yards to go across the parade square to his billets. But I suggest to the Court that there are four buildings around the parade square, near the Offrs' Mess to which the accused might well have got to. In fact he might well have gone to the corner of the Offrs' Mess, a matter of only 10 yards. Once in the shadow of the buildings, he could easily have walked back to his billets without being seen. Admittedly, the evidence does not show the actual manner in which Dillon was murdered. Rarely is the guilty person seen to do the act. In fact, I suggest to the Court that it would be an exception to the usual rule to get any direct evidence of the actual slaying of a person. I suggest to the Court that there has been ample evidence adduced to put the accused on his defence. That is all that the prosecution has produced the necessary evidence to call upon the Defence to offer evidence to rebutt it. The Court is not at this time determining the guilt or innocence of the accused. It is merely asked to decide whether or not the Prosecution has produced enough evidence to indicate that the accused, Robinson, did, on or about 2250 hrs, on the night of 2 Aug 44, so wound one Pte Dillon, that this Pte Dillon did, on or about 7 Aug 44, die as a direct result of that wounding.

Defending Offr's Reply:

Sir, the opening remarks of the Prosecutor seem to be in defence of the Offrs and certain other personnel of 2 Bn 1 CBRD. They are not on trial before this Court. He is not responsible for their conduct, and he need not apologize for their incompetence or misdemeanours. I also stated in my opening argument that I had no fault to find in the Prosecutor in his conduct of this case. He acted in good faith. He was given instructions by Higher Authority. But such Higher Authority has no place in judging the guilt or innocence of the accused unless a member of the proper Military Court. Their conduct does not come within the jurisdiction of the Court. I strongly feel, however, that the Prosecutor has misled the Court by his remarks. I trust the Judge Advocate will remark upon the statement that the accused is being tried in accordance with the laws of England. This was true up to the year 1867. But reference to Section 69 of the Militia Act, which is Appendix I to K.R. (Can)

states that the Army Act, only insofar as it is consistent with the provisions of K.R. (Can) and Cdn law, applies. Therefore the rules of evidence, by which this Court is governed, are those rules laid down in the Canada "Evidence Act". This Court is a Canadian Court. Then there is the suggestion that all the Prosecution has to do is to establish a prima facie case against the accused: that his guilt or innocence is not to be decided at this stage. I do not agree. That is a matter on which you will receive full and complete instructions from the Judge Advocate. I suggest we are in this position. If I were to stop now, offering no evidence in defence, you cannot deny my motion unless you are prepared to find the accused guilty of murder on the evidence which you have heard. The Prosecutor cited the case of Rex vs. Thompson. From the facts which he gave you, it seems that the accused, Thompson, was convicted on a charge of perjury as a result of improperly obtaining a marriage certificate, and that, subsequent to obtaining the marriage certificate, he was accused of brutally murdering his wife. These were two separate prosecutions and not connected in any way apart from the fact that the facts respecting the improper obtaining of the marriage certificate might be acceptable in evidence before a Court trying the murder charge. The Prosecutor did not seem to think an investigation into the character of the deceased was in point - that it had no bearing on the possible guilt of the accused. He omitted, however, to tell you that the purpose in presenting the character of the deceased in evidence was to determine whether or not he had been guilty of any previous acts of violence or if there had been any previous exhibitions of quarreling between the deceased and the accused.

Prosecutor:

I may be mistaken, but the impression I got was that the Defending Offr said that was a matter for the Defence.

Defending Offr:

It is not a question for the Defence at this time. It might be later. The reference to Phipson on Evidence shows that this is one of the matters to be investigated by the proper investigating authorities.

Prosecutor:

Such an investigation was indicated by the evidence of Cpl De Harte.

Defending Offr:

What has Cpl De Harte to do with the case?

Prosecutor:

He gave evidence that the accused demanded "a buck" from the deceased.

Defending Offr:

What has that to do with the character of the deceased? I am dealing with his previous history. I am not dealing with any incident alleged in connection with this case. If the Court accepts that "a buck" was demanded by the accused of the deceased,

W.B.B.

then they must also accept De Harte's statement there was never any question or any violence between them. When the Prosecutor used the word "embroiled" to describe the argument that took place, he is using a word which I don't think he meant. The Prosecutor also stated that the identity of the deceased was properly established by means of the identity discs because it is done that way in the field. I presume by that he meant in action. There, with the bullets falling right and left; in the midst of heavy shell fire we accept certain practices, but we also know that mistakes in identification are made. But when you are back as far as we are, we must, in fairness to the accused, be a little more thorough in our identification. Which was the point of entry and the point of exit of the gun-shot wound will cause the Court a great deal of concern, for the simple reason that the theory suggested by the Prosecutor, indicates that the wound of entry must be in the right frontal bone or forehead, and the wound of exit in the right occipital bone. He stated that there is no evidence as to what would happen to a person on receiving a wound of this kind. I checked Capt Verdicchio's evidence. I refer to the transcript of evidence, question and answer, no. 38. (quotes) That is the only fair inference which the Court may accept. The body either twisted or spun around at the moment of impact of the bullet. According to the Prosecution, the accused was agitated and, in his moment of agitation, slipped the pistol under some blankets or clothing. Yet right afterwards the accused climbed into bed and went to sleep. The Court must examine the evidence of the witnesses called by the Prosecution in the light of their method of giving evidence. It was highly prejudiced against the Defence. They have stated the accused appeared to be asleep. Now to go to sleep so soon after consciously shooting another person is absolutely inexplainable. References were made to Capt McKee's evidence. I think the Court was favourably impressed by his evidence in most instances; but did the Court fail to notice one very weak point in his method of giving evidence? In order to protect himself and give himself loads of time to think before giving his answer, he turned to the Court stenographer, spoke slowly, chose his words carefully, and made sure he said the right thing. Has the Court, along with all these other matters, considered the significance of the Dental Sgt falling out of the window? The Court, from an examination of Exhibit "G", can readily see that the bullet that wounded Dillon might have been fired from that house providing Dillon was walking in the direction of the Borden Building and was shot from behind. The Court cannot accept the theory advanced by the Prosecutor as to how Dillon was shot without finding obvious faults with that theory. Had Dillon taken that hat on to it instead of throwing it away. The fact that he had time to throw it away shows that he must have been shot by someone who was not standing directly in front of him. Otherwise he would not have had time to throw the hat some considerable distance. Then there is the suggestion that the accused carried the pistol in his pocket. We know that a pistol raises a considerable bulge. De Harte was cross-examined as to whether or not any pistol or weapon was apparent in the hands or clothing of the person talking to Dillon. He said "No". The whole assumption in the theory advanced by the Prosecution is that Dillon was shot through the front of the head. You must consider the evidence of the first personswho superficially examined him. They saw a small hole at the back and a larger hole at the front from which brain tissue was protruding. Obviously he was shot from behind. It is now the Court's problem to decide which was the wound of entry and which was the wound of exit. I feel that the Prosecutor has apologized

sufficiently for his presentation of the case. I strongly suggest that the Court accept these apologies and throw this case out. They cannot find the accused guilty on circumstantial evidence unless they are satisfied, not only that the circumstances are consistent with the accused having committed the act, but that they are inconsistent with any other rational conclusion. I submit the Prosecution has failed to link the accused with the offence alleged.

Judge Advocate's Summing Up:

Mr President and gentlemen, it is not laid down, as far as I know, in the Rules of Procedure that the Judge Advocate should sum up in open Court at the conclusion of a motion of this nature. But since the Court wishes it, and, in view of the serious nature of the charge which the accused is facing , I feel that it is not only desirable, but my duty to do so. The accused is charged under Sec 41 of the Army Act with committing the civil offence of murder, the allegation being that on the 2nd of August of this year, he murdered one Pte Dillon, J.W.M. A charge of murder can be tried by Court Martial when we are out of the United Kingdom by virtue of Sec 41 of the Army Act. This raises a point mentioned by the Defending Offr. I quote Sec 69 of the Militia Act, R.S.C. 1927, Chap 132, found in K.R. (Can) at p.292 (reads). Now the effect of that is that the accused is to be tried by the English Criminal Law and, according to the English law of evidence, not by the Canadian Criminal Code nor Canadian Law respecting evidence. The Defending Offr contends that the Prosecution has failed to establish a prima face case. What does that mean? I refer to the MML, Chap VI, para 12 and part of para 13, pp 72-3. (quotes para 12 and lines 1-3 of para 13) It goes on to give examples which are not applicable to this case. It should not be necessary for me to remind the Court that it is the sole judge of the facts; that is to say, the evidence which has been adduced before this Court and only that evidence. If the Court has in its mind a reasonable doubt as to the accused's guilt then it must find him not guilty. A reasonable doubt is not one based on whimsy sentiment or anything of that nature, but it is a doubt such as the members of the Court might entertain in the conduct of their own personal affairs. It is the duty of the Judge Advocate to advise the Court, to the best of his ability, of the law involved. Any opinion which he has or expresses with respect to the facts are not binding on the Court. The accused is charged with having committed murder. I refer the Court to MML, Chap VII, para 42, p.115. (reads) I also refer the Court to Archbold "Criminal Pleading Evidence & Practice", 1943 edit, p.859. (reads para headed 'Murder') Then on the same page, the para headed "The Person Killing". (reads lines 1-4 of the para) I refer you also to Archbold, p.860, the para headed "The Person Killed", (quotes lines 1-3 of the para); also on p.861 to the para headed "The Manner of Killing" (quotes lines 1-3 of the para). I would refer you also to the opening sentence of the second para on p.864 of Archbold (reads). Also at p.879 under the heading "Killing without intention whilst doing another act" (reads lines 1-3 of the para). In order to find a person guilty of murder it is essential to prove malice on the part of the alleged murderer. I refer the Court to Archbold p.864 (reads para: "Express malice") and to p.865 under the heading "Implied malice" (reads lines 1-8 of para). Referring again to Archbold pp 868-9 under the heading of "Quarrels" (reads lines 1-4 of para). Now we are not, at this stage, concerned with the defences to a charge of murder. You have to consider the Prosecution's case in order to decide whether or not the

R.A.B.

Defending Offr's submission should be allowed. I have endeavoured to prepare a time table, if you wish to call it that, which may be of some assistance to the Court. On 2 Aug 44 at 2130 hrs Cpl De Harte and some of his comrades entered the main gate at Canada Bks. There they met a Hast & PER soldier who was drunk and argumentative. Cpl De Harte ascertained that this soldier's name was Dillon. At 2215 hrs Pte Wilcock was held up by another soldier wearing Seaforth flashes. He was robbed of his Glengarry with the name "A.H. Wilcock" inside (Exhibit "H") and his fountain pen which bore some tooth marks (Exhibit "I"). Sometime between 2215 hrs and 2230 hrs, Cpl De Harte came upon this soldier Dillon arguing with two other soldiers on two separate occasions, and then he found Dillon and the accused in an argument. The accused made a demand for money. Cpl De Harte says that he recognized the accused because it was not usual to see a man with Seaforth flashes wearing a 48 Highrs Glengarry. At 2230 hrs Cpl De Harte left them still arguing. At same time Pte Wilcock reported to Cpl Ferguson in the Gd Room and was then shown to his billets. Sometime between 2230 hrs and 2250 hrs, two or three shots were heard by the following people: Sgt Whynot, who was in the Gd Room, Capt McKee, who was in 2 Bn Offrs' Mess, Cpl Ferguson, Cpl De Harte who was also in Bn Offrs' Mess, and Lt Dillon, lying face downwards. Capt McKee identified as Pte Dillon, lying face as he left the Mess. Capt McKee stated that he smelled powder burning in the head, allegedly identified as Pte Dillon, lying face promptly to 2 Bn Offrs' Mess where they found a body, wounded Dolan who was in the Gd Room. Certain of these people went billets, Major Bernier who was in 2 Bn Offrs' Mess, and Lt "H") on the Mess steps. Cpl Ferguson found a .45 casing on the point "J" on Exhibit "G". Lt Mills found the Glengarry (Exhibit Verdicchio, and Sgt Whynot were also on the scene around that time. Sometime after 2250 hrs, Capt McKee discovered the identity discs with the broken cord (Exhibit "J") and turned them over to Capt Snell. Lt Mills found blood spots on the steps of 2 Bn Offrs' Mess. Major Bernier and Capt Snell set off to trace the owner of the discs that Capt McKee said he found in the injured man's hand. The injured man was taken to 2 Bn MIH and from there to 3 Cdn Gen Hosp by Cpl Stewart. About the same time Major Bernier and Capt Snell had completed their investigations. They got Cpl Shaw who took them to the accused's quarters, which they reached at approximately 2340 hrs. In other words, about one hour after the shots were heard fired, Major Bernier and Capt Snell arrived at the accused's bedside and stated they awakened him as he appeared to be asleep. His kit was searched and also his blankets. The .45 automatic (Exhibit "O") was found. Major Bernier and Capt Snell stated that in their opinion it had been recently fired. Major Bernier also found a United States type holster (Exhibit "P") in the accused's kit, the kit which the accused admitted was his own. The accused had scratches on his neck similar to fingernail scratches; no identity discs, and his face appeared bruised. He was placed under arrest at 2355 hrs. Pte Stewart took the patient, named Dillon, from 3 Cdn Gen Hosp in an ambulance to 65 Brit Gen Hosp in Naples. Sometime after 2250 hrs Lt Dolan investigated the case of the Dental Sgt who had fallen out of a window of his billets near Canada Bks. At 0145 hrs, 3 Aug 44, a patient named Dillon, conveyed in an ambulance from 3 Cdn Gen Hosp and suffering from a through-and-through gun-shot wound in the head, was admitted to 65 Brit Gen Hosp. The evidence in support of that is the testimony of Sgt Fieldhouse, Capt Grossman and, to some extent, W/Capt Tootell, the padre. At 0230 hrs a patient named Dillon was examined by Capt Jepson, who stated that there were no other persons admitted to the hospital that night with similar injuries. Later that day, the Court of Inquiry, at which the

accused gave evidence, was held. Lt Dolan searched the accused and his kit in 2 Bn Gd Room. The accused, on being ordered to empty his pockets, handed over two fountain pens of which the light grey one (Exhibit "Q") was identified by Mr Dolan. He was unable to identify the other one beyond stating that it had tooth marks on it. Capt Jepson, who had been attending the patient Dillon, stated that he died on the 7th or 8th of Aug. Padre Tootell said he buried him in the British Military Cemetery in Naples. I think that is a fair summing up of the evidence brought out by the Prosecution. Now as the Defending Offr has quite properly pointed out, that evidence is largely circumstantial. In that connection I would like to refer the Court to MML, Chap VI, para 42, pp 81-2. (reads para 42) The Defending Offr has asked me to say something to the Court about the identification of exhibits and about the proper method of identifying an accused person. As to the latter, the usual civil practice is to have the suspect picked out of a line-up of persons who are, as nearly as possible, similar to him in size, appearance and dress by the person who is called on to identify him. The suspected person must be given an opportunity of changing his place in the line-up if more than one person is called upon to identify him. In this case, as far as Cpl De Harte is concerned, any identification that he made was made before any such parade took place. In other words, one of the things that you will have to decide is whether Cpl De Harte's identification of the accused is due to his recalling the oddity of seeing a Seaforth soldier with a 48 Highrs Glengarry or whether, as the Defence contends, it was due to the fact that he had ample opportunity to memorize the features of the accused while he had him under observation prior to the Court of Inquiry on the morning of 3 Aug 44. Now as to the identification of the discs: I refer the Court to MML, Chap VI, para 112, p.100. (reads) Reference has also been made in argument to what is called "Judicial knowledge" - "Military experience" and similar expressions. I would refer the Court to MML, Chap VI, para 11, p.72. (reads para) In other words, the examples quoted are all examples of things which are of general knowledge. They do not apply to particular evidence which is of an expert or quasi-expert nature. I have nothing further to add, sir, except that I think I should again call your attention to the final sentence of para 12 on p.72 of MML (quotes). If you think that has not been done in this case, then you must allow the submission of the Defending Offr and find the accused "Not Guilty".

Judge Advocate (to Defending Offr):

Is there anything else you wish me to add?

Defending Offr:

I asked you, sir, to make some reference to the method with which Capt Rose introduced the exhibits. You read a para in MML, but I think it would be better --------

Judge Advocate:

I take it you are referring to the civil police methods?

Defending Offr:

I am referring to the police methods of obtaining exhibits and submitting them in Court.

W.B.B.

C.119

Judge Advocate:

The practice, as I understand it, is that once an article is taken into possession by the police it should be marked in some way by the person who finds it. It may be tagged: it may be initialled - some mark may be scratched on it - something of that nature. The point is that this should be done as soon after the finding as possible. Otherwise, a proper identification becomes a difficult matter if the article passes from one hand to another before being submitted to the Court.

E

Findings.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty"

The Court is closed for the consideration of the finding.

The Court find that the accused B. 144333 Pte Donald John Frederick Robinson 2 Bn 1 CBRB not guilty of the first charge

In the Field
In Italy
29 Sept 44

[signature]
Lt Col
Pres.

R. R. Bate Capt.
Judge Advocate.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

Proceedings on Conviction before Sentence

*The Court being re-opened, the accused is again brought before it

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by Witness.*

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked [illegible] signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to this fact, and the Court must inquire into the nature and amount of that additional punishment.

Question to the accused.

Do you wish to address the Court? *Answer.*
The Court is closed for the consideration of the sentence

Army Form A 47 X

COURTS - MARTIAL

Form of Order for the assembly of a General or District COURT - MARTIAL

W. B. Bate Capt Pros

Orders by Brig E W Haldenby MC VD
Commanding 1 Cdn Base Rft Group
In the Field 4th day of Sep 1944

W. B. Bate Capt Judge Advocate

B144333 Pte Donald John Frederick ROBINSON 2 Bn 1 CBRD

The detail of officers as mentioned below will assemble at Shilo Bks, Avellino, Italy, on the 21st day of Sep 1944 at 1000 hrs for the purpose of trying by a General Court-Martial the accused person named in the margin (and such other person or persons as may be brought before them)

PRESIDENT

Colonel S A LEE MC Comd 2 CBRD is appointed President

MEMBERS

Lt-col J G VINING ED (CAC) 5 Bn 2 CBRD
Lt-col E R GILL (RCCS) 7 Bn 2 CBRD
Major L F MacDONALD (RCCS) 8 Bn 2 CBRD
Major A T BROWN (CIC) HQ 1 CBRGp

WAITING MEMBER

Capt J A McGOWAN (CAC) 5 Bn 2 CBRD

JUDGE-ADVOCATE

Capt W B BATE ADJA HQ 1 CBRGp is hereby appointed Judge-Advocate.

The accused will be warned and all witnesses duly required to attend.

The Proceedings will be forwarded to HQ 1 C B R Gp.

Signed this 4th day of Sep 1944.

E W Haldenby

(E. W. HALDENBY) Brigadier
Commander
1 Cdn Base Rft Group

2 NN 1 CBN MASR DPT DEPOT

I certify that I have this morning examined

B144323 PTE ROBINSON D.S.F

and he is fit to undergo trial by Court Martial.

21 SEP 44

[signature] Capt

M.O. 2 Bn. 1 C.B.R.D.

[signature] Capt
Pres.

W. B. Bate Capt
Judge Advocate

oOo MEDICAL OFFICER'S CERTIFICATE oOo

I hereby certify that I have this day examined

No. B144323 Rank PTE Name ROBINSON D.T.F.

and in my opinion is fit to undergo trial by Field General Court Martial.

W Bailey Capt
(Medical Officer)

Date

22 SEP 44

Sales Col
Pres.

W. B. Bate Capt
Judge Advocate.

oOo MEDICAL OFFICER'S CERTIFICATE oOo

I hereby certify that I have this day examined

No. P144333 Rank. PTE Name. ROBINSON D.J.F.

and in my opinion is fit to undergo trial by Field General Court Martial.

[signature] Capt

(Medical Officer)

Date

23 Sept 44

[signature] Col

Pres

W. B. Gate Capt

Judge Advocate

oOo MEDICAL OFFICER'S CERTIFICATE oOo

I hereby certify that I have this day examined

No. B144333 Rank PTE Name Robinson D.J.F.

and in my opinion is fit to undergo trial by Field General Court Martial.

Alexander Capt
(Medical Officer)

Date

SEPT 28 44

[illegible] Col
Pres

W. B. Bate Capt
Judge Advocate.

MEDICAL OFFICER'S CERTIFICATE

I hereby certify that I have this day examined

No B/144333 Rank Pte. Name Robinson D.J.F.

and in my opinion is fit to undergo trial by

Court Martial.

Date 29-9-44

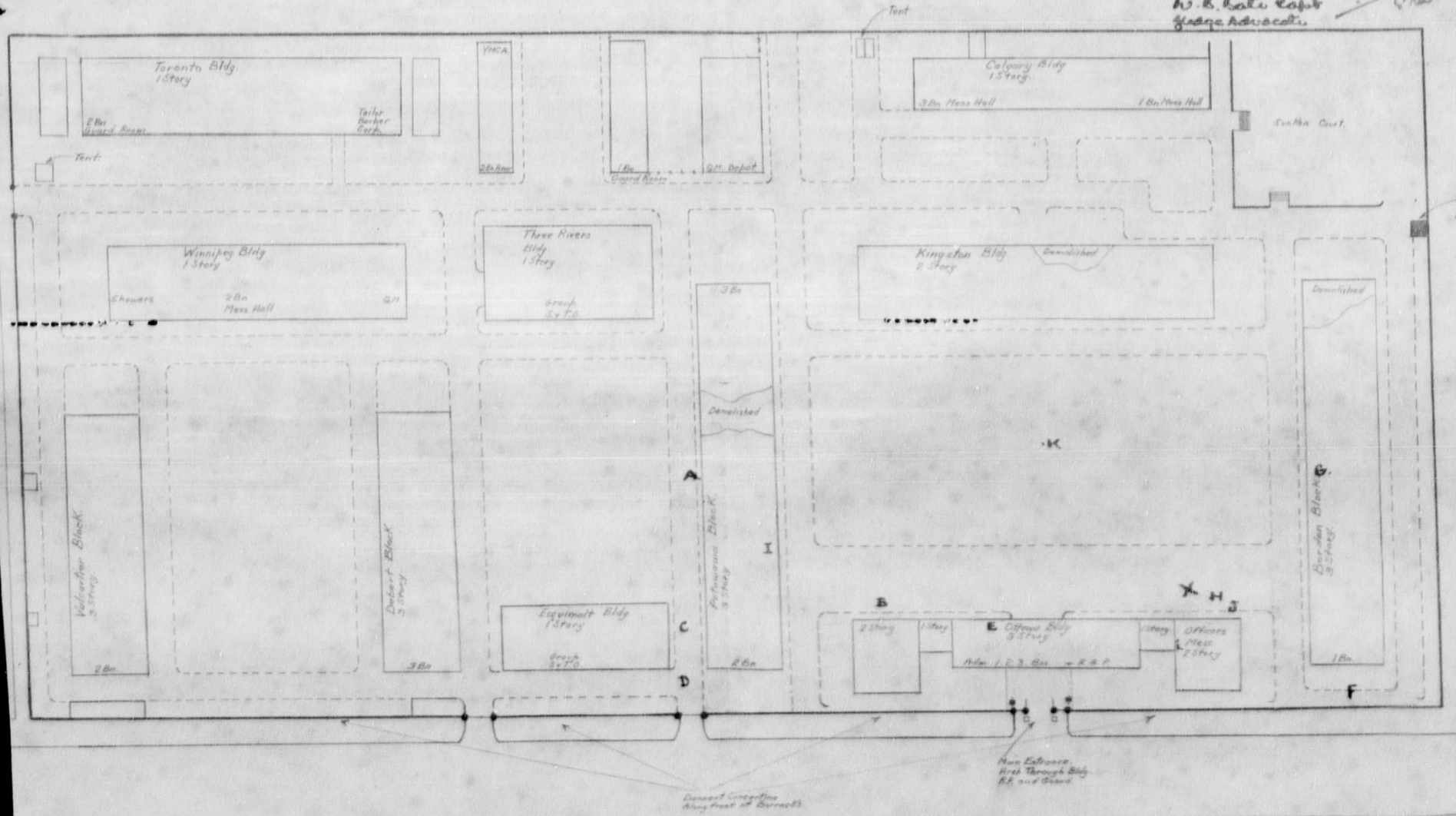
(Medical Officer)

Lt Col
Pres

W. B. Bates Capt
Prosecutor

EXHIBIT G

W. B. Scott Capt
Judge Advocate.



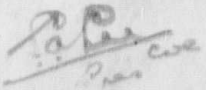
CANADA BRKS.

Scale 1" = 9' Date 13 Sept 44

J Love R.C.E.

TWO INDENTIFATION DISC ATTACHED
DISCARDED NOT ABLE TO MICROFLIM

EXHIBIT 'J'



W. B. Hale Capt
Judge Advocate.

Sale Co
Prec

EMPTY SHELLS DISCARDED

EXHIBITS M → N

W. B. Lake Capt
Judge Advocate



ENPTY SHELLS DISCARDED

EXHIBITS 'L' & 'K'

W. B. Bates Capt
Judge Advocate.

Summary of Evidence.

Summary of Evidence in the case of B 144 383 Pte Robinson, D.J.F., of the Seaforth Highlanders of Canada, on strength of 2 Canadian Base Reinforcement Battalion, 1 CBRD, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

First Witness for the Prosecution.

B 72921 Pte Wilcock, A.H., 3 Cdn Base Rft. Bn, 1 C.B.R.D., having been duly sworn, states:

"I am B 72921 Pte Wilcock, A.H. of the 3 Cdn. Base Rft. Bn, 1 CBRD. On the night of August 2nd 1944 at approximately 2215 hrs I was over on the west side of the Petawawa Building, about half way down, and a chap appeared to put a gun against my left side and I turned around and saw a Seaforth flash. He took off my Glengarry. I can recognize my Glengarry by my name inside and the checks in the hat have the appearance of pin pricks (Glengarry produced and marked Exhibit "A"). I recognize the Glengarry marked Exhibit "A" as the Glengarry that was taken from me on the night of 2nd August 1944. He also took my Waterman's pen, a grey one. I can recognize my pen because the original name has been scratched off and there is a tooth mark on the nib. (Waterman's pen produced and

marked Exhibit "B". I recognize the Waterman's pen marked Exhibit "B" as my pen. It is the pen that was taken from me on 2nd August 1944. After taking my Glengarry and pen he turned around and walked behind me towards the M.I. Room. I saw some chap walking over from the garage to the Main Gate. I hollered to the chap. He just hollered back something and then started to walk away and I hollered again. He came over to my right side and I grabbed his arm and held him close to me. We were walking just about in front of 1 Bn. Officers' Mess, and I could not feel the gun any more, so I turned around and the chap who had the gun had disappeared. Then I went right over and reported the incident at the Guard Room. The officer in charge was Lt. Dolan. Then a guard and myself went outside and searched the area and found nobody around the vicinity of the Officers' Mess, 1 Bn. I then went to my billet and went to bed. I was awakened in the morning about 0200 hrs by Capt Mills and Capt Cameron, and proceeded to No. 2 Bn. Guard Room and stayed there the night. I do not recognize the accused as the man who held me up with

the gun."

Cross examined by the accused:

Q.1. "The gun that you recognized as yours, do you consider it grey in colour?"

A.1 "It is not all grey; it is streaked with white. I have always called it a "grey gun".

A.W. Alcock

Second Witness for the Prosecution.

F39716 Sgt. Whynot, R.H., 1 Cdn. Base Rft. Bn., 1 C.B.R.D. having been duly sworn, states:

"I am F39716 Sgt. Whynot, R.H., 1 Cdn. Base Rft. Bn., 1 C.B.R.D. At approximately 2245 hrs, 2nd August 1944, while on No. 1 Guard Room making out my Guard report, I heard a shot fired in the direction of the main parade square outside of Borden building. I immediately ran out of the Guard Room, and on my way out I heard two more shots fired. Just as I arrived at the main entrance to Borden building I could see a body lying in front of the Officers' Mess, 2 Bn. I did not know whether it was a drunk, so I looked around to see if I could see anyone running, and could see nobody. I then proceeded to where the body lay, and when arriving there the Corporal on Guard, Cpl Ferguson, and the Officer of the Guard, Lt. Dolan were there. In my estimation the shots sounded like they had

come from the direction of the S.L.O. and C.Y.R. quarters. When I first ran out I saw a man in a crouched position trying to get up. It was the same man I saw later."

The accused declines to cross-examine this witness.

Third Witness for the Prosecution

Capt. T.E. McKee, "6" Coy, 2 Cdn Base Rft. Bn., 1 C.B.R.D. having been duly sworn, states:

"I am Capt. T.E. McKee, "6" Coy, 2 Cdn. Base Rft. Bn., 1 C.B.R.D. On the night of August 2nd, 1944 about 2250 hrs. I was sitting in the Officers' Mess, 2 Bn, 1 CBRD. I heard two shots fired outside. They sounded to be very close, so I got up and walked out of the Mess to have a look around. When I arrived at the porch outside the door of the Mess I saw a body lying on the pavement about eight yards from the porch. I walked over to see a man lying face down on the pavement with his hands stretched out at his side. He was not dead but was bleeding from two ~~wholes~~ holes in the head, one in the front and one in the back. I went over to 2 Bn. M.I.R. and posted an orderly for the Medical Officer. I

then went back to the scene of the accident. By this time there was a number of officers and men collected around the wounded man. I thought the man may have shot himself, as I started to look for a weapon. I found no weapon, but in his left hand I found a set of identity discs. These discs I turned over to the Adjutant, 2 Bn. 1 CSR'D. Capt Snell. I just glanced at the discs and saw the name "Robinson" on them but cannot remember the number. (Identity discs produced and marked Exhibit "C"). I would say that the discs marked exhibit "C" are the same discs I took from the hand of the man that was shot and gave to Capt. Snell. By this time the Medical Officer was there and had moved the body to the M.D.R. I stayed there until the man was placed in a vehicle and then went to my quarters.

Cross examined by the accused:

Q.1. "Sir, you said that you recognize the name on the discs. Are you positive?"

A.1. "Yes."

Q.2. "Was it dark outside when you saw the discs."

A.2. "Yes, it was dark outside. I looked at the discs inside the M.D.R. when I gave them to Capt Savill the adjutant."

Thos. E. McNeil

Fourth Witness for the Prosecution.

Capt. A. Verdicchio, Medical Officer at 2 Cdn. Base Rft. Hsp., 1C.B.R.D. having been duly sworn, states:

"I am Capt A. Verdicchio Medical Officer at 2 Cdn Base Rft. Hsp. 1C.B.R.D. On the night of the 2nd August 1944 I was in bed dozing off to sleep and was suddenly awakened and heard gun shots. I think there were two shots. As a result of information received I went down stairs and out to the road in front of 2 Hsp Officers' Mess and there found a soldier lying face down about ten yards from the entrance to the Mess. His head was lying in a pool of blood. He was breathing quite well and his pulse was fair. I removed his beret and as I did I noticed that it was filled with blood. I examined his head and found a fairly large wound on his forehead with brain tissue exposed. I then felt around the rest of his skull, including the back of his head, and felt a smaller wound, which was dripping blood into my hand. I came to the conclusion, then, that the wounds were apparently gun shot in origin. I called for some shell dressings and dressed the wounds and asked someone to get a vehicle from the unit. Whilst waiting I took the injured man to the M.D.R. on a stretcher.

While in the M. D. R. adjusting his dressings his identity discs were examined for information for hospital records. The name on the discs was Pte Dillon. His shoulder flashes revealed the name of the Hastings and Prince Edward Regiment. The vehicle arrived in a very few minutes and I sent the man to No. 3 Canadian General Hospital, accompanied by Cpl. Stewart. After I had despatched him to the hospital I noticed the time to be about 2330 hrs."

Verdrecchus Capt.

The accused declines to cross-examine this witness.

Fifth Witness for the Prosecution

K 52039 Cpl Stewart, R., 2 Cdn Base Rft Bn., having been duly sworn, states:

"I am K 52039 Cpl Stewart, R, medical Corporal of M. D. R, 2 Cdn. Base Rft Bn. ICBRD. On the night of 2nd August 1944 I was awakened out of my bed and as a result of information received I immediately got up got a stretcher and medical supplies. I went to a spot immediately in front of 2 Bn. Officers' Mess and found a soldier lying on the ground.

When I first saw him he had a wound on his forehead, to which I immediately applied a shell dressing. I noticed later that the blood was saturating through the bandage at the back of his head. I then applied another shell dressing on the back of his head. He was then put on a stretcher and carried into the M. I. R. The Medical Officer made out his hospital admission slip from his identity discs. I read off his particulars from his identity discs. He then evacuated him to the 3 Canadian General Hospital. I accompanied him. When we arrived at the hospital I assisted the admitting officer, Major Davidson, in removing the bandages. I saw a few small fragments of brain tissue on the shell dressing. After he had received further dressings I returned to Canada Barracks. The particulars I read from the identity discs were "B 138552 Pte Dillon, J."

C. R. Stewart R.

Sixth Witness for the Prosecution.

The accused declines to cross-examine this witness.

Major J. R. Davidson, 3 Cdn. General Hospital, having been duly sworn, states:

"I am Major J. R. Davidson, in charge of surgery No. 3. Can. Gen. Hospital. On the 2 August 1944 at approximately 2330 hrs I was called to the admitting room

to see a patient who was suffering from a compound fracture of the skull. The patient was unconscious. There was a wounds of entry over the occiput and a wound of exit in the middle of the frontal bone. Some brain tissue was exuding from the wound of exit. I would be of the opinion that the wound was caused by a high explosive missile. After examination of the patient's general condition the wounds were re-dressed and I called the Roman Catholic padre to administer the last rites. The patient was immediately transferred by ambulance to No. 65 British General Hospital.

J. Davidson
Major

The accused declines to cross-examine this witness.

Seventh Witness for the Prosecution.

U 1672 Pte Aedy, J.A., 3 Cdn. Gen. Hosp. having been duly sworn, states:

"I am U 1672 Pte Aedy, J.A. on strength of 3 Cdn. Gen. Hosp. On the night of 2 August 1944 I was employed as night clerk in the admitting room. At approximately 2330 hrs. a patient was brought in with a head wound. I took his particulars from

his identity discs. The particulars I took were: "B13855 2 Pte Dillon, J. W. M.", (R.C.) Roman Catholic" I saw Major Davidson examine the patient. I saw the patient, Pte Dillon, placed in an ambulance for transfer to 65 Br. Gen. Hospital at approximately 2355 hrs, 2 August 1944. I saw Pte Shelusk enter the ambulance to accompany the patient as medical orderly.

Ready.

Eighth Witness for the Prosecution

The accused declines to cross-examine this witness.

B14 20 30 Pte Shelusk, R., 3 Cdn. Gen. Hosp. having been duly sworn, states:

"I am B14 20 30 Pte Shelusk, R. on strength of 3 Cdn. Gen. Hosp. On the night of 2 August 1944 at approximately 2355 hrs. I entered an ambulance to accompany a patient with a head wound to 65 Br. Gen. Hosp. as medical orderly. From the documents I carried I found his particulars to be "B13855 2 Pte Dillon, J. W. M." On arrival at 65 Br. Gen. Hosp. I delivered the patient to the admitting room and then returned to 3 Cdn. Gen. Hosp."

R Shelusk

The accused declines to cross-examine this witness.

Ninth Witness for the Prosecution.

#610847 Sgt. Fieldhouse, W., 65 British General Hospital, R.A.M.C., having been duly sworn, states:

"I am #610847 Sgt. Fieldhouse, W. on strength of 65 British General Hospital. On the night of 2/3 aug. 1944 I was night ward master. At approximately 0145 hrs on 3 August 1944 I admitted a patient with head wounds. I received a transfer slip from the orderly from 3 Can. Gen. Hosp. From this I found that he was a Canadian and that his particulars were B138592 Pte Dillon, J.W.M." Capt. Grossman examined him and the patient was sent to X-ray.

W. Fieldhouse Sgt.
(No. 4610847 RAMC)

The accused declines to cross examine this witness.

Tenth Witness for the Prosecution.

Capt W. Grossman, 65 British General Hospital, R.A.M.C., having been duly sworn, states:

"At approximately 0130 hrs. 3 August 1944 I admitted a patient with a head wound. After examination I diagnosed the injury

as a Gun Shot wound of the head. X-Ray examination was made and he was transferred to a resuscitation ward.

W. Jefferson Capt RAMC.

The accused declines to cross-examine this witness.

Eleventh Witness For the Prosecution

Capt. R.P. Jepson, 65 British General Hospital, R.A.M.C., having been duly sworn, states:

"I am Capt. R.P. Jepson, 65 Br. Gen. Hosp., R.A.M.C. At approximately 0230 hrs., 3 August 1944 I was called to examine a patient. He had a through and through wound with the entry right frontal bone and the exit right occipital bone. The wound being caused by a high velocity missile, probably by a .303 or shrapnel of the size. I operated on the patient at approximately 0900 hrs. 3 Aug. 1944. I only knew the patient as "Dalton". The patient died on the 7 August 1944 & certified the death of the patient.

R.P. Jepson Capt RAMC

The accused declines to cross-examine this witness.

Twelfth Witness for the Prosecution

Rev. J. Goodall, C.F.R.C., having been duly sworn, states:

"I am Rev. J. Goodall C.F.R.C., Roman Catholic chaplain for 65 British General Hospital. On the 2 August 1944 I attended a soldier by the name of "Dillon" I buried at a British Military Cemetery, Naples on the morning of the 5 Aug 1944, the same soldier by the name of "Dillon"

J. Goodall, C.F.R.C.

The accused declines to cross-examine this witness.

Thirteenth Witness for the Prosecution

Lieut A.J.B. Mills, 3 Cdn. Base Rft. Bn., 1 C.B.R.D., having been duly sworn, states:

"I am Lieut A.J.B. Mills 3 Cdn Base Rft Bn., 1 C.B.R.D. At approximately 2240 hrs, 2 Aug 1944 I was having lunch in the Officers' Mess when I heard three shots. I went out to see what was going on and on the steps going out of the Mess I picked up a Glengarry with a 7 8 1/4" Highlander badge on it. I recognize the Glengarry marked exhibit "A" as the one found on the steps on the 2 Aug 1944. I then had a look at the wounded man, who was lying face down approximately twenty feet from the entrance to the 2 and 3 Bns. Officers' Mess. He

had been shot through the head and there was quite a pool of blood where he was lying. A crowd had gathered, including the Guard Commander, Lt. Dolan and the Guard Corporal, Cpl Ferguson, also the Provost Sgt. from 1 Bn. Sgt. Wright. Someone handed me a beret with a Hastings and Prince Edward Regiment badge on it which apparently belonged to the wounded man as there was blood dripping from it. I handed the beret over to Lt. Dolan. Lt. Dolan dispersed the crowd and I aided him in a search of the area. One .45 calibre casing was found approximately eight feet from where the wounded man had been lying. On further investigation of the Glengarry which I had found on the steps of 2 Bn. Officers' Mess I found the name of "A.H. Wilcock" on the inside. After investigation I went to Capt. Cameron's quarters and turned the Glengarry over to him. He immediately got dressed and I accompanied him to the 48th Highlanders' quarters where Wilcock was brought to him and was later turned over to the 2 Bn. Guard Room. I returned to the scene where the wounded man had been lying and in company with

some of the Guard made a further search for empty cartridge casings. During the search one more .45 calibre casing was found by the Guard. As Lt. Dolan was not available the casing was turned over to the Orderly Officer of 3 Bn with instructions to turn same over to the Adjutant of 2 Bn, Capt Snell, who by this time was in possession of the other casing which had been found. During the second search I noticed a few drops of blood on the steps of the Officers' Mess and also one drop of blood right at the door of the officers' Mess. Two of the casings marked exhibit "D." are similar to the two found at the scene of the shooting.

G. J. B. Mills

The accused declines to cross-examine this witness.

Fourteenth Witness for the Prosecution

Lieut B. J. Dolan, 3 Cdn Base Rft Bn, 1 C.B.R.D., having been duly sworn, states: "I am Lieut B. J. Dolan, 3 Cdn Base Rft Bn, 1 CBRD. I was officer in charge of the Guard from 0900 hrs, 2 Aug 1944 to 0900 hrs. 3 Aug 1944. At approximately 2240 hrs, 2 Aug 1944, a soldier later identified as Pte Wilcock of the 48th Highlanders entered the Guard Room. He was quite excited. I sent a corporal out with Wilcock to investigate the matter. A few minutes later I heard a shot. I told the Guard to "stand to" and then heard two more shots. I took

the sergeant and two men and started out to investigate the matter. I saw a group of people standing in front of 2 Bn Officers' Mess. Going in that direction I saw a man lying on the ground. I continued my investigation and tried to find out where the shots came from. I made a tour of all the buildings in 1 Bn area and discovered nothing. Going back to where the man was lying I found that quite a crowd had gathered. I sent those not on duty to bed. Looking further a .45 empty casing was found by Cpl. Ferguson. He turned it over to me. A set of identity discs bearing the inscription "B 144333 Pte Robinson, D." were found. On the suggestion of Capt. Snell we went to each Records Office of 1 CBRO. We discovered the record of a man fitting the inscription of the identity discs at 2 Bn. Later Capt Snell entered the Guard Room and upon obtaining a receipt I turned over to him the .45 casing. One of the casings produced and marked Exhibit "D" is similar to the one I turned over to Capt. Snell."

B J Dolan Lieut

The accused declines to cross-examine this witness.

Fifteenth Witness for the Prosecution

B51982 Cpl Ferguson, E., 1 Cdn Base Rft. Bn., 1 C.B.R.D. having been duly sworn, states:

I am B51982 Cpl. Ferguson, E., 1 Cdn Base Rft Bn, 1 C.B.R.D. On the night of 2 August 1944 at approximately 2230 hrs. a 48th soldier reported to the Guard Room. I took the soldier, whom I learn to be Pte Wilcock, to the Seaforth coy office. I made arrangements there that any man carrying an unauthorised weapon be reported to the Guard Room. Pte Wilcock and myself came back downstairs from the Seaforth office. I showed him the way down to his billets. I was on the other side of the Petawawa Building when I heard two shots fired. The shots seemed to come from the direction of 2 Bn. Officers' Mess. I came back to the Guard Room and then proceeded to the scene of the shooting. I saw a pool of blood and a half eaten sandwich of onions. I tried to find where the shots had come from and I found a spent .45 cartridge case, approximately ten feet away from the steps of the Officers' Mess. I handed this over to Lt. Dolan who was officer of the Guard. Later a second casing was found by one of the guards about fifteen paces from where the first one had been found. The following morning I was sent by Lt. Dolan to the Seaforth coy office to get Pte Wilcock's name and number, which I did not obtain. On my way down from the Seaforth office I picked up a

spent. 4 casing on the steps leading out of the Petewawa Building. I reported this to L. Dolan on my return to the Guard Room. (Casings produced and marked Exhibit " ").

I recognize two of the casings produced as exhibit "D." as the ones I found. The bent one I found on the stairs of the Petewawa Building.

J. Ferguson E.

The accused declines to cross-examine this witness.

Sixteenth Witness for the Prosecution.

Major J. Bernier, R.C.A.P.C., Paymaster of 2 Cdn Base Rft. Bn., 1 C.B.R.D., having been duly sworn, states: "I am Major J. Bernier, R.C.A.P.C., paymaster of 2 Cdn Base Rft. Bn, 1 C.B.R.D. On the night of the 2nd August 1944 I was reading in my room above 2 Bn. Officers' Mess. At approximately 2300 hrs. I heard a shot, then a second shot, then another. They seemed to be revolver shots in the immediate vicinity of the Mess. I slipped my trousers over my pyjamas and went down to investigate. Several officers were standing around the body, sprawled on the road immediately in front of 2 Bn Officers' Mess entrance. It was the body of a man who had been wounded by

Gun Shot. The Bn Orderly Officer, Lt. Manahan, seemed to have the situation well in hand, so I left the scene. I then went to my office as I thought there might have been an attempted robbery of my cash. I found everything in order. I then returned to the scene of the accident and was shown a set of identity discs by Capt. S. E. McKee, P.P.C.L.I. They were not the wounded man's. They bore the following information: "B144393 Robinson D., Pres., C.W.N." I now recognize the discs marked Exhibit "C" as the discs shown to me by Capt McKee. I then went to Nos. 1, 2, and 3 Bns' Pay Offices to find out if Robinson belonged to any of these Bns. He traced him to the Seaforth Coy of No. 2 Edm Bde Rft. Bn. I then accompanied Capt. Snell, adjutant of 2 Bn to the Seaforth billets at approximately 2330 hrs. We found Pte Robinson, whom I now recognize as the accused, apparently sleeping in his blankets. We woke him up. He had been drinking but in my opinion was in full possession of his faculties. His lips and nose were bruised.

There were scratches on his neck, and his vest was torn. He was not wearing identity discs. On searching his kit I found under the head of his blankets an empty .45 calibre automatic revolver, the property of the United States Army, bearing the serial 948416 and the figures M1911 which I presumed to be the model or issue no. (Revolver produced and marked exhibit "E".) I recognize the revolver marked Exhibit 'E' as the one I found in Pte Robinson's kit. From the smell of powder I would say that the revolver had been fired recently. I found the holster of the revolver in Pte Robinson's kit bag (Holster produced and marked Exhibit "F"). I recognize the holster marked Exhibit 'F' as the one I found in Pte Robinson's kit bag on the night of the 2nd August 1944. I handed both the revolver and the holster to Capt. Snell for safe custody. Pte Robinson's rifle was hanging on a nail by his bed. It had not been fired. I found no other fire arms, ammunition, cleaning rods, etc. Capt. Snell had Pte Robinson placed under

close arrest and sent to 2 Bn Guard Room. The duty Corporal of the Seaforth Coy was ordered to make a minute search of Pte Robinson's bed and of the area in which he slept. I then accompanied Capt Snell as witness when he took statements from Pte Robinson and other persons involved in the shooting. I was present when Capt Snell cautioned Pte Robinson as follows: 'Do you wish to make a statement or give evidence on oath, you are not obliged to do so but if you do it will be taken down in writing and may be given as evidence.' Pte Robinson made a statement. (Statement produced and marked Exhibit "G".) I recognize the statement marked as Exhibit "G" as that which was taken down by Capt. Snell and which was signed by Pte Robinson in my presence. I recognize both signatures as the accused's. The accused was not forced to give the statement. In fact he was given cigarettes to smoke while he made his statement.

Cross-examined by the accused.

Q1. Where did you find my holster?

A.1. I found it in your kit bag by your bed.

Jan Bernier Major.

The accused declines to cross-examine this witness further.

Seventeenth Witness for the Prosecution

Capt. J. H. Snell, Adjutant, 2 Cdn Base Rft. Bn. 1 C.B.R.D. having been duly sworn, states:

"I am Capt J. H. Snell adjutant, 2 Cdn Base Rft. Bn., 1 CBRD At approximately 2315 hrs., 2 August 1944 I entered Canada Bmacks and because of information received I contacted the Guard Commander, Lt. Dolan, and the Orderly Officer, Lt Manahan, to get information and instigate an investigation. I met Major Bernier, Paymaster, 2 Bn. 1 CBRD and as a result of what he told me I contacted Capt. Mc Kee, P.P.C.L.I., who gave me a set of identity discs bearing the name of a soldier "B 144 333 Pte Robinson, D." Major Bernier and I went through the card index systems of all three Bns to ascertain the whereabouts of the soldier whose name was on the identity discs. I recognize the discs marked Exhibit "C"

as the pair handed to me by Capt McKee, on the night 2nd August, 1944. I found that Pte Robinson was on strength 2 Bn, Seaforth Coy. I contacted the Orderly Corporal on duty at Seaforth Coy and he directed me to Pte Robinson's bed. I placed the soldier, whom I now recognize as the accused under close arrest, directing that he be taken to the Regimental Police, 2 Bn, 1 CARD. I noticed at the time that the accused's face was bruised, his lips were cut, and there were several scratches on his neck. I searched the kit of the accused and I found a .45 automatic pistol, M1911 / 948416, under his pillow. I recognize the pistol marked Exhibit 'E' as the one found by me on the night 2nd August 1944 under Pte Robinson's pillow. The holster for the pistol was found in the small pack of the accused. I recognize the holster marked Exhibit 'F' as the one found in the small pack of the accused. The pistol was empty but I would say it was fired recently because the barrel was

corroded and smelt of powder. I instructed the Orderly Corporal, Cpl Shaw, to bring the complete kit of Pte Robinson to 2 Bn. Guard Room. I paraded Pte Robinson, cautioning him as follows:
"Do you wish to make any statement or give any evidence on oath, you are not obliged to say anything or give any evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."
No promises, violence, or duress of any kind was made to the accused with the exception of cigarettes offered to him whilst I was taking down his statement. I recognize the statement marked Exhibit "G" as the signed statement taken down by me on the night 2nd August 1944. I recognize both signatures as those of the accused. I read the statement back to the soldier and had him sign it. The accused was not wearing a set of identity discs. He recognized

the pistol M1911/948416 as his property. He acknowledged knowing the order concerning the wearing of identity discs as contained in the statement signed by him. On returning to the scene of the incident one casing of a .45 calibre bullet was turned over to me by Lt. Dolan. At approximately 1130 hrs. 3 Aug 1944, two other .45 calibre casings were turned over to me by the Assistant adjutant, Lt. Rumbell, of 3 Bn. I recognize the casings marked Exhibit "D" as the casings turned over to me. I instructed the Orderly Officer Lt. Marsden, to report the incident through the proper channels.

Cross examined by the accused:

Q1. Where did you find my holster?

A1. The holster was found in the small pack of the accused."

J. H. Hall Capt Adj

Eighteenth Witness for the Prosecution

Major J.R.A. Morgan, 2nd in command, 3 Cdn Base Rft Bn, 1 C.B.R.D., having been duly sworn, states:

"As President of a Court of Inquiry on the 3 August 1944 I heard evidence and as a result had the effects of Pte Robinson, whom I now recognize as the accused, searched. Two fountain pens were discovered on his person. The two pens marked Exhibit "B" are the same two pens taken from the person of the accused on the 3rd August 1944."

J.R.A. Morgan Maj.

Dr. C. [illegible]

Nineteenth Witness for the Prosecution

B73385 Cpl. DeHarte, W.L., 3 Cdn. Base Rft. Bn., 1 C.B.R.D., having been duly sworn, states:

"I am B73385 Cpl. DeHarte W.L. 3 Cdn Base Rft. Bn., 1 CBRD. On the night of 2 August 1944 at approximately 2130 hrs I entered the Main Gate of 1 CBRD in the company of two friends. We met a Hastings and Prince Edward soldier and stopped to talk. The three of us had been

drinking a little and the Hastings man appeared quite drunk. I persuaded my two friends to go to their billets and tried to convince the Hastings and Prince Edward man to return to his. I then proceeded to my Coy Orderly Room and checked in with my Coy Orderly N.C.O. Returning across 1 Bn. Parade Square to my billets which were then in 1 Bn. building I encountered the Hastings and Prince Edward man again attempting to pick an argument with a stranger. I persuaded the stranger to proceed to his billets. Then while doing so the Hastings and Prince Edward man became involved in an argument with another man and I chased him to his billets also. I argued with the Hastings and Prince Edward man for some time, endeavoring to make him return to his billets. While I was asking him to leave the square another

shop approached, wearing Seaforth shoulder flashes and a Glengarry with a 48th Highlanders badge. I now recognize the accused as this man. This man's first words were: "Have you any money?" The Hastings and Prince Edward man answered, "Why?" The Seaforth, the accused, replied, "Give me a buck. I want a buck," in a demanding tone. I decided it was useless to try to keep the Hastings and Prince Edward man out of trouble and returned to my billets. This last meeting took place in the centre of 1 Bn's Sports Field. I had just returned to my billets when I heard a shot fired, followed shortly by another shot. I took no notice of these shots as such sounds are fairly frequent in the barracks. At the last meeting the

strange appearance of a 4/8th Highlanders badge and the Seaforth Highlander flashes caused me to look very closely at the man and because of that I can recognize him again.

Cross examined by the accused:

Q.1. On the night of 2 August 1944 you state that you could recognize a Seaforth wearing a 4/8th Glengarry and Seaforth flashes.

A.1. "Yes."

Q.2. In what way could you recognize the man?"

A.2. By his general features.

Q.3. Explain general features.

A.3. A man of medium height, quite heavily built. I have a good memory for faces and remember a man's face.

Q.4. To get a good look at a man's face on the 2 August 1944

was it moonlight night or a dark night?

A.4. It was a bright moonlight night.

Q.5. Was there nothing about the man that you saw on 2 August 1944 that would stand out.

A.5. Yes, there was a dark mark running upward from the left hand corner of his mouth.

Q.6. In your statement you said you had been drinking and that you more or less admitted you were feeling better than your friends. So how could you say by the light of the moon that the party was the man that you identified on 2 August 1944.

A.6. I said in my statement that my friends and I had been drinking and that the Hastings and Prince Edward men appeared to be quite drunk. I was sober enough to know everything that was going on and had all my

faculties about me.

Q.7. How can you identify a man by the light of the moon when you have been drinking.

A.7. I had not had sufficient to drink to dull any of my senses and further I was quite able to see this man and his face, and remember it.

Q.8 Would you or would you not sooner take a man's word when he is sober rather than when he has drinking on an identification.

A.8. That depends upon the amount the man has been drinking. If he is still in full possession of his faculties it makes no difference.

Q.9. Would you commit yourself to say that you had full control of yourself when you have been drinking.

A.9 If moderately, yes. On the night in question I had had three or four ten litre glasses of vermouth.

Q.10. Did you identify any of the other men who were engaged with the Hastings and Prince Edward soldiers on the night of the 2 Aug 1944 other than the accused?

A.10 I have had no opportunity of seeing all the men at 1 C.B.R.D. Neither of these men were wearing shoulder flashes and I cannot identify their units.

Q.11. Do you identify everyone by their shoulder flashes?

A.11 No

Q.12 How is it that you identified the accused by his shoulder flashes?

A.12. The fact that the man was wearing Seaforth flashes and a 4th badge caused me to look at him more closely than I might have otherwise.

Q.13. How close were you to the man you saw wearing Seaforth flashes and 4/8th Highlander Glengarry?

A.13. From two to three feet.

Q.14. It was the man you saw wearing Seaforth flashes and 4/8th Highlander Glengarry on the 2 August 1944 drunk?

A.14. He appeared to have been drinking, but was not drunk.

Cpl. Th. DeHart

The accused was cautioned as follows:

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give any evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given as evidence."

Thirty-four.

The accused declines to make any statement or give evidence on oath.

Certified that Rules of Procedure 4 (c), (d), (e), (f), ~~(g) (h) (i)~~ have been complied with.

I certify that the foregoing Summary of Evidence, consisting of thirty-four pages, was taken down by me in the presence and hearing of the accused.

J J Murphy, Lieut.

Officer detailed to take Summary.

In the Field
30th August 1944.

NOTICE PURSUANT TO R.P. 76

R42576 Cpl Shaw, G. C., "S" Coy, 2 Cdn Base Rft Bn, 1 C.B.R.D., will give evidence as follows:

"On the night of 2nd August 1944 I was employed as Coy Orderly Corporal and at approximately 2330 hours Capt Snell and the Paymaster came into "S" Coy Orderly Room. I was shown a set of identity discs. I looked at them and checked them with our nominal roll and found that they corresponded with the name and number of Pte Robinson, the accused, whom I now recognize. I then directed Capt Snell and the Paymaster to the bed of Robinson where I saw him sleeping. On instructions, I awoke Robinson and noticed that his lips were swollen; there was blood on his face, scratches on his neck and his identity discs were missing. Capt Snell ordered me to place him under close arrest and I had him taken to 2 Bn Detention Room. I was also directed to check this man's full kit and place it in the custody of the Regimental Police of 2 C.B.R.Bn. I checked the kit in "S" Coy Orderly Room and found nothing but a normal kit."

31 August 1944

J. H. Snell, Capt.,
Adjutant, 2 C.B.R.Bn., 1 C.B.R.D.

NOTICE PURSUANT TO R.P. 76

Lieut H. J. MacComb, "15" Coy, 3 Cdn Base Rft Bn, 1 C.B.R.D., will give evidence as follows:

"As a member of a Court of Inquiry on 3rd August 1944 I went over to the Guard Room and searched the personal effects of the accused, Pte Robinson, for ammunition. While searching the accused himself, two fountain pens were brought to light, which I took. The fountain pens marked Exhibit "B" are the same pens I took from the accused on the 3rd August 1944."

31 August 1944

J. H. Snell, Capt.,
Adjutant, 2 C.B.R.Bn., 1 C.B.R.D.

Notice Pursuant to R P 76 to the accused
B144333 Pte Robinson W J F 2 Bn 1 C B R D

B25304 Spr Lowe J V Rn S C B R D will give evidence that he prepared sketch marked Ex 'H' on the 12 Sep 44 of Canada Barracks, Avellino.

(D. W. Rose) Capt
HQ 1 C B R Gp

14 Sep 44

I certify that I have been given gratis, a copy of the Notice Pursuant to R P 76 dated Sep 44.

B144333 Pte Robinson W J F

Sep 44

LIST of WITNESSES
in the case of
B144333 Pte Robinson, D.J.F.

For the Prosecution:

(1)	B72921 Pte Wilcock, A. H.	3 Cdn Base Rft Bn, 1 C.B.R.D.
(2)	F39716 Sgt Whynot, R. H.	1 Cdn Base Rft Bn, 1 C.B.R.D.
(3)	Capt T. E. McKee	2 Cdn Base Rft Bn, 1 C.B.R.D.
(4)	Capt A. Verdicchio	2 Cdn Base Rft Bn, 1 C.B.R.D.
(5)	K52093 Cpl Stewart, R.	2 Cdn Base Rft Bn, 1 C.B.R.D.
(6)	U1672 Pte Aedy, J. A.	3 Cdn General Hospital
(7)	Major J. R. Davidson	3 Cdn General Hospital
(8)	B142030 Pte Sheluk, R.	3 Cdn General Hospital
(9)	4610847 Sgt Fieldhouse, W.	65 British General Hospital
(10)	Capt W. Grossman	65 British General Hospital
(11)	Capt R. P. Jepsom	65 British General Hospital
(12)	H/Capt J. Tootell	65 British General Hospital
(13)	Lieut B. J. Dolan	3 Cdn Base Rft Bn, 1 C.B.R.D.
(14)	Lieut A.J.B. Mills	3 Cdn Base Rft Bn, 1 C.B.R.D.
(15)	B51982 Cpl Ferguson, E.	1 Cdn Base Rft Bn, 1 C.B.R.D.
(16)	Major J. Bernier	2 Cdn Base Rft Bn, 1 C.B.R.D.
(17)	Capt J. H. Snell,	2 Cdn Base Rft Bn, 1 C.B.R.D.
(18)	Major J.R.H. Morgan	3 Cdn Base Rft Bn, 1 C.B.R.D.
(19)	B71385 Cpl DeHarte, W. L.	3 Cdn Base Rft Bn, 1 C.B.R.D.
(20)	K42576 Cpl Shaw, G. C.	2 Cdn Base Rft Bn, 1 C.B.R.D.
(21)	Lieut H. J. MacComb,	3 Cdn Base Rft Bn, 1 C.B.R.D.

For the Defence:

N I L

LIST of EXHIBITS
in the case of
B144333 Pte Robinson, D.J.F.

Exhibit "A"	-	Glengarry lost by B72921 Pte Wilcock, A. H.
Exhibit "B"	-	Two pens obtained from Pte Robinson.
Exhibit "C"	-	Identity discs belonging to Pte Robinson.
Exhibit "D"	-	3 .45 calibre cartridge casings.
Exhibit "E"	-	Pistol No. M1911/948416.
Exhibit "F"	-	Holster belonging to Pte Robinson.
Exhibit "G"	-	Written statement of Pte Robinson.

I, B144333 Pte Robinson, D. J. F., Seaforth Highlanders of Canada, 2 Cdn Base Rft Bn, 1 C.B.R.D. request that Capt. Bergman (or) an officer be appointed to represent me at my trial by Court Martial.

Date 24.Aug.44. Robinson D.J.F.
(B144333 Pte Robinson, D.J.F.)

I certify that I have been given gratis, a copy of the Charge Sheet, a copy of the Summary of Evidence, a copy of the List of Witnesses, and a copy of the List of Exhibits pertaining to my trial by Court Martial.

Date 24.Aug.44. Robinson D.J.F.
(B144333 Pte Robinson, D.J.F.)

B

Q.2 Do you object to A5976[illegible] Lashbrook, R.E. 5 Bn 2 CBRD as hand writer ?

A.2 No sir.

The President, members and judge-advocate are duly sworn.

The following officer~~x~~ under instruction is duly sworn.

Capt J.A. McGowan (CAC) 5 Bn 2 CBRD

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 86 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Q.3 Are you guilty or not guilty of the (first) charge against you, which you have heard read ?

Question to the accused.

A.3 Not guilty, sir.

Answer.

[redacted]

Question.

Answer.

[redacted]

Question.

Answer.

[redacted]

Question.

Answer.

[redacted]

Instruction.

If the trial proceeds upon any charge to which where is a plea of Not Guilty, the Court will not proceed upon the record of a plea of Guilty, until after the finding on that other charge.

Spare copy - SCMS 54

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings of a General ~~Disciplinary~~ Court-Martial.

Proceedings of a General Court-Martial held at Avellino, Sorrento and Italy on the 21,22,23,26 and 29 days of September 1944 by order of

Brigadier E.W. Baldenby, MC VD

Commanding 1 Cdn Base Rft Group

Dated the 4th day of September 1944

President.

Colonel S.A. Lee MC Comd 2 CBRD

Members.

Lt-Col J.G. Vining, ED (CAC) 5 Bn 2 CBRD

Lt-Col E.R. Gill, (RCCS) 7 Bn 2 CBRD

Major L.F.MacDonald, (RCCS) 8 Bn 2 CBRD

Major A.T. Brown (CIC) HQ 1 CBRGp

Judge Advocate

Capt W.B. Bate HQ 1 CBRGp

Trial of*

B144335 Pte Donald John Frederick ROBINSON, 2 Bn 1 CBRD

The order convening the Court, the charge-sheet and the summary (~~of evidence~~) of evidence are laid before the Court.

WBB ~~The accused is asked whether he objects to be tried by any officer named in the order convening the Court.~~

WBB ~~He objects to be tried by~~

WBB ~~The Court satisfy themselves as provided by Rules of Procedure 22 & 23.~~

The accused is brought before the Court.

Prosecutor, † Capt DW Rose(CIC) HQ 1 CBRGp (Lawyer)

WBB ~~assisted~~ § or defending officer † Capt ES Bergman 1 Cdn Conv Depot(Lawyer)

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked X signed by the President, and attached to the proceedings.

The names of the President and members of the Court read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Q.1 Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

A.1 No sir.

(N.B. – If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
§ Qualification to be stated.

2667 / PMEJ / 5.000 - 8/43

CERTIFIED TO BE A TRUE COPY EXCLUSIVE OF EXHIBITS.
ADJA HQ 1 CBRG
W.B. Bate Capt.

13

116

CHARGE SHEET

(SGD) S A LEE Col
Pres

(Sgd) W B BATE Capt
Judge Advocate

The accused, B144333 Pte Donald John Frederick ROBINSON, Seaforth Highlanders of Canada, presently on strength 2 Canadian Base Reinforcement Battalion, 1 C. B. R. D., a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
Sec. 41

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, MURDER

in that he

In the Field, in Italy, on or about 2 Aug 44, when on active service, murdered B138082 Pte Dillon, J. W. H., 3 Cdn Base Rft Bn, 1 C.B.R.D.

(SGD) P H Stphelin
(P. H. STEHELIN) Major,
T/Comd, 2 Cdn Base Rft Bn.,
1 C.B.R.D., Cdn Army, C.M.F.

In the Field
31 August 1944.

Approved as to form
(SGD) W B Bate Capt
AJAA HQ 1 CBROp

TO BE TRIED BY GENERAL COURT MARTIAL

In the Field
In Italy
4 Sep 44

(SGD) E. W. Haldenby)
(E. W. HALDENBY) Brigadier
Comd 1 Cdn Base Rft Gp
Cdn Army-CMF

C 2

SECOND WITNESS (Capt A. Verdicchio, RCAMC, Medical Officer, 2 Bn
for (1 CBRD, having been duly sworn, is examined by
Prosecution (the Prosecutor

Q.14 Are you a qualified Medical Doctor ?
A.14 Yes sir.

Q.15 Do you recall the 2nd of August ?
A.15 Yes, I do.

By the Judge Advocate:

Q.16 This year ?
A.16 Yes.

Prosecutor:

Q.17 Will you tell the Court in your own words why you recall that particular night ?
A.17 On that particular night after dozing off to sleep, I was suddenly awakened from my sleep on hearing a couple of shots. A few minutes later I was called downstairs to the roadway in front of the entrance to 2 Bn. Officers' Mess, and there saw a soldier lying face downwards on the pavement.

Q.18 Will you point out on this sketch, (Exhibit "G"), the approximate point where you found the soldier lying ?
A.18 This point I am indicating is the spot where I found this Private soldier face downwards. (Marks point X on sketch).

Q.19 How would you describe this approximate position in relation to the Mess ?
A.19 The approximate position is about ten yards from the stairs leading up to the Mess.

Q.20 Will you describe your examination of the body ?
A.20 I examined the man and found his head lying in a pool of blood. I removed his hat and immediately noticed a large wound on his forehead to the right of the mid-line. He was breathing well and his pulse was fair. I examined the remainder of his head and felt a wound at the back of his skull which was dripping blood into my hand. I didn't examine any further then. I called for shell dressings, bandaged his head and called for a stretcher and a vehicle from the unit. A man took him to the MIR. There I examined his chest. The full particulars of the man were noticed on his identity discs. His name was obtained from the discs for the hospital records in order to fill out the admittance slip. The vehicle then arrived and I despatched him with my Corporal to No 3 Cdn Gen Hosp.

Q.21 What time was that ?
A.21 I didn't notice the time at the start, but when the patient had been sent to the hospital, I noticed it to be about 2330 hours.

Q.22 You mentioned a wound in this man's head. Where was that wound ?
A.22 The wound that I saw was on the forehead up close to the hair line to the right of the mid-line.

Q.23 Where was the second wound ?
A.23 The second wound which I felt was in the back of his skull. I didn't see the second wound.

Q.24 What unit did this man belong to ?
A.24 His shoulder flashes showed him as Hastings and Prince Edward Regt.

C

Proceedings on Plea Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. Q.4 "Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. A.4 No sir.

The prosecutor makes an opening address ([illegible]) (See page C1)

The prosecutor proceeds to call witnesses.

First witness for prosecution. B25304 Spr Low, J. (RCE) 7 Bn 2 CBRD

being duly sworn, is examined by the prosecutor.

Q.5 What are your duties at 7 Bn ?
A.5 Draughtsman and sign painting.

Q.6 Did you prepare a sketch of Canada Barracks ?
A.6 I did, sir.

Q.7 I show you a sketch here. Is that the sketch you prepared of Canada Barracks ?
A.7 It is, sir.

Q.8 Is that according to the plan of the barracks ?
A.8 Yes sir.

Q.9 Is it reasonably accurate ?
Q.10 Yes sir.

Q.11 There are two copies ?
A.11 Yes sir.

Q.12 Will you describe to the Court the meaning of the part coloured pink ?
A.12 The pink is the roadway.

Q.13 And the dotted lines ?
A.13 The dotted lines show where the roadway is, and these three spots here are parade squares. The dotted lines include the parade squares. The straight lines are the buildings themselves.

(Sketch of Canada Barracks admitted and marked Exhibit "G")

No cross-examination.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

Prosecutor's Opening Address

There will be put in evidence a plan of Canada Barracks to assist the Court, followed by such medical evidence as is now available. Following the medical evidence, there will be evidence offered to show that the accused was recognized near the scene of the crime a short time before, and when his quarters were searched, a weapon was found hidden away near his bed, that weapon belonging to the accused and showing signs of having been recently fired. There will be evidence offered that one Pte Willcock was held up about an hour before the body of Dillon was found, and his Glengarry and a fountain pen were removed from his person. Evidence will also be adduced to show that the pen taken from Pte Willcock was found on the person of the accused. I think you will find the evidence will more or less flow together to establish the prosecution's case.

Cross-examined:

Q.25 Will you describe a little more fully the description of the body as you saw it first ?
A.25 Yes. As I saw him first, the patient was lying flat on his face: as we say, in a prone position, with his left cheek lying on the pavement in this position. (Indicates).

Q.26 How do you determine which is the point of entry and which is the point of exit of a wound ?
A.26 On detailed examination, the point of entry is usually described as being small fairly clean point on the top of the wound. The point of exit of a through and through wound shows more fragmentation and is larger.

Q.27 What is the first time you examined him to establish his identity ?
A.27 I examined his identity discs in the middle of the road as soon as we got him on the stretcher.

Q.28 That is the only means you had of identifying him ?
A.28 That is all, sir.

Q.29 Did you check his paybook ?
A.29 I did not.

Q.30 I suggest to you that you had something to do with another set of identity discs that evening ?
A.30 That is true. I saw some other identity discs that evening.

Q.31 Where did you see them ?
A.31 I saw them in the hand of Capt McKee.

Q.32 And was that out on the roadway of Canada Barracks or was it some where else ?
A.32 I saw them in my own room.

Q.33 What were the circumstances of your seeing these identity discs ?
A.33 The discs were offered to me as a means of identifying a patient by Capt McKee.

Q.34 Did you handle the identity discs at all ?
A.34 As far as I recall, I did.

Q.35 Is there any possibility that this body was shot while lying on t ground ?
A.35 The possibility always remains, sir.

Q.36 Why do you say that ?
A.36 It could have happened.

Q.37 What opinion did you come to as a result of the examination of the wounds ?
A.37 The opinion I came to was that this man had been shot through the head and fell face downward on the roadway.

Q.38 Having regard to the size of the wound that you saw, is it probable that the wounde man walked for some distance or was thrown right down on the roadw
A.38 I would consider it unlikely that he walked for any distance at al

Q.39 Do you think it possible, from that type of wound, for a man to fa and try and get up again or not ?
A.39 He became unconscious the moment he was wounded.

Q.40 Did you check the fingernails of this man ?
A.40 No, I didn't.

Q.41 Can you tell us what happened to the beret when you took it off ?
A.41 When I took the beret off I held it up and handed it to someone a the bystanders.

Q.42 Where did you see the beret again ?
A.42 After the patient had gone to hospital, the beret was brought into the MIR by a Lieutenant. I believe he was the Guard Commander.

Q.43 What happened to it then ?
A.43 Well, I looked at it, noticed a hole in the back, one in the front. The inside was filled with blood.

Q.44 Now in applying your shell dressing would you touch the wound at the front or rear ?
A.44 I didn't make any attempt to clean up the wound.

Re-examined:

Q.45 The identity discs that you examined on the wounded man, how were they attached to him ?
A.45 They were attached, but I cannot recall whether it was by a piece of string or by a chain. Whether they were attached in the appropriate manner I cannot say. They were around his neck.

Q.46 What did you do with them ?
A.46 I merely looked at them , took the information from them, name and number, and left them in place.

By the Court:

WBB Q.47 Will you indicate ~~xxxxxxxxxxx~~ the point of entry and the point of exit on your own head ?
A.47 There was a wound there and a wound there as far as I can remember. (The witness indicates a wound in the forehead and a wound in the back of the head, the latter wound being lower than the former).

Q.48 Were there any other marks on the face or elsewhere ?
A.48 None that I saw or took the trouble to look for.

Q.49 Any powder burns ?
A.49 No, Ididn't see any obvious powder burns.

Q.50 Can you give the Court the approximate time when the wounded man was moved to the hospital ?
A.50 It would be around 2300 hours. That is an approximation.

Q.51 In your opinion, which of the two wounds did you consider to be the wound of entry ?
A.51 My first impression when I saw him and examined him, - not having seen but merely felt the wound at the back - was that the large wound in the forehead was the wound of exit.

Q.52 Have you had any cause to change your opinion from your own examination ?
A.52 I have had no opportunity of examining the patient further.

By the Judge Advocate:

Q.53 Was the wounded man conscious ?
A.53 He was unconscious.

Q.54 Did he regain consciousness when he was in your hands ?
A.54 No.

Q.55 What was the name you saw stamped on the identity discs which were around the wounded man's neck ?
A.55 Pte Dillon.

Q.56 And the number ?
A.56 I don't recall the number.

Q.57 The initials ?
A.57 No.

WBB

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

THIRD WITNESS(K82039 Cpl Stewart, R. 2 Bn, 1 CBRD
for (having been duly sworn
Prosecution (is examined by the Prosecutor

Q.58 What are your duties, Corporal ?
A.58 My duties - I am the Medical Corporal in the MIR.

Q.59 Do you recall the night of the 2nd of August, 1944 ?
A.59 I do, sir.

Q.60 Will you tell the Court in your own words what happened that night ?
A.60 As to the approximate time, I think it was around 2330 hours. I was in my bed and shortly after retiring I heard some shots being fired. Of course I didn't think anything of it at the time. Shortly afterwards I was awakened and was told .....

Judge Advocate:

You cannot repeat conversationsthat you had with anybody unless the accused, Pte Robinson, was present. You can state that you had conversation, and as a result of such conversation you did something or were ordered to do something. You can state that somebody gave you orders and then you can tell what you did after that.

By the Prosecutor:

Q.61 Will you point out to the Court where you were in relation to the spot marked "X" on Exhibit "G" ?
A.61 Here. (Witness indicates the spot where he was).

Q.62 What did you do when you arrived at that spot ?
A.62 I immediately applied a field dressing to the injured man's head. As I put the bandage on, I found there was more blood coming from the back of his head. I then applied another shell dressing to his head at the back. He was then placed on a stretcher and carried into the MIR. When he was in the MIR, we wrote out the admittance slip for him to be admitted to the hospital. I read off from the identity discs the number, rank and name of the wounded man to the Medical Officer. Then when transportation came I went with the patient to the hospital. When we arrived there, I believe it was Major Davidson who looked into the case. I am not certain whether it is Major Davidson or Major Howard. I was opposite Major Davidson when the dressings were taken off.

Q.63 What hospital was this ?
A.63 The hospital was No 3 Cdn Gen Hosp, sir.

Q.64 Where were the identity discs ?
A.64 The identity discs were on his neck, sir.

Q.65 What were the particulars you read off those discs ?
A.65 His number and his rank and name was on it.

Q.66 What was the name ?
A.66 The name was "Dillon".

Q.67 Do you recall the number ?
A.67 No sir, I don't.

Q.68 Why did you read the particulars to the Medical Officer ?
A.68 The light in the MIR is very poor. At the time he couldn't find out who this man was. That was when I looked for his identity discs.

Q.69 Why did you read them out to the Medical Officer ?
A.69 The light was very poor. He couldn't see it.

Q.70 Did you not read them out to the Medical Officer in order to give the particulars to him ?
A.70 Yes sir.

Cross examined:

Q.71 When you read out those particulars, did Capt Verdicchio fill out the hospital admission slip ?
A.71 Yes sir.

Q.72 The only information that Capt Verdicchio had of the wounded man was something you told him ?
A.72 From the identity discs.

Q.73 You read out the name and number from the identity discs to Capt Verdicchio, is that correct ?
A.73 Yes sir.

Q.74 Then you read out the particulars on the hospital admission slip?
A.74 Yes sir.

Q.75 Then, the only information as to the identity of the wounded man on the hospital slip was something you told Capt Verdicchio ?
A.75 Yes, sir.

Q.76 You say you applied a shell dressing ?
A.76 Yes sir.

Q.77 What was Capt Verdicchio doing ?
A.77 He applied the first one and I applied the second. I saw more blood on the back of his head. I tore up the first shell dressing and gave it to Capt Verdicchio.

Q.78 Did you notice which wound was the larger of the two ?
A.78 The wound on the forehead was larger than the one on the back of the head.

Q.79 You saw that yourself.
A.79 Yes sir.

No Re-examination.

By the Court:

Q.80 In the MIR were you the only one who examined the patient ?
A.80 There was another officer. On account of the bad light he couldn't make head or tail of the identity discs That is when I looked at it myself.

Q.81 Did you see the MO examine the patient ?
A.81 Yes sir.

Q.82 Will you describe to the Court how he examined the patient ?
A.82 When I got there Capt Verdicchio was there ahead of me. That is when we applied the first field dressing.

Q.83 In the MIR ?
A.83 The shell dressings were all on him.

Q.84 Were there any further examinations of the patient at that time ?
A.84 Not that I remember.

Q.85 You mentioned hearing shots fired. Did Pte Dillon have any weapon near him ?
A.85 I didn't see any, sir.

Q.86 Did you see the MO examine the identity discs about the neck of the patient ?
A.86 No sir.

Q.87 Who did you say applied the first dressing and the second dressing ?
A.87 Capt Verdicchio applied the first one. That is when I saw the blood at the back coming through the bandage.

Q.88 Now describe what you saw on the identity discs ?
A.88 On his identity discs, all I remember seeing was the number, rank and name.

Q.89 You saw his number, rank and name ?
A.89 Yes, sir.

Q.90 Did you recognize the initials ?
A.90 The initials also.

Q.91 Anything else ?
A.91 No sir.

Q.92 Do you recall what initials were on the disc ?
A.92 No, I can't recall that at all.

Q.93 Do you recall how many initials ?
A.93 No, I don't recall that at all.

By the Judge Advocate:

Q.94 Who took charge of the wounded man when he arrived at No 3 Cdn Gen Hosp ?
A.94 Major Davidson took over, I believe, sir.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

FOURTH WITNESS (U1672 Pte Aedy, J.A. 3 Cdn Gen Hosp RCAMC for Prosecution (having been duly sworn or affirmed) is examined by the Prosecutor.

Q.95 What are your duties in the hospital ?
A.95 A & D Clerk, sir.

Q.96 Will you explain to the Court what "A & D" mean ?
A.96 Admission and despatch of patients, sir.

Q.97 Do you recall the night of the 2nd of August, 1944 ?
A.97 Yes, sir.

Q.98 Why ?
A.98 I was on duty, working nights from 1900 hours to 0700 hours in the morning.

Q.99 What day ?
A.99 The 2nd of August.

Q.100 1944 ?
A.100 Yes sir.

Q.101 What happened that night ?
A.101 At approximately 2330 hours a truck drove up to the A & D and a stretcher patient was brought in. I took his regimental particulars and 'phoned for a Medical Officer, the Surgical Officer, Major Davidson.

Q.102 Where did you get the particulars from ?
A.102 Read the rank, name and initials and religion from the identity discs on the body, sir.

Q.103 Did you examine the discs ?
A.103 No sir.

Q.104 What were the names read out ?
A.104 Pte Dillon.

Q.105 What happened to that patient ?
A.105 He was sent to the Surgical Officer, sir, and then transferred to 65 British Gen Hosp.

Q.106 How did he go to the hospital ?
A.106 He was sent in an ambulance, sir.

Q.107 What is the practice at your hospital when a patient is sent out ?
A.107 His discharge papers are typed, sir, and he is put in the ambulance and sent out. That is all, sir.

Q.108 Will you explain to the Court what happened that night when you admitted that patient ?
A.108 He was brought in the A & D on a stretcher.

Q.109 Who brought him in ?
A.109 I don't know who brought him in, sir.

No Cross-examination.

By the Judge Advocate :

Q.110 Do you know what day it was that this patient was transferred to No 65 British Gen Hosp ?
A.110 Yes.

Q.111 Well, what day ?
A.111 The 2nd of August, sir.

Q.112 That same night ?
A.112 Yes sir, 2355 hours approximately, sir.

Q.113 When a patient is transferred by ambulance from one hospital to another, does the hospital discharging the patient forward any documents along with the patient ?
A.113 Yes.

Q.114 What documents ?
A.114 The hospital admission slip and any other papers the Surgical Officer writes up.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

FIFTH WITNESS(Major J.R. Davidson, 3 Cdn Gen Hosp RCAMC
for (having been duly sworn
Prosecution (is examined by the Prosecutor

Q.115 You are a qualified Medical Doctor ?
A.115 I am.

Q.116 Do you recall the night of the 2nd of August, 1944 ?
A.116 I do.

Q.117 Will you tell the Court what happened that night ?
A.117 At approximately 2330 hours, I was called to the admitting room to see a man who had suffered from a through and through wound of his skull. He was unconscious. I removed the dressing which had been applied and examined the patient. I found a through and through wound of the skull. Brain tissue was exuding from the wound in the forehead. I re-applied fresh dressings and ordered the man to be taken to No 65 British Gen Hosp.

Q.118 In your opinion what caused the wound.
A.118 In my opinion it was caused by some sharp missile, probably a rifle or a revolver bullet.

LJT&B

Q.119 Will you point out on your own head where the two wounds in the head were ?
A.119 As closely as I can remember, sir, the one was approximately on the back of the head, and the other was on the forehead. (The witness indicates the position of the two wounds; the one at the back of the head being the lower down than the one on the forehead).

Cross-examined:

Q.120 Do you know who this patient was ?
A.120 No sir. I believe it was Pte Dillon. I just heard his name mentioned from his documents. It is more important for a medical man working in a hospital to treat the patient than to find out who he is.

Q.121 Did you at any time take any specific steps to establish the identity of this patient in your own mind ?
A.121 No sir.

Q.122 How do you determine which is the point of entry and the point of exit ?
A.122 It is generally believed that the wound of entrance of a bullet entering the skull is what might be termed a clean-cut hole, while the wound of exit usually shows fragmented bone.

Q.123 If any difference of opinion arises between the opinion formed by the medical officers first attending a wounded man and the doctor conducting a post-mortem examination, subsequently, which would you suggest to the Court would be more accurate ?
A.123 Do you refer to a man examining the wound after he had been operated on ?
Q.124 If there had been previous interference by a surgeon, would you explain the difference in the wounds then ?
A.124 It is possible, had there been previous treatment, the wounds of exit and entrance might be confused.

Q.125 Now, did you make any other examination of this patient apart from the head injury ?
A.125 Just as to his general condition, checking his pulse.

Q.126 Did you check his fingers or fingernails ?
A.126 No, I did not.

Q.127 What, Doctor Davidson, was the extent of your interference with that wound - the amount of treatment ?
A.127 There was no interference apart from applying fresh dressings to the skull and bandaging the head.

Q.128 Now, for the purpose of getting a little technical information across the Court, is there such a bone as an occiptal bone ?
A.128 That is the bone at the back of the head, part of the skull.

Q.129 How would you describe the right frontal bone ?
A.129 The right frontal bone refers to the case of the skull. The right frontal bone would be on the right side of the mid-line, beneath which lies the frontal lobe of the brain.

Q.130 I would like you to answer the next two questions, if possible, by merely stating "yes" or "no". Have you ever heard of injury by contracoup.
A.130 Yes.

Q.131 Has this injury by contracoup ever been satisfactorily explained by medical science ?
A.131 I cannot answer that question "yes" or "no".

W7843

Q.132 Injury by contracoup is still a contentious question in medical science ?
A.132 I don' think that is a fair way of putting it.

No Re-examination.

By the Judge Advocate:

Q.133 When you were indicating the position of the wound, front and rear, with your finger, am I to assume that at the front that was the approximate position in the wounded man's forehead.

A.133 I cannot state definitely, only approximately.

Q.134 From what medical school did you graduate ?
A.134 McGill.

Q.135 In what year ?
A.135 1929.

Q.136 You have been practising medicine and surgery ever since ?
A.136 Yes.

WB13 Q.137 Which of the two wounds was the wound of entrance?
A.137 In my opinion the entrance was at the back.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

SIXTH WITNESS(B142030 Pte Sheluk, R. 3 Cdn Gen Hosp, RCAMC
for (having been duly sworn
Prosecution(is examined by the Prosecutor

Q.138 What are you employed at in the hospital ?
A.138 As a Nursing Orderly.

Q.139 Do you recall the evening of the 2nd of August, 1944 ?
A.139 Yes, sir.

Q.140 What happened that evening ?
A.140 I was just having supper. At approximately 2330 hours a case came in which we attended to. At approximately 2350 hours we put him in an ambulance, and I went down to 66 British Gen Hosp with him.

Q.141 Who was this patient ?
A.141 According to his papers, it was Pte Dillon.

Q.142 What did you do when you got him at 65 British Gen Hosp ?
A.142 We took him in to the A & D room and they looked after him there.

Q.143 Did you examine this patient ?
A.143 No sir.

Cross-examined:

Q.144 The only way you know who this patient was is from his papers he carried ?
A.144 Yes sir.

Q.145 The only method ?
A.145 Yes sir.

By the Judge Advocate:

Q.146 Did you see the patient when he came into 3 Gen Hosp.
A.146 I wasn't there when he came in.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

WB13

SEVENTH WITNESS (4610847 Sgt Fieldhouse, W. RAMC, 65 Brit Gen Hosp
for (having been duly sworn
Prosecution (is examined by the Prosecutor

Q.147 Do you recall the night of the 2/3 August, 1944 ?
A.147 Yes sir.

Q.148 What were you doing that night ?
A.148 I was night wardmaster at 65 Gen Hosp.

Q.149 Did anything happen that night ?
A.149 During the night, about a quarter to two, Pte Dillon was brought into the hospital with a gun shot wound in the head. He was sent to the Duty Officer and admitted to 65 Gen Hosp.

Q.150 Who brought the patient in ?
A.150 An ambulance from 3 Cdn Gen Hosp brought the patient in. I don't quite recall whether there was an orderly or just the driver with him. There was definitely someone who brought him in and handed him over.

Q.151 How did you obtain the particulars of this man ?
A.151 From his documents.

Q.152 And you said the Orderly Officer admitted him ?
A.152 Yes sir. Admitted him from 3 Cdn Gen Hosp.

Q.153 Who is that Orderly Officer ?
A.153 Capt Grossman.

Q.154 Did you ever see this patient again ?
A.154 No sir.

Q.155 Was there anyone else present ?
A.155 I don't think there was sir. I don't recall, sir.
Cross-examined:
Q.156 How did you know this man was Dillon ?
A.156 From the documents.

Q.157 Did you make any other check ?
A.157 No sir.

Q.158 How did you know it was an ambulance from 3 Cdn Gen Hosp ?
A.158 From the transfer slip.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

EIGHTH WITNESS (Capt W. Grossman, RAMC, 4 MFSU
for (having been duly sworn
Prosecution (is examined by the Prosecutor

Q.159 Are you a Medical Officer ?
A.159 Yes sir.

Q.160 Will you state to the Court the University or College you attended?
A.160 The University of Prague.

Q.161 Are you licensed as a Medical Officer ?
A.161 Yes sir.

Q.162 Where ?
A.162 At the General Medical Council in London.

Q.163 When was that ?
A.163 In 1936.

Q.164 Do you recall the night of the 2nd of August, 1944 ?
A.164 Yes.

WB13

Q.165 Will you tell the Court what happened that night ?
A.165 At about a quarter to two in the morning I was called to see a patient who was admitted to 65 British Gen Hosp, transferred to that hospital from No 3 Cdn Gen Hosp. The patient was suffering from a through and through gun wound on the right side of his head. He was deeply unconscious. He did not respond to any questions or pain. I arranged his resuscitation and transferred him to the Resuscitation Ward. I also informed the surgeon on duty from the Neurosugical Unit who took over this case immediately.

Q.166 Will you describe to the Court where these wounds were in this man's head, either by pointing out or - - - ?
A.166 I did not disturb his dressings, but the wound appeared to be on the right side of the forehead and the right side of the back of the head.

Q.167 What were your particular duties with this man ?
A.167 Only Orderly Medical Officer.

Q.168 How many cases did you admit that night ?
A.168 I admitted only one case of gun wound of the head.

Cross-examined:

Q.169 If you did not disturb the surgical dressings, Doctor, then you didn't see the actual holes in the head that evening ?
A.169 No.

Q.170 It was some time subsequent to this that you saw the patient again?
A.170 I saw him in his ward the next day.

Q.171 By that time had he had some treatment to his head ?
A.171 Yes.

Q.172 How do you determine which is the point of entry and the point of exit of a bullet ?
A.172 The exit wound is usually far bigger than the entry wound. The exit wound is more extensive than the entry wound. You can also sometimes determine the entry wound by finding powder grains from the actual bullet.

Q.173 Those are the characteristics of pistol or revolver wounds ?
A.173 Yes sir.

Q.174 Did you get any information about the wounds after the surgical dressings were removed ?
A.174 No sir.

Q.175 What X-Rays did you actually order for this patient ?
A.175 I ordered him for immediate X-Ray.

Q.176 X-Ray of the head ?
A.176 Only the head.

Q.177 How did you identify this patient ?
A.177 He had a slip of paper with his name on it.

Q.178 You identified him from his medical documents ?
A.178 Yes sir.

Q.179 Did you take any other steps to identify him except from his medical documents.
A.179 No.

No Re-examination.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(3).

W738

NINTH WITNESS (H/Capt J. Tootell, CMRC
for (Having been duly sworn
Prosecution (is examined by the Prosecutor

Q.180 What is your appointment, padre?
A.180 I am RC Chaplain for 65 British Gen Hosp.

Q.181 Do you recall the evening of the 2nd of August, 1944?
A.181 I don't just recall the day. According to my diary it was on the night of the 2nd of August. I don't just remember the day as I say. I saw the boy on the 2nd of August.

Q.182 Do you recall what time?
A.182 I can't remember the time I was called to him.

Q.183 To whom were you called to see?
A.183 Dillon.

Q.184 Did you see Dillon again?
A.184 I was called to the boy Dillon. I attended to him. He was unconscious.
I visited him frequently until I went to bed.

Q.185 What hospital was this?
A.185 He was in No 65 British Gen Hosp.

Q.186 What ward was he in?
A.186 He was in Ward I and later was moved to Ward 3.

Q.187 Did you have anything further to do with this man Dillon?
A.187 Nothing at all.

Q.188 When did you cease to see the patient?
A.188 I saw him on the 2nd of August. We always keep visiting a patient until he regains consciousness. The actual time of his death, I can't remember.

Q.189 Do you recall the date of his death?
A.189 The date I have for his death - the 7th, the day he was buried. I buried him on the 7th.

Q.190 Where did you bury him?
A.190 At the new British Military Hospital Burial Grounds outside Naples.

Q.191 Under what name did you bury him?
A.191 Dillon.

Cross-examined:

Q.192 Padre, are you positive that it was the 2nd of August that you saw him?
A.192 I looked in my diary after seeing the patient and made the entry.

Q.193 Did you make this entry in the diary either at the time you saw him or shortly afterwards?
A.193 I make the entries immediately or fairly soon afterwards. The date is the 2nd of August.

Q.194 That entry that you have made there, is a reasonably accurate entry? I want you to be satisfied that it is right in your own mind?
A.194 Yes.

Q.195 In making up your entries in your diary, does a new day start after midnight, or if you made an entry a few minutes after midnight, would you make the date of the entry the day before?
A.195 As soon as I attend to the patient, if it is that day, the 2nd of August, I should say the 2nd of August. If it was three o'clock in the morning, I would make the entry on the third.

Q.196 But the individual or patient that you saw on the 2nd of August, is that the patient you buried on the 8th?
A.196 Yes.

Q.197 Then, did you bury him on the 7th?
A.197 Yes.

Q.198 Have you a record of the burial?
A.198 When I buried him I signed the form.

Q.199 Did you make an entry in your diary?
A.199 Yes.

Q.200 I suggest to you that you made that burial statement on the 8th. I am suggesting to you that he was buried on the 8th of August?
A.200 Yes.

Q.201 Would that be correct?
A.201 I took it on the 7th of August.

Q.202 I'll show you your original statement on the Summary of Evidence .....
A.202 From memory this morning, I thought it was the 7th. I attended to him on the 7th. I don't remember the record in the diary of the day I buried him. I abide by my writing.

Q.203 You are stating to the Court that the body you saw on the 2nd of August is the one you buried on the 8th?
A.203 Yes.

Q.204 You are reasonably certain you saw him on the 2nd of August?
A.204 Yes.

Q.205 You are certain that the man you saw on the 2nd of August is the man you buried on the 8th. Is that correct?
A.205 Yes sir.

No Re-examination.

By the Court:

Q.206 What time on the 2nd did you visit this man Dillon?
A.206 I can't remember. I don't make reference in my diary to time.

Q.207 You do not refer to your watch when making entries in your diary. Then, if it was during the night how do you know it was before or after midnight to establish the 2nd? You wouldn't know if it was a minute to 12 or a minute after 12?
A.207 I do not wish to make a definite statement as to the time when I saw the patient.

By the Defending Officer: (with the Court's permission)

Q.208 I want the Court to be satisfied that there is no mistake in the entry in his date book. He has already stated to the Court that it was the 3rd of August. If you saw that man at two o'clock in the morning, you would make that entry on the 3rd?
A.208 Yes sir.

Q.209 You are very satisfied that you saw this body sometime prior to the 3rd of August?
A.209 Yes.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

The Court adjourned at 1410 hrs.

The Court re-opened at 1430 hrs, the same members being present.

WYMD

By the Court: (to the accused)

Q.210 Do you object to K.68696, Sgt Brown, F.O., H.Q., 1 CBR Gp, as shorthand writer?

A.210 No sir.

The shorthand writer is duly sworn.

TENTH WITNESS (B.72921 Pte Wilcock, A.H. (48 Highrs) 3 Bn 1 CBRD for Prosecution (having been duly sworn is examined by the Prosecutor

Q.211 Do you recall the night of 2nd August, 1944?

A.211 Yes sir.

Q.212 Would you tell the Court what happened on that night?

A.212 On the night of 2nd August at about 2015 o'clock I was walking along the west side of the Pateawawa Bldg going south. About half way down a fellow came up and put a gun in my side. Then, he looked at me and saw my Glengarry and said, "I could do .....

Q.213 Before you go too far will you tell the Court exactly what happened when you met with this other fellow?

A.213 He stepped up to me, spoke, and looking at my Glengarry, took it from my head. He took my fountain pen out of my pocket and then marched me on towards 3 Bn MIR. Then I saw a fellow coming along by the garage. I hollered at him and he came over. We walked on until we got as far as 1 Bn Offrs' Mess. Then I didn't feel the gun in my back.

Q.214 Will you describe the Glengarry to the Court?

A.214 My Glengarry is a red diced one. It had air holes in it. My name "Wilcock" was inside. The badge is rounded and punched out.

Q.215 I produce and show you a Glengarry. Would you examine it?

A.215 This is my Glengarry, sir. (48 Highrs Glengarry with name "A.H. Wilcock" inside, admitted and marked Exhibit "K")

Q.216 Will you describe to the Court the fountain pen that was taken that night?

A.216 My fountain pen was a grey pen with white running through it. It has tooth marks at one end. The original name has been scratched off.

Q.217 I now produce to you two fountain pens. Would you examine them?

A.217 This is my pen, sir. (Holding up one)

Q.218 Will you show the Court any identification marks?

A.218 Yes. (Witness points out to the Court the tooth marks on the pen. Fountain pen admitted and marked Exhibit "I".)

Q.219 Can you describe this man?

A.219 The only thing I recall is the Seaforth flashes. This is all I remember.

Q.220 Did you see the weapon?

A.220 All I saw was the gun and I cannot tell you ----

Q.221 What did you do?

A.221 I went to the Guard Room and reported.

Q.222 Whom did you report to?

A.222 I reported to the Sgt in the Guard Room.

Q.223 What did you do after you reported?

A.223 After I reported I looked around outside in the area around the Ottawa Bldg and found nobody. I then went to bed. At 0230 hrs, Capt Cameron and Capt Mills awakened me and took me to the Guard House.

Cross-examined:

Q.224 What kind of a night was it?
A.224 It was a fairly dark night.

Q.225 Do you remember a moon?
A.225 It wasn't shining.

Q.226 Approximately what would be the normal area distance of vision that evening?
A.226 I don't know.

Q.227 Estimate it?
A.227 Maybe 50 yards.

Q.228 Did you get a chance to get away? You were marching some distance without having any weapon in your back?
A.228 I got to 1 Bn Offrs' Mess and didn't feel it any more.

Q.229 Are you sure you were going towards 1 Bn MIR?
A.229 Yes sir.

Q.230 What were you doing at the Offrs' Mess?
A.230 He came back with me.

Q.231 I now show you Exhibit "G", a sketch of Canada Bks. Point out the approximate position where you were held up?
A.231 Approximately here. (The witness marks point with an "A" on sketch.) This is the place where he held me up.

Q.232 Continue from where he held you up?
A.232 We proceeded down this way (indicates southward) to the MIR walking along the Petawawa block, turned left, proceeded east, then north and then east over to approximately the Offrs' Mess.

Q.233 Indicate with the letter "B" where the man left you?
A.233 Here sir. (Witness marks point with letter "B" on sketch)

Q.234 Does it not strike you as a little queer that he should march you in the direction of the Main Guard Room?
A.234 I happened to turn that way.

Q.235 When did you stop feeling the weapon in your back?
A.235 I didn't feel ---- I thought it was a good thing to keep walking.

Q.236 You had the courage to call for assistance?
A.236 Yes sir.

Q.237 What gave you this new found courage?
A.237 I wasn't very far from the chap who was walking towards the Offrs' Mess.

Q.238 Was the individual who held you up wearing a hat?
A.238 He wasn't sir.

Q.239 Was he wearing Seaforth flashes?
A.239 Yes sir.

Q.240 What were you doing out at 2215 hrs?
A.240 Out getting air.

Q.241 Do you usually go out to get air at that time?
A.241 Not usually, no sir.

Q.242 Did you hear any shots that night?
A.242 No sir.

Q.243 You said after the incident you went to bed?
A.243 He left the Guard Room to go to bed.

W.D.B.

Q.244 How long did the incident take from the time you were held up until you got into bed?
A.244 15 minutes.

Q.245 How much did you have to drink that evening?
A.245 A few drinks.

Q.246 What of?
A.246 Vermouth.

Q.247 How many glasses?
A.247 About five glasses, sir.

Q.248 You were sober were you?
A.248 I wasn't exactly sober nor drunk.

Q.249 Did you feel the drinks?
A.249 No sir.

Q.250 Have you any idea as to how many Seaforths were at Canada Bks at that time?
A.250 I have no idea.

Q.251 Do you remember a draft coming in just before this incident?
A.251 Yes sir.

Q.252 Was this a few days before the incident?
A.252 I don't know sir.

Q.253 Do you remember if there were any Seaforths in the camp that particular day?
A.253 There may have been.

Q.254 Do you know?
A.254 There might have been.

Q.255 Did you not notice several?
A.255 Yes.

Q.256 Were there many around on parade on this day?
A.256 There were a few.

Q.257 So it wasn't unusual?
A.257 No.

Q.258 You must have gone to sleep very quickly?
A.258 I wasn't very long.

Q.259 Did the incident bother you a great deal?
A.259 It scared the living daylights out of me.

Q.260 You recovered very quickly. Were you in fear of your mortal life?
A.260 I would not say that. No sir.

Q.261 It didn't bother you very much?
A.261 No.

Q.262 How long have you been in the 48 Highrs?
A.262 Five years.

Q.263 Ever been court martialled?
A.263 Never.

Q.264 Are you rft or PR?
A.264 Rft.

Q.265 Now what happened to the man whose assistance you called?
A.265 After I called him over he walked away.

Q.266 Did he accompany you to the Guard Room?
A.266 No sir, he didn't. I just turned around to him and then said "good- to him.

GB

Q.267 Didn't you feel a little foolish when nobody was there?
A.267 I didn't worry very much.

Q.268 Didn't you want anyone to substantiate your story?
A.268 I didn't worry. I reported to the Guard Room.

Q.269 Was such conduct normal?
A.269 No sir.

Q.270 Would you act accordingly if you hadn't been drinking?
A.270 No sir.

By the Court:

Q.271 Would you recognize the gun; the one the man extended when he held you up?
A.271 No sir, I couldn't say.

Q.272 Was it large or small?
A.272 It looked like an automatic revolver. (Witness is shown sketch, Exhibit "G".)

Q.273 You were walking in that direction (North)?
A.273 Yes sir.

Q.274 Where did you first see the other man?
A.274 When we got here. (Witness marks point with a "C" on sketch.) The other man was here. (Witness marks point with a "D" on sketch.) The man at point "D" came towards me. I called out to him. He hesitated and stopped as he came towards me.

Q.275 Was there any conversation between the man you met and the man who held you up?
A.275 No sir.

Q.276 Was there any conversation between the man who held you up and yourself?
A.276 No sir.

Q.277 Did you indicate to the man you met that you were held up?
A.277 I said that a fellow held me up with a gun and he chuckled. I emphasized it to him again but he just laughed and walked beside me on the right.

Q.278 Did you feel the pressure of the gun in your back, still, as you walked along?
A.278 Part of the way to the Offrs' Mess.

Q.279 Did you hear any footsteps to indicate to you that the man was leaving the two of you?
A.279 No sir.

Q.280 You remember what type of footwear he wore?
A.280 No sir.

Q.281 How far from the man were you when you met him at the corner?
A.281 About 25 feet when I first saw him.

Q.282 Did he come up to you or were you going towards him?
A.282 I just seemed to run bump into him.

Q.283 You didn't notice him?
A.283 No sir.

Q.284 He confronted you face to face?
A.284 Yes sir.

WBB

By the Judge Advocate:

Q.285 Would you point out on Exhibit "G" the location of the Guard Room to which you went?
A.285 Here sir. (Witness indicates point "E" on sketch.)

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83 (B).

ELEVENTH WITNESS (K.30716 Sgt Whynot, H.H. (WEST NSR) 1 Bn 1 CBRD for Prosecution) (having been duly sworn) (is examined by the Prosecutor

Q.286 What duties do you perform at your unit?
A.286 Provost Sgt 1 Bn.

Q.287 Do you recall the evening of 2 Aug 44?
A.287 Yes sir.

Q.288 What happened?
A.288 At approximately 2245 hrs on the 2nd Aug 44, I was in my Guard Room making out my Guard Report. I heard one shot fired. I immediately left my work and ran from the Guard Room.

Q.289 Where did the shot come from?
A.289 From my estimation it seemed to come from the direction of the Carleton & York and East PER Bks.

Q.290 Would you point out where these bks are, please?
A.290 (The witness points to the Kingston Block.) I thought the shots came from the Kingston Block.

Q.291 Where were you at that time?
A.291 I was here. (Marks point with an "E" on the sketch.)

Q.292 After you left the Guard Room what happened?
A.292 When I was outside I heard two more shots fired.

Q.293 Where did they come from?
A.293 The same direction I thought.

Q.294 When you got outside did you notice anything unusual?
A.294 No sir. There were quite a few drunks around that night.

Q.295 What did you do then?
A.295 I stopped for a moment at the entrance of the Borden Block looking around to see what I could see. It was then I noticed a soldier in front of 2 Bn Offrs' Mess trying to get up.

Q.296 What did you do?
A.296 Well, due to the fact that there were a good many drunks that evening I didn't do anything immediately.

Q.297 Did you further investigate this body?
A.297 Yes sir.

Q.298 What did you find out in the investigation?
A.298 When I saw everyone running towards the body, I ran to the body myself.

Q.299 Who was present?
A.299 The Guard Commander and the Cpl of the Guard were present.

Q.300 Where was this body?
A.300 The body was at the main entrance of 2 Bn Offrs' Mess in the Ottawa Bldg.

Q.301 Was it right at the entrance?
A.301 It was towards the Borden Block.

Q.302 How far?
A.302 About 15 feet from the entrance.

Q.303 Will you point this spot out on Exhibit "G"?
A.303 Here sir. (Witness points to Point "X" on the sketch.)

Q.304 Did you find out who this man was from your own investigation?
A.304 The Guard Comd and Cpl of the Guard had the situation well in hand.

Q.305 Did you recognize the man?
A.305 No sir, I didn't.

Q.306 What type of a night was it?
A.306 A moonlit night, sir.

Q.307 How far could you see?
A.307 I could see approximately 100 yards that night, sir.

Cross-examined:

Q.308 From where you were standing at the entrance of the Guard Room, did you have a fairly clear view to the front of the parade square?
A.308 Definitely, sir.

Q.309 Were you out of the Guard Room on hearing the second and third shots?
A.309 No sir.

Q.310 Were you still inside?
A.310 I was on my way out.

Q.311 Were you in motion?
A.311 I was.

Q.312 How long did it take to get a clear view?
A.312 Approximately 15 seconds to get a clear view.

Q.313 How long to get into the area?
A.313 A matter of seconds.

Q.314 How many?
A.314 About 10 seconds.

Q.315 You were in motion leaving the Guard Room. How soon would you have a view of the scene and be able to see any person running away from the area in which the body was found?
A.315 In the first place I didn't know where the body was. It would take at least 30 seconds to focus.

Q.316 Leaving the office at point "B" on the sketch, I suggest to you that it would be still impossible to take 15 seconds before getting a view of the square. How long did you take?
A.316 10 or 15 seconds. I was walking at the time.

Q.317 You told the Court you were in motion. Are you still satisfied that you would take 15 seconds to get a view after you were in motion on the way out?
A.317 After hearing the first shot it wouldn't take that long. I would think it would take me from 8 to 10 seconds to get out of there.

Q.318 Do you know whether or not there had been a pay day on that evening or before that evening?
A.318 I know that there was one on the 30th of the month.

Q.319 You suggested that there were a lot of drunks about. Does that give you any stimulus to bring back the recollection of a pay day?
A.319 In 1 Bn there are a good many drunks at all times at night; not during parade hours.

Q.320 You have told the Court you saw a body fall?
A.320 No sir, I didn't say that.

4318

Q.321 What did you say?
A.321 I told the Court that I saw a body trying to get up.

Q.322 Are you sure you didn't see a body falling?
A.322 No sir, it wasn't falling.

Q.323 What makes you so sure?
A.323 I could see the body.

Q.324 Are you positive?
A.324 Yes sir, definitely.

Q.325 How can you suggest to the Court, when it took so long to get your eyes focussed?
A.325 I didn't say that.

Q.326 What did you say?
A.326 It took five or ten seconds.

Q.327 What particular stimulus was registered in your mind when you first saw this man getting up?
A.327 In my mind I thought he had been drinking.

Q.328 Then thinking he had been drinking, you immediately turned to see if you could see anyone running away from this particular area?
A.328 No sir, I didn't say that.

Q.329 Having seen this body crouched, and having come to the conclusion it was a drunk, you immediately went towards the Borden Block?
A.329 Yes sir.

Q.330 Why were you so anxious to see if anyone was running away if you thought he was drunk?
A.330 I always search the area of 1 Bde.

Q.331 Why do you do it?
A.331 I said I was searching it to find some one.

Q.332 Do you remember giving evidence in the Summary of Evidence?
A.332 Yes sir.

Q.333 You stated in the Summary, "I didn't know there was a drunk about. I looked around to see if there was anything." Do you want to change it?
A.333 No sir.

Q.334 Have you one reason why you thought someone was running away from this particular scene?
A.334 Because I heard a shot fired.

Q.335 Did you happen to see any of the drunks around the gate the day of the firing?
A.335 No sir.

Q.336 Did it occur to you as a possibility?
A.336 No sir.

Q.337 I suggest to you that it is not unusual to hear shots fired?
A.337 It is not unusual.

Q.338 A common occurrence?
A.338 It has happened before, sir.

Q.339 What did you do after you found that the man was injured?
A.339 After the body was picked up, sir?

Q.340 By how many people?
A.340 There was confusion, sir.

WGB

Q.341 How soon after was the body lying there? Did you go over to it?
A.341 I was there when it was picked up.

Q.342 Then you were satisfied that the Guard Comd still had the situation well in hand?
A.342 Yes sir.

Q.343 What investigation did you make? Did you find weapons or missiles of any kind or empty cartridge cases?
A.343 I searched the area where the body was found and never found anything.

Q.344 How soon after hearing the shots was your search made?
A.344 Approximately five or 10 minutes after.

Q.345 Was it a thorough search of the immediate vicinity?
A.345 As thorough as a flashlight would allow.

Q.346 And what distance from the body did you search?
A.346 I searched right around the entrance of the Sgts' Mess 1 Bn.

Q.347 Where would that be?
A.347 Right here, sir. (The witness marks the point with an "S" on sketch.)

Q.348 What were you searching for at the time?
A.348 I was searching for a weapon and also empty cartridges.

Q.349 Did you find any?
A.349 No sir.

Q.350 Now, do you remember whether a draft had recently arrived prior to the 2nd of August, 1944?
A.350 I am pretty sure there was, Mr.

Re-examination:

Q.351 To your knowledge did anyone else search the area before you made your search?
A.351 No sir.

By the Court:

Q.352 You stated you went from your Guard Room to the entrance of the Borden Block direct?
A.352 That is right, sir.

Q.353 What direction did you take, to go from the Guard Room to the Borden Block?
A.353 I am sorry sir, my Guard Room is in the Borden Block and not in the Ottawa Bldg.

By the Judge Advocate:

Q.354 Did you or did you not examine the man whom you found lying on the ground?
A.354 No sir, I did not.

Q.355 When you told Capt Rose in re-examination that to your knowledge no other search was made prior to the search which you made, did you mean that you knew that no other search had been made or that you didn't know?
A.355 I didn't know, but to my knowledge nobody had.

W-136

Q.356 How did you arrive at your estimate of the approximate time that you heard the shots?
A.356 There had been a few instances of men jumping or falling out of windows. I had made it a point of looking at anything that happened, so I looked at my watch.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 85 (B).

TWELFTH WITNESS (Lt (A/Capt) T.E. McKee (PPCLI) 8 Bn 1 CBRD for (having been duly sworn
Prosecution (is examined by the Prosecutor

Q.357 Do you recall the evening of the 2nd of August, 1944?
A.357 I do.

Q.358 Will you tell the Court what happened on that evening?
A.358 On the 2nd of Aug 44, at about 2350 hrs, I was in 2 Bn Offrs' Mess 1 CBRD having a lunch. I heard two shots fired outside. They sounded to be quite close. I got up and walked out to the porch outside. I could smell powder burning. I looked around and saw a body lying on the pavement about eight yds from the porch.

Q.359 I show you Exhibit "G". Would you point out that spot on the sketch?
A.359 The porch is here and the body was lying there. (The witness marks the point with an "H" on the sketch.)

I saw the body lying on the pavement. So I went down to the body. It was a man lying face downwards with his arms stretched out at his side.

Q.360 Would you demonstrate?
A.360 Like this. (Witness demonstrates)

Q.361 What was his condition?
A.361 He was breathing. It sounded quite heavily to me. There was some blood on the pavement which was coming from a hole in his head. I immediately went to 2 Bn RAP and sent the orderly for the Medical Offr. Then I returned to the scene of the accident. There was a number of offrs and men around there by now. I thought the man may have shot himself so I took a look for the weapon. I found nothing. In his left hand I found a set of identity discs which I took and put in my pocket. By this time the MO was removing the body to the MIR. I went into the MIR where I turned the identity discs over to the Adjt 2 Bn, Capt Snell. I just glanced at the discs and saw the name "Robinson" on them.

Q.362 I produce two identity discs. Do you recognize them?
A.362 I would say they are the same discs.

Q.363 Would you read to the Court the name on the discs?
A.363 B.144333, Pte Robinson, Presbyterian, Canadian. (One red and one green identity disc, admitted and marked Exhibit "J".)

Q.364 How were these discs found in the wounded man's hand?
A.364 They were in the left hand of the man who had been shot, clenched tight, with the fingers closed.

Q.365 Were the discs entwined in his hand?
A.365 I could not say, sir, that they were both in his hand. There was one in his hand, and I take it both were held by the string.

Q.366 What did you use a light for?
A.366 I had no light. The moon was shining. It wasn't very dark. I could see the name on the discs.

WRB

Q.367 What was the light outside?
A.367 It was a full moon. The stars were shining and the moon was out. You could see a man walking about 100 yards away.

Cross-examined:

Q.368 How much time had elapsed from the time you heard the shots until the time you got outside on the porch?
A.368 It would not be over a minute.

Q.369 Which part of the Mess were you in?
WBB A.369 I was in the part where we eat/at the end table.
sitting

Q.370 And that is in the part of the Mess nearest the door?
A.370 That is right.

Q.371 Would you have taken a minute to get outside?
A.371 No, it would not if I had jumped right up. I got up and walked out the door.

Q.372 About how many feet was it from where you were sitting to the door?
A.372 Approximately 15 feet.

Q.373 Did you estimate the paces taken as you walked out of the door?
A.373 I just walked over at a normal pace to the door.

Q.374 Did you take about five seconds?
A.374 Not any more.

Q.375 Did it take another second or two to open the door?
A.375 It would take another second or two to get on the porch?

Q.376 Did that not take 15 seconds?
A.376 It wouldn't take more than 15 seconds from the time I started moving until I got out.

Q.377 Why do you say you could have seen a man who was running away from the immediate vicinity of the body?
A.377 If a man had been close - very close - and running out in the open across the parade square, I think I could have seen him.

Q.378 You told the Court you could see a man 100 yds away?
A.378 Right.

Q.379 So within the 15 seconds you could have seen a man running away?
A.379 If he had run along by the building, I may not have seen him.

Q.380 Have you studied ballistics to any extent?
A.380 No.

Q.381 Have you studied the normal amount of ballistics in the "Weapon Training" pamphlet?
A.381 That's right.

Q.382 Was it a very still night or was there any breeze at all?
A.382 I don't think there was very much because I didn't notice it windy at all.

Q.383 I suggest to you that if you were able to smell powder recently burnt from the time you got out on the porch, it would have been fired from the spot on which you were standing. Do you agree with that suggestion?
A.383 I would say that it hadn't been fired very far away from the door way. It could have been up to 25 yds away.

WBB

Q.384 I suggest that you are imagining the smell of that powder. As a result of the information you subsequently learned, you are imagining you smelled it and didn't actually smell it?
A.384 I am convinced that I smelled powder.

Q.385 I suggest that it was a physical impossibility to smell it; impossible according to ballistic ------
A.385 I still say I smelled it.

Q.386 Then you suggest to the Court that it was powder from the bullets you heard fired?
A.386 I cannot say what bullet the smell of the powder came out of as I didn't see it fired.

Q.387 Were you in a particularily mentally alert stage when you were on the porch?
A.387 I would say that I was in my normal mental condition.

Q.388 Was it influenced by a considerable quantity of liquor?
A.388 It was not.

Q.389 I suggest that you had quite a bit to drink prior to the shooting incident, is that correct?
A.389 On the evening of the shooting incident, I had very little to drink.

Q.390 I am not trying to discredit you. Will you tell the Court what quantity you had that evening?
A.390 Throughout the evening I would say I had possibly four drinks of gin and lime.

Q.391 Doubles or singles?
A.391 Singles. I think I could have had four.

Q.392 What directed you to the identity discs?
A.392 In the man's hand?

Q.393 You found a set of identity discs?
A.393 I was actually looking for a weapon. I thought the man had shot himself. While looking for a weapon I was kneeling down at his left side. I saw his hand and something in his hand. When I pulled it, I found a set of identity discs.

Q.394 Did you have any definite instructions for removing the set of identity discs?
A.394 No.

Q.395 They came out easily?
A.395 Fairly easily.

Q.396 Can you, by taking this (hands witness Exhibit "J"), show the Court by putting your hand on the floor, the approximate position of the string?
A.396 I cannot actually sir. His hand was lying right at his left side. I noticed something in it and pulled it out and it was a set of identity discs. (Witness demonstrates the manner in which he found the identity discs in the hand of the injured man.)

Q.397 How much of the string outside of the man's hand was visible to you?
A.397 I cannot say.

Q.398 Are you sure you noticed the identity discs prior to pulling the string?
A.398 I said there was something in his hand. I didn't know they were discs.

Q.399 The string directed you?
A.399 I didn't know there was a string.

WEB

Q.400 Would you describe to the Court whether the string was all in his hand or all out?
A.400 I can't.

Q.401 Describe to the Court whether it was all in or all out?
A.401 That it was all pulled from his hand, no.

Q.402 The normal action of a man struck from behind is to fall forward with his hands stretched, isn't it?
A.402 Yes, I would think that if you were struck from behind you might fall with your hands outstretched on being shot from behind with a .45.

Q.403 You are estimating?
A.403 Yes.

Q.404 Is it normal for a man being struck from behind to have his hands stretched out?
A.404 Yes, it is normal.

Q.405 Now what gave you the idea that this man was shot with a .45?
A.405 The reason I had the idea that he was shot with a .45 was that he had a hole in his head - the doctor states two holes - and some of them found .45 slugs in the area. That is the only reason I have for assuming it.

Q.406 Was your reason for coming to that conclusion based on your own investigations?
A.406 No.

Q.407 You didn't know for sure?
A.407 The doctor said so in the MIR to the others and to myself while a number of men were in there. The .45 shells, I referred to, were shown to me that evening as having been picked up on the scene of the incident.

Q.408 Something like this? (Defending Officer produces a brass casing.)
A.408 Something like it.

Q.409 Anything like this? (Defending Officer produces a steel casing.)
A.409 Yes. (42 WCC brass casing and 42 steel casing admitted and marked Exhibits "K" and "L", respectively.)

Q.410 Did you examine those casings very carefully?
A.410 I don't know.

Q.411 Now were the identity discs held in a very firm grip, as if the wounded individual was hanging on to them for dear life?
A.411 No, I didn't need to exert pressure to remove them.

Q.412 Was it possible that someone could have put or forced anything into his hand?
A.412 It is quite possible.

Q.413 Why did you say these (indicates Exhibit "J") are the same discs you gave to Capt Snell?
A.413 I still say they look like the same discs.

Q.414 Similar?
A.414 Yes.

Q.415 Did you mark the discs when you found them in the hand of the wounded man for purposes of identification?
A.415 I did not.

Q.416 When you found these discs on him did you attach any importance to them?
A.416 No. When I took them, I thought they belonged to the man that was shot.

WT3B

Q.417 And what did you do?
A.417 I put them in my pocket.

Q.418 And how long afterwards - that evening - was it that you again produced them?
A.418 It would be, I would say, not over three-quarters of an hour.

Q.419 How do you know they are the same ones you took from the hand of the wounded man?
A.419 Because I had taken them from his hand and put them in my pocket. They were still there when I took them out again.

Q.420 What was the impulse that caused you to take them out again?
A.420 When they were trying to find out the names of different people. The Medical Offr said that he had checked the discs of the man who had been shot, and his name was "Dillon". Then I recalled the discs I had in my pocket and turned them over to the Adjt of 2 Bn, Capt Snell. I saw the name "Robinson" on the discs.

Q.421 I suggest to you that you didn't find the identity discs in the hand of the wounded man: that they became apparent to you only at such time as they started to move the body. Do you agree?
A.421 No, I had nothing to do with the moving of the body. I had the discs in my pocket when they started to move the body.

Q.422 Then, if I am under the impression that they were about to move the body when you took the identity discs, I am labouring under a misapprehension?
A.422 They could have been about to move the body, for they did so shortly after.

Q.423 How shortly after, moments, seconds?
A.423 A matter of minutes because they carried the body out on a stretcher after I had the discs.

Q.424 After you got the discs, what amount of time elapsed before the body was moved or carried away?
A.424 I can't say the exact time.

Q.425 Do you know what happened to the beret that the wounded man was wearing?
A.425 I do not.

No re-examination.

By the Court:

Q.426 At the scene of the accident - how many people were around the body?
A.426 I would say there would be six or seven at least. There could have been more around, but right beside the body I would say at least six or seven.

Q.427 Did you speak to anybody about the discs or drew them to their attention?
A.427 No sir.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83 (E).

THIRTEENTH WITNESS (Lt A.J.B. Mills (Perth R) 3 Bn 1 CBRD
for ( )having been duly sworn
Prosecution (is examined by the Prosecutor

Q.428 Do you recall the night of 2 Aug 44?
A.428 Yes sir.

Q.429 Will you tell the Court what you were doing?
A.429 I was having lunch in the 2 and 3 combined Offrs' Mess when I heard three shots. I went outside to see what was going on. On the steps I found a Glengarry with a 48 Highrs badge on it.

WBB

Q.430 Would you describe this Glengarry?
A.430 It was an ordinary 48th Glengarry with red dice checks on it.

Q.431 Did you examine the Glengarry immediately?
A.431 I went over and looked at the wounded man. I saw him lying on the ground. Someone handed me a beret which I took to be the wounded man's as there was blood dripping from it. Then I looked at the Glengarry closer and saw the name "A.H. Wilcock" on it.

Q.432 I produce a Glengarry, (Prosecutor shows Exhibit "H") do you recognize it?
A.432 That is the same Glengarry.

Q.433 Where was the man that you saw lying?
A.433 Approximately 15 feet from the door leading into the Mess.

Q.434 I show you Exhibit "G". Would you look at it closely and point out where you saw the body lying?
A.434 About here. (The witness marks point with an "H" on the sketch.)

Q.435 Did you examine the body?
A.435 No, I just looked at the man and saw a pool of blood around his head.

Q.436 At what time was that?
A.436 2240 hrs approximately.

Q.437 As a result of finding the Glengarry what did you do?
A.437 I took it to Capt Cameron, the Coy Comd, and then accompanied Capt Cameron to the 48 Highrs quarters where Wilcock was brought to me and later turned over to the 2 Bn Guard.

Q.438 Did you examine the scene of the accident?
A.438 Yes, quite thoroughly.

Q.439 Did you find anything?
A.439 I didn't find anything myself. I noticed blood on the ground everywhere, and on the steps going into the Mess where I picked up the Glengarry.

Q.440 When you had the beret in your hands, did you examine it?
A.440 I did not examine the beret. I just looked at it and then turned it over to the Guard Comd.

Q.441 Where did you turn it over?
A.441 Outside, at the scene of the accident.

Cross-examined:

Q.442 Did you see the blood on the steps where the Glengarry was found at the same time as you saw the Glengarry?
A.442 No, when I went back.

Q.443 Was that on returning from the body?
A.443 No, on my return from having seen Capt Cameron and Pte Wilcock.

Q.444 Can you tell the Court whether or not the blood was there when you found the beret?
A.444 I am sure I saw the blood. I cannot make a definite statement as to that.

Q.445 What lead you to that conclusion?
A.445 The only thing I can say is that the beret was not carried up the steps by myself or anyone else. The blood may have been there from some other reason.

Q.446 Then your explanation of the blood on the steps is that it did not come from the beret?
A.446 Yes.

Q.447 Did you go out on the porch?
A.447 Yes sir, the porch of 2 and 3 Bn Offrs' Mess.

Q.448 Where was Capt McKee when you got to the beret?
A.448 I didn't see him myself.

Q.449 How long after you heard the shots did you appear on the scene?
A.449 Roughly three minutes.

Q.450 Can you tell us why you did not take less than three minutes?
A.450 Yes. I made a sandwich. After I had the sandwich made, I started to eat it and then walked out of the Mess.

Q.451 What were the ingredients of the sandwich?
A.451 It was ------

Q.452 What was the base of the sandwich?
A.452 Bread.

Q.453 Were there any onions in it?
A.453 Yes.

Q.454 A large amount or small?
A.454 A large amount.

Q.455 Do you remember whether or not there was any bully beef?
A.455 Definitely. There was no bully beef.

Q.456 What time is lunch served for offrs of 2 and 3 pns?
A.456 It is put on the table at 9 o'clock.

Q.457 When you got on the porch, could you smell any powder burning?
A.457 No sir.

Q.458 How did you arrive at the conclusion it was 2240 hrs when you heard the shots?
A.458 The Mess closes at 2230 hrs. It was closed when I started to make the sandwich.

Q.459 Is there any other method of identifying the Glengarry and badge except for the name on the inside?
A.459 The name on the inside is the way I identified it.

Q.460 Did you see a set of identification discs removed from the hand of the wounded man?
A.460 No, I didn't.

Q.461 How many people were around the body when you arrived?
A.461 Quite a number.

Q.462 Could you give us any help as to the number?
A.462 I would say about ten or twelve.

Q.463 Was there a certain amount of confusion around the body? Was there chaos and excitement?
A.463 Oh yes.

Q.464 How close were the people coming to the body when they were having a look around?
A.464 Not more than a foot from the body.

Q.465 Would it be very difficult for any of the people around to put anything in the hands of the wounded man?
A.465 I would say it would be very difficult without anyone seeing it.

Q.466 Would it have been possible for others to come up to the body without being noticed by those around?
A.466 Yes, there is a possibility.

WEB

Q.467 Do you know of any fights that might have taken place in the area of 2 or 3 Bn Mess?
A.467 No sir.

Q.468 Do you know what happened to the beret?
A.468 After I had it, it was turned over to Capt Snell, Adjt 2 Bn.

Q.469 You say you saw one drop of blood at the door. Is that correct?
A.469 Yes, that is correct.

Q.470 On the floor of the door or on the door?
A.470 On the ground at the base of the door.

Q.471 Could you assist us by stating whether it was a drop or trail of blood or a pattern?
A.471 It appeared to be a trail of blood part way up the steps, then there was no blood and one drop right at the base of the door.

Q.472 What kind of a night was it as you recollect?
A.472 Very bright.

Q.473 And what was the normal visibility for seeing - across or towards the parade square?
A.473 You could see right across the parade square.

Q.474 Could you have distinguished people, if there had been any between the Ottawa Bldg and the Kingston Bldg? Could you see immediately north?
A.474 Yes.

Q.475 On the left, as you stood on the porch, could you distinguish bodies between yourself and that building?
A.475 Yes.

Q.476 Could you distinguish bodies between yourself and the Borden Block?
A.476 Yes.

Q.477 If you had arrived at the scene where the body was within a matter of seconds of the shooting, could you have seen anyone running across the parade square?
A.477 I could have seen anyone that was running, yes.

Q.478 What type of weapon did you think had been fired when you heard the shots?
A.478 I thought it was a Tommy Gun.

Q.479 Why did you think it was a Tommy Gun?
A.479 From the sound.

Q.480 Any other reason?
A.480 No.

Q.481 Had there been any Tommy Gun firing prior to this on the evening of 2nd August?
A.481 Not that I know of.

Q.482 Had you not heard of any weapon firing at nights?
A.482 Yes, I have heard weapons firing at nights on occasions.

Q.483 In the area of Canada Bks?
A.483 Yes and outside the area of Canada Bks.

Q.484 Is it unusual for shots to be fired at that hour of the night?
A.484 It is unusual, but it has happened.

4-13-13

Q.485 It could not have been very unusual if it took you three minutes to get out to see it?
A.485 I wasn't terribly startled.

Q.486 When you had the beret, did you notice how many holes in it?
A.486 No, I didn't.

Q.487 How long had you been in Canada Bks prior to the 2nd of Aug?
A.487 About one month.

Q.488 Were 48 Highrs' Glengarries unusual sights around that area at that time?
A.488 No.

Q.489 And around the parade square/on 2 Aug, was it unusual to see Seaforth flashes?
A.489 No.

Q.490 Have you been having any previous trouble or heard of any previous trouble or holdups prior to this evening?
A.490 I had not heard of anything.

Q.491 Will you tell the Court whether or not there had been a draft in prior to 2nd Aug 44?
A.491 Yes.

Q.492 And were there quite a number of rfts at the time or a dearth such as now?
A.492 Quite a number.

Q.493 Now can you give us any opinion as what value .45 pistols were in the eyes of the rfts at that time?
A.493 I have no information as to that.

Q.494 In your eyes has an American .45 pistol a certain souvenir value?
A.494 Yes sir.

Q.495 In your experience had you noticed they have a greater value to the rfts recently arrived than to the rfts who have been over for a month or two?
A.495 Yes they have.

Q.496 Did you form any opinion as to what direction these shots were fired from?
A.496 I never formed any opinion.

Q.497 Did you, yourself, make a search for anything in the immediate vicinity immediately after the shooting for a weapon, or did you ignore the issue?
A.497 Yes, we made a search.

Q.498 Can you tell the Court how dilligently that search was conducted?
A.498 There were several members of the Guard and a couple of offrs conducting it. The search was quite thorough.

Q.499 Have you any opinion as to whether or not Thompson Sub Machine Carbines were in good supply around 2 Aug - that is to the personnel of Canada Bks?
A.499 We fired Tommy Guns on the ranges almost daily at that particular time.

Re-examination:

Q.500 What type of ammunition does a Tommy Gun generally fire?
A.500 .45 rimless.

Q.501 I show you Exhibits "K" and "L". Will you examine them? What type of ammunition is that?
A.501 .45.

L-1218

Q.502 Is that the type you use in a Tommy Gun?
A.502 Yes sir.

Q.503 Do you know anything about ballistics?
A.503 No.

Q.504 Do you know anything about a Colt automatic?
A.504 No.

Q.505 Have you fired one?
A.505 Only a .45.

Q.506 What type of ammunition does it use?
A.506 Same as a Tommy Gun.

Q.507 Therefore, that type and that used by Colt are the same?
A.507 Yes sir.

Q.508 In your cross-examination you said that there was "excitement" around the body. Would you tell the Court what you meant?
A.508 I didn't mean excitement. There was quite a number of people around the body, and until the Guard Comd dispersed the crowd there was some confusion.

Q.509 What do you mean by confusion?
A.509 People talking; walking here and there. Nobody seemed to be doing anything.

Q.510 Did you see the Medical Offr arrive?
A.510 I wasn't there when the Medical Offr came.

Q.511 Did you mention in the cross-examination that the blood on the steps could have been caused by someone walking through the pool of blood and on up the steps?
A.511 No, it did not appear so.

By the Court:

Q.512 Did you examine the floor inside the doorway for evidence of blood?
A.512 Yes sir.

Q.513 And what did you find?
A.513 There was none.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83 (8).

Court adjourned at 1655 hrs.

Court re-opened at 1000 hrs, 22 Sep 44, the same members being present.

Prosecution produced Medical Certificate.

FOURTEENTH WITNESS (B.51982 Cpl Ferguson E. Carlt & York R, 1 Bn, for (1 CBRD, having been duly sworn,
Prosecution (is examined by the Prosecutor

Q.514 Do you recall the evening of 2 Aug 44?
A.514 Yes sir.

Q.515 What were you doing on that evening?
A.515 On that evening I was .....

Q.516 Will you tell the Court what happened that night?
A.516 At approximately 2230 hrs a man from the 48th Highrs Coy, Pte Wilcock, reported to the Guard Room. I took Pte Wilcock to the Seaforth Coy Office where I spoke to the Coy Sgt Major. I came back downstairs and showed Pte Wilcock where his billets were.

Q.517 Where were his billets?
A.517 At the far end of the camp. I do not know the name of the building. the 48th Highrs were stationed there.

Q.518 I show you Exhibit "G". Where were you when Pte Wilcock reported?
A.518 Here sir. (Witness points to spot "E" on the sketch.)

Q.519 Where did you take Pte Wilcock after he reported to you?
A.519 To the Coy Office of the Seaforths on the second floor of the Petawawa Bldg. (Witness marks spot with letter "I" on sketch.)

Q.520 From there where did you take Wilcock?
A.520 After I spoke to the Sgt Major of the Seaforths I brought Pte Wilcock to the opposite side of the Petawawa Bldg. I told him the way to his billets.

Q.521 Where were they?
A.521 The Debert Block. (Indicates on Exhibit "G")

Q.522 Are you sure those are the billets?
A.522 I am not exactly sure, but I took him there to his billets.

Q.523 What else happened that night?
A.523 I was on that side of the building. Pte Wilcock had just left me when I heard two shots fired.

Q.524 Could you say whether it was some distance away or quite close?
A.524 It came from the direction of 2 Bn Offrs' Mess.

Q.525 What did you do then?
A.525 I returned to the Guard Room.

Q526 What did you do when you returned to the Guard Room?
A.526 I went to where a man had been injured.

Q.527 Where was that?
A.527 In front of 2 Bn Offrs' Mess.

Q.528 What did you do when you went to 2 Bn Offrs' Mess?
A.528 When I got to 2 Bn Offrs' Mess, I saw a pool of blood in front of the steps and half of a sandwich amongst the blood.

Q.529 I show you a sketch, Exhibit "G". Point out where you saw this pool of blood?
A.529 Here sir. (Witness points to point "H" on sketch.)

Q.530 When you arrived there what did you do?
A.530 Well, I tried to determine where the shots had been fired.

Q.531 Did you determine that?
A.531 No, in my hunt I found a .45 casing.

Q.532 What type of casing?
A.532 A .45 calibre.

Q.533 Can you describe the marks on it?
A.533 There weren't any but there was a dark colour on it.

Defending Officer:

I am not satisfied with the method in which the Exhibits are being presented. I feel that there is going to be a lot of irregularity here. I would like the Prosecuting Offr to have the witness properly describe each Exhibit to my satisfaction before it is presented in evidence.

Prosecutor:

There is no doubt in my mind that certain articles were found. I feel that the witness, having found some article, has a right to identify that article if possible.

WTB/B

Judge Advocate:

Capt Rose, could you get the witness to describe, if possible, in every detail, the article which he found before producing it to him in Court?

Prosecutor:

Q.534 Will you describe to the Court where you found this article?
A.534 I picked up a .45 casing about ten feet from the steps of 2 Bn Offrs' Mess. It was lying against the curb.

Q.535 Will you point out on the sketch, Exhibit "G", where you found this casing?
A.535 I found it right about there. (Witness marks point with letter "J" on sketch.)

Q.536 Will you describe in detail to the Court the casing that you found?
A.536 There was no difference between it and any other .45 casing. No special marks that I can identify it with.

Prosecutor:

In view of the fact that he cannot describe it correctly I cannot ask the witness to identify it.

Judge Advocate:

He may be able to identify the casing.

Prosecutor:

Q.537 I show you two cartridge cases: marked EC 43 and EC respectively. The number on the latter is unreadable. Are they similar to the ones you found?
A.537 This one is sir.

Q.538 Is this the one you picked up?
A.538 This is the one, yes sir. (Steel casing marked EC 43 admitted and marked Exhibit "M".)

By the Court:

Could I see the two casings shown to the witness? I am fairly certain that later in the proceedings the Court will be able to see them.

Judge Advocate:

It is not permitted to see the other one at this stage. It is not yet in evidence, Major Brown.

Court:

I have a particular reason. There are two distinct types that any witness could identify; a steel casing and a brass casing. The point I wish to establish is whether these two cartridge casings that were shown to the witness were both brass or one brass and one steel.

Judge Advocate:

The witness was shown two casings which were described by number. He picked out one which is marked Exhibit "M". The other, unless identified and produced in evidence, cannot be seen by the Court.

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Prosecutor:

Q.539 After you found this casing what action did you take?
A.539 I turned the casing over to the Offr of the Guard.

Q.540 Who was that?
A.540 Lt Dolan who was present at the time.

Q.541 What else did you do?
A.541 After turning over the casing, I reported to the Guard Room.

Q.542 What time was this?
A.542 Approximately 2230 hrs.

Q.543 How did you establish the time?
A.543 Well, I am not sure. At nine o'clock the guard relief came on. From then until one o'clock we act as Regtl Police. Men coming in after curfew, approximately 10 or 10:15 o'clock, report to the Guard Room. About 10 minutes after curfew Pte Wilcock reported to the Guard Room.

Q.544 What time was it when you found the casing?
A.544 About 2245 hrs.

Q.545 After you returned to the Guard Room where did you go?
A.545 Well, after I returned to the Guard Room, we went out in different groups to look over the Camp and see if the hold-up man could be found.

Q.546 Did you find him?
A.546 No sir.

Q.547 Then what did you do?
A.547 We came back to the Guard Room. I proceeded back to the scene of the shooting.

Q.548 What did you do there?
A.548 There were several guards and offrs still around. One of the guards was still looking around and found a second .45 casing.

Q.549 What else happened?
A.549 It was turned over to one of the offrs present.

Q.550 What did you do about it?
A.550 I did nothing as the offrs seemed to take charge.

Q.551 What did you do after that?
A.551 We returned to the Guard Room. The following morning Lt Dolan sent me to the Seaforth Bldg to get Pte Wilcock's number and name.

Q.552 Did you go to the Seaforth Office?
A.552 Yes, but I did not obtain the number.

Q.553 Did you find anything there?
A.553 I reported and then I went down the steps of the bldg where I picked up a second .45 casing.

Q.554 I show you Exhibit "G". Where did you find the second casing?
A.554 On the steps going out of the billets in the Petawawa Bldg. I was coming out of the building, going down the steps. I found it on the steps about here. (Witness marks point with letter "I" on sketch.)

Q.555 Will you describe to the Court the casing you picked up?
A.555 The casing I picked up was not perfect. It had been stepped on. It was similar to the first casing except that it had been stepped on.

WBB

Q.556 I now show you a cartridge casing EC, apparently steel. Is that the casing you found?
A.556 Yes sir, I would say it was. (Admitted and marked Exhibit "N".)

Q.557 What did you do with that casing?
A.557 I brought it back to the Guard Room and reported to my offr, Lt Dolan.

Cross-examined:

Q.558 Why did you say so definitely that this (Exhibit "N") is the casing you found?
A.558 I am not saying that it was.

Q.559 Your words were, "That is the casing I found"?
A.559 I don't believe I said that.

Q.560 Then you say it is similar to the casing you found?
A.560 Yes.

Q.561 I show you Exhibits "M" and "N". By looking at the base can you notice any similarity of manufacture by company and by year?
A.561 It doesn't look like it.

Q.562 When you looked at the base of them did you notice the initials of the manufacturer on the back?
A.562 Both have the same number and year on the back.

Q.563 You saw that they are of the same manufacture, and that they apparently came in the same package?
A.563 Yes sir.

Q.564 In unloading a magazine isn't it usual to pick out cartridges bearing the same number and year?
A.564 Yes sir.

Q.565 Do you realize that when an automatic pistol is fired the empty cartridge is ejected?
A.565 Yes sir.

Q.566 You heard two shots?
A.566 Yes sir.

Q.567 Did you make any estimate as to the distance of the ejection from the automatic weapon?
A.567 No sir.

Q.568 Did you know that if you fired two shots from the same weapon the distance of ejection of the casings would be the same?
A.568 Yes sir.

Q.569 What is the distance between points "J" and "I" on Exhibit "G"?
A.569 I would say about 100 yds.

Q.570 Right. Then would you say that the person firing the pistol had sufficient time to get from one spot to the other?
A.570 Well sir ------

Q.571 Was there sufficient time for the man to cover that distance between the two explosions?
A.571 No sir, not over that distance.

Q.572 So that there could not be any relation between the two casings and the two shots?
A.572 That depends if it was the last shot of the weapon.

Q.573 You do not know. You said the time elapsing between the firing of the two shots was not sufficient for a person to cover the distance between the two casings. Was there sufficient time?
A.573 No sir.

C.S

Q.574 You showed Wilcock where his billets were?
A.574 Yes sir.

Q.575 Did he require your assistance?
A.575 Pte Wilcock had been drinking and was excited.

Q.576 Was he a little bit irrational?
A.576 Yes sir.

Q.577 Were you in the building when you heard the shots?
A.577 I was in the open when I heard the shots fired.

Q.578 From where you were standing when you heard the shots fired, did you have a clear view of the entrance of 2 Bn Offrs' Mess?
A.578 No sir.

Q.579 You were outside of the Petawawa Bldg?
A.579 Yes sir.

Q.580 How long did it take you to get around to have a view of the front of the building?
A.580 About half a minute, sir.

Q.581 30 seconds is a long time?
A.581 Yes sir.

Q.582 Did you speed up?
A.582 Yes sir.

Q.583 Then you still think it took 30 seconds?
A.583 I imagine it was about that.

Q.584 What type of a night was it?
A.584 A medium night - neither bright nor dark.

Q.585 What would be the approximate distance of visibility for moving bodies?
A.585 From about 40 to 50 yards.

Q.586 What were your duties as Guard Comd at Canada Bks with reference to unusual occurrences?
A.586 My duties are to see that something is being done about it. At that time I had an Offr of the Guard and Guard Sgt.

Q.587 What were your duties when you heard the shots? Did you do the things you ought to have done?
A.587 When I heard the shots I went in the direction of the shots.

Q.588 Did you go to the entrance of Canada Bks at that time?
A.588 Yes sir. I went to the Guard Room first and then to 2 Bn Offrs' Mess.

Q.589 Was it unusual to hear shots fired at that time?
A.589 No sir, it wasn't.

Q.590 It might have been fired by any gun or might have been fired by the Guard at Italians?
A.590 No sir. They have nothing to do with the Italians except if they come through the gate. The guard has to help look after the gate and the Regtl Police picquet the walls of the Camp.

Q.591 We have been told there were a number of drunks coming in. Is that right?
A.591 It is generally that way every night. There was no difference that night.

Q.592 Were there a number of drunks?
A.592 I don't know sir. I wasn't on the gate.

W 12/3

Q.593 I suggest to you that when you saw the casings, Exhibits "M" and "N", that it was apparent to you that they had both been exposed to the elements for some time?

A.593 I didn't tell you that.

Q.594 Take Exhibit "M" which I show you. Why do you say that is the first one you found that night in the bks?

A.594 Yes sir.

Q.595 Would you examine it? Is it apparent to you that it had been exposed to the elements and lying on the ground for some time?

A.595 I didn't examine it closely.

Q.596 I show you Exhibit "N" which you picked up the following morning. I suggest that it was apparent to you that it had been exposed to the elements for some considerable time?

A.596 I can't answer that. I don't know.

Q.597 (Witness is shown Exhibits "M" and "N".) Will you examine the marks made by the firing pin and tell the Court if there is any similarity between the marks of the two firings?

A.597 Both marks are similar except one is very deep.

Defending Officer:

I don't want to labour the Court but I want facts. I suggested before that there is no similarity between the cartridge casings. I am endeavouring to explain to the Court by this examination of the witness. I leave it to you, gentlemen.

Cross-examination (continued):

Q.598 Have you taken your normal common-to-all-arms training in the infantry?

A.598 Yes sir.

Q.599 Are you acquainted with the lessons on the theory of small arms fire?

A.599 Fairly well, sir.

Q.600 Therefore, you know that the firing pin of a pistol will make an identical mark on any cartridge case fired from that particular pistol?

Prosecutor:

It is not proved that this soldier knows anything about a .45 pistol. That doesn't come in "Small Arms Traini g".

The Court:

I don't think there is much harm done.

Defending Officer:

Q.601 You know that every firing pin, when fired, makes the same kind of a mark?

A.601 I never said so, sir.

Q.602 Will you state from your military knowledge whether or not the firing pin is the same in all guns?

A.602 No sir. The firing pin in weapons don't all look the same.

Q.603 I am speaking of a specific weapon. Will it or will it not leave an identical mark on the casing of the cartridge it expels, other things being equal?

A.603 I don't know sir.

Q.604 When you found the sandwich by the pool of blood what was your reaction?
A.604 Well, I presumed the man had dropped it there when he had been attacked by the other man.

Q.605 Did you make any check to ascertain if this was so?
A.605 No sir.

Q.606 Is it possible that a man could eat a sandwich with one hand and pull the identity discs off with the other?
A.606 No sir.

Q.607 When that sandwich was found, approximately how many inches was it away from the body?
A.607 There were several pieces, some in the blood and some away from it.

Q.608 How far were the farthest pieces away from the body?
A.608 About four of five inches.

Q.609 Did you examine the body on any occasion?
A.609 I did not see the body.

Q.610 You did not see the body?
A.610 No sir.

Q.611 Do you know of anyone who reported this matter, or anyone who suggested that an investigation should be made?
A.611 No sir.

Q.612 Did you report the matter of this shooting that evening for investigation?
A.612 No sir, I did not.

Re-examined:

Q.613 What light did you use when you were looking about the front of 2 Bn Offrs' Mess?
A.613 Well, I used a few matches that I had. There were also flashlights there.

Q.614 When you found the cartridge casing, Exhibit "M", what light did you use?
A.614 I forget whether it was a flashlight or match. I don't know.

By the Court:

Q.615 Was Pte Wilcock wearing any headgear when he reported to you?
A.615 No sir.

Q.616 Have you ever before seen casings lying about Canada Bks similar to those which you found?
A.616 Yes sir.

Q.617 When you took Pte Wilcock to the Coy Office and reported the incident to the WO, why was it necessary to accompany him to his own billets?
A.617 I took him to the Seaforths office.

Q.618 Why was it necessary to show him to his billets?
A.618 He did not seem to know how to get to his billets.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

WBB

FIFTEENTH WITNESS (B.73385 Cpl De Harte, WL (48 Highrs) 3 Bn 1 CBRD for Prosecution (having been duly sworn is examined by the Prosecutor

Q.619 Do you recall the evening of the 2nd August, 1944?
A.619 Yes sir.

Q.620 What happened on that evening?
A.620 At about 2130 hrs I entered the Main Gate of 1 CBRD with two of my friends. We had been downtown and had a few drinks. When we got to the gate, we met a man from the Hast & PER who stopped us and started to talk to us. He appeared to be quite drunk. After a minute or two an argument started between the Hasty P and one of my friends.

Q.621 Do you know the name of this Hast & PER man?
A.621 Yes sir.

Q.622 What was his name?
A.622 His name was "Dillon".

Q.623 What happened then?
A.623 As it appeared that a fight might start, I soon got my friends to their billets and then tried to persuade the Hasty P man to go to his billets. He seemed to be on his way so I went to my Orderly Room and reported to my duty NCO. Then I returned to my billets which, at that time, were in 1 Bn Bldg.

Q.624 What was the name of the building?
A.624 I don't know the name of the building. The people of 1 Bn were in it.

Q.625 I show you Exhibit "Q", a sketch of Canada Bks. Will you point out the building?
A.625 This is the building. (Witness indicates the Borden Block.)

Q.626 Will you carry on with your statement?
A.626 While crossing the main parade square to the Borden Block, I ran into the Hasty P man again. He was just starting an argument with a stranger. I sent the stranger to his billets. While I was doing so, the Hasty P man ran into another party and started to argue with him. I also sent this other party to his billets, and once more tried to convince the Hasty P man to go to his billets. After a few minutes a man came up who was wearing Seaforth flashes and a Glengarry with a 48 Highrs badge.

Q.627 Now, do you know this man you saw?
A.627 The new man sir.

Q.628 Yes?
A.628 Yes sir.

Q.629 Who was the new man?
A.629 He was the accused, sir.

Q.630 Is he in Court?
A.630 Yes sir.

Q.631 Where?
A.631 Sitting at this table, sir. (Indicates the table where the accused and Defending Offr are sitting.)

Q.632 What happened then?
A.632 The accused said, "Have you any money?".

Q.633 Who did he say that to?
A.633 The Hasty P man, sir.

W.B.

Q.634 What happened after that?
A.634 The Hasty P man asked "Why"? The Seaforth man then said "Give me a buck, I want a Buck" in a demanding voice.

Q.635 What did you do about this?
A.635 I decided that another argument was about to start. As I was having too much trouble trying to get the Hasty P man to keep out of trouble; and that seemed impossible, I returned to my billets. A few moments after I was in my room I heard a shot fired, followed by another. As that was frequent around Canada Bks at night, I paid no attention to it.

Q.636 What was the light like that night?
A.636 The moon was out. While I was on the parade square it was shining brightly.

Q.637 Do you recall what state of moon it was?
A.637 No sir.

Q.638 Could you recognize the Glengarry the accused was wearing that night?
A.638 You mean the Glengarry ..... ?

Q.639 Yes.
A.639 No sir.

Cross-examined:

Q.640 Cpl, why did you look around the room before stating that the accused was on my left? Was he the man on the parade square in this little part of your story?
A.640 I was asked if the accused was in the room. I have never been in this room before so I looked around to make sure that the man was in it and had not left it by another door.

Q.641 Why did you start looking from the right? The first person you looked at was the accused. Then you came back and looked to my left. Why that performance?
A.641 I did not at first notice that the accused was sitting on your left, sir.

Q.642 How often have you seen the accused since the night of 2 Aug?
A.642 Four or five times sir.

Q.643 Now tell the Court the first time you saw him?
A.643 The first time was at the Court of Inquiry on the morning of Aug 3rd.

Q.644 What time in the morning?
A.644 Somewhere between 0930 and 1030 hrs.

Q.645 Where was the accused?
A.645 Standing between his escort in the hallway of the Admin Wing of 1 CBRD.

Q.646 He didn't have a hat on?
A.646 Yes sir.

Q.647 Did you not observe him for at least 30 to 45 minutes?
A.647 Yes sir.

Q.648 Then there should be no difficulty in identifying the accused?
A.648 No sir.

Q.649 How often have you seen him since?
A.649 I saw him against the Summary of Evidence which was held in the Guard Comd's Room at 1 CBRD a few days later.

WBG

WB18

Q.650 Now to go back to the morning of the 3rd of Aug; you knew him as the accused before you knew him as "Robinson"?
A.650 Yes sir.

Q.651 Were you ever asked to identify him at a proper identification parade?
A.651 Yes sir. Major Morgan paraded five or six men into the CO's Office of 3 Bn and asked me to identify the man.

Q.652 You had seen him several times before this identification parade?
A.652 Yes sir.

Q.653 How much information about the accused did you have prior to the identification parade?
A.653 He was involved in some transaction on the 2nd of Aug. I had heard that a Hast & PER man had been shot on the night of the 2nd of Aug; and that a 48 Highrs Glengarry had been found at the scene of the shooting. So I reported to my Comd that I had left a Hast & PER man and a Seaforth man wearing a Glengarry in an argument on 1 Bn parade square.

Q.654 After you left Dillon arguing on the parade square, did you see the other man again?
A.654 No sir.

Q.655 Were you ever asked to identify him?
A.655 No sir.

Q.656 Howwell did you know Dillon?
A.656 While trying to argue him into going back to his billets I said I would meet him the next day and try to go into this idea he had that everyone was against him. I asked him his name and arranged to meet him the next day. He said his name was "Dillon".

Q.657 Then you can't tell the Court you were the last person who saw the man who was arguing with the man who gave his name as "Dillon"?
A.657 No sir.

Q.658 Then in point of fact there was no relationship that you could give between the argument and the incident of the shooting?
A.658 Yes sir.

Q.659 Why do you say "yes"?
A.659 Because the 48th Glengarry had been found at the scene of the shooting.

Q.660 Are you sure it was at the scene of the shooting?
A.660 Certainly sir.

Q.661 How did you find out it had been found on the parade square?
A.661 I had been told that a Hasty P man had been shot and the 48th Glengarry was found at the scene of the shooting. I had also been told that Pte Wilcock had been robbed of a Glengarry the night before. The combination of a Seaforth flash and a 48th hat badge appeared to me the answer.

Q.662 You told the Court quite clearly that you had the accused under observation before being asked to identify him on a proper identification parade, is that correct?
A.662 Yes sir.

Q.663 Then there is no excuse for making any mistake about it?
A.663 No sir.

Defending Officer:

I seek the advice of the Judge Advocate. I wish to register a complaint about the method by which the accused was identified.

WTB13

Judge Advocate:

That is more a matter for argument. You have a strong talking point.

Defending Officer:

Q.664 When you left the last two men arguing on the parade square, there was never any thought in your mind that any violence would ensue?
A.664 None other than fisti-cuffs.

Q.665 There was nothing in the conduct of these two individuals which in your opinion would warrant you, as a reasonable NCO, to stay and see that nothing happened?
A.665 No sir.

Q.666 Can you give me the approximate time you left the two men arguing?
A.666 Some time about 2230 hrs.

Q.667 Now you, as an NCO, are responsible to see the soldiers get in on time. Is that not true?
A.667 I was not on duty at that time.

Q.668 Do you not do anything but what you are told to do? Have you no initiative of your own?
A.668 Yes sir.

Q.669 Can you tell the Court whether or not this incident was after the normal body check or roll call at Canada Bks?
A.669 After sir.

Q.670 How much after?
A.670 Half an hour after.

Q.671 Are you sure you are not getting stuck with something and are qualifying your answers?
A.671 I don't understand.

Q.672 Why do you say it was half an hour after the body check?
A.672 Normal Tattoo is at 2145 hrs and takes until approximately 2200 hrs. It was at 2230 hrs that I left the two soldiers on the parade square.

Q.673 When you saw this individual wearing the Glengarry on his head, did you see articles in his hands or on his person?
A.673 No sir.

Q.674 Was there anything to indicate that he might be carrying a weapon?
A.674 No sir.

Q.675 Could you tell the Court whether or not a new draft arrived from England a few days before the 2nd Aug?
A.675 Yes sir.

Q.676 It did?
A.676 Yes sir.

Q.677 Were the billets at Canada Bks rather crowded at that time?
A.677 Yes sir.

Q.678 What would you say that the normal visibility was at 10 o'clock that night?
A.678 There was a bright moon.

Q.679 You mentioned a bright moon. Elaborate?
A.679 I would say the visibility of a moving body would be 75 to 100 yds. Detailed recognition at 10 to 15 yds.

W-818

Q.680 Visibility of a normal moving body at 75 to 100 yds?
A.680 Yes sir. Silhouette.

Q.681 Are the times you gave the Court, estimates?
A.681 That is right.

Q.682 What was your condition? Had you been drinking?
A.682 Yes sir.

Q.683 You and your companions were in a happy mood?
A.683 No sir. We had only four or five glasses of vermouth.

Q.684 Were you not in a jovial frame of mind?
A.684 No sir.

Q.685 Were you completely cold sober?
A.685 Yes sir.

Q.686 How much had you had to drink?
A.686 Four or five glasses of vermouth at 10 lire a glass.

Q.687 When did you arrive at Canada Bks? How long have you been there?
A.687 From 26 Jun 44 sir.

Q.688 Have you noticed that new drafts coming to this country are anxious to obtain weapons or souvenirs?
A.688 No sir.

Q.689 You have had no experience?
A.689 No sir.

Q.690 Have you had any requests from soldiers for American or Italian weapons?
A.690 No sir. Only from men of my unit who work with field units.

Q.691 Would you say that at Base there is a desire on the part of soldiers to obtain German or American weapons?
A.691 I have not had any such experience. I had heard of men of the Merchant Navy wanting them.

Q.692 Not Canadians?
A.692 No sir.

Q.693 Do you get around very much?
A.693 No sir.

Q.694 Did you notice the condition of any of the soldiers returning to Canada Bks while you were returning - whether there were many drunks or not?
A.694 There were quite a few men coming back to camp under the influence of liquor of some sort.

Q.695 The time limit, you gave in evidence, was from 10 to 10:30 o'clock?
A.695 No sir, 9:30 to 10:30 o'clock.

Q.696 Would you say the men under the influence were happy and carefree?
A.696 Yes sir.

No re-examination.

By the Court:

Q.697 What time elapsed from the time you left the two arguing until the time the shots were fired?
A.697 Three or four minutes.

W12/13

Q.698 You left them walking across the parade square and walked to your room on the third floor?
A.698 Yes sir.

Q.699 What were you doing when you heard the shots?
A.699 Getting into bed.

Q.700 Can you point out on Exhibit "G" where the conversation took place between the man you said was "Dillon" and the other individual who you stated had on a 48 Highrs Glengarry and Seaforth flashes?
A.700 Yes sir. They were on 1 Bn Sports Field. (Witness marks point with letter "K" on sketch.)

Q.701 Also you stated that you were talking to a Hast & PER man at the gate who was in an argument with one of your friends?
A.701 Yes sir.

Q.702 Later you were crossing the parade square when you saw this person whom you believed to be the same individual in another argument?
A.702 Yes sir.

Q.703 Didn't you state that there was another argument with the individual you identified wearing a 48th Glengarry and Seaforth badges?
A.703 That was a fourth man.

Q.704 That was the fourth argument you had with the person presumed to be Dillon that night? You are a Cpl, but you didn't feel he was sufficiently under the influence of liquor or behaving in a manner to warrant assistance?
A.704 No sir.

Q.705 Had you ever seen or had the occasion to observe the accused prior to the night of 2 Aug 44?
A.705 No sir.

By the Judge Advocate:

Q.706 In your evidence, Cpl, you stated that you had been downtown with friends on the 2nd Aug. What place do you refer/as downtown?
A.706 Along the main street of Avellino. to W-313

Q.707 How close were you standing to the two persons you stated got into an argument at the point on Exhibit "G" which you indicated by the letter "K"? How close were you?
A.707 About three feet.

Q.708 What was the condition of the accused at the time?
A.708 He appeared to have been drinking but not drunk.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83 (B).

Judge Advocate:

I am directed by the President to state that the Members of the Court, the Offr Under Instruction, the Judge Advocate, the Prosecutor and Defending Offr, the Accused and his escort will assemble at the Main Entrance of Canada Bks at 1400 hrs today to view the scene. During this inspection no questions will be asked of any witnesses.

Court adjourned at 1143 hrs.

At 1400 hrs the Court, Offr Under Instruction, Judge Advocate, Prosecutor, Defending Offr, and the Accused, attended at Canada Bks to view the scene of the alleged shooting.

Court re-opened at 1425 hrs, the same members being present.

W-313

SIXTEENTH WITNESS (K.42576 Cpl Shaw G.C. (Seaforth of Can) 2 Bn 1 CBRD
for Prosecution (having been duly sworn
(is examined by the Prosecutor

Q.709 Do you recall the night of 2 Aug 44?
A.709 Yes sir.

Q.710 What were you employed as?
A.710 Orderly Cpl.

Q.711 Which Coy?
A.711 S Coy

Q.712 Do you recall what happened that night?
A.712 Yes sir.

Q.713 Will you tell the Court what happened that night?
A.713 That night I was up late writing letters in the Orderly Room. At 2330 hrs Lt Snell and Major Bernier came into the Orderly Room. Lt Snell said .....

Q.714 What happened when Lt Snell and Major Bernier came into the Orderly Room?
A.714 I was told .....

Q.715 To get at it another way, what did you do after they came into the Orderly Room?
A.715 I didn't do anything. These two offrs talked to me.

Q.716 As a result of that, what did you do?
A.716 I told them "Yes".

Q.717 Don't repeat conversations. After that what did you do?
A.717 I showed the Major and the Capt in which bay and bed Robinson slept.

Q.718 Is Robinson in this room?
A.718 There sir. (pointing to the accused)

Q.719 What happened in the bed or around the bed of pte Robinson?

Judge Advocate:

For the benefit of the Court it might be well to establish the location of the bed and bay.

Prosecutor:

Q.720 How did you show them?
A.720 I looked at the chart in the Orderly Room and took the two offrs to the bay and bed.

Q.721 Where is the bay and bed?
A.721 In the Petawawa Bldg on the 2nd floor. The bay is the fourth bay and the bed is the first on the left.

Q.722 What type of bed was it?
A.722 Just blankets on a ground sheet on the floor, sir.

Q.723 In your presence and in the presence of the accused, did you see anything happen?

Defending Offr:

I am not satisfied that in the initial stage the accused was not sleeping. On that basis the accused to all intents and purposes was not there.

WBB

Prosecutor:

Q.724 Who was in the bed?
A.724 Robinson was in the bed.

Q.725 In what condition was he?
A.725 He was lying on his stomach. I believe Capt Snell turned him over and said .....

Defending Offr:

I object.

Prosecutor:

Q.726 Can you describe the accused's appearance?
A.726 There was blood on his face. His lips were swollen. There were scratches on his neck.

Q.727 Did you examine the accused?
A.727 I noticed him just before he was taken to the Guard House.

Q.728 I repeat the question, did you examine the accused?
A.728 Yes sir.

Q.729 What did your examination disclose?
A.729 That he had apparently been fighting.

Q.730 What did you see on the examination? You say you examined him. What did you find?
A.730 He had no identity discs.

Q.731 What kind of an examination did you make?
A.731 I searched his kit afterwards.

Q.732 After what?
A.732 After the accused was taken to the Guard Room.

Q.733 What were the appearances of the scratches, bruises, and blood on the accused's face and neck?
A.733 Just splotched on the face. The lips were swollen. The scratches on the neck looked as if they might have been from fingernails.

Cross-examination:

Q.734 Have you told the Court everything about that evening?
A.734 There were other things I had done that night, sir.

Q.735 There is much more you could have told the Court apart from what you have given about the accused. Is there not?
A.735 No, only what I carried out that night.

Q.736 You were responsible to make a body check at Tattoo?
A.736 No sir.

Q.737 Did you?
A.737 No sir.

Q.738 When did you?
A.738 No sir.

Q.739 Whose duty is it to report a man who is absent?
A.739 The Coy Orderly Sgt.

Q.740 Whose responsibility is it to make the Tattoo check?
A.740 The Coy Orderly Sgts'.

Q.741 I suggest to you, on that night, you reported Robinson in bed at roll call?
A.741 Not myself.

W1213

Q.742 Did you have occasion to report to any offr that Robinson was present and in bed on the evening bed check?
A.742 As far as I know the Tattoo Report showed that he was present at roll call.

Q.743 Cpl, have you any specific desire to find the accused guilty?
A.743 No, not on my own behalf.

Q.744 On whose behalf have you that desire?
A.744 I know little about the accused.

Q.745 What desire have you as regards the finding of the accused guilty of the charge laid?
A.745 (Witness makes no reply.)

Q.746 I suggest to you that you are anxious to see the accused found guilty?
A.746 No sir.

Q.747 Did you have occasion that evening, prior to 2330 hrs, to report to an offr that Pte Robinson was absent at 2200 hrs?
A.747 From the Tattoo Report?

Q.748 Did you have occasion to report him present? You had a witness as to that, correct?
A.748 Right.

Q.749 His name was Pte Piggott?
A.749 Right.

Q.750 Why did Capt Snell have to turn Robinson over? Was he asleep?
A.750 I don't know sir. I was just obeying an order.

Q.751 Was the accused Robinson asleep?
A.751 Asleep?

Q.752 Was Robinson asleep?
A.752 I cannot say sir.

Q.753 In your opinion?
A.753 I don't know.

Q.754 I don't want to labour this. I suggest you answer. Do you understand?
A.754 I am trying to, sir.

Q.755 Was Robinson asleep?
A.755 Capt Snell asked me to see whether this man was asleep, and afterwards ordered me to place this man under close arrest.

Q.756 Why did Capt Snell have to turn the accused over?
A.756 I don't know.

Q.757 Did Robinson have the appearance of a man asleep when you first saw him at 2330 hrs?
A.757 (Witness makes no reply.)

Q.758 I want you to realize one thing. A man may be hanged by the neck as the result of your evidence. Did Robinson, when you first saw him around 2320 hrs in the company of Capt Snell and Major Bernier, have the appearance of being asleep?
A.758 In my opinion he had been asleep.

Q.759 Now, you have told the Court that the scratches that you saw appeared to have been made by fingernails?
A.759 It looked like it.

W13B

Q.760 There were no distinct scratches?
A.760 No sir.

Q.761 They gave you the appearance of scratches?
A.761 Yes sir.

Q.762 Was the accused present when you made a search of his kit?
A.762 No sir.

Q.763 Is it usual at Canada Bks to have a soldier absent when a search is made of his kit?
A.763 No sir.

Q.764 You made a report that evening reporting Robinson to be in bed at Tattoo?
A.764 No sir, I did not.

Judge Advocate:

He made a report to some offr that, according to the Tattoo report, the accused was present, in bed, at roll call.

Defending Offr:

Q.765 What words did you use when you made a report to the offr?
A.765 When the battalion report is turned in to the RSM. That was the only report.

Q.766 What did you say to the offr?
A.766 I said that he was present in bed.

Re-examination:

Q.767 What time was the Tattoo roll call made?
A.767 Ten o'clock.

Q.768 Who made the Tattoo Report?
A.768 The Sgt of that Platoon.

Q.769 What was the Sgt's name?
A.769 Sgt Larson.

Q.770 What platoon was Sgt Larson in?
A.770 No. 1 Platoon.

Q.771 What platoon is the accused in?
A.771 No. 1 Platoon, sir.

By the Court:

Q.772 Was the report made to the offr in words or was it a document?
A.772 I just told the offr that I had seen the Tattoo Report.

Q.773 At what time did you tell this to the offr?
A.773 It was when I was interviewed by him that night in the Detention Bks.

Q.774 You arrived with Capt Snell and the Paymaster to the bed of Pte Robinson?
A.774 Right sir.

Q.775 What I would like to know is, did you receive any instructions at that time from these offrs?
A.775 The only instructions were to point out the bed and bay of Pte Robinson.

Q.776 Any other instructions?
A.776 Later I had other instructions, sir.

Q.777 How was the accused dressed or was he dressed when you saw him in his bay?
A.777 At the time he was lying in his bed?

Q.778 Yes?
A.778 His socks, shoes and pants were on the floor. He had a shirt on. I think so, but I am not sure.

Defending Offr:

Here is an opportunity of questioning the witness as to whether he felt the socks inside the shoes to see how long they had been on or off.

By the Judge Advocate:

Q.779 Did you or did you not examine the boots, socks, or any other articles of clothing that belonged to Pte Robinson?
A.779 No sir.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

SEVENTEENTH WITNESS(Capt J.H. Snell, 2 Bn 1 CBRD
for (having been duly sworn
Prosecution(is examined by the Prosecutor.

Q.780 Will you state to the Court your appointment and unit?
A.780 I am the Adjt of 2 Bn.

Q.781 Do you recall the evening of 2 Aug 44?
A.781 Yes sir. I recall it.

Q.782 Will you tell the Court, to your knowledge, what happened that evening?
A.782 I returned to Canada Bks at approximately 2315 hrs and found a few soldiers and offrs crowding around the entrance of the 2 Bn Offrs' Mess. I went to the 2 Bn MIR where I found Capt Verdicchio, 2 Bn MO, and Capt McKee, PPCLI. From information I received, I ascertained that a soldier had been shot on the main square outside the entrance of the Offrs' Mess. While still in the MIR, Capt McKee gave me a set of identity discs bearing the name of "Pte Robinson", number - "B.144333".

Q.783 I show you Exhibit "J". Do you recognize this?
A.783 I recognize the discs as the ones given to me by Capt. McKee.

Q.784 What did you do then? W-1313
A.784 Major Bernier, Paymaster, 2 Bn, who was present at the MIR, and I, endeavoured to find the owner of the discs through the card index system of 3 Bn. It appeared that they would have some bearing on the incident. We found the owner of the discs to be a Seaforth soldier. The number corresponded to one of the Seaforth cards in the 2 Bn Card Index. Major Bernier accompanied me to the Seaforth Office in the Seaforth billets. I found that Pte Robinson was billeted in the Seaforth quarters. The NCO got a candle as there was not sufficient light, and we went to the soldier's bed, which was an outside bed in one of the bays where the soldiers were sleeping. I found the soldier asleep on his face on the bed. I awakened him and asked him his name.

Q.785 Is that soldier in this Court Room?
A.785 Yes, I recognize Pte Robinson as the soldier I awakened on finding him in the Seaforth building. I noticed at the time that Pte Robinson's lips were cut and his face scratched. I told the Orderly NCO, Cpl Shaw, to take Pte Robinson to the 2 Bn RP. Major Bernier and myself searched the kit of Pte Robinson while he was still there. We found a .45 automatic, Army pattern, at the top of Pte Robinson's bed. I observed the magazine, finding that the gun was empty. I smelled the gun and detected a smell of cordite powder as if it had been recently fired.

Q.786 Will you fully describe the pistol in question?
A.786 The pistol was a .45 model: American make, .45 automatic. It was rusted slightly and not in very good condition. The number I first took from it was M.1911 which I later found was the model number only. The pistol was identical with an Army pattern .45. The only distinct feature I can recollect is that it was slightly rusted and did not appear in good shape. The number I ascertained at a later time. The pistol remained in my possession for a period of time. I am sure it was the same pistol.

Q.787 What was the number of the pistol?
A.787 I don't recall.

Q.788 Have you got any memoranda on your person?
A.788 I jotted down a few points: the number of the pistol and a few witnesses present on the evening of the incident.

Q.789 When did you make these notes?
A.789 I made these notes in the Bn Orderly Room while the Summary of Evidence was being prepared.

Q.790 Was the pistol out of your possession at that time?
A.790 Yes. The pistol was turned over to Major Morgan of 3 Bn who completed the Court of Inquiry. It was returned to me personally with the exhibits on completion of the Court of Inquiry. The exhibits were then placed under lock and key and specifically turned over to Lt Murphy who had them at various times until the completion of the Summary of Evidence. They were then returned for safe-keeping to 2 Bn.

Q.791 I am producing this weapon for your inspection. I want you to state to the Court if that weapon is the one you found on the night of the incident or not?
A.791 To the best of my knowledge that pistol is the same pistol I found on the night of the incident.

Q.792 How do you identify the pistol?
A.792 I recognize the pistol from its rusty appearance, also the corrosion contained in the barrel which I originally noticed at the time the pistol was found. (.45 automatic pistol, stamped "United States Property M1911 AI US Army No.948416 Remington Rand Inc, Syracuse, N.Y., USA", admitted and marked Exhibit "O".)

Q.793 After the revolver was found did you make any further inspections?
A.793 Yes, we searched the kit.

Q.794 Was the accused present at the time?
A.794 Yes, to the best of my knowledge the accused was present.

Q.795 Did you find anything?
A.795 The holster was found.

Q.796 Did you find the holster?
A.796 Major Bernier found the holster.

Q.797 Was the accused present at the time?
A.797 As far as I can recall the accused was present.

Q.798 Would you describe the holster?
A.798 To the best of my knowledge, the holster was a typical American one.

WWB

Defending Offr:

It is important to note that the witness eludes the Court by answering "To the best of my knowledge". I am convinced, myself, that the kit inspection was not carried out in the presence of the accused.

Judge Advocate:

I think the Court will object if they feel convinced that the manner in which a witness answers is unfair to the accused.

Defending Offr:

I am a little anxious that the Court should find out why he says "To the best of my knowledge".

Judge Advocate:

Will the witness please give specific answers? Capt Rose, [redacted] whether or not the accused was present when his kit was searched?

Prosecuter:

Q.799 Was the accused present when you searched the kit alleged to belong to the accused?
A.799 Yes.

Defending Offr:

This witness was not present and did not search the kit himself. If the Court were to adjourn, the Court would see from the .....

A.799 (continued):

The accused was lying on his bed. I was standing near his bed. I awakened the accused. Major Bernier was going to search his kit. I was questioning the accused as to who he was. I assisted Major Bernier in the search of the man's kit. The man was present.

Q.800 To whom do you refer when you say, "The man was present"?.
A.800 Pte Robinson.

Q.801 What did you find in his kit?
A.801 I found it was the ordinary soldier's kit. I didn't find the pistol. I didn't find the holster.

Q.802 Who was present when either the pistol or the holster were found?
A.802 Major Bernier and Cpl Shaw of the Seaforths were present.

Q.803 Where were you and where was the accused?
A.803 The accused was sitting up on his bed. I was sitting down on the left side of his bed. Major Bernier was on my left. The NCO was standing behind Major Bernier, to his left, in the hallway between the bays.

Q.804 Did you see either the automatic or the holster found?
A.804 I saw Major Bernier find the pistol at the top of Pte Robinson's bed.

W1313

Q.805 Did you see the holster found?
A.805 I didn't see it found, the spot, but Major Bernier produced the holster there. It was found in the kit.

Q.806 After these articles were found what did you do?
A.806 I told the Cpl to place Pte Robinson under close arrest and take him to the RP of 2 Bn, informing him I would be over later.

Q.807 Did you see the accused later?
A.807 Yes.

Q.808 Where?
A.808 At the RP 2 Bn.

Q.809 What happened at that time?
A.809 Major Bernier and I proceeded to the RP 2 Bn and tried to find out more about this incident. I got hold of the RP Sgt - Sgt Leclerc, and told him to bring the accused to me. The accused was brought to me.

Q.810 What did you do then?
A.810 I warned Pte Robinson. This was in 2 Bn Detn Room.

Q.811 Where were you sitting?
A.811 I was sitting at the table in the office of the detn barrack. The accused was standing in front of me.

Q.812 What did you say to the accused?
A.812 Major Bernier was sitting on my left. Sgt Leclerc was standing to the left of the accused. I warned the accused or said to the accused that he could make a voluntary statement under oath, and that it would be taken down in writing and perhaps later be used as evidence. As far as I can recall, these are the words I used.

Q.813 Were any threats made to the accused?
A.813 No threats or promises were made to the accused with the exception that I offered him some cigarettes which he smoked.

Q.814 Was any violence offered to the accused?
A.814 No.

Q.815 Was the accused in any manner, shape or form given any indication that if he made a statement things would be easier for him?
A.815 No.

Q.816 Was there a statement made?
A.816 I prepared a statement in pencil.

Q.817 Will you detail to the Court exactly what you did?
A.817 I asked the accused if he minded telling some of the events that happened during the evening. He made no objection. I asked the accused if he was aware of the order concerning the wearing of identity discs.

Defending Offr:

I object to the answers of the accused being admitted because the witness must have made up his mind to lay a charge against the accused at this stage. The statement must have been obtained in accordance with "The Judges Rules" as set out in para 78 MML p.91. I also object to any verbal answers the accused made as they are equally a part of the statement made by the accused.

Judge Advocate:

Do you object to both written and oral statements?

Defending Offr:

Yes sir.

Judge Advocate:

Capt Snell, the result of the objection is that at this stage you may not, until the Court decides it is admissable, tell the Court what were the contents of the written statement the accused made. The Court may hear what went on between you and the accused when making the statement. Nothing he said or the contents of the statement can be given in evidence until the Court rules that they are admissable.

Prosecutor:

Q.818 Will you tell the Court in what manner you obtained this statement or any statement from the accused?
A.818 I obtained the statement by asking the accused two or three questions which I wrote down. I received answers to these questions which I wrote down in the accused's own words. On the completion of the statement, I read it back to the accused in the presence of the witnesses I have mentioned. Then I asked him to sign it.

Q.819 Did you cross-examine the accused on his statement?
A.819 No I did not.

Prosecutor:

I submit that the statement of the accused given to the witness should be admitted into evidence.

Judge Advocate:

The Defending Offr has the right to cross-examine this witness on the manner of obtaining the statement. You may call other witnesses who were present at the time of the taking of the statement. The accused has the right to give evidence if he so wishes. This is what is known as a "Trial within a Trial".

Cross-examined:

Q.820 Have you seen the statement since you first took it on the night of 2 August?
A.820 Yes.

Q.821 Do you recall it? It seems to be in four or five different paras?
A.821 Yes.

Q.822 And each of these paras is the answer to a specific question you wrote down?
A.822 Yes.

Q.823 These questions were not asked by you merely to clear up an ambiguity or were they to .....
A.823 Clarify please.

Q.824 The questions you asked were not questions to clear up something you had learned of the incident from what the accused had just told you?
A.824 No.

WBB

Q.825 What was the condition of the accused? Had he been drinking?
A.825 Yes.

No re-examination.

By the Court:

Q.826 You say he had been drinking: to what extent in your opinion?
A.826 I say he had been drinking because I could smell liquor on his person. But he was standing perfectly upright and was in full possession of his faculties. Therefore, I took the statement.

Defending Offr:

I would like to ask a couple of questions of the witness.

Judge Advocate:

I have a few to ask myself. I will question the witness. If I do not cover the precise points you have in mind, the Court will put your questions for you.

By the Judge Advocate:

Q.827 When the accused was brought to you by Sgt Leclerc in the Detn Room office, did you explain to him that you were investigating the shooting which occurred in Canada Bks earlier that evening?
A.827 Yes. First I warned the accused. I told him there had been a shooting. After the warning, I asked him what he knew of it.

Q.828 I take it there was a reply to this preliminary question?
A.828 He didn't .....
Yes.

Q.829 Did you at any time form an opinion in your mind as to the accused being guilty or likely guilty of doing this shooting?
A.829 No. I wouldn't say that sir. I had a confused impression of the whole affair and was merely investigating.

Q.830 What period of time elapsed from the time that Cpl Shaw took the accused away from his quarters until the accused was brought before you again?
A.830 I would say a matter of five or ten minutes, fifteen minutes at the outside.

Q.831 Did you or did you not, before you asked the accused to sign this statement, ask him to read it over in order to make any corrections in it if he so wished?
A.831 I read the statement I had written to the accused and asked him if he wanted to say anything else or put anything else down.

By the Court:

Q.832 In the presence of the accused at the bedside, was there any confusion regarding ownership of the pistol?
A.832 I don't remember.

Defending Offr:

I would like the Court to put a question to the witness - whether or not he had made up his mind to lay a charge.

By the Court:

Q.833 Capt Snell, did you make up your mind to lay a charge against the accused when you found the pistol in the bed clothes of the accused's bed?
A.833 No, I felt that in my capacity as Adjt, an investigation should ensue before any charges could be laid. At the time we merely held Robinson in safe custody.

Q.834 Do you know whether or not a charge was laid against the accused for being improperly in possession of the pistol?
A.834 Yes.

Q.835 When was it laid?
A.835 On the completion of the Court of Inquiry?

Q.836 When did that take place?
A.836 I don't remember - about one or two days later.

Q.837 Who laid the charge?
A.837 We laid it - 2 Bn. I laid it.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of HP 83(3).

EIGHTEENTH WITNESS(Major J. Bernier, RCAPC, 2 Bn 1 CBRD,
for (having been duly sworn,
Prosecution (is examined by the Prosecutor.

Judge Advocate:

Major Bernier, the Court at this moment is only concerned with ascertaining the facts leading up to the obtaining of a certain statement or statements from the accused. The previous witness has given evidence that a statement was obtained. He has described or given his version of the manner he obtained it. The Defending Offr has objected to the admissibility of the accused's answers and the statement. So we are only concerned with what transpired up to the obtaining of the statement.

Q.838 Will you give the Court your appointment?
A.838 I am Paymaster of 2 Bn.

Q.839 Do you recall the evening of the 2nd Aug 44?
A.839 I do.

Q.840 Were you in 2 Bn Detn Bks that night?
A.840 I was.

Q.841 Who else was there?
A.841 Capt Snell, the Adjt of 2 Bn, along with several witnesses in connection with the accident that happened that night and the accused whom I now recognize in this Court Room.

Q.842 Will you tell the Court what was said to the accused but not what the accused said in reply? You were in this room; where were you?
A.842 I was sitting next to Mr Snell at a desk in the Guard Room.

Q.843 You spoke to the accused?
A.843 I didn't. No sir.

Q.844 Did anyone else speak to the accused?
A.844 Capt Snell told the accused that he could make a statement or give evidence on oath, and that what he would say was to be taken down in writing and used in evidence.

Q.845 Were any threats made to the accused?
A.845 No.

Q.846 Were any promises held out?
A.846 No.

Q.847 Was there any duress of any sort whatever?
A.847 No, none at all.

Q.848 Was there a suggestion that if he made a statement things might become easier for him?
A.848 Nothing like that, that I recall.

Q.849 After the statement was made, did Lt Snell read it to the accused?
A.849 I don't recall whether he read/or showed it to the accused to read before signing. it

Q.850 Was there any inducement made to the accused to sign the statement?
A.850 None that I recall.

Cross-examined:

Q.851 What words did Capt Snell use when he wanted the signature?
A.851 I cannot recall the actual words.

Q.852 I suggest to you it was in the form of a command, "You sign here".
A.852 No, I would not say it was in the form of a command. It was shown to him.

Q.853 Were these words used?
A.853 No, I don't recall that.

Q.854 Do you recall anything of the methods used in obtaining the signature?
A.854 As far as I recall, it was pointed out to him that it was a rather important document, and that it would be better for him to sign it.

Q.855 The information which Capt Snell wrote down after he gave the caution was obtained by asking the accused questions and listing answers, was it not?
A.855 Yes.

Q.856 The questions were not put merely for the purpose of clearing up any misunderstanding in Capt Snell's mind but to elicit specific information?
A.856 Yes.

Q.857 Had the accused been drinking?
A.857 Yes.

Q.858 Capt Snell has told the Court the relevant positions of himself, yourself, the Sgt, and the accused. Would you tell the Court the relevant positions?
A.858 Capt Snell was sitting at the desk. The accused was immediately in front of him. I was sitting at Capt Snell's right. I am not sure of the Sgt, but I believe he was sitting fairly well back near the door which was on the right of the desk.

Q.859 Some cigarettes were offered to the accused while the information was obtained from him?
A.859 Yes.

Re-examination:

Q.860 Who stated that it might be better for the accused to sign this statement?
A.860 I don't recall that that was exactly my answer. The Offr for the Defence asked me in what way the demand was made. As far as I recall it was made in the line of advice.

Q.861 Who gave this advice?
A.861 Capt Snell.

By the Court:

Q.862 Had the accused been told before he started to give his statement that it would be taken down in writing, and he would be expected to sign it?
A.862 He was warned.

Q.863 But not told that he had to sign it?
A.863 Not that I recall.

Q.864 You stated the accused had been drinking?
A.864 Yes sir.

Q.865 Do you think that his reasoning or understanding was effected at that time?
A.865 Not in my opinion.

By the Judge Advocate:

Q.866 Were the cigarettes offered to the accused or did he ask for them?
A.866 They were offered.

Q.867 By whom?
A.867 By Capt Snell.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

Judge Advocate:

Does the accused wish to give evidence?

Defending Offr:

No sir.

Defending Offr's Submission:

Sir, I object to the statement being put in evidence on the basis that the information obtained was made after the Bn Adjt - the investigator - decided to lay a charge or charges against the accused. The caution was not properly administered, and it was not a proper caution. From the evidence, the Court can readily infer that the statement was given under duress. Consider that a private soldier, who, in the opinion of the interrogater had been drinking, was awakened and marched, under the escort of a Sgt, no less, to the Guard Room. In any event the Sgt was available throughout the interrogation. It was not sufficient for them to obtain merely a L/Cpl from the unit to get the statement. Capt Snell must also have the assistance of a Field Offr to help

W-1310

him. All of these things must have thrown a little fright into the accused. Therefore he was under duress. There is evidence of Capt Snell being the "big brother" of the accused. There is evidence of an inducement, the giving of the cigarettes. Major Bernier states that Capt Snell tried to influence the accused with the advice that it might be better if the accused signed it. This is sufficient evidence from which the Court can draw the inference that there was a threat. I would like to draw the Court's attention specifically to sub-para 7 on page 92 in MML which covers the accused's particular case. This statement is a set question and answer statement and, therefore, inadmissable. I quote: (reads MML Chap VI p.91 sub-para 7). I would draw the Court's attention to the fact that the accused, in the eyes of the person obtaining the answers, had been drinking. Great care must be taken in demanding statements from people who have been drinking, whether little or much. I refer to MML p.93 para 79 which reads as follows: (reads para 79). I wish the statement thrown out.

Prosecutor's Answer:

There is no evidence before the Court from which it can be inferred that a charge was to be laid against the accused. I suggest that the statement was obtained in accordance with the rules laid down by the Judges of the King's Bench Division, found in para 78 at p.91 of MML. In particular, I quote: (reads sub-para 1, MML, p.91). There is no indication, either, in the evidence that the accused was cross-examined as the Defending Counsel suggested. I will read you sub-para 7 on p.92 of MML again. (reads sub-para 7). In any event the caution which was given, I believe, comes well within the ruling of the Court, which in the past decided the form in which the caution should be given. This individual offr gave the exact words used. His failure to put the caution in the exact words of the Rule indicates merely he was not qualified, you might say, in obtaining confessions. He is, you might find, in the capacity of a police offr. There is no evidence of any inducement, threat or promise made to the accused. It was between ten and fifteen minutes from the time he was placed under close arrest in his billets before he was questioned in the detn room of 2 Bn. He was given cigarettes. In fact the attitude of the offr taking the statement was, as far as the accused was concerned, in my opinion, a helpful one. He wanted to make the accused as comfortable as possible. The cigarettes were not offered - there is no suggestion they were offered as an inducement to the accused. There is no evidence before the Court to indicate that the accused was, in any shape or form, drunk. There is some evidence that he had been drinking which is the most ambiguous term. The signature was obtained after the accused had made the statement and had either read it over or had it read over to him. At that time he had the opportunity to delete or make any corrections in the statement if he so desired. I submit that the statement should be admitted in evidence.

The Defending Offr made no reply.

The Court closed to consider the Submission. The Court was re-opened.

Judge Advocate:

Pte Robinson, I am directed by the Court to advise you that the submission made by your Defending Offr has been allowed. In consequence of that, the statement will not be admitted in evidence, and no answers to questions which were put to you during the investigation at 2 Bn Detn Room Office will be admitted.

WMB

SEVENTEENTH WITNESS (Capt J.H. Snell, 2 Bn 1 CBRD, recalled, already sworn, is examined by the Prosecutor.

Q.868 Did you make any examination of the accused's person at the time you awakened him?
A.868 Yes.

Q.869 Will you describe to the Court what you found?
A.869 I noticed the accused's lips were bruised and cut and that there were scratches on the front of his neck below the chin.

Q.870 Describe these bruises, cuts and scratches?
A.870 Well, the bruises on his face were similar to bruises or cuts one would get in a fight. I would not say he had been in a fight that night. The scratches on his neck were two or three long scratches running diagonally down from his chin and approximately 2½ inches long.

Q.871 Do you recall how many scratches there were?
A.871 Two or three.

Q.872 Was the accused properly dressed when you saw him?

Defending Offr:

I object to the form of that question.

Prosecutor:

Q.873 Describe how the accused was dressed at the time or a few minutes after he was awakened?
A.873 The accused was dressed in trousers with his boots off but his socks on. I would say he also had on some sort of undershirt.

Q.874 Did the accused put on any article of dress at the time you were with him there?
A.874 I don't remember.

Q.875 Could you tell the Court of any other article of dress that the accused had on at the time?
A.875 He might have had on a pair of shorts.

Q.876 You said he had trousers on?
A.876 Trousers, socks and a white undershirt.

Q.877 What were the condition of the clothes?
A.877 His clothes were quite dirty.

Q.878 When you next saw the accused, will you describe his dress?
A.878 The accused had on a bush shirt and shoes but no hat.

Q.879 Will you describe the condition of the bush shirt?
A.879 The bush shirt was dirty. That is all I recall.

Judge Advocate:

Capt Bergman, do you wish to proceed with your cross-examination now? Would it prejudice your case if the Court were to adjourn until tomorrow morning?

Defending Offr:

I have made fairly complete notes which I wish to study tonight. I won't be prejudiced if the Court is adjourned until tomorrow.

Court adjourned at 1655 hrs.

Court re-opened at 1000 hrs, 23 Sep 44, the same members being present.

Prosecutor produced Medical Certificate.

Cross-examined:

Q.880 Capt Snell, when did you make up your mind that serious charges would be laid as a result of the shooting?
A.880 On completion of the Court of Inquiry at 3 Bn.

Q.881 Had you not formed a complete conclusion as to the guilt of the accused when you found the pistol and identity discs during your investigation?
A.881 I was confused about the evidence. I had formed no definite opinion.

Q.882 What made you place him under arrest?
A.882 I placed him under arrest because of the circumstances surrounding him. He might be involved. I placed him in safe custody to further the investigation.

Q.883 How soon after the shooting did you make up your mind that this was not a case of suicide ?
A.883 I didn't arrive at that conclusion.

Q.884 Didn't you consider that a possibility?
A.884 I didn't consider any possibilities. My mind was confused - muddled.

Q.885 Didn't you think it was a little ridiculous that decision?
A.885 My opinion was my own opinion. I heard a lot of things. I was not present at the body or even near the shooting. I found a Seaforth soldier who had been drinking with a pistol in his possession, the .45 automatic which I identified. Certain empty .45 calibre casings were found. All of which seemed to point to the fact that he was lying.

Q.886 You came to the conclusion that he was lying?
A.886 That was my opinion. As it was so late, I thought I had better place him in safe custody. I thought, in my own mind, that he might have been lying.

Q.887 It was a definite conclusion on your part?
A.887 Yes.

Q.888 It was a definite conclusion that he was very closely linked with the shooting?
A.888 Yes.

Q.889 Can you tell the Court how soon after the incident the Court of Inquiry was in your hands?
A.889 The Court of Inquiry was delivered to me the night of the following day, 3 Aug 44.

Q.890 How soon after the shooting did you say the charge was laid against the accused for being improperly in possession of the weapon?
A.890 I received the Court of Inquiry. As it seemed quite a long case and in my opinion it would come to a Summary of Evidence, the charge was placed against Robinson.

Q.891 Was he dealt with and punished?
A.891 Yes he was charged and given 28 days.

Q.892 Detention?
A.892 Detention.

Q.893 When you read the Court of Inquiry, did you see the recommendations made by the offr of 3 Bn?
A.893 I did.

Q.894 In view of these recommendations, you still felt you should lay the charge of improper possession?
A.894 Yes.

Q.895 In view of what was contained therein, hadn't you now come to the conclusion that the accused was guilty of the shooting?
A.895 No.

Q.896 Have you ever received instructions in your capacity as Adjt, or heard that the Judge Advocate does not want a multitude of charges laid?
A.896 Yes.

Q.897 Did you think that laying a charge against the accused was in accordance with those instructions?
A.897 Yes I do.

Q.898 How long have you been in the Army, Capt Snell?
A.898 I have been in the Army for about four years.

Q.899 Who was your Commanding Offr on the 2nd of Aug?
A.899 Colonel Lent.

Q.900 Did you know whether or not he has legal qualifications?
A.900 Yes he was a lawyer.

Q.901 Did you consult him?
A.901 I did.

Q.902 How often have you read the evidence you gave at the Summary of Evidence?
A.902 I have read it very little. I read it yesterday morning.

Q.903 Just prior to coming into Court?
A.903 Yesterday, not this morning.

Q.904 This morning?
A.904 No, not this morning.

Q.905 You did, in your evidence yesterday, identify Exhibit "J", the identity discs handed to you by Capt McKee. Are you convinced that they are the same or different?
A.905 I state specifically, they are the same.

Q.906 On what identifying marks, do you base this opinion?
A.906 The cord is similar.

Q.907 The type?
A.907 No. The cord is the same cord. It is short and won't go around a person's neck. The marking and stamping on the discs is rough. The name is the same. The way the discs are tied is exactly the same as they were tied. It bears the same number, rank and name as before. They are the same discs.

WRB

Q.908 There is one distinct peculiarity about the identity discs in connection with the letters of the name. Can you tell the Court what that peculiarity is?
A.908 I don't recall.

Q.909 You examined them and you didn't see this distinct peculiarity? There is something peculiar about one of these discs - something in connection with the numbering which is not very often found on identity discs?
A.909 Possibly.

Q.910 Do you still say you gave them a microscopic inspection?
A.910 I didn't give them a microscopic inspection. I examined them.

Q.911 Still you gave the Court a microscopic description of them as you recalled them, did you not?
A.911 I stated that I recalled them.

Q.912 Examine Exhibit "J" and explain to the Court how the initial on the top disc is placed in relation to the one on the bottom disc?
A.912 They are joined. The "D" runs into the "PTE".

Defending Offr:

The initial and the "PTE" run into one another. I draw the Court's attention to Exhibit "J" - to the top identification disc and to the lettering "PTED".

Q.913 When you received a copy of the Court of Inquiry, did you implement any of the recommendations made by the Commanding Offr of 3 Bn?
A.913 Yes there were. I have seen the Court of Inquiry very little. As I recall in the findings several charges were suggested. From that it was decided in 2 Bn to place a charge of improper possession against Pte Robinson. The Commanding Offr, 3 Bn, recommended the investigation of several rather serious offences.

Q.914 Did you or did you not take steps to implement these recommendations?
A.914 Yes. After Pte Robinson was charged, it was suggested that we send the pistol to some ballistic experts in Rome. Major Morgan of 3 Bn contacted them through Fd Security. That fell through.

Q.915 How did it fall through?
A.915 Apparently they could not find or locate this ballistic expert in Rome. The pistol was returned to 3 Bn and turned over to him again. This took a certain period of time. It was decided that a Summary of Evidence would have to be taken. Mr Murphy was detailed to round up any persons who might have information concerning the event.

Q.916 Is there any MP force in your Bn?
A.916 Yes.

Q.917 Were there any MP offrs and personnel available to assist you in the investigation?
A.917 Yes.

Q.918 Did you request such assistance?
A.918 No.

Q.919 Why did you not obtain the assistance of their trained personnel?
A.919 I had a variety of reasons. I was very busy with the drafts at the time.

WBB

Q.920 You were busy with drafts?
A.920 I was very busy. I had an offr working at 2 Bn Orderly Room who devoted his whole time to the preparation of Summaries of Evidence, Courts of Inquiry, etc. I had an administrative offr to assist me. I turned over the investigation to this offr as I could not spare the time myself to help Mr Murphy.

Q.921 What is the other of the two reasons?
A.921 I suggested to Mr Murphy that he contact the Judge Advocate which I know he did - due to the seriousness of these charges.

Q.922 Is it the duty of the Judge Advocate to assist in advising you as to whether or not there is sufficient evidence or to assist in investigating the case?
A.922 He is there to clarify certain points. It is not the Judge Advocate's job to direct police investigations.

Q.923 The impression I got was that on various points that arose, on points of law, the Judge Advocate assisted -----

Judge Advocate:

To clarify this for the benefit of the Court; I was not then acting as a Judge Advocate. I was acting in my capacity as ADJA Gp HQ. I am here today as Judge Advocate.

Defending Offr:

Q.924 When did you first consult Capt Bate, ADJA Gp HQ?
A.924 I cannot give you the date. It was four or five days afterwards. Mr Murphy could tell you better.

Q.925 And when Capt Bate was first consulted, was Mr Murphy in possession of any of the information given to the Court these last three days?
A.925 No.

Q.926 You are satisfied in your mind that Mr Murphy sought the best advice that he could obtain and was capable of completing a murder investigation?
A.926 Yes.

Q.927 Had Mr Murphy any recent experience to your knowledge?
A.927 No.

Q.928 Had Mr Murphy any previous experience in murder investigations?
A.928 Not to my knowledge. Mr Murphy spent a period in England and here on Courts of Inquiry and Courts Martial work. He has turned in very efficient work with few repercussions of any sort, and he was quite qualified to deal with this case.

Q.929 You gave evidence yesterday that you and Major Bernier decided to obtain particulars of the owner of the discs that were handed to you by Capt McKee?
A.929 Yes.

Q.930 What did Major Bernier have to do with the discs?
A.930 The decision to pursue the tracing of the discs was simultaneous. He was to check the Pay records and I was to check the Card Index which were in the Bn offices.

Q.931 So you and Major Bernier set yourselves up as an amateur detective office?
A.931 Yes.

CW-13.43

Q.932 When you first went to the bed in which you found the accused that night, you stated that it was by candle light?
A.932 I think there were two candles.

Q.933 You were not in a particularly observant mood that night?
A.933 Quite. Yes.

Q.934 The NCO who was present previously told the Court that he brought a lantern along. Is he right or are you?
A.934 He may have been right. He might have gone back for the lantern, but there were candles when we first went to the bed.

Q.935 What do you say? When you first got there with the NCO, was there a lantern or candles?
A.935 Candles when I first went in as far as I can remember.

Q.936 You are not sure?
A.936 (Witness makes no reply.)

Q.937 If you are not sure of such a small detail, how could you be sure that your specific identification of the discs is any more accurate?
A.937 Yes, I am. My attention was centered on them. My attention was not centered on the light. There was light around the bed.

Q.938 How can you tell the Court you saw scratches on the face or the neck of the accused when you saw him on 2 Aug 44? What conclusion did you come as to how these scratches were incurred?
A.938 My impression!

Q.939 Yes?
A.939 In the RP the soldier ------

Q.940 At the bed?
A.940 When this soldier, who was lying on his face, turned over, his face was bruised - lips bruised and face damaged. On his neck were scratches that had no significance at the time. He was not wearing discs when found in bed. As he was Robinson and I had Robinson's discs, it occurred to me on the way over to the RP that his scratches had some significance. On arrival at the RP I asked Cpl Shaw, in the presence of the accused, if he had noticed scratches on Pte Robinson areund his neck. He said "No". I sent the Cpl into the cell where Pte Robinson was. I said take a look at his neck. He came back and I -------

Q.941 You first stated you had this conversation in the presence of the accused. Now which is it?
A.941 Not in his presence. We were told by Cpl Shaw that the scratches resembled scratches which might have been put on his neck by fingernails.

Q.942 Was there any difference in the length and width of the individual scratches? Were they of the appearance of having been put on by fingernails?
A.942 Yes. They looked like scratches.

Q.943 Now, to the best of your knowledge, was any attempt ever made to examine Dillon's fingernails to see if any blood was clotted in them?
A.943 To the best of my knowledge I never heard of any.

Q.944 Don't you think that would be the best way to link Dillon with the accused?
A.944 I would say that that would be a very good method.

WT313

Q.945 Do you agree that that would be the usual police method?
A.945 I am not versed with police methods.

Q.946 Would you tell the Court if a draft had arrived recently from England - just prior to the 2nd Aug?
A.946 Yes.

Q.947 Was there a fair number of Seaforths in camp around 2 Aug 44?
A.947 Yes, there was quite a number.

Q.948 A number of 48th Highrs?
A.948 Yes.

Q.949 And quite a few Hast & PER?
A.949 Yes.

Q.950 When you found the accused asleep in bed with the pistol, was any attempt made to find out whether the accused had been recently seen in possession of the pistol by any of the people in the Bks?
A.950 Taking into consideration .....

Q.951 Forget the time limit that evening. Were any specific steps taken to determine whether or not the accused was seen in possession of that particular pistol?
A.951 I don't know.

Q.952 Did you yourself give that any consideration?
A.952 Mr Murphy and I discussed it.

Q.953 Did you discuss the investigation with him?
A.953 I don't remember what matters were discussed.

Q.954 Did you, in that discussion, consider obtaining the assistance of the police?
A.954 Yes, I 'phoned the Pd Security Offr with reference to the pistol: asked if he had anything to report on it and found out this expert was not available. I frequently asked Mr Murphy how the Summary was getting on and if further assistance was needed. I don't remember telling him specifically to contact the Local Provost or any other police personnel.

Q.955 Who suggested the trip to Rome for ballistic purposes?
A.955 3 Bn instigated it if I remember correctly.

Q.956 Who is Capt Allan, W.C.?
A.956 I think he is OC or 2IC of the Pd Security Sec.

Q.957 Did you ever hear of the American ballistics people at Naples?
A.957 No. We were endeavouring to find out.

Q.958 Did you contact the DAPM, the L of C Pro or the SIB of the CMP?
A.958 No.

Q.959 I would like to direct the Court's attention to the next one or two questions and ask them to try and recall the method in which Exhibit "O" was put in by this witness yesterday. When you were handed the pistol, Exhibit "O", yesterday by the Prosecuting Offr, do you recall the method in which you presented it to the Court - how much you handled it?
A.959 Fairly well.

Q.960 Capt Rose handed it to you; then you identified it and then you looked at it?
A.960 I broke it.

Q.961 Will you take it and break it exactly the same as you did yesterday?
A.961 If I didn't I should have.

Q.962 You made a statement that you did?
A.962 I don't think I did. I looked at it.

Q.963 You looked at it and could see the corrosion on it?
A.963 I examined the features of the pistol and noticed it was corroded.

Q.964 Can you tell from there that the barrel is corroded?
A.964 The light was shining on it. I can see it.

Q.965 How much did you see? Did you look at it that closely?
A.965 I did. I also recall seeing it on the table, and on examination it had corrosion in the barrel.

Q.966 Did you inspect it in the same manner?
A.966 It is not hard to see the corrosion.

Q.967 Can you examine a barrel without looking down it?
A.967 Not in the true sense of the word, not to examine it.

Q.968 The amount of examination in detail that you did is evidence on which someone may be convicted of a serious offence. If the evidence is going to be as sloppy as that identification of yours, there will be a miscarriage of justice. Now, what do you say?
A.968 I identified the pistol.

Q.969 You smelled the gun on the night of 2 Aug?
A.969 Yes.

Q.970 And as a result of that smell you came to the conclusion that the pistol had been recently fired?
A.970 Yes.

Q.971 Take Exhibit "O" and tell the Court if the smells from it are any different than those of 2nd Aug?
A.971 It smells of oil now and didn't the other day.

Q.972 How would the oil get there?
A.972 I assume it has been cleaned.

Q.973 How would the oil get there?
A.973 A certain amount of oil remains on certain parts of the mechanism for some time.

Q.974 Now, when you told the Court the pistol had been recently fired, what period of time do you mean by "recently"?
A.974 Recently fired?

Q.975 What do you mean by "recently fired"?
A.975 Recently fired could be a short period.

Q.976 Would it be less than an hour?
A.976 Possibly.

Q.977 Take the time you want .....
A.977 1½ hours.

Q.978 What is the time you meant?
A.978 No one could state the exact time that cordite in any weapon would last.

Q.979 How could you say it was recently fired?
A.979 It smelled quite fresh. The impression I got was that it had been recently fired.

Q.980 You say it had been recently fired. I want an estimate as to how recently?
A.980 The smell of powder from a weapon that had been fired might last a day or only two hours. I would think, from my experience, that where a weapon had been fired the smell would last for some time. My impression from smelling it, when handing it to Major Bernier, was that it had been fired within the last three or four hours.

Q.981 The shooting only occurred approximately one hour before the pistol was in your hands?
WBB A.981 Possibly.

Q.982 Did you look for any other pistols that may have been fired that evening?
A.982 Yes. We enquired about any .45 automatics around. There were a few around the barracks. Several offrs had them. Their pistols were not fired.

Q.983 How and when did you make that check?
A.983 In conversation. I saw two pistols.

Q.984 Don't you feel ridiculous about the way you made your check?
A.984 It was hard to find pistols in all the various places.

Q.985 There were lots around?
A.985 Not of that particular type.

Q.986 There were a lot of souvenir weapons in the hands of soldiers at that time. It was a very popular pastime to collect weapons, was it not?
A.986 Yes.

Q.987 Did you find any difference in the souvenir value of weapons to soldiers just here for the first few days and two or three months after? Are they more anxious to obtain pistols when they first arrive?
A.987 I would say so. I would say that they had it in mind to collect a pistol and carry it as long as they possibly could.

Q.988 If I were to tell you that a pistol fired at 0845 hrs has the same smell at 1000 hrs as it would have at 4:30 o'clock, would you agree that was possible?
A.988 Everything is possible.

Q.989 I only want your opinion from your military experience. Would you agree to the possibility?
A.989 There is the possibility. In my experience, a fresh smell of cordite departs and afterwards you smell corrosion.

Q.990 Was the soldier you found in bed at 2230 hrs asleep?
A.990 He was lying on his face. I assumed he was asleep.

Q.991 Did you turn him over?
A.991 I awakened him.

Q.992 Did he have the appearance of a sleeping man? Did you come to the conclusion he had been sleeping? Did you have to awaken him?
A.992 Yes. I assumed he had been sleeping. My first impression was that he was drunk. I smelled liquor on his breath when he was talking.

WBB

Q.993 When was the first identification parade to let the witnesses pick out the accused?
A.993 Major Morgan held the identification parade preceding the Court of Inquiry.

Q.994 Who found the pistol?
A.994 To the best of my memory Major Bernier found the pistol at the top of the bed in the clothing the accused used as a pillow. It was a simultaneous finding. I was searching the kit, and he probably got his hands on it first.

Q.995 Was it in the man's pillow or by his head or in his kit?
A.995 Underneath the clothing used for a pillow on top of his head.

Q.996 Why did you arrange a second kit inspection?
A.996 Because our inspection had been cursory so I decided that a thorough search should be made. The kit was taken to the RP so that nothing could be taken away from it.

Q.997 You took the regular Infantry Training for an offr?
A.997 Yes.

Q.998 Have you handled rifles or pistols to any great extent?
A.998 Yes.

Q.999 Have you fired a large number of shots from a rifle or pistol or some weapon? Is it not correct that the firing pin on the explosion of the cartridge makes an identical mark on each cartridge?
A.999 Yes.

Q.1000 In order to get the casings out, the ejector is used?
A.1000 Yes.

Q.1001 The ejector makes marks on the cartridge as it ejects the cartridge?
A.1001 Yes.

Q.1002 Have you at any time examined the firing pin mark on cartridges after shots have been fired?
A.1002 I have.

Q.1003 Did you notice any similarity in the marks made in the firing?
A.1003 Yes, three.

Q.1004 I show you Exhibits "M" and "N". Is there any similarity in the firing pin marks?
A.1004 There is a difference.

Q.1005 From your experience, is there anything here to make you come to the conclusion that these cartridges were fired by different weapons?
A.1005 There are two possibilities. One is that they were fired by different weapons. The other is that the spring firing the trip, due possibly to the condition of the pistol, didn't strike hard enough on that particular cartridge.

Q.1006 Examine Exhibits "M" and "N". Is the head the same in each casing or different?
A.1006 There is a difference.

Q.1007 You admit there is a difference?
A.1007 It appears that way.

WBB

Q.1008 That being the case, the conclusion to come to is that they were fired from different weapons?
A.1008 I am not a pistol expert. I cannot say.

Q.1009 Did you examine any of the cartridges for ejecter marks?
A.1009 No, I did not.

Q.1010 Supposing you did not find the pistol on Robinson's bed but found it in some other place; is there any way in which you could have linked up that particular pistol with the accused?
A.1010 I am not sure -----

Q.1011 Had the pistol not been found in or near Robinson's bed but found elsewhere, would there have been any possibility of connecting the pistol with the accused?
A.1011 Not unless he attempted to conceal it.

Q.1012 Is there any way to prove it?
A.1012 By fingerprints?

Q.1013 Was it tested for fingerprints?
A.1013 No, I don't think so.

Q.1014 Did you give any such instructions?
A.1014 No.

Q.1015 Do the police have such facilities available in this theatre?
A.1015 If the pistol hadn't been handled by about 20 individuals we could have tried it.

Q.1016 The pistol was not on charge to Robinson?
A.1016 No.

Q.1017 Did you examine Dillon's conduct sheet?
A.1017 No.

Q.1018 Did you check to find out if there had been any previous bad feeling between Dillon and Robinson?
A.1018 No.

Q.1019 Was it given consideration by anyone you knew of?
A.1019 I heard that 3 Bn gave it consideration. It was only hearsay.

Q.1020 So that, if the weapon had been found in the middle of the parade square, there wouldn't have been any link between the body of Dillon and the accused?
A.1020 No.

Q.1021 If the identity discs were not found near or by the body of Dillon, you would not have any way of linking Robinson with this incident whatever?
A.1021 No.

Q.1022 Can you suggest to the Court any motive for this shooting on the part of Robinson or anyone else?
A.1022 The motive?

Q.1023 The motive. Can you suggest any motive which you found in your investigation?
A.1023 Any one of several.

Q.1024 I want you to be very careful in answering that. Did you find any motive, to your knowledge, of linking the accused with the shooting of Dillon?
A.1024 No.

WTB/B

Q.1025 In your opinion was the argument they had, the motive?
A.1025 No.

Q.1026 Was any consideration given as to how this shooting took place, having reference to the position of the body and the shots fired?
A.1026 Yes.

Q.1027 What consideration that you know of?
A.1027 Various theories. Lots of people mentioned them and most of them were discarded.

Q.1028 Would you tell the Court one of your theories?
A.1028 The theory that he was fired at and shot in the front of the head. There was a discussion by the MOs, but they couldn't make up their minds as to the correct theory. Another theory was that he was shot while running away.

Q.1029 When you considered that the man might have been shot from the front while standing, did you try to find out where the other person might have stood to fire the shot?
A.1029 I did.

Q.1030 And did you take into consideration that the first empty cartridge casing, Exhibit "M", was found approximately some eight feet from the body? Realizing where the cartridge casing was found and that it was fired from an automatic weapon, did you try to reconstruct that? What did you find, was the normal ejection distance?
A.1030 A .45 throws right. The casing is ejected straight up and drops three or four feet from the pistol.

Q.1031 What if it fell on a hard surface?
A.1031 It might bounce.

Q.1032 You said you carried out a test?
A.1032 I said I fired several .45s.

Q.1033 What I am trying to do now is to keep to the specific case dealing with the incident on the 2nd of Aug. You said several theories were advanced. I want to test whether you agree with these theories of this shooting. Were any of these theories discarded?
A.1033 We have been discarding them.

Q.1034 Did you reconstruct the shooting out in front of the Offrs' Mess in the area where the body was found?
A.1034 We reconstructed the shooting at the time and discussed how he was shot, in front or rear. It was thought at that time it was from behind. We were merely investigating the scene of the shooting for more information.

Q.1035 Did you examine any walls for slugs?
A.1035 We did.

Q.1036 Did you go over those walls very closely?
A.1036 We did.

Q.1037 What walls?
A.1037 The walls in front of the Offrs' Mess.

Q.1038 Did you go over carefully the west side of the Borden Block? I show you Exhibit "G" for reference.
A.1038 I examined the wall of the Ottawa Bldg, but I didn't examine the wall of the Borden Block. The reason I examined the side of the Ottawa Bldg and the Offrs' Mess was because I thought that the shots had been fired from the sports ground in front of the Ottawa Bldg. Another reason for examing the wall was the position of the pool of blood. We happened to find a bullet in the wall of the bldg. There were several bullet holes, all of which might have been made by .45 slugs. It was impossible to find out which was the bullet.

WTBB

Q.1039 Did you find any .45 slugs?
A.1039 No.

Q.1040 Did the bullet taken from the man's head give you any indication as to where the shot was fired from?
A.1040 I didn't know that a bullet came from his head.

Q.1041 Did you ask for information on those lines?
A.1041 I assumed it would be included in the medical interpretation.

Q.1042 Did you come to any conclusion as to the distance from which the shot was fired?
A.1042 I would say close up.

Q.1043 On what did you base this conclusion?
A.1043 From the size of the bullet-hole in the head.

Q.1044 A case of largeness or smallness?
A.1044 Largeness.

Q.1045 Are you suggesting to the Court that the size of the bullet-hole related to the distance from which the shot was fired?
A.1045 Definitely. A steel bullet makes a small hole and a lead bullet makes a large hole. It was a case of the size of the bullet-hole.

Q.1046 You came to the conclusion that it was fired from close range?
A.1046 Not having seen the body but knowing a small part of the evidence given by the doctors .....

Q.1047 You didn't know the size of the hole?
A.1047 No.

Q.1048 So you jumped to conclusions. When you and Major Bernier found the identity discs and the pistol which you linked closely with the accused, you both jumped to the conclusion that he was guilty?
A.1048 No, I would not say that.

Q.1049 Whether or not you jumped to that conclusion, it appeared to have something to do with the incident, something closely to do with the incident?
A.1049 It would appear that way.

Q.1050 Were any steps taken to find out whether or not Dillon was left handed or right handed?
A.1050 I don't recall.

Q.1051 Wouldn't it have been of some assistance, seeing that the identity discs were in his left hand to determine whether he was left handed or not?
A.1051 I was not there.

Q.1052 Did anyone make inquiries to find out what room Dillon slept in or whether he wore a wrist watch or not?
A.1052 I don't think so.

Q.1053 Was Pte Robinson told he didn't have to give evidence at the Court of Inquiry?
A.1053 I think Major Morgan told him that. I wasn't present.

Q.1054 To your knowledge, was any assistance given Robinson as far as his legal rights were concerned, apart from your own advice?
A.1054 I can't tell you that.

Q.1055 You don't know?
A.1055 No.

WB13

Q.1056 You have the Orderly Offr's Report for the 3rd of Aug?
A.1056 No.

Q.1057 Have you examined it to see what information it contained?
A.1057 The Orderly Offr's Report?

Q.1058 Yes. Did you examine it - the Orderly Offr's Report for 3rd Aug? Have you examined it?
A.1058 Some time ago.

Q.1059 Do you recall if Lt Hanahan was Duty Offr that day?
A.1059 He was.

Q.1060 was there any report of this incident made in the Orderly Offr's Report for the night of 2/3 Aug 44?
A.1060 No, there was no reason for it.

Q.1061 Give a reason why there wasn't one?
A.1061 Taking into consideration the fact that there were the proper lengthy notes incorporated in the Court of Inquiry, made .....

Q.1062 Do you think that the Court will believe that? Is that the reason?
A.1062 Clarify the question.

Q.1063 You are trying to tell us about something that was done much later. I suggest to you that there was no Orderly Offr's Report. I suggest to you that it was some time later that he made a specific report of the incident?
A.1063 He made a written statement of the incident, I believe, the next morning.

Q.1064 I suggest it didn't come in with the Orderly Offr's Report?
A.1064 I don't remember. Everyone was quite aware that there had been a shooting.

Q.1065 Are you suggesting seriously that because everyone knew about it, no report was made? You are aware that it is evidence you must give in this Court. Don't make silly remarks.
A.1065 (Witness does not answer.)

Q.1066 Where was the holster found?
A.1066 In the kit of Pte Robinson.

Q.1067 Did you find it?
A.1067 No.

Q.1068 Doesn't it strike you as rather queer that the pistol and the holster were not in the kit together?
A.1068 It strikes me that he wanted it under his pillow.

Q.1069 This accused?
A.1069 Yes. It strikes me that he wanted it under his pillow.

Q.1070 Doesn't it strike you as queer that the holster was found in the kit bag and the pistol found by the pillow or articles used as a pillow?
A.1070 Not queer.

Q.1071 Does it strike you as unusual?
A.1071 It doesn't strike me as unusual.

Q.1072 You are trying to be a big help .....
A.1072 You are asking me. Some people don't keep their pistols in their holsters and others do.

Q.1073 I suggest to you that after the pistol and holster and identity discs were found, you were trying to prove him guilty?
A.1073 The evidence seemed very certain from the sequence of events that came out that evening.

Q.1074 Wouldn't it be quite unusual for Robinson to keep the pistol, assuming he was connected with the shooting that evening?
A.1074 Yes.

Q.1075 Doesn't it strike you as unusual that you found it under his pillow and not in his kit?
A.1075 It might be -----

Q.1076 Was it found when he was asleep?
A.1076 If he was asleep.

Q.1077 Don't be technical. Do you dislike the accused?
A.1077 I have no feelings one way or the other.

Q.1078 You had been looking after the investigation right throughout. Apart from the medical assistance - there had been no proven t assistance - were you not trying to find s[illegible] shooting without any professional assistance?
A.1078 No, I don't think so.

No re-examination.

By the Court:

Q.1079 You stated yesterday that you took the smell of cordite as evidence that the revolver had been recently fired. At what time did you smell it?
A.1079 Shortly after it was found. A matter of minutes.

Q.1080 At approximately what time did you smell it?
A.1080 It took 10 or 15 minutes to find out about Robinson. We went directly to Robinson's bed, and it was somewhere between 11:25 and 11:45 o'clock when the pistol was found - around that time approximately.

Q.1081 In other words 2355 hrs?
A.1081 Approximately.

Q.1082 You specifically examined the Orderly Offr's Report after this incident?
A.1082 Yes sir.

Q.1083 Did you see the Tattoo Roll Call for the night 2/3 Aug 44?
A.1083 I saw it the following morning. I didn't see it that night. I don't recall now if Robinson was marked as in that night or not. We checked on it the following morning.

Q.1084 Why the check in the following morning? Was Pte Robinson marked absent at Tattoo Roll Call?
A.1084 I can't verify that from memory.

By the Judge Advocate:

Q.1085 I think, Capt Snell, you said that when you saw the accused in bed his clothing was dirty?
A.1085 Yes sir. I remember they were dirty.

Q.1086 What do you mean by dirty? Oily, muddy, dusty or what?
A.1086 I would say dusty but I can't verify the type of dirt.

WBB

Q.1087 You have in the course of your evidence referred to the accused's kit. How do you know it was his kit?
A.1087 I am not positive that it was his kit, but it was in his bed and around his bed. It is normal to find a man's kit around his bed.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(b).

EIGHTEENTH WITNESS(Major J. Bernier, MCAPC, 2 Bn 1 CBRD, recalled, for (already sworn, Prosecution (is examined by the Prosecutor.

Judge Advocate:

Major Bernier, the decision of the Court was that the written statement and the answers by the accused to the questions when he was before Capt Snell in the 2 Bn Detn Room would not be admitted in evidence. So don't repeat any part of them, please.

Prosecutor:

Q.1088 Do you recall the evening of 2 Aug 44?
A.1088 I do.

Q.1089 Will you tell the Court, as simply as possible, what happened on that evening?
A.1089 On the night of 2 Aug 44 I was reading in my room, immediately above the 2 Bn Offrs' Mess.

Q.1090 I think it might be important if the Court were shown just where Major Bernier's room is on the sketch, Exhibit "G".
A.1090 My room is facing the one storey wing of the Ottawa Bldg on the second floor - the last room. (Witness marks spot with letter "L" on sketch.)

Q.1091 Carry on?
A.1091 At approximately 2300 hrs I heard a shot and then two other shots. I jumped up; went downstairs and found a group of offrs standing around a body sprawled in front of 2 Bn Mess entrance.

Q.1092 I would like you to indicate on Exhibit "G" the position of the body?
A.1092 Here. (Witness points to letter "H" on sketch.)

Q.1093 Will you tell the Court what was the attitude of the body?
A.1093 I only saw him for a brief moment. I remember the man was lying on his stomach. It seems to me his arms were outstretched and not at his side.

Q.1094 In what direction was he facing?
A.1094 His head was facing the Borden Bldg# and his feet towards the Petawawa Bldg.

WTB13

Q.1095 Will you carry on, please?
A.1095 The 2 Bn Orderly Offr, Lt Manahan, seemed to have the situation well in hand so I left the scene. As I thought there might be an armed robbery, I went to my office and found everything in order. Then I returned to the general area of the incident. I was shown a set of identity discs by Lt McKee, who said .....

Q.1096 Carry on, but don't repeat conversations.
A.1096 The discs appeared to belong to B.144333 Pte D. Robinson and had the abbreviation for "Presbyterian" and "Canadian" on them.

WTB13

Q.1097 Was there anything else, any other points of identification on these discs?
A.1097 They were two normal discs, tied together the way they should be, but the cord or string had been broken and, If I remember correctly, the discs had different information as to initials or rank. One had full initials and one had just one initial. I am not sure of this.

Q.1098 I now produce to you Exhibit "J". Can you identify these discs?
A.1098 Yes, these are the discs I was shown on that night.

Q.1099 Carry on, please.
A.1099 I went to Nos 1, 2 and 3 Bns to see if they had any record of Pte Robinson. We finally traced him at the Seaforth Coy Office of 2 Bn. I reported the fact to Capt Snell who had also found out the same information. I accompanied Capt Snell to the Seaforth billets. We found Pte Robinson in his proper bay, sleeping in his blankets. We awakened him. Pte Robinson's face and lips were bruised. There were scratches on his neck and his face. I went through his kit and found an American model .45 calibre revolver under the part of his blankets which formed a pillow. The revolver was empty and had, from the smell of powder, been recently fired.

Q.1100 Will you give to the Court any information you know about that revolver?
A.1100 It was American - I did not notice the make - of .45 calibre. It was in a rusty condition or unpolished in appearance. The number, model or issue was blurred. It had 1911 on it but I did not take the number until the following day. That is about all the information I know except that the magazine was on and was empty. There were no cartridges in the chamber.

Q.1101 Could you identify the revolver if you saw it again?
A.1101 I could.

Q.1102 How?
A.1102 From its general appearance and from its condition because I have a good memory.

Q.1103 I produce Exhibit "O". Will you examine this exhibit and tell the Court whether that is the same revolver or not?
A.1103 (Witness examines pistol) Yes, that is the same revolver.

Q.1104 At what time did you find this revolver?
A.1104 Approximately 2330 to 2345 hrs.

Q.1105 What did you do then?
A.1105 I looked through the rest of the kit and found a holster, presumably the one for the revolver in question. I found it in Pte Robinson's kit bag. I found no other fire arms or ammunition except his rifle which was hanging on the wall and had not been fired. I handed the revolver and holster to Capt Snell for safe custody.

Q.1106 How do you know the kit belonged to Pte Robinson?
A.1106 Because when he was sitting up in his bed, he acknowledged the fact that it was his kit.

Q.1107 How did he acknowledge it?
A.1107 I told him I was going to look through his kit. I asked him if it was his kit and he said, "Yes".

Q.1108 What was the holster like?
A.1108 It was a light brown holster, not well polished. It had quite a few stains on it but no marks that I recall, no issue or serial number of any sort.

Q.1109 I produce a holster. Can you identify it?

Defending Offr:

In my opinion the methods of introducing the exhibit is objectional. The witness has not identified it by a proper description.

Judge Advocate:

He was only asked whether he was able to identify it or not. The Court will decide on the sufficiency of the identification, in due course.

(examination cont'd)

A.1109 I identify it from its badly polished condition.

Q.1110 Do you recognize that holster?
A.1110 I do recognize it.

Q.1111 What holster is it?
A.1111 That is the holster I found in the kit. (Brown leather holster stamped "US", admitted and marked Exhibit "P".)

Q.1112 Did you make any examination or search of the person of the accused?
A.1112 I did not.

Q.1113 What did you do then?
A.1113 Capt Snell had the accused placed under close arrest. Then the Cpl on duty was ordered to take Pte Robinson to the 2 Bn Guard Room and make a methodical search of the general area where Pte Robinson slept. I later accompanied Capt Snell to 2 Bn Guard Room while he questioned the accused and other witnesses as to the shooting.

Q.1114 Can you point out the accused in this Court Room?
A.1114 The accused is here (pointing) sitting by the Offr for the Defence.

Cross-examined:

Q.1115 Major Bernier, giving evidence before this Court has caused you considerable worry, hasn't it?
A.1115 I call it nervousness.

Q.1116 You have been worried about giving evidence?
A.1116 I am not used to the formality of the Court.

Q.1117 You are a little bit worried about the questions I am about to ask you?
A.1117 If I tell the truth I have nothing to worry about.

Q.1118 Since you found out I was the Defending Offr, haven't you been a little bit nervous and worried about the questions I would ask?
A.1118 I knew it would mean a lot of cross-examination.

Judge Advocate:

Capt Bergman, you wouldn't be flattering yourself by any chance?

Defending Offr:

May I have that on the record, sir?

Q.1119 With the result that you have, since the taking of the Summary, read and re-read the evidence you gave in the Summary?
A.1119 I read it only once.

Q.1120 Thoroughly?
A.1120 Just once was the only time. I probably asked other witnesses ....

Q.1121 Have you ever referred to it in an attempt to refresh your memory?
A.1121 Just that once.

Q.1122 Did you memorize the statement you gave at the Summary?
A.1122 No. I had already repeated the story I knew five or six times. I have a photographic memory for certain of the details of what happened.

Q.1123 You saw the accused on his bed on the night of the incident, on the 2nd of Aug. What happened that night since you have such a photographic memory for detail?
A.1123 Only for certain details.

Q.1124 Have you the same photographic memory of what happened between 1130 and 1140 hrs this morning?
A.1124 Partly, yes.

Q.1125 Apart from the conversation you had in the presence of Capt Rose and myself, did you have a conversation with anyone else out there?
A.1125 I talked to the Cpl about the duration of the trial.

Q.1126 Did you talk to Capt Snell at all or have any words with him?
A.1126 I asked him whether he had been sitting down when giving his evidence.

Q.1127 Did you discuss the identification of the exhibits?
A.1127 No.

Q.1128 Did you discuss the questions asked him?
A.1128 No.

Q.1129 Why did you so anxiously point out the difference of a letter in the identity discs in the initials of the two discs?
A.1129 As far as I can recall, I noticed it on the night of 2 Aug when I was trying to find the initials for record purposes. I didn't get all the actual details.

Q.1130 Is that the only peculiarity in the initials on either one of them?
A.1130 That is all I remember. I have only seen the discs a few times.

Q.1131 You had the discs in your hand a few moments ago .....
A.1131 The only way I remember them is by the difference in the initials and rank on both of the discs.

Q.1132 What is the difference of initials and rank? Specify it?
A.1132 One has no initial or only has the initial "D".

Q.1133 Are you sure there is no difference in the type of the "PTE" or the position of the initials?
A.1133 I cannot say.

Q.1134 Will you tell the Court if when you first saw the identity discs you examined the string to see whether it was cut or broken?
A.1134 I did not.

Q.1135 Did you examine the type of knot?
A.1135 I did not.

Q.1136 You gave these identity discs a close examination?
A.1136 I gave them an examination as to rank, name and initials.

Q.1137 Then you can't say that these are the same identity discs because of any other mark of identification?
A.1137 They only bore the same number and name. In my opinion they are the same discs I saw that night.

Q.1138 That is a big difference. Now the holster, the only way you can identify it is that the holster is not polished?
A.1138 Yes.

Q.1139 How could you pick it out of a thousand holsters?
A.1139 By its form.

Q.1140 Could you be sure?
A.1140 Yes.

Q.1141 Are you prepared to state that that is the specific holster you took out of the kit of the accused - identify it specifically? Are you prepared to have your identification checked? Could you pick it out of a large group of holsters of the same size, shape and quality?
A.1141 Frankly, no.

Q.1142 So you cannot identify it specifically?
A.1142 Frankly, no.

Q.1143 Now, if I gave you a number of American .45 pistols of the same type and army serial numbers as Exhibit "O", all a little rusty and dirty and which had been fired, could you pick that one (points to Exhibit "O") out of a very large number?
A.1143 Yes.

Q.1144 And what is the specific thing you would use to identify it?
A.1144 One side of the grip is smooth and the other rough.

Q.1145 Is that unusual?
A.1145 Both sides should be the same.

Q.1146 When did you firstmemorize the number of the identity discs?
A.1146 The next morning I knew that I would have to establish the number in identifying the discs so I examined them thoroughly.

Q.1147 Capt Snell told us he asked the accused questions. Is that not true?
A.1147 Yes.

Q.1148 How did Robinson have a chance to tell you which was his kit - which kit to examine?
A.1148 As far as I recall there were only a few questions asked him. I had time to ask him a few.

Q.1149 Did you ask him during the actual questioning, before the questioning started or after the questions were asked?
A.1149 I can't say.

Q.1150 Are you sure you can't remember?
A.1150 I remember I asked the accused where his large pack was. His large pack was at his head and his small pack to the left. I asked him which part of the kit belonged to him and made him show me where it was. He said, "Yes".

Q.1151 How did you and Capt Snell go about doing this?
A.1151 I don't know. I asked the questions.

Q.1152 In Capt Snell's presence?
A.1152 Yes.

Q.1153 As soon as you got hold of the identity discs and looked at the pistol, you made up your mind the accused was guilty, didn't you?
A.1153 No, I did not.

Q.1154 You didn't make up your mind. When did you first decide the accused was guilty?
A.1154 I would like to reserve my opinion. It was a matter of investigation.

Q.1155 Did you form a definite opinion that the accused was guilty of something or other?
A.1155 Yes, of something.

Q.1156 On what occasion did you change your opinion?
A.1156 I would not say.

Q.1157 When you first arrived at the body would you say there was a group around it?
A.1157 Yes.

Q.1158 How many?
A.1158 Five or six.

Q.1159 Were there any offrs?
A.1159 Some were offrs and some were guards and others.

Q.1160 Were there any spectators?
A.1160 Some of the offrs had rushed out of the Mess and there were people from the Guard Room. Whether there was anyone who had nothing to do with the business, I couldn't say.

Q.1161 You say the offrs rushed out?
A.1161 I don't know. I was on the second floor.

Q.1162 How long did it take you to get out?
A.1162 Less than a minute.

Q.1163 When you arrived at the doorway of the Offrs' Mess did you go right to the point where the body was?
A.1163 Yes.

Q.1164 What made you think that you were going to have a burglary in the Pay Office?
A.1164 I have always been safety-conscious. That has been stamped into me.

Q.1165 Did you check up other Pay Offices as well as your own?
A.1165 No, I was concerned with my own only.

Q.1166 You told the Court that in your opinion the revolver had been recently fired?
A.1166 Yes.

Q.1167 Do you know anything about revolver ballistics?
A.1167 No, I don't.

WBB

Q.1168 Can you tell the Court the approximate time that elapsed between the firing and when you found the pistol?
A.1168 No.

Q.1169 Have you any evidence to link up the revolver with the shooting?
A.1169 The strong smell of burning powder.

Q.1170 Are you sure of the smell?
A.1170 Yes.

Q.1171 Can you estimate how recently the pistol had been fired?
A.1171 No.

Q.1172 Then there is no way of linking the shooting up with the pistol?
A.1172 No.

Q.1173 What makes you think the revolver you found had been fired?
A.1173 There was a smell of powder about that pistol that made me come to the conclusion that it had been fired.

Q.1174 Did you examine the accused's rifle?
A.1174 Yes.

Q.1175 How many cartridges were in the magazine?
A.1175 Ten.

Q.1176 What did you find on the examination of the barrel? Was it a thorough examination?
A.1176 Nothing. I didn't examine the barrel thoroughly.

Q.1177 You know the only way you could find out whether the barrel had been recently cleaned was from an examination of the pull-through?
A.1177 No.

Q.1178 You must have been particularly observant?
A.1178 (Witness makes no reply.)

Q.1179 Why was it that you took such a prominent part in this investigation?
A.1179 I don't call it prominent. I found whose identity discs they were and where he was from.

Q.1180 You were a bright investigator weren't you?
A.1180 I was helping out.

Q.1181 You were helping out and took an extensive part in the investigation?
A.1181 I would not say that.

Q.1182 Why was there such a further kit inspection after you had taken the gun from the kit yourself?
A.1182 Because we just went through the kit. There were other men sleeping in the bay and we didn't want the other men disturbed.

Q.1183 Did you examine the scratches on the accused?
A.1183 I saw them.

Q.1184 Were they scratches which might have been made by fingernails?
A.1184 Yes.

Q.1185 Was there any attempt, to find out from Dillon's body, whether he had any blood under his fingernails?
A.1185 Not that I know of.

Q.1186 Did you know if the MPs or the DAPM or the British Special Investigation Bureau were sent for to assist in this case?
A.1186 I don't know.

WBB

Q.1187 Do you know if any ballistic's information was received from the American ballistic people in Naples?
A.1187 I don't know.

Q.1188 Don't you agree that it was strictly an amateurish job as far as investigation was concerned?
A.1188 It was a preliminary investigation of the shooting.

Q.1189 Don't you agree it was amateurish?
A.1189 Other people took it up the next morning.

Q.1190 Don't you think it was an amateur investigation?
A.1190 It was a rough examination.

Q.1191 You have no specific qualifications?
A.1191 I report facts.

Q.1192 Have you any special experience or qualifications in conducting investigations?
A.1192 No.

Q.1193 Could you tell by an examination of Exhibit "J", the identification discs, whether or not the cord attached to them has been broken in the way which a string would break if pulled from the neck of a person wearing it?
A.1193 I would say it is possible.

Q.1194 Do you know how long the string is?
A.1194 Ten inches or a foot.

Q.1195 You have never measured it yourself, have you?
A.1195 No.

Q.1196 Do you suggest it was broken?
A.1196 Here and here is the point of two breaks; one here and one here. (witness indicates on cord of Exhibit "J")

Q.1197 Then you are stating that there are two breaks, one here and one at the other end. By that do you mean there is a piece missing?
A.1197 I don't know if a piece is missing.

Q.1198 The cord is not long enough to go around a man's neck? (demonstrates)
A.1198 No.

Q.1199 Then there is a piece of the string missing?
A.1199 Possibly.

Q.1200 Is it possible that this piece of string is the only part of the string that was around his neck?
A.1200 No, it isn't.

Q.1201 There must be a piece missing?
A.1201 Yes.

Q.1202 Therefore on a pull of the identity discs from the neck, there is apt to be only one break?
A.1202 That depends on the condition of the string.

Q.1203 The point of the string where the first force is exerted, is where the break occurs, isn't it?
A.1203 Yes, or also where there had been a knot and where the cord may have ....

Q.1204 Then, where there is a knot there will likely be a break?
A.1204 (Witness does not answer.)

Q.1205 I want an answer to the question?
A.1205 As I am not an expert .....

Q.1206 Do you know anything about it?
A.1206 I don't know.

Q.1207 Did you examine the shoes and socks of the accused when you got to his bed?
A.1207 I don't ..... no.

Q.1208 You can't tell how recently they had been taken off?
A.1208 No.

Q.1209 Did you go into that?
A.1209 No.

Q.1210 What light was used when you first got to the accused's bed?
A.1210 Candle light.

Q.1211 The Orderly Cpl says he got a lantern and took you and Capt Snell to the bay. Is that correct?
A.1211 I can't remember. I only remember what I said.

Q.1212 You don't remember about the light?
A.1212 No.

Q.1213 Then your photographic memory doesn't recall what kind of light there was on the 2nd of Aug 44?
A.1213 I don't remember.

Q.1214 I also suggest to you that you are not sure of the quarters in which you found Robinson - that it was the correct one as to bay and bed?
A.1214 I am sure.

Q.1215 Did a new draft come in recently?
A.1215 Yes.

Q.1216 Was it a fairly large draft?
A.1216 Not too large. We had had two drafts; one from the UK and one from the Armoured Corps - tradesmen and drivers from every arm of the service - transfers.

Q.1217 Wasn't it correct that Capt Snell had been out a good part of the night of the shooting and was a little "happy" when he came home?
Q.1217 He didn't appear that way.

Q.1218 He had had a few drinks?
A.1213 Yes.

Q.1219 What about you?
A.1219 I had not had a drink.

Q.1220 You had not?
A.1220 No.

Q.1221 Did you have a fairly clear view of Dillon's body as it lay on the parade square?
A.1221 No.

Q.1222 Did you have a chance to examine him?
A.1222 No.

WBB

Q.1223 Were his sleeves up or down?
A.1223 I don't know.

Q.1224 Were his hands outstretched?
A.1224 Slightly clenched like this (witness indicates). I can't remember other details.

Q.1225 Were you able to see his wrist watch on his left wrist?
A.1225 NO.

Q.1226 The finding of the body didn't excite or arouse you to remember details?
A.1226 There were five or six offrs present, and they had just called the doctor. It wasn't my business to interfere.

Q.1227 With your photographic memory, do you recall the condition of the body?
A.1227 Just the position of the body.

Q.1228 The only way you link the pistol with the accused is by the finding of it by or near his body, right?
A.1228 No.

- - - -

Q.1229 Was there any difference in the type of scratches on the neck of the accused when you saw them? Did you see them?
A.1229 Yes, I did.

Q.1230 Were they a type of scratch that would have been made by fingernails?
A.1230 Yes.

Q.1231 There was no difference in length or width?
A.1231 Yes.

Q.1232 They were all scratches?
A.1232 Yes.

Q.1233 Were these three shots you heard fired in fairly rapid order?
A.1233 No, I would say they would be about three seconds apart.

Q.1234 Would you say that they sounded like the normal sound of a shot fired from a Tommy Gun?
A.1234 Not being an expert .....

Q.1235 You have fired weapons?
A.1235 Yes.

Q.1236 Was there some space or time that would elapse between the normal firing of a Tommy Gun?
A.1236 Yes.

Q.1237 What kind of books do you like reading?
A.1237 Anything - detective stories, travel and adventure stories.

Q.1238 You like detective stories?
A.1238 Yes.

Q.1239 Do you read Conan-Doyle?
A.1239 Not for a long time.

Q.1240 Can you estimate the period of time you stood at or near the body lying outside R En Offrs' Mess that particular evening?
A.1240 About half a minute. As I said before, the Duty Offr seemed to have everything in order; the MO was coming so I ran over to see that my money was all right.

Q.1241 What clothing mainly did you find in the accused's kit?
A.1241 I didn't find anything unusual.

By the Court:

Q.1242 Would you describe how the accused was dressed when you found him?
A.1242 He was sitting up in bed so I can only give what appeared above the bed clothes. His underwear appeared to have been torn. He had no discs. That is all I can say.

Q.1243 You say there were three shots that you heard?
A.1243 As far as I can recall.

Q.1244 Were they close together?
A.1244 A spacing of one, two or three seconds.

By the Judge Advocate:

Q.1245 Major Vernier, there has been some questioning of your methods and of the part in which you played in the investigation. Did you do it from your sense of duty?
A.1245 Yes I did.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(3).

The Court adjourned at 1245 hrs.

The Court re-opened at Sorrento at 1400 hrs, 28 Sep 44, the same members being present.

Prosecutor produced Medical Certificate.

NINETEENTH WITNESS (Capt R.P. Jepson, 5 Mobile Neuro-Surgical Unit, RAMC, having been duly sworn, is examined by the Prosecutor.
for Prosecution

Q.1246 You are attached to 65 Brit Gen Hosp. Is that right?
A.1246 That is right.

Q.1247 That hospital is located where?
A.1247 Naples.

Q.1248 Are you a Medical Doctor?
A.1248 Yes. I have medical degrees.

Q.1249 From what University?
A.1249 The University of Manchester.

Q.1250 Are you a licensed practitioner?
A.1250 Yes.

Q.1251 Will you give the Court your degrees?
A.1251 MB Manchester and BSc Manchester.

Q.1252 Are you licensed by the Medical Association?
A.1252 Yes.

Q.1253 Do you recall the night of 2/3 Aug 44?
A.1253 The early morning of the 3rd of August.

Q.1254 What happened that morning?
A.1254 I was sleeping in my flat, situated not far from the Hospital, and a message came which called me to the Hospital. I then went to the Hospital and examined a patient who was referred to me as Dillon. He was suffering from a through and through bullet wound of his head which had entered the right frontal bone and came out through the right occipital bone.

WRB/B

Q.1255 What time was this?
A.1255 I saw him at 0230 hrs on the 3rd of August, according to my notes.

Defending Offr:

I wish to raise an objection. The witness said, "I see from my notes". What evidence is there that these are the notes in question?

Judge Advocate:

Q.1256 When were those notes made?
A.1256 At the time I first saw the man.

Defending Offr:

When did he last see the notes he made?

Judge Advocate:

Q.1257 When did you last see those notes?
A.1257 The notes were completed on the day he died. I think he died on the 7th or 8th of August.

Defending Offr:

This matter should be cleared up to the satisfaction of the Court. You will notice that the witness has in his hand a certain document - certain memoranda - and has not the permission of the Court to refer to them.

Prosecutor:

The witness has not referred to them in the Court.

Defending Offr:

The witness used the words, "I see by my notes", and referred to the notes in his hand.

Judge Advocate:

Q.1258 Is the document, which you are holding in your hand, the notes which you mentioned?
A.1258 Yes.

Q.1259 Who made them?
A.1259 They are not the original notes.

Q.1260 Who copied them?
A.1260 Col. Ashcroft.

Defending Offr:

The witness is not entitled to refer to that document.

Prosecutor:

His is not referring to it except to refresh his memory.

Defending Offr:

I don't wish to be difficult, but I know the witness received these particular notes outside this Court Room and carried them in .....

WTBNB

Prosecutor:

I am not intending to establish .....

Defending Offr:

The evidence, this witness is giving, is evidence that he has got from certain pieces of paper which he did not have a hand in making.

(examination continued)

Q.1261 Would you mind pointing out to the Court on your own head where the wound of entry was and where the wound of exit was?
A.1261 The wound of entry was roughly here and the exit roughly here: the line between the two being more or less horizontal.
(the witness pointed first to the middle of the right forehead and then to the back of his head in line with the first point)

Q.1262 What caused this wound?
A.1262 A high velocity missile.

Q.1263 What happened to the patient after you first saw him?
A.1263 He was given a blood injection and was recussitated by having a tube put into his stomach for the purpose of administration of fluid.

Q.1264 Did you have anything more to do with the patient?
A.1264 Yes, I saw him again at 8:30 in the morning and operated on him at 0900 hrs.

Q.1265 What further attention did you give him?
WBB A.1265 I saw him afterwards perhaps two or times a day until he died.

Q.1266 What did he die from?
A.1266 He died from the effects of a severe brain injury and secondary bronchial-pneumonia.

Q.1267 Is bronchial-pneumonia a common sequence to a severe head injury?
WBB A.1267 Where a patient is in a coma from an injury to the head, you frequently get a lung condition which becomes infected causing pneumonia.

Q.1268 Do you know whether or not any person was treated in that hospital that night for wounds of that nature?
A.1268 Not to my knowledge. I would certainly have been called to see him if he had come in.

Q.1269 After the patient died, did you have any further dealings with him?
A.1269 No.

Cross-examined:

Q.1270 Apart from this particular head injury which you described as caused by a high velocity missile entering the right frontal bone, were there any other wounds in the head or body of the person you examined?
A.1270 No.

Q.1271 None apparent to you?
A.1271 No.

Q.1272 Did he have any bruises on his face or body?
A.1272 Not that I know of.

WBB

Q.1273 Is secondary bronchial-pneumonia caused by a bug or a bullet?
A.1273 A combination of the two.

Q.1274 Does the bullet bring the bug?
A.1274 No.

Q.1275 You stated to the Court that the bullet travelled through the head of this person in a horizontal line?
A.1275 Yes.

Q.1276 Can you tell whether the front or rear bone was on a horizontal plane?
A.1276 No, I cannot answer that.

Q.1277 Would you say there was the slightest difference in that line?
A.1277 I didn't pay that much attention to it.

Q.1278 You realize how important it is to the Court in testifying what was the actual line from the standpoint of the entry of the wound?
A.1278 Yes.

Q.1279 I suggest this to you; that if a bullet is fired from a pistol, from a reasonably close range, at someone else, the entry wound would be slightly higher if he were shot from the rear than if shot from in front?
A.1279 It would depend on the angle of the head. If his neck was flexed and the man was holding the pistol down here (indicates), it would be in a perfect horizontal line.

Q.1280 How could it be a perfect horizontal line if he fired from behind and the head is forward at an angle? Then, if the shot was fired from behind, the wound of exit would be much higher?
A.1280 If the man was firing from behind, yes.

Q.1281 I am meaning with regard to the normal position of the bodies?
A.1281 Then, if his head is bent forward, the exit wound would be higher than the entry wound. You realize that by horizontal plane is meant the line taken between the ear and the eye.

Q.1282 Could you describe to the Court the type of wound that a piece of string would leave on a reasonably tender part of the skin if the piece of string were jerked from the neck?
A.1282 It depends on the violence of the jerking.

Q.1283 Would you say that, if it were a violent jerk, the resulting wound would be a scratch or a welt?
A.1283 If it was a violent jerk it would be a burn.

Q.1284 Doctor, I want to assume that you have a set of identity discs around your neck, and that they are pulled sharply away from your throat. Would the string, in breaking, leave two or more identical burns on the skin?
A.1284 It again depends on the amount of friction between the string and the skin. If it were a very good piece of string that would not break without a great pull; if it required great violence, you probably would get burns on both sides of the neck.

Q.1285 Could you tell the Court - describe the amount or type of burns which you referred to? Would it be a burn or a welt?
A.1285 In which order?

WBB

Q.1286 You realize perhaps that you are giving evidence before a Canadian Court, and you may be using the word "burn" in a different sense than the Court would understand it?
A.1286 Perhaps if I gave an example: say a rock climber, who after falling, say five or ten yards, is brought to a sudden stop by the rope, he would get second degree burns.

Q.1287 A second degree burn leaves quite a scar?
A.1287 No scar. Just a bruise.

Q.1288 And that would be .....
A.1288 That depends on the amount of skin surface covered by the string.

Q.1289 Could you tell the Court anything as to the range at which this missile was fired?
A.1289 No, I don't remember seeing powder marks on the skin.

Q.1290 Do you know how far away the pistol has to be held - how close to the body to leave powder marks?
A.1290 No.

Q.1291 How many doctors were there in the staff of 65 Brit Gen Hosp on the 2nd of Aug 44?
A.1291 You mean the whole of 65 Gen Hosp, both medical and surgical?

Q.1292 Yes, approximately how many?
A.1292 I would say about ten or twelve.

Q.1293 Did you notice any bruises on the left forehead of the person you examined?
A.1293 No.

Q.1294 What is the usual medical method of determining which is the point of entry, and which is the point of exit in a case of this kind?
A.1294 I always tell by ascertaining where there is greater fragmentation of bone.

Q.1295 But had you seen the wound immediately after being inflicted, what would you look for to find the wound of entry and exit?
A.1295 Firstly, powder marks on the skin and then the relative size of the exit and entry wounds.

Q.1296 Which would be the larger?
A.1296 The exit wound is usually the larger.

Q.1297 If one wound is smaller than the other, both are exuding blood, then that would indicate to you that the small wound is the wound of entry and the larger is the wound of exit?
A.1297 Yes, it would be.

Q.1298 Now, is this small wound of entry and large wound of exit characteristic of both pistol and rifle bullet wounds?
A.1298 I believe so.

Q.1299 If there had been previous interference; if the wound had been previously dressed on the night of 2/3 Aug 44 by a surgeon; would it be possible that you could make a mistake as to which was the wound of entry or exit?
A.1299 I had no doubt at the time.

Q.1300 I used the word "interference"?
A.1300 That depends as to what you mean by "interference".

WTB/B

Q.1301 If there had been interference in the surface dressings or inside the wound itself? If both front and rear wounds had been cleaned up?
A.1301 After a complete and formal operation, I could not tell.

Q.1302 How far would a complete and formal operation have to go?
A.1302 Would you like the details?

Q.1303 When you first treated this patient, you concentrated on the head injury?
A.1303 His general condition was first seen to .....

Q.1304 How far did you go?
A.1304 Took his pulse, checked his blood pressure and response to pain, and if he could talk.

Q.1305 When did you first examine his chest?
A.1305 At the time when I first saw him.

Q.1306 How far did you go?
A.1306 [illegible] was made.

WJB Q.1307 With a stethescope?
A.1307 Yes, with a stethescope.

Q.1308 When you say you examined the patient referred to you as Dillon, you gained that information from a medical document?
A.1308 Yes.

Q.1309 Did you take any other steps for the identification of that particular body?
A.1309 No.

Q.1310 Did you take any further notice of the body?
A.1310 Not particularily, no.

Q.1311 Did you find any foreign skin or blood substance under his fingernails?
A.1311 No.

Re-examined:

Q.1312 What were the comparative sizes of the wounds of entry and exit?
A.1312 From memory I should say the entry wound size was about the size of a sixpence and the exit would was between the size of a shilling and a florin.

By the Court :

Q.1313 Doctor, from the appearance of the wound, did it seem if the shot was fired from a short or long distance away?
A.1313 I don't think you could tell.

By the Judge Advocate:

Q.1314 What was the date of this patient's death?
A.1314 The 7th or 8th.

Q.1315 Of August 1944?
A.1315 Yes.

WJB

Q.1316 If we were to suppose that this patient had received no medical treatment before you saw him except to have two field dressings applied to his head on the occasion when he was discovered shot and then later had these dressings renewed, would you be able to determine the wound of entry and the wound of exit?
A.1316 At the time of the operation, yes.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

TWENTIETH WITNESS(Lt B.J. Dolan, 3 Bn 1 CBRD,
for (having been duly sworn,
Prosecution (is examined by the Prosecutor.

Q.1317 Do you recall the evening of 2 Aug 44?
A.1317 Yes sir.

Q.1318 What were you doing that evening?
A.1318 On 2 Aug 44 I was Gd Comd, 1 CBRD.

Q.1319 What, if anything, happened that evening?
A.1319 At approximately between 1030 and 1100 o'clock in the evening I heard a shot, I immediately ordered the guard to stand to. While this was happening two more shots were fired. I got a party together to investigate the shooting. In front of 2 and 3 Bn Offrs' Mess, I saw a body lying there. There was an offr in charge. He had the situation under control. I immediately took my party to investigate the buildings in the area. I found nothing out of the ordinary. I came back where the body was lying. He had been evacuated. We looked around the area and the Cpl of the Guard found an empty .45 casing. He turned it over to me. Later I turned the casing over to the Adjt, 2 Bn. That's all, sir.

Q.1320 Was that the only incident that night?
A.1320 No sir. Later I was called out again to investigate the case of a Sgt from the Cdn Dental Corps who had fallen out of an upstairs window in his quarters.

Q.1321 What was the name of the Cpl of the Guard?
A.1321 Cpl Ferguson, sir.

Q.1322 Will you describe the casing which he turned over to you?
A.1322 It was a casing that had been scraped, greyish in colour and not the ordinary .45 casing.

Q.1323 What type of a .45 casing was it?
A.1323 I do not know.

Q.1324 If there were several casings handed to you, similar in colour, would you be able to pick out the casing Cpl Ferguson handed to you?
A.1324 I have sworn by Almighty God, about two minutes ago, to tell the truth. I don't think I am capable of doing so, sir.

Cross-examined:

Q.1325 You told the Court that a Dental Sgt had fallen out of a window in the barracks?
A.1325 I don't believe I said inside Canada Bks. The Dental Barracks are immediately outside on the road to Montefore.

Q.1326 That is outside, just at the end of the west wall of Canada Bks?
A.1326 It is immediately outside the west wall.

BNB

Q.1327 On the road to Naples?
A.1327 Yes.

Q.1328 Did you form the opinion that the Dental Sgt had been drunk?
A.1328 When I got over there the Medical Offr was there. I questioned the men and found out what had happened.

Q.1329 As a result of the questioning, were you able to form any opinion?
A.1329 No sir.

Q.1330 You knew at that time there had been a shooting at Canada Bks?
A.1330 Yes sir.

Q.1331 Did you make any attempt to search the barracks of this Sgt to find a pistol?
A.1331 No sir.

Q.1332 Did you try to connect this incident of the fall of the Sgt with the shooting incident?
A.1332 No sir.

Q.1333 By that time the shooting was old history was it?
A.1333 Yes sir.

Q.1334 You say that you heard three shots fired'
A.1334 Yes sir.

Q.1335 Did you or did you not hear one and then two more?
A.1335 I heard one shot and called the guard. There was one or more after that.

Q.1336 How long did it take you to get the guard called out after the first shot?
A.1336 Approximately a couple of minutes, sir.

Q.1337 The main idea was for you and your guard to identify the person and catch him?
A.1337 We did not know what it was. In the past month in that barracks there had been shooting every night. We thought it was another case of a guard shooting at a man going over the fence or something.

Q.1338 It wasn't unusual to hear shots at this time?
A.1338 No sir.

Q.1339 Do you remember handling three cartridge casings?
A.1339 No sir.

Q.1340 How many did you handle?
A.1340 On the 2nd of Aug one was found. The next morning my Cpl passed me another one he found in the area.

Q.1341 He told you he found them?
A.1341 Yes sir.

Q.1342 Were you present with the Cpl when he found the first casing?
A.1342 Yes sir.

Q.1343 How close were you to him when he found it?
A.1343 Approximately two feet.

Q.1344 While you had the casings in your possession did you at any time mark them for specific identification?
A.1344 No sir.

WRB

Q.1345 Did you handle any identification discs that evening?
A.1345 No sir. I recall something about some identification discs, but I didn't see them.

Q.1346 You made a search in the Records Office of the Seaforths for a certain name and number?
A.1346 Yes sir.

Q.1347 Where did you get the information as to the name and number?
A.1347 There was a Senior Offr present.

Q.1348 Did someone tell you what was on the identity discs?
A.1348 Yes sir.

Q.1349 That is the only way you got the information?
A.1349 Yes sir.

Q.1350 Now, having information as to the finding of the identity discs, did you come to the conclusion that the person referred to on the identity discs was guilty of the shooting?
A.1350 No sir.

Q.1351 Did you keep an open mind?
A.1351 Yes sir.

Q.1352 Did you form the conclusion that he had a strong connection with the case?
A.1352 No sir.

Q.1353 No conclusion at all?
A.1353 No sir.

Q.1354 Were there any fights in and around the gate at that time?
A.1354 No sir.

Q.1355 Apart from the Sgt falling out of the window and the shots you heard fired, was there anything unusual that evening?
A.1355 No sir.

Re-examined:

Q.1356 How far away was the building the Sgt fell out of from the Gd Room?
A.1356 At least 500 yards.

Q.1357 In what direction?
A.1357 On the road to Monteforte.

Defending Offr:

I think there is some confusion. We should refer to the sketch.

By the Court:

Q.1358 The building is on the road to Monteforte between Canada Bks and 3 Cdn Gen Hosp?
A.1358 Yes sir. Between Canada Bks and 3 Cdn Gen Hosp on the road to Montefore.

Q.1359 You stated there was shooting every night?
A.1359 Yes sir.

Q.1360 On what do you base that statement?
A.1360 From what I have seen.

Q.1361 Are you in the Barracks every night?
A.1361 No sir. I have been in the Barracks for a month.

WJB

Q.1362 You stated that it might have been one of the guards firing at somebody going over the fence?
A.1362 Yes sir.

Q.1363 To your knowledge has that ever happened?
A.1363 I could not swear to it, but I believe it has happened.

Q.1364 You don't know?
A.1364 No sir.

Defending Offr:

Sir, your questions were limited to soldiers. Was there any incident of Italians being fired at?

By the Court:

Q.1365 Were there any instructions given to you as Guard Commander that you keep out civilians or unrecognized persons from entering the front of Canada Bks?
A.1365 Not to my knowledge; no sir.

Q.1366 In other words the sentry uses his own judgment?
A.1366 Yes sir.

Q.1367 Can you tell the difference between a car back-firing and a shot?
A.1367 No sir.

By the Judge Advocate:

Q.1368 Lt Dolan, do you know the name of the offr whom you said had the situation under control where the body was found in front of the 3 Bn Offrs' Mess?
A.1368 Truthfully, no sir.

Q.1369 Do you know the name of the 2 Bn Adjt to whom you gave the .45 casing?
A.1369 Yes sir.

Q.1370 Who was it?
A.1370 At that time, Lt Snell, sir.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(3).

TWENTY-FIRST WITNESS for Prosecution (Lt H.J. MacComb (48 Highrs), 3 Bn 1 CBRD (having been duly sworn, (is examined by the Prosecutor.

Q.1371 Do you recall 3 Aug 44?
A.1371 Yes I do.

Q.1372 To what unit did you belong at that time?
A.1372 3 Bn 1 CBRD.

Q.1373 What happened that day as far as you were concerned?
A.1373 I was on a Court of Inquiry.

Q.1374 Will you tell the Court what you did as a result of receiving instructions from the President of that Court of Inquiry?
A.1374 I went over to the Gd Room.

Q.1375 What did you do in the Gd Room?
A.1375 I searched the belongings of the accused and the accused's person. I found two fountain pens which I turned over to the President of the Court.

WWB/B

Q.1376 Who was this person you searched?
A.1376 I don't know his name but I would know him to see him.

Q.1377 Is that person in this Court Room?
A.1377 Yes he is.

Q.1378 Will you point him out to the Court?
A.1378 There sir. (witness points to the accused)

Q.1379 Will you describe to the Court the fountain pens that you took off the accused on the morning of 3 Aug 44?
A.1379 I cannot describe them closely. I know that they were two grey pens. One was light grey and one darker grey.

Q.1380 By "light grey" what do you mean?
A.1380 Fairly light; nearly white.

Q.1381 I propose to show you two pens, and all you are required to do is to say "yes" or "no".

Defending Offr:

I am going to object to the witness being shown the pens on the ground that there is not a real test being made. Have him pick these pens out of a group of pens. I am going to object to his answering "yes" and "no". If he feels the proper answer is not "yes" or "no", he is allowed, I believe, to give his answer as he sees fit. The person asking the witness is bound by the whole of the reply which is elucidated from the question.

Judge Advocate:

Capt Bergman, I see no objection to the witness being shown two pens and asked if he is able to identify them. He has described two pens which he claims to have found in the accused's kit or person - one being light grey in colour and the other being dark grey in colour. The witness is not prepared to go further in his identification. The Court will give due regard to the sufficiency of his identification. If the witness is prepared to identify them, I think the pens should be admitted, - if you like, subject to your objection.

Defending Offr:

I want the identification to be subject to my objection, sir.

Prosecutor:

Q.1382 I now show you three pens. Can you identify any of them?
A.1382 This is definitely one. (witness indicates light pearl grey fountain pen) These two I can't be sure of. (witness indicates fountain pen marked Exhibit "I" and a grey fountain pen similar in appearance to Exhibit "I")

Q.1383 These two you cannot be sure of?
A.1383 No. (fountain pen, light pearl grey in colour admitted and marked Exhibit "Q")

Q.1384 Where did you find these pens?
A.1384 They were on the accused's person. He gave them to me himself.

Q.1385 When you said you could not be sure what did you mean?
A.1385 The other two pens look alike. I cannot swear to either one of them.

WRBB

Cross-examined:

Q.1386 Why did you say that the pen, Exhibit "Q", is definitely one that you could identify?

A.1386 I do not understand.

Q.1387 Why did you say, "this is definitely one"?

A.1387 It is the same pen I picked up that day. That is the only pen I have ever seen of that colour. I am pretty sure that this is the same one.

Q.1388 Did you mark either of the two pens specifically for future identification?

A.1388 There is one definite mark on one of the pens. One had tooth marks on it.

Q.1389 On the bright white pen?

A.1389 Yes.

Q.1390 On the white pen?

A.1390 I don't know. I think it is on the white pen. It is so long ago that I -----

Q.1391 Did you yourself put any specific identification mark on either of these two pens?

A.1391 I didn't.

Q.1392 Who handled the two pens next?

A.1392 The President of the Court.

Q.1393 Who was that?

A.1393 Major Morgan.

Q.1394 Did you ever see the pens again before to-day?

A.1394 I saw them the next day.

Q.1395 Under what circumstances?

A.1395 Pte Wilcock, a 48 Highr, claimed he had had one stolen from him and wanted to identify his.

Q.1396 Was that in connection with your duties on the Court of Inquiry?

A.1396 Yes sir.

Q.1397 Did you see them again after that?

A.1397 No, I didn't.

Q.1398 You never have?

A.1398 I have never seen them since.

Q.1399 When were you first told you would be giving evidence on a subsequent trial?

A.1399 I was never told I was going to give evidence.

Q.1400 Were you advised by Capt Snell as to what evidence you were going to give?

A.1400 No.

Q.1401 How did he know what you were going to say in Court to-day?

A.1401 That is right, there was a 'phone call to Naples that I would have to identify the pens.

Q.1402 If I put the pen, Exhibit "Q", in with a group of 15 or 20 other identical pens, would you definitely be able to pick it out?

A.1402 I would not be sure.

WJB/B

Q.1403 Now, when you went to the accused to get these pens, you had him indicated to you at the Court of Inquiry?
A.1403 I don't remember whether it was before or after.

Q.1404 Had you seen the accused or had him under observation for some little time prior to to-day?
A.1404 I just saw him the day I went to the Court of Inquiry; the day we had him at the Court of Inquiry.

Q.1405 The accused was given quite a grilling at your Court wasn't he?
A.1405 The Major asked him a few questions.

Q.1406 What do you mean by "a few"?
A.1406 About 15 or 20, I imagine.

Q.1407 Did Major Morgan or any member of the Court administer the caution to the accused that he need not answer questions that would criminate him at any time prior to giving evidence?
A.1407 I don't remember.

Q.1408 Would you have remembered if that had been done?
A.1408 I cannot say.

Q.1409 Wasn't the accused at that time ever told by any members of the Court that he was under oath when giving evidence?
A.1409 Not that I remember.

Q.1410 You didn't let Robinson go until you were satisfied that you had got all the information out of him? Is that not correct?
A.1410 That is correct.

Re-examined:

Q.1411 In your cross-examination, you stated that Wilcock identified the pen. Was the accused present when Wilcock made the identification?
A.1411 No, I don't think so.

Q.1412 You stated that one of the pens had a tooth mark on the nib, right?
A.1412 That is right.

Judge Advocate:

He did not say that. I think he just said tooth marks and nothing about a nib.

Defending Offr:

Having asked the last question, it is rather useless to ask it in a different way now.

By the Court:

Q.1413 When the accused was being searched by you in the presence of the other people in the Gd Room, was there any conversation between you and him when the pens were found?
A.1413 No, there wasn't.

By the Judge Advocate:

Q.1414 You mentioned a Court of Inquiry which was held on 3 Aug 44, and you also stated that Major Morgan was President of a Court. Is that the same Court of Inquiry you first mentioned?
A.1414 Yes.

Q.1415 When you went to the Gd Room to make this search, was that before or after the accused had given evidence at the Court of Inquiry?
A.1415 I am not sure. I think it was after.

Q.1416 What particular Gd Room was it that you went to?
A.1416 2 Bn Gd Room.

Q.1417 And I think you told the Court you found these two pens on the person of the accused?
A.1417 That is right.

Q.1418 In what manner?
A.1418 They were handed to me by the accused himself.

Q.1419 Where did he get them?
A.1419 He took them out of his inside pocket.

Q.1420 What did you say to the accused that made him reach into his pocket and hand them to you?
A.1420 I asked him to empty his pockets. He did.

In the opinion of the Court and the Judge Advocate it was unnecessary to comply with the provisions of RP 83(B).

The Prosecution is closed.

Court adjourned at 1540 hrs.

Court re-opened at Avellino at 1000 hrs, 29 Sep 44, the same members being present.

Prosecutor produced Medical Certificate.

Defence did not require Major J.R.H. Morgan for cross-examination.

Defending Offr's Submission:

Mr. President, I wish to make a motion pursuant to the provisions of fn 1 to RP 40. The evidence adduced by the Prosecution has not established a prima facie case against the accused, having regards to the facts alleged in the charge sheet. The accused, therefore, should not be put upon his defence. At this time, as the Judge Advocate will probably advise you, the only question which the Court has to consider is whether or not the offence alleged has been proven. The question of a special finding or conviction of a lesser offence does not arise. I will, in the course of my remarks, make certain allegations against the Prosecution. I would, at this time like the Court to be firmly convinced that these allegations are not against the Prosecuting Offr in this case. When I use the term "Prosecution", I refer to the investigation which started on the night of the 2nd of August and which lead to the evidence which has been submitted to the Court in the past few days. I would further state that the conduct of the Prosecuting Offr, in my mind and in the mind of the accused, has been most fair. When I use a loose expression, such as "the Prosecution", I refer entirely to the history of this case which started some time between 2330 hrs and 2345 hrs, 2 Aug 44, and also to the amount of investigation, both legal and special, which is on the record and which the Court must examine. I may also state that both I, as Defending Offr, and the accused, who is on trial, consider that the Court which is judging the guilt or innocence of the accused has been completely fair. The Defence has not been hampered by the Court in any way shape or form. The accused has had a considerate and kindly hearing. However, I intend to castigate the prosecution for their sins of omission, rather than their sins of

W1818 W1818

commission. These remarks I hope the Court will interpret as a castigation of the individuals who first took charge of this investigation. You have had one reference by a witness for the Prosecution that legal advice was sought in completing or preparing the case against the accused. That reference deals entirely with the assistance sought of Capt Bate in his capacity as ADJA at HQ 1 CBRGp. The whole Court has sufficient Army experience to know that Capt Bate, in his official capacity as ADJA, considers the Summary of Evidence and charge sheet before trial. Therefore, the Court must accept the fact that his responsibility is the technical and legal responsibility to decide that the written or typewritten sheets discloses an alleged offence. The ADJA on any HQ is neither an amateur or professional detective. He is the legal assistant to the Comd. Therefore, any evidence as to the assistance which the Prosecution sought from his department should naturally be depricated. When one considers that he is not, nor ever was intended to be, a "Sherlock Holmes", I submit that the reference which the witness, namely Capt Snell, made to his "assistance" should be discarded completely. Capt Bate gave his assistance to these incompetents by virtue of the kindness of his heart and not because of the duties which naturally flow from his particular appointment. The evidence submitted by the Prosecution is purely circumstantial. It may be felt by the Court to be quite strong circumstantial evidence. I refer the Court to MML Chap VI, para 42, pp 91-2. (reads para 42) The entire history of this case has been full of sins of omission, perhaps the grossest of which is the failure of supposedly competent and qualified offrs, with normal mental capacity and education, to call upon anymilitary police - either Canadian, British, or American to assist them. Had this been done, the Court would undoubtedly have been supplied with certain expert ballistic evidence as to whether the pistol, Exhibit "O", had been recently fired and whether or not the two empty cartridge casings, Exhibits "M" and "N", had been ejected from that pistol. At this stage in the trial, the cartridge casings have not been connected with the pistol in any way. In view of the evidence before the Court, the normal assumption must be that they were, in fact, not fired from the same weapon. It does not take expert evidence to see that the mark made by the firing pin on Exhibit "M" is different from the mark on Exhibit "N". Nor does it take expert evidence to see that had Exhibits "M" and "N" been the spent cartridge casings which were ejected as a result of the last two shots that were fired that night from the same weapon, the person firing the weapon must have been flying a Spitfire in order to cover the distance between the places the casings were found - a space of some 200 to 250 yards in approximately two seconds. I suggest to the Court it is a matter of their common knowledge, and a matter of which they can take judicial notice; that a pistol ejecting two spent cartridge casings would eject them in roughly the same area, providing no mechanical defects between the first and second shots. The Prosecution has made no attempt to explain the relevancy of the cartridge casings, Exhibits "M" and "N", either to the specific weapon or to the specific shooting. This tends to confuse rather than to assist the Court. Until such time as Exhibits "M" and "N" are related in some way to the accused and to the offence charged, these exhibits should not be admitted in evidence. In fact, from the evidence before the Court, it is much more likely that these cartridge casings came from some other weapon and from a prior shooting. The evidence before the Court shows that the firing of weapons in Canada Bks at that time of night was not unusual; that according to the only Guard Commander examined, apart from Lt Dolan, shooting at 2200 hrs nightly was a notorious fact; that there were a large number of drunks around the gates and in the area of Canada Bks on the night of the 2nd of Aug 44; that around the 2nd of August, Thompson Machine Carbines were being fired daily on the ranges; and that Thompson Machine Carbines

W-B13

were in good supply at that time. Therefore, any soldier who had surplus ammunition and who did not fill his magazine completely could have quite easily put some extra rounds into his pocket. There has been a certain amount of cross-examination on what might be termed ballistics evidence. Yet in my cross-examination I have attempted, on this point, to limit it to that type of ballistics evidence which could be defined as matters that come within the Court's general military knowledge. In that way I have avoided the calling of expert ballistic witnesses. As the Judge Advocate will probably advise you later, ballistic evidence comes well within the general military knowledge of the members of the Court, who are commissioned offrs of the Canadian Army. Therefore, that evidence complies with RP 74. The Court has three specific problems to decide in the matter of identification alone. First they must have a corpus delecti, and he must be identified as the person described in the charge sheet. Secondly, the accused must be identified with the offence. Thirdly, there must be specific identification of the exhibits tendered in evidence. This has not been done in the case of any of the three. Dealing with the first; the Court only has evidence that a set of identity discs were buried. There is no proper identification of the person described in the charge sheet with the person who was certified dead and subsequently buried. Without labouring this particular point, if the Court will only refer to the evidence concerning a certain medical document; the document which admits a soldier to hospital, it will recall that the name and number of the person on that document was put on it by Capt Verdicchio as a result of what someone told him. The certificate concerning the person treated and the certificate as to the person buried is an identification only by virtue of what someone told someone else - statement made not in the presence of the accused. Look at Capt Tootell's evidence. The Court can well remember that I examined him as to the time he saw the patient as recorded in his diary. He gave a fairly unsatisfactory explanation. He could not have seen that person before 0200 hrs 3 Aug 44 as the admission paper shows it was at 0145 hrs. He has told you that he buried someone whose name he assumed was Dillon, by virtue of information he received concerning a person admitted on the 2nd of August 44. He was checked carefully as to this. Therefore, according to his evidence, the person he buried on 8 Aug 44 is a person who was admitted to 65 Brit Gen Hosp prior to the time the person who was shot at Canada Bks could have got there.

WBB

One observation I would like to make is, that it is not the duty of the Court either to correct the mistakes made by the Prosecution or to fill in the gaps left by either the Defence or the Prosecution when you have persons with legal qualifications assisting the Court in presenting the evidence to it. It is well known that it is a principle of British justice that it is better that nine to ten guilty men should go free than for one innocent man to be hung. The Court must look to the Prosecuting Offr and to the Defending Offr to assist them in examining all the angles involved in any offence; particularly in a case like this which presents more than the usual difficulties encountered in ordinary Field General Courts Martial. The Defending and Prosecuting Offrs are charged with presenting a case, properly investigated, to the best of their ability. The Court will decide on the guilt or innocence of the accused person on the evidence adduced and admitted on the record. To carry on with the identification details encountered in this particular case; there is only one instance of any specific identification of the accused with the alleged shooting of Dillon. This is evidence of Cpl De Harte. Cpl De Harte stated that he saw the accused on the parade square arguing with the man who supposedly gave his name as "Dillon".

WBB

De Hart went further. He identified the accused specifically as the man who was arguing with this nebulous Dillon. De Harte's evidence shows that the argument between Dillon and the accused was the third argument, I believe I am correct, with which he had occasion to interfere that evening. He could not identify the other two people that he stopped arguing before he had words with the person he identified as the accused. Why? I ask the Court to disregard completely the identification evidence given by Cpl De Harte, especially in view of the subsequent history of that identification he gave in cross-examination. De Harte has himself told the Court that before he was asked to identify the accused he had the accused under observation for some 45 minutes while the accused was waiting to give evidence at the Court of Inquiry. There the accused stood between two escorts, without a hat on. So that before De Harte was called on specifically to identify the accused, he had had him under observation for some time. According to his own evidence, he came to the conclusion that the accused was closely linked with the shooting on the night of 2 Aug 44. Bearing in mind this period of observation, the Judge Advocate will advise you as to the degree of reliability to be attached to such identification evidence. I submit the accused should be granted all the rights and privileges afforded an accused by the civil and criminal courts in Canada. When a man puts on a uniform and becomes a soldier, nevertheless, when charged under Sec 41 of the Army Act of committing a civil offence, he should be given the benefit of the rights extended to him in Canadian civil and criminal courts. He should not be deprived of his civil rights merely by virtue of the fact that he has offered his services to his country and now wears khaki and not zombie garb. Dealing more specifically with De Harte's evidence;- let us analyse the psychological features of the human mind. You are acquainted with people who, as a result of subsequent consideration of what they saw, come to the conclusion that because certain facts should be so, they are so. As a result of that subsequent consideration, they suffer from the hallucination that it actually is so. I throw a challenge to you as individuals, to consider whether you are satisfied in your minds that De Harte saw the accused, as he said, or came to that conclusion as a result of having the accused under observation subsequent to 2 Aug 44. Can you, as reasonable individuals, accept his statement beyond a reasonable doubt? I strongly protest against the unfair and incompetent manner in which the accused was handled prior to the proper identification parade. I protest against the manner in which the accused was publically paraded under escort before a proper identification was made. The Court must consider very carefully the amount of reliability which can be placed on De Harte's identification. I submit that there is a sufficiently strong doubt to disregard that identification entirely. Its reliability has been completely upset. I request the Judge Advocate, in his summing up, to refer to the usual proper criminal methods of identification in civilian courts and specifically to mention the number of cases and the type of cases which the Courts have thrown out because of improper and incompetent identification. The identification of the exhibits is unreliable and incomplete. In only one instance has a specific exhibit been identified. That was when Major Bernier identified the pistol, Exhibit "G", by means of the difference in the sides of the handle or butt grip. The right hand grip, as you noticed, is smooth; whereas, the left hand grip is rough - the ordinary grip. Major Bernier, however, did not bring out that specific means of identification in his examination. It was not until he was closely questioned in cross-examination that he finally remembered. That pistol passed through many hands. That pistol, in the hands of competent people, would have been closely studied for any specific features as well as the serial

number. No one yet has identified that pistol in the proper manner.by its serial number. Major Bernier, as an after thought, imagined the difference in the sides of the butt plate. Never, at any time prior to the taking of the Summary of Evidence, were any of the exhibits specifically marked . No one, therefore, can say that the exhibits, that have been tendered in evidence, are the objects found on the 2nd or 3rd of August. The Court is now in the position of having before it exhibit evidence of no specific or substantial value. The doubt which must arise in their minds negatives the evidentiary value of those exhibits. Therefore, they are valueless in linking the accused with the offence alleged in the charge sheet. You will, no doubt, be advised by the Judge Advocate that no matter how amateur our Canadian Police are - how amateur they may be in investigating an offence - they always tag an exhibit. It is immediately marked for identification and kept in safe custody until it is presented in evidence at trial. I refer to a case at which the present Judge Advocate sat as Judge Advocate; which I think was tried on the 21st or 22nd of December, 1943. I was defending. There were two main exhibits, one of which was a beer bottle. The original handling of that exhibit was incompetent. It was a question of identifying certain fingerprints on that bottle as having been made by the accused. The bottle was not marked by the first person finding it. It subsequently came into the hands of the civilian police and was properly kept in safe custody until the trial. But its evidentiary value was negatived because of the incompetence of the first person examining it. In the English Courts - I say this from personal knowledge - it seems that exhibits do not have to be marked with the same care that they do in the Canadian Courts. But I draw your attention to the fact that you, as president and members of this Court, are Canadians trying a Canadian soldier. Therefore, you should allow him the same consideration which a Canadian criminal court would allow him in deciding him guilty or not guilty of this offence. The history of this case indicates that the handling of these exhibits has been amateurish. I submit that the prosecution witnesses had seen them time and time again before they identified them before this Court. There is evidence that a Court of Inquiry was held prior to this trial. You had a Summary of Evidence taken and you have had this trial. There may have been some check made, but there has been no instance of a proper identification. The Court will realize that, because the Prosecutor and the Defending Offr had neither the chance nor the opportunity of controlling the type of investigation these individuals conducted, the evidence has not been presented as it would be in civilian life. Some of you may consider that we give up these civil rights and privileges by virtue of serving our King and Country. It does not matter one iota whether a man serves with a base unit or serves for months in the front line. The fact that he has signed an attestation paper makes him liable to be sent into any theatre of operations if His Majesty, through his representatives, deems fit. I don't want the Court to be prejudiced for one minute because this individual came from a Base Unit, or that he should be given any different consideration because this incident did not happen within a few yards of the German trenches. Without labouring too much the identification of the exhibits - the guilt or innocence of the accused is to be determined by offrs who have had normal training: what is known as "training common-to-all-arms". So without going into

W-313

expert ballistic evidence, let us deal specifically with Exhibits "M" and "N", the spent cartridge casings. The distinct features in the identification of a spent cartridge casings are the company which manufactured them; the year in which they were manufactured; and the mark made by the firing pin, especially its size and position. There are many other ways in which an expert can identify a spent casing, but the ways I have cited are known to the amateur. There are also matters which come well within the Court's general knowledge, and, therefore, judicial notice can be taken of them pursuant to RP 74. The absence of proper identification, under any of the three headings I have mentioned, would be sufficient for a Judge of a Canadian Criminal Court to refuse to admit such exhibits in evidence. Then consider the other morning when the Court is left hanging in the air because the pistol which was found in the area of the accused's bed had been tampered to the extent that they stated that the pistol which was found in the area of the accused's bed had been fired. Yet the Court is left hanging in the air because they could not state specifically or even attempt to explain in hours what they meant by "recently fired". None of us has any idea as to time elapsed or assumed time elapsed according to their evidence. Any from the word "recently". Yet according to the witnesses refer to in their evidence, it must have been in their hands in less than 45 minutes from the firing of the shots which the pistol which was used in the firing of the pistol which was found been the particular weapon. Any person with the slightest knowledge of weapons and who has made tests will realize that a pistol smells identically the same four hrs after it has been fired as it smells 15 or 20 minutes later. These two witnesses dare to offer their evidence, in spite of the fact that one is a member of the Pay Corps, completely lacking the experience of a normal regimental offr in the field; while the second, Capt Snell, had been on a party and had been drinking. That Capt Snell drinks is not unusual - but he had been at a party. No reflection is intended in referring to that fact. Yet it is a notorious fact according to medical science that indulgence in alcoholic stimulants dulls all senses, including the sense of smell. The responsibility of passing a death sentence based on the nebulous memories of these two witnesses as to the events of the evening of 2 Aug 44 is a responsibility not to be taken lightly. If such a sentence were put into effect, it might well be the cause of nightmares and many sleepless hours for the members of the Court. Dealing with certain parts of the medical evidence - That death of Pte Dillon, the person named in the charge sheet. Court must give careful consideration as to the cause of the Court must include whether or not the wound of entry was in the front or in the back of the head. Here again the Court must look to the Defence and not to the Prosecution for assistance. No attempt has been made to establish which was the wound of entry and which the wound of exit. It is important for the Court to determine whether this person was shot from behind while walking in an upright position, by someone across the roadway at Canada Bks, or was he knocked down by an assailant, and when falling, reached out, grabbing at them off and was he still holding them firmly while unconscious after having been shot? The presence of the identity discs must be satisfactorily explained by the Prosecution. What is the interpretation that is to be placed on it, taking into consideration the marks on the neck, and under the chin of the accused that were observed when he was subsequently examined?

expert ballistic evidence, let us deal specifically with Exhibits "H" and "H", the spent cartridge casings. The distinct features in the identification of spent cartridge casings are the company which manufactured them; the year in which they were manufactured; the mark made by the firing pin, especially its size and position; and the marks made when the empty casings are ejected. There are many other ways in which an expert can identify a spent casing, but the ways I have cited are known to the amateur. There are also matters which come well within the Court's general knowledge, and, therefore, judicial notice can be taken of them pursuant to RP 74. The absence of proper identification, under any of the three headings I have mentioned, would be sufficient for a Judge of a Canadian Criminal Court to refuse to admit such exhibits in evidence. Then consider the ridiculous evidence that was tendered to the Court the other morning by Capt Snell and Major Bernier when they stated that the pistol which was found in the area of the accused's bed had been fired. Yet the Court is left hanging in the air because they could not state specifically or even attempt to explain in hours what they meant by "recently fired". None of us has any idea as to time elapsed or assumed time elapsed from the word "recently". Yet according to their evidence, had the pistol which was found been the pistol which was used in the firing of the shots which the witnesses refer to in their evidence, it must have been in their hands in less than 45 minutes from the firing of that particular weapon. Any person with the slightest knowledge of weapons and who has made tests will realize that a pistol smells identically the same four hrs after it has been fired as it smells 15 or 20 minutes later. These two witnesses dare to offer their evidence, in spite of the fact that one is a member of the Pay Corps, completely lacking the experience of a normal regimental offr in the field; while the second, Capt Snell, had been on a party and had been drinking. That Capt Snell drinks is not unusual - but he had been at a party. No reflection is intended in referring to that drinking. Yet it is a notorious fact according to medical science that indulgence in alcoholic stimulants dulls all senses, including the sense of smell. The responsibility of passing a death sentence based on the nebulous memories of these two witnesses as to the events of the evening of 2 Aug 44 is a responsibility not to be taken lightly. If such a sentence were put into effect, it might well be the cause of nightmares and many future sleepless hours for the members of the Court. Dealing with certain parts of the medical evidence - the Court must give careful consideration as to the cause of the death of Pte Dillon, the person named in the charge sheet. That consideration must include whether or not the wound of entry was in the front or in the back of the head. Here again the Court must look to the Defence and not to the Prosecution for assistance. No attempt has been made to establish which was the wound of entry and which the wound of exit. It is important for the Court to determine whether this person was shot from behind while walking in an upright position, by someone across the roadway at Canada Bks, or was he knocked down by an assailant, and when falling, reached out, grabbing at the assailant and clutched the set of identity discs, pulling them off and was he still holding them firmly while unconscious after having been shot? The presence of the identity discs must be satisfactorily explained by the Prosecution. What is the interpretation that is to be placed on it, taking into consideration the marks on the neck, and under the chin of the accused that were observed when he was subsequently examined?

WTB13

The latter seems to be the theory of the Prosecution. Yet it has one inconsistency. It is, as suggested, Dillon, in his last moment of consciousness, grasped these identity discs from the neck or throat of the accused at the time he was shot. I think there is medical evidence to the effect that he would have held on to them for dear life. Capt McKee would have found them tightly clenched in his hands and would not have had too easy a time removing them. Had they been grasped a moment or two before the shot was fired then the shot must have been fired from behind as the man fell forward on his face. The evidence of Capt Verdicchio and Major Davidson was that he was shot from in front. Had the deceased first got hold of the discs and had afterwards been hit by the bullet he would have instinctively made a last movement - put his hands out to break his fall. The evidence is that the identification discs were found in his hand, but ordinarily if his fingers had been outstretched to break his fall, the identity discs would have dropped and fallen in close proximity to his left hand. Then consideration must be given to the manner in which Capt McKee told the Court the way in which the identity discs were found in the hands of the deceased. You will recall that he could not say definitely whether both identity discs were covered by the palm, but he made a point of holding them in this manner, indicating that they had been picked up or handled some time prior to the bullet entering Dillon's head. What other explanation can the Court reasonably take of the manner in which these identification discs came into the hand of the deceased? In order to make it easier for the Court to reach a satisfactory determination, let us consider the effect of seven, eight or 12 people milling around that body when it was first found. You will well realize the confusion which must happen over the finding of a body seriously wounded at a base area where enemy action is not expected or contemplated. Did or did not someone who came within a foot of the body lean down, examine the body and put the identity discs there? That is something that must be given consideration and only discarded on specific evidence and for specific reasons. The Court must reconstruct this shooting. They must find a satisfactory answer as to what happened and come to a conclusion beyond a reasonable doubt. The explanation, which the Court must make as to the finding of these identity discs, must be an explanation, not only that the accused committed the crime, but one that is inconsistent with any other rational conclusion. This may not be in strictly chronological order, but let me draw your attention to two even greater inconsistencies respecting the identity discs in order to show you that they could not have been pulled from the neck of Robinson by Dillon immediately prior to the alleged shooting. If you examine the string you will see that the part that would go round the neck is only 11½ inches long. To verify this measurement the Court may take a ruler and check. That obviously is not long enough to go around the neck of the accused. Therefore, the string must have been broken in two places. If it was broken when pulled from the accused's neck, then only one break would occur . It is a matter of notoriety that, when a piece of string is pulled sharply, it breaks at the point of resistance, normally. It may also break at a point close to a knot. This string shows no presence of a knot. The first resistance would normally be at the back of the neck equidistant from the top of the identity discs and, all other things being equal, would break at that point of first resistance. I suggest that this

W43B

piece of string is not broken sufficiently close to the knot to have been broken in two places at the same time. Therefore, had the string been broken in two places by the deceased, Dillon, in his last dying grasp, the other piece of string which is missing should have been readily found. Now dealing with the next point, the Court must bear in mind that I knew we were going to have an adjournment. The Judge Advocate will probably tell you that as Defending Offr it is up to me to represent the accused in the best manner I can and therefore, in doing that, I must save my ammunition as long as I can. That must be apparent to the Court from my examination of Capt Jepson, the last medical witness. In order that I might not indicate to the Prosecution too clearly what I was searching for in establishing the type of wounds observed on the neck of the accused on the night of the 2nd of August, I refrained from asking questions as to the type of scar or burn or wound which would be left by a piece of string being pulled sharply against a piece of tender skin. It does not matter whose evidence the Court believes. All the people who gave evidence as to the type of bruises or scratches on the neck of the accused, stated that they were of the type of scar or wound left by fingernails. They also stated that, apart from the length and width of these scratches, there was no difference in them. Therefore, there is no evidence before the Court that the deceased pulled these identity discs from the neck of the accused. Therefore by virtue of the lack of that evidence, the Court cannot find that Dillon grasped these identity discs and pulled them from the accused's neck on the night of the incident. Without labouring the point any further, the medical evidence tendered yesterday by Capt Jepson was that there were no marks or bruises or scratches on Dillon when he examined him. It is rather ridiculous to say that he could have beaten up the accused, Robinson, and put all these scratches, marks and bruises on his face and not have received one blow in return. Yet the inference is there;- that, in spite of all that, Robinson shot him while standing face to face with him. That is a conclusion which cannot be rationally substantiated. The people who examined Robinson were unanimous that the scratches were of the same type. There was no welt suggested, such as would be produced by the string being pulled sharply across his skin. I suggest to the Court that any competent police offr, once having found the scratches on the neck and throat of the accused, would immediately have an investigation made to find the wounded individual and examine his fingernails in order to see if any foreign substance, such as skin or blood, was found under his fingernails. This was not done and the Court has been deprived of the opportunity of having this evidence to assist them in deciding the guilt or innocence of the accused. To complete the remarks on the medical evidence, I feel that a post mortem report should have been submitted in evidence by the Prosecution. The Court well knows there was a post mortem report. I have it. It was readily available. On that post mortem report and according to Capt Jepson, there were two causes of death. Has the first, the pneumonia been satisfactorily explained? Did Dillon have the pneumonia bug prior to the examination at 65 Brit Gen Hosp? Neither Verdicchio, Davidson or Grossman, as medical offrs examined the chest and lungs of Dillon. All I can say in this regard is that pneumonia is caused by a bug and not by a bullet. It is now the Court's responsibility to decide, from the evidence adduced, what part was played by pneumonia in the death of Dillon. There are several medical features to the case which have not been explained. It has not been satisfactorily established what the medical terms imply. The medical evidence is completely unsatis-

factory. The sins of omission in the medical case history of the deceased must prevent the Court's coming to a definite finding beyond a reasonable doubt. Assuming for a moment that the accused handled the lethal weapon that evening, his subsequent conduct, knowing that he had committed a felonious act, is inconsistent with the normal and rational conduct of any human individual in the circumstances. Could he have been found on the parade square at 2250 hrs with a lethal weapon and, after committing a felony, be found asleep at 2350 hrs when he was found by Capt Snell and Major Bernier? I draw the Court's attention to the way in which Capt Snell and Major Bernier gave their evidence as to whether or not the accused was asleep. They, as individuals, were not prepared to give the accused the benefit of the doubt. They became technical and said that he appeared to be sleeping. I think it a fair conclusion to say that once the identity discs, and the pistol had been found by Major Bernier and Capt Snell, the accused, in the eyes of these two offrs, had been found guilty and hung, drawn, and quartered. There is no other rational explanation as to why he should be placed under immediate arrest by Capt Snell when the pistol was found. Now the Court must also consider the place where the pistol was found and must bear in mind that the holster which seemed to relate to that pistol, allegedly was found in the kit of the accused. The holster, sir, is usually used to keep a pistol in. Therefore, if the pistol had been taken out that night and brought back, it would normally have been placed in the holster. The only reason that the pistol would have been taken out and placed under the pillow was that the accused probably carried a considerable amount of money with him. This was not given in evidence - the results of searching the accused. Therefore, your normal assumption would be that he would take the pistol out, bring it back and replace it in the holster. The important point to consider about the pistol is that, in Army phraseology, it was a buckshee weapon. It is not on charge to the accused and apart from the serial number, cannot be linked with the accused. Therefore, the normal reaction of the accused, following the shot or shots and knowing that someone had been injured, would be to throw away or get rid of that particular weapon. He is certainly not going to keep it so close to him that he is immediately connected with the shooting when it is found. That is, however, an inconsistency that the Court must consider. The general investigating offr, Capt Snell, has made no attempt to check the conduct sheet of the deceased at any time. Yet it is a firmly established fact that he ought to have done so. I refer to page 177, Phipson on Evidence, 8th Edition. There has been no attempt to investigate the bed and quarters of the deceased in spite of the fact that evidence has been given that the person by the name of Dillon was belligerent and drunk on the parade square at Canada Bks on the night of 2 Aug 44.

Prosecutor:

I think that the defence should quote the section he is referring to.

Defending Offr:

I have found it. I refer to para (3) at p.177, headed "Character as Affecting States of Mind" (reads para). The members of the Court have been in this theatre of operations long enough to know that one of the first things the new, shall I say, private arriving in this theatre wants is a souvenir to send home. I think one of the first souvenirs

they want to get is an enemy weapon, and with them must be included the weapons of our co-belligerents, the Italians. Another popular type of weapon is the American .45 automatic which at one time in this area the Americans seemed to have in particularly good supply. Therefore, consideration must be given to the fact that a new draft had arrived at Canada Bks a few days prior to this incident, and any one of them might have had occasion to beg, borrow, buy, or steal anyone of these types of weapons. Next consider the effect that Italian liquor, commonly described as "Mussolini's secret weapon", has on the individual when drinking it for the first time. A new draft arrival, having borrowed, bought, or stolen an automatic weapon and coming back to Canada Bks after indulgence in Italian stimulants, might well have carelessly discharged his weapon thus causing the wounding of Dillon: especially when you realize that it seems to be a notorious fact that the shots at Canada Bks or discharging of weapons at Canada Bks around and after tattoo roll call are a common practice. With that evidence it seems hard to find, beyond a reasonable doubt, that the accused fired the weapon which caused the wound. In order to convict the accused, that is the decision which the Court must reach beyond a reasonable doubt. The question of "reasonable doubt" the Judge Advocate will explain later. I can not, in fairness to the accused, omit to draw the Court's attention to the evidence respecting the action taken by the C.O. of 2 Bn 1 CBRD, Col Lent. It has been established that he is a man of legal qualifications. He, above all others, should realize the duties and responsibilities affecting a person accused of a serious crime. He decided, after getting the proceedings of the Court of Inquiry, to have the accused up on a charge of improper possession of a pistol, part of the incident of the night of the 2nd of August, and to sentence the accused to 28 days' detention: done apparently with the sole purpose of keeping the accused in custody. Had this happened in civilian life, if any magistrate or judge of a criminal or quasi criminal Court had dealt with the accused in such manner, such injustice would have been screamed from the editorials of every leading paper in Canada. But apparently Col Lent sought sanctuary in the Army Act and KRL. He found the accused guilty of an offence, in connection with the same transaction out of which rose the present charge. He apparently felt the accused was guilty, although the accused had not yet had the benefit of a trial by a competent Court.

Prosecutor:

There is no evidence before the Court as to what Colonel Lent felt.

Defending Offr:

I said apparently, sir. It is a question of interpretation. In summing up I can only interpret these things as I see them. I expect the Judge Advocate will deal with certain witnesses, and the amount of reliability to be attached to their evidence. I don't propose to take any more time in dealing with it. The Court has a transcription of the evidence, apart from the evidence heard yesterday, which is sufficiently fresh in their minds, and can refer to it to see what is proved and what is not proved. However, I have dealt with one of these four witnesses. The remaining three I shall deal with now. I want to draw attention particularly to Cpl Shaw's evidence. The Court will have to consider his mentality and size up the reliability of his evidence. He said, as I

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recollect it, without special reference to the transcript, although he was loath to tell the Court,- that he had reported the accused to be in bed. Cross-examination specifically proved that he had reported the accused in bed at tattoo which was very shortly before the shots were heard. When questions were put to him, he also seemed to have a personal desire to see the accused convicted of this offence. That is an example of the attitude of the people at Canada Bks resulting from their preliminary investigations. I have tried - and I think it is realized by certain members of the Court - not to throw too much mud in this trial. But I think it is reasonable to show up the attitude of the witnesses from the evidence they gave. As a result of finding the identity discs and pistol, they came to the irrevocable conclusion that the accused was guilty of the alleged offence. It was not necessary to do much more. They convicted him before he ever got before the Court, without the benefit of a finding. I want to take up the activities of Capt Snell and Major Bernier before I go on. The next point I think is one that occurred to every member of the Court as well as myself, and that is, why no military police assistance was called in in this case. The incident happened on 2 Aug 44. The Summary of Evidence was completed by 30 Aug 44. Yet in all that time no one at 2 Bn had occasion to call in the assistance of the MP or the SIB. Why had they not done it? We all know that that is what they are for. They are usually called to assist the offrs of a unit in obtaining the evidence in any criminal investigation. The unfairness to the accused for this omission, naturally may result in a miscarriage of British justice. The accused had been called before a Court of Inquiry. He was apparently given no information as to his rights. Lt MacComb stated on cross-examination that the accused was not allowed to leave after giving his evidence until the Court was satisfied that they had obtained all the information that they wished to obtain from him. The manner of taking the evidence before that Court of Inquiry, and the interrogation of the accused can be justified only on the technical ground that evidence taken in a Court of Inquiry is not admissible at a Court Martial. Now the accused gave evidence at that Court of Inquiry without the benefit of legal assistance. The Court knows and I know that if the defence is called on, the evidence for the defence must be exactly that contained in the Court of Inquiry, because the accused gave evidence on oath. The accused has been forced to disclose his defence in advance. It is again unheard of that, because a person assumes new obligations on joining the Army, he should lose his civilian right of having the benefit of legal assistance and can be compelled at a Court of Inquiry to answer questions which in civil lefe he would not have to answer. Capt Snell stated that the only reason he didn't call in military police assistance was because he was too busy with drafts. The lack of interest he has taken in the legal and technical investigation of this case shows either a complete lack of mental competence and responsibility of his duties as adjutant or a persecuting complex which gave no benefit of the doubt to the accused. I don't propose to say any more about that, sir. I would like to point out one particular feature in the conduct of this case. That is the lapse between some of the witnesses giving their evidence and the others. When evidence is a little cold it has lost a great deal of its value. I would like to draw the Court's attention to the excuses offered for pushing this case on at the time it was - namely, it was necessary to get people away on draft. Some of the people they were so anxious to get away on draft were still

WTBB

in Canada Bks as recently as 24 hrs ago. I feel that is to the prejudice of both the Court and myself. Therefore, I feel that the Court should take these things into consideration in deciding the guilt or innocence of the accused. I want the Court to understand that the accused has pleaded not guilty to this offence. Should he be called on for his defence, in all probability the case for the Prosecution will be weakened considerably. That, however, does not justify the Court in calling on the accused for his defence. They must make up their minds where there is sufficient evidence without a reasonable doubt to convict. To find the accused guilty on a charge of murder, there must be evidence of malice of forethought. There is no evidence of such malice in any of the evidence brought out by the Prosecutor. Such malice is not necessarily presumed from a mere unethical act. Now because the accused was found with a pistol under his pillow, which is an offence only under Routine Orders, is it proper to assume that the only conclusion from that act is that the accused fired the pistol used in the killing of Dillon? The witness who claims to identify the accused on the parade square saw no evidence of any violence, nor suspected any violence, nor did he see any sign of any lethal weapon in possession of the person he claimed was the accused. I refer you to Archbald's "Criminal Pleading, etc", 31st edit, p.900, under WTBB the heading: "Evidence for the Defence". (quotes: "The prisoner may show ------ or witnesses called by the Defence.") I contend that my cross-examination has elicited enough evidence to prove either that the murder was not committed by the accused or that it is doubtful if the offence alleged was murder. Only the evidence which has been submitted by the WTBB Prosecution ~~xxxx~~ can be taken into consideration. Referring again to Archbald, p.64, under the heading "Express Malice" (quotes: "To amount to murder the killing --------- aforethought"). I contend that there is no evidence whatsoever of any malice aforethought which can connect the accused with the shooting incident on the night of the 2nd of August. I am not going to deal with the facts any further. I merely wish to remark upon certain things - certain irregularities, in connection with Canada Bks that night:- the evidence respecting shots being fired and the prevalence of drunks. The conduct of a particular commanding offr is not a matter which concerns the Court or which it must explain. If irregularities are occurring then it is not your function either to justify them or cover them up. You must decide the guilt or innocence of the accused on this charge of murder solely on the evidence before you. You should not consider how it may read to some Offr in superior authority. The Prosecution has given you facts; the Defence has tested those facts. Is Pte Robinson guilty of murder according to those facts? - guilty beyond a reasonable doubt? I have throughout made reference to the Prosecution. I would like to state that the accused is quite satisfied that he has had a very fair trial, and that every consideration has been given to his Defending Offr. I would also like to state that the Prosecutor has been exceptionally fair to the Defence, and the Court has been exceptionally patient all through the trial.

Court adjourned at 1245 hrs.

Court re-opened at 1400 hrs, the same members being present.

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Prosecutor's Answer:

Mr. President, I would like to make it a point at this moment to bring your attention to the fact that this morning in Court it was said the Prosecution was rather unfair to the accused in that it hastened this trial. Yet certain witnesses had not left until yesterday morning. That is quite true. But at that time Higher Authority were demanding the presence of these personnel at their field units. It was only fair in the interests of the service to expedite their return. This was done at the earliest possible moment; the men going out on the first draft after the adjournment of the Court on Saturday morning. It is, sir, the duty of the Prosecutor to bring out every fact available in the case to assist the Court in every way possible. It matters not to the Prosecutor whether, having obtained all these facts in evidence, what the decision of the Court may be. We only represent the Crown. It is a well known fact that the Crown is only interested in justice being done. The Court must be guided solely by the laws of England which you will find referred to in Army Act, Sec 41. The law of Canada, while similar, is not the law under which the accused is being tried. All the Prosecution has to do at this stage of the proceedings is establish a prima facie case. It does not have to do anything except prove the accused guilty of the crime charged: merely to bring sufficient evidence before the Court to satisfy you that the accused is guilty of the offence, the offence he is charged with. It may be weak; it may be overwhelming. For this proposition I draw your attention to MML, p.644, RP 40, fn 1. With regard to circumstantial evidence, I draw your attention to MML, Chap VI, para 4, p.70, which in effect states that circumstantial evidence is indirect evidence. I shall read it for the benefit of the Court. (quotes: "There is no difference ------ did or did not happen (indirect evidence)".) This again is referred to in MML at p.81, para 41. (quotes: "In connection with the rule ------- not of degree but of kind.") It is a recognized practice for Courts to accept substantial evidence. I think from the para I have just read, there is really no doubt about that. Now as to the action taken by the Commanding Offr of 2 Bn 1 CSRD with reference to the accused of having in his possession a weapon without authority and sentencing him to 28 days, that is a recognized procedure in the Civil Courts. I can refer you to one case the Courts in Ontario in 1939. I cannot cite the exact report, but it was known as Rex vs. Thompson in which the accused man was sentenced to 18 months for perjury on obtaining a marriage certificate. He said he was a single man. His wife was still living and was found some months later brutally murdered. It was established that her death was caused within several days after the marriage license was obtained. He was charged with perjury and sentenced to, I believe, 18 months, in order really, to allow the police to gather sufficient evidence to bring him before the Courts later on a charge of murder. The action, therefore, taken by Col Lent was without doubt entirely right. There is, in this case, evidence of malice. Evidence has been given that the accused shortly before Dillon's death demanded from Dillon "a buck" in a rather surly manner, indicative of a hold-up. I feel there has been a slur cast upon the offrs of 2 Bn in this case. The Court can come to no other conclusion that these offrs acted with the best of intentions. While they may not have been wise in not calling in police assistance, nevertheless, their actions were, I believe, beyond reproach.

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Now, coming to the identity of the deceased, it is normal practice - the recognized practice in the Canadian Army - to identify a deceased or wounded soldier by his identity discs. This is particularily applicable to actual fighting - to the field. The evidence of Capt Verdicchio and Cpl Ferguson, Medical Offr and Medical Cpl respectively, of 2 Bn, was to the effect that they had both examined the discs around the neck of the deceased person while in the MI Room of that Bn. There can be no doubt from the evidence that this body was taken to 3 Cdn Gen Hosp and later to 65 Brit Gen Hosp in Naples. The admitting doctor, Capt Grossman, stated that no other patient, suffering from a gun-shot wound in the head, was admitted to that hospital either that night or early in the morning of 3 Aug 44, while he was on duty as Medical Orderly Offr. He stated that he would have seen any such admission. Capt Jepson's evidence indicates that he attended, as he says, the only person admitted on the night of 2/3 Aug 44 that was suffering from a gun-shot wound in the head; that he knew this person from the records as Dillon, and that that patient whom he attended regularly from 0230 hrs in the morning of the 3rd of August until he died either on the 7th or 8th of August was the same man whom he knew as Dillon. He stated the cause of this man's death was a gun-shot wound of the head and bronchial-pneumonia. He stated that the bronchial-pneumonia is directly caused as a result of the gun-shot wound in the head. It may happen to persons suffering from a head wound due to the fact that they lie upon their backs and the respiration is affected by the head wound. In short, the gun-shot wound that Dillon suffered from, was directly the cause of his death. The question as to whether or not the shot entered the head from in front or behind is, I think, more likely to be decided correctly by the medical offr who operated and attended the wounded man. A more correct and detailed study of the wound would, of necessity, have to be made by that doctor. Neither Capt Verdicchio nor Major Davidson could or would have been expected to make a very thorough check of the wound. They realized that they would not be in a position to assist the man, and that it was their duty to get that man to a brain specialist, who, apparently, was stationed at 65 Brit Gen Hosp. In short, they were more interested in helping the wounded man than trying to determine the size of the various wounds. Let us briefly go over the evidence of the various witnesses, other than the medical witnesses. We have Pte Wilcock going into the Gd Room and stating that his Glengarrry, with the 48th Highr badge on it, had been removed from his head somewhere around 2215 hrs on the night of 2 Aug 44 by a man wearing Seaforth flashes and carrying a gun, what he believed, was an automatic. We have the evidence of Lieut Mills who tells of finding the Glengarry , which Wilcock identified, on the steps of the Offr's Mess. Mills also states that Pte Dillon was lying within a few yards of these steps. We have the evidence of the Gd Cpl who states that he accompanied Pte Wilcock in the direction of the latter's billets; that on his way back from this trip he heard a shot or shots fired, and a very few minutes later was at the scene of the shooting. Therefore, Wilcock cannot, in any way, be connected with the crime. We have the evidence of Cpl De Harte. While some of his actions may well be criticized, there is one thing established, namely, that this Cpl on the morning of the 3rd, after hearing of the shooting, went to his superior offr and offered certain information. He stated in Court that he had seen Pte Dillon at approximately 2230 hrs embroiled in an argument with a man whom he recognized as the accused. Why did he recognize him? Simply and solely because he saw him wearing Seaforth flashes and a Glengarry which had a 48th Highrs badge on it. You will recall

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that Cpl De Harte was a member of the 48th Highrs. The most normal and natural thing is for any soldier to take a very good look at someone he finds wearing his own regiment's head-dress and badge and yet wearing different shoulder flashes. De Harte states that within three or four minutes after arriving in his billets he heard some shots. I suggest to the Court it is a fair inference from the evidence in which only two or three shots were mentioned as having been fired during the period in question, that these were the shots that De Harte heard and were responsible for the wounding of Dillon. We come to Capt McKee's evidence. I don't think that the Court could conclude that he was giving it for any other reason than it was his duty to tell what he knew to this Court. You will recall that he could not say the exact way Dillon was holding the identity discs that had the name 'Robinson' on them and he refused to be tied down. He was sure of one thing; that at least one disc was firmly in the hand of Dillon. His was the only medical evidence, if such you might call it, as to how a man shot through the head would fall. Cpl Shaw, one had to admit, was not the best of witnesses, but his attitude was the same in reply to the Prosecution, in reply to the Defence, and, I might say, in reply to the Court. Whether he held any grudge against the accused, neither I nor any other person can tell. But he did state that he saw scratches and other marks upon the accused's face and neck. He got into quite a bit of difficulty about the tattoo report. It is clear from his evidence that he did not call the roll, and that he had no knowledge of the accuracy of the tattoo report turned in by the various platoon sergeants. He did, however, state that tattoo roll call is made about ten o'clock or 2200 hrs. The evidence of Capt Snell is to the effect that at 2330 hrs, 8 Aug 44, he, together with Major Bernier, went to the bedside of the accused. The accused was lying down, face down, on his bed. Neither Capt Snell nor Major Bernier, in fact, Cpl Shaw could say more than that the accused was apparently asleep. I do not think that it calls for any argument to prove that point. If a person desires to feign sleep, few people can prove otherwise. An automatic, .45 colt, was found under the blankets at the head of the accused's bed or as the witnesses described it, if I recall it right, under some clothes that were used as a pillow. They found that the accused was suffering from scratches and bruises, and that he was not wearing his identity discs. On looking at the revolver they both stated that they smelled burnt powder from it. By the smell of burnt powder the identification of that automatic is firmly established. It was established even more firmly on the cross-examination of Major Bernier. The Court may well consider that cross-examination. The evidence given by the witness on his cross-examination is even better evidence than that given on his examination-in-chief. Lieut Dolan gave certain evidence. His evidence, however, was of very little value. He, however, admitted that he could not tell the difference between a back fire and shots. Now there are certain theories which I propose to advance. I forgot to mention that Major Bernier, in addition to finding the automatic, also found a holster of the type used to carry an automatic similar to that which was found under the head of the accused's bed. He also stated that the undershirt of the accused was torn. Now there is a theory which I suggest in deciding the reason why the holster and the pistol became separated. The accused, coming into his billet, no doubt agitated by what he had just done, afraid to be seen by other men putting the pistol into the holster along with his kit, jammed it under the head of his bed, climbed into bed and made every effort to appear asleep. To do so he lay face downwards. I suggest that in his haste to hide that automatic he placed it under his blankets and, as a result, the fumes of burning powder remained in the barrel

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of that pistol long enough for them to be smelled by Capt Snell and Major Bernier. As to the question of the identity discs: it is, I think, a fair inference from the evidence we have heard from Cpl De Harte, that the accused and Dillon got into a struggle, maybe not punching particularly, but they were struggling. I suggest that in the course of that struggle, Dillon grabbed at the accused's throat, laying hold of his identity discs and yanked them. As the Court will notice the cord on these discs is old and rather worn. They broke away. As they were breaking away the accused grabbed the string. In a further struggle the second piece of string broke off. The accused retained it in his hand and later threw it away. The theory that I put forward to the Court is that in this struggle Dillon, somehow, picked the glengarry off the head of the accused and threw it away. It landed on the steps of the Offrs' Mess or near them. In the struggle to break away, Dillon staggered backwards with Robinson's identity discs in his hand. Whether or not he fell or remained upright I cannot say. The accused, who was carrying a revolver in his pocket, pulled it out and fired it. Dillon on being hit would no doubt spin around and fall face downwards. There is no possible suggestion in the medical evidence as to how the man was wounded when he fell. I feel the members of the Court must, in their military experience, have seen men shot: have seen them spin partly around as a result of a heavy slug entering the head. How the accused got away is not difficult to understand. I will attempt to explain it. It is true that he had something like 100 yards to go across the parade square to his billets. But I suggest to the Court that there are four buildings around the parade square, near the Offrs' Mess to which the accused might well have got to. In fact he might well have gone to the corner of the Offrs' Mess, a matter of only 10 yards. Once in the shadow of the buildings, he could easily have walked back to his billets without being seen. Admittedly, the evidence does not show the actual manner in which Dillon was murdered. Rarely is the guilty person seen to do the act. In fact, I suggest to the Court that it would be an exception to the usual rule to get any direct evidence of the actual slaying of a person. I suggest to the Court that there has been ample evidence adduced to put the accused on his defence. That is all that the prosecution at this stage is required to do. The Prosecution has produced the necessary evidence to call upon the Defence to offer evidence to rebutt it. The Court is not at this time determining the guilt or innocence of the accused. It is merely asked to decide whether or not the Prosecution has produced enough evidence to indicate that the accused, Robinson, did, on or about 2250 hrs, on the night of 2 Aug 44, so wound one Pte Dillon, that this Pte Dillon did, on or about 7 Aug 44, die as a direct result of that wounding.

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Defending Offr's Reply:

Sir, the opening remarks of the Prosecutor seem to be in defence of the Offrs and certain other personnel of 2 Bn 1 CSRD. They are not on trial before this Court. He is not responsible for their conduct, and he need not apologize for their incompetence or misdemeanours. I also stated in my opening argument that I had no fault to find in the Prosecutor in his conduct of this case. He acted in good faith. He was given instructions by Higher Authority. But such Higher Authority has no place in judging the guilt or innocence of the accused unless a member of the proper Military Court. Their conduct does not come within the jurisdiction of the Court. I strongly feel, however, that the Prosecutor has misled the Court by his remarks. I trust the Judge Advocate will remark upon the statement that the accused is being tried in accordance with the laws of England. This was true up to the year 1867. But reference to Section 69 of the Militia Act, which is Appendix I to K.R. (Can)

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states that the Army Act, only insofar as it is consistent with the provisions of R.N. (Can) and Cdn law, applies. Therefore the rules of evidence, by which this Court is governed, are those rules laid down in the Canada "Evidence Act". This Court is a Canadian Court. Then there is the suggestion that all the Prosecution has to do is to establish a prima facie case against the accused: that his guilt or innocence is not to be decided at this stage. I do not agree. That is a matter on which you will receive full and complete instructions from the Judge Advocate. I suggest we are in this position. If I were to stop now, offering no evidence in defence, you cannot deny my motion unless you are prepared to find the accused guilty of murder on the evidence which you have heard. The Prosecutor cited the case of Rex vs. Thompson. From the facts which he gave you, it seems that the accused, Thompson, was convicted on a charge of perjury as a result of improperly obtaining a marriage certificate, and that, subsequent to obtaining the marriage certificate, he was accused of brutally murdering his wife. These were two separate prosecutions and not connected in any way apart from the fact that the facts respecting the improper obtaining of the marriage certificate might be acceptable in evidence before a Court trying the murder charge. The Prosecutor did not seem to think an investigation into the character of the deceased was in point - that it had no bearing on the possible guilt of the accused. He omitted, however, to tell you that the purpose in presenting the character of the deceased in evidence was to determine whether or not he had been guilty of any previous acts of violence or if there had been any previous exhibitions of quarreling between the deceased and the accused.

Prosecutor:

I may be mistaken, but the impression I got was that the Defending Offr said that was a matter for the Defence.

Defending Offr:

It is not a question for the Defence at this time. It might be later. The reference to Phipson on Evidence shows that this is one of the matters to be investigated by the proper investigating authorities.

Prosecutor:

Such an investigation was indicated by the evidence of Cpl De Harte.

Defending Offr:

What has Cpl De Harte to do with the case?

Prosecutor:

He gave evidence that the accused demanded "a buck" from the deceased.

Defending Offr:

What has that to do with the character of the deceased? I am dealing with his previous history. I am not dealing with any incident alleged in connection with this case. If the Court accepts that "a buck" was demanded by the accused of the deceased,

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then they must also accept De Harte's statement there was never any question of any violence between them. When the Prosecutor used the word "embroiled" to describe the argument that took place, he is using a word which I don't think he meant. The Prosecutor also stated that the identity of the deceased was properly established by means of the identity discs because it is done that way in the field. I presume by that he meant in action. There, with the bullets falling right and left; in the midst of heavy shell fire we accept certain practices, but we also know that mistakes in identification are made. But when you are back as far as we are, we must, in fairness to the accused, be a little more thorough in our identification. Which was the point of entry and the point of exit of the gun-shot wound will cause the Court a great deal of concern, for the simple reason that the theory suggested by the Prosecutor, indicates that the wound of entry must be in the right frontal bone or forehead, and the wound of exit in the right occipital bone. He stated that there is no evidence as to what would happen to a person on receiving a wound of this kind. I checked Capt Verdicchio's evidence. I refer to the transcript of evidence, question and answer, no. 38. (quotes) That is the only fair inference which the Court may accept. The body either twisted or spun around at the moment of impact [illegible]. According to the Prosecution, the accused was agitated and, in his moment of agitation, slipped the pistol under some blankets or clothing. Yet right afterwards the accused climbed into bed and went to sleep. The Court must examine the evidence of the witnesses called by the Prosecution in the light of their method of giving evidence. It was highly prejudiced against the Defence. They have stated the accused appeared to be asleep. Now to go to sleep so soon after consciously shooting another person is absolutely inexplainable. References were made to Capt McKee's evidence. I think the Court was favourably impressed by his evidence in most instances; but did the Court fail to notice one very weak point in his method of giving evidence? In order to protect himself and give himself loads of time to think before giving his answer, he turned to the Court stenographer, spoke slowly, chose his words carefully, and made sure he said the right thing. Has the Court, along with all these other matters, considered the significance of the Dental Sgt falling out of the window? The Court, from an examination of Exhibit "O", can readily see that the bullet that wounded Dillon might have been fired from that house providing Dillon was walking in the direction of the Borden Building and was shot from behind. The Court cannot accept the theory advanced by the Prosecutor as to how Dillon was shot without finding obvious faults with that theory. Had Dillon taken that hat from the head of his assailant, he would more likely have held on to it instead of throwing it away. The fact that he had time to throw it away shows that he must have been shot by someone who was not standing directly in front of him. Otherwise he would not have had time to throw the hat some considerable distance. Then there is the suggestion that the accused carried the pistol in his pocket. We know that a pistol raises a considerable bulge. De Harte was cross-examined as to whether or not any pistol or weapon was apparent in the hands or clothing of the person talking to Dillon. He said "No". The whole assumption in the theory advanced by the Prosecution is that Dillon was shot through the front of the head. You must consider the evidence of the first persons who superficially examined him. They saw a small hole at the back and a larger hole at the front from which brain tissue was protruding. Obviously he was shot from behind. It is now the Court's problem to decide which was the wound of entry and which was the wound of exit. I feel that the Prosecutor has apologized

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sufficiently for his presentation of the case. I strongly suggest that the Court accept these apologies and throw this case out. They cannot find the accused guilty on circumstantial evidence unless they are satisfied, not only that the circumstances are consistent with the accused having committed the act, but that they are inconsistent with any other rational conclusion. I submit the Prosecution has failed to link the accused with the offence alleged.

Judge Advocate's Summing Up:

Mr President and gentlemen, it is not laid down, as far as I know, in the Rules of Procedure that the Judge Advocate should sum up in open Court at the conclusion of a motion of this nature. But since the Court wishes it, and, in view of the serious nature of the charge which the accused is facing, I feel that it is not only desirable, but my duty to do so. The accused is charged under Sec 41 of the Army Act with committing the civil offence of murder, the allegation being that on the 2nd of August of this year, he murdered one Pte Dillon, J.W.M. A charge of murder can be tried by Court Martial when we are out of the United Kingdom by virtue of Sec 41 of the Army Act. This raises a point mentioned by the Defending Offr. I quote Sec 69 of the Militia Act, R.S.C. 1927, chap 132, found in K.R. (Can) at p.292 (reads). Now the effect of that is that the accused is to be tried by the English Criminal Law and, according to the English law of evidence, not by the Canadian Criminal Code nor Canadian Law respecting evidence. The Defending Offr contends that the Prosecution has failed to establish a prima face case. What does that mean? I refer to the MML, Chap VI, para 12 and part of para 13, pp 72-3. (quotes para 12 and lines 1-3 of para 13) It goes on to give examples which are not applicable to this case. It should not be necessary for me to remind the Court that it is the sole judge of the facts; that is to say, the evidence which has been adduced before this Court and only that evidence. If the Court has in its mind a reasonable doubt as to the accused's guilt then it must find him not guilty. A reasonable doubt is not one based on whimsy sentiment or anything of that nature, but it is a doubt such as the members of the Court might entertain in the conduct of their own personal affairs. It is the duty of the Judge Advocate to advise the Court, to the best of his ability, of the law involved. Any opinion which he has or expresses with respect to the facts are not binding on the Court. The accused is charged with having committed murder. I refer the Court to MML, Chap VII, para 42, p.115. (reads) I also refer the Court to Archbold "Criminal Pleading Evidence & Practice", 1943 edit, p.859. (reads para headed 'Murder') Then on the same page, the para headed "The Person Killing". (reads lines 1-4 of the para) I refer you also to Archbold, p.860, the para headed "The Person Killed", (quotes lines 1-3 of the para): also on p.861 to the para headed "The Manner of Killing" (quotes lines 1-3 of the para). I would refer you also to the opening sentence of the second para on p.864 of Archbold (reads). Also at p.879 under the heading "Killing without intention whilst doing another act" (reads lines 1-3 of the para). In order to find a person guilty of murder it is essential to prove malice on the part of the alleged murderer. I refer the Court to Archbold p.864 (reads para: "Express malice") and to p.865 under the heading "Implied malice" (reads lines 1-8 of para). Referring again to Archbold pp 868-9 under the heading of "Quarrels" (reads lines 1-4 of para). Now we are not, at this stage, concerned with the defences to a charge of murder. You have to consider the Prosecution's case in order to decide whether or not the

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Defending Offr's submission should be allowed. I have endeavoured to prepare a time table, if you wish to call it that, which may be of some assistance to the Court. On 2 Aug 44 at 2100 hrs Cpl De Harte and some of his comrades entered the main gate at Canada Bks. There they met a Nast & PER soldier who was drunk and argumentative. Cpl De Harte ascertained that this soldier's name was Dillon. At 2215 hrs Pte Wilcock was held up by another soldier wearing Seaforth flashes. He was robbed of his Glengarry with the name "A.H. Wilcock" inside (Exhibit "H") and his fountain pen which bore some tooth marks (Exhibit "I"). Sometime between 2215 hrs and 2230 hrs, Cpl De Harte came upon this soldier Dillon arguing with two other soldiers on two separate occasions, and then he found Dillon and the accused in an argument. The accused made a demand for money. Cpl De Harte says that he recognized the accused because it was not usual to see a man with Seaforth flashes wearing a 48 Highrs Glengarry. At 2230 hrs Cpl De Harte left them still arguing. At the same time Pte Wilcock reported to Cpl Ferguson in the Gd Room and was then shown to his billets. Sometime between 2230 hrs and 2250 hrs, two or three shots were heard by the following people: Sgt Whynot, who was in the Gd Room, Capt McKee who was in 2 Bn Offrs' Mess, Lt Mills who was also in 2 Bn Offrs' Mess, Cpl Ferguson, Cpl De Harte who was in his billets, Major Bernier who was in 2 Bn Offrs' Mess, and Lt Dolan who was in the Gd Room. Certain of these people went promptly to 2 Bn Offrs' Mess where they found a body, wounded in the head, allegedly identified as Pte Dillon, lying face downwards. Capt McKee stated that he smelled powder burning as he left the Mess. Lt Mills found the Glengarry (Exhibit "H") on the Mess steps. Cpl Ferguson found a .45 casing on the point "J" on Exhibit "G". Major Bernier, Lt Dolan, Capt Verdicchio, and Sgt Whynot were also on the scene around that time. Sometime after 2250 hrs, Capt McKee discovered the identity discs with the broken cord (Exhibit "J") and turned them over to Capt Snell. Lt Mills found blood spots on the steps of 2 Bn Offrs' Mess. Major Bernier and Capt Snell set off to trace the owner of the discs that Capt McKee said he found in the injured man's hand. The injured man was taken to 2 Bn MIR and from there to 3 Cdn Gen Hosp by Cpl Stewart. About the same time Major Bernier and Capt Snell had completed their investigations. They got Cpl Shaw who took them to the accused's quarters, which they reached at approximately 2340 hrs. In other words, about one hour after the shots were first heard fired, Major Bernier and Capt Snell arrived at the accused's bedside and stated they awakened him as he appeared to be asleep. His kit was searched and also his blankets. The .45 automatic (Exhibit "O") was found. Major Bernier and Capt Snell stated that in their opinion it had been recently fired. Major Bernier also found a United States type holster (Exhibit "P") in the accused's kit, the kit which the accused admitted was his own. The accused had scratches on his neck similar to fingernail scratches; no identity discs, and his face appeared bruised. He was placed under arrest at 2355 hrs. Pte Stewart took the patient, named Dillon, from 3 Cdn Gen Hosp in an ambulance to 65 Brit Gen Hosp in Naples. Sometime after 2250 hrs Lt Dolan investigated the case of the Dental Sgt who had fallen out of a window of his billets near Canada Bks. At 0145 hrs, 3 Aug 44, a patient named Dillon, conveyed in an ambulance from 3 Cdn Gen Hosp and suffering from a through-and-through gun-shot wound in the head, was admitted to 65 Brit Gen Hosp. The evidence in support of that is the testimony of Sgt Fieldhouse, Capt Grossman and, to some extent, H/Capt Tootell, the padre. At 0230 hrs a patient named Dillon was examined by Capt Jepson, who stated that there were no other persons admitted to the hospital that night with similar injuries. Later that day, the Court of Inquiry, at which the

accused gave evidence, was held. Lt Dolan searched the accused and his kit in 2 Bn Gd Room. The accused on being ordered to empty his pockets, handed over two fountain pens of which the light grey one (Exhibit "Q") was identified by Mr Dolan. He was unable to identify the other one beyond stating that it had tooth marks on it. Capt Jepson, who had been attending the patient Dillon, stated that he died on the 7th or 8th of Aug. Padre Tootell said he buried him in the British Military Cemetery in Naples. I think that is a fair summing up of the evidence brought out by the Prosecution. Now as the Defending Offr has quite properly pointed out, that evidence is largely circumstantial. In that connection I would like to refer the Court to MML, Chap VI, para 42, pp 81-2. (reads para 42) The Defending Offr has asked me to say something to the Court about the identification of exhibits and about the proper method of identifying an accused person. As to the latter, the usual civil practice is to have the suspect picked out of a line-up of persons who are, as nearly as possible, similar to him in size, appearance and dress by the person who is called on to identify him. The suspected person must be given an opportunity of changing his place in the line-up if more than one person is called upon to identify him. In this case, as far as Cpl De Harte is concerned, any identification that he made was made before any such parade took place. In other words, one of the things that you will have to decide is whether Cpl De Harte's identification of the accused is due to his recalling the oddity of seeing a Seaforth soldier with a 48 Highrs Glengarry or whether, as the Defence contends, it was due to the fact that he had ample opportunity to memorize the features of the accused while he had him under observation prior to the Court of Inquiry on the morning of 3 Aug 44. Now as to the identification of the discs: I refer the Court to MML, Chap VI, para 112, p.100. (reads) Reference has also been made in argument to what is called "Judicial knowledge" - "Military experience" and similar expressions. I would refer the Court to MML, Chap VI, para 11, p.72. (reads para) In other words, the examples quoted are all examples of things which are of general knowledge. They do not apply to particular evidence which is of an expert or quasi-expert nature. I have nothing further to add, sir, except that I think I should again call your attention to the final sentence of para 12 on p.72 of MML (quotes). If you think that has not been done in this case, then you must allow the submission of the Defending Offr and find the accused "Not Guilty".

Judge Advocate (to Defending Offr):

Is there anything else you wish me to add?

Defending Offr:

I asked you, sir, to make some reference to the method with which Capt Rose introduced the exhibits. You read a para in MML, but I think it would be better --------

Judge Advocate:

I take it you are referring to the civil police methods?

Defending Offr:

I am referring to the police methods of obtaining exhibits and submitting them in Court.

C.119

Judge Advocate:

The practice, as I understand it, is that once an article is taken into possession by the police it should be marked in some way by the person who finds it. It may be tagged; it may be initialled - some mark may be scratched on it - something of that nature. The point is that this should be done as soon after the finding as possible. Otherwise, a proper identification becomes a difficult matter if the article passes from one hand to another before being submitted to the Court.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused B144333 Pte Donald John Frederick Robinson 2 Bn 1 CBRD not guilty of the first charge

In the Field
In Italy
29 Sep 44

(SGD) S. A. Lee Col
Pres.

(SGD) W. B. Bate Capt
Judge Advocate

*When the Court is already open this sentence will be struck out.

~~Proceedings on Conviction before Sentence.~~

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

is duly sworn

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

244

F

Sentence.

The Court sentence the accused

Sentence.

WBB

Army Form A 47

X

COURTS - MARTIAL

Form of Order for the assembly of a General or District

COURT - MARTIAL

(SGD) S. A. Lee Col
Pres

Orders by Brig E W Haldenby MC Vd
Commanding 1 Cdn Base Rft Group
In the Field 4th day of Sep 1944

(SGD) W. B. Bate Capt
Judge Advocate

B144333 Pte Donald John Frederick ROBINSON
2 Bn 1 CBRD

The detail of officers as mentioned below will assemble at Shilo Bks, Avellino, Italy on the 21st day of Sep 1944 at 1000 hrs for the purpose of trying by a General Court-Martial the accused person named in the margin (and such other person or persons as may be brought before them)

PRESIDENT

Colonel S A LEE MC Comd 2 CBRD is appointed President

MEMBERS

Lt-col J G VINING	(CAC)	5 Bn 2 CBRD
Lt-col E R GILL	(RCCS)	7 Bn 2 CBRD
Major L F MacDONALD	(RCCS)	8 Bn 2 CBRD
Major A T BROWN	(CIC)	HQ 1 CBRGp

WAITING MEMBER

Capt J A Mc GOWAN	(CAC)	5 Bn 2 CBRD

JUDGE-ADVOCATE

Capt W B BATE ADJA HQ 1 CBRGp is hereby appointed Judge-Advocate.

The accused will be warned and all witnesses duly required to attend.

The Proceedings will be forwarded to HQ 1 C B R Gp.

Signed this 4th day of Sep 1944.

E W Haldenby

(E. W. HALDENBY) Brigadier
Commander
1 Cdn Base Rft Group

5Q-83

Inv. Robinson E. G.

~~19 files~~

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A. Assault	NOT GUILTY	GUILTY	
2nd Att Sexual	NOT GUILTY	NOT GUILTY	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; ~~special findings~~ see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :
To undergo a detention for a period of One Hundred and Twenty (120) days.

(Sgd) ..... 27 JUL / 45 (Sgd) ..... President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.)

Date 29 Jul 45 (Sgd) Cuthbertenby Brig
Commanding Comd A Group - CMHQ Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
M 106013 Gnr Robinson, E.G.	30 Jul 45	C.H. McCurdy Lt.

PART II ORDER No 43 'A' d/ 31 Jul 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160

RECEIVED 2 AUG 45 JAG's BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFAB) 40/1/A & B/1099 (8144) 4/38B

Convened by Order of Brig EM Haldenby, CBE, MC, VD Comd A Group dated 26 Jul 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
M106013	Gnr	Edmund George	ROBINSON	5 Cdn Reinf Dep

PROCEEDINGS REVIEWED.
JAG's BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Convening Officer (name) Brig EM Haldenby CBE MC VD Comd A Group on (date) 27 JUL 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for paths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)~~
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. ~~President to accused : Do you object to ..... as interpreter ? Ans .....~~
~~The Interpreter is sworn.~~(1) Do you object to EXPIRED as shorthand writer ? Ans NO
~~The shorthand writer is sworn.~~(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans NO SIR(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(5). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	LT-COL	D.L. REDMAN	3 Q CAN
Member	CAPT	E.N. FLEMING	1 C CAN
Member	LT	L.E. STEPHEN	2 C CAN
~~Judge-Advocate~~			
Prosecutor	LT	R.L. TATTRIE	5 C REINF D
Defending Offr	CAPT	O.L. LEBLANC	5 C REINF D

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~or~~ plea .....
(1) .....
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~ not objeet to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 80, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of parts D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO SIR.(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (his) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE-H TI
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 113.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may [redacted] without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Give Evidence. Do you intend to call witnesses on your behalf? Ans. YES SIR. Are they witnesses as to character only? Ans. NO SIR.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1st charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans. NO SIR.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(*1. AFB 355 or AFB 295. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. My Own Wish. (NOTE NIL)(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 320, 563-566, Overseas RO 309, 2323, MML p 50, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, M 106013 Gunner Edmund George ROBINSON, on strength of No 5 Canadian Repatriation Depot, a soldier of the Canadian Army (Overseas) is charged with:-

FIRST CHARGE
SECTION 18 (4) ARMY ACT

WHILE ON ACTIVE SERVICE, stealing property belonging to a person subject to military law

in that he

in the Field, at approximately 2300 hrs, Wednesday 11 Jul 45, stole a Knife, the property of B 22788 Sgt Sharabura W, a person subject to military law.

The second alternative charge:

SECOND CHARGE
SECTION 40 ARMY ACT

WHILE ON ACTIVE SERVICE, conduct to the prejudice of good order and military discipline

in that he

in the Field, at about 1400 hrs, Thursday 12 Jul 45 was improperly in possession of a Knife, the property of B 22788 Sgt Sharabura W.

(S.H. Dobell) Colonel
Commanding Officer
No 5 Cdn Repat Depot
Cdn Army (Overseas)

Aldershot, Hants
26 Jul 45

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

(E W Haldenby) Brig
Comd
A Gp Cdn Rft Units

Aldershot Hants

26 Jul 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) ~~Appmt, A/R or A/Appmt~~	Full Christian Names.	Surname.	Unit.
M106013	Gnr		Edmund George	ROBINSON	5 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 26 Jul 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ". Ewd

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ Ewd
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ Ewd
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ Ewd
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-col	D L Redman, VD	HQ Cdn Rft Units

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by Comd Offr	1 CGRU
Lt	To be detailed by Comd Offr	2 CGRU

~~WAITING MEMBER.~~ Ewd

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~ Ewd

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

(Signed personally. RP 105 fn 2.) (Rank.)

Date 26 Jul 45

Commanding (E W Haldenby) Brig
Convening Officer.
Comd A Gp Cdn Rft Units

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA95 (In lieu of AFA3) 40/P & S/1697 (4931)

(See overleaf for oaths and notes for use on trial.)

I CERTIFY that I have this date examined M 106013 Gnr Robinson E.G. 5 Repat Depot and find him fit - ~~unfit to~~ undergo trial by Court Marial.

.....
Medical Officer No 5 Cdn Repat Depot.

TRANSCRIPT BY: R.88188 SGT AN SINCLAIR

TRIAL OF

M.106013 Gnr ROBINSON EG 5 Cdn Repat Dep

PROSECUTION

FIRST WITNESS

R.88788 Sgt SHARABURA WW, 5 Cdn Repat Depot, having been duly sworn, states:

On the night of 11 Jul 45 I came into camp about 10.30 off pass and went to the Mess for a cup of tea and then I came into my room. There was nobody else on the bottom floor and I got undressed and took a towel and some soap and went to the bathroom where I remained for 5-10 mins when I heard someone come through the door and ask for a match. I didn't know who it was because I never heard that voice before. He must have gone away then and I came back to my room and I heard the door to my room slam shut. I opened the door and the accused, whom I now recognize, was inside my room hiding behind the door. I asked him "what are you doing here". I saw some of my stuff was on the floor which had been inside my closet inside my kit bag. The accused tried to get around and past me to get out the door. I just had my shorts on and I dropped the towel and soap and we had a scuffle but he got away. As it was public outside I didn't follow him.

Q. Tell us about the condition of your room?
A. I have quite a big kit bag and it was inside the closet in my room and I keep it fairly neat. I knew right away that something was wrong when the things were strewn around.

Q. Did you have a knife and where did you keep it?
A. Yes, and I kept it on the shelf with some toilet articles. It is a "Jerry" knife, a pocket knife, and it is a very sturdy one. At the very tip of the blade there are about 4-5 little nicks.

Q. Did you see your knife when looking around your room?
A. No, and when I left the room to go to the washroom it was there and when I came back it was not there. I checked amongst my stuff lying around the floor and it wasn't there and next morning I made a complete checkup and it wasn't there.

Q. Do you recognize this knife?
A. Yes, there is no doubt at all that it is my knife.

KNIFE MARKED EXHIBIT 1

Q. Did you report it?
A. I told the SM about it, the DSM, and next morning I reported it to Sgt Wood of the RP.

Q. What happened the next morning?
A. The SM and Sgt Wood advised me to go to the pay parade on 13 Jul, and I went there after 1 in the afternoon. I recognized the accused going through the line with his head bent down. After he was paid I walked up to him with Sgt Wood as I was still a little doubtful as to whether it was him or not; I didn't say anything to him and just as I walked toward him slowly he said it was him.

Q. What did you say?
A. I just forget my exact words, but if the SM hadn't come along I would have fixed it up with him.

Q. What did he say to you?
A. "Yes, it was me".

CROSS-EXAMINED

Q. Did you notice anything strange about the accused the night

before when you saw him in your room?
A. In which way?

Q. Was he acting normal?
A. He knew exactly what he was doing.

Q. How did you notice that?
A. By the scuffle I had with him.

QUESTIONS BY THE COURT:

Q. Did you notice that night whether or not the accused had been drinking?
A. He may have been, Sir, but I didn't smell any liquor on him.

Q. Was there anything peculiar about his walk or speech that you noticed?
A. He wasn't gatabling around, Sir.

[redacted]

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 93(A)

SECOND WITNESS

H.15184 Sgt WOOD, JH, 5 Cdn Repat Depot, having been duly sworn, states:

Q: Will you tell us what you know about this case?
A. Yes, Sir. I was approached at 0900 hrs 12 Jul by Sgt Sharabure who reported the loss of a knife to me. He gave me a full description of the man that was in his room and that description so given to me definitely fits the accused whom I now recognize. Sgt Sharabura described his knife and the description he gave me of the knife, fits the knife, Exhibit 1. On 13 Jul, the following day, I stood watching a Pay Parade and I asked Sgt Sharabura if he recognized anyone. He said he wasn't quite sure and I asked him to take particular note of this man coming through, who was the accused, and on a second look Sgt Sharabura said he thought that it was the man and I said, "we had better approach him". He did so and as we approached him the accused said "O.K. Sgt, it was me, but I didn't know what I was doing, I was drunk". I took the accused then under close arrest, and later I reported the case to an offr, Lt Done, and I searched the accused's quarters in the presence of the accused, and amongst his kit in his kit bag, was Exhibit 1, and I asked Lt Done to hold it for evidence.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 93(B)

THIRD WITNESS

Lt HE DONE, 2 CGRU, having been duly sworn, states:

On the afternoon of 12 Jul at approx 1400 hrs I was sent to search the kit of the accused whom I now recognize. I took Sgt Sharabura and Sgt Wood with me and in the presence of the accused we went through his kit and I found a knife which opens into a dagger with a model plastic handle. This, Exhibit 1, is the knife I refer to. I recognize it on account of its general appearance and some nicks on the point of the blade. I asked the accused if it was his property and he said it was a souvenir that he had brought from Italy with him a year previous. He could not suggest to me anyone who had seen it in his possession,

and said it had always been in his kit bag.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

THE PROSECUTION IS CLOSED

- DEFENCE -

FIRST WITNESS

The ACCUSED, having been duly sworn, states:

Q. Will you tell the Court what happened on the night of 11 Jul?
A. Just shortly before 6 o'clock I went to Aldershot to the pub and went in as soon as it opened up and I don't believe I came out until after closing time and I don't know what I did between then and when I woke up in the morning.

Q. Can you tell the Court what happened the next day on the Pay Parade?
A. I got my pay and I walked out and Sgt Sharabura said to me he would like to see me a minute. He looked at my face and asked me how my lip was. When I woke up that morning I noticed I had a swollen face and a cut on my lip, and I thought I had been in a fight the night before downtown perhaps, and I said "yes, it was me". Just then Sgt Wood stepped up and I was arrested.

Q. Did you have anything to do with this knife, Exhibit 1?
A. No.

CROSS-EXAMINED

Q. Did you drink excessively at the pub?
A. Yes.

Q. Would you say you were not in control of your senses when coming hom?
A. I don't remember coming home.

Q. You don't remember the fight at all or how you got the cut lip?
A. No.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

SECOND WITNESS

L.6037 Gnr HOOD MD, 5 Repat Depot, having been duly sworn, states:

Q. Have you ever seen the accused before?
A. Yes.

Q. When?
A. He was in the same Tent Sec as I was.

Q. What did he usually do before a payday?
A. He generally went out and had a few drinks, etc.

Q. Did you see him on the night of 11 Jul?
A. Yes, he reported in to the Tpt Office slightly intoxicated after 2 o'clock in the morning.

Q. He wasn't normal?
A. No.

Q. Was he a bit excited?
A. No, he was quite a bit under the weather though. He didn't seem to know anyone or where he was.

CROSS-EXAMINED

Q. He was not normal; can you be more explicit?
A. I would say he was drunk.

Q. Did he come in alone?
A. Yes.

Q. Did he recognize you?
A. I don't think so.

Q. Did you actually smell liquor on his breath?
A. Yes.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(2)

THIRD WITNESS

M.60864 Cnr HARRISON L, 5 Repat Depot, having been duly sworn, states:

Q. Have you ever seen the accused before?
A. Yes.

Q. Where?
A. He used to be a driver in the MT and on the night of 11-12 Jul I was on duty when he came in drunk and I took him to bed.

Q. Do you think he recognized you when he walked in?
A. Yes.

Q. Would you say he was a big drinker?
A. I don't drink myself, and I've never been out with him.

Q. Have you heard of or seen him stealing before?
A. No.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(2)

DEF OFFR TO PRESIDENT:

I have a statement, Sir, from K.76041 Cnr INGLIS who is not here today, as he has signed up for the Pacific Force.

PRESIDENT:

Would you read it to the Court?

(DEF OFFR READS STATEMENT)

PRESIDENT: While this is not strictly admitted in law I am willing to take it on behalf of the accused.

STATEMENT MARKED EXHIBIT 'E'

THE DEFENCE IS CLOSED

STATEMENT BY THE DEFENDING OFFR ON THE FINDING

I don't think the accused was responsible for his acts that night. I have brought in witnesses that prove this, and that he was actually drunk, and one of them said he could not recognize him that night and another one said he had to help him to bed, and the accused himself under oath says he couldn't remember anything that happened the night before.

STATEMENT BY THE PROSECUTOR ON THE FINDING

I am of the opinion that if the accused is a man of such a character by going out and getting drunk to the extent that he doesn't know what he is doing, then I am in sympathy with him, but I cannot understand how he can struggle with a man who is so much bigger than himself in that condition and then get away?

THE COURT IS CLOSED TO CONSIDER ITS FINDING

THE COURT IS REOPENED AND THE PRESIDENT ANNOUNCES THAT THE COURT FINDS THE ACCUSED NOT GUILTY ON THE SECOND CHARGE.

PLEA IN MITIGATION

Drunkenness is a strong mitigant as the accused in that condition would not be so clear as to what he was doing as he would be if sober and might yield more readily to temptation in that condition. The accused is young, his M&T'S is quite good, and I ask the Court to take all these things into consideration when passing sentence.

My

Receipt for Exhibit

I acknowledge receipt of the knife, Exhibit 1, which I agree to hand to the Adjt who will hold until further order.

[illegible] Lt.
Prosecution.

K-76041 Gnr Inglis, D.I. "B" Wing, 2 CCRU, a soldier of the Cdn Army, Overseas s, having been duly sworn, states:

"On 11 Jul 45 myself and two friends, Gnrs Lemoine and Tpr Armand Quesnel at 1930 hrs went into the Wellington Pub, Aldershot to have a drink of beer. Here we met Gnr Robinson who had been in the pub previous to our coming into the pub. To me and my chums he seemed quite drunk. We drank beer with Gnr Robinson until 2130 hrs and consummed a goodly amount of beer. When we left, Gnr Robinson at 2130 hrs he was really well drunk and was reeling around, incapable of knowing what was going on around him. To me he was drunk, not sober.

"Q" 1. Have you ever seen Gnr Robinson drunk before?
"A" 1. Yes, while in 2 CARU at Bramshott, I have on numbrous occassions seen him being helped into the hut and put to bed while under the influence of liquor. The next morning he never remembered what he had been doing or where he had been drinking as he used to ask those of us around him whom had put him to bed and what he had been doing during the night.

"Q" 2. Would you say he was a big drinker?
"A" 2. Any time I have seen him with any money he was usually on his way to the pub and usually came home drunk.

"Q" 3. Have you ever seen or heard of him stealing?
"A" 3. Never to my knowledge.

D. I. Inglis

Ex 2
pm

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M 106013	Gunner	ROBINSON. Edmund George	No 5 Cdn Repat Depot

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 15 (1) 1 times.

For A.A. Sec 40 1 times.

For _____ times.

For _____ times.

Date of first entry in Field Conduct Sheet 22 May 44

Date of last entry in Field Conduct Sheet 31 May 44

2. ~~Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.~~

*Strike out if not applicable.

*3. ~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been awaiting trial on the present charges for 0 days in civil custody; and for ~~18 days of 16 July 43~~ days in military custody, *i.e.*, 0 days in open arrest, ~~18 days as of 16 July 43~~ days in close arrest; of which 0 days were spent in hospital.

5. The present age of the accused is 2 yrs 199 days as of 16 July 43

6. The date of his ~~arrestation~~ ~~calling up for military service~~ is 15 Jan 43

7. The service which the accused is allowed to reckon is 2 yrs 199 days as of 16 July 43

8. The accused is in possession of‡ C.V.S.M. & Clasp

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). ~~The accused has served continuously, without reduction, to the present date.~~

Date of Promotion.

~~In the substantive rank of~~

~~In the war substantive rank of~~

~~In the acting rank of~~

EXB

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) Wt.8670/668 100,000 4/42 A.& E.W.Ltd. Gp.698
(22459) Wt.2925a/1873 60,000 9/42 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		Nil.		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 27/16 day of July 45

C.J.W. Cundy Lt.
A/ Adjutant
"A" Wing 5 Odn Repah Depot

No. M 106013 Name ROBINSON R.G. Sqn., Battery, or Company

SUPPLEMENTARY

Corps R.C.

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Date of enlistment

Sheet No.

14-1-43 G.C. Badges

Signature O.C. Company, etc.

Service or Proficiency Pay

M.F.M. 6 (A.F.B. 127) 40/P & S/130 (3637)

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				No entries Certified true copy of MFM 6 Extracted from MFM 4		20 May 44		G.R. Boyle Lieut.	
Field	22 May 44	Gnr		A.A. Sec 40: in that he was not wearing his head dress therefore causing himself to be checked by MPs	Documentary	Admonished	12 May 44	Maj C.P. Wilkinson	
Field	31 May 44	Gnr		A.A. Sec 15 (1) in that he was making away with his military clothing when he was apprehended by Police.	Documentary	14 days Pay 7 days F.P.	2 Jun 44	Maj C.P. Wilkinson	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY w.e.f. 15 Jul 45					
				C G McCurdy					
				(C.G. McCURDY) Lieut., R.C.A.,					
				A/Adjt., A Wing, No 5 Can Repat Depot					
				Officer having custody of original documents.					

SUMMARY OF EVIDENCE

Summary of evidence in the case of M 106013 Gunner Robinson, E.C., on strength of No 5 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the summary of evidence is taken on oath.

FIRST WITNESS for the prosecution

B 22788 Sjt SHARABURA, W.W. on strength of No 5 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:

"At about 2255 hrs, Wednesday 11 Jul 45, I was in the downstairs bathroom of the Seargeant's Quarters, Beaumont Barracks. At the time I was alone and was not aware that there was anyone else downstairs in the building. I heard a voice ask for a match and replied that I did not have one. I did not see this person but heard footsteps and presumed that he had left. As I was returning from the bathroom, the door of my room, which I had left open, was closed. I opened the door and saw Gnr. Robinson, whom I now recognize, in my room. I asked, "What are you doing here?" I do not remember his reply. I was still in the doorway to my room when I noticed that my kit bag, which I had last seen inside the cabinet in my room about 2250 hrs the same evening, was strewn all over the floor. Gnr Robinson made a break for the door. I tried to stop him. We struggled for about a minute but he got away, running out through the door. As I was dressed only in my underwear, I did not give chase. On looking around I discovered that a knife, which I kept on a shelf in my cabinet, was missing. I reported the incident to Sjt Wood of the R.Ps. and to B.S.M. Loghrin of "C" Wing, No 5 Cdn Repat Depot and they advised me to attend pay parade and I might find the man who was in my room. At about 1315 hrs 12 Jul 45 I met Sjt Wood and stood there looking each man over as he was paid. I recognized Gnr Robinson as being the man in my room the night before. I told Sjt Wood that this was the man and we approached him. As I came up to him he said, "It was me". Sjt Wood placed him under arrest. At about 1430 hrs I was questioned by Lieut Done about my missing knife. I described it to him in detail."

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

W. W. Sharabura

(W.W. SHARABURA) Sjt., B 22788.

SECOND WITNESS for the prosecution

H 15124 Sjt WOOD, J.H., NCO i/c Regimental Police, on strength of No 5 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:

"At approximately 0900 hrs on Thursday 12 Jul 45, Sjt Sharabura reported to me that he had found a man in his room around 2300 hrs. He reported that he had challenged the man when he discovered him in his room and that the man had tried to make a break and had escaped after a short struggle. He described this man to me as being 5'4" tall, about 135 lbs., light complexion and possibly carrying a scar as there was blood on the floor of his quarters after the struggle. He informed me that he had so far not checked his kit thoroughly but knew that a knife was missing. This knife he described as having a plastic handle of various colours, signle blade and corkscrew. I decided to

.....Page -2-

SECOND WITNESS for the prosecution (Continued)

check all parades. At approximately 1315 hrs the same day, I, along with Sjt Sharabura, checked the M.T. Pay Parade. I asked Sjt Sharabura if he thought that there was any difference in the description of the man he gave me and Gnr Robinson, whom I now recognize and who was on Pay Parade. He replied that that was the man. We approached Gnr Robinson and before anything could be said, he, Gnr Robinson stated, "O.K. Sjt, it was me but I didn't know what I was doing." I placed him under arrest. At approximately 1400 hrs, acting under instructions of Lt-Col. Myatt, accompanied by Lieut. Done and Gnr Robinson, I went to Robinson's quarters to inspect his kit. Robinson turned out all his kit which Lieut. Done inspected. Amongst the kit was a knife of the description given to me by Sjt Sharabura. This I asked Lieut Done to hold onto as evidence. We then returned Gnr Robinson to the Guard Room where Lieut Done interviewed him."

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

J.H. Wood Sjt.

(J.H. WOOD) Sjt., H 15124

THIRD WITNESS for the prosecution

Lieut H.E. Done of No 2 C.G.R.U. (No 1 C.A.R.U.). A Statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence and marked Appendix "A".

I, Lieut C.G. McCurdy, R.C.A., the Officer taking this Summary of Evidence, certify that owing to the loss of time and expense involved, the attendance of this witness cannot in my opinion be readily procured.

C G McCurdy

(C.G. McCURDY) Lieut., R.C.A.,
A/Adjt., A Wing, No 5 Repat Depot,
Officer detailed to take
the Summary of Evidence.

THE ACCUSED DOES NOT DEMAND THE ATTENDANCE OF THIS WITNESS FOR CROSS EXAMINATION.

The accused was cautioned as follows: Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

THE ACCUSED DECLINES TO MAKE A STATEMENT AND RESERVES HIS DEFENCE.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

C G McCurdy

(C.G. McCURDY) Lieut., R.C.A.,
A/Adjt., A Wing, 5 Repat Depot,
Officer detailed to take
the Summary of Evidence.

July 12th 1945
5 Cdn Repat Depot
Can. Army

Appendix "A"

Sir:

At approximately 1400 hrs. this date acting on the orders of Lt Col W. G. Myatt and accompanied by the Regt Police Sgt I searched the effects of Gnr Robinson E. G. reg no M106013

I found therein a distinctive type of pocket knife, and, as a pocket knife had been among articles mentioned as stolen from the Sgts mess quarters, I took the knife as a possible piece of evidence. Pte Robinson maintained that the knife was his own property and that he had brought it with him as a souvenir from Italy some time ago. He could not however produce, or mention, anyone who had ever seen the knife before

Later in the afternoon, before seeing the knife in question, Sgt Sharabura described it to me in great detail even mentioning various tiny "nicks" on the blade

I submitted the knife to the Regt'l Police Sgt as evidence

I swear this statement to be a true statement So help me God

W. E. Done Lt.

Witness:
C. G. McCurdy Lt
12 Jul 45

No 5 Cdn Repat Depot
Cdn Army (Overseas)

LIST OF WITNESSES

FOR THE PROSECUTION

B 22788	Sjt	SHARABURA, W.W.	5 Repat Depot
H 15124	Sjt	WOOD, J.H.	5 Repat Depot
Lieut		H.E. DONE - DOCUMENTARY	2 CGRU

FOR THE DEFENCE

6A-48 Gpr. Robinson E.H.

N

R

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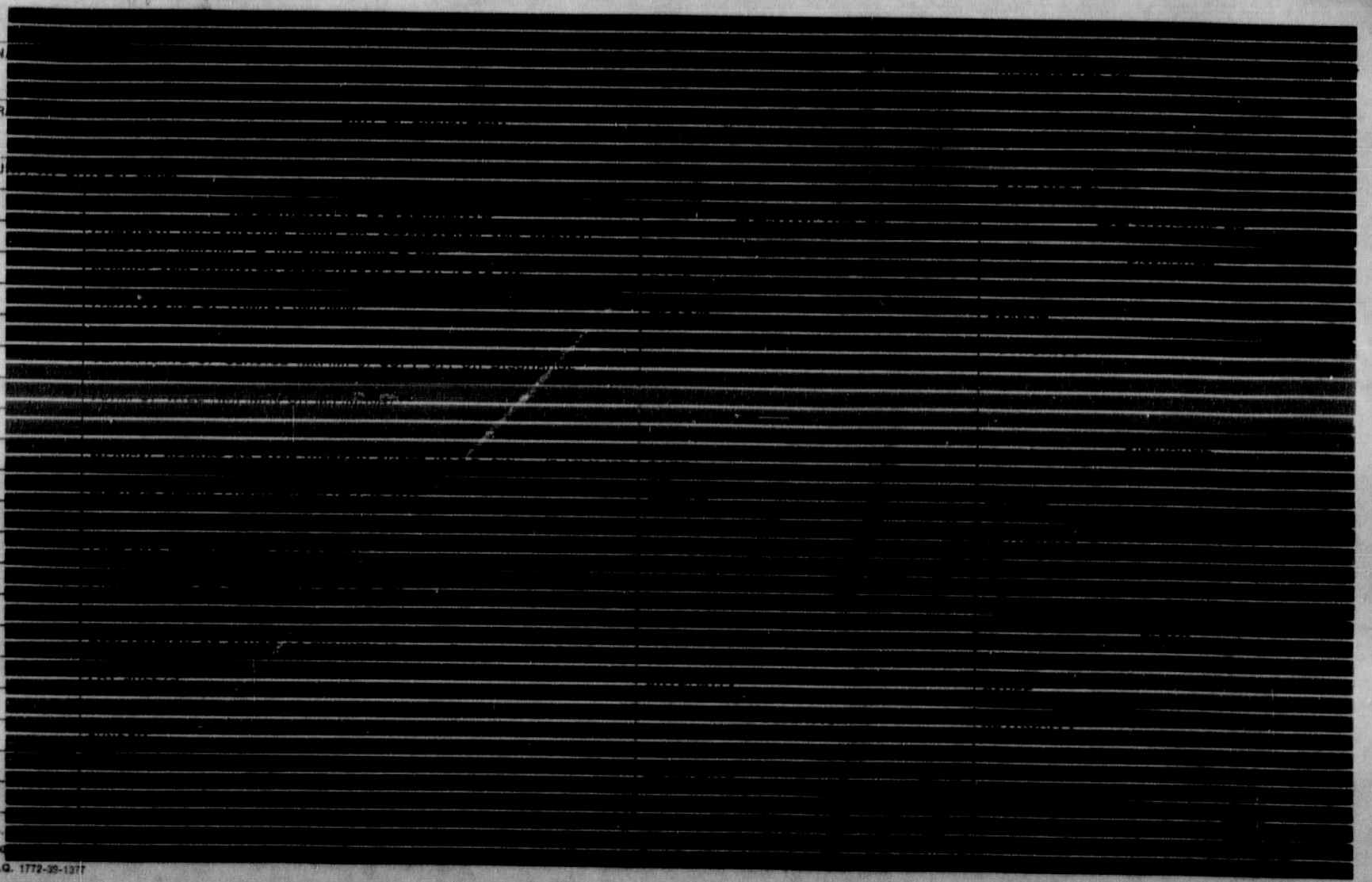
M.



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H.Q. 1772-39-1377

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.62142 Tpr Ernest Howard ROBINSON

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence fm ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To forfeit all ordinary pay for a period of sixty (60) days.

(Sgd) ..... 4 MAR '46 (Sgd) C. E. Woodrow Lt. Col.

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 33, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 7 Mar 46 (Sgd) A.R. Connolly Brig

Commanding CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B62142 Tpr Robinson E.H.	8 Mar 46.	[illegible] Lt Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 5 A - 4 5

RECEIVED APR 26 1946 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFA96 (To 1000 of AFA83) 40/P.R/A/1000 (40/00)

4/38B

If convened by Order of Brig. K.C. BLACKADER CBE DSO MC ED Comd CRU dated 28 Feb 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.62142	Tpr	Ernest Howard	ROBINSON	"B" Wing 4 Cdn Repat Depot

PROCEEDINGS REVIEWED 25 May 46 C.H. Tait, Maj. REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 4 Mar 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all references [illegible] for guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to [illegible] will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(6) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1120 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(E), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to [illegible] as interpreter? Ans

The Interpreter is sworn.(1) Do you object to M69158 Sgt Rimstad, RA as shorthand writer? Ans Not Stated

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Not Stated (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any,~~ and Offrs under instr, ~~if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	C.E. WOODROW OBE ED	HQ CRU
Member	Capt	D LEBERE	1 C Rep Dep
Member	Lieut	D.I. SMITH	1 C Rep Dep
~~Judge-Advocate~~			
Prosecutor	LIEUT	J.C. TREMBLAY	4 C REP DEP
Defending Offr	CAPT	R.F. DEMPSTER	4 C REP DEP

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 3.)

A8. The accused before arraignment make(s) (no) [illegible] plea [illegible] (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*ii*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO - I PLEAD .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are ~~read to~~ him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both (2) in which case you will be subject to cross-examination.(3) You may, however, make a statement without being sworn and you will not be subject to cross-examination.(4) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (c), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO J R .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans DEFENDING OFFICER'S PLEA IN MITIGATION ATTACHED .....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"B" WING NO. 4 CANADIAN REPATRIATION DEPOT
CANADIAN ARMY ENGLAND

CHARGE SHEET

in the case of

B-62142 Tpr Ernest Howard ROBINSON, of "B" Wing, No 4 Canadian Repatriation Depot, a soldier of the Canadian Army, Overseas, is charged with:-

A.A. Sec 15 (1) WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

at Laurentide Camp, Witley, Surrey at 1530 hours 19th January, 1946 did absent himself without leave until surrendering himself to an N.C.O. of the M.P. in Brighton at 2155 hours, 12th February, 1946.

Total time absent: 24 days, 6 hours, 25 minutes.

Laurentide Camp,
Witley, Surrey,
19 Feb 46

(R.E.A. MORTON) Colonel
Comd No 4 Cdn Repat Depot

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

IN THE FIELD
28 FEBRUARY, 1946.

(K.G. Blackader) Brigadier
Commander
Canadian Repatriation Units

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 62142	Tpr		Ernest Howard	ROBINSON	"B" Wing, 4 Cdn Repat Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~[illegible]~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 28 Feb 46 endorsed by me, ~~[illegible]~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~[illegible]~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~[illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~[illegible]~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	C.E. Woodrow, OBE, ED	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed from	1 Cdn Repat D
Lieut	to be detailed from	1 Cdn Repat D

~~[illegible]~~

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	~~[illegible]~~	

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) (K.G. Blackader)

Brigadier (Rank.)

Dat 28 FEBRUARY, 1946

Commanding Canadian Repatriation Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (6143)

(See overleaf for oaths and notes f. use on trial.)

Plea attached at F/3

Plea of Mutigation for B-62142 Tpr. Robinson, E.H.

Tpr. Robinson has been in the Army for 4½ years, and since 1943 has seen action both the Mediterranean and the European theatres. When he returned to the U.K. on repatriation, he was given leave and at that time became involved with a young lady. He soon discovered she was in trouble and in a misguided way set out to help her, a step which influenced his staying away from the unit.

In mitigation I would like to point out that Robinsons' conduct sheet had been clean for two years prior to the time that he made this unfortunate acquaintance.

A lso Robinson at that time was on a [illegible] very keen to get back to Canada, consequently his action has already meant a certain amount of sacrifice.

(R.E. Dempster)
Opt.

Exhibit A
O.C.

"B" WING NO. 4 CANADIAN REPATRIATION DEPOT

SUMMARY OF EVIDENCE

In the case of B-62142 Trooper ROBINSON, Ernest Howard, on Transient Strength of No 4 Canadian Repatriation Depot ("B" Wing), a soldier of the Canadian Army, Overseas.

"I produce the following documents pursuant to ORO 5352 which has been read over and shown to the accused and which are attached hereto as exhibits"

(i) Certified True copy of Extract from No 4 Canadian Repatriation Depot Daily Order Part II No 26 d/2 Feb 46, showing B-62142 Tpr ROBINSON, E.H. absent without leave from 1530 hours, 19th January, 1946. Still absent at 1530 hours 27th January, 1946. (8th day) Marked as Exhibit "A")

(ii) Certified True copy of extract from No 4 Canadian Repatriation Depot Daily Order Part II No 38 d/16 Feb 46, showing B-62142 Tpr ROBINSON, E.H. returning from AWL at 2155 hours, 12th February, 1946. (Marked as Exhibit "B").

The accused was cautioned as follows:

"Do you wish to make any statement or give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but, whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused reserves his defence.

The accused does not call any witnesses.

"I certify that the above summary of Evidence consisting of one (1) page was taken down in the presence and hearing of the accused and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with."

In the Field
18 Feb 1946

(J.C. Dunn) Capt
Officer detailed to take down the Summary of Evidence

E-X-H-I-B-I-T "A"

No. 4 CANADIAN REPATRIATION DEPOT CAC

Last Order No 25 1 Feb 46

PART II ORDERS ISSUED BY Colonel R.E.A. MORTON, D. S. O Officer Commanding

No 26 2 Feb 46

"B" OTHER RANKS

16. ABSENT WITHOUT LEAVE

(b) AWL from 1530 hours, 19 Jan 46 Still AWL 1530 hrs 27 Jan 46 (8th Day)

B-62142 Tpr ROBINSON, E.H.

CERTIFIED TRUE COPY

(J.C. Dunn) Capt
Officer detailed to take down Summary of Evidence

Officer in custody of original
19 Feb.46

"B"

EXHIBIT "B"

NO. 4 CANADIAN REPATRIATION DEPOT CAC

PART II ORDERS ISSUED BY

Last Order No 37 15 Feb 46 — Colonel R.E.A. MORTON, D.S.O. Officer Commanding — No 38 16 Feb 46

-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0

"B" OTHER RANKS

17. ABSENT WITHOUT LEAVE

(f) Ret from AWL 2155 hrs 12 Feb 46.

B-62142 Tpr ROBINSON, E.J. Transit

CERTIFIED TRUE COPY

(J.S. Dunn) Capt
Officer detailed to take down Summary of Evidence

Officer in custody of original
19 Feb.46

Exhibit "B" Form B.296 (War).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
B-62142	Tpr	ROBINSON, E.H.	"B" Wing, 4 Cdn Repat Depot

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	A.A. Sec 15 (1)	3 times.
For	A.A. Sec 15 (3)	1 times.
For	A.A. Sec 24 (2)	1 times.
For		times.

Date of first entry in Field Conduct Sheet 5th June, 1943

Date of last entry in Field Conduct Sheet 12th January, 1946

2. ~~Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.~~ Ph

*3. ~~The accused is the present time is under sentence~~ Ph

~~[illegible]~~ Ph ~~[illegible]~~ Ph

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for ~~7~~ 20 days days in civil custody; and for ~~7~~ 20 days in military custody, *i.e.*, NIL days in open arrest, ~~7~~ 20 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 22 yrs, 8 months 19 days

6. The date of his attestation ~~calling up for military service~~ is 23 Sep 41 Ph

7. ~~[illegible]~~ Ph

8. The accused is in possession of: 1939 1945 STAR, FRANCE & GERMANY, ITALY. Canadian Volunteer Service Medal and Clasp.

‡State the military decorations (if any) held by accused.

9. ~~[illegible]~~ Ph

~~[illegible]~~ Ph

Date of Promotion.

~~[illegible]~~ Ph

~~[illegible]~~ Ph

~~[illegible]~~ Ph

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*28072) Wt.30721/3701 $2,000 9/44 A.&E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ~~26th~~ 4th day of ~~February~~ MARCH, 1946

(J.C. Dunn) Capt & Adj't,
"B" Wing, 4 Cdn Repat Depot

Exhibit "B" Form B.296 (War).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
B-62142	Tpr	ROBINSON, E.H.	"B" Wing, 4 Cdn Repat Depot

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recorded special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	A.A. Sec 15 (1)	3 times.
For	A.A. Sec 15 (3)	1 times.
For	A.A. Sec 24 (2)	1 times.
For		times.

Date of first entry in Field Conduct Sheet 5th June, 1943

Date of last entry in Field Conduct Sheet 12th January, 1946

2. ~~Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.~~ PL

*3. ~~The accused is the present [illegible] beginning on the [illegible]~~ PL

4. The accused has been awaiting trial on the present charges for ~~7~~ 20 days in civil custody; and for ~~7~~ 20 days in military custody, *i.e.*, NIL days in open arrest, ~~7~~ 20 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 22 yrs, 8 months 19 days

6. The date of his attestation ~~[illegible]~~ is 23 Sep 41

7. ~~[illegible]~~ PL

8. The accused is in possession of: 1939-1945 STAR, FRANCE & GERMANY, ITALY, Canadian Volunteer Service Medal and Clasp.

9. ~~[illegible]~~ PL

Date of Promotion.

~~[illegible]~~ PL

~~[illegible]~~ PL

~~[illegible]~~ PL

*Strike out if not applicable.

‡State the military decorations (if any) held by accused.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*28072) Wt.30721/3701 $2,000 9/44 A.& E.W.Ltd. Gp.695

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ~~1946~~ 2/26 day of ~~February~~ MARCH, 1946

(J.C. Dunn) Capt & Adjt,
HQ Wing, 4 Con R pat Depot

Exhibit "C" Ad

3/17 MFM 6
(AFB 122)
40/P&S/126 10415

No. B62142 Name ROBINSON Ernest Howard | Sqn, Battery, or Company | Corps CAC | Date of enlistment XXXX 23-9-1 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
3 CACRU	5Jun 43	Tpr		AA 15 (1) AWL (Absent 7 hrs 25 mins)		7 days F.P. 8 days pay FRAI	10 Jun43		
5 CAR	19Jul 43	Tpr		AA 15(1) AWL 4 days 4 hrs		28 days FP 28 days pay Cost of App 20-13-6	28Jul 43		Tot Forf 33 days pay
5 CAR	18 Dec 43			AA 15 (3)		7 days CB 7 days pay	21 Dec43		
5 CAR	4Jan 44			AA 24 (2)		7 days pay	7 Jan 44		
4 CRD	12Jan 46			AA sec 15 (1)		7 days CB 10 days pay	12 Jan46		

(Over)

(TTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
" " "				CERTIFIED TRUE EXTRACTS FROM MEM 4					

Original held in my custody
.I9 Fe b.46

"B" WING NO. 4 CANADIAN REPATRIATION DEPOT

THE CASE OF: B-62142 Tpr Ernest Howard ROBINSON

1) List of Witnesses for the Prosecution.

NIL

2) List of Witnesses for the Defence.

NIL

3) List of Exhibits for the Prosecution.

(a) Extract of No 4 Cdn Repat Depot Part II Daily Order No 26, d/2 Feb 1946 Sec 16 sub sec (b).

(b) Extract of No 4 Cdn Repat Depot Part II Daily Order No 30 d/16 Feb 46 Sec 17 sub sec (f).

4) List of Exhibits for the Defence.

NIL.

5) Receipt of the accused for copy of Charge and a Summary of Evidence

I hereby acknowledge that I have been served with a a true copy of the Summary of Evidence taken in the Field, preliminary to my forthcoming Court Martial. I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

E H Robinson

(B-62142 E.H. ROBINSON) Tpr

6) Application by the accused for a Defending Officer.

I hereby request that the convening Officer appoint an Officer to represent me at my trial.

E H Robinson

(B-62142 E.H. ROBINSON) Tpr

Signed in the Field
this 19th day of February, 1946

Medical Officers' Certificate
K.R. (Can) Para 557.

I certify that I have this morning examined B62142 (No) TPR (Rank)

ROBINSON E.H. of 4 CDN REPAT DEPOT (Unit)

and in my opinion he is fit to undergo trial by Court Martial.

Station FIELD

Date 4 MAR 46

Sgd [signature] Capt (Medical Officer)

4085
PTE ROBINSON F

Correspondence to be PINNED here.

RECEIVED 15 NOV 1944 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160. 40-85

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 12 day of Oct, 1944

Whereas it appears to me, the undersigned, an officer in Command of First Cdn Special Service Bn C.A. (a), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* ~~[I am unable to appoint :—~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

for the following reasons, namely :—]

PROCEEDINGS REVIEWED 16 Nov 44

J C C

W. C. Inch Capt.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	W. W. Mair, 1st Cdn Sp Sv Bn, HQ, 1st Regt	F.S.S.F.

Members.

Rank.	Name.	Regiment.
Capt	M.M. Willison, 1st Cdn Sp Sv Bn, HQ	F.S.S.F.
Lieut	C. Legault, 1st Cdn Sp Sv Bn, 2nd Coy 3rd Regt	F.S.S.F.
Waiting Member Lieut	J.G. Simms, 1st Cdn Sp Sv Bn, HQ, 2nd Regt	F.S.S.F.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [illegible] Akehurst [illegible]

Commanding 1 Cdn Spec Sv Bn

Convening Officer.

S. Winston Mair

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B43867 Pte Thomas Robinson 1st Cl Sp Lt Bn 3rd Coy 3rd Regt. 7.S.L.F.	1st Charge Sec 15 (1) AA.	guilty	guilty 60 days detention	Confirmed

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— N/A.

(Signed) J.K. Akehurst Lt Col (Signed) _____

Commanding 1 Cdn Spec Svc Bn
Convening Officer (a) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14 day of Oct 44, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~) sworn
*(4. ~~The officers under instruction~~) sworn
were duly sworn.

*Omit if not applicable.

Signed this 17 day of Oct 19 44

M Winston Maj
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 782 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this _____ day of _____ 19 .

_____
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 21 day of Oct 1944.

J.K. Akehurst Lt Col
Confirming Officer.

Promulgated and extracts taken in the case of B43867 Pte Robinson T.
(a) (Dated) 26 Oct 44 (Signed) for Lt Col Commanding

Promulgated and extracts taken in the case of [illegible] Adjutant 1 Cdn Spec Svc Bn.

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(2284) W3 26330-6/43 60,000 12/42 A.& E.W.Ltd. Gp.648

CHARGE SHEET

The accused B-43867 Pte. Thomas Robinson, 1st Canadian Special Service Battalion C.A.(A), 3rd Company, 3rd Regiment, 1st Special Service Force, a soldier of the Canadian Army on Active Service, is charged with:

ABSENCE WITHOUT LEAVE

Charge
Sec 18 (1)
Army Act

in that he

was absent without leave from 0930 hrs 17 Sept. 1944 until 1845 hrs 8 Oct. 1944. When he voluntarily surrendered.

Total time absent - 21 days 9 hours 15 minutes.

Close arrest 12 Oct 44

In the Field
France.
12 October 1944

R.W. Becket Lt-Col.
(R.W. Becket) Lt.-Col.
1st Cdn Sp Sv Bn. C.A.(A)
Commanding 3rd Regiment
1st Special Service Force

To be tried by Field General Court Martial.

In the Field
France
12 October 1944

J.F.R. Akehurst
(J.F.R. Akehurst) Lt.-Col.
Commanding,
1st Cdn Sp Sv Bn., C.A. (A).

App "B"

FIRST CANADIAN SPECIAL SERVICE BATTALION C.A.(A).

In my opinion, Officers other than those of the First Canadian Special Service Battalion C.A.(A) are not available to sit as members of the Field General Court Martial in the case of B43867 Pte. Robinson, T.

(J.F.R. Akehurst) Lt.-col.,
Officer Commanding,
First Canadian Special Service Bn, C.A.(A).

The Court being composed of Combat Officers drawn from the front lines, it is considered necessary that the Court sit on Sunday 15 Oct 44 in case of B43867 Pte Thomas Robinson.

15 Oct 44
In the Field

[illegible]
President of F.G.C.M.

Appx "A"

FIELD GENERAL COURT-MARTIAL

ACCUSED

Number.	(a) Permnt R	(b) Appmt, A/R or A/Appmt.	Full Name	Unit
B-43867	Pte.		Thomas ROBINSON	1st Cdn Sp Sv Bn. 3rd Coy 3rd Regt. 1st Sp Sv Force.

CONVENING ORDER

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 Oct 44 endorsed by me, (or by an officer of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and~~ [redacted]

3. I hereby convene a Field General Court-Martial to try the said person(s) and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

5. [redacted]

PRESIDENT

Major (Rank)	W. W. Mair (Must be named, RP 106)	1st Cdn Sp Sv Bn. H.Q. 1st Regt. 1st Sp Sv Force (Unit)

MEMBERS

Capt.	M.M. Willison	R.C.A.P.C. att 1st Cdn Sp Sv Bn. 1st Sp Sv Force
Lieut (Rank)	C. Legault (Named, or detailed)	1st Cdn Sp Sv Bn. 2nd Coy 3rd Regt. F.S.S.F (Unit)

WAITING MEMBER

Lieut. (Rank)	J.G. Simms (Named or detailed, if any)	1st Cdn. Sp Sv Bn. H.Q. 2nd Regt. F.S.S.F. (Unit)

JUDGE-ADVOCATE

(Rank)	(Must be named, if any)	(Unit)

On Active Service in the Fd

in France (Country)

(Signed personally) Lt.-Col. (Rank)

Date 13 Oct 44

Commanding 1st Canadian Special Service Bn. C.F. (A)
Convening Officer.

CONVENING OFFICER WILL INITIAL ALL DELETIONS AND ALTERATIONS

MEDICAL OFFICERS CERTIFICATE

I hereby certify that B43867 Pte. Robinson, T. 1st Canadian Special Service Bn., is fit to undergo trial by Field General Court Martial.

"H"

25 Oct 44.

.....Capt.
Medical Officer
First Special Service Force.

MEDICAL OFFICERS REPORT

I certify that B-43867 Pte. Robinson, T. 1st Canadian Special Service Battalion, 3rd Company, 3rd Regiment, First Special Service Force is fit to undergo trial by Court-Martial.

Signed at Nice, France this 14th day of October 1944.

"H"

.....
Medical Officer,
First Special Service Force.

Plea in Mitigation of Punishment in Case of Pte Robinson.

He enlisted in the Can Army Sept 42. He transferred to Final Sqn de Force 28 Sept 43 at Burlington, Vermont, U.S.A., and outside of a short time spent in hospital has been fighting with them ever since. His war record to date is an excellent one. It proves that Pte Robinson's loyalty can not be disputed. In view of the evidence of the two witnesses called and of this M.F.M. 6 I would submit that he deserves lenient treatment and request that the Court consider this in ~~fixing~~ their sentence.

App "D"

Proceedings at a F. G. C. M. at Nice, France on 14 Oct. 1944 by order of Lt. Col. J. F. R. Akehurst, commanding 1st Cdn. Sp. Sv. Bn.

President: Maj. W. W. Mair, 1st Cdn Sp. Sv. Bn. Hq. 1st Reg't. F. S. S. F.

Members: Capt. M. M. Willison, RCAP(ate) 1st Cdn Sp. Sv. Bn. ~~Force Hq.~~ F. S. S. F.

Lt. C. Tegault, 1st Cdn. Sp. Sv. Bn. 2nd Coy. 3rd Regt. F. S. S. F.

~~Waiting member, Lt. J. G. Simms, 1st Cdn Sp. Sv. Bn. Hq. 2nd Regt. F. S. S. F.~~

Trial of No. B-43867 Pte. Thomas Robinson, 1st Cdn. Sp. Sv. Bn. 3rd Coy. 3rd Regt. F. S. S. F.

The order convening the Court, charge sheet, and the summary of evidence, are laid before the Court. The Court satisfy themselves by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor: Capt. S. F. Dymond, 1st Cdn. Sp. Sv. Bn. 4th Coy. 3rd Regt. F. S. S. F.

Defending Officer: Lt. W. E. Brousseau, 1st Cdn Sp. Sv. Bn. 1st Coy. 2nd Reg't. F. S. S. F.

At 1310 hrs. the trial commences.

The order convening the Court is read by the President, signed, and marked App. "A" by him, and attached to the proceedings. The names of the President and members of the Court, are read out in the hearing of the accused, and they answer severally to their names.

Q-1 Rule of Procedure 25. Do you object to be tried by me, as President, or by any of the Officers whose names you have heard read out.

A-1 No Sir.

The President and Members are duly sworn.

At 1345 hrs. the Court adjourns until 1515 hrs. on the 15th of Oct. 1944. On the 15 Oct. 1944. at 1530 hrs. Court re-assembles pursuant to adjournment; Present, the same members as on the 14 Oct. 1944.

The Charge Sheet is signed by the President marked App. "B" and annexed to the

proceedings.

The accused is arraigned on the charge (Sect. 15-(1) A.A.) in the above mentioned charge sheet.

Q-2 Are you Guilty or not Guilty of the charge against you, which you have heard read.

A-2 Guilty Sir!

The accused, having pleaded guilty to the charge, provisions of RP 35 (B) are here complied with, and a plea of guilty is entered.

The accused No. B-43867 Pte. Thomas Robinson, 1st Cdn. Sp. Sv. Bn. 2nd Coy 3rd Regt. F.S.S.F. is found guilty of the charge. (Sect. 15-(1) A.A.).

In accordance with RP 37 (B) summary of evidence is read, marked app "C" ~~and~~ signed by the President, and attached to the proceedings.

Q-3 Do you wish to make any statement in mitigation of punishment?

W.W.

A- 3. Yes Sir. Defence affirm-make plea as App "D" attached.

Q- 4 Do you wish to give evidence yourself or to call any witnesses as to character.

A- 4 I wish to call two (2) witnesses as to my character.

Sworn Witness (for Defence) No. 19052197. Sgt Murphy 3rd Coy. 3rd Regt. A.I.F. having been duly sworn, states. I am No. 19052197 Sgt Murphy 3rd Coy 3rd Regt. A.I.F.

Q- 5 Tell us what you know, of Pte Robinson's character, and why you are qualified to make this statement.

A- 5 I have known the accused, Pte Robinson, since he joined the Corps at Fort Ethan Allen, when we were there last, a little over a year ago. He became a member of my platoon at that time, and has remained in my platoon since that time, with the exception of some short periods spent in hospital.

W.W.

He has caused no trouble whatsoever, in the platoon, and his character has always been A-1.

He has been A-1 in combat, and acted as ammunition carrier on my mortar crew, carrying a heavy load at all times. His feet bothered him, and his ankles kept swelling up, but in spite of that, he stayed on the job. Back at Anzio, he was a very good man to have on patrol, because he remained alert, and kept me posted as to what was happening in his sector.

The Prosecution declines to cross-examine. Rule of Procedure 83 (B) is complied with, and the witness withdraws.

Second Witness for the defense, # 6972665 1st Sgt. Paine Wm D. 3rd Coy 3rd Regt. F.S.S.F. having been duly sworn states, I am # 6972665, 1st Sgt. Paine Wm D. 3rd Coy 3rd Regt. F.S.S.F.

Q-6 Will you tell the Court what you know about the character of the accused.

DWm

A-6 I recognise the accused as Pte Robinson who has been in our Coy. for a little more than a year. As first Sgt of the Coy. he has not, to my knowledge caused any trouble at any time, and has been a very good soldier in the front line.

The Prosecution declines to cross examine.

R.P. 83-(B) is complied with, and witness withdraws.

Third Witness, Major J.V.J. Bisive adm. officer 1st Cdn. Sp. Sv. Bn. is now called, and having been duly sworn states. I am Major J.V.J. Bisive adm. officer 1st Cdn. Sp. Sv. Bn.

Q-7 Have you any evidence to produce as to character and particulars of service of the accused.

A-7 Yes. I produce a statement as to character and particulars of service of the accused, and a certified true copy of his MFM 6.

W.W.

The above Statement (revised schedule of convictions) and MFM 6 are read, marked App. "E" & "F" respectively, signed by the President and attached to the proceedings.

Q- 8 Is the accused the person named in the statement which you have heard?

A- 8 Yes Sir.

Q- 9 Have you compared the contents of the above statement with the Regimental Books?

A- 9 Yes Sir.

Q- 10 Are they true extracts from the Regimental Books, and is the statement of entries in the Conduct sheets a fair and true summary of those entries

A- 10 Yes Sir.

The Defending officer declines to cross examine.

In the Opinion of the Court, it is not necessary to comply with R P 83 (B) and witness withdraws.

H.F.M.

Q-11 Do you wish to address the court.
A-11 No Sir.

The court is closed for consideration of sentence.

The court sentence the accused # B. 43867 Pte Thomas Robinson, 1st Cdn Sp. Sv. Bn. 3rd Cay 3rd Regt. F.S.S.F.

To undergo detention for sixty (60) days, with automatic forfeitures of pay as follows:

22 (twenty two) days pay by F.R.I. 149 (1a)

3 (three) days pay by F.R.I. 149 [1(b)]

J. Winston Main Major
President F.C.M.
15-Oct 44

List of Appendices.

Appx.	"A"	Convening Order.
"	"B"	Charge Sheet.
"	"C"	Summary of Evidence
"	"D"	Plea for Mitigation of Punish.
"	"E"	Statement as to Character and Particulars of Accused.
"	"F"	M. E. M. 6
"	"G"	Form of application for Court Martial.
"	"H" & "H-1"	Medical Certificate.
"	"I"	List of Witnesses.
"	"J"	Statement of Accused re Defence.
"	"K"	Statement re Deputy Court.

SUMMARY OF EVIDENCE

In the case of B-43867 Pte. Robinson, Thomas, 1st Canadian Special Service Battalion, 3rd Company, 3rd Regiment, First Special Service Force.

FIRST WITNESS: 1st Sgt. Payne, W.D., 3rd Company, 3rd Regiment, First Special Service Force, having been duly sworn states:

I am 1st Sgt. Payne, W.D. 3rd Company, 3rd Regiment, First Special Service Force, Pte Robinson reported to 3rd Company, 3rd Regiment for duty at 1845 hrs 8 Oct 1944.

(Q) Did Pte. Robinson , to your knowledge, report for duty at any time between 0930 hrs 17 Sept 1944 and 1845 hrs 8 Oct 1944.

(A) He did not.

The above statement was re-read to the witness who wished to make no changes, deletions, or additions.

THE ACCUSED HAD NO QUESTIONS. Walter W. Payne

SECOND WITNESS: 6561235 S/Sgt. Smith, F.A. 3rd Company, 3rd Regiment, First Special Service Force, having been duly sworn states:

I am S/Sgt. Smith, F.A. 3rd Company, 3rd Regiment, First Special Service Force. Pte. Robinson was absent from duty from 0930 hrs 17 Sept 1944.

The above statement was re-read to the witness who wished to make no changes, deletions, or additions.

THE ACCUSED HAD NO QUESTIONS. Fred E Smith

The accused having been duly warned under the provisions of R.P. A (c) did not wish to make any statement.

Pte. Thomas Robinson

R. Y. Moffat.
(R.Y. Moffat) Lieut.
1st Canadian Special Service Battalion
3rd Company, 3rd Regiment,
1st Special Service Force.
OFFICER DETAILED TO TAKE SUMMARY OF EVIDENCE.

App "E"
Johnston Mair

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or Unit)
B43867	Pte.	Robinson, T.	1st Cdn Spec Serv Bn C.A.(A). 3rd Coy 3rd Regt. Field Service Force.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company conduct sheets of the accused, exclusive of convictions by a court-martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:-

	Within the last 12 months	Since Enlistment
For A.A. Sec 15(1)	1 times	1 times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~
~~or~~
~~There are no entries in the conduct sheets of the accused~~

2. The accused has not been previously convicted, ~~OR~~ ~~Previous convictions of the accused by a Court-martial or a Civil Court, summary awards under section 47 of the Army Act, and dispensations with trial under section 23 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused has been in confinement, awaiting trial, on the present charges for NIL days in civil custody, and 1334 days in military custody, making a total of 1343 days, of which NIL days were spent in hospital.

4. The accused is not under sentence at the present time, ~~OR the accused at the present time is under sentence for ..... beginning on the ..... day of~~ .....

5. The present age of the accused according to his record of service ~~or attestation paper, is~~ 33 Years, 345 days.

6. The date of his attestation specified in his ~~attestation paper~~ record of service is 1 Sept 42.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 Years and 45 days

8. The accused is entotled to deferred pay or gratuity in respect of NIL service.

9. The accused is entitled to reckon NIL service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~[illegible]~~.

11. (IF THE ACCUSED IS A WARRANT OFFICER) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (IN THE CASE OF AN OFFICER) The accused holds in the army the rank of N/A dated ..... and in his regiment (OR corps OR department) the rank of N/A dated .....

I hereby certify that the foregoing schedule of convictions & dispensations with trial is a true extract from the regimental books in my custody

Signed this 15th day of Oct. 44

J. W. Bisson maj
Adjt Admin

M.F.M. 6
(A.F.B. 122)
500M—11-41 (3498)
H.Q. 1772-30-1652

No. R4-867 Name ROBINSON T. Sqn., Battery, or Company #2 DD(AF) RCA (A/A LT) #1 COY R WIGN Corps Date of enlistment 1-9-42 G.C. Badges Tradesmen's Rates of Pay

No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				ENTRIES NIL 18-9-42	SGT [illegible]				
FIELD	14-6-44	PTE		AA SEC 15 (1) A.W.L FROM 0600 HRS 14-6-44 TO 1600 HRS 16-6-44. ABSENT 2 DAYS 10 HRS.	SGT KWIT [illegible] MJ	FINED 14 DAYS PAY	17-6-44	JPG [illegible] LT-COL	AUTO FORF 3 DAYS PAY UNDER FR #1 149-1(A)

Certified true copy.
J. A. [illegible] maj.
A/c Admin.

App "F"
[illegible]

(P.T.O.)

LIST OF WITNESSES

The Accused: B43867 Pte. Robinson, T.

For the Prosecution:

6561235 S/Sgt. Smith, F.A.
3rd Company 3rd Regiment
First Special Service Force.

App "J"

1st Sgt. Payne, W.D. For the Defence
3rd Company 3rd Regiment
First Special Service Force.

For the Defence:

Major J.V.J. Biscoe,
Administration Officer,
1st Canadian Special Service Bn.

For the Defence

19052197 Sgt. Murphy,
3rd Company 3rd Regiment,
1st Special Service Force.

13 Oct 1944

Appx J

STATEMENT OF ACCUSED: B-43867 Pte. Robinson, T.

"I desire to have an Officer assigned by the Convening Officer to represent me at my trial."

Pte. Thomas Robinson

B-43867 Pte. Robinson, T.

appx "J"

FORM OF APPLICATION FOR A COURT-MARTIAL

First Canadian Special Service Bn. Regiment

Station Nice, France Date 12 October 1944

Application for a Field General Court-Martial

Sir,

I have the honour to submit 1 charge against

No. B-43867 Pte. Robinson, T. 1st Cdn Spec Serv Bn., C.A.(A)
of the 3rd Coy 3rd Regt under my command, and request you will ~~obtain the sanction of~~

that a Field General Court-Martial ~~may~~ be assembled for his trial

X in the field (Nice, France)

The case was investigated by (a) Lt.-Col. R.W. Becket and Lt. R.Y. Moffat

A Court of Inquiry was held on (b) N/A (date)

at (Station).

President ... Ranks,
Members ... names
... and
... corps.

The accused is now at ~~Base Stockade~~ His general character is (c) Good

I enclose the following documents (d):—

1. 1 Charge Sheet (in duplicate) (e).
2. Summary of Evidence, original (f) and one copy. RWB
3. ~~Original Exhibits (g).~~ RWB
4. List of witnesses for the prosecution and defence (with their present stations or addresses) (g).
5. ~~List of Exhibits (h).~~ RWB
6. ~~Correspondence (g).~~ RWB
7. Statement as to character (M.F.B. 355) and regimental and company, etc., conduct sheets (or Field Conduct sheets) of accused (g).
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (R.P. 14 (B)) (h).

Your obedient servant,

Signature of Commanding Officer R W Becket Lt-Col.

(R.W. Becket) Lt.-Col.
First Canadian Special Service Battation,
Officer Commanding, Third Regiment,
First Special Service Force.

To:

MEDICAL OFFICER'S CERTIFICATE

I certify that No B43867 Pte. Robinson, T. 1st Cdn Spec Serv Bn. Regiment,
is Fit to undergo trial by Court-Martial.

R Kaye Captain.
Signature of the Medical Officer
First Special Service Force.

"Insert "fit" or "unfit."

(a) Here insert name of:—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence (R.P. 19 (B) (iii)).
(b) To be filled in if there has been a Court of Enquiry respecting any matters connected with the charges; otherwise to be struck out (R.P. 19 (B) (iii)).
(c) To be filled in by the Commanding Officer.
(d) Any items not applicable to be struck out.
(e) One copy is to be sent to the President; one copy to be filed with the application for trial.
(f) Original summary of evidence to be sent to the President.
(g) 2, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.
(h) 3 and 8 to be sent to the President.
(i) If the accused has elected to be tried under A.A. 46 (8), the fact should be recorded at the top of this form.)

M.F.B. 321
40-P & S-850

5Q-66

Inr. Robinson F. H.

FIELD GENERAL COURT-MARTIAL

(AFW90. In lieu of AFAA1 40/17 & AFW1608 (6144))

4/388

Convened by Order of BRIG L. G. CLARKE Comd R.C.A. 3 CDN INF DIV dated 6 JUNE 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M 35303	G/R		FREDERICK HUGH	ROBINSON	14 CDN FD REGT RCA

PROCEEDINGS REVIEWED 13 July 45 [illegible] Capt

REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) GERMANY on (*date(s)*) 22 JUNE 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 34/140.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnin ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~(s)~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: Do you object to B/11929 GNR KLASSEN H as Interpreter ? Ans NO SIR

The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer ? Ans .....~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	R. J. BARKER	3 CDN A/T REGT RCA
Member	MAJOR	S. C. HEYES	Q O R of C
Member	CAPTAIN	S. W. KEELER	S D & G HIGHRS
Judge-Advocate	CAPTAIN	J. K. KIDD	H Q 1 CDN ARMY
Prosecutor	CAPTAIN	C. W. FULLERTON	Q O R of C
Defending Offr	CAPTAIN	C. HUTCHINS	NTH N S HIGHRS

Questions by President: Is the Prosecutor a lawyer ? Ans YES Is the Defending Offr a lawyer ? Ans YES (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See D/ p 2.)

A8. The accused M 35303 GNR ROBINSON F. H. before arraignment make(s) (no) ~~(s)~~ plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D + E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

FE/160 G 2 P 41

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 37(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

TO WHOM IT MAY CONCERN

DATE 22 June 45

This is to certify that I have this date examine M 35303
(regt'l no)

GNR. ROBINSON F.H. of R.C.A. and found him fit/~~unfit~~ to

undergo trial by Court Martial.

R.J.B.

R.R. Jones Capt
RCAMC

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/P&S/1697 (2003)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M.35303	Gnr.		Frederick Hugh	ROBINSON	14 Cdn Fd Regt RCA

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 6 Jun 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) no fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Name	Unit.
Major	R.J. BARKER	3 Cdn A/T Regt RCA

(Must be named. RP 106.)

MEMBERS.

Rank.	Name	Unit.
Major	S.C. HEYES	QOR of C
Captain	S.W. KEELER	S D & G Highrs

(Named or detailed. RP 106.)

WAITING MEMBER.

Rank.	Name	Unit.
Captain	C.E. LEFEVER	1 C Scot R

(Named or detailed, if any. RP 106.)

JUDGE-ADVOCATE.

Rank.	Name	Unit.
Captain	J.K. KIDD	HQ 1 Cdn Army

(Must be named, if any. RP 106.)

On Active Service in the Fd

in HOLLAND (Country.)

(Signed personally. RP 105 fn 2.)
(L.G. Clarke) Brigadier

Brigadier (Rank.)

Date 6 Jun 45

Commanding Royal Canadian Artillery
3 Cdn Inf Div. Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused M 35303 Gunner Frederick Hugh ROBINSON, 81 Field Battery, 14 Field Regiment, R.C.A., a soldier of the Canadian Army Overseas, is charged with

WHEN ON ACTIVE SERVICE
COMMITTING A CIVIL OFFENCE,
THAT IS TO SAY, INDECENT ASSAULT,

in that he

FIRST CHARGE
Sec 41
AA

contrary to Sec 52 of the Offences against the Persons Act 1861, at SANHORST, GERMANY, on the night 11/12 May 1945, did indecently assault Mrs. Anna SIEBELS without her consent.

- -

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF
GOOD ORDER AND MILITARY
DISCIPLINE

in that he

SECOND CHARGE
Sec 40 AA
(alternative)

in GERMANY on the night 11/12 May 1945, did fraternize with Mrs. Anna SIEBELS, an inhabitant of GERMANY, not his wife, by visiting the said Mrs. SIEBELS' house in GERMANY.

Approved under N.R. Can 540
G. Browne
Dir A
3 Can Inf Div

Signed in the Field
this 4th day of June 1945.

G. A. Browne
(G.A.Browne) Lt-Col RCA.,
Commanding 14 Field Regiment,
R.C.A.

To be tried by Field General Court-Martial.

In the Field

Date 6 Jun 45

L. G. Clarke
(L.G. Clarke) Brigadier
Commanding
Royal Canadian Artillery
3 Cdn Inf Div.

I

FIRST WITNESS FOR THE PROSECUTION

Mrs Anna Siebels 124 Sandhorst Germany duly sworn States:- I am as above. I live in a house

EXAM along with Mrs Gluck, Ditta Gluck, Bertha Mannot. Friedrich Siebels, Andre Siebels. I cannot recognize the accused. On Nite of 11/12 of May several persons knocked on the door they didn't make any disturbance. I dont know who the persons were. I asked the other lady in the house what to do. The lady was Frau Gluck. We asked them what they wanted. Three persons outside door said they were looking for weapons. I opened the door, One person out of three asked for weapons in German. I said You have the liberty of the house & You can look through it. They didnt search the house. They stood around & talked between themselves. One person who spoke German asked if they could have anything to eat & if they could sleep there. person spoke to me if he could sleep there. The three women in house went into a room & stayed there by themselves. Frau Gluck & I were in one room together and I did not see the three strangers until the Next Morning. I saw the Two Men in the Kitchen Next Morning. I made coffee for Them. The three were intoxicated & they slept in the House in one of the beds it was in the Kitchen in the spare bed. I slept with Mrs Gluck in another room. I slept with Mrs Gluck I had My son with Me. I have Two sons

CROSS EXAM NONE

RE EXAM NONE

COURT+VA One soldier went with me into My bedroom. I dont know for Certain Who that Soldier Was. ~~Two other soldiers is~~. Soldier in bed room didnt do anything but lay Himself on bed & go to sleep. The following Morning soldier said he had thirst & I gave the Soldier coffee. One of soldiers drinking coffee in the Morning was one who was in My room. Two soldiers had coffee in Morning. Soldier in My bedroom came in room lay on bed & went To Sleep, The one who spoke German left that Nite. I am Married Woman, I have resided in Germany all My life

RP 83 B Complied With

II.

SECOND WITNESS FOR THE PROSECUTION

Mrs Aurora Gluel 124 Sandhorst Germany, duly sworn states - I am as above I live with Mrs Subels in Sandhorst. I Cant recognize anyone in this room. I live with Mrs Anna Subels, Bertha Mannot, Detta Gluel, Frederick Subels + Andre Subels, Lately A Simond lived in House. One Night I dont know what time it was 2200 hrs or 2300 hrs. Three Men from the Can Army came To the door. They wanted To come into the place I myself was already in bed. They Knocked on door. Frau A Subels asked Me what To do. I told Mrs Subels To open the door. She opened door + 3 Men entered. They said they were from the police + were looking for weapons. It May have been 2300 hrs. One person opened drawer + Mrs Subels said at That Time that We had No weapons. One Man stood beside dresser + spoke To girl He had a pistol in his Hand. He Spoke To Bertha Mannot. They told Me to go to bed. I went To bed. I didnt see soldiers again it was dark in My room after that. I do not know what happened after that. I wouldnt recognize any of the soldiers again

EXAM.

CROSS. EXAM: None
RE EXAM None
COURT to JA

I am Mrs Subels Friend, I stayed in bed When I got there I heard persons talking. I dont know who those persons were. I didnt see Mrs Subel come To bed it was already dark. One of the Men that was there the evening before was in the Kitchen Next Morning when I walked in. I dont remember what he looks like. When I got up Next Morning

~~R.P. 83 (B) Complied with~~

one of the soldiers was still in bed, Two Men in the House, One in bed in Kitchen one drinking Coffee in Kitchen

R.P. 83 (B) Complied With.

III THIRD WITNESS FOR THE PROSECOTION

Miss Bertha Mannott 124 Sandhorst Germany having
EXAM been duly sworn Stats:- I live with Mrs Seibels in
the Same House. I recognize the accused. I saw
him at My House he asked for eggs. He wasn't
alone he was with another. The following evening
three persons came together. 1st Nite were 2 persons
Next Nite 3 persons. ~~He was the~~ The accused
was there both evenings. When accused asked for
eggs I dont remember How long they stayed.
~~2nd Nite they asked for eggs~~ 2nd Nite we had just
gone To bed at 22 40 hrs. We were in bed 10
minutes + heard a knock on the door. Frau
Seibels + I got out of bed. We got dressed +
went to Frau Gluck + asked what To do.
Frau Gluck Told us we should not open the
door. Soldiers knocked again + said they wished
To search for weapons. Frau Seibels opened
the door. The three soldiers entered, one of
them that could speak German said They
were searching for Weapons. This one doesnt
speak German (accused). We told them To
Search. One soldier opened drawer + looked
it wasn't the accused or the one that spoke
German. ~~The Man~~ The accused just stood
there. They closed the dresser drawer. One
soldier came To Me. The soldier who looked
through drawer came To Me. I dont remember
what he looked like. ~~He spoke~~ The ~~person~~
One that spoke German + had a pistol in
His Hand said You Must be My wife for
the Nite. I said I didnt understand. He
repeated it Several Times + then said I say
it for the last time + then I will Shoot
I never said anything after that + he told
Me what bed I was To Sleep. I
showed him a bed + we went there. I
saw accused go to our room where the
women slept. He entered the living room
No one slept there at the Time. I didnt See
Them again. Accused left Kitchen with
Mrs Seibels. Mrs Seibels, Mrs Gluck + accused
left the Kitchen. I didnt see where they
went. I dont know why they left. I didnt
hear any of Soldiers after That. I have Seen
soldiers again when they had identification
parade. I didnt recognize accused on that
parade. I didnt look for accused I looked

IV.

Only for the Man that spoke German.

CROSS EXAM NONE

RE EXAM NONE

COURT + JA I didn't have lamp when. I opened door & turned on electric light when we opened door. I recognize accused as my father pointed him out & told me that was the Man so I agreed with him. This happened at identification parade. It was during parade Father told me after I went through & he came back. This incident happened on 11 May 45. I remember date of incident as following day I had a birthday. The parade was held after the incident.

RP 83 B Complied With.

FOURTH WITNESS FOR THE PROSECUTION

Johann Mannott 1103 Sandhorst Germany. duly sworn

EXAM States. I recognize the accused, On 12th May at 0600 hrs. The accused offered me Schnapps which I did not take. It was in the Kitchen of Frau Siebels Home. Frau Gluck & another soldier were there. The soldier that I do not remember Any More Sat in the Chair. The accused stood with a bottle of Schnapps in His Hand. Nothing Happened. ~~The other~~ Only Soldier offered me a Cigarette. I dont Remember Which. I next saw accused on parade - identity parade. The accused followed Men into the barn & offered me Schnapps. On 14th May I saw accused on identity parade. I identified accused on that parade. I remember him from Morning of 12th. Mrs Siebels made coffee. Mrs Gluck darned socks. I didn't see who was drinking coffee.

CROSS EXAM - I forget who the other Man was that was in the house. Other soldier Had his back to me so I couldn't identify him again. I remember him From 12th of May

RE EXAM NONE

COURT + J.A. I saw accused - Kitchen of Mrs Siebels on 12th of May. Identity parade was Held on 14th May. I recognized him by His Face. I dont know if accused was talking to Mrs Siebels ~~both~~ Kitchen On Morning of 12th of May.

RP 83 (B) Complied With

IVA

Defending officer moves that No Prima Facie Case Has been made out on the first & second charges

Defending officer's Submission attached.

prosecutor's reply attached

JA advises court re Prima Facie Case.

Motion - M35303 Jan Robinson, F.N.

I submit prosecution has failed to establish a prima facie case on either charge.

1. No evidence whatsoever to support first charge.
2. Insufficient identification
   (a) Johanna Mannott - 0610 hrs 12 May 45
   (b) Anna Siebels & Frau Amora Gleich - cannot identify accused as one of men in house of former on night in question.
3. Credibility of witnesses
4. Corroboration.

Mitchell Capt.

R. 35303. Gm. Robinson F.H.

Prosecuting Officers Reply to motion for non-suit

A prima facie case for fraternization has been made out by the uncontradicted evidence of Mr. Mannott that the accused was in a Germans house at 0630 hrs and offered him drink on 2 occasions. The credibility of this witness should not be considered at this time

C. W. Fullerton Capt

V FIRST WITNESS FOR THE DEFENCE

D6805 Gnr Winden 14 Cdn Fd Regt sworn States:-

Exam I know the accused, on Nite of 11/12 of May I saw Gnr Robinson about 2215 hrs of that evening. He was pretty Happy. I didnt see him Take a drink. Accused was sleeping at a guard post about 50x from barn. There were about 3 entrances To the barn. The Men used door off the barn To the road. Door could be seen from guard House. You could see anybody leave.

CROSS EXAM - Guard Was To challenge anybody leaving

RE EXAM - None

Court People living in House have No connection with This case. I dont know where Miss Seibels House Was.

RP. 83B Complied With

SECOND WITNESS FOR THE DEFENCE

N10650 Gnr Marks 14 Cdn Fd Reg Sworn States

Exam I know accused, on Nite of 11/12 of May I saw him at 2100 hrs in the barn he was drinking Coffee. I saw him Later at 2230 hrs. he was laying on His bed. I saw him on his bed about 2300 hrs. After I got water

CROSS Exam None

RE Exam None

Court Accused Slept in barn.

RP 83(b) Complied With

THIRD WITNESS FOR THE DEFENCE

C 1450 Gnr Galloway E.J. 14 Cdn Fd Regt Sworn States

Exam I know the accused, on Nite of 11/12 of May I was on guard from 2200 hrs - 2400 hrs. First hour I was on Main Gate, 2nd ~~hour~~ hour I was a roving patrol. First Hour I was to Check personnel going in + out. Later I was roving patrol. From Main gate I could see anyone leave or enter barn. I didnt See ~~Gnr Robertson~~ accused come out through Main gate between 2200 hrs - 2300 hrs. Nite of 11 of May

CROSS EXAM I was roving patrol covering area of 300x. I stayed by Vehicles at Times

RE EXAM None

COURT None RP. 83(b) Complied With

VI FOURTH WITNESS FOR THE DEFENCE

D26719 Gnr Maloney B.D. 14 Fd Coy RCA Sworn States

Exam. I know the accused on Nite of 11/12 of May I was on guard duty from 2300 - 2900 hrs. I was on Main gate at No time did I see Gnr Robinson leave the barn. While on Roving patrol from 2200 - 2300 I didn't see Gnr. Robinson.

CROSS EXAM. If a soldier walked on grass I would see him.

R. EXAM - None
Court - None

RP 83(b) Complied With

FIFTH WITNESS FOR THE DEFENCE

Lieut J.F. MacDonald 14 Fdy Regt. Sworn State

Exam The barn where the accused was supposed to be sleeping is about 2½ miles by road + 1¾ miles across Country. The accused I have known since April 44. He has done an exceptionally good job. He is a good worker & very reliable. He is a very good soldier.

Cross Exam None
Re Exam None
Court None

RP. 83(b) Complied With.

1

Summary

① Burden of Proof
(a) every man is presumed to be innocent until proven guilty
(b) he who alleges a fact must prove it, whether allegation couched in affirmative or negative terms.

② Unless therefore the guilt of the accused has been established beyond reasonable doubt, the accused must be acquitted as the prosecution has failed adequately the burden of proving his guilt.

③ Corroboration Generally speaking, legally open to court to convict an accused person on the evidence of one credible witness
But can one say a German woman would be considered a credible witness in a case involving a Cdn soldier. Generally speaking I think not.
(a) fighting them nearly six years
(b) Dwarcing of Nazi leaders at war's end. - passive resistance
(c) husbands, sons, relatives killed by us.
Dangerous precedent - Cdn guilty of serious offence on evidence of one German woman.
No frock - no marks.

④ Identification -
not by Mrs Siebels - strange
Johann Mannott - 0610 12 May.

⑤ Contradiction of Mrs Siebels
2 miles
(a) Winden - (10:15) 10:00
(b) Starr - 10.30
(c) Galloway & Mahoney (10-12)
(d) Marks - 1100

C Hutchins Capt

Re: M-35303
Gen Robinson F H

Prosecuting Officer's Address.

Mr Pres. & Members of the Court.

The evidence of interrogation is about to turn instances of association with Germans; once at night, and once in the morning. Johann Mannott said he recognized the accused and saw him at 0630 hrs 12 May 1945 in the kitchen of Mrs Anna Liebe house and that the accused offered him liquor to drink on 2 occasions. This evidence is not disputed by evidence of the defense. The defense witnesses do not negative the fact that the accused was at his billets in the early hours of 12 May 1945. Interrogation is about has been given.

L. W. Fullerton Capt
Prosecuting officer.

Sum Up by J.A. Cne. Robinson

Explains To Court:

① Function of J.A.
② Analysis of Charge.
③ Court Sole judge of the facts

Second Charge
Fraternization

① Court May take judicial Notice that Supreme Allied Commander has set forth a policy (Non Fraternization) regarding the relations to be adopted by the Canadian army towards the inhabitants of Germany.

② Germans or German people include all persons living in Germany of their own free will

③ Non Fraternization is the avoidance of Mingling with Germans upon terms of friendliness, familiarity or intimacy whether individually or in groups, in official or Unofficial dealings.

④ Conduct Under AA 40 Must be To prejudice of both good order & Military discipline.

Advises Court:

① Credibility of Witnesses
② Onus of proof
③ Reasonable Doubt

Prosecutor, Defending officer Nor Court on being asked, ~~request~~ do not request any further advice on an matter.

JAKrdt

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M 35303	Gnr	Robinson F.H.	81 Field Bty 14 Field Regt R.C.A

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	Nil	Nil times.
For	Nil	Nil times.
For	Nil	Nil times.
For	Nil	Nil times.

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for Nil beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for ~~24~~ 23 days in military custody, i.e., Nil days in open arrest, ~~24~~ 23 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 41 Yrs 11 Mos 23 Days

6. The date of his ~~calling up for military service~~ attestation is 4 Mar 42

7. The service which the accused is allowed to reckon is 3 Yrs 9 Mos

†State the military decorations (if any) held by accused.

8. The accused is in possession of† C V S M C L A S P

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of N/A	N/A
In the war substantive rank of N/A	N/A
In the acting rank of N/A	N/A

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) W1.8670/668 100,000 4/42 A.& E.W.Ltd. Gp.698
(22459) W1.29238/1873 50,000 9/42 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N I L		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ~~8th~~ 22nd day of JUNE 1945

F. H. Wilson

(FF WILSON) A/CAPT RCA

Adjutant 14 Field Regiment RCA

No. M35303 Name Robinson .F.H. Sqn, Battery or Company

Company Conduct Sheet — Date of last entry in

No and date of last drunk

Corps R.C.A

Period not reckoning towards freedom from extra fine

Date of enlistment 4 Mai 42 OC Badges

Sheet No 1 Signature OC Company, etc

Service or Proficiency Pay N/A

MFM 6 (AFB 122) 40/P&S/136 (3438)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				IMPROPER ENTRY DELETE 26 Apr 43					

Character

Certified true copy of the original document.

(F.P. WILSON) Capt RCA.,
Adjutant 14 Fld Regiment, R.C.A.

(PTO)

Summary of evidence in the case of M-35303 Gunner ROBINSON, F.W. 81 Field Battery 14 Field Regt., Royal Canadian Artillery 3rd. Canadian Division CAC charged with

(a) Fraternization (A.A. 40)- (alternative)
(b) Indecent assault (A.A. 41)

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness for the Prosecution. Johann Mannott, 110 Sandhorst, having been duly sworn, states:-

I am a farmer, father of miss Berta Mannott and live at 110 Sandhorst. On the night of 11/12 May my Daughter came home and shouted, "Father, open the door". My Wife opened the door and my daughter said to us. "Father, one Canadian Soldier has raped me and there are two more who want to do the same". We then sent her to bed, locked the door and retired.

I got up the following morning at six o'clock, took my bycycle and went to the home of Mrs. Anne Siebels where my daughter was employed, to get information about the incident of the early morning. When I entered the Kitchen of Mrs. Siebels home at approximately 0610 Hours, there were two Canadians, Mrs. Gliech and Mrs. Siebels in the kitchen. One soldier was completely dressed, the other sat with his jacket off. One soldier whom I thought was intoxicated, offered me a drink of gin which I refused. The other offered me a cigarette. I accepted. The soldier who offered me the gin is the one here. (pointing to the accused)

I remained a few minutes in the kitchen and then walked towards the barn to do some chores which my daughter does normally. Mrs. Siebels followed me and then the two soldiers. The same soldier who offered me the drink in the kitchen followed me into the barn and offered me a second drink, which I refused. He then walked out of the barn and with the other soldier, disappeared.

Signed,
Mr. Johann Mannott

The accused declines to cross examine the witness.

Second Witness for the Prosecution. Miss Bertha Mannott, having been duly sworn, states:-

I am the servant girl, daughter of Mr Johann Mannott and work for Mrs Siebels 124 Sandhorst. Approximately 2300 Hours on the 11 May I heard a knock on the door. Mrs. Siebels, Mrs Gliech and three children were the other occupants of the house at this time. I went to Mrs. Gliech's room to ask what to do and she advised me not to open the door. I looked out the window and saw three soldiers. I heard one say in German, "open the door we are going to search the house for weapons". Mrs Gliech said, "open the door". Meantime we were all dressed and Mrs. Siebels opened the kitchen door. I was standing near the kitchen table and Mrs. Gliech was standing at the entrance of her bedroom. Three soldiers entered, a tall soldier who did not speak German approached and touched my hair. The German speaking one said, "my job is to search for weapons." He had a revolver in his hand. Mrs. Siebels and I told them there were no weapons in the house but they could search. The soldier who touched my hair went to the kitchen cupboard and opened the drawers, he then approached me again.

Cont'd,

Second Witness for the Prosecution (Cont'd)

The German speaking soldier said I would become his (the tall soldier) wife for the night. I said I did not understand. He asked me again 3 or 4 times and threatening me with the revolver said to me, "if you don't understand you will be shot". Then the German speaking soldier asked "Where are the beds?" At that time there was one child sleeping in eahh of the two beds built into the Kitchen wall. The German speaking soldier took one child and put him in bed with the other child and told me to enter the empty bed. I refused and he demanded it. At this time the tall soldier made a gesture with his knife. I then went into the bed. While this was taking place Mrs. Glisch, Mrs. Siebels and the other soldier disappeared from the kitchen. The German speaking soldier told me to undress, the tall soldier came into the bed with me and the German speaking soldier was walking around the kitchen. The tall soldier laid on the bed a few moments then got sick and left the bed. I attempted to leave the bed at this time but the German speaking soldier approached and said, "my comrade is sick, could I do his part?" I said no. Then he opened his belt and came into the bed. He forced my legs apart and sexual intercourse took place. I shouted for help, the tall soldier came back and was sitting on the edge of the bed. He put his hand on my mouth to prevent me from shouting. After the German speaking soldier raped me, the tall soldier then came into bed. He took off his boots and shirt and lay down. The German speaking soldier who was still standing in front of the bed told me I had to remain in bed with him (the tall soldier) and that I had to awaken him at 6 o'clock. He then told me not to worry because the other two soldiers had no weapons and they would remain until morning. He then went away. The tall soldier was sick again so I pretended to get something for him and fled to my parents home. When I arrived home my Mother came to the door and I told her I had been raped. My father was in the bedroom, My Mother told me to go to bed and I did. That is the first sexual experience I had.

Cross-examined by the accused (
Question 1 - Were all the soldiers dressed the same?
Answer - I don't know
Question 2 - Were there lights in the house?
Answer - Yes, electric lights
Question 3 - Was the light on all the time you were there?
Answer - yes.

Signed,
Miss Bertha Mannott

Certified that this statement was written in the presence of the accused by the interpreter and under my supervision.

J. MacIsaac
(J.F. MacIsaac) lieut, R.C.A.

Third Witness for the Prosecution

Mrs. Aurora Gliech 124 Sandhorst, having been duly sworn, states: -

I am Mrs. Gliech. I am a pomeranian refugee and live at the home of Mrs. Anne Siebels with my grandson. On the evening of 11 May I was sleeping with my grandson when we heard voices outside the house. It was approximately 2300 Hours. Mrs. Siebels came to me and asked me what to do. The soldiers knocked at my window. I asked, "what's going on here". Then one soldier shouted in German, "open the door we have come to search the house for weapons". I told Mrs. Siebels to open the door. I stood at the entrance to the kitchen and my bedroom when the three soldiers entered. A German speaking soldier said he was going to search the house. The Soldier had a revolver and talked to the girl. A couple of minutes later the German soldier told Mrs. Siebels and I to disappear. I went directly to my bed and remained there. Mrs. Siebels son came in a few minutes later screaming something and Mrs. Siebles put her son in my bed. The German speaking soldier came in some time later and said he was going away. I was very excited and cannot remember any of the conversations that took place. On the following evening 12 May I was visiting my daughter-in-law and was called by Mr. Johann Siebels and told that a German Speaking Soldier was at the house and wanted to know something of the night before. I told him the same as stated above. He handed Mr. Johann Siebels the revolver, then Weert Siebels then myself in turn, asking each of us to shoot him. We all refused. I handed him back the revolver then went back into my daughter-in-law's room.

Cross-examined by the accused,

Question 1 - Could you positively identify any of the three soldiers who were supposedly at the Home of Mrs. Siebels at approximately 2300 Hours on the night of 11/12 May?

Answer - "NO"

Signed,
Mrs. Aurora Gliech.

4th. Witness for the Prosecution

Mrs. Anna Siebels 124 Sandhorst, having been duly sworn, states:-

I am a married woman, whose husband is missing on the Eastern Front. I live at 124 Sandhorst St. and with me in the house are Mrs. Gliech and her grandson, my two sons and my employee Miss Berta Mannott. We were in bed on the night of 11/12 May when, approximately 2300 Hours we heard a noise outside the house. I went to Mrs. Gliech's room to ask her advice. Mrs. Gliech shouted, "what's going on here"? A German speaking soldier answered "open the door we have come to search the house for weapons". Mrs. Gliech told me to open the door. Three soldiers entered the kitchen and the German speaking one said, "we were told there are weapons in the house" "We are going to search". A slim middle sized soldier walked to the cupboard and opened the drawers talking in English to the others. Coming from the cupboard, the tall soldier approached Miss Mannott. The German speaking soldier said to Miss Mannott that the tall soldier will sleep with her. Miss Mannott answered that she would have to see her father. Then the German Speaking soldier told me and Mrs. Gliech to disappear from the Kitchen. Mrs. Gliech and I left the room, went to the adjoining room and then to Mrs. Gliech's bedroom. One soldier followed us. I could not recognize him if I saw him. We were standing there in the bedroom for about three or four minutes.

Cont'd,

4th. Witness for the Prosecution (Cont'd,)

Mrs. Gliech went directly to bed. I heard Miss Mannott crying. My two sons were in the kitchen beds and when Miss Mannott started to cry one of them came into me and told me the soldiers were going to kill Miss Mannott. I put him in bed with Mrs. Gliech. The soldier who followed me into the bedroom put his arm around me and tried to take my frock off. I resisted. He then layed on the other bed and fell asleep. I saw him asleep and took for granted he would remain that way and layed down beside him.

After a while the German speaking soldier entered the room and Mrs. Gliech said to him, "Now are you going to harm me?" He answered "No", I am going home, and left. Everything was quiet until morning. I awoke about five o'clock and made coffee. At six o'clock I awakened the soldiers. They got up and asked for something to drink. I gave them coffee and they sat in the kitchen and remained there until Mr. Mannott arrived around 0615 Hours. Personally I don't think the soldiers have done much wrong and they should go unpunished this time.

Signed,
Mrs. Anna Siebels

The Unit Order covering fraternization is attached as exhibit 'A'.

The accused was cautioned as follows:
Question - Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.
Answer - I do not want to make a statement.

The accused does not call any witnesses.

I certify that the foregoing summary of evidence was taken down by me in the presence of the accused and that RP (4) (C) (D) (E) (F) and (G) (1½) have been complied with.

H. MacIsaac Lt

(H.F. MacIsaac) Lieut. R.C.A.
81 Field Battery 14 Field Regt., R.C.A.

"A"

Certified true copy of 14 Field Regiment, R.C.A. Part I Order

No 475 dated 7 April 1945. R. F. Lucas Lt.
Officer i/c Records

"475. DISCIPLINE -- NON-FRATERNIZATION

1. Ref is made to Part I Order No 443 dated 23 Feb 45.

2. Non-fraternization means having nothing whatever to do with German people except the minimum contact required for the execution of military duty.

3. All acts of fraternization are absolutely forbidden; the following are examples:

(a) Shaking hands with Germans.
(b) Permitting children to climb into motor vehs or to congregate in areas around military premises.
(c) Associating on familiar terms, especially with women.
(d) Visiting German houses.
(e) Drinking with Germans.
(f) Playing games or sports with them.
(g) Making or accepting gifts of any sort (even to or from children).
(h) Attending German dances, entertainments or other social events.
(i) Accompanying Germans on the streets, in theatres, taverns, hotels, or elsewhere, except on official business.
(j) Communicating with Germans on any subject except on official business.

The above examples are not exhaustive.

4. Disciplinary action will be taken in all cases of fraternization.

5. Fraternization offences may be minor or serious in character.

Examples of Minor Cases
Speaking to women or girls (except in cases of absolute necessity); shaking hands with Germans, small gifts to Germans (incl children); permitting children to climb on vehs or Germans to congregate about military premises.

Examples of Serious Cases
Associating with women or girls; visiting German homes; drinking with Germans; playing games or sports with them; giving or accepting gifts (except for the most trivial nature provided for above); attending German dances or other social events; accompanying Germans on the streets, in theatres, taverns, hotels or elsewhere (except on official business; discussions and arguments with Germans especially on politics or on the future of Germany.

6. Sexual intercourse with German women is a flagrant breach of the "Non-fraternization" directive and will always be dealt with by Court Martial. Due to propaganda German women may be in fear of Allied soldiers and may consent to intercourse through fear of the consequences of refusal. Where consent to intercourse results from fear, the crime of rape is committed. In cases of sexual intercourse with German women, where the circumstances indicate the woman's consent was induced either by force or fear, a charge of rape should be considered with (in the case of offrs) alternative "Fraternization" charge under Sec 40 AA."

Robinson

1st Witness

Johann Mannott. I am the father of Miss Berta Mannott

I am a farmer and live at 110 Sandhorst Dr. father of Miss Berta Mannott

the night of 11/12 may my daughter came home and shouted "Father open the door". My wife opened the door and my daughter said to us "Father one Canadian Soldier has raped me and there are two more who want to do the same. We then sent her to bed and locked the door and retired.

I got up the following morning at six o'clock took my bicycle and went to the home of Mrs Anna Siebels where my daughter was employed to get information about the incident of the early morning. When I entered the kitchen of Mrs Siebels home at approximately 0610 hours, there were two Canadians, Mrs Gliech and Mrs Siebels in the kitchen. One soldier was completely dressed the other sat with his jacket off. One soldier whom I thought was intoxicated offered me a drink of gin which I refused. The other offered me a cigarette I accepted. The soldier who offered me the gin is the one here pointing to the accused. He remained a few minutes in the kitchen and then walked towards the barn to do some chores which my daughter does normally. Mrs Siebels followed me and then the two soldiers the same soldier who offered me the drink in the kitchen followed me into the barn, and offered me a second drink, which I refused. He then walked out of the barn and with the other soldier disappeared

SIGNATURE OF
MR. JOHANN MANNOTT

Johann Mannott

Robinson 2nd Witness

11/7

Miss Bertha Mannott

I am the servant girl, daughter of Mr. Johann Mannott, and work for Mrs. Siebels 124, Sandhorst. Approx. 2300 hrs on the 11th of May I heard a knock on the door Mrs Siebels, Mrs Gliech and three children were the other occupants of the house at this time. I went to Mrs Gliech's room to ask what to do and she advised me not to open the door. I looked out the window and saw three soldiers. I heard one say in German "open the door, we are going to search the house for weapons." Mrs Gliech said, "open the door." Meantime we were all dressed, and Mrs Siebels opened the kitchen door. I was standing near the kitchen table and Mrs Gliech was standing at the entrance of her bedroom. Three soldiers entered a tall soldier who did not speak German ~~appro~~ approached me and touched my hair. The German speaking one said "my job is to search for weapons." He had a revolver in his hand. Mrs. Siebels and I told them there were no weapons in the house but they could search. The soldier who touched my hair went to the kitchen-cupboard and opened the drawers, he then approached me again.

The German speaking soldier said I would become his [the tall soldier] wife for the night. I said I did not under

hand. He asked me again 3 or 4 times and threatening me with the revolver said to me, if you don't understand you will be shot. Then the german speaking soldier asked "where are the beds?" At that time there was one child sleeping in each of the two beds, built into the kitchenwall. The german speaking soldier took one child and put him in bed with the other child, and told me to enter the empty bed. I refused and he demanded it. At this time the tall soldier made a gesture with his knife. I then went into the bed. While this was taking place Mrs Glück, Mrs Siebels and the other soldier disappeared from the kitchen. The german speaking soldier told me to undress, the tall soldier came into the bed with me and the german speaking soldier was walking around the kitchen. The tall soldier laid on the bed a few moments then got sick and left the bed. I attempted to leave the bed at this time but the germ. speak. soldier approached and said, "my comrade is sick, could I do his part?" I said „no". Then he opened his belt and came into the bed. He forced my legs apart and sexual intercourse took place. I shouted for help, the tall soldier came back and was sitting on the edge of the bed. He put his hand on my mouth to prevent me from shouting. After the germa

3) speak soldier ~~up~~ raped me the tall soldier then came into bed. He took of his boots and shirt and lay down. The German speaking soldier who was still standing in front of the bed told me I had to remain in bed with him (tall soldier) and that I had to awaken him at ~~6~~ 6 o'clock. He then told me not to worry because the other two soldiers had no weapons and they would remain until morning. He then went away. The tall soldier was sick again, so I pretended to get something for him and fled to my parents Home. When I arrived home my mother came to the door and I told her I had been raped. My father was in the bedroom, my mother told me to go to bed, and I did. That is the first sexual experience I had.

Cross examined by the accused M35303
Gunner Robinson F.H.

1. Qu. ~~W~~Were all the soldiers dressed the same?
Ans. I don't know!

2. Qu. Were there lights in the house?
Ans. Yes, electric lights

3. Qu. Was the light on all the time you were there?

Ans: Yes!

SIGNATURE OF
MISS BERTHA MANNOTH

Bertha Mannoth

Certified that this Statement was written in the presence of the accused by the interpreter and under my supervision

J. F. MacLean J.P.

M35303 Gnr. Robinson FH.

3rd Witness

Mrs Aurora Gliech 174 Sandhorst.

having been duly sworn states

I am Mrs Aurora Gliech. I am a Pomeranian refugee and live at the home of Mrs Anne Siebels with my grandson. On the evening of 11 may I was sleeping with my grandson when we heard voices outside the house. It was approximately 2300 hours. Mrs Siebels came to me and asked me what to do. The soldiers knocked at my window. I asked "whats going on here" Then one soldier shouted in German "Open the door we have come to search the house for weapons". I told Mrs Siebels to open the door. I stood at the entrance to the kitchen and my bedroom when the three soldiers entered. A german speaking soldier said he was going to search the house. This soldier had a revolver and talked to the girl. A couple of minutes later the german soldier told Mrs Siebbles and I to disappear. I went directly to my bed and remained there. Mrs Siebles son came in a few minutes later screaming something and Mrs Siebles put her son in my bed. The German speaking soldier came in some time later and said he was going away. I was very excited and cannot remember any of the conversations that took place.

On the following evening 12 may I was visiting my daughter-in-law, and was called by Mr Johann Siebels and told that a german speaking soldier was at the house and wanted to know something of the night before. I told

him the same as stated above. He handed Mr Johann Siebels the revolver, then Mr Siebels then myself in turn, asking each of us to shoot him. We all refused. I handed him back the revolver then went back into ~~the house~~. My daughte in laws room.

~~two~~

Qu: Could you positively identify any of the three soldiers who were myterously at the Home of Mrs. Siebels at appx. 2300 hrs on the night of 11-12 May ?

Ans. " No "

SIGNATURE OF
MRS AURORA GLIECH

Aurora Gliech

Robinson 4rd Witness having been duly sworn states

Mrs Anna Siebels 1 124 Sandhorst

I am a married woman, whose husband is missing on the Eastern front. I live at 124 Sandhorst St and with me in the house are Mrs Gliech and her grandson, my two sons and my employee Miss Berta Mannatt. We were in bed on the night of 11/12 may when, approximately 2300 hrs we heard a noise outside the house. I went to Mrs Gliech's room to ask her advice. Mrs Gliech shouted "what's going on here" - A german speaking soldier answered "Open the door. We have come to search the house for weapons" Mrs Gliech told me to open the door. Three soldiers entered the kitchen and the german speaking one said "We were told there are weapons in the house. We are going to search" A slim middle sized soldier walked to the cupboard and opened the drawers, talking in English to the others. Coming from the cupboard the tall soldier approached Miss Mannatt. The German speaking soldier said to Miss Mannatt that the tall soldier will sleep with her. Miss Mannatt answered that she would have to see her father. Then the german speaking soldier told me and Mrs Gliech to dissappear from the kitchen. Mrs Gliech and I left the room, went to the adjoining room and then the Mrs Gliech's bedroom. The soldier followed us. I could not recognize him if I saw him. We were standing there in the bedroom for about three or four minutes. Mrs Gliech went directly to bed. I heard Miss Mannatt crying. My two sons were in the kitchen beds and when Miss Mannatt started to cry, one of them came into me

and told me the soldiers were going to kill Mrs Marriott. I put him in bed with Mrs Gliech. The soldier who followed me into the bedroom put his arm around me tried to take my frock off. I resisted. He then layed on the other bed and fell asleep. I saw him asleep and took for granted he would remain that way, and layed down beside him.

After a while the german soldier entered the room and Mrs Gliech said to him "Now are you going to harm me". He answered "no, I am going home" and everything was quiet until morning. I awoke about five o'clock and made coffee. At six o'clock I awakened the soldiers they got up and asked for something to drink I gave them coffee and they sat in the kitchen and remained there until Mr Marriott arrived around 0615 hours. Personally I don't think the soldiers have done much wrong and they should go unpunished this time.

The accused declines to cross-examine the witness.

SIGNATURE OF
MRS ANNA SIEBELS

The unit order covering fraternization is attached as exhibit "A"

The accused was cautioned as follows

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence

A I do not want to make a statement

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence was taken down by me in the presence of the accused and that RP # (C)(D)(E)(F) and (G) (B) have been complied with.

J. D. MacIsaac
E1 Bty 14 Field Regt RCA.

Certified that the foregone are true translations from German into English to the best of my ability. I also certify that I have taken the interpreter's oath as per MML, Rules of Procedure App II page 762 (d) interpreter.

Certified True Copy Sgd. (J. Bell) L/Cpl.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of two pages was taken down by me in the presence of the accused and Rules of Procedure (c) (d) (e) (f) (g) (13) have been complied with.

J. MacIsaac Lt

(J.F. MacIsaac) Lieut

2 Jun 45

List of Witnesses with present addresses in the case of

M 35303 Gnr. ROBINSON, F.H.

For the Prosecution

Mr.	Johann	MANNOTT	110 Sandhorst
Miss	Berta	MANNOTT	110 Sandhorst
Mrs.	Aurora	CLUGH	124 Sandhorst
Mrs.	Anna	SIEBELS	124 Sandhorst

I (do wish an officer to defend me at my trial
(~~do not~~

by F.G.C.M.

F.H. Robinson

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO SIR (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (~~no~~) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C)(D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the FIRST & SECOND charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the SECOND charge(~~s~~) and allowed on the FIRST charge(~~s~~), and that, accordingly, the trial will proceed on the former, but the accused is (~~not~~) found Not Guilty on the latter charge(~~s~~).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. NO SIR. Do you intend to call witnesses on your behalf? Ans. YES. Are they witnesses as to character only? Ans. NO.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(~~s~~).(1) The finding(~~s~~) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the SECOND charge(~~s~~), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans. NO SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. NO SIR.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : M 35303 GNR ROBINSON F.H. 14 CDN FD REGT RCA.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 41	NOT GUILTY	NOT GUILTY	
ALTERNATIVE 2nd AA 40	NOT GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~Not present under sentence for~~ ~~beginning on (date)~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 23 days, of which NIL days were spent in hospital (2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

TO UNDERGO DETENTION FOR SIXTY (60) DAYS

(Sgd) J K Kidd Capt
Judge-Advocate, if any.

22 JUNE 45
Date awarded.

(Sgd) R J Barker Major
President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

CONFIRMED

~~I direct that the accused be not committed to prison or detention barracks until further orders (1)~~

(1. AA 57A. Delete if not used.)

Date 30 JUN 45

(Sgd) [signature]
L.G. CLARKE BRIG
Commanding CRA 3 CDN INF DIV
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. GNR. ROBINSON, F.H.

Date. 3 JULY 45.

Signature of Offr. [signature] Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO SIR (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (~~his~~) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the FIRST & SECOND charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the SECOND charge(s) and allowed on the FIRST charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (~~are~~) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. NO SIR. Do you intend to call witnesses on your behalf?
Ans. YES. Are they witnesses as to character only? Ans. NO.

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(b).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the SECOND charge(s), being subject to confirmation, will be promulgated later.(1)

~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO SIR

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (~~ii~~) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. NO SIR.(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 80, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M35303 GNR ROBINSON F.H. 14 CDN FD REGT RCA.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 41 ALTERNATIVE	NOT GUILTY	NOT GUILTY	
2nd AA 40	NOT GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... ~~beginning on (date)~~ .....

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 23 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO UNDERGO DETENTION FOR SIXTY (60) DAYS

(Sgd) J K Kidd Capt — Judge-Advocate, if any. 22 JUNE 45 — Date awarded. (Sgd) R J Barker Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

~~I direct that the accused be not committed to prison on detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 30 JUN 45 (Sgd) L.G. CLARKE BRIG

Commanding CRA 3 CDN INF DIV

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
M35303 GNR. ROBINSON, F.H.	3 JULY 45.	[signature] Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Lpr. Robinson. H.T.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D144001 Tpr Frank Thomas Robinson

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st			
2nd	NOT GUILTY		is NOT guilty of desertion but guilty of absence without leave
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lass of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1) Nil

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 40 days, of which No days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

to suffer six (6) months detention

(Sgd) _____ 8 Feb 45 (Sgd) C C Petersen
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the findings and sentence of the Court

~~I direct~~ that the ~~accused be not committed to prison or detention barracks until further order~~.(1)
(1. AA 57A. Delete if not used.)

(Sgd) J. Lind Brig

Date 9 Feb 45 Commanding 12 Cdn Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D144001 Tpr Frank Thomas Robinson	14 Feb 45	Capt

~~No. 1 Base Sec. 2 Echelon 21 Army Gp~~

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4X-84

FIELD GENERAL COURT-MARTIAL

CPA86 (To Req of AFAS) 40/P & 0/1008 (4030) 4/38B

RECEIVED 2 AUG 1945 JAG BRANCH O.M.H.Q.

Convened by Order of Brig J H Lind Comd 12 Cdn Inf Bde dated 6 Feb 45

ACCUSED.

(Add, as to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D144001	Tpr	Frank Thomas	Robinson	1 Can Base Sec. 2 Echelon G 21 Army Gp

RECORDS REVIEWED

J. Lind Brig Comd 12 Cdn Inf Bde 6 Feb 45

REVIEWING OFFICER, JAG BRANCH O.M.H.Q. 24 AUG 45

PROCEEDINGS REVIEWED

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date) 8 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1430 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans _____

~~The Interpreter is sworn (1). Do you object to~~ as shorthand writer? Ans _____

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn(1). The following are the ranks, names and units of the offrs comprising the Court, etc:

President	A/Major	C C Petersen	Canada Regt Staff
Member	Capt	J D Davis	12 Cdn Inf Bde HQ
Member	Lt	G G Forman	Western Regt
Judge-Advocate			
Prosecutor	Capt	E S Thorne	4 F & D
Defending Offr	Lt	D M. Forbes	17 Fd Regt RCA

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused D144001 Tpr Frank Thomas Robinson before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused D 144001 Tpr Frank Thomas ROBINSON 4th Princess Louise Dragoon Guards, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Army Act
Sec 12(1)(a)

When on Active Service, DESERTING HIS MAJESTY'S SERVICE

in that he

in the Field after having been warned that his unit would shortly proceed into action, with intent to avoid such action, absented himself without leave from theunit lines of the 4th Princess Louise Dragoon Guards, from 0630 hours 27th of December 1944 until apprehended by the Military Police in Rome at 1130 hours 29th of December 1944.

In the field
3/4445.

(C. PETCH) Lt-Col.,
Commanding Officer
4th Princess Louise Dragoon Guards.

To be tried by Field General Court Martial.

5 Feb 45

(J S H Lind) Brig,
Comd 12 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2663)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D144001	Trooper		Frank Thomas	ROBINSON	4 PLDG

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (*date*) 5 Feb 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ". pt

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ pt

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder. pt

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ pt

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ pt

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	C. E. Petepiece	Lan & Ren Scot R.
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	to be detailed by CO 12 Cdn Inf Bde Coy RCASC	
Capt or Lt	to be detailed by CO Westmr R.(M)	
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Capt or Lt	to be detailed by CO 8 Cdn Lt Fd Amb RCAMC	
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy	(J S H Lind)	Brig
(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)

Date 5 Feb 45

Commanding 12 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

(1) CC

D3. D144001 Tpr. Robinson F. T. R.A.D.C.

1st Witness for the Prosecution

C70665 Sgt. Johnson R.A. having been duly Sworn States

I was Troop Sgt. 14 troop "C" Squadron from approx the 10 Dec. 1944 till 25th Jan 45

Prosecution

Q. Was Tpr. Robinson a member of your troop

A. Yes

Q. Is Tpr Robinson here

A. Yes the accused

Q. What took place during 25th 26th Dec.

A. We were in a rest area and I warned the troop as a whole not to wander too far away from their billets as we were going back into the line very shortly.

Objection by the defence

Defending officer objects because it is irrelevant as the accused was not there and suggest that it is here say evidence

Court overrules the objection

Q. What took place on the 27th of Dec.

A. At 0630 hrs. I checked my troop I found three men were absent one was Tpr Robinson

Q. When did you next see Tpr Robinson

A. When we arrived at Camerino

Q. If he had returned to the troop would you have known

A. Yes.

I present this document

Certificate in accordance with the army act Sec 163(1)(ii) purporting to be signed by Capt Bell CO III Provost of C M Police this document refers to the accused.

RP83B completed with [illegible]

Exibit A

Cross examination

Q. Did you have any roll calls on the 25th 26th of Dec.

A. No sir.

Q. Did you see Robinson at any of the gatherings that the warning was given

A. No sir

③ CCP

2nd Witness for Prosecution

B46721 L/Sgt. Seccoreccia A. 4th PLDG.
having been duly sworn states.
During the month of Dec.
I was section Leader 14 troop
"C" Squadron PLDG.

Q. Was Tpr Robinson with that troop

A. yes I recognize the accused Tpr
Robinson a member of my troop

Q Was there a Squadron Xmas
dinner held on the 25.

A. yes.

Q. Did anyone speak to the squadron
at the dinner

A. yes sir Col Petch

Q. As a result did you form
any conclusions as to the future
of the regiment

A. yes I gathered from the C.O.
speech that the unit
would be moving
into the line very shortly

(4) (C6)

Q. Was there any troop gatherings or parades on the 26.

A. Yes, that I can remember, 1 in the morning and 1 in the afternoon

Q. Did Sgt Johnson speak to the troop at those meetings

A Yes Sgt Johnson spoke to the troop

Q Can you say whether the accused was present at either of those parades.

A that definitely sir to the best of my knowledge he was.

Cross Examination Defence

Q. Did you see Robinson at any of these gatherings that the warning was given.

A. I could not say definitely

Q. Do you Know anything about a guitar that was borrowed from the P.L.F.

A. I remember telling Tyr Robinson to bring a guitar back to X area. I don't remember the day.

Q. Robinson did go away about a guitar

A. I don't remember.

Q. Did you told Robinson to take the guitar back

A. Yes

Q. Have you any Knowledge of it being returned or not being returned

A. I don't Know. Just I have seen the guitar here in this area.

Q. When did your unit leave to come to this area.

A. the 11th or 12th

CCP

Q. Did you see the guitar between Xmas time and the time you came down here.

A. I saw the guitar on the morning of the 26th Jan. I hadn't seen the guitar from the time I told Robinson to take it back until the 26th Mpanna.

CCP RP 83B
Completed with
CCP 2645

1st Witness for the Defence.

D6

D144001 Tpr Frank Thomas Robinson
4 PLDG having been duly sworn

Q. Were you present at any time when a warning was given that your unit would shortly go into action

A. No sir

CC CC CC

Q ~~What~~ Where were you on Xmas morning

A I was out at a movie show with one of the fellows.

Q What did you do when you came back

A I had dinner

Q What condition were you in at the time

A I was feeling pretty good.

Q Was there much noise in the dinning hall

A Yes sir.

Q Did you hear the C.O. give a warning that the squadron was going into action

A No sir

Q What were you doing the rest of the day

A. I was out all afternoon walking around town

Q Did you do any more drinking

A. Yes sir

Q What did you do on the morning of the 26.

A I took a guitar over to the PLF.s as a fellow who was going on leave didn't want it left around

Q What time did you come back.

A. I couldn't say for sure but I was there for quite a while

Q. What did you do then

A. I went to dinner

Q and then what did you do

A. Gave my mess tins to one of the fellows and went A'NOL.

(1) CCP

Q Why did you go absent without leave
A I had not had a leave for some time and I had told my mother that I would get her something for x mas from Rome
Q Did you apply for leave
A No
Q Why didn't you apply for leave
A I didn't think that I would get one
Q Did you have a pass a short time before issued by Capt Intstat which was cancelled by the Squadron comd
A Yes sir
Q Did any body else go on leave at the time your pass was cancelled
A Yes sir
Defence submits the pass issued to the accused and later cancelled. (Marked exhibit B)

Cross Examination

Q Did you at any time around the 25th or 26th of Dec 47 hear any talk or rumour about the unit going back into action very soon
A No

Rules of Procedure
83B
Complied with
CCP

Any Address by the Def (10 CCP

The Defence admit that the accused was absent without leave for the period alleged - but contend that the Prosecution have not made out a case for desertion.

The accused chose to leave his unit while it was out of the line - and not while in action, where he served for some considerabl time. Hence it may be presumed that he was not attempting to avoid action, other things being equal.

The Prosecution brought evidence to show that the troop had been warned. The Defence contended that these statements were inadmissable unless it could be shown that the accused was present wh the warnings were given - firstly, they were irrelevant unless the accused was there and, secondly, there is a strong possibility that it was hearsay evidence. See MML p 84 Sec 47 - it is a "statement with reference to the accused" in that he was included in the troop that was expected to go into action; "relative to the charge"; and "made in his absence".

The burden of proof never shifts from the Prosecution. The Defence contend that no prima facie case has been made out. At the stage of proceedings when the Prosecution closed their case, they showed warnings had been given, but had brought no conclusive evidence that the accused was present on any occassion.

The accused answered questions very frankly and admitted being at the Christmas dinner - but in a drunken condition - that there was a lot of noise - and that he didn't hear the CO give any warning about going into action. The Court, from their knowledge of Canadian Army Christmas dinners will surely realize that this is quite plausible. It is probably true that many soldiers, without meaning disrespect to their CO, hear very little of what is said by the CO at a Christmas dinner. In any event, the accused is entitled to the benefit of any doubt. Certainly a reasonable doubt exists here.

The accused, on oath, has sworn that he never heard any warning, and has accounted reasonably for his whereabouts on the occasions when the warnings were given. A witness was available to corroborate the sworn testimony of the accused, but was not called when the Court said they would accept the evidence of the accused at its face value; the Prosecution was agreeable to this.

The evidence showed that there were no roll calls on Dec 25 or Dec 26. Surely a better procedure for warning the troop would have been to have a proper parade with a roll call - rather than warning small groups that were available - and trusting to word of mouth methods for advising the remainder.

The whole basis of the charge is in the phrase "after being warned". No other circumstances such as being found in "civilian clothes" or "boarding a ship" have been shown - hence no intent not to return can be presumed.

The Defence submit that a finding of desertion is not proper under the circumstances, and that the Court should bring in a finding of Not Guilty of desertion but guilty of absence without leave.

(11)

Closing address of Prosecution
In the Case of
Tpr Tucker.

Sir:

I have already pointed out to the Court the manner in which I consider the surrounding circumstances may be taken into consideration in order to decide the presence or absence of the intention of the accused to desert the Majesty's service.

Dealing briefly with the Evidence in the Record, I would draw the attention of the Court to the fact that the accused was present at the Christmas dinner and spent at least one full evening with other members of his troop, that the troop had been warned of the impending action. I submit to the Court that these facts are sufficient evidence to draw the conclusion that the accused did in fact have the intention of deserting when he left the unit lines.

If however the Court does not feel that the Prosecution has proved desertion, the facts of the absence without leave are fully proved as set out in the charge.

Capt

CCP.

E.3 Address by def on Statement and Conduct sheet and in mitigation of punishment

The accused is charged in respect of an absence of 2 days 3 hours. He has been in military custody for 40 days. He has no entries on his conduct sheet. Normally apart from the charge of desertion he would be tried by his CO as a first offender for a short absence without leave and would have received a maximum of 28 days. I point out that the sentence of the court will run from today and that the 40 days he has already served should be taken into account. I point out the extreme youth of the accused. He just turned 20 before this charge arose.

The evidence has brought out what he probably thought a reason for going AWOL as his leave was cancelled and that he had promised to get his mother souveners from Rome

CCP

Certificate in accordance with the Army Act Sec. 163 (1) (jj)

I certify that

No D/144001 Rank TROOPER Name ROBINSON F.T.

of the PRINCESS LOUISE DRAGOON GUARDS

was arrested at ROME at 1130 Hrs.,

on the 29th day of DECEMBER 194 4.

Signature of P. M., A. P. M., or other Officer into whose custody the above named person was taken on arrest. | C. S. Gill

Rank Captain

Appointment (if any)

Commanding 111 PROVOST COMPANY, C.M.POLICE

Date 29th December 1944

PSSN(771)/5-44/(2.500)

Attached to the Summary of Evidence

Dated 21 Jan 45

If a calling-out of the whole Army Reserve is ordered every soldier on pass must return immediately to his unit without waiting for instructions.

4 P L D G

No. 101 Regiment 4 P. L. D. G.

Army Form B206
(In pads of 100)

PASS

No. D144001 (Rank) TPR (Name) Robinson J.T.

has permission to be absent from his †quarters/duty, from 0600 hrs

9 Dec 44 to 2359 hrs. 16 Dec 44

for the purpose of proceeding to* Rome

(Station) Field

(Date) 9 Dec 44

Commanding

4 PLDG (P.T.O.)

ORDERLY ROOM

* Destination not required unless absence is to exceed 24 hours, unless [illegible] owing to local conditions or is necessary to enable [illegible] of a rail ticket at reduced [illegible]

† Delete whichever is not practicable.

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ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D144001	Tpr	ROBINSON, F.T.	4th P.L.D.G.

NOTE.—The Field Conduct Sheet is to be produced to Court with this statement but is not to be annexed to the proceedings. The number hereto stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special note of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For NIL ____ times.

For ____ ____ times.

For ____ ____ times.

For ____ ____ times.

Date of first entry in Field Conduct Sheet ____

Date of last entry in Field Conduct Sheet ____

2. ~~A previous conviction of the accused by a court martial or a civil court are set out in the schedule hereto.~~

*Strike out if not applicable.

~~3. The accused is undergoing sentence for ____ beginning on the ____ day of ____ 19__.~~

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for ~~38~~ 40 days in military custody, *i.e.*, nil days in open arrest, ~~33~~ 40 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 21 years

6. The date of his ~~enlistment~~ attestation is 5 Jan 44

7. The service which the accused is allowed to reckon is 11 months 26 Days

~~8. The accused is in possession of~~

~~9. The accused has previously undergone ____ Date of discharge ____~~

~~in the said ____ in the rank of ____~~

~~in the said ____ in the rank of ____~~

N/A

~~in the corps to which the accused belongs.~~

~~in the corps to which the accused belongs.~~

N/A

~~in the acting rank of ____~~

N/A

†State the military decorations (if any) held by accused.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) W1.8570/665 100,000 4/41 A. & E. W. Ltd. Gp.698 Forms/B.296(War)/2
(32459) W1.32048/1878 60,000 3/42

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 3 day of Feb. 45

Capt.
Adjt., 4 Princess Louise Dragoon Gds.

Ex D CCL 8 Feb 45

No D144001 Name Robinson, F.T. Sqn, Battery, or Company Supplementary

Date of last entry in Company Conduct Sheet | No and date of last drunk | Corps CIC | Period not reckoning towards freedom from extra fine | Date of enlistment 5 Jan 44 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Sheet No | Signature OC Company, etc B.A. Smith Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified true copy taken from records in my possesion. 30 Jan 45					
				(W.H. [illegible]) Capt., Adjt., 4th Princess Louise Dragoon Guards. Officer having custody of original					

(PTO)

SUMMARY OF EVIDENCE

Summary of evidence in the case of D 144001 Tpr ROBINSON, F.T. 4th Princess Louise Dragoon Guards, Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on Oath.

First Witness
for the Prosecution

C 70665 L/Sgt Johnson, R.A. 4th Princess Louise Dragoon Guards, having been duly sworn states:-

I am and was at all times material hereto C 70665 L/Sgt Johnson, R.A. On the 26th Dec 44 I was troop Sgt of 14 troop "C" Sqn 4th P.L.D.G. and continued to be troop Sgt of that troop until January the 25th. D 144001 Tpr Robinson, whom I recognize as the accused was a member of 14 troop on Dec 26th and 27th. From the 25th Dec on I warned all the troop not to be too far away from the billets as we expected to be going back up into the line. I spoke to the troop when they were all together.

On the morning of the 27th I got up at 0630 hours and checked the whole troop and found that Tpr Robinson was not present. I waited about an hour or so and then reported his absence. I did not see Tpr Robinson again until I saw him here under arrest. If he had returned to the troop I would have known of it.

I present tothe Court a certificate in accordance with Sec 163 (i) (j) ofthe Army Act purporting to be signed by Capt C.C. Gill, C.O. 111 Provost Coy., C.M. Police. This document refers tothe accused man.

The accused declines to cross examine this witness.

R.L. Johnson Sgt

The certificate referred to by the witness, produced, read over tothe accused, marked exhibit "A", signed by me and attached hereto.

(E.S. THORNE) Capt.,
4th Princess Louise Dragoon Guards.

Second witness
for the prosecution

B 46721 L/Sgt Seccoreccia, A. 4th P.L.D.G. having been duly sworn states:-

I am and was at all times material hereto B 46721 L/Sgt Seccoreccia, A. During Dec 1944 I was section Cpl in 14 troop "C" Sqn. D 144001 Tpr Robinson whom I recognize

Second Witness cont'd
for the prosecution

whom I recognize, as the accused was a member of 14 troop. On Christmas during dinner dinner the C.O. spoke to the Sqn and told us that we would be going into the lines again shortly. On the 26th of Dec there were at least two troop parades at which Sgt Johnson the troop Sgt told the men that we would be going into the lines again very shortly, and that we were tostay around the billets as it was not known exactly when we would be leaving. After the 26th I did not see the accused until I saw him under arrest.

Cross Examined by the accused

Q. What time were these parades?

A. I don't remember the exact time. There(were) was one just before dinner on the 26th when Sgt Johnson called us all into the one room and told us to stay around.

Q. When was the other one?

A. Just after dinner when Sgt Johnson was getting the ammunition and grenades.

Q. Did you see me there?

A. I could'nt say exactly as I was busy checking my own section ammunition. To the best of my knowledge you were.

A. Seccorecia
A. Seccorecia Sgt

The accused having been duly warned as follows:-
"Do you wish to make any statement orto give evidence upon Oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing , and may be given in evidence",

declines to make any statement or to give evidence.

Certified that R.P. 4 (c) (d) (e) & (f) have been complied with.

This summary of evidence consisting of two (2) pages was taken down by me in writing in the presence and hearing of the accused.

In the field
26th Jan 45

(E.S. THORNE) Capt.,
4th Princess Louise Dragoon Guards.

LIST OF WITNESS

For the Prosecution

C70665	Sgt	JOHNSON, R.A.
B45721	Sgt	SECCO/RECCIA, A.

For the Defence

Nil

List of Exhibits

1. Certificate of apprehension

Prosecuting Officer

Capt E.S. Thorne 4th P.L.D.G.

Defending Officer

I wish the Convening Officer to detail an Officer to defend me.

I wish/~~do not wish to have the U/K Officer to defend me at my trial~~.

In the field

F. Robinson

F.T. Robinson Tpr

KK·53 (AFRICA)

PTE ROBINSON G.E.

Correspondence to be PINNED here.

Canadian C & E

Phil

KK-53

a7

A-49

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this day of , 19 .

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Army Tank Bde....., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [I am unable to appoint :—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reasons, namely :—]

Proceedings Assembled

Ellie Dinsdale Capt

3 Sep 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	W.D. King, 1 Cdn Tk Dely Sqn.	

Members.

Rank.	Name.	Regiment.
~~Capt.~~ Lieut.	~~E.G. King, 1 Cdn Tk Tpn Wksp~~ L.M. Stewart	1 Cdn Army Tk Bde H.Q. Sqn from 1 Cdn Army Tk Bde Reinforcement
Capt	R.E. Boykowich, 1 Cdn Tk Bde Wksp	
	Waiting member	
Lieut	J.E. Steinbuckl, 1 Cdn Tk Dely Sqn.	

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brig

Commanding 1 Cdn Army Tk Bde.

Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D.117073 Pte ROBINSON, George, Edward 1 Cdn Tk Bde Wksp.	1st Charge A.A. Sec. 9 para 1 See enclosed charge sheet, for particulars.	guilty	guilty WDK fifty-six (56) days detention	Finding and sentence are confirmed. To be promulgated on a strong parade of his unit. [signature] [illegible] COMD'G 1st CAN. ARMY TANK BDE.
	2nd Charge A.A. Sec 8, para 2 See enclosed charge sheet for particulars.	guilty		

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) [signature] (R. A. Wyman) Brig (Signed) WDKing (W.D. King) Maj,

Commanding 1 Cdn Army Tk Bde 1 Cdn Tk Dely Sqn.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the day of , and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~*(3.~~ The Interpreter)
~~*(4.~~ The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 26 day of July 1943

WDKing
(W.D. King) Maj
1 Cdn Tk Delivery Sqn.
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~ WDK

*See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19 .

(W. D. King) Maj
1 Cdn Tk Delivery Sqn.
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ [signature]

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 28 day of July 1943

[signature]
(R. A. Wyman) Brig
Comd, 1 Cdn Army Tk Bde.
Confirming Officer.

Promulgated and extracts taken in the case of D.117073, Pte ROBINSON, George, Edward.

(a) (Dated) 1 Cdn Tk Bde Wksp. (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] W1.46179/850 50,000 2-43 A.A.E.W.Ltd. Gp.[illegible]

B.2

CHARGE SHEET

The accused No.D.117073 Pte. George Edward ROBINSON,

1 Cdn Tk Bde Wkshop, a soldier of the Cdn Army (Active)

Overseas, is charged with:-

1st Charge

Section 9

Para (1)

Army Act

DISOBEYING, IN SUCH MANNER AS TO SHOW A WILFUL DEFIANCE OF AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER IN THE EXECUTION OF HIS OFFICE.

in that he

In the Field, (Aboard H.M.Troopship Cameronia) whilst in harbour, at approximately 1900 hours, 14 July 43, when ordered by No.C.37813 Cpl. Cutler, S.H., 1 Cdn Tk Bde Wkshop, to close a port or ports on his mess deck did not do so, but went up to the Corporal and struck him in the face.

2nd Charge

Section 8

Para (2)

Army Act

WHEN ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER

in that he

In the Field, (Aboard H.M.Troopship Cameronia) whilst in harbour, at approximately 1900 hours, 14 July 43, when ordered by No.C.37813 Cpl. Cutler, S.H., 1 Cdn Tk Bde Wkshop, to close a port or ports on his mess deck did not do so, but went up to the Corporal and struck him in the face.

In the Field
19 July 43.

L.D. McGee, Major, O.C.,
1 Cdn Tk Bde Wkshop.

To be tried by F.G.C.M.

(R.A. Wyman)
Brigadier,
Comd, 1 Cdn Army Tank Bde.

In the Field
24 Jul 43.

24 Jul 43

1 CDN ARMY TK BDE ORDER FOR ASSEMBLY OF A COURT MARTIAL

1. The details of officers mentioned below will assemble at the lines of 1 Cdn Army Tk Bde Wkshop at 1000 hrs, Mon. 26 Jul for the purpose of trying by FGCM the u/m accused person and such other persons as may be brought before them.

D.117073 Pte ROBINSON, George Edward, 1 Cdn Tk Bde Wksp.

PRESIDENT

Major W.S. King, 1 Cdn Tk Dely Sqn

MEMBERS

Capt E.G. King, 1 Cdn Tk Bde Wksp
Capt R.R. Borkowich, 1 Cdn Tk Bde Wksp

WAITING MEMBER

Lieut J.E. Steinbuckl, 1 Cdn Tk Dely Sqn.

2. The accused will be duly warned and medically examined, and all witnesses directed to attend.

3. 1 Cdn Tk Bde Wksp will provide both ~~[illegible]~~ prosecuting and defending officer, court orderly and stationery.

4. The proceedings will be forwarded to this HQ for confirmation.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialed by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field Gen. Court-Martial held at Field

on the 26 day of July 1943 by order of

Brig. R.A. Wyman

Commanding 1 cdn Army Tank Bde

dated the 24 day of July 1943

President.

Major W.D. King 1 cdn Tk Dely Sqn.

. Members.

~~Capt. E. G. King, 1 cdn. Tk. Tpo Whp~~

~~Capt. R. E. Boykowich 1 cdn Tk Bde Whp~~

Lieut J. M. Stewart 1 cdn Bde H.Q. Sqn. from 1 cdn Bde Bridge mnt.

Capt. R. E. Boykowich 1 cdn Tk Bde Whp

, ~~Judge Advocate~~.

~~Trial of*~~

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt J. C. Armstrong

Counsel‡ or defending officer† Lieut H.A. G. Kingsmill

At 1.05 o'clock the Trial commences.

The order convening the Court is read, and is marked , signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

NO

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. Wt.W16839/78. 35,000 sets. 6/43. K. & H., Ltd. G657/11. Forms A 9/55.

B

The President, members and judge-advocate are duly sworn.

~~The following officers under instruction are duly sworn.~~ WSSK

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to the two charges the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

SUMMARY OF EVIDENCE IN THE CASE OF

D-117073 Pte. C.E. Robinson, 1 Cdn Tk Bde Wkshop.

The Commanding Officer directs that the evidence be taken on oath.

First Witness for Prosecution

C 37813 Corporal S.H. Cutler, 1 Canadian Tank Brigade Workshop, RCOC, having been duly sworn states:- On July 14th 1943, at approximately 1915 hours I received a personal order from the ships warrant officer that the ports must be closed light immediately. I then made a general remark to the men at the mess tables to that effect. The accused told me "Buzz off." I then explained where the original order came from and the accused said "Buzz off we're having supper". I then ordered the accused to close the port by mess table number 16. The accused then left his seat at the mess table and came over to me and said "Have you your hooks on" I replied "Yes and that is still an order". The accused then struck me on the left cheek. I took no further action but left table 16 then went to C.S.M. Murphy's cabin and laid a charge against the accused of Refusing to obey an order and striking an N.C.O.

The accused declined to cross-examine this witness

S.H. Cutler. Corporal.

Second Witness for Prosecution

C 37864 Lance Corporal W.G. Pretty, 1 Canadian Tank Brigade Workshop RCOC, having been duly sworn states:— On July 14th 1943 shortly after 1900 hours I was at supper at mess table 14 on C2 deck and the accused was seated at mess table 11

cont' Second witness for Prosecution

which was next to me. Lcpl S.H. Cutler came over and was standing at the end of the table where he sat. I heard Corporal Cutler giving the order that port holes must be closed tight. The accused said "Buzz off. I'm at supper". Corporal Cutler then ordered the accused to close the window. There were several other words spoken between the accused and Corporal Cutler which I don't remember, I then turned around and as I did I saw the accused strike Corporal Cutler with his fist on the side of the face. I rose from my table and I said to the accused "Use your head and go and sit down". The accused turned to me and said "Keep out of this". I again said "Sit down" which he did.

On his evidence being read to him the witness desires to make the following alteration:-

"Corporal Cutler then ordered the accused to close the porthole".

The accused declines to cross-examine this witness

~~Corporal~~ L/Cpl.

cont' Second witness for Prosecution

which was next to me. Corporal S.H. Cutler came over and was standing at the end of the table where the accused sat. I heard Corporal Cutler giving the order that port-holes must be closed tight. The accused said "Buzz off. I'm at supper". Corporal Cutler then ordered the accused to close the windows. There were several other words spoken between the accused and Corporal Cutler which I don't remember, I then turned around and as I did I saw the accused strike Corporal Cutler with his fist on the side of the face. I rose from my table and I said to the accused "Use your head and go and sit down" The accused turned to me and said "Keep out of this". I again said "Sit down" which he did.

On his evidence being read to him the witness desires to make the following alteration:-

"Corporal Cutler then ordered the accused to close the porthole".

The accused declines to cross-examine this witness

Witness Petty O/Cpl.

Third witness for Prosecution

H3681 Pte. D Coghill, 1 Canadian Tank Brigade Workshop, RCOC, having been duly sworn state:-

On 14th July 1943 I was eating my supper at Mess table 14 on C2 deck of H.M. troopship Cameronia, I am not sure of the exact time when Corporal Cuttle came over near the table I was seated at and said "all port holes had to be closed" The port holes were partly closed at the time. I heard an argument start between Corporal Cuttle and the accused but what was actually said, I don't remember. At this time I got up from the table to serve myself some food, I then saw Pte. Robinson G.E. standing up near Corporal Cuttle but what was said at that time I don't know. At this time I saw the accused strike Corporal Cuttle and I left immediately. Just before I left Corporal Petty who was seated with me at table 14 asked the accused to sit down, which he did.

The accused declines to cross-examine this witness.

D. Coghill

Fourth Witness for Prosecution

D117403 Pte. J.J. Campbell, 1 Canadian Tank Brigade Workshop, RCOC. having been duly sworn state:-

On 14th July 1943 at aproximately 1900 hrs I was eating my supper at mess table 16 on C2 deck of H.M. Troopship Cameronia when I heard Corporal Cuttle give an order. He said "All Port holes will have to be clos

Cont'd
Fourth Witness
for Prosecution

There was an argument between the accused and Corporal Cutler but I don't remember what was said, then I saw the accused strike Corporal Cutler. The accused then sat down. A few minutes later C.S.M. Murphy came down to the mess deck and put the accused under close arrest.
The accused declines to cross-examine the witness.

L J Campbell.

Fifth witness
for Prosecution

H 101045 Pte. G.R. Allan, 1 Canadian Tank Brigade Workshop RCOC being duly sworn states:—

On 14th July 1943 around 1900 hrs at the mess table number 12 on C2 deck on H.M. Troopship Cameronia I heard Corporal Cutler ask the accused to close the Port hole. Pte. Robinson G.E said "Bugg off" then Corporal Cutler said "This is an order" I then turned around and saw the accused strike Corporal Cutler. Then I saw S/Cpl. Pretty rise from his table and go between Corporal Cutler and the accused. Then the accused sat down.
The accused declines to cross-examine this witness.

G R Allan.

List of witnesses for prosecution

H 66011 Pte J. C. Schmidt, 1 Canadian Tank Brigade Workshop RCOC being duly sworn states :—

On the 14th July 1943 at about 1900 hrs I just came to our mess table number 16 where the accused was, and started to eat my supper when Corporal Cutler came over to the table and said "Close the Portholes". Then Corporal Cutler and the accused got into an argument but I don't remember what was said. I then started to eat my supper again and did not pay any attention to what was going on.

The accused declines to cross-examine this witness.

J C Schmidt

The accused was cautioned as follows:—

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused elected to give evidence as follows:-

First Witness for Defence

The accused D 117073 Pte G.E. Robinson, 1 Canadian Tank Brigade Workshop RCOC, not on oath, states:—

On 14th July 1943 I was mess orderly at mess table 16 on C2 deck of H.M. Troopship Cameronia. At 1900 hrs I went to the ship's kitchen to get the food for our mess table I returned to the table shortly after 1900 hrs and as the mess table N.C.O was not present I started to dish out the food to the men. I finished giving the food out to the other men and started on my own when Corporal Cutler came down the stairs to the deck and gave a general order for all portholes to be closed, I looked around and I didn't see anyone get up to close the portholes He then came over to me and said "Robinson, close the portholes", I told Corporal Cutler I was having my supper

Cont'
First witness
for Defence

I said "why don't you get someone else" he replied "It is you I want to close the port holes" I again explained I was having my supper. I got up from my seat and said to Corporal Cutler "You have no stripes on your arm, you have no right to give an order" Corporal Cutler replied "Close those portholes", I was mad by this time and before I realized it, hit him. Corporal Pretty got up from his seat then and ordered me to sit down at my table which I did, and I finished my supper.

G.E. Robinson.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of seven pages was taken down by me in the presence of the accused and that Rules of Procedure 4(C), (D), (E), and (F) have been complied with.

J.A. Armstrong, Captain
1 Canadian Tank Brigade
Workshop R.C.O.C.

H.M. Troopship Cameronia
15th July 1943

(CC) W.D.K. ing Maj

Sir, I have served in the Canadian Army (V.R.) for a period of three years, so far as yet, I cannot recall whereas I have refused to carry out orders as a soldier and I will continue to do so in the future, this offence which I have committed, I would like to make a plea of leniency in my ~~said~~ case. ~~And oblige~~

G.E. ~~Robinson~~.

To the best of my knowledge, I have rendered ~~satisfactory~~ satisfactory service to all Officers and N.C.O.s that I have served under and I feel that at present I am playing a useful and valuable part in this field of operations and earnestly desire to continue to do so.

G.E. Robinson (C.C.A.)

W.D. King Maj

[illegible]

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.] WOK

N/A

~~The accused is found guilty of~~ WOK

†The summary (or abstract) of evidence is read, marked CC signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment ~~says~~ :— WOK

WOK ~~he~~ hands in a written statement, which is read, marked CC1, signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character ?

Question to the accused.

wish Lieut H.A.T. Kingsmill to

Answer.

give evidence as to my character

Evidence as to character.

Lieut Kingsmill under oath do state that I have known the accused for a period of four and one-half months. He has been under my charge for three months I have found him at all times to be a capable tradesman and an able soldier. He has always taken orders from myself and N.C.O's without question.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is ~~closed for the consideration of the finding.~~

~~The Court find that the accused~~ WDK

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*~~The Court being re-opened, the accused is again brought before it~~

~~in duly sworn.~~ WDK

Question by the President. Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E signed by the President, and annexed to the proceedings.

Question by the President. Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes

Question. Have you compared the contents of the above statement with the regimental books? *Answer.* yes

Question. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* yes

Cross-examined by the accused.

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps or otherwise the Deputy of the Court considers him liable to any exceptional punishments in addition to that to be awarded by the Court the president must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of the additional punishment.]

Question to the accused. Do you wish to address the Court? *Answer.* "no Sir: I would like Lieut J. A. Kingsmill to make a statement on my behalf. I produce the said statement marked E I WDK ing Major

The Court is closed for the consideration of the sentence.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is ~~closed for the consideration of the finding~~.

~~The Court find that the accused~~ WDK

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before Sentence.*

Evidence of character, &c.

*~~The Court being re-opened, the accused is again brought before it~~ ~~is duly sworn.~~ WDK

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* yes

Cross-examined by the accused.

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* "no Sir: I would like Lieut J. A. Kingsmill to make a statement on my behalf.

The Court is closed for the consideration of the sentence.

I produce the said statement marked E I WDKing Major

F

Sentence.

The Court sentence the accused

Sentence.

To undergo ~~fifty-six~~ (56) days detention

Field
27/6/83

I would like to make a plea for leniency on behalf of the accused on the following grounds:-

1. The man by his own confession lost his temper. At the time of the incident he was upset by the incidents that took place just previous to Cpl Cutlers entrance to the mess deck (see summary of evidence accused's statement.)

2. In that Cpl Cutler chose to order the man who was farthest from the port hole to close the same, it would indicate that Cpl Cutler was using his authority to vent his personal feelings ~~towards~~ against the accused

3. In that this man has never before been charged with refusing to obey an order in the course of his 3 yrs of active service in the army, I maintain that the incident was as much a reflection on the ability of Cpl Cutler as a corporal as it was on pte Robinson as a disciplined soldier.

EI
W.D. King Maj

H.A. G. Kingsmill Pvt
1 C T B W/S

Temporary M.F.M.6

No. D.117073 Name ROBINSON GEORGE EDWARD Sqn.,Battery,) Company) NO. 4 A. F. W. S. R.C.O.C. CASP Corps Date of enlistment) 19 Sept.40 G.C.) Badges) Service or Proficiency Pay)

Date of last entry in) Company Conduct Sheet) No. and date) of last drunk) Period not reckoning towards) freedom from extra fine) Sheet No. Signature O.C.) Company,etc.) T.M.Lanthier ?? Lieut.A/Adj. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field Eng.		Pte.		A.W.L.from 2359 hrs 1-9-41 until 0955 hrs 2-9-41 A.A.15	Sgt.Parsons,W.W.	4 days C.B.	3-9-41	J.Patie, Major.?.	Forfeits 1 days pay under FR&I 149.1.a
Field Eng	5-12-42	Pte.		A.W.L.from 2300 hrs 5 Dec 42 until 0200 hrs 6 Dec 42 (Absent 3 hours) Sect.15(1) A.A.	Capt.J.A.Trudel	Forfeiture 2 days pay under FR&I 149 (2)	7 Dec 42	R.H.Noble,Major	
Field Eng.	15-12-42	Pte.		Sec.15(1) A.A.,A.W.L. from 2300 hrs 15-12-42 until 0800 hrs 16-12-42 (Absent 9 hrs)	Cpl.Campbell.A.S.	28 days field Punishment	16-12-42	R.H.Noble,Major.	Forfeits one days pay under FR&I.149.1.(a
Field Eng.	11 June 43	Pte.	(1)	A.W.L.from 2300 hrs 11 June 43 until apprehended in London by M.P. at 0055 hrs 15 June 43, returned to Glasgow under escort cost £3.11.11 returned to Unit from Glasgow cost £1.1.0. (Absent 3 days 1 hr. 55 minutes.) Sec.15(1) A.A.	Documentary	14 days detention 14 days forfeiture of pay under FR&I 149 (2)	17-6-43	L.D.McGEE?Maj.	Forfeits four days pay under FR&I 149,1,(a). Placed under Stoppages of pay to the amount of £4.12.11 make good railway fare.
			(2)	Act to the prejudice of good order & military discipline being in in possession of a pass purporting it to be genuine knowing it to be false.		TOTAL FORFEITURE 28 days pay.			

CERTIFIED TRUE COPY.

19 July 43.

L.D.McGee, Major.,O.C.
1 Cdn Tk Bde Wkshop.

M.F.B. 355
40/P & B/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D.117073	Pte.	George Edward Robinson	1 Cdn Tk Bde Wkshop

1. The following is a fair and true summary of the entries in the Regimental ~~Service and General~~ ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

Within last 12 months			Since enlistment		
For A.W.L.	3	times	A.W.L.	4	times
For Act prej. of good order & military discipline	1	times	Act prej. of good order & military discipline	1	times
For		times			times
For		times			times

Number of instances of gallantry or distinguished conduct Nil

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under Act 70 are set out in the Schedule annexed to this statement.~~

3. ~~The accused is not under sentence at the present time.~~
The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for [illegible] beginning of the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for N/A days in civil custody, and 12 days in military custody, making a total of 12 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 31 yrs 4 mos 2 days

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 19 Sept 1940

7. The service which the accused is allowed to reckon towards discharge is 2 yrs 10 mos 7 days

8. The accused is entitled to reckon 2 yrs 10 mos 7 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~no air force decoration, or air force reward~~ military Nil military Nil (or is in possession of or entitled to). State any ~~air force decoration~~ military Nil or reward.

10. ~~If the accused is a warrant officer. The accused before he was made a warrant officer last held the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

Permanent Force unit

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Name ..... of ..... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this twenty-sixth day of July [illegible] Capt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked (E) W D King Maj signed by the president, and annexed to the proceedings.

4D.51

PTE ROBINSON G.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-120541 Pte Gordn. John ROBINSON S D &G att 7 C G H.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 18(2)	Guilty	Guilty	
2nd (Alternative) AA 40			Withdrawn by prosecutor (RP 38c)
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for --- beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of nil days, of which nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for two (2) years with recommendation to mercy.

(Sgd) ..... Judge Advocate. 21 Sep 44. Date awarded. (Sgd) F M Miller Major. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65.— Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

I direct that the award is to ~~commence on the date of my confirmation~~ [illegible]
(1. AA 57A. Delete if not used.)

Date 27 Sep 44. (Sgd) "A W Beament" (A W Beament) Brigadier Commanding Cdn Sec GHQ1 Ech 21 A Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C-120541 Pte Gordon John Robinson	27 Oct 44	F H Playfair Capt RCAMC A/Reg No. 21 C.S.M.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

"d Illegalities or Irregularities such as
No Illegalities or Irregularities such as
would warrant

RECORDED AT CMHQ IN AB 160, 40-51.

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA31) 40-P & S/1608 (4600) 4/38B

Convened by Order of Brig AW Beament Cond 21Army Gp dated 19 Sep 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number. (a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-120541	Pte	Gordon John	ROBINSON	S D & G Highrs. att 7 C G H.

CERTIFIED TRUE COPY

Cdn Sec GHQ 1 Ech 21 Army Gp.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) France. on (date(s)) 21Sep 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~Acting Members~~ [illegible] if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1530 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) [illegible]
(1. KR Can 357. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. [illegible]
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No Sir.(2)
(1. RP 110. 2. If no objection, waiting member recires. RP 65(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~Officers~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E M Miller RDKG R.GC	att	Cdn Sec
Member	Major	M L Troy ED	Alq R.	GHQ 1 Ech
Member	Capt	F A Baillargeon	Gen List.	21 Army Gp
~~Judge Advocate~~				
Prosecutor	Lt-Col	J W G Thompson	HQ 2 Cdn Div	
Defending Offr	Capt	W G D Hungerford	RCASC att 1 Ech.	

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 33.)

A8. The accused ---
---
before arraignment make(s) (no) ~~no~~ plea (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused ~~are~~ arraigned ~~severally~~ jointly on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~adjourns~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*II*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 80-86; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA if any~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans ..... (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by completing such paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A93. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(B).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(7) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans Will give evidence myself only (on oath)
(*1. If evidence has already been given by accused or his witnesses as to character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces ~~Extract(s) from character~~ and Particulars of Service(1), and certified true copies ~~of~~ of Conduct Sheet(s)(2), purporting to refer to the accused ~~and to charge~~ the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex ..... respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes through my defending officer. ..... (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court may call witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~(and by the JA)~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see insets on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused C-120541 - Pte - GORDON JOHN ROBINSON - Stormont Dundas and Glengarry Highlanders of Canada attached No: 7 Canadian General Hospital, a soldier of the Canadian Army Overseas is charged with:-

FIRST CHARGE
Army Act
Sec 18 (2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he

in the field on 23 Jul 44 by discharging his rifle wilfully injured himself by shooting himself through the left foot in the region of the ankle with intent thereby to render himself unfit for service.

SECOND CHARGE
(Alternative)
Army Act
Sec 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field on 23 Jul 44 while with his regiment in the line so negligently handled his rifle as to shoot himself through the left foot in the region of the ankle thereby rendering himself unfit for service.

O.C. No: 7 Cdn Gen Hospital

In the Field

To be tried by Field General Court Martial

(A.W. Beament) Brigadier
OIC
Cdn Sec GHQ 1 Ech 21 A Gp.

In the Field

21 Sep 44.

CONFIRMING OFFR

FGCM
C-120541 Pte Robinson G.J.

1. Proceedings herewith.

2. Recommendation that m/n be returned to his unit for duty on suspended sentence.

"E M Miller" Major
Pres.

CHARGE SHEET

The accused C-120541 /te Gordon John ROBINSON Stormont Dundas and Glengarry Highlanders of Canada attached No. 7 Canadian General Hospital, a soldier of the Canadian Army Overseas is charged with:-

FIRST CHARGE
Army Act
Sec 1 (2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE.

in that he
In the Field on 23 Jul 44 by discharging his rifle wilfully injuried himself by shooting himself through the left foot in the region of the ankle with intent thereby to render himself unfit for service.

Second Charge
(Alternative)
Army Act.
Sec 40

Wehn on ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.

in that he
In the Field on 23 Jul 44 while with his regiment in the line so negligently handled his rifle as to shoot himself through the left foot in the region of the ankle thereby rendering himself unfi t for service.

"y o Hader, Col
OC No. 7 Cdn Gen Hospital

In the Field
18 Sep 44.

To be tried by Field General Court Martial.

"A W Beament"
(A W Beament) Brigadier,
OIC
Cdn Sec GHQ 1 Ech 21 A Gp

In th e Field.
19 Sep 44.

M.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 14, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-120541	Pte		Gordon John	ROBINSON	SD & G Highrs, att No. 7 Cdn Gen Hosp.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (~~the~~) 19 Sep 44. endorsed by me, (~~or by anyone upon whose~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable that the~~ ~~offence(s) should be tried by a~~ ~~Field General Court-Martial~~).

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~The Judge Advocate appointed to act at the General Court-Martial convened by me on the~~ ~~day of~~ ~~19~~ ~~is hereby~~ ~~appointed~~.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~The said Judge Advocate is hereby authorized to exercise the powers of a Deputy Judge Advocate~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	E M Miller ED KC (Must be named. RP 106.)	RCOC	att Cdn Sec (Unit.)

MEMBERS.

Major	M L Troy	Alq R	GHQ 1 Ech
Capt (Rank.)	F A Baillargeon (Named or detailed. RP 106.)	Gen List	21 Army Gp (Unit.)
(Rank.)	~~WAITING MEMBER~~ (Named or detailed, if any. RP 106.)		(Unit.)
(Rank.)	~~JUDGE ADVOCATE~~ (Must be named, if any. RP 106.)		(Unit.)

On Active Service in the Fd

in France (Country.)

"A W Beament" Brigadier, (Signed personally. RP 105 fn 2.) (Rank.)

(A W Beament)

Date 19Sep 44.

Commanding Cdn Sec GHQ 1 Ech 21 A Gp
Convening Officer.

Approved.
B WHoward
Capt.
DJA

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

CFAES (In lieu of AFA3)
4/38A 40/P & S/1097 (4031)

(See overleaf for oaths and notes for use on trial.)

Cdn Sec GHQ 1 Ech 21 A Gp
19 Sep 44.

MEDICAL CERTIFICATE

I certify that I have this morning examined No. C-120541 Pte ROBINSON G J and he is fit to undergo trial by court-martial.

Date 21 Sep 44.

W Edward Armour Capt.
Medical Officer RCAMC

E.M.

El.

C-102541 Pte Robinson G.J. Sworn States.

"Born in Maynooth Ont. 28 Nov 1918 Country School to 7 Gr at age 15 worked on fathers farm in summer and bush in winter until I enlisted When called up 14 Feb 43. Basic Trg 2 mos ths at Peterborough. 1 mos in Hosp appendicitis Adv Trg Borden 3ily to Nov 43. to UK 25 Dec 43. Did Ballte Drill in Debert en route. 1 Cl rifle No Bren Trg. Threw 2 live Grenades in Canada. Did some Sten and Thompson Gun firing. At C I RU until about 1 Mar 44 posted to S D & G and with them until this happened coming to france D day. 12 children in our family 9 living 3 dead. I am only one in Army. One was turned down with rupture I am 4th oldest living. My nerves have always been bad. I was rejected when 21 from the Army on account of my nervousness and on account of a scar on my ribs from a drainage of lungs operation when I was 3. I'll go back to the line its where I want to be. I was obs in carrier Pln. Lt Fagan was a reinf offr. Many men had been sent back for Battle exhaustion. 4 that I know of on this day I was attached to C Coy on guard position disposed in slit trenches in twos and I did not see an officer all day. It was at Bras. I donated blood 1943 not 1944.

(Ref Conduct Sheet) Read over (R P 83(3)

"E M Miller
Pres.

C-120541 Pte Gordon John Robinson, S D G Highrs.

Plea in Mitigation by Defending Officer.

Mr. President and gentlemen this accused when asked how he feels about this wound has replied. "I want to go back - thatis where I want to be". This is consistent with Capt Johnson's report where, in the "Summary" he states he was impressed by this man's honesty, straightforwardness, by the fact that he was and genuinely upset by the accusation of SIW. You will also note there is no Evidence of psychiatric disability. This man case to France on "D" day ie 6 June and he was in action right up tillthe 23 July a period of 47 days. I think this case is deserving in consideration of recommending suspended sentence. I ask the Court to view it on that basis.

21-9-44.

W G D Hungerford. Capt.

SUMMARY OF EVIDENCE

Summary of evidence in the case of C120541 Pte Gordon John ROBINSON, Stormont Dundas and Glengarry Highlanders attached No 7 Canadian General Hospital, charged with, when on active service wilfully injuring himself with intent thereby to render himself unfit for service (AA Sec 18(2)), alternative, when on active service neglect to the prejudice of good order and military discipline (AA Sec 40)

By direction of the Commanding Officer the evidence is taken on oath.

First Witness

C 42000 Sgt Gibbs LA, No 1 SIS HQ First Cdn Army, sworn states :-

I am C 42000 Sgt Gibbs LA, No 1 SIS HQ First Cdn Army. On 12 Sep 44 the accused, whom I recognise as C120541 Pte Robinson GJ, was interviewed by Sgt Harrison JT, No 1 SIS and myself. He was informed that we were members of the SIS and that we were investigating SIW cases. The accused was then cautioned in the following manner: - "You are not obliged to say anything unless youwish to do so but whatever you do say will be taken down in writing and may be used in evidence". The accused understood this caution. He volunteered to make a statement which was reduced to writing. After the statement was reduced to writing it was read over to him by Sgt Harrison. He then signed the statement. I produce the statement as evidence and I recognise the signature on the statement as that belonging to the accused. There were no threats, promises of reward or inducements held out to the accused to obtain this statement. The accused was not under arrest at this time.

J A Gibbs
Witness

The accused declines to cross-examine this witness.

The statement referred to in the evidence of the above witness is attached hereto as Exhibit "A".

Second Witness

Capt WE Armour, RCAMC, No 7 Cdn Gen Hosp, sworn states:-

I am Capt WE Armour, medical officer at No 7 Cdn Gen Hosp. Pte ROBINSON was admitted to my care on the 26 Jul 44 suffering from a wound of the left foot which occurred on the 25 Jul 44 according to medical records accompanying him. The wound traversed the foot from the medial malleolus through the tarsus to the lateral side of the sole as is usual in fractures of this type and also some comminution by infection which has now cleared up. He is still in a walking plaster cast and will probably not be fit for duty for six weeks more and will need a lowering of category due to his wound. In my opinion the wound could have been caused by a small arms projectile fired from a weapon held by the man himself. I cannot say at what distances from the wound the weapon was fired.

W Edward Armour
Witness

The accused declines to cross-examine this witness

Third Witness

Capt AM Johnson, RCAMC, No 10 Cdn Gen Hosp.

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service not readily procurable and a written statement of his evidence signed by him, has been read to the accused and is attached herego as Exhibit "B"

J W G Thompson Lt-Col

Officer Taking Summary

I do not require the attendance of Capt AM Johnson for the purpose of cross-examination.

G J Robinson

Accused

The accused is cautioned as follows :-

Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

There is nothing I have to say now.

The accused does not wish to call any witnesses.

I certify that the foregoing summary of evidence consisting of two pages was taken down before me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

J W G Thompson Lt-Col

Officer detailed to take the Summary of evidence.

In the Field
18 Sep 44

Exhibit "A"

EMM

Statement of C-120541 - Pte - Gordon John ROBINSON
4th platoon Support Coy S.D. & C. Highrs.

'I have been cautioned by Sgt. Harrison J.T. of No: 1 Special Investigation Section that I do not have to say anything, unless I wish to do so, but what ever I do say, will be taken down in writing and may be given in evidence.

(Sgn) C.J. Robinson.

I arrived at my unit on 'D' day and was in action constantly right up to the 23rd July 44. I had been through so much shelling and mortaring from the time that I came to France that on the 22nd my nerves broke down. On that day my officer Lieut. Fagan suggested that I be sent back for a rest. I decided that I could stand it longer, and I tried to, but on the 23 Jul 44 my nerves completely broke down and I did'nt hardly realise what I was doing, but I shot myself in the left foot with my rifle. Had I been able to see my officer that day, I should have asked him to send me back because I could stand it no longer. Pte. Waite was in a slit trench with me when it happened, but I do not know if he saw me do it or not. I realise I should not have shot myself, but I am willing as soon as I am able to get back to my unit.

Witness: L.A. Gibbs, Sgt.

Statement taken by A-55251 - Sgt - HARRISON, J.T.
No: 1 S.I.S., First Cdn Army.

12 Sep 44.

This is a R referred to in summary of evidence in the case of C/120541 Pte Robinson G.J. taken before me this 12 Day of September 44

J.W.B. Thompson Lt Col
Offr Taking Summary

Hospital or Sick List Record
(Psychiatrist Report)

Enlisted 14 Feb 43. Overseas Dec 43. BLA D-day. Evac 23 Jul44.

Problem

Family History - Father is a farmer - ill with bladder trouble. Mother had nervous breakdown in 1930 and has been continually ill since then.

P.I. - Lung absess age 3 - appendectomy - otherwise nil.

P.H. - Home life was unhappy because of mother's illness - denies childhood neuroses - Grade VII at 15 - normal progress, normal sociability, interested in sports - quit school to work on the farm and has remained there ever since - was a hard worker - normal recreation.

Army - Enjoyed the army - always got along well - did full training - two minor crimes - morale and volitions are high.

Habits - single, VD once, doesn't drink - makes good friends.

H.P.I. - Went in D-day by his own request - claims he carried on well in action - ate and slept well - claims he was one of the coolest ones in the platoon - gives convincing story of accidental wounding.

M.S. - Abrupt rather reserved type, average intelligence, no mood disorder or pre-occupation.

Summary - This man appears to be quite adequate in spit of a poor constitutional history - strikes me as being quite honest and straightforward and genuinely upset by accusation of S.I.W. No evidence of psychiatric disability.

"G.S.Burton" Maj for A.M.Johnson
Capt RCAMC.

Read

A certified true copy of the summary of evidence
This is Exhibit "A" referred to in the
in the case of C 120541 Pte ROBINSON, GJ, taken before me
this 18th day of September, 1944.

J.W.C. Thompson Lt-Col
Officer taking Summary.

Certified true Copy of org
Hosp Record returned to prosecutor.

"E M Miller"
Pres

21 Sep 44.

MFM 6
(AFB 122)
40/P&S/136 (3438)

No C120541 Name ROBINSON G.J. Sqn, Battery, or Company Corps C.I.C. Date of enlistment 15Feb43 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No 1 Signature OC Company, etc "W Grey" Captain Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Peterboro	20 Mar 43		Pte	AWL from 2215 hrs 20 Mar 43 to 1540 hrs 22 Mar 43 (1day 17 hrs 25 mins AA 15(1)	Sgt Vateman Cpl Ready	7 days C.B	23-3-43	Capt J.G. Wiser	2 days Pay (auto)
Pteerboro	21 May43		Pte	AWL 0001 hrs 21 May 43 to 1420 hrs 24 May 43(3days 14 hrs 19mins	Cpl Haynes Pte Blk	7 days C.B 4 days fof Pay	28 May 43	E.B Keeler Lt-Col	4days forf pay(auto)

CAMP BORDEN DONATED 450 cc BLOOD 14 Aug 44.

"G.H. MacFarlane" Captain.

CERTIFIED TO BE A TRUE EXTRACT FROM THE REGIMENTAL BOOKS AND DOCUMENTS IN MY CUSTODY

(G Stewart-Patterson) Lieut;
Officer i/c Rec "X"
Cdn SeC GHQ 2 Ech 21 Army G p
PMN JG-J

Exhibit "B"
EMM

(PTO)

I Pte Gordon John Robinson desire to have an officer assigned to represent me at my trial by court martial. I desire the services of Capt W G D Hungerford if he is available.

18 Sep 44.

G J Robinson.
Signature of accused.

SSS-149

PTE ROBINSON J.F

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
KDT.	1st	Guilty	Guilty	
	2nd			
	3rd			
	4th			
	5th			
	6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

KDT. At present under sentence for beginning on (date) (1)
(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

KDT. Time in confinement awaiting present trial—a total of 5 days, of which NIL days were spent in hospital.(1)
(I. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of (45) forty five days.

(Sgd) 25 July 44. (Sgd) N.D. Theobald Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order re assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Dated (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I direct that the accused be not committed to [prison or detention barracks until further orders] (1) (I. AA 57A. Delete if not used.)

Date (Sgd) P.J. Montague Major-General
(P.J. Montague) Major-General
i/c Administration
Commanding Canadian Military Headquarters
Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
A11011 Pte Robinson JF	31 Jly 44	[illegible] Capt & Adjt

D.O. 183 A
d/ 31 July 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED. ICACK J

I certify that there are no irregularities to justify withholding confirmation of these proceedings.
DJAG. Can. Sec. GHQ ECF 21 Aug 44
for (Date) 16 Aug 44

RECEIVED 16 AUG 1944 DJAG Canada

RECORDED AS CONV IN AB 168 555-149

FIELD GENERAL COURT-MARTIAL

CFAAG (To face p 1 of AFAA) 4/38B

KDT. Order of Lt-Col W.J. Stewart Comd 13 Bn CBRBN. dated 25 July 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or conformed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 11011	Algonquin Regt	Pte	John Fredrick	Robinson	JF

KDT. PROCEEDINGS REVIEWED J. Rutiquelard Capt.
REVIEWING OFFICER. JAG BRANCH CMHQ 7 Aug 44

PROCEEDINGS OF TRIAL.

KDT. Held in the Fd in (country) Italy on (date(s)) 25 July 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

KDT. A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

KDT A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2)

KDT. The Court is satisfied that it is properly convened and constituted(3), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(I. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

KDT. A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 0930 hours trial commences.

KDT. A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with~~ summarily by the CO.(2)

(I. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

KDT A5. ~~President to accused : Do you object to~~ as interpreter ? Ans

KDT ~~The Interpreter is sworn.(1) Do you object to~~ as shorthand writer ? Ans

KDT ~~The shorthand writer is sworn.(1)~~

(I. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

KDT. Ans NO (2)

(I. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 31, RP 25, 71, 18, MML p 742.)

KDT A7. The President, Members, ~~JA if any, and Offrs under instr if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

KDT. President	Maja	N.D. Theobald	3 C.T.M.
KDT. Member	Capt.	J.A. Stewart	C.I.C. 15 CBRB Bn
KDT. Member	Capt.	D.F. Morris	C.I.C. 15 CBRB Bn
KDT ~~Judge-Advocate~~			
KDT Prosecutor	Lieut	M.A. Chicoine	C.I.C.
KDT Defending Offr	Lieut	J.G. McPhie	C.I.C.

KDT. Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(I. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

KDT A8. The accused A11011 Pte Robinson JF before arraignment make(s) (no) ~~(not)~~ plea (1)

(I. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

KDT A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(does)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(I. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

KDT A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 23

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc; see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

HDJ. President to accused : Do you wish to make a statement ? Ans NO (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

HDJ B3. ~~The Court considers the accused's statement~~ The Court decides (not) to advise accused to change his HDJ ~~(their)~~ plea(s) of Guilty to Not Guilty on the charge(s). The accused is ~~(are)~~ so informed, and he ~~(they)~~ HDJ ~~change(s) his (their) plea(s) on~~ charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

HDJ B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

HDJ B5. The Summary of Evidence is marked Ex X, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making as appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para. If submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A65. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(7) (c), RP 45, 120(A).* 2. *AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

HDJ E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and HDJ marked Ex A and Ex B respectively.(3)
(1. *MFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in HDJ mitigation of punishment ?(1) Ans Yes statement by Defending Officer (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(8), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 737-739. As to venomous assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 62(1), KR Can 564.* 2. *RP 30. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

FIRST CHARGE
AA SEC. 15(1)

The accused A.11011 Pte John Frederick ROBINSON, Algonquin Regt., 13 Bn, 2 CBRG, a soldier of the Canadian Army Overseas, is charged with, WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, absented himself without leave from 1800 hrs 12 Jul 44 until 1230 hrs 20 Jul 44 when he surrendered to his unit.

Total time absent (8 days 4 hrs 30 min).

(W.J. Stewart) Lt.Col.
Commanding 13 Bn 2 CBRG

In the field
24 Jul 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(W.J. Stewart) Lt.Col.
Commanding 13 Bn 2 CBRG

In the field
25 Jul 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50. RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
A 11011	Pte		John Frederick	ROBINSON	13 CBRBN
D 86247	Pte		Jack	DUBROW	13 CBRBN
B 59162	Pte		John Paul	GAGNON	13 CBRBN

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 Jul 44 endorsed by me, [illegible], "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	N.D. Theobald (Must be named. RP 106.)	3 Cdn Town Major Unit (Unit.)

MEMBERS.

A Capt	To be detailed by OC	13 CBRBN
A Capt (Rank.)	To be detailed by OC (Named or detailed. RP 106.)	13 CBRBN (Unit.)

WAITING MEMBER.

A Lieut (Rank.)	To be detailed by OC (Named or detailed, if any. RP 106.)	13 CBRBN (Unit.)
[illegible] (Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 25 Jul 44

W.J. Stewart Lt-Col
(Signed personally. RP 105 fn 2.) (Rank.)

(W.J. Stewart)
Commanding 13 Bn 2 CBRG
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFAPS (In lieu of AFA3) 40/P & S/1697 (4931))

(See overleaf for oaths and notes for use on trial.)

N. D. Theobald Maj

Medical Certificate

(AR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined _____ (No.)

A-11011 Pte (Rank) Robinson V.E. (Name) and in my opinion he is

fit to undergo trial by Court-Martial.

Station Field

Date 25 July 44.

H. A. Theobald major

J.A. Hache, Capt. (Sgd),
Medical Officer

(Unit) 13 Bn. Res. # 2 C.B.R.D.

Pte J. H. Robinson
A-11011

Sir:

The accused Pte. J. H. Robinson A-11011 has been charged by the prosecutor with absenting himself without leave for 8 days, 4 hrs., 30 min., however I would ask the court to consider this mans reason before passing sentence.

The only reason for the accused absenting himself was to make sure that his wife, who is expecting a baby, and whom he has not heard from for some time, was well. At the time the accused left to see her, it was expected she would have the baby, however after getting there, he has been assured by the doctor in charge of the case, that it will not be until next month.

The accused had been told by the army Medical Officer that his category which is 2 under 11, would prevent him from going to the field, on these conditions he had his wife move closer to him, in order that they may see more of one another during this period. However no sooner had he got his wife moved, than he was told his category would not keep him from going to the field, as a result he had to leave his wife, and not hearing from her, it only natural that he would worry.

This man joined the army at the outbreak of the war in Sept. 1939, so I don't think there is much doubt as to his sincerity in wanting to be a good soldier, in spite of the charges marked against him, only one of which I think you will agree is of a very serious nature.

I do not say the accused was perfectly justified in absenting himself, but in view of the circumstances, I would ask the court to duly consider the position the accused was placed in before passing sentence.

J. J. McPhee Lt

H. A. Theobald major

SUMMARY OF EVIDENCE IN THE CASE OF

A.11011, Pte. John Frederick ROBINSON, Algonquin Regt., 13 Bn, 2 CBRG, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, all evidence is given on oath.

FIRST WITNESS FOR THE PROSECUTION

Lt. W.A. Murray, Records Officer, 13 Bn, 2 CBRG, having been duly sworn, states:

"I am Lt. W.A. Murray, Records Officer, 13 Bn, 2 CBRG, and present the following documents pertaining to the accused A.11011, Pte. Robinson, J.F., Algonquin Regt., 13 Bn, 2 CBRG."

Exh."A". Copy of Part II Order X-List Algonquin Regt. No. 26A dated 21 Jul 44 showing A.11011 Pte. Robinson, J.F., A.W.L. from 1800 hrs 12 Jul 44 until 2230 hrs 20 Jul 44.

W A Murray

(W.A. Murray) Lt.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

The accused was cautioned in accordance with Rules of Procedure 4(e) of the Army Act.

THE ACCUSED DECLINES TO MAKE A STATEMENT AT THIS TIME.

"I certify that the foregoing summary of evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c) (d) and (e) have been complied with."

J E Miller Lt

(J.E. Miller) Lt.
Officer Taking Summary of Evidence
13 Bn 2 CBRG

Exhibit X
N. D. Theobaldinger

1/9 Camp

Exh 'A'

X LIST
THE ALGONQUIN REGIMENT

LAST ORDER	PART II ORDERS	
No 26	issued by	no 26A
21 JUL 44	CANADIAN SECTION G H Q 2nd ECHELON-21 ARMY GP	21 JUL 44

"A" OFFICERS

NIL

"B" OTHER RANKS

1. ABSENT WITHOUT LEAVE
(a) AWL from 1100 Hrs 12 JUL 44. Ret from AWL 2230 hrs 20 JUL 44.
A11011 Pte ROBINSON J.F (13 Dn)

B T Saunders.
(B.T. SAUNDERS) Captain
for Officer i/c
CDN SEC GHQ 2ND ECHELON - 21 ARMY GP

ADS

T.S.T.

REQUEST FOR A DEFENDING OFFICER

"I, A.11011, Pte. Robinson, J.F., wish to have a competent officer appointed to defend me at my forthcoming trial by Court Martial."

J. F. Robinson

(A.11011, Pte. Robinson, J.F.)

LIST OF WITNESSES

FOR PROSECUTION: Lt. W.A. Murray, Records Officer, 13 Bn, 2 CBRG.

FOR DEFENCE: Nil.

LIST OF EXHIBITS

Exh. "A". Certified copy of Part II Order X-List Algonquin Regiment No. 264 dated 21 Jul 44 showing A.11011 Pte. Robinson, J.F., a.W.L. from 1800 hrs 12 Jul 44 until 2230 hrs 20 Jul 44.

K. D.

July 18 1944

This is to certify that Mrs Elsie Robinson.
wife of Allan the J. F. Robinson
residing at 28 Brown Lane. Leeds 11

is ~~was~~ ~~under my care~~ ~~for~~ ~~until the~~ pregnant
Expected date of confinement
= Aug 3rd 1944.

~~and is~~ ~~not~~ ~~now~~ ~~able to follow~~ ~~occupation.~~

G. N. Thomas M.D. pp. T. Silverstone

Surgeon

No. A11011 Name ROBINSON, J.F. Sqn., Battery, or Company — Corps CIC — Date of enlistment 5 Sep 39 — G.C. Badges — Service or Proficiency Pay — M.F.M. 6 (A.F. B.122) 40/P & /8136 (2063)

Date of last entry in Company Conduct Sheet: NA — No. and date of last drunk: NA — Period not reckoning towards freedom from extra fine: NA — Sheet No. 1. — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30 May 43	Pte		WOAS AWL from 2400 hrs 30 May 43 until 2200 hrs 20 Jun 43 (Absent 20 days 22 hrs 20 min) AA SEC 15(1)	Documentary	28 days FP	21 Jun 43	Lt.Col.HBL Doucet	
Field	14 Nov 43	"		AA 15(1) WOAS AWL from 2359 hrs 14 Nov 43 til 1040 hrs 16 Nov 43 (Absent 1 day 10 hrs 41 min)	Cpl Barlow F.S.	7 days CB	17 Nov 43	Lt.Col CS Radley	Forf 2 days pay FR&I 149 (1)(a)
Field	18 Nov 43	"		AA 40. Neglect to the prej. etc neglected to answer defaulters roll call	Documentary			Lt.Col D Fletcher	Forf 1 days pay FR&I 149
Field	9 Jan 44	"		AA 15(1) AWL from 0830 hrs till 1630 hrs 9 Jan 44 (10 hrs)	Cpl Maheney J.T.	7 days CB	10 Jan 44	Lt.Col. D Fletcher	Forf 1 days pay FR&I(1)(a)

J.B.S. (P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 6	Feb44	Pte		AA Sec 15(1) NDAS AWL in that he was absent from 2359 hrs 6 Feb44 till 1700 hrs 8 Feb 44 (Absent 41 hrs 1 min.	Sgt. Barlow F.J.	7 days FP Forf 7 days pay FRI 149(2)	9 Feb 44	Lt.Col.S Hadley	Forf. 2 days pay FRI 149(1)(a)
Field 29	Apr44	"		SEC 15(1) AA AWL from 1500 hrs 29 Apr 44 to 2300 hrs 30 Apr 44	Cpl Metcalfe D.	5 days pay 5 days FP	1 May 44	Lt.Col.MT Kempton	2 days pay under FRI

CERTIFIED TRUE COPY OF ORIGINAL IN MY POSSESSION 24 July 44

Exhibit B

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
A.11011	Pte	ROBINSON, J.F.	13 Bn 2 CBRG

* 1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:-

For As SEC 15(1) ____ 5 ____ times

For As SEC 40 ____ 1 ____ times

For ____ ____ times

For ____ ____ times

Date of first entry in Field Conduct Sheet 10 May 43

Date of last entry in Field Conduct Sheet 27 Apr 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

† 3. The accused at the present time is under sentence for NA beginning on the NA day of NA

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 5 days in military custody, i.e., NIL days in open arrest, 5 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 28

6. The date of his ~~calling up for military service~~ attestation is 6 Sep 39

7. The service which the accused is allowed to reckon is 4 yrs 10 mos.

8. The accused is in possession of † NA

9. (If the accused is a warrant officer or N.C.O.) The accused has served continuously, without reduction, to the present date:

	Date of promotion
In the substantive rank of ____	NA
In the war substantive rank of ____	NA
In the acting rank of ____	NA

INSTRUCTION: If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

NOTE: The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

† Strike out if not applicable.

† State the military decorations (if any) held by accused.

Exhibit 'A'

H. D. Theobald Major

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 25 day of July 44

(J.E.Miller)Lt.
13 Bn 2 CBRG

511-98

Spr. Robinson J.F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D76838 Spr (L/Cpl) Robinson J F

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labor for one (1) year.

(Sgd) N/A — Judge-Advocate, if any.
11 Apr 45 — Date awarded.
(Sgd) "Donald Mackenzie" Major — President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to ... until further ordered.~~ "EB"
(1. AA 57A. Delete if not used.)

Date 16 Apr 1945
(Sgd) "E L M Burns" Major General
GO IC Cdn Sec 1 Ech HQ 21 A Gp
Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B76838 Spr (L/Cpl) Robinson J F	20 Apr 45	"C E White" Major OC 2 Cdn Drilling Coy

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

I certify that there are no illegalities or irregularities to justify withholding confirmation of the proceedings
For (Sgd) Boris Major
DJAG Cdn Sec 1 Ech 21 Army Gp

RECORDED AT CMHQ IN AB 160 5 M 41

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA81 40/F & B/1698 (1944) 4/38B

Convened by Order of Maj-Gen ELM BURNS Cdn Sec 1 Ech Comd HQ 21 A Gp dated 5 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D76838	Spr	(L/Cpl)	James Frederick	ROBINSON	Cdn Drilling Coy RCE

CERTIFIED TRUE COPY
PROCEEDINGS REVIEWED
D J A,
Cdn Sec 1 Ech HQ 21 Army Gp.
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

1
Held in the Fd in (country) Belgium on (date) 11 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 29/33

A1. The President, Members, ~~acting Members also if any, and other under instruction~~ "DM", assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Instrs". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) "DM"
The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3) "DM"
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. "DM" At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused wishes to be tried by ... and summons the first witness.~~ "DM"
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to N/A as interpreter? Ans N/A
The Interpreter is sworn.(1) Do you object to N/A as shorthand writer? Ans N/A
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~Judge-Advocate, and other under instruction, if any~~ "DM" are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D MACKENZIE	ESSEX SCOT ATT 2 CBRG
Member	Capt	F A BAILLARGEON	1 CDN DISC CENTRE
Member	Lieut	N J HEARN	10 CBR Bn
Judge-Advocate		N/A	
Prosecutor	Capt	H D BALL	2 CDN DRILLING COY RCE
Defending Offr	Lt	DAG SMITH	2 CDN DRILLING COY RCE

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DJ p 2.)

A8. The accused D76838 Spr (L/Cpl) Robinson J F before arraignment make(s) (no) (a) plea "DM"
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RaP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. "DM"
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

12May45 jwb

A10. The Court (~~adjourned~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans N.O.(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement (1). The Court~~ decides (not) to advise accused ~~to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ~~H~~, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecution makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para. If submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D5.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 120(A).)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 395. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans ONE WITNESS AT PAG. SOLICIT
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces ~~Statement(s) as to Character and Particulars of Service(1),~~ and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ~~C~~ and Ex — respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES CAN I MY DEFENDING OFFICER(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused MML p 60, 757-759. already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Last Order
No 7
18 Feb 45

2 CANADIAN DRILLING COY R C E
PART II ORDERS ISSUED BY
CANADIAN SECTION 2nd ECHELON HEADQUARTERS
21 ARMY GROUP

"DM"
no 8
25 Feb 45

4. ABSENT WITHOUT LEAVE

(a) AWL from 2359 hrs 10 Feb 45 Still absent 2359 hrs 18 Feb 45 (8th day)

D76838 L/Cpl ROBINSON J F

Last Order
No 9
4 Mar 45

2 CANADIAN DRILLING COY R C E
PART II ORDERS ISSUED BY
CANADIAN SECTION 2nd ECHELON HEADQUARTERS
21 Army Group

No 10
11 Mar 45

6. ABSENT WITHOUT LEAVE

(a) AWL from 2359 hrs 10 Feb 45 Still absent 2359 hrs 4 Mar 45 (22nd day)

D76838 L/Cpl ROBINSON J F

Last Order
No 12
25 Mar 45

2 CANADIAN DRILLING COY R C E
PART II ORDERS ISSUED BY
CANADIAN SECTION 2nd ECHELON HEADQUARTERS
21 Army Group

No 13
1 Apr 45

4. ABSENT WITHOUT LEAVE

(a) AWL from 2359 hrs 10 Feb 45 Ceases to be AWL at 0730 hrs 24 Mar 45

D76838 L/Cpl ROBINSON J F

Certified the above three (3) extracts are true copies.

"L F Labow"
(L F Labow) Lieut RCE
2 Cdn Drilling Coy RCE

1. D76838 Spr A/L/Cpl Robinson J F
2 Cdn Drilling Coy RCE "DM"

E 1

Lieut D A G Smith, 2 Cdn Drilling Coy RCE, sworn states:
I am officer i/c 7 pl 2 Cdn Drill Coy. L/Cpl Robinson has been my section clerk since may 44 and during that time he has caused no trouble in the section whatsoever. He has carried out his work quite faithfully and has done more than has actually been required. To my knowledge this is the first charge against him since he joined this Coy except for one redent charge of AWL.
RP 83 (B) complied with.

E 3

Plea in mitigation by defending officer

Plea of Mitigation D76838 Spr (L/Cpl Robinson, James Frederick

L/Cpl Robinson was mobilized on 26 Aug 39 with the Stormont, Dundas and Glengarry Highlanders in the City of Cornwall, Ont. This unit was acting as a Canal Guard but was demobilized 5 Nov 39.

From this time until 1 Dec 39 L/Cpl Robinson spent consierable time in Ottawa attempting to enlist in the RCAF but was unsuccessful. On 1 Dec 39 he went to Montreal where he enlisted with the Royal Montreal Regiment. He proceeded overseas with this unit 6 Dec 39.

L/Cpl Robinson remained with the RMR until 1942 when he was transferred to the RCEngineers coming to 2 Cdn Drilling Coy RCE in July of that year.

During the first two years of service L/Cpl Robinson had a clean crime sheet and since that time has had only minor crimes with one major AWL charge for which he spent some time in detention.

Since May 1944 L/Cpl Robinson has been L/Cpl clerk in 7 Platoon of which I am Platoon Officer. He has always done his work quite faithfully and has undertaken more than was actually required of him. During that time he has had no crimes other than one AWL which is practically concurrent with the present charge.

L/Cpl Robinson is 33 years of age and is unmarried.
Sir, may I ask that the length of L/Cpl Robinson's service, his years of service without crime and the few crimes of the past years be given due consideration in determining the punishment which is to be given.

"D A G Smith" Lt
11 Apr 45 O i/c 7 Cdn Drilling Pln
2 Cdn Drilling Coy RCE

Summary of Evidence in the case of D76838 Spr (L/Cpl) James F Robinson, 2 Cdn Drilling Coy RCE, CHO charged under AA Sec 15(1)

By direction of the officer commanding, the evidence is taken on oath.

First witness: A19403 Sgt Gray E G, 2 Cdn Drilling Coy RCE, sworn states:

I am A19403 Sgt E G Gray, 2 Cdn Drilling Coy RCE employed as orderly r room Sgt. I submit extracts from Part II Order No 8 d/25 Feb 45, No 10 d/11 Mar 45, No 13 d/1 Apr 45, which relate to the absence of L/Cpl Robinson.

"E G Gray"

The accused declines to cross examine the witness.

The accused was cautioned as follows:

Q: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or evidence you give will be taken down in writing and may be given in evidence.

A: I do not wish to make a statement.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP (c) (d) (e) and (f) have been complied with.

In the Field
4 Apr 45

"HH "H D Ball" Capt

Capt E B Van Dine is sick and, at present, in 2 Cdn Gen Hosp. Lt N J Hearn, as waiting member, replaced him.

"DONALD MACKENZIE"
Major

11 Apr 45

CHARGE SHEET

The accused D-76838 Spr (L/Cpl) ROBINSON, James Frederick 2 Cdn Drilling Coy RCE, a soldier of the Canadian Army Overseas is charged with:-

First Charge Sec 15(1)AA WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, in Belgium, absented himself without leave from 2359 hrs 10 Feb 45 until 0730 hrs 24 Mar 45. (absent 41 days 7 hrs 31 min).

In the Field
4 Apr 45

"C E White" Maj.
(C E White) Major RCE
Officer Commanding
2 Cdn Drilling Coy RCE

To be tried by Field General Court Martial.

In the Field

5 Apr 45

" E L M Burns" Maj-Gen
(E L M Burns) Maj-Gen
GO I/C
Cdn Sec 1 Ech HQ 21 A Gp

D76838 L/Cpl Robinson J F

---

of 2 Cdn Drilling Coy RCE

In the Field

"W A Bearden Capt"

Date 11 Apr 45

20 C S E Coy

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(6).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 76, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D76838	Spr	(L/Cpl)	James Frederick	ROBINSON	2 Cdn Drilling Coy RCE

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Apr 45 endorsed by me, (~~or in an offr of my unit (or me)~~), " To be tried by Field General Court-Martial ", "ELMB"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.) "ELMB"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto~~. "ELMB"
(AA 49, RP 106(8), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder~~. "ELMB"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D MacKenzie	Essex Scot att 2 CBRG

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	F A Baillargeon	1 Cdn Disc Centre
Captain	E B Van Dine	1 Cdn Disc Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	N L Hearn	10 CBR Bn

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
~~XXXXXX~~	~~"XXXXXXXXXXX~~ ~~XXXXXXXXXX~~	~~XXXXXX~~

On Active Service in the Fd

in ~~XXXXXXX~~ Belgium — "E L M Burns" (E L M ~~BURNS~~) — Maj-Gen
(Country.) (Must be signed by Convening Offr. RP 105 fn 2.) (Rank.)

Dat 5 Apr 45 — Commanding Cdn Sec 1 Ech - HQ 21 Army Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

1/38A CFA 65 (In lieu of AFA 2) 40/P & S/1691 (8143) (See overleaf for oaths and notes for use on trial.)

Approved:
"B W Howard" Major
DJA

Ex "B" "DM"

No D76838 Name ROBINSON J F | Sqn, Battery, or Company 509/1 | Corps RCE | Date of enlistment 1-12-39 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/126 (3428)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26-4-42	Pte		AA15(1)AWL fr. 2230hrs 26Apr42 to 0745hrs 27Apr42 (abs 9hrs 15 min)	Sgt Owens	2 dys CB	29-4-42	Maj.MacRae	For 1 day FRI 149(1)(a)
Field	14-5-42			AA15(1)AWL fr.2230hrs 14May42 to 1200hrs 18May42.(abs 3 days 13hr 30 mins)	L/Cpl.Breyoe	7 days CB	18-5-42	Maj.MacRae	For 4days FRI 149(1)(a)
Field	29-6-42			AA15(1)AWL fr.1000hrs 29Jun42 to 1300hrs 3Jul42(abs 4days 3 hrs)	Cpl McNeil	7 days FP	6 Jul 42	Lt-Col. Calder	For.5days FRI 149(1)(a)
Field	14-8-42	Spr		AA15(1)AWL fr.2200hrs 14Aug42 to 0930hrs 15Aug42 (abs. 11hrs 30 min)	Documentary	3 days pay	17Aug 42	Lt-Col Thompson	For 1 day FRI 149(1(a)
Field	21-8-42			AA15(1)AWL fr. 21Aug42 to 30Jan 43 (absent 162 days)		9 mths detn	11-2-43	FGCM	For 163 days FRI 149(1)(a)
Field	3-1-45	L/Cpl		AA15(1)AWL fr.2359hrs 3Jan45 to 2359hrs 21Jan45.(abs 18 days)	Sgt MacLeod	SEVERE REPRIM AND	27-1-45	Maj.White	For.18days FRI 149(1)(a)

Certified true copy.
"H D Ball" - (H D Ball) Capt RCE, 2 Cdn Drilling Coy RCE, 4 Apr 45

(FTO)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 76838 Spr. (A/Cpl) ROBINSON J. F.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. SEC. 15(6)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with Hard Labour for one (1) year

(Sgd) N/A Judge-Advocate, if any. 11 Apr. 45 Date awarded. (Sgd) Donald Mackenzie Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) E. L. M. Burns Major-General

Date Commanding HQ 21 Army Gp Confirming Officer.

16 APR 1945

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D-76838 Spr (A/Cpl) Robinson J. F.	20 Apr 45	G. E. [illegible] Maj OC 2 CDN DRILLING COY

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 5H-98.

RECEIVED 15 MAY 1945 D.M.I. C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFAR 3 (to Dpn of AFAR) 40-9-38-A-1945-(40501) 4/38B

Convened by Order of MAJ-GEN. E. L. M. BURNS Comd CDN SEC 1 ECH HQ 21 A Gp dated, 5 APR 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D76838	SPR. (A/Cpl)	JAMES FREDERICK	ROBINSON	2 CDN DRILLING COY R.C.E.

PROCEEDINGS REVIEWED

17 MAY 45 S. Brady Capt.

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 11 APR 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for reports and returns on how to record addresses, evidence, etc, which Instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (if) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10.00 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)~~

(1. KR Can 557. 2. AA 46(6), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to N/A as interpreter? Ans N/A

The Interpreter is sworn.(1) Do you object to N/A as shorthand writer? Ans N/A

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	D. MACKENZIE	ESTEVAN SCOT. ATT 2 CDN
Member	CAPT.	F. A. BAILLARGEON	1 CDN DIST CENTRE.
Member	LT.	N. J. HEARN	10 CBR BN
Judge-Advocate	N/A		
Prosecutor	CAPT	H. D. BALL	2 CDN DRILLING COY RCE.
Defending Offr	LT	D. A. G. SMITH	2 CDN DRILLING COY RCE.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Q1 p 3.)

A8. The accused D76838 SPR.(A/Cpl) ROBINSON J. F. before arraignment makes(s) (no) plea (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, deliver and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG. WD 6 P 49

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*)*, Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*)*; powers and duties of JA see RP* 103*; duty of Prosecutor see RP* 60(*A*) (*B*)*; duty and privileges of accused and Defending Offr see RP* 60, 87(*C*), 91, 92*; securing and withdrawal of witnesses from Court see RP* 81, 82*; questioning of accused see RP* 80, 87(*C*), 92(*B*)*, and of witnesses see RP* 83-85*; calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116*; use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6*; and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or to call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(1), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused: Do you wish to make a statement? Ans NO (4)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above. Evidence is read as relate to the charges dealt with under C2. *If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is*

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para. if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....

Do you intend to call witnesses on your behalf? Ans.....

Are they witnesses as to character only? Ans.....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1; 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 82, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (*c*), *RP* 45, 120(*A*). 2. AA 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character 1(1)

Ans ONE WITNESS. LT D.A.G. SMITH

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces ~~Statement(s) as to Character and Particulars of Service(1), and~~ certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(i) (*g*) (*h*), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex ... respectively.(3)

(1. *MFB* 355 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 358. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans YES THRO MY DEFENDING OFFICER. (2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(*e*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*); *KR Con* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1*B*), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(E).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-76838	Spr	(L/Cpl)	James Frederick	ROBINSON	2 Cdn Drilling Coy RCE

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence set forth in the Charge Sheet attached and on (*date*) 5 Apr 45 endorsed by me, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial ; [redacted]

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. [redacted]

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D MacKenzie	Essex Scot att 2 CBRG

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	F.A. Baillargeon	1 Cdn Disc Centre
Captain	E.B. Van Dine	1 Cdn Disc Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	N.L. Hearn	10 CBR Bn

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium (Country.)

Dat 5 Apr 45

(Signed personally. RP 105 fn 2.)

(E.L.M.Burns)

Maj-Gen (Rank.)

Commanding Cdn Sec 1 Ech - HQ 21 Army Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 2) 40/P & S/1697 (8143)

(See overleaf for oaths and notes for use on trial.)

Approved

DJA

MEDICAL OFFICERS CERTIFICATE

K.R. (Can) Para 557

I certify that I have this morning examined No. D76336 L/Cpl ROBINSON, J.F. of 2 Cdn Drilling Coy RCE and in my opinion he is fit to undergo trial by court-martial.

Station - In the Field

Date - 11 Apr 45

.....
2 Cdn Dr Coy

CHARGE SHEET

The accused No. D-76838 Spr (L/Cpl) ROBINSON, JAMES FREDERICK, 2 Cdn Drilling Coy RCE, a soldier of the Canadian Army Overseas is charged with:-

First Charge
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, in Belgium, absented himself without leave from 2359 hrs 10 Feb 45 until 0730 hrs 24 Mar 45. (absent 41 days 7 hrs 31 min).

In the Field
4 Apr 45

C. E. White Maj.
(C.E.White) Major RCE
Officer Commanding
2 Cdn Drilling Coy RCE

To be tried by Field General Court-Martial

In the Field
5 Apr 45

E.L.M. Burns
(E.L.M.Burns) Maj-Gen
GO I/C
Cdn Sec 1 Ech HQ 21 A Gp

Capt. E. B. Van Dine is sick and, at present, in 2 Cdn Gen Hosp.
Lt. N. J. Hearn, as waiting member, replaced him.

Donald Mackenzie
Major

11 Apr -45-

Sheet 1.

Summary of Evidence in the case of D76838 Spr (L/Cpl) James F Robinson, 2 Cdn Drilling Coy RCE, CAO, charged under AA Sec 15(1).

By direction of the Officer Commanding, the evidence is taken on oath.

First Witness - A19403 Sgt Fray E. T., 2 Cdn Drilling Coy RCE, sworn states:-

I am A19403 Sgt E. T. Fray, 2 Cdn Drilling Coy RCE employed as orderly room Sgt. I submit extracts from Part II Order No 8 dated 25 Feb 45; No 10 dated 11 Mar 45; No 13 dated 1 Apr 45; which relate to the absence of L/Cpl Robinson.

E. T. Fray

The accused declines to cross-examine the witness.

The accused was cautioned as follows, -

Q - Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or evidence you give will be taken down in writing and may be given in evidence.

A - I do not wish to make a statement.

The accused does not call any witnesses

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP (c), (d), (e) and (f) have been complied with.

2 Cdn Field
4 Apr 45.

[illegible] Capt.

1/- D 76838 Spr A/L/Cpl Robinson J F.
2 Cdn Drilling Coy R.C.E.

E1

Lieut D.A.G. Smith, 2 Cdn Drilling Coy R.C.E. sworn states;

I am officer i/c 7 Pl. 2 Cdn Drill Coy. L/Cpl Robinson has been ~~in~~ my section clerk since May 44 and during that time he has caused no trouble in the section whatsoever. He has carried out his work quite faithfully and has done more than has actually been required. To my knowledge this is the first charge against him since he joined this Coy, except for one recent charge of A.W.L.

R.P. 83 (2) complied with

E.3.

Plea in mitigation by defending officer

see attached page 2.

2

Plea of Mitigation

D 76838 Spr (L/Cpl) Robinson, James Frederick

L/Cpl Robinson was mobilized on 26 Aug 39 with the Stormont, Dundas & Glengarry Highlanders in the City of Cornwall, Ont. This unit was acting as a Canal Guard but was demobilized 5 Nov 39.

From this time until 1 Dec 39, L/Cpl Robinson spent considerable time in Ottawa attempting to enlist in the R.C.A.F. but was unsuccessful. On 1 Dec 39 he ~~proc~~ went to Montreal where he enlisted with the Royal Montreal Regiment. He proceeded overseas with this unit 6 Dec 39.

L/Cpl Robinson remained with the R.M.R. until 1942 when he was transferred to the R.C.Engineers coming to 2 Cdn Drilling Coy R.C.E. in July of that year.

During the first two years of service L/Cpl Robinson had a clean crime sheet and since that time has had only minor crimes with one major A.W.L. charge for which he spent some time in detention.

Since May 1944 L/Cpl Robinson has been L/Cpl clerk in 7 Platoon of which I am Platoon Officer. He has always done his work quite faithfully and has undertaken more than was actually required of him. During that time he has had no crimes other than one A.W.L. which is practically concurrent with the present charge.

L/Cpl Robinson is 33 years of age and is unmarried.

Sir may I ask that the length of L/Cpl Robinson's service, his years of service without crime and the few crimes of the past years be given due consideration in determining the punishment which is to be given.

D.J. Smith Lt.
O/c 7 Cdn Drilling Pn.
2 Cdn Drilling Coy. R.C.E.

11 Apr. 45.

EXA

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No. D76838 Spr (L/Cpl) ROBINSON, J.F., 2 Cdn Drilling Coy RCE, CAO, charged under AA 15 (1).

By direction of the Officer Commanding the evidence is taken on oath.

First Witness

A19403 Sgt GRAY, E.G., 2 Cdn Drilling Coy RCE, sworn states:- I am A19403 Sgt GRAY, E.G., 2 Cdn Drilling Coy RCE. I am employed as Orderly Room Sgt. I submit extracts from Part II Order No. 8 d/25 Feb 45; No. 10 d/11 Mar 45 and No. 13 d/1 Apr 45 which relate to the absence of L/Cpl ROBINSON.

E.C.Gray.

The accused declines to cross-examine the witness.

The accused was cautioned as follows:-
Q - Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or evidence you give will be taken down in writing and may be given in evidence.
A - I do not wish to make a statement.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP (c),(d),(e) and (f) have been complied with.

In the Field
4 Apr 45

(H.D.Ball) Capt RCE
Officer taking Summary of Evidence)

2 CANADIAN DRILLING COY R C E
PART II ORDERS ISSUED BY
CANADIAN SECTION 2nd ECHELON HEADQUARTERS
21 Army Group

Last Order No. 7 16 Feb 45 — No. 8 — 25 Feb 45

4. ABSENT WITHOUT LEAVE
(a) AWL from 2359 hrs 10 Feb 45 Still absent 2359 hrs 18 Feb 45 (8th day)

D76838 L/Cpl ROBINSON, J.F.

2 CANADIAN DRILLING COY R C E
PART II ORDERS ISSUED BY
CANADIAN SECTION 2nd ECHELON HEADQUARTERS
21 Army Group

Last Order No. 9 4 Mar 45 — No. 10 — 11 Mar 45

6. ABSENT WITHOUT LEAVE
(a) AWL from 2359 hrs 10 Feb 45 Still absent 2359 hrs 4 Mar 45 (22nd day)

D76838 L/Cpl ROBINSON, J.F.

2 CANADIAN DRILLING COY R C E
PART II ORDERS ISSUED BY
CANADIAN SECTION 2nd ECHELON HEADQUARTERS
21 Army Group

Last Order No. 12 25 Mar 45 — No. 13 — 1 Apr 45

4. ABSENT WITHOUT LEAVE
(a) AWL from 2359 hrs 10 Feb 45 Ceases to be AWL at 0730 hrs 24 Mar 45

D76838 L/Cpl ROBINSON, J.F.

Certified the above three (3) extracts are true copies.

(L.F.Labow) Lieut RCE
2 Cdn Drilling Coy RCE

Witnesses for the prosecution

A-19403 Sgt Gray E.W. - 2 cdn Drilling Coy RCE.

Witnesses for the defence

None.

I do not desire to have an officer to represent me, assigned by the convening officer.

James F Robinson

In the Field
4 Apr. 45

No D76838 Name ROBINSON, J.F. Sqn, Battery, or Company 509/1 Corps RCE Date of enlistment 1-12-39 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Ex B
W/

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26-4 42	Pte		AA15(1) AWL from 2230 hrs 26 Apr 42 to 0745 hrs 27 Apr 42 (abs 9 hrs 15 min).	Sgt Owens	2 dys CB	29-4-42	Major MacRae	Forf 1 day FRI149(1)(a)
Field	14-5 42	Pte		AA15(1) AWL from 2230 hrs 14 May 42 to 1200 hrs 18 May 42. (abs 3 days 13 hrs 30 min)	L/Cpl Breyce	7 days CB	18-5-42	Major MacRae	Forf 4 days FRI149(1)(a)
Field	29-6 42	Pte		AA15 (1) AWL from 1000 hrs 29 Jun 42 to 1300 hrs 3 Jul 42 (abs 4 days 3 hrs).	Cpl McNeil	7 days F.P.	6 Jul 42	Lt-Col Calder	Forf 5 days FRI149(1)(a)
Field	14-8 42	Spr		AA15(1) AWL from 2200 hrs 14 Aug 42 to 0930 hrs 15 Aug 42 (abs 11 hrs 30 min)	Documentary	3 dys pay	17 Aug 42	Lt-Col Thompson	Forf 1 day FRI149(1)(a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	21-8-42	Sgt		AA15(1) AWL from 21 Aug 42 to 30 Jan 43 (absent 162 days)		9 months Detention	11-2-43	F.G.C.M.	Forf 163 days PRI149(1)(a)
Field	3-1-45	L/Cpl		AA 15(1) AWL from 2359 hrs 3 Jan 45 to 2359 hrs 21 Jan 45. (abs 18 days)	Sgt MacLeod	SEVERE REPRIMAND	27-1-45	Major White	Forf 18 days PRI149(1)(a)

Certified true copy.

(H.D.Ball) Capt RCE
2 Can Drilling Coy RCE
4 Apr 45.

Y.10

SPR ROBINSON, JF

Correspondence to be PINNED here.

D.76838 Spr. Robinson, J.F.
1 C.E.R.U.
BORG 5-6-2-121

Y 10

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this 5 th day of February, 1943.

Whereas it appears to me, the undersigned, an officer in Command of HEADQUARTERS, "B" GROUP, CANADIAN REINFORCEMENT UNITS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer;]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[I am unable to appoint:—
*(1.) Three Officers to form the Court.)
*(2.) A Field Officer as President;
for the following reasons, namely:—]

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lt. Col.	D.L. Redman	Calgary Highrs-H.Q. C.R.U.

Members.

Rank.	Name.	Regiment.
A Captain	from	1 C.E.R.U.
A Lieutenant	from	1 C.S.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (P.R.Shields)Colonel
Commanding HQ "B" Group, C.R.U.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D.76838 Spr. ROBINSON, James Frederick No. 1 Cdn Eng Reinf Unit.	First Charge A.A. 15(1) See attached charge sheet	Guilty	Guilty Sentence to undergo detention for a period of one (1) year and to be put under stoppages of pay, until he has made good the sum of $70-37-2 the expenses of his apprehension and return 6th Feb 1943 [illegible]	I confirm the finding of the Court and remit the sentence to one of nine months detention with stoppages as awarded [illegible] Col 8 Feb 43

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(*Signed*) (P.R. Shields) Colonel (*Signed*) [illegible]

Commanding HQ "B" Group, CRU *Convening Officer* (e) *President*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

CHARGE SHEET

The Accused, D.76838 Spr. ROBINSON, James Frederick, No. 1 Canadian Engineer Reinforcement Unit, a Soldier of the Canadian Army (Overseas) is charged with:--

FIRST CHARGE
A.A. 15(1).

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

At Guillemont Barracks, COVE, Hants, absented himself without leave from 0745 hours, 21 August, 1942, until 1830 hours, 30 January, 1943.

Cost of Apprehension £ 0.5.8 (five shillings and two pence).

COVE, Hants.
4th day of February, 1943.

C.N. Mitchell

(C.N. MITCHELL) LIEUT-COLONEL, R.C.E.
A/Commanding Officer,
No. 1 Cdn. Engineer Reinforcement Unit,
Canadian Army (Overseas).

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(P.R.Shields)Colonel
Commander, "B" Group
Cdn. Reinf. Units

5 Feb 43

MEDICAL OFFICER'S CERTIFICATE

M.R. (C.M.) FARM 557

I certify that I have this morning examined

No. D76838 Spr Robinson J.E.

of ~~[illegible]~~ C.E.R. Unit and in my opinion he

is fit ~~unfit~~ to undergo Trial by Court Martial.

Station Cove

Date 6th Feb 1943

[illegible] Capt

Medical Officer. M.O.

C. Eng. R.U.

[illegible]

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT COVE, HANTS.
ON THE 6 DAY OF FEB. 1943

The accused D76838, SAR. ROBINSON J.F. Unit 1 CERU.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 & 23.

The accused is brought before the Court.
The Medical Certificate is presented to the Court.
The order convening the Court is read by the President and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lt-Col. D.L. Redman Unit HQ. - C.R.U.
Members Capt. C. Ewing/Sr Unit 1 CERU
Lt. H.H. Carter Unit 1 C.S.R.U.

The officers under instruction are duly sworn:-

Lt. J.M. Acorn Unit 1 CSRU
Lt. J.G. Smith Unit 1 CSRU.
Prosecutor Lt. J.G. Price Unit 1 CERU.
Defending Officer Capt. H.A. Hosking Unit 1 CERU.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B)
The Summary of Evidence is read.
The Prosecutor is sworn and produces ~~MFB 355~~ AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) ~~makes a statement in mitigation of punishment~~
(b) ~~calls witnesses as to character~~
(c) ~~calls witnesses in mitigation of punishment~~
(d) addresses the Court by his Defending Officer

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE AND ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Def. officer objected to fact his copy charge sheet different to original. In his copy of C/S. charge for deficiency of kit, whereas in original C/S. no mention deficiency. Amt. in Def. off's copy £2.14.0. In original C/S. costs of apprehension shown 1.5/2 - not sh in accused's copy.
Def. officer read address on behalf of accused. (attached).

(OVER)

[signature]
President

SUMMARY OF EVIDENCE

Summary of Evidence in the case of D 76838 Spr. Robinson, James, Fredrick, of the No.1 Cdn. Eng. Reinf. Unit, a soldier of the Canadian Army (Overseas).

FIRST WITNESS FOR THE PROSECUTION

Lieut. J.L. Martin, Assistant Admin. Officer for No.1 C.E.R.U., having been duly sworn states as follows:-

I am Assistant Admin. Officer of No.1 C.E.R.U. I submit the following documents which I am satisfied relate to the Accused.

(a) Record of the Declaration of a Court of Inquiry held at Cove, Hants, on 15 Sept 42.

B. Certificate of Apprehension dated 31 Jan 1943.

C. Certificate of Cost of Apprehension.

J.L. Martin Lieut

(J.L. Martin) Lieut.
Assist. Admin Officer.,
No.1 C.E.R.U.

The Accused declines to cross-examine this witness.

SECOND WITNESS FOR THE PROSECUTION

B 25282 C.Q.M.S. Tait, H.C., Q.M. Office, No.1 Cdn. Eng. Reinf. Unit, having been duly sworn states as follows:-

I am C.Q.M.S. at No.1 Cdn. Eng. Reinf. Unit. On 3 Feb 43 I inspected the kit of D 76838 Spr. Robinson, J.F.; on 2 Feb 43, I found it deficient to the value of £ 2-14-1½ which is 75% of total value of £ 3-12-1 as shown in Exhibit D.

H.C. Tait

B 25282 C.Q.M.S. Tait, H.C.
Q.M. Office, No.1 C.E.R.U.

The accused declines to cross-examine this witness.

The Accused was cautioned in the following manner:-

Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The Accused declined to make any statement.

I certify that R.F. 4(C)(D)(E) and (F) have been complied with and that the above evidence was taken in the presence of the Accused, at Guillement Barracks, Cove, Hants, this 3rd day of Febuary, 1943.

J.J. Pierce Lieut.

(J.J. Pierce) Lieut., i/c C.E.R.U.

RECORD of the Declaration of a Court of Inquiry assembled Guillemont Barracks on the 15th day of September 1942, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipment, Instruments, Regimental Necessaries, or Clothing of No. D 76838 Spr. Robinson, J.F.

D E C L A R A T I O N

The Court declare that No. D 76838 Spr. Robinson, J.F. of No.1 Cdn. Engineer Reinforcement Unit, Guillemont Barracks, Cove, Hants illegally absented himself without leave from Guillemont Barracks, Cove, Hants, at 0745 hrs on the 21st day of August 1942; and that he is still so absent, and that on the 15th September 1942 he was deficient, and that he is still deficient of the following articles:-

Articles	No	£	s	d.	Articles	£	s	d
Shirts Angola drab	2		18	4			15	9
Shirts Battle salmd cannt	1 pr		18	10			6	7½
Socks Woollen	3 "		5	6			3	9
Socks N.S. Desert	1			4½				5½
Towels hand	2		1	11				5
Drawers cell short	2 -		4	1			3	1
Vests Cotton gym	2		3	0			2	3
Socks "	2 -		3	10			2	11
Bags ration	1			1				1½
Belts waist large	1		6	7			4	11½
Bottle water	1		2	11			2	2
Braces left	1		3	3			2	5
Braces right	1		2	11½			2	2½
Carriers cartridge	2		8	9			6	7
Carriers water bottle	1		3	3			2	5
Covers Mess Tin	1			4½				3½
Frogs bayonet	1		1	6			1	1½
Haversack	1		12	5			9	10
Helmets steel	1		10	0½			7	8½
Pack	1		10	4½			7	11
Slings rifle	1		1	4			1	0
Straps Shoulder	1		6	8			5	0
Straps web suspending	2		2	2			1	7½
Tins- Mess	1		3	1			2	4
Bayonet No1 MK1	1	1	1	0			15	7
Bottle Oil	1		1	0				9
Scabbards Bayonet	1		11	9			8	10
Pull through	1			6				4½
Rifle No1 MK III	1	7	8	0		5	10	0
Sheets ground	1		10	9			8	1
Respirator complete	1		14	6½			11	8
Outfit No2 Tins	1			5½			4	4½
" No3 Tins	1			7½				7½
Coat, Battle camouflage	1	1	3	6½			13	8
Jacket Battle "	1		1	5½			1	1
Nets Helmet Camouflage	1			8				6
Eyeshields	6		2	3			1	9½
Total		33	0	9	Total	24	16	3½
		100 %					75%	

Lieut. J.L. Martin
Asst. Adm. officer

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army Lists.

(16836) WLE7459/757 25,000 9/40 A.& E.W.Ltd. Gp.498 Forms/O.1617/12

Army Form C.1617
R.A.F. Form 1617

I CERTIFY that the man whose personal description is given below surrendered himself to* P.C.'R' 539 ARMITT at Northfleet (Kent) at (hour) 18.30 hours on the 30th day of Jan., 1943 as being No. D. 76638 (Rank and Name) Private ROBINSON, James Frederick a deserter (or absentee without leave) from the Royal Montreal Regiment of Canada and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 21 Height 5 Feet 6 Inches

Complexion Fresh. Hair Dark. Eyes Brown.

Marks Nil.

In uniform or plain clothes Uniform.

Probable Date and Place of Attestation	
Probable Date of Desertion or beginning of absence, and from what place	Pte.ROBINSON was seen in Perry Street, Northfleet, at 18.30 hours 30.1.43, by P.C.'R'539 ARMITT, and on being interrogated he admitted he was an absentee from the Royal Montreal Regt.

A. Crouch
Inspector.

Signature of Officer of Police in charge of Northfleet Police Station.

31st January, 1943. Date of Signature.

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of

No.

who surrendered to the Police at on

Payable to

		NIL.	

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. A-76838 Rank Pte Name Robinson, J.F. Unit 1 M4 RU

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ Unit ~~From~~ London from North Fleet

Date	Particulars	Amount		
1 Feb. 43	Escorts return fare from LONDON To North Fleet		3	5
	Prisoners single fare to LONDON From North Fleet		1	9
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		5	2

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] ~~Lieut~~

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:55
40/P & S/483

Fi No. 16-126

Officer Commanding,

No1 M.G.B.U.

RC:-D-70030 Pte.Robinson J.F.

1. Forwarded for your information and necessary action, please, and disposal under C.A.R.O. No. 388 dated 29 Oct. 40.

London
31-Jan-43

Capt.
(W.Fe/M) D.A.P.M.,
London Area.

LIST OF WITNESSES

List of Witnesses in the case of D 76838 Spr. Robinson, J.F. No.1 Canadian Engineer Reinforcement Unit, A Soldier of the Canadian Army (Overseas).

Lieut. J.L. Martin, Assist. ~~Adj~~ Admin Officer
No.1 Cdn. Eng. Reinf. Unit.

LIST OF EXHIBITS.

List Of Exhibits in the case of D 76838 Spr. Robinson, J.F. No.1 Canadian Engineer Reinforcement Unit, a Soldier of the Canadian Army (Overseas).

A Certified true copy of Declaration of Court of Inquiry.

B Certificate of Apprehension

C Certificate of Cost of Apprehension

~~D List of Kit Deficiencies.~~

I, the undersigned, request that an officer be appointed by the Court to represent me.

D76838 Sapper Robinson J.F.

D-76838 Sapper Robinson, J. F.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

D76838 Spr. ROBINSON, James Frederick of the No. 1 Cdn. Engineer Reinforcement Unit, C.A.(OS).

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

Pres. Pass. 664, R.R. 1905.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	*Within last 12 months.		*Since Enlistment.	
For A.A. 40 Neglect etc.	1	times	1	times.
For A.A. 15(1) A.W.L.	4	times	4	times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct,

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Wt. 42648/664 50,000 2/40 W. S. Ltd. 11—6004

[illegible]

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for [illegible]
beginning on the [illegible] day of [illegible]

4. The accused has been in confinement, awaiting trial on the present charges
for [illegible] days in Civil Custody,
and 8 days in Military Custody.
Total 8 days.
Of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 21 3/12 years

6. The date of his commission / attestation specified in his record of service / attestation paper is 1 Dec 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 2/12 years.

8. The accused is entitled to deferred pay or gratuity in respect of 3 2/12 years' service.

9. The accused is entitled to reckon 3 2/12 years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of or entitled to [illegible]]

11. *(If the accused is a warrant officer.)* The accused, before he was made a warrant officer last held the regimental rank of [illegible]

12. *(In the case of an officer.)* The accused holds in the army the rank of [illegible], dated [illegible] and in his regiment (*or* corps *or* department) the rank of [illegible] dated [illegible]

13. The accused has served as a non-commissioned officer continuously without reduction, to the present date;

	Date of Promotion	
In the rank of [illegible]	[illegible]	years
In the rank of [illegible]	[illegible]	years
In the rank of [illegible]	[illegible]	years.

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked [illegible], signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name D.76836 Sapper ROBINSON, J.F. of the No. 1 Cdn. Engr. Reinf. Unit.

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(Continued overleaf.

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 6th day of Feb 1943

Capt.

No. D-76838 Name ROBINSON, J.F. Sqn., Battery, or Company

Corps R.C.E.

Date of enlistment 1 Dec 39 G.C. Badges

Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 1755M—7-41 (1219-20) H.Q. 1772-39-1632

Date of last entry in Company Conduct Sheet Nil

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No. 1

Signature O.C. Company, etc. Capt J.I. Blue

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
At the end of 2 years Service, a new Conduct Sheet was made out - there were no regimental entries on the Original sheet. -- Capt. J.I. Blue									
Field	24 Jan 42	Pte		A.A. Sec 40 - neglect to clean rifle before turning it into stores when proceeding on leave.	D-76137 Sgt. Dowler	5 days C.B.	6 Feb 42	Lt. P.P. Mustard	
Field	26 Apr 42	Pte		A.A. 15(1) A.W.L. from 2230 hrs 26 Apr 42 until 0745 hrs, 27 Apr 42 (9 hrs, 15 mins)	Sgt Owens Cpl Leatherbarrow	2 days C.B.	29 Apr 42	Maj D. MacRae	Forf 1 days pay
Field	14 May 42	Pte		A.A. 15(1) A.W.L. from 2230 hrs 14 May 42 until 1200 hrs 18 May 42 (Abs: 3 days, 13 hrs, 30 mins)	L/Cpl. de Bryne, A.E.	7 days C.B.	18 May 42	Maj D. MacRae	Forf 4 days pay
Field	29 Jun 42	Pte		A.A. 15(1) A.W.L. from 1000 hrs 29 Jun 42 until 1300 hrs 3 Jul 42 (Abs. 4 days, 3 hrs)	Cpl McNeil L/C Mather	7 days F.B. 7 days loss of pay	6 Jul 42	Lt Col Calder	Forf 5 days pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14 Aug 42	Spr		A.A. 15(1) A.W.L. from 2200 hrs. 14 Aug 42 until 0930 hrs, 15 Aug 42 (Abs: 11 hrs, 30 mins)	Documentary	Deprived 3 days pay	17 Aug 42	Lt Col V.S. Thompson	Forf 1 days pay FR&I 149(1)(a)
				Certified true copy, 18 Sep 42	R B Fraser Major 2 i/c A. Wing No 1 CE R.U.				

President of the court & members.

Sir in making a plea of mitigation for Spr Robinson I would ask the court to review his military history.

He joined the army at the very start of the war. He resigned a ~~position~~ rest in the ~~N.P.A.M. to~~ 5 D & G. Highlanders N.P.A.M. to join a fighting unit the R.M.R's and came overseas in Dec '31. At the end of two years he was awarded a good conduct stripe because he had had no crimes.

He is well educated having ~~has~~ ~~his~~ senior matriculation and had hoped to follow his father's example and get his commission Col Robinson but after over two years good effort in the army he had arrived ~~gone~~ no place he asked to be transfered to the engineers where he would be able to follow his trade as a draftsman.

In about six months this plea was allowed and he was transfered but this nothing happened. He was

a son of a col, who rose from the ranks in the last war, got his promotion a well educated man, who is definitely officer material to be come to the state of frustration in the army that he would go A.W.L.

I ask the court when passing sentence to remember this man held and wore a good conduct stripe and that by mismanagement we have driven him to go bore after he had done a good job for two years. I would ask if we are not punishing the wrong person for this crime. If we have not committed a bigger crime in wasting good material for well years. ~~Henry Hocking Capt.~~

All the statements I have made would seem to be endorsed by the action of withdrawing the cost of loss of list by the CERO. before this man stands for Court Martial.

H Hocking.

given fatigues and training
as a new recruit ~~and~~ from
April till Aug when in order to
get rid of him from the C.E.R.U. [illegible]
he was trade tested as a clerk, [illegible] and
ordered to go to the field.
After three years of befuddling
mismanagement of his talents
by the army he decided that it
was time that he did something
about it himself. As he had asked
several times to be trade tested and given
a chance at his trade he decided
that he would not be further misplaced
by the army, that in order to receive
some attention that he would go
A.W.L. When he was away he was
frightened to come back and that
accounts for the 162 days absences.
I content that this man has
committed a crime being absent
for this time but I wonder if we
as officers haven't committed a
greater crime in allowing this (OVER)

Accused 31 - summaries. Transf. voluntarily to fighting unit. In civil life draftsman with St. Lawrence Power Co, Cornwall. In NPAM since 1929 - Pte. 5 Nov. 39 was chosen for Sr. NCO course, but transf. to RMR (MG).

RM

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 6th day of February 1943 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The interpreter) Shorthand Writer
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 6th day of February 1943

[signature] Lieut Col

President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 8 day of Feb 1943

[signature]

Confirming Officer.

Promulgated and extracts taken in the case of D-76838 Spr. Robinson, J.F. 1 C.E.R.U.

(a) (Dated) 10 Feb (Signed) J.L. Martin Lieut

Promulgated and extracts taken in the case of

ENTERED PART II ORDERS

(Dated) 10/2/43 ORDER No. 34

No. 1 Cdn. Engineers' Holding Unit, C.A.

(Signed) [signature] Capt.

OFFICER IN RECORDS

No. 1 Cdn. Engineers' Holding Unit, C.A.

Promulgated and extracts taken in the case of D-76838 Spr Robinson, J.F.

Cas. Ret. No. 143 d/21 Oct 43

(Dated) 21 Oct 43 (Signed) Alexander Hawn Lieut for Capt

E.F. Creelman for

O. C. No. 2 Cdn Tunnelling Coy RCE

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[B4] Wt. 38092/1316 70m 2/41 W. & Co., Ltd. Gp. 748/2

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AASec15(1)	Guilty	Guilty	
2nd	AASec40	NotGuilty	Not Guilty	
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 8.)

~~At present under sentence ..... beginning on (date)~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of nil days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be reduced to the ranks.

(Sgd) ..... Judge-Advocate, if any. 11 Dec 44 Date awarded. (Sgd) W S Hunt, Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56. 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally : AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 17 Dec 44 (Sgd) ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
M 5364 Sgt J.R. Robinson 5 Cdn Mech Equip Pl RCE	17 Dec 44	J.H. Hunt Capt O.C. 5 Cdn Mech Equip Pl RCE

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ 10 JAN 1945 JAN BRANCH C.M.H.Q.

4R-118.

CFAB6 (TO form of AFAB) 20-17 & 18/1608

FIELD GENERAL COURT MARTIAL 4/38B

Convened by Order of Lt-Col E W Whelpton Comd 1 Cdn [illegible] Adm Area dated 8 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 483, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-5364	Sergeant	Joseph Roy	ROBINSON	5 Cdn Mech Equip Pl RCE.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) in ITALY on (date(s)) 11 Dec 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2F-115

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs as how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 69-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) ~~are~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(1), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1245 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans .....

The Interpreter is sworn.(1) Do you object to L-22658 Cpl DF McLeod as shorthand writer ? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No, sir.

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	W S Hunt	HQ 1 Cdn Corps
Member	Captain	M J Pratt	1 Cdn C Tps Wkshop RCASC
Member	Lieutenant	C W Seale WIH	205 CdnArmd Ord Sub Pk RCOC
Judge-Advocate	.....	.....	.....
Prosecutor	Lieutenant	R A Wild MC	12 Cdn Fd Coy RCE
Defending Offr	Major	R B Fraser DSO	3 Cdn Fd Coy RCE

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans (2) No

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused M-5364 Sgt J R Robinson before arraignment make(s) (no) ~~a~~ plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C.

C2/122

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(2)

President to accused : Do you wish to make a statement ? Ans ..... (3)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to the finding on ..... charge(s).~~ The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). ~~Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A" initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No, sir. (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (~~brief~~ opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the second charge(s).(2) The Court is re-opened, and the President announces that the submission is dismissed as to the ..... charge, and allowed on the second charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)*

D5. ~~President to accused : You will now proceed with your defence.(1)~~ You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 2, 9.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 80(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up at the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated ~~Part I of the Schedule is dated and signed~~.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No, sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *AFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes, through my defending offr.
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused M5364 Sgt. Robinson, J.R. of 5 Cdn Mech Equip Pl., R.C.E. CA(CMP) a soldier of the Canadian Army, active force is charged with-

First charge
AA 15 (1)

Absenting himself without leave

In that he,

While on active service in the field, while under open arrest, did absent himself without leave from approx 0230 hrs, 30 Oct 44 till 1630 hrs, 5 Nov 44.

Second charge
AA sec 40

Conduct to the prejudice of good order and military discipline.

In that he,

While on active service in the field at approx 2315 hrs on 29 Oct 44 did use W.D. Vehicle No. CZ 4255125, without permission.

Date 27 Nov. 44

J.D. Van Kleeck Capt

(J.D. Van Kleeck) Capt.
Officer Commanding
5 Cdn Mech Equip Pl., R.C.E.

To be tried by Field General Court Martial.

In the Field
8 Dec 44.

(E W Whelpton) Lt-Col.
Comd 1 Cdn Corps Adm Area.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-5~~4~~3 64	Sergeant		JOSEPH ROY	Robinson	5 Cdn Mech Equip Pl RCE

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) 8 Dec 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) W S Hunt, (Must be named. RP 106.) HQ 1 Cdn Corps (Unit.)

MEMBERS.

Captain To be detailed by OC 1 Cdn Corps Tps Wkshop RCEME

Capt or Lieut (Rank.) To be detailed by ADOS 1 Cdn Corps Tps (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

Capt or Lieut (Rank.) To be detailed by Comd 1 Cdn Corps Adm Area. (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in ITALY (Country.) (E W Whelpton) Lt-Col. (Signed personally. RP 105 fn 2.) (Rank.)

Date 8 Dec 44 Commanding 1 Cdn Corps Adm Area. Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA95 (In lieu of AFA3) 40/P & S/1697 (4931)

I certify that the u/m have been medically examined by me and found medically fit

for trial by F.G.C.M.

M5364 Sgt. Robinson, J.R.

Date 11 Dec 44

Capt

FGCM
Joseph [illegible] ROBINSON, 5 Cdn Mech Equip Pl RCE

First Witness for the Prosecution: Lieutenant G W Lawson, 5 Cdn Mech Equip Pl RCE, being duly sworn, is examined by the Prosecution:-

Q-1 Mr Lawson, will you tell the court exactly what happened on the night of 29 Oct 44?

A-1 On the night of 29 Oct 44 at approx 2345 hours, I came out of the orderly room and was walking down the lines when I noticed the 15 cwt vehicle was missing from the vehicle park. As no vehicles were allowed out without the permission of the OC, who was Captain Carson at that time, Sergeant Borse[illegible] the regimental sergeant, and myself, I inquired of the OC and of the regimental sergeant and discovered that no permission had been given for the vehicle to leave the yard. They know nothing about it so I decided to sit up for the vehicle to return. At approx 2345 hours the guard, Spr Dauphinais, and myself were standing by the entrance to the unit lines when the 15 cwt drove into the yard. The guard ordered the vehicle to stop and when it did I went up to the vehicle and asked who the senior person in the 15 cwt was. Sergeant Robinson replied that he was and I noticed then that Cpl Hollis was the other occupant of the vehicle. He was driving it. I asked them if they had permission to have the vehicle out and the Sergeant replied "No". I then put him under open arrest and told him he would be up for oders in the morning. I then went to my tent and was undressing when Sergeant Robinson and Corporal Hollis asked permission to see me. They came in and Sergeant Robinson asked why he was under open arrest and I told him and Cpl Hollis asked to be placed under open arrest. I noticed at that time that they had been drinking and I told them to see me in the morning and we would straighten things out then. Sergeant Robinson then asked to see the OC and as Captain Carson was asleep in the same tent I woke him up and explained the situation. Captain Carson told Sergeant Robinson and Corporal Hollis that he would straighten the situation out in the morning. The sergeant and the corporal then left and I went to bed. At approx 2:30 in the morning I was awakened by the sound of gunfire and the guard, Sapper Dauphinais, came running into the tent saying that someone had stolen the 15 cwt. I got up and with Sergeant Borse, the Regimental sergeant, we looked in the billets and found that Sergeant Robinson was absent and that his kit was gone. All that remained was a couple of shoe brushes. We also found that Cpl Hollis was absent and that his bed roll and personal kit was missing. We then took my jeep and reported to a section of the canadian [illegible] and Cpl Hollis were AWL and that a 15 cwt had been stolen from our vehicle park.

Q-2 Was there a set of keys to the 15 cwt or just the switch?

A-2 Just the switch.

Q-3 Who drives the 15 cwt now?

A-3 Spr Wallet at the present time. At the time it was stolen it was Spr Dauphinais, the guard.

Q-4 How was this order published that no one was allowed to use the vehicles without permission of the OC, yourself, or the regimental sergeant?

A-4 It was necessary to have permission of the OC, myself, or the regimental sergeant for recreational trips in the unit vehicles. Ordinary runs were handled by the MT Cpl and I always knew of them. There was no order published but it was laid down very definitely to the NCOs.

XX'd by the Defence

Q-5 How long have you been with the Mech Equip Pl?
A-5 Since June, sir.

Q-6 Have any standing orders with regard to use of transport, and regulations regarding the use of transport been published in your unit insofar as you know?
A-6 No, sir. It is not on our standing orders.

Q-7 Do you use work tickets?
A-7 No, sir.

Q-8 How is Cpl Hollis employed in the platoon -- that is at the time of the incident?
A-8 He was transport Cpl.

No re-x'm

In the opinion of the Court it is not considered necessary to comply with RP 83(B). THE WITNESS WITHDRAWS.

Second Witness for the Prosecution: H-63791 Spr C. Dauphinais, 5 Cdn Mech Equip Pl, RCE, being duly sworn, is examined by the prosecution:

Q-9 Will you identify yourself to the Court?
A-9 I am H-63791 Spr C. Dauphinais, 5 Cdn Mech Equip Pl RCE.

Q-10 Will you tell us what happend on 29 Oct 44 when you were on guard in your unit transport lines?
A-10 I was performing my duty as guard walking up and down when suddenly I heard a motor starting. A 15 cwt started to pull outside the camp and I ordered it to stop. It did not stop. I yelled out again. It did not stop so I fired. Right after that I reported to Captain Carson. He was in bed at the time. I told him what happened.

Q-11 Earlier in the evening you were on guard from what hour?
A-11 I can't say what time I was on guard.

Q-12 Roughly could you tell us?
A-12 I would say it was around ten o'clock that I went on guard.

Q-13 Did you see Mr Lawson during the evening you were on guard?
A-13 Yes, sir, I did. He was waiting for a truck to come in.

Q-14 Did this truck come in while he was with you?
A-14 Yes, the truck came in. Mr Lawson asked who the senior NCO was. Sergeant Robinson said, "I am, sir.". Mr Lawson put him under open arrest. Sergeant Robinson parked the truck in the parking lot and that is all I saw of the matter. I went on with my duty.

Q-15 You definitely heard Mr Lawson put the sergeant under open arrest?
A-15 Yes, I was right by the truck.

XX'd by the Defence

Q-16 You stated to the court that you can't remember when you went on guard that night? Is that correct?
A-16 Well, sir, I was supposed to be on the first shift at 8 o'Clock but I wasn't on it. I was in bed.

Q-17 Why were you not on the first shift?
A-17 I just forgot about it.

Q-18 You didn't go out on the first shift?
A-18 No, Mr Lawson put me under open arrest and said to go on the second shift.

Q-19 When does the second shift go on guard?
A-19 The second shift starts at 11:20 until 3:20 in the morning.

Q-20 So that you went on the second shift? You did not go on at 10 o'clock in that case. You went on at 11:20?
A-20 It wasn't very long after lights out that I went on.

Q-21 Do you know what time you came off guard?
A-21 I can't say -- I just woke up the other guard. I haven't any watch so I don't know.

Q-22 Do you remember making a statement when the summary of evidence was take.
A-22 Mr Wild asked me about the matter and I told him about it. I signed this statement a day or so later in the orderly room. It had been typed out.

Q-23 Do you know what you signed?
A-23 I signed a report which was the statement I had made to Mr Wild. It had been typed out.

Q-24 In that statement did you say to Mr Wild th t you had been on guard on that particular night from 2230 hours until 0240 hours the following morning?
A-24 Yes, sir. I said that.

No re-x'm

In the opinion of the Court it is not considered necessary to comply with RP 83(B).

The WITNESS WITHDRAWS.

THE PROSECUTION IS CLOSED.

Def Offr to Court

I object to the AFB 296 submitted by the prosecution in that it discloses one charge of drunkeness under AA Sec 19 and two offences under AA Sec 40 where the MFM 6 discloses not entries whatsoever.

President to Def Offr.

The court will proceed on the presumption that there are not entries against the accused.

Submission by Defence that No prima facie case has been established.

The whole question of the second charge evolves around what constituates permission and we have in cross examination brought out from the first witness for the prosecution that no standing orders were in effect which required permission to be obtained from the OC, from Mr Lawson, or from the regimental sergeant. He is the only witness who has made any statement to the effect that permission must be obtained and he has not shown why permission must be necessary.

Reply by the prosecution to submission of no prima facie case

The whole thing evolves on the point that there is no standing orders in the unit that an NCO must not take out vehicles without permission. I wonder how many units in the field have standing orders, that is, something down on paper that certain persons wont take vehicles without permission of an officer or particular NCO. I know it doesn't exist in my unit or in the unit I have just recently left. Mr Lawson said that it was a recognized rule in the unit that vehciles were not to be taken without permission and the court will knows that a unit cannot have anybody running out with their trucks.

The only facts we can prove and that Mr Lawson has brought out is that it is definitely a rule in the unit although nothing is laid down on paper that anybody using a vehicle must obtain permission of Mr Lawson, the regimental sergeant or the OC. It is not a standing order and there is nothing written down. My point is that there are very few units in the field that do have standing orders regarding the use of vehicles.

Statement in Mitigation by Defending Offr.

I would like to say a few words in regard to this charge on which the accused has been found guilty - that of AWL.

It is noted from the evidence of the third witness in the summary of evidence brought by the prosecution that Sergeant Robinson surrendered himself himself seven days after the offence was committed. Bearing in mind the fact that Sergeant Robinson was placed under open arrest on his return to camp on the evening of 29 Oct 44, and that in view of the way he felt about this I suggest that in the heat of anger he committed the offence of going AWL and when he had had time to think this over he surrendered himself.

His conduct sheet speaks for itself. He has been a sergeant since Sep 43 and has performed his duties satisfactorily. Sergeant Robinson joined the army on 28 May 40. He came to Sicily on 13 Jul 43 and has served continuously in the Field since that time.

He has had no leave since coming to Italy and while it is realized that these probably do not provide extenuating grounds for a misdemenour, I would ask the court to take into consideration his record, the fact that he has been rather foolish and that he obviously realized that and gave himself up to the provost and came back to take his punishment.

Ex "A"

Summary of evidence in the case of M5384 Sgt. Robinson, J.R. 5 Cdn Mech Equip Pl., R.C.E. 1 Cdn Corps Troops. CA(CMF).

By direction of the Commanding Officer the summary of evidence is taken on oath.

1st witness for the prosecution

Lieut. G.W. Lawson of 5 Cdn Mech Equip Pl., R.C.E. having been duly sworn states:

I am Lieut G.W. Lawson, 2 i/c of 5 Cdn Mech Equip Pl., R.C.E. On the night of the 29 Oct. 44 I was walking down the Platoon lines and noticed a 15 cwt vehicle missing from the vehicle park. As no vehicles were allowed out of the lines without permission of the O.C. myself and the Platoon regemental Sgt. I enquired from the Sgt and O.C. if permission had been granted for any person to take out the 15 cwt. As they knew nothing about the absence of the vehicle I decided to stay up and wait for the vehicle to return. At approx 2345 hrs as the guard, Spr. Dauphinais and myself were standing at the entrance to the unit lines the 15 cwt approached and I ordered it to stop. I asked who the Senior person in the vehicle was and Sgt Robinson replied that he was. Cpl Hollis was the other occupant of the vehicle. I then asked if he had permission to have the vehicle out. He replied, "No". I then told him that he was under open arrest and would be up for orders in the morning. I then went to my tent and was undressing when Sgt. Robinson and Cpl. Hollis came into the tent and asked permission to see me. Sgt. Robinson asked why he was under open arrest and Cpl. Hollis also asked thathe, Cpl. Hollis, be put under open arrest as well. I told them that we would straighten things out in the morning. I noticed that both Sgt Robinson and Cpl Hollis were talking in a manner that would indicate that they had been drinking. Sgt Robinson then asked if he could see the O.C. I then woke Capt. Carson who was sleeping in the same tent and Capt. Carson told them that he would straighten things out in the morning. Sgt Robinson and Cpl Hollis then left the tent.

At approx 0230 in the morning I was awakened by the sound of small arms fire and the guard Spr. Dauphinais came running in to the tent saying that they had fired at the 15 cwt as it pulled out of the yard after ordering it to halt. I then got dressed and with Sgt Borse we discovered that Sgt. Robinson and Cpl. Hollis were missing, Sgt. Robinson with complete kit and Cpl. Hollis all his but one kit bag. We then went out of the yard in a jeep and tried to overtake the 15 cwt. We soon found that as it was dark and nobody was around to notice which direction the 15 cwt had gone that it was useless. We then reported to the Provost that a 15 cwt had been stolen and Sgt. Robinson and Cpl. Hollis had gone A.W.O.L.

Cross-examined by the accused.

Question 1: What makes you think that I took all my kit?

Answer 1: Sgt. Borse and I went to your bed in the billets and noticed that all your kit including blankets was missing. The only thing left was your bed and a shoe brush.

Question 2: Do you know Sir where Cpl. Summerfield got my kit bag, rubber coat and miscellaneous articles?

Answer 2: No.

P.T.O.

G.W. Lawson Lieut (PTO)

2nd witness for the prosecution

H63791 Spr. Dauphinais, C. of 5 Cdn Mech Equip Pl., R.C.E. having been duly sworn states:

I am H63791 Spr. Dauphinais, C. On the night of 29 Oct. 44 I was on guard from 1230 until 0240. After I had been on guard a half an hour or more Mr. Lawson came out with me and a little later a 15 cwt came in. Mr Lawson asked who was the senior N.C.O. in the truck and Sgt. Robinson said he was so Mr Lawson told him he was under open arrest. I then went back to my post. Later on in the night I heard a truck start and moved towards it. I ordered it to halt three times and when it did not, I fired. The truck kept on going. I then reported to Capt. Carson that the truck was missing.

The accused declines to cross-examine this witness.

C. Dauphinais
(H63791 Spr. Dauphinais, C.)

3rd witness for the prosecution

14209674 L/Cpl. Brooks, N. of 111 Provost Coy., C.M. Police

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence. Having regard to the loss of time involved. The attendance of this witness cannot be in my opinion readily procured.

(Lieut Wild)

The accused does not demand the attendance of this witness for cross-examination.

The accused having been duly cautioned in accordance with Rule of Proceedure 4(E) reserves his defence.

Certified that Rule of Proceedure 4 (C) (D) (E) (F) and (G) have been complied with.
Taken down by me in the presence and hearing of the accused this 27 day of November 1944 in the field.

(Lieut Wild)

Ex "A"

Summary of evidence in the case of M5364 Sgt. Robinson, J.R. 5 Cdn Mech Equip Pl., R.C.E. 1 Cdn Corps Troops. CA(CMP).

By direction of the Commanding Officer the summary of evidence is taken on oath.

1st witness for the prosecution

Lieut. G.W. Lawson of 5 Cdn Mech Equip Pl., R.C.E. having been duly sworn states:

I am Lieut G.W. Lawson, 2 i/c of 5 Cdn Mech Equip Pl., R.C.E. On the night of the 29 Oct.44 I was walking down the Platoon lines and noticed a 15 cwt vehicle missing from the vehicle park. As no vehicles were allowed out of the lines without permission of the O.C. myself and the Platoon regemental Sgt. I enquired from the Sgt and O.C. if permission had been granted for any person to take out the 15 cwt. As they knew nothing about the absence of the vehicle I decided to stay up and wait for the vehicle to return. At approx 2345 hrs as the guard, Spr. Dauphinais and myself were standing at the entrance to the unit lines the 15 cwt approached and I ordered it to stop. I asked who the Senior person in the vehicle was and Sgt Robinson replied that he was. Cpl Hollis was the other occupant of the vehicle. I them asked if he had permission to have the vehicle out. He replied, "No". I then told him that he was under open arrest and would be up for orders in the morning. I then went to my tent and was undressing when Sgt. Robinson and Cpl. Hollis came into the tent and asked permission to see me. Sgt. Robinson asked why he was under open arrest and Cpl. Hollis also asked thathe, Cpl. Hollis, be put under open arrest as well. I told them that we would straighten things out in the morning. I noticed that both Sgt Robinson and Cpl Hollis were talking in a manner that would indicate that they had been drinking. Sgt Robinson then asked if he could see the O.C. I then woke Capt. Carson who was sleeping in the same tent and Capt. Carson told them that he would straighten things out in the morning. Sgt Robinson and Cpl Hollis then left the tent.

At approx 0230 in the morning I was awakened by the sound of small arms fire and the guard Spr. Dauphinais came running in to the tent saying that they had fired at the 15 cwt as it pulled out of the yard after ordering it to halt. I then got dressed and with Sgt Borse we discovered that Sgt. Robinson and Cpl. Hollis were missing, Sgt. Robinson with complete kit and Cpl. Hollis all his but one kit bag. We then went out of the yard in a jeep and tried to overtake the 15 cwt. We soon found that as it was dark and nobody was around to notice which direction the 15 cwt had gone that it was useless. We then reported to the Provost that a 15 cwt had been stolen and Sgt. Robinson and Cpl. Hollis had gone A.W.O.L.

Cross-examined by the accused.

Question 1: What makes you think that I took all my kit?
Answer 1: Sgt. Borse and I want to your bed in the billets and noticed that all your kit including blankets was missing. The only thing left was your bed and a shoe brush.
Question 2: Do you know Sir where Cpl. Summerfield got my kit bag, rubber coat and miscellaneous articles?
Answer 2: No.

G.W. Lawson Lieut (PTO)

P.T.O.

I, Lieut Lawson, 21/c of 5 Cdn Mech Equip Pl., R.C.E. hereby submit Certificate under Army Act Section 163 (1) (J) marked as exhibit "A".

(G.W. Lawson) Lieut.

2nd witness for the prosecution

H63791 Spr. Dauphinais, C. of 5 Cdn Mech Equip Pl., R.C.E. having been duly sworn states:

I am H63791 Spr. Dauphinais, C. On the night of 29 Oct. 44 I was on guard from 2230 hrs until 0240. After I had been on guard a half an hour or more Mr. Lawson came out with me and a little later a 15 cwt came in. Mr Lawson asked who was the senior N.C.O. in the truck and Sgt. Robinson said he was so Mr Lawson told him he was under open arrest. I then went back to my post. Later on in the night I heard a truck start and moved towards it. I ordered it to halt three times and when it did not, I fired. The truck kept on going. I then reported to Capt. Carson that the truck was missing.

The accused declines to cross-examine this witness.

(H63791 Spr. Dauphinais, C.)

3rd witness for the prosecution

14209674 L/Cpl. Brooks, N. of 111 Provost Coy., C.M. Police

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence. Having regard to the loss of time involved. The attendance of this witness cannot be in my opinion readily procured.

(Lieut Wild)

The accused does not demand the attendance of this witness for cross-examination.

The accused having been duly cautioned in accordance with Rule of Procedure 4(E) reserves his defence.

Certified that Rule of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.
Taken down by me in the presence and hearing of the accused this 27 day of November 1944 in the field.

(Lieut Wild)

CERTIFICATE UNDER ARMY ACT SECTION 163 (1) (i)

I, Captain L.A. WADHAM Commanding 111 PROVOST COMPANY, C.M.P.

certify that No. M/5364 Rank SGT. Name ROBINSON J.R.

of the ROYAL CANADIAN ENGINEERS surrendered himself to

No. 14209674 Rank L/CPL. Name BROOKS N.

of the 111 PROVOST COMPANY, C.M.POLICE at ROME

at hrs., 1630 on the 5th day of NOVEMBER 194 4

as a deserter (or absentee without leave).

Date 5th November 1944

Capt.

O.C. 111 Provost Coy. C.M.P.

Commanding Officer of the person or portion of His Majesty's Forces to whom the Surrender was made.

6MDS/549/2500/6-44

Statement of **EVIDENCE** in the case of

M. 5364 SERGEANT ROBINSON J.R.
No 5 CANADIAN MECHANICAL EQUIPMENT SECTION
THE ROYAL CANADIAN ENGINEERS
CANADIAN TROOPS.

SIR

At ROME on the 5th NOVEMBER 1944 at about 1630 HOURS I was on duty at 111 PROVOST COMPANY HEADQUARTERS when the above named N.C.O approached me and said "I AM AWOLT DAYS CORPORAL AND I WANT TO TURN MYSELF IN" I arrested him, obtained his particulars for report verified same from his MILITIA BOOK M.I. Later he was conveyed to the Town GUARD ROOM where he was handed over to the N.C.O i/c GUARD ROOM to be detained Body receipt attached.

ROME
5th NOVEMBER 1944.

N. Brooks L/CPL
111 PROVOST COMPANY
C. M. POLICE.

REMARKS

~~Ex A~~

CHARGE

Army Form B 252
(See King's Regulations)

THE ROYAL CANADIAN ENGINEERS — Regiment

No 5 CANADIAN ELECTRICAL EQUIPMENT SECTION — Battery / Squadron / Troop or Company

CHARGE against No. M.5364 Rank SERGEANT

Name ROBINSON J. R.

Place Date of Offence

OFFENCE W.O.A.S. Absent from ? until surrendering to the Military Police at the 111 PROVOST COMPANY H.Q. at about 1630 hours on the 5th NOVEMBER 1944.

Names of Witnesses :—

1430674 Sgt. BROOKS H. 111 PROVOST COMPANY C.M.P. POLICE

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

6th/11/44 MAJOR APM (Sr) R.A.C

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M 5364	Sgt.	Robinson, J.R.	5 Cdn Mech Equip Pl., R.C.E.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 617, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA 19 Drunkness	1 times	1 times.
For AA 40	1 times	2 times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct.

~~Number of instances of gallantry or distinguished conduct.~~

~~or~~

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, ~~or~~

~~The previous convictions of the accused by a court martial or civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 79 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ ~~XXXXXXXXXXXXXXXXXX~~ ~~beginning on the XXXXXXX day of XXXXXXXXXXXX~~.

4. The accused has been in confinement awaiting trial on the present charges, for ~~XEXX~~ days in civil custody, and 15 days in military custody, making a total of 15 days, of which ~~XXXXX~~ days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 40 years 6 months

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 28 May 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 years 5 Months

8. The accused is entitled to deferred pay or gratuity in respect of 4 years 5 months service.

9. The accused is entitled to reckon 4 years 5 months service for the purpose of determining his pension, etc.

10. ~~The accused is in possession of or entitled to receive the following decoration or military award~~ (or is in possession of or entitled to (*state any military decoration or reward*)). C.V.S.M. and Clasp and 1939-43 Star

11. ~~The accused was reported [illegible] was made aware when he made the statement~~ ~~XXXXXXXXXXXXXXX~~

12. ~~The accused was tried by a court martial on the following charges and~~ ~~XXXXXXXXXXXXXXXXX

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(*INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7 day of Dec 44

J Dan Bleek Capt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years, ...

In the rank of ..... years, ...

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*

No M5364 Name Robinson, J.R. Sqn. Battery, or Company | Corps R.C.E. | Date of enlistment 28-5-40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet 19-12-42 and date of last drunk 19-12-42 (1st) | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed 10 Sep 43 on confirmation in rank of Sergeant.					Pt II order No 45 dated 25 Sep. 43
				CERTIFIED TRUE COPY [signature]					

Ex "C" WM

(PTO)

4K 118.

Sgt. Robinson J. R.

000.40

PTE ROBINSON M.J.

000-40

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3)
A.F.P.& S. 1698 (28804)

RECEIVED 15 JUN 1944 JAG BRANCH C.M.H.Q.

Convened by Order of Brig. J.R. Stewart Lough DSO, MC, VD. Comd "D" GP - CRU dated 31 May 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-136140	Pte.		Mathew John	ROBINSON	3 CIRU

PROCEEDINGS REVIEWED

J C A Cunliffe Major
15 Jun 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in (the Fd in (country) England on (date(s)) 1 Jun 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. — The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to N.A. as interpreter? Ans NA

The Interpreter is sworn.(1) Do you object to B38440 Pte. Webb R.E. as shorthand writer? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.M. Bowman	48th Highrs.	3 CIRU
Member	Capt.	A.M. Mackenzie	R. Regt. C.	3 CIRU
Member	Lieut.	R.H. Fairhead	R. Regt. C.	3 CIRU
Judge-Advocate	—	—	—	—
Prosecutor	Lieut.	G.F.D. Goldring	C.I.C.	3 CIRU.
Defending Offr	Lieut.	W.S. Lees	C.I.C.	3 CIRU.

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ~~—~~ Nil before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D + E. JAB

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. JAB

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)

(*1. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Ex. A.

CHARGE SHEET

The accused Number B136140, Private Mathew John ROBINSON, Canadian Infantry Corps on the strength of 3 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
ARMY ACT
SEC. 8(1)

WHILE ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER, BEING IN THE EXECUTION OF HIS OFFICE

In that he,

at Scarborough, Yorkshire, at about 2330 hours the 13th day of May 1944, struck with his fist in the face M-1102 L/Cpl Fowler, J., Canadian Provost Corps, who was at the time escorting him in close arrest to a Police Station.

SECOND CHARGE
ARMY ACT
SEC 9(2)

WHILE ON ACTIVE SERVICE, DISOBEYED A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

In that he,

at Scarborough, Yorkshire, at about 2330 hours on the 13th day of May, 1944, did not put on his battle dress blouse and cap, when ordered to do so by M.1102 L/Cpl Fowler, J., Canadian Provost Corps.

THIRD CHARGE
ARMY ACT
SEC 10(3)

WHILE ON ACTIVE SERVICE, RESISTING AN ESCORT WHOSE DUTY IT WAS TO HAVE HIM IN CHARGE

In that he,

at Scarborough, Yorkshire, at about 2330 hours on the 13th day of May, 1944, while under escort of M.1102 L/Cpl Fowler, J., Canadian Provost Corps, resisted the escort by struggling.

A.S. Pearson

(A.S. Pearson) Colonel
Commander
3 Cdn Inf Rft Unit

In the Field
29th day of May
1944

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

J.R. Stewart Lough

In the Field
31 May 44

(J.R. Stewart Lough) Brigadier,
Commander "D" Group,
CANADIAN REINFORCEMENT UNITS.

Convening Officer.

JRB

Ex B.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-136140	Pte.		Mathew John	ROBINSON	3 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has ~~[illegible]~~ committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (date) 31 May 44 endorsed by me, ~~[illegible]~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[illegible]~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~[illegible]~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	J.M. BOWMAN (48 HIGHRS)	3 CIRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt. ~~An Officer~~	A.M. Mackenzie ~~to be detailed by O.C.~~	R Rgt C. 3 CIRU
Lieut ~~An Officer~~	R.A. Fairhead ~~to be detailed by O.C.~~	R Rgt C. 3 CIRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
—	—	—

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
—	—	—

On Active Service in the Fd

in England (Country.)

Date 31 May 44

J.R. Stewart Lough (Signed personally. RP 105 fn 2.)
(J.R. Stewart Lough)
Commanding "D" Group, Cdn Rft Units.
Convening Officer.

Brigadier (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

EX = C1

3 CANADIAN INFANTRY REINFORCEMENT UNIT

Medical Officers Certificate
K.R.(CAS) Para 567.

I certify that I have this morning examined No. B.136140

Pte ROBINSON, H. of 3 C.I.R.U. and in my opinion he is

fit / ~~unfit~~ to undergo trial by Court Martial.

Station Field

DATE 1 June 44

[illegible] Capt.
Medical Officer,
3 Cdn. Inf. Rft. Unit.

Ex. C.2

3 CANADIAN INFANTRY REINFORCEMENT UNIT

Medical Officers Certificate
K. . (Can) para 507

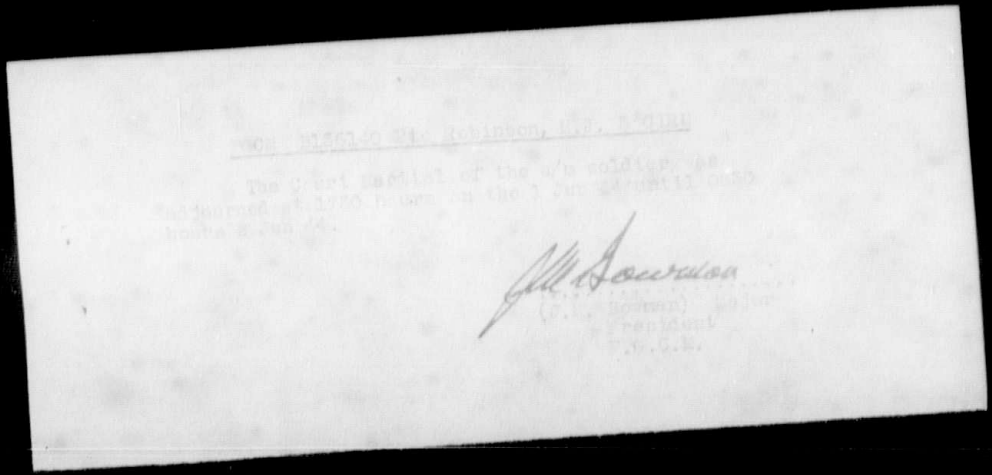
I certify that I have this morning examined No. B.156140 Pte. Robinson, M.J.
Name & Rank
of # 3 C.I.R.U. and in my opinion he is fit to undergo trial
xxxxx
by Court Martial.

Station Field.

Date 2 June 44

[signature]

G. D. Thorl Capt.
Medical Officer
3 Cdn. Inf. Reinf. Unit.



Ex D

Evidence in the case of

B-136140 Private Mathew John Robinson

3 Canadian Infantry Reinforcement Unit

1st Witness

Questioned by the Prosecutor

Q. You are M-1102 L/Cpl. Fowler, J., Canadian Provost Corps, on the strength of No. 7 Canadian Provost Coy. and are stationed at "D" Group?
A. Yes.
Q. Where were you stationed on May 13th, 1944?
A. At "D" Group.
Q. What duties did you have on the evening of May 13th?
A. We were on patrol in the town of Scarborough.
Q. And your general duties were?
A. To see that the town was in order and also the dance halls.
Q. Did you go to the Royal Hotel and what happened while you were there? Did the proprietor ask you to go outside for any reason?
A. Yes sir. There was a Canadian soldier there with his hat and tunic off arguing with the proprietor.
Q. Is that soldier in court today?
A. Yes sir.
Q. Did you know his name and number?
A. Idid not know the name and number of Robinson.
Q. Just what took place outside the dance hall?
A. He had no hat and tunic on and was arguing with the proprietor of the dance hall and trying to crash the gate.
Q. Did Pte. Robinson have his hat and tunic with him?
A. It was lying on the pavement, sir.
Q. Were there any more Provost with you?
A. There was Pte. St. Laurent.
Q. What did you do after you went out there?
A. I asked the accused what the trouble was all about.
Q. And how did the accused answer you?
A. He would not answer me at all.
Q. What did you do to Pte. Robinson?
A. He had his hat and tunic off and I immediately told him to put his tunic and hat on.
Q. Did he do that?
A. No.
Q. What did you do then?
A. He started to curse me.
Q. Do you remember any swear word that he used to you?
A. Yes. I do not have to do anything for a bunch of yellow Provost bastards.
Q. Then what did you do?
A. I had one of the bystanders pick up his coat and hat.
Q. What did you do to Pte. Robinson then?
A. We forced him to put it on.
Q. Who do you mean be we?
A. Pte. St. Laurent and two soldiers and myself.
Q. Had you seen Pte. Robinson at any time before that night?
A. No sir.

JHB

EXD

Q. What did you do next?
A. I asked him for his Pay Book.
Q. Did he produce it?
A. No sir.
Q. What did you do next?
A. I told him he was under close arrest.
Q. What followed after that?
A. He still refused to show his Pay Book.
Q. Then what followed?
A. Then we started to escort him down to the city police station.
Q. Anything happen then?
A. We got down about 50 yards on the sidewalk and he hit me in the face.
Q. How did he hit you?
A. He was walking on my left side and hit me with his fist.
Q. Where was Pte. St. Laurent?
A. Behind me.
Q. What happened after that?
A. As soon as he hit me he broke and ran forward.
Q. What did you do?
A. I tried to overtake him.
Q. Then what happened?
A. I saw a policeman down the street and hollered to him to stop Robinson.
Q. Did the policeman do that?
A. Yes.
Q. Then what took place?
A. Pte. Robinson lay down on the ground of his own accord and started to curse the Provost and the police.
Q. What happened then?
A. He complained that the Provost had broken his wrist.
Q. How can you finish the rest of the story.
A. Two or three minutes after this the Provost truck arrived and Cpl. Dyre, St. Laurent and myself lifted him on to the truck.
Q. Where was Cpl. Dyre?
A. Cpl. Dyre was in charge of our detail in Scarborough that day.
Q. Had Cpl. Dyre been present at any time?
A. He drove up with the truck.
Q. What did you do with Robinson from then on?
A. We took him to the police station to have his wrist looked at by the 1st Aid personnel who said that there was nothing the matter.
Q. At what time did you go out to the Royal Hotel?
A. At 2330 hours.
Q. What did you do with Pte. Robinson after you left the police station.
A. We left him there for about thirty minutes and he still complained of his wrist, following which we returned him to 3 C.I.R.U. at Nawton Camp. We took him to the R.A.F. were a First Aid man examined his wrist and said there was nothing wrong with it, but Pte. Robinson continued to complain. The Medical Officer was awakened and examined the wrist and certified in writing that there was nothing wrong.
Q. Anything more you would like to add to this?
A. Nothing sir.

JMB

Ex. D

Pte. M. J. Robinson

Cross-examined by the Defence

Q. How do you know that this was the approximate time?
A. I made enquiries about the time after I put the accused under close arrest.
Q. How long was it between the time you came out of the hotel and the time you placed the accused under arrest?
A. Five minutes.
Q. You said you were in the hotel and the proprietor called you out?
A. Yes sir.
Q. Had you been outside the hotel other than before being called out by the proprietor?
A. On different occasions I was outside.
Q. Did you see the accused outside the hotel with his battle blouse off before you ordered him to put it on?
A. No sir.
Q. Did you notice what state the accused was in?
A. He seemed to know what he was saying. If he had been drinking he could not have run away like he did.
Q. Why did you mention the fact "If he had been drinking"? Was there anything about the accused to lead you to think that he had been drinking?
A. Yes. A soldier in his right mind would not have had his hat and tunic off. My first impression was that he was drunk and then after I talked to him he seemed to be in his right mind.
Q. In your opinion had he been drinking?
A. I couldn't tell you.
Q. By couldn't, you mean not able or would not?
A. I did not smell his breath, I did not know whether he had been drinking or not.
Q. What was the closest you came to him all evening?
A. I had ahold of him.
Q. Do you know the smell of liquor?
A. Yes.
Q. When you first saw the accused what was his general attitude?
A. Quarrelsome mood.
Q. Did he do anything that would lead you to believe that he was not in a quarrelsome mood? Any show of friendship?
A. Not towards us.
Q. What pocket of his tunic was his Pay Book in?
A. I couldn't tell you.
Q. Was it an inside pocket or an outside pocket?
A. I don't know sir. I had nothing to do with taking the Pay Book from him.
Q. How did you take him under close arrest?
A. I had to put my hand on him.
Q. In what way?
A. I ~~gripped~~ grabbed ahold of his right arm.
Q. Have you a certain way of doing it?
A. No sir.
Q. Did you expect him to get away from your grip?
A. I don't know sir, we have to be pretty keen about anything like that.
Q. Therefore, too what degree did you hold him? Any pressure at all?
A. A good firm grip. He was calling us bastards and yellow. Provost and everything he could think of all the time.

JMB

Ex. D.

Q. Was it when you were holding him firmly that he complained of his arm being broken?
A. No sir.
Q. Which hand did he hit you in the face with?
A. With his left hand.
Q. Was his left hand open or clenched?
A. It would be clenched.
Q. What would you say if the accused could not clench his left hand?
A. I don't know.
Q. Could you see a policeman on the corner when you were approaching? How close to the corner?
A. I could see a policeman on the corner when I was thirty feet or so from the corner.
Q. How did the policeman stop the accused?
A. He grabbed him.
Q. Did the accused fall or be knocked down when he reached the policeman?
A. No.
Q. In the two or three minutes before the truck came what was going on?
A. There was a big gathering there. I was watching over him on the ground.
Q. What did you do when the truck came?
A. I stood up and flagged the truck and told the Cpl. what was going on.
Q. If you could not pick the accused up before how did you pick him up now?
A. Three or four of us picked him up and we put him in the truck.
Q. Was any force used in putting him in the truck?
A. No sir.
Q. Whereabouts was he in the truck immediately after you put him in?
A. He was sitting on the seat.
Q. Where did you go then?
A. To the police station.
Q. How far?
A. About 300 yards.
Q. WHo all did you take into the police station with you?
A. The accused and Provost personnel.
Q. How long were you in the police station?
A. Approximately 20 or 25 minutes.
Q. Where there other personnel similar to the accused left in the truck while you went into the police station?
A. I don't know sir.
Q. When did the accused ~~xxxxxxx~~ hurt his wrist?
A. Sometime after he was caught by the policeman.

JMB

R.P. 83 "B" has been complied with

[signature] Major

F.D.

2nd Witness

Questioned by the Prosecutor

Q. You are H-195070 L/Cpl. St. Laurent, M., Canadian Provost Corps?
A. Yes sir.
Q. On the 13th May, 1944, what was your rank?
A. Private sir.
Q. Where were you attached?
A. To No. 7 Canadian Provost Coy. under the control of "D" Group.
Q. What duties were you given that night?
A. We were supposed to patrol the town of Scarborough.
Q. Who were you working with?
A. L/Cpl. Fowler.
Q. Did you go to the Royal Hotel?
A. Yes.
Q. Were you present when L/Cpl. Fowler was called out of the hotel by the proprietor? Were you included in the request?
A. Yes.
Q. When you were outside what did you find?
A. We found the accused with his tunic ~~xxx~~ off and also his cap.
Q. Did you know the name of the accused?
A. Yes. Robinson.
Q. Is this person the same person you saw that night?
A. Yes.
Q. Will you describe what was happening outside?
A. Apparently he wanted to go into the hall but they would not let him.
Q. Did you know why?
A. It was after hours.
Q. What happened after you were outside?
A. L/Cpl. Fowler asked him to put his tunic and hat on and he refused. Two or three minutes later he ordered him to put it on and he still refused.
Q. Tell us what happened while you remained outside the hall.
A. L/Cpl. Fowler finally persuaded him to put his hat and tunic on and asked him for his Pay Book and he refused to give his Pay Book
Q. Can you tell us something of his manner of refusing?
A. He said that he was not going to give to any yellow Provost.
Q. What else happened?
A. L/Cpl. Fowler placed him under arrest and was taking him along to the police station and the accused hit L/Cpl. Fowler and ran up the street.
Q. Was there a struggle before he hit L/Cpl. Fowler?
A. No.
Q. Then what happened?
A. Then he ran up the street and we went after him. There was a civilian policeman at the corner and L/Cpl. Fowler yelled at him to catch the prisoner. He did that.
Q. When you started to take the accused to the police station who did the taking?
A. L/Cpl. Fowler.
Q. Where were you?
A. I was behind.
Q. When the accused was stopped by the policeman what took place?
A. He just flopped on the street.
Q. Did he do this of his own accord?
A. Yes of his own accord.
Q. What happened after this?

J40

EX.D

A. We loaded him on our 15 cwt. and took him to the police station.
Q. Who did you mean by we?
A. L/Cpl. Fowler and I and our driver L/Cpl. Olinek.
Q. Who was in charge of your detail that night?
A. Cpl. Dyer.
Q. Where was he?
A. On some other patrol.
Q. Was he there at the time?
A. No he was not.
Q. Was he there when you put the accused on the truck?
A. Yes he was.
Q. How did the accused carry on while lying on the ground?
A. He complained of a broken arm and was hollering for an M.O.
Q. Where did you take him in the truck?
A. To the police station.
Q. What did you do there?
A. We took him there and had his arm examined by a First Aid man at the police station.
Q. Then what happened?
A. We brought him back to 3 C.I.R.U., Nawton Camp, and had him examined by the First Aid orderly at the R.A.P. The orderly said there was nothing and at his request we had him examined by the M.O. who also said there was nothing wrong.
Q. Which wrist was he complaining of as broken?
A. Right one and in the R.A.P. he complained that both of them were hurting him.
Q. Except for striking L/Cpl. Fowler did he resist you or the escort in any other way?
A. No.

Cross examined by the Defence

Q. What time did the proprietor call you to the front door of the Royal Hotel?
A. At approximately 2330 hours.
Q. What time does the dance end at the Royal Hotel?
A. At 12 o'clock.
Q. Are you sure?
A. It was that evening sir.
Q. What time is the dance supposed to end?
A. I don't know, the manager told us it would end at 12 o'clock.
Q. Did you know why the accused had his hat and tunic off?
A. No.
Q. Was he engaged in repairing any part of his clothing?
A. I didn't notice that sir.
Q. How far away was his tunic from him?
A. I would say about six feet away.
Q. Where was it?
A. Lying on the pavement.
Q. Are you absolutely sure it was not hanging up beside a store?
A. It was on the pavement.
Q. In your opinion had the accused been drinking?
A. I wouldn't know that sir.
Q. How close did you come to him during the evening?
A. Quite close to him.
Q. Were you sitting next to him on the truck at any time?
A. No.
Q. What was the attitude of the accused when you first saw him?

J 213

Ex. D.

A. He was mad sir.
Q. Could you think of any reason why he should be mad?
A. Apparently they would not let him in the hall and he was mad at the man at the entrance.
Q. Did the accused at any time shake hands with you?
A. Not with me.
Q. Did he shake hands with anybody?
A. I never noticed.
Q. How did L/Cpl. Fowler take hold of the accused when he put him under close arrest?
A. By the right arm.
Q. In what manner?
A. I wouldn't know the manner. I was not watching them closely. He had his hand under the accused's right arm.
Q. Did the accused resist at all?
A. No he was walking along with L/Cpl. Fowler.
Q. Did you hear the accused say that L/Cpl. Fowler was hurting him?
A. No.
Q. It was then was it that the accused struck L/Cpl. Fowler?
A. Yes sir.
Q. Up to now had you heard any cursing or swearing on the part of the accused?
A. Yes.
Q. What did he say?
A. He called L/Cpl. Fowler a yellow Provost son of a bitch.
Q. Anything else?
A. There was other words though he was cursing quite a lot.
Q. Did he call L/Cpl. Fowler a bastard?
A. Not that I know of.
Q. Did you leave the scene at any time?
A. No.
Q. When you were approaching the corner did you see a civilian policeman on the corner?
A. Yes.
Q. How did the policeman stop the accused?
A. Caught him in his arms.
Q. In this action, did the accused go to the ground?
A. Yes.
Q. How?
A. He just slumped down.
Q. Would you say his legs gave way?
A. No, I think he did it on his own accord.
Q. That is what you think?
A. Yes.
Q. Was there anything to keep the accused from getting up?
A. No there was not.
Q. Where was L/Cpl. Fowler?
A. He was right there with him. He was standing up near the accused.
Q. Was he touching him?
A. He was holding his wrist.
Q. In what manner? How firmly was L/Cpl. Fowler holding his wrist?
A. I would not know that.
Q. If the accused evidently did not endeavour to get up why was it necessary to hold on to his wrist?

JWB

Ex: D.

A. He saw he might spring away from him.
Q. When did you say the accused first complained of his wrist?
A. When he was lying on the pavement after the policeman caught him.
Q. When did he xxxxx hurt his wrist?
A. I don't know even if it was hurt.
Q. Do you consider the accused was in a clear state of mind?
A. Yes.
Q. Did you help put him in the truck?
A. Yes.
Q. How did you put him in?
A. Lifted him in.
Q. Could I use the word push there?
A. No.
Q. Immediately after you put him in the truck what was his position in the truck?
A. He was sitting on the seat.
Q. Were you worried about his wrist?
A. No we were not worried over it because we knew there was nothing wrong with it.
Q. After you left the police station, how did the accused get into the truck?
A. We lifted him in there again.
Q. Similar to last time?
A. Yes.
Q. Where was he immediately after putting him in the truck?
A. He was lying down on the floor of the truck.
Q. Why?
A. There was no other room for him.
Q. Where other people standing in the truck? Was the accused the last one in the truck?
A. No he was not, we picked up another lad on the road.
Q. Did he stand up?
A. No he sat upat the end.
Q. Did you sit on a seat?
A. Yes.
Q. Did you get on the truck before the accused?
A. Yes.

Q. You say that L/Cpl. Fowler ordered the accused to put on his coat and hat?
A. Yes.
Q. Now after he had ordered the accused to put on his tunic did he put xx on his tunic?
A. With the assistance of the L/Cpl. he was assisted on with his jacket a short time later.
Q. In your own mind would you say the accused put on his tunic or that he took his own time putting it on?
A. He took his own time putting it on with the aid of the L/Cpl.

Questioned by the Court

Q. Did you see the accused strike L/Cpl. Fowler?
A. Yes.
Q. Where was L/Cpl. Fowler struck?
A. Around the mouth.
Q. Did you hear the accused complain of a sore wrist or any pain of any kind before the blow was struck?
A. No.

J.M.B

R.P. 83 B has been complied with

EX. D

Pte. M. J. Robinson

1st Witness for the Defence

Questioned by the Defence

Q. You are B-136140 Private Robinson, Mathew John, Canadian Infantry Corps, on the strength of 3 C.I.R.U.
A. Yes.
Q. How old are you?
A. twenty.
Q. When did you join the army?
A. November 28, 1942.
Q. Therefore you had just turned 18?
A. Yes sir.
Q. When did you come Overseas?
A. 7 April, 1944.
Q. On May 13th, 1944, you went by bus to Scarborough?
A. Yes sir.
Q. Who was with you?
A. Pte. Slonecky, Pte. Barnes, Pte. Robaidoux, Pte. Ross, Pte. Wickiam and Pte. Warnholz.
Q. When did youarrive in Scarborough?
A. About 5 o'clock.
Q. What did you do first?
A. Went to a N.A.A.F.I. and had something to eat.
Q. What did you do next?
A. Went to a hotel.
Q. What did you do there?
A. We drank beer, gin and wine. We went to three or four different places.
Q. Over what period of time were you drinking?
A. From approximately 5:30 until approximately 10:15.
Q. What type of liquor where you drinking over the period of the evening?
A. Gin, wine and beer.
Q. What state were you in when you left the last bar?
A. I was drunk.
Q. Had you all been drinking?
A. No sir. Pte. Warnholz and Pte. Slonecky only drank beer and not much of that.
Q. After leaving the last hotel what did you then do?
A. We started off to the Royal Hotel. I was at the last of the bunch with Pte. Robaidoux. On the way down Pte. Robaidoux and myself stopped about 100 yards from the Royal Hotel to talk to two girls. In five minutes or so we went on to the Royal Hotel. We arrived there and the proprietor told us we were too late.
Q. What time was that?
A. Just a little after 10:30 because they told us the time and said there was no more tickets.
Q. Then what happened?
A. My friends Pte. Ross and Pte. Wickiam had gone into the dance and I asked the proprietor if he would kindly call Ross' name over the microphone in order to see if he was going to stay or go with us because we could not get in. I stayed there for a few minutes talking to the proprietor and Pte. Warnholz. Then Fowler came out of the door and started pushing me back and saying I would have to move on. I told him I was waiting for my friend that they were announcing over the microphone

JMB

Ex. D.

Pte. M. J. Robinson

and that made no difference as far as they were concerned. The next thing I remember was shaking hands with ~~xxxx~~ one of the Provost.

Q. And then what happened? When did you first take your tunic off?

A. I don't remember taking it off but I do remember shaking hands when it was off. One of the Provost, Pte. St. Laurent, refused to shake hands.

Q. What was your general attitude at this time?

A. I was ready to leave and was in a friendly attitude. I asked Pte. St. Laurent if he thought he was too good to shake hands with a common private; his being a Provost. The next thing I remember was my tunic being helped on me and as I was buttoning it up, L/Cpl. Fowler grabbed my wrist.

Q. How did he take hold of your wrist?

A. He roughly took hold of my right wrist.

Q. What degree of strength did he use?

A. Heavy pressure. I continued buttoning my tunic up and we started walking down the street. He then put his left wrist under my right wrist and started to force my hand down over his wrist. He put a lot of pressure on it and it was hurting me quite a bit. I asked him to leave go so I could walk on my own as I did not need any assistance or anybody hurting me. I told him several times in the few minutes we walked. I brought my left arm around and hit him in the face and pushed him away.

Q. Was your left hand clenched?

A. No sir.

Q. Why?

A. Because my 4th and 5th fingers have been broken and I cannot close my fist.

Q. What happened then?

A. As soon as I hit him he let go of the pressure on my wrist and I started to run.

Q. What happened then?

A. I ran down the street towards the main street and I came to the corner where there was traffic coming the opposite way; I swung around the corner grasping a lamp post and ran smack into a policeman.

Q. Where was the policeman?

A. Just around the corner. I ran into the policeman and fell down and when I fell down L/Cpl. Fowler came around the corner grabbing my right arm and kneeling beside me he forced my right arm down to keep me down. I asked him to let me up and he told me to stay where I was. Then the ~~xx~~ 15 cwt. wagon pulled up and the Provost assisted me over to the truck and I landed face down at the back of the truck.

Q. What happened next?

A. The next thing I remember, we were on our way back to Camp and they were cursing me and abusing me.

Q. In what way were they abusing you?

A. They were sitting on both sides of me and kicking me with their feet, not hard but annoying. I asked them to stop but they would not.

Q. What happened next?

A. We arrived in Camp Nawton, 3 C.I.R.U., and went to the guard house. I had been complaining about my wrist and I asked to see the M.O. They took me down and an orderly was there and looked at my wrist and said it

EX. D.

Pte. M. J. Robinson

was alright but it pained me quite a bit and I asked to see the M.O. The M.O. came in and looked at my wrist and moved my hand a bit and said my hand was alright. It seemed to me that it was swollen so I put my wrist up to show him the difference but he said it was all right.

Q. When did your wrist first bother you?
A. When L/Cpl. Fowler took hold of me when placing me under close arrest. It was at the time he commenced to bend it down with his other wrist.
Q. Do you remember at any time cursing or swearing at the Provost.
A. No sir.

Cross examined by the Prosecutor

Q. Have you ever been to Scarborough before?
A. No sir.
Q. Why did you go there?
A. To have a few beers with my friends and to see what the town was like.
Q. How many do you consider a few?
A. Five to ten large glasses.
Q. What was it that persuaded you to stop in the pubs?
A. We met a couple of girls who told us there was a dance at the Royal Hotel and that there would be no fun starting until 10 or 11 o'clock. My intention was to go to the dance and, since I did not dance myself, I wanted to meet a girl and take ~~her~~ her home afterwards.
Q. Did you stay with these girls all that time?
A. We met them on the street and they left us shortly afterwards.
Q. How much gin did you have to drink altogether?
A. Over five and possibly, for all I know, more than ten and I was also drinking approximately one beer to every two gins.
Q. Is drinking at this rate a habit of yours?
A. No.
Q. Have you every been drunk before the 15th May?
A. Once back in Canada.
Q. When you left the pub to go to the dance where you in a cheerful frame of mind?
A. Yes.
Q. What feeling did you get when you were refused admittance to the dance?
A. I was disappointed.
Q. Were you upset?
A. Not exactly, but I wanted to get in and I dismissed it from my mind once I knew I could not get in.
Q. Why did you take your tunic off?
A. That is something I do not remember.
Q. Were you wearing your belt and cap when you left the pub?
A. Yes.
Q. Have you seen them since?
A. No.
Q. Do you recollect whether your conduct had any impression on the proprietor?
A. We were talking and it did not seem to annoy him.
Q. Did you see the Provost come out of the hall?
A. Yes sir.

JH13

EX-D

Pte. M. J. Robinson

Q. What were you doing?
A. I was talking to Pte. Warnholz and the proprietor of the hall.
Q. What did the Provost say to you?
A. He started to push me and told me to move on.
Q. Did you see that he was a Provost L/Cpl.?
A. Yes.
Q. Do you know the general duties of the Provost personnel.
A. To keep order generally.
Q. What must you do to orders given by a L/Cpl.?
A. Obey them sir.
Q. Do you remember being told to put your tunic on?
A. No.
Q. Do you know what you are to do when placed under arrest?
A. To go along peacefully with the escort.
Q. Why did you hit L/Cpl. Fowler?
A. Because he was hurting me.
Q. Why did you run?
A. The pain in my hand lessened and I wanted to get away from him before he grabbed my wrist again.
Q. Do you remember being ordered to put your tunic on?
A. No one told me but someone held it up and helped me put it on.

A.P. 93 B. has been complied with

Re-examination by the Defence

Q. Do you know x now why you took your tunic off?
A. It seems that my braces had been broken but I am not sure and sort of vague about it. When I got to the guard-house they were attached in belt fashion. There was also three braces' buttons off my pants.
Q. Do you know how much you spent on liquor that evening?
A. I am not sure.
Q. Did you take the smell of liquor from your breath?
A. No.

2nd Witness for the Defence

Q. You are A-106735 Pte. Warnholz, J. A.,
A. Yes sir.
Q. Of the Canadian Infantry Corps on the strength of 3 C.I.R.U.?
A. Yes sir.
Q. On the 13th of May, 1944, did you proceed to Scarborough in the company of the accused?
A. Yes sir.
Q. At approximately what time did you arrive in Scarborough?
A. I am not quite sure of the time sir but I think it was a little after 6 o'clock.
Q. It was on the same bus as the accused?
A. Yes sir.
Q. What did you do on arriving in Scarborough?
A. I think we went to a pub first and then we went to a N.A.A.F.I. then started out going from pub to pub.
Q. Did you have anything to drink at these pubs?
A. I had a couple of glasses of beer sir.
Q. Did you see the accused drinking at the pubs?
A. Yes sir.
Q. What did you see him drinking?
A. I seen him drinking beer and liquor, white spirits. I believe it was gin.
Q. Did the accused drink much during the evening?

EX. D.

A. I would say he put away seven or eight shots during the evening.
Q. What time did you leave the last pub?
A. Well sir, I would say around 9:30.
Q. Do you know the exact time?
A. No sir.
Q. Do you know what time the pubs close?
A. No sir I don't.
Q. In relation to the time of closing of the pubs ~~xxxx~~ when would you say you left?
A. I don't know sir. Will you say that again sir.
Q. In relation to the time of closing of the pubs when would you say you left?
A. Around the time the pub closed.
Q. What was the state of the accused at that time?
A. Drunk sir.
Q. What leads you to this conclusion?
A. Being close to him all evening. By his actions I could see he was getting drunker all the time.
Q. Where did you go on leaving the last pub?
A. Up to the Royal Hotel.
Q. What happened then?
A. When we arrived there we found we could not get in without tickets.
Q. Did any of your friends gain admission to the dance?
A. Yes sir.
Q. Who gained admission?
A. Pte. Barnes, Pte. Ross and Pte. Wickham.
Q. What were the actions of the accused at this time?
A. He got somebody to call for Pte. Ross.
Q. What was his general attitude at this time?
A. His attitude was good. He was not after any trouble or anything like that.
Q. Then what happened?
A. I then drew his attention to the fact that his pants were slipping and I walked him over to the side of a building and he took his tunic off and hung it on a door knob. While he was fixing his pants a L/Cpl. and Pte. Provost came over.
Q. What happened then?
A. One Provost told him to put his tunic on and Robinson said something to him about fixing his pants and the Provost helped him put it on.
Q. Then what happened? What was the attitude of the accused when the Provost was helping him on with his tunic?
A. His attitude was all right.
Q. Did the accused make any show of friendship?
A. Yes sir.
Q. In what way?
A. He shook hands with the L/Cpl. Provost and tried to shake hands with the Pte. Provost who refused.
Q. Then you say the Provost took hold of him?
A. Yes sir.
Q. Which Provost?
A. The L/Cpl. Provost.
Q. Why did he take hold of him?
A. To take him along with him.
Q. Under what circumstances? Would the circumstances lead you to believe that the accused was under arrest?
A. Yes sir.
Q. Why?
A. Because of the way the Provost grabbed his wrist.
Q. Did you hear whether or not the Provost declared him to be under close arrest?
A. No sir.

JHB

Ex. D.

Pte. M. J. Robinson

Q. How did the Provost take ahold of the accused?
A. He took hold of ~~xxx~~ his right wrist while the accused was buttoning his tunic.
Q. Can you describe in what manner?
A. I don't know.
Q. Did the accused object to being so held by the Provost?
A. He was hollering about his wrist, asking the Provost to let go, that he was hurting him.
Q. From what you could see was there any basis for the accused so objecting?
A. Yes sir.
Q. Then what happened?
A. Then they started marching down the street.
Q. Yes?
A. I followed them a ways down the street, turned around and when I turned back the accused was running down the street.
Q. How far did he run?
A. He run to the corner. By the time I got to the corner the accused was lying on the ground and the Provost was kneeling down holding the accused down.
Q. Did you see under what circumstances the accused reached the ground?
A. No sir.
Q. What was the behaviour of the accused while in this position?
A. He was just laying there making an awful noise about his wrist. That it was hurting him. He was hollering. "Take me to a Doctor".
Q. Then what happened?
A. One Provost said to the other Provost, "Phone for the truck".
Q. Did the truck come?
A. Within about 10 or 15 minutes.
Q. What happened in the meantime?
A. The accused remained on the sidewalk with the Provost holding him there and a crowd was gathering.
Q. What happened when the truck arrived?
A. The two Provost with assistance threw him in the truck.
Q. In what manner?
A. He ended up flat on the floor of the truck.
Q. Then what happened?
A. Then I went back to the hotel to look for my friends and returned to the truck.
Q. How long did that take?
A. About five minutes and the truck was gone when I got there.
Q. When did you next see the truck? How did you get back to camp?
A. I drove from Scarborough to Helmsley in the truck with the accused.
Q. During the evening did you hear the accused cussing or swearing?
A. No sir.

Cross examined by the Prosecutor

Q. Pte. Warnholz were you with Robinson when you left the last pub?
A. Yes sir.
Q. Where you ever out of earshot?
A. Part of the time
Q. How many of you were there?
A. Seven of us. We were trying to pick up some girls.
Q. Did you hear Robinson trying to get into the dance.
A. No.

Ex. D.

Q. Do you know whether he was in a friendly mood or an angry mood?
A. I would say in a friendly mood.
Q. Did you hear the discussion with the proprietor?
A. No sir.
Q. Were you with him when the Provost arrived?
A. Yes sir.
Q. Tell us what happened when they got there?
A. He was fixing his pants.
Q. Did you hear an order given to put that jacket on?
A. Yes sir.
Q. How many times?
A. Once for sure.
Q. More than once?
A. I don't know.
Q. Did Robinson refuse to obey the order?
A. He did not refuse.
Q. Did the Provost seem in a hurry about what they were doing?
A. No sir.
Q. Then would you say that the Provost helped him put the jacket on rather ~~rx~~ than give further orders?
A. Yes sir.
Q. Did you see this blow struck?
A. No sir.
Q. Did you see the accused struggling with the Provost at all?
A. While he was lying on the sidewalk he was trying to get up.
Q. Did you see the accused run from the Provost?
A. Yes.

Courts Witness

Q. During the course of this whole episode you heard no swearing?
A. No sir.

R. P. 83 B has been complied with

3rd Witness for the Defence

Q. B-136186 Pte. Barnes, C. U., Canadian Infantry Corps, 3 C.I.R.U.?
A. Yes sir.
Q. Were you in the party with the accused on the evening of 13th May, 1944?
A. Yes sir.
Q. Did you have anything to drink during the evening?
A. Yes sir. I had some beer and a couple of shots of gin.
Q. Did you see the accused drinking?
A. He had some. I think he had quite a bit.
Q. What makes you think he had quite a bit?
A. He could not walk to steady sir and the party was getting pretty loud because we started to sing.
Q. Over what period of time was the accused drinking?
A. I'd say from around about 6:30 till 10 o'clock.
Q. Where did you go after leaving the last pub?
A. We walked down the street a couple of times and stopped in front of the dance hall.
Q. Did you go in?
A. Yes sir. Along with Ross.
Q. After going in the dance when did you next see the accused?
A. About twenty minutes later.

JHB

Ex. D.

Pte. M. J. Robinson

Q. What happened then?
A. I heard the call come over the P.A. system for Ross.
Q. Yes. Ken?
A. I came out then and was with the boys from then on.
Q. Did you then see the accused?
A. I saw the Provost apparently trying to get him to move on.
Q. In what way were the Provost requesting the accused to move?
A. The Provost asked us if we could handle him.
Q. How was the accused dressed at this time?
A. He was properly dressed.
Q. Did you see the accused remove his tunic and cap?
A. No sir.
Q. Did you see the accused with his tunic and cap on?
A. Yes sir.
Q. Did you see any signs of friendliness by the accused?
A. Yes sir.
Q. What were they?
A. He asked the L/Cpl. to shake hands and he did. He asked the Pte. Provost to shake hands and he just turned his back xx to him and walked away.
Q. When did the accused put his tunic back on?
A. He fixed his suspenders.
Q. Did he put his tunic on?
A. I am not sure about the circumstances under which the tunic was put back on. My full attentions were not on the proceedings.
Q. Did you hear any orders by the Provost?
A. No sir.
Q. What did you next see?
A. I saw nothing after that. I went on down the street with Ross and around the corner.
Q. When did you next see the accused?
A. I saw him in the guard-room approximately a week later.

Cross examined by the Prosecutor

Q. Pte. Barnes did you hear the Provost or anybody order Robinson to put that jacket on?
A. No sir.
Q. Did you see the blow struck?
A. No sir.
Q. Did you see him run?
A. No sir.

R.P. 83 B has been complied with
[signature]
Major

4th Witness for the Defence

Q. B-79270 Sgt. Moore, J., Irish Regt. of Canada, on the strength of 3 C.I.R.U.?
A. Yes sir.
Q. Where were you on the evening of May 13th, 1944?
A. Scarborough sir.
Q. Did you see the accused on that evening?
A. Yes sir.
Q. Under what circumstances?
A. Two Provost was bringing him to a truck. They were rushing him to the truck. The two Provost had hold of him, one on each arm. He was begging for mercy at the time. Quotation. "Please don't hit me any more. You are breaking my arm. Don't hit me, don't hit me, don't hit me."
Q. What happened then?
A. They brought him up to the truck then they heaved him in and he fell forward with his face down, towards

J.M.B.

Ex. D.

the front of the cab.
Q. Yes?
A. He lay there until we got there.
Q. Where were you while this was going on?
A. Sitting in the truck.

The Prosecutor Re calls the 1st Witness for the Prosecution; L/Cpl. Fowler

Q. How many times did you have dealings with Robinson this Saturday night?
A. Just once sir.
Q. When you came out of the hotel was he fixing his pants?
A. He was arguing with the proprietor of the dance hall sir. He was not fixing his pants.
Q. Did you see him fixing his pants at any time?
A. Not that I know sir.
Q. How many times had you told him to put his jacket on?
A. Two or three times.
Q. Did you not help him put his jacket on?
A. Yes sir.
Q. Will you tell the court the method of holding Robinson before you were struck?
A. I just took him by the arm.
Q. Will you tell us how you held him after you were struck?
A. My hand on his shoulder. I was kneeling down.
Q. Will you tell us the manner in which you put Robinson on the truck?
A. I had hold of his arm-pits and two other Provost had him by the legs and we lifted him that way and put him in gently.
Q. At any time did you shake hands with Pte. Robinson?
A. No sir.
Q. Did you see him offer to shake hands with anybody?
A. No sir.

Cross examined by the Defence

Q. At any time during the trouble did you use your other hand in holding the wrist of the accused?
A. No sir.
Q. If I was to suggest to you that there was evidence to the contrary what would you say to that?
A. The evidence would be wrong sir.
Q. Are you in a position to say whether or not there was anything wrong with the pants or suspenders of the accused?
A. No.
Q. So that if there was something wrong in that regard you are not in a position to deny it?
A. If there was something wrong at the time, the accused made no effort to fix it.
Q. Did you see the accused take his tunic off?
A. No sir.
Q. Then it is quite possible that sometime between the time he took his tunic off and the time you first saw him that he did fix his suspenders?
A. I don't know.

JLNB

R.P. 83 B has been complied with

JM Bowman Major

Ex. E

SUMMARY OF EVIDENCE

In the case of Number B-136140, Private ROBINSON, Mathew John, Canadian Infantry Corps, on the strength of 3 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this summary of Evidence is taken on Oath

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FIRST WITNESS FOR THE PROSECUTION

M-1102 L/Cpl Fowler, J., Canadian Provost Corps, on strength of 7 Canadian Provost Company, having been duly sworn, states:

I am M-1102 L/Cpl Fowler, J., Canadian Provost Corps, on strength of 7 Canadian Provost Company. At approximately 2330 hrs on the 13th of May, 1944, in company with H-195076 L/Cpl St. Laurent, M.I., was in the Royal Hotel, Scarborough on duty to supervise conduct at the dance that evening. While at the dance hall, the proprietor of the hotel called to us to go outside. This we did and found a Canadian soldier, whom I now recognize as the accused, with his battle-dress blouse off and his cap off and who was making a disturbance on the street outside the dance hall by cussing and swearing at the proprietor who refused him admittance to the dance. I spoke to the accused and ordered him to put on his tunic and cap, to behave himself and go away. The accused then started to curse me by saying "You bunch of yellow provosts" - "I can lick you if you want to fight" and he refused to put on his tunic and cap which were laying on the pavement about six or seven feet away. I finally got some soldiers to pick up his tunic and we put it on him. I then asked the accused for his paybook (MBM I Pt III) and he refused to show it to me saying "I won't show my book to any yellow provost son of a bitch". I then placed him under close arrest. While I was escorting the accused down the street to the police station, the accused hit me on the mouth with his left fist which stunned me for a moment. The accused then broke away from my grasp and started running down the street with me and L/Cpl St. Laurent, M., running after him. We chased him about one hundred yards and then I saw a policeman standing at a corner. I yelled to him and he was able to stop the accused and I took him into custody again. The accused then lay down on the sidewalk and refused to get up when I ordered him and he complained then of a broken wrist, which he said had been done by the provost. In a few minutes, our truck came along and with the help of two or three soldiers, L/Cpl St. Laurent and myself lifted the accused into the truck. He was all the time cursing and swearing and a big crowd of civilians and soldiers had gathered around. We then proceeded in the truck to the police station to see if the accused required any medical treatment and after the accused was examined, we were allowed to proceed on our way to Camp, no treatment having been given the accused. We arrived at 3 C.I.R.U. - Newton Camp - at approximately 0230 hours, the 14th of May, 1944. The accused still complained of his wrist. We took him to the guard room and then later to the M.O. We got a statement from the Medical Officer, Capt. Sellars of 3 C.I.R.U. who at the time said the accused was fit for duty.

M1102 J. Fowler
(J. Fowler) L/Cpl.

the accused declines to cross examine this witness

JMB

Ex E 1

SUMMARY OF EVIDENCE

In the case of Number B-136140, Private ROBINSON, Mathew John, Canadian Infantry Corps, on the strength of 3 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this summary of Evidence is taken on Oath

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SECOND WITNESS FOR THE PROSECUTION

H-195070 L/Cpl St. Laurent, M., Canadian Provost Corps, on strength of 7 Canadian Provost Company, having been duly sworn, states:

I am H-195070 L/Cpl St. Laurent, M., Canadian Provost Corps, on strength of 7 Canadian Provost Company. At approximately 2330 hrs, 13th of May, 1944, I was present at the Royal Hotel, Scarborough, with L/Cpl Fowler, on tour of duty at the Saturday night dance. I was with L/Cpl Fowler continually from the time that the proprietor of the dance hall called to us about a disturbance outside the dance hall where we met the accused until we delivered the accused into custody of the guard at 3 C.I.R.U. at approximately 0230 hours, the 14th of May, 1944. I saw the accused cursing and swearing outside the dance hall where he was standing without his battle dress blouse or cap. I saw him strike L/Cpl. Fowler in the face and break away and run down the street. I saw a Civil policeman in Scarborough apprehend the accused. Then he lay down on the street and refused to get up when ordered, stating he had a broken wrist caused by the provost. I helped load the accused into the truck which was passing and we took him to the Civil Police Station for medical treatment if necessary. From there we took the accused back to No. 3 C.I.R.U. where he saw the Medical Officer, Capt. Sellars, in my presence who stated there was nothing wrong with his wrist.

H195070 M St Laurent
.....
(M. St. Laurent) L/Cpl

The accused asks the following questions:

Q.1 - What was I wearing in place of my battle dress blouse?

A.1 - A shirt.

The accused having been warned according to Rules of Procedure 4(E) reserves his defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

.....
(Thomas E. Rogers) Capt.
Officer detailed to take Summary of Evidence.

In the Field
29th day of May
1944.

EX E 2.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence together with list of names and addresses of witnesses taken at Nawton, Yorks, on the 29th day of May, 1944, preliminary to my Field General Court Martial.

I further acknowledge that I have been served with a true copy of the Charges under which I am being brought to Court Martial.

B.136140 Pte. Robinson M.J.
(B.136140 Pte ROBINSON, M. J.)

Dated at Nawton Yorks,
this 29th day of May, 1944.

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.
I desire the services of Lt W S Lees — C.I.C 3 C.I.U.
if he is available.

B.136140 Robinson M.J.
(B.136140 Pte ROBINSON, M. J.)

Dated at Nawton, Yorks.
this 29th day of May 1944.

M.J.R.

B137340 Pte. Slonecky. C.
Witness as to Character

(Q) How long have you known to accused.
(A) 18 months.

Ex. H.

(Q.) Have you ever seen accused drunk on any other occasion
(A) No I have seen him with a few beers but never drunk
(Q.) How does accused act when having a few beers
(A) He is friendly with everyone.
(Q) Whould you say he would pick a fight easily
(A) No Sir, I have seen him hit before and he has never done anything about it, because he didn't want to

Cause any trouble. Page 2

- The accused has always appeared to me as good natured.

Ex. H.

[illegible] Major

Ex. F. Ex G.

No B136140 Name ROBINSON M.J. Sqn, Battery, or Company

Corps C.A.C.

Date of enlistment 30/11/42 GC Badges 1

Service or Proficiency Pay

3/17 MFM 6 (AFB 122) 4GF/23/136 (5413)

Date of last entry in Company Conduct Sheet NA

No. and date of last drunk NA

Period not reckoning towards freedom from extra fine NA

Sheet No 1

Signature OC Company, etc Sgd:RC Hodgins Captain Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing with trial	By whom awarded	Remarks
Camp Borden	17/1/44	TPR		SHEET DESTROYED 30-5-43; LAST ENTRY 11/5/43; NO CASES OF DRUNKENESS:- Sgd:-RC Hodgins Capt. AA 15(1) AWL from 0615 hrs 17-1-44 till 1000 hrs 27-1-44 (10 days 3 hrs 45 mins) Apprehended.	Documentary.	28 days Det'n	1-2-44	Lieut.Col. J. Begg.	Forf 11 days pay FR&I 149 (1a),28 days FR&I 149(1b)
Camp Borden	26/5/43	TPR		Having been brought before the Police Magistrate,Toronto, on 16-6-43,was sentenced to be imprisoned in Ont. Reformatory,Guelph, for the term of 3 months.		3 months' Reformatory.	16/6/43	Police Magistrate Toronto.	(Init:I.F.)
				AWL whilst a defaulter, from 2200 hrs 14-5-43 until apprehended by Civil auth. in Toronto at approx. 0130 hrs 26-5-43 dress in civ.Clothes.		14 days C.B.	28/9/43	Lt.Col. J.Begg	Forf 12 days pay FR&I 149 (1a)

JMB

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	11/10/43	TPR		AA 40 Conduct to the Prejudice, etc AA 15(1) AWL from 2240 hrs 11-10-43 to 2240 hrs 14-10-43 (3 days 16 hrs 55 mins) Close Arrest from 2240 hrs 14-10-43 to 1400 hrs 15-10-43 (4 days 16 hrs 40 mins)	Documentary	14 days C.B. 5 days pay AA 46(2)c	14-10-43	Lt.Col. J. Begg	Forf 5 days pay FR&I 149(2), Forf 4 days pay FR&I 149(1)(a),
Camp Borden	13/3/44	TPR		AA 15(1) AWL from 0220 hrs 13-3-44 to 0200 hrs 15-3-44 (2 days)	Documentary	10 days Det's	16-3-44	Major T.W. Rutherford	Forf 5 days pay FR&I 149(1)(c)(ii) Forf 2 days pay FR&I 149(1)(a),10 days pay 149(1)(b)

CERTIFIED TRUE COPY OF ORIGINAL MPM 6 IN MY POSSESSION.

(W.E. THORNE) CAPT.,
Records Officer,
3 Cdn Inf Reinf Unit.

Ex. F.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
B136140	PRIVATE	ROBINSON M.J.	C.I.C. 3 C.I.R.U.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. 15(1) 4 times.

For A.A. 40 1 times.

~~For~~ times.

For ~~times.~~

Date of first entry in Field Conduct Sheet 17 Jan 44.

Date of last entry in Field Conduct Sheet 13 Mar 44.

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~*3. The accused at the present time is under sentence for~~

beginning on the day of

4. The accused has been awaiting trial on the present charges for 0 days in civil custody; and for ~~20~~ 21 days in military custody, *i.e.*, 0 days in open arrest, 21 days ~~20~~ days in close arrest; of which 0 days were spent in hospital.

5. The present age of the accused is 20 years, 1 month,

6. The date of his attestation ~~calling up for military service~~ is 30 Nov 42

7. The service which the accused is allowed to reckon is 1 year, 6 months,

8. The accused is in possession of‡

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

~~In the substantive rank of~~

In the war substantive rank of

In the acting rank of

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) Wt.8670/668 100,000 4/42 A. & E.W.Ltd. Gp.698
(22459) Wt.29255/1873 60,000 9/42 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
Police Magistrate's Court, Toronto.	16 Jun 43.	Having been brought before the Police Magistrate, Toronto, on 16 Jun 43 was sentenced to be imprisoned in Ontario Reformatory, Guelph, for the term of 3 months'.		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 29th day of May

W.R. THORNE, CAPT.,
Records officer, 3 Cdn Inf Rft Unit

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the N/A charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the N/A charge(s), and allowed on the N/A charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. I wish to give evidence and to call witnesses. Do you intend to call witnesses on your behalf? Ans. YES. Are they witnesses as to character only? Ans. NO

(1. RP [illegible] 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1 ST charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. I do not wish to give evidence but to call a witness as to character.

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex F and Ex G respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. NO (2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) N/A

(1. When several accused tried separately see RP [illegible]. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonement or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. * As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-136140 Private Mathew John ROBINSON, 3 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 8(1)	Not Guilty	Guilty	
2nd AA Sec 9(2)	Not Guilty	Not Guilty	
3rd AA Sec 10(3)	Not Guilty	Not Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ——— beginning on (date) ——— 8 Feb

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which NO days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for a period of 60 (sixty) days

(Sgd) ..... Judge-Advocate, if any. 2 June 44 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 3 Jun 44 (Sgd) [signature] Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B-136140 Pte. Mathew, John ROBINSON.	5 June 44 (3 CIRU Part II DO No 131 dated 6 June 44)	[signature] (J.E. Rogers) Capt. & Adjt. 3 Cdn. Inf. Rft. Unit.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4X-50.

Cpl. Robinson. P.O

ADJT

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-25930 Gpl. Robinson P.O. 1 Cdn Air Sup Coy RCE

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 493 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~Gpl.~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 4 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be reduced to the ranks and to undergo detention for 120 days.

(Sgd) Gordon M. Jermyn, Judge-Advocate, if any. 5 Jan 45 Date awarded. (Sgd) [illegible] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) J.R. Gough Brigadier

Date 9 Jan 45 (J.R.R. Gough)

Commanding A Tps Area, First Can Army

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C-25830 Cpl Robinson P.O.	14 Jan 45	[illegible]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED — WAR CRIMES — JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160 4X-52

CF AFM 218 (Dec. 1951 of AFA 21) 4 COPIES R 1658 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Gen J.R.R. Gough Comd HQ A Tps Area dated 3 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C-25930	Gpl.	Phillip Robert	Robinson	1 Cdn Air Sup Coy RCE

PROCEEDINGS REVIEWED

RECEIVED OTTAWA WAR CRIMES JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 5 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under Instr, if any~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(E), RP 60 fn 1. For effect see KR Can 563(c). Delete if not applicable.)

A5. President to accused: Do you object to ~~Lt~~ as interpreter? Ans

The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under Instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.C.L. Castonguay	CIC 11 Bn CBRB
Member	Capt.	A. Roberge	CIC 11 Bn CBRB
Member	Capt.	J.E. Bergeron	CIC 11 Bn CBRB
Judge-Advocate	Capt	G.N. Jermyn	HQ A Tps Area First Can Army
Prosecutor	Lt	J. Gladwood	1 Cdn Air Sup Coy RCE
Defending Offr	Capt	J.J. Thompson	1 Cdn Air Sup Coy RCE

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under Instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) ~~a~~ plea(s)

(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~not~~ arraigned (~~separately~~)) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B + E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 4*A*(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if ~~s/he~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or call witnesses as to character and make an address in mitigation of punishment.(1)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans N O S I R .(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(*1. If "YES", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 565. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 13-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans ..... Do you intend to call witnesses on your behalf?
Ans ..... Are they witnesses as to character only? Ans .....
(*1. RP 135. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(B).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans YES SIR .
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Service as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement of Service and Conduct Sheet and in mitigation of punishment?(1) Ans I am in lay my defending officer .(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182 RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Jahl 1.

CHARGE SHEET

AA 41
First Charge

The accused, C 25830 Cpl Robinson P O RCE, whilst on active service in the field, committing a civil offence, that is to say: theft, contrary to Sec. (2) of the Larceny Act, 1916, in that he, at approximately 1245 hrs 28 Dec 44, stole one fur coat, the property of Madame Gabriella Josephine Daemers from a shop in Ghent known as Maison Oosterlink at 62 Rue de Baguettes Ghent, Belgium.

Approved on behalf of the J A G Cdn Army Overseas pursuant to K R (Can) 540 and Overseas RO 475 6(13)
G. Tarmyn Capt.
3 Jan 45 ADJA Army Tps Area 3 Jan 45

H C Hammond MAJOR
O.C. 1 CDN AIR SURVEY COY R.C.E.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

R Gough

In the field
3 Jan 45

(JHR Gough) Brigadier
ComdA Tps Area
First Cdn Army

3.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAS/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.25830	Cpl	Cpl	P Phillips O Robert	ROBINSON	1 Cdn Air Svy Coy RCE

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 3 Jan 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.E.L. CASTONGUAY (CIC)	11 Bn CBRB

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	R. GUENET (CIC)	11 Bn CBRB
Captain	B. ROBERGE (CIC)	11 Bn CBRB

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	G.E. BERGERON (CIC)	1 Bn CBRB

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Captain	G.H. JERMYN, ADJA	HQ A Tps Area, First Cdn Army

On Active Service in the Fd

in BELGIUM (Country.)

Rgough (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Date 3 Jan 45

Commanding (JRR Gough) A Tps Area, First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

(KR(Can) Form 557)
(CMHQ CL 173)

Exhibit 4.

I certify that I have this day examined C-85830 (No.)

Capt (Rank) ROBERTSON, J.C. (Name) and in my opinion he is

fit to undergo trial by Court-Martial,
~~unfit~~

Station FIELD

Date. 5 JUL 45

Medical Officer
(unit) #2 C.G.H.

Exhibit 5.

We court satisfy themselves that Capt R Ernest CIC 11 Can CBRB is not available to serve having been posted away as reinforcement Capt J L Bergeron CIC 11 Can CBRB waiting member takes his place as a member of the court.

Capt

E-1.

Character Evidence.

Capt. F.J. Hufton, 1 Cdn Div Sup Coy. R.C.E. sworn states.

I have known Cpl Robinson since Jan 40. He has been an efficient soldier. We ran courses together. I have met his wife whom he married in England. He is devoted to his wife and children.

No Cross-examination.

R P ¶ 3 (B) complied with.

Major L.G. Troy, 1 Cdn Div Sup Coy R.C.E. sworn states.

I have known Cpl Robinson since Jan 40. He has been in the unit continuously. During that time his character was good. He is married with two children and I think a substantial citizen. I cannot understand this business at all. It is at variance with all I know of him.

R P ¶ 3 (B) complied with.

E-3.

Defending Officer in Mitigation.

In the past annual medical Cpl Robinson has been under treatment for an infected mouth. On the morning of 7 Feb. the treatment was a penicillin pack. After taking the coat he gave it back. He has been in the Army for almost 5 years and has been overseas almost all the time. His conduct sheet shows only 2 minor offences. He has a home, a wife and two children to whom he is devoted. He has every thing to lose as a result of this offence. I ask the court for leniency for this one breach.

[signature] Capt
J.A.

EXHIBIT 'A'

1 Canadian Air Survey Company R C E

SUMMARY OF EVIDENCE IN THE CASE OF: C 25830 CPL HONINSON R C., RCE a soldier of the Canadian Army Overseas.

Charged with

AA 41: WOAS committing a civil offence, that is to say:- theft, contrary to Sec. (2) of the Larceny Act, 1916,
in that he, at approximately 1245 hrs, 28 Dec 44, stole one fur coat, the property of Madame Gabriella Josephine Daemers from a shop in Ghent known as Maison Oosterlink at 62 Rue de Baguettes Ghent.

The accused is informed of his rights. The C O directs that the evidence of the witnesses be taken on oath.

First Witness for the Prosecution: Madame Gabriella Josephine DAEMERS, Maison OOSTERLINK, 62 Rue de Baguettes, Ghent. having been duly sworn states:-

I reside at 62 Rue de Baguettes and operate a fur shop in conjunction with Alexander Theodorus de Waegeneire known as the Maison OOsterlink at 62 Rue de Baguettes, Gand. Between 1200 and 1230 of the afternoon of the 28 Dec 44, a soldier came into the store and asked for a box. I recognized this soldier as he had been in my shop on two occaisions and purchased some goods. I went into the basement to ask the servant girl to get the box for me and as I was returning up the stairs I heard the entrance door of the shop which is fitted with a bell open and close. On entering the shop proper, the soldier was not there. I looked out of the door to see if the soldier was outside in a vehicle. I then noticed that the inside show window door was open and that one of the stands which had displayed a brown fur coat was knocked over and that the coat had disappeared. I looked down the street and saw the soldier walking toward Guihard Straat. He was the only one in the vicinity. He was carrying a brown fur coat on his left side under his short leather vest. The coat was protruding below the vest and was clearly visible. I shouted for my husband pointed to the soldier and said "he has stolen a coat" or words to that effect. My husband immediately went after the soldier, I followed him. My husband caught up to him just as he was entering a door near the top of Guihard Straat almost opposite the Police Station. I was some distance behind when my husband arrived at the door, but as I was approaching I could see my husband trying to open it. I arrived just as the coat was pushed into my husbands arms from the other side of the door. I recognized the coat as the one stolen from my shop. A police officer had arrived on the scene, my husband and I told him the story and the constable told us this was a case for the military. The door was then opened. My husband and I entered. There were several soldiers around and they asked us questions. A soldier then told me to follow him and he led me out of the courtyard and into another doorway of the same building and then into a room. There were several soldiers in the room and the soldier who had stolen the coat was standing before the desk. I pointed to accused and said "That is the man."

Gabriella Josephine Daemers.

Accused declines to cross-examine the witness.

1 D 118843 L/Cpl WILSON R D., 1 Cdn Air Svy Coy R C E - interpreter, - having been sworn, translated the statement of the above witness.

2 I certify that the statement of the above witness, Madame Gabrielle Josephine Daemers, was truly translated by me, to the best of my ability.

RD Wilson.

Second Witness for the Prosecution: Alexander Theodorus De Waegeneire Maison COSTERLINK, 62 Rue de Baguettes, GHENT., having been duly sworn states;-

I am the owner of a fur shop known as Maison COSTERLINK 62 Rue de Baguette Ghent, between 1200 and 1230 on the 28 Dec I was in the basement of my shop when my wife called me from upstairs to the effect that a soldier had taken a fur coat from the show window. I rushed upstairs into the store to my wife who was there. She pointed out to me the direction in which the soldier was proceeding. I immediately walked after him as fast as I could. There was only one soldier in the street. He was about 100 meters ahead of me as I left my store entrance. The soldier was walking fast and was carrying what looked like a fur coat under the left side of a leather vest. The soldier turned up Guinard Straat toward the Police station and I caught up to him just as he was entering a large double door opposite the police station. I started shouting Thief ! Thief ! and kept shouting it. I placed the left half of my body between two doors in order to keep them from closing. The soldier was trying to close the door from the other side and I was face to face with him. He had a fur coat under his arm. We struggled a couple of minutes and then he pushed the fur coat into my arms. I left the door, which was then closed. A Belgian Policeman appeared and asked what had happened. I described the incident briefly to him and he told me that this was a case for the military. Some soldiers opened the double door and I entered and walked into the yard followed by my wife who had arrived. A fattish soldier dressed in a shirt and dirty trousers came out of the building and talked to me in French. Several soldiers gathered around me and asked what the soldier who I was chasing looked like. My wife and I both replied, that he was skinny, dark complexion with moustache, and a fairly large mouth with large lips. Two soldiers took me into the kitchen to look for this man. We did not find him. The two soldiers led me through the building into a room where there were several people. I saw my wife there and the soldier who had taken the coat. I pointed to the soldier and said "that is the man." Somebody told me that my presence was no longer required so I returned to my shop with my wife. We arrived between 1 o'clock and 1.15 pm. The coat that was pushed into my hands was the coat stolen from my store.

The accused wishes to cross examine the witness:

Q 1 How is the owner of the shop so sure that it was between 1200 and 1230 when his wife called him to the effect that a soldier had stolen a fur coat ?

A I always eat between the hrs of 1200 and 12.30 and it was lunch time.

Q 2 Is the owner positive that he placed the left side of his body between the two doors.

A Yes, absolutely.

A D Waegeneire

1 A 20284 Spr HOFMANS H J., 1 Cdn Air Svy Coy R C E - interpreter, - having been sworn, translated the statement of the above witness.

2 I certify that the statement of the above witness, XXXXXXXXXXXXXXX Alexander Theodorus De Waegeneire, was truly translated by me, to the best of my ability.

H J Hofmans

Third Witness for the Prosecution: Clementius Armanitus KLOY
Police Constable, Belgium
Police, City of Ghent,
No 5 Section. Having been
duly sworn states:

I am police constable No 253 No 5 Section City of Ghent, my headquarters are the police station Guinard Straat. About 10 minutes to one o'clock in the afternoon of Thursday 28 Dec 44 I was at my headquarters which was on the same side of the street. I noticed two civilians on Guinard Straat running after a soldier. The soldier was on the opposite side of the street and approaching me. He was about three metres away from the lower entrance of the Stadt School when I first noticed him. He entered that door and immediately closed it and I only caught a glimpse of him. The two civilians were shouting the word "Thief, Thief". The civilian man stood on the outside. I walked over to see what it was all about. The man had his arm through the door and when I arrived he had withdrawn it and was in the possession of a brown fur coat. I asked "What happened" and the civilian men told me that the fur coat which he now possessed had been stolen. I told this civilian that it was not a case for the Belgian police. I walked up to the other entrance where there were several soldiers. I spoke to one of them and told him what had happened. This soldier indicated to me that my presence was no longer required, so I returned to my office.

Accused declines to cross-examine the witness.

1 A 20284 Spr BOTHAMS R J., 1 Cdn Air Svy Coy R C E - interpreter, - having been sworn, translated the statement of the above witness.

2 I certify that the statement of the above witness, Clementius Armanitus KLOY, was truly translated by me, to the best of my ability.

Fourth Witness for the Prosecution: 1 33126 Sgt Nelson A E W having
1 Cdn Air Survey Coy R C E been duly sworn states:-

At between 1240 and 1250 A hrs 28 Dec 44 I was in my room when I heard screaming and yelling in the street outside. Sgt Snow and I ran to the window and looking out we saw the accused running up the alleyway. We went downstairs and were informed that a soldier, who had run up the alleyway to the side door, had stolen a fur coat. Since Cpl P C Robinson was the only one we had seen running through there I mentioned that fact. He was carrying a sten gun over his right shoulder and wearing a leather jerkin, not a greatcoat.

Accused declines to cross examine.

Fifth Witness for the Prosecution: F 11129 L/Sgt Snow R W having
1 Cdn Air Survey Coy R C E been duly sworn states:

Between 1230 and 1300 hrs A 28 Dec 44, I was sitting in my room playing cribbage with Sgt Nelson when we heard some screaming outside. We went to the window and saw Cpl P C Robinson running up the back alleyway. Then I went downstairs to find out what the noise was about.

Accused declines to cross-examine the witness.

Sixth witness for the Prosecution: C 2419 Sgt Reynolds F A., having been duly sworn states:-

Between a quarter to one and one o'clock 28 Dec 44 I was approaching our billets from the corner and I saw that there was a commotion and on hearing that a man had run into the court of our barracks I immediately went into the court yard and checked the door ~~xxx~~ into the recreation room and found that no one could possibly get through there, the other door into the barracks was locked so I entered the kitchen, the only door unlocked and asked Cpl Marcoux who had come through the kitchen in the last five minutes. He said Cpl Robinson passed through and Pte Dixon verified it. From there I went back to the woman who had come up to the building and asked her to describe the dress of the man. She said he had a leather short coat and I asked her if he had worn chevrons and she replied that he did. Then I called Captain Burton who was witnessing from the window my talk with the woman.

Accused declines to cross-examine the witness.

Seventh witness for the Prosecution: R 102047 Pte DIXON W J., having been duly sworn states:-
1 Cdn Air Survey Coy R C E

An incident occurred three or four days ago between 1225 A hrs and 1255 A hrs. I was working in the kitchen at the ~~time~~ time and am unable to state the precise moment. I learned later in the afternoon that the incident concerned the stealing of a fur coat. Some time during the period I have mentioned, Sgt Reynolds came into the kitchen and asked me if I had seen anybody. I replied that I had seen Cpl Robinson walk through the kitchen. Cpl Marcoux was definitely in the kitchen at this time, there were others as well, I think they were Pte Markle and two men from the labour Section.
Cpl Robinson must have come in from the outside door opening from the alleyand passed through the kitchen into the mess hall.

Accused declines to cross-examine the witness.

Eighth witness for the Prosecution: R 28320 Cpl MARCOUX E., having been duly sworn states:
1 Cdn Air Survey Coy R C E

At 1250 A hrs 28 Dec 44 I was in the kitchen when I heard a lot of noise outside the back door. I went outside to see what was happening. A very excited civilian man and woman were there, explaining that some soldier ~~xx xxxx~~ had stolen their fur coat. The woman described the soldier as being fair while the man said he had dark hair. I did not ask for any further description of the soldier and went back to the kitchen after seeing Lt McDuell. Shortly after Lt McConnell asked me to go to the front hall to act as interpreter. The two civilians, Cpl Robinson and several others were there. The man identified Cpl Robinson saying "He is the man", while looking around the room to make sure. The woman said she knew the soldier but did not say that he was the man who stole the fur coat. She was very excited.

Accused declines to cross-examine the witness.

Ninth Witness for the prosecution; A 20179 CSM PORTER W J having been duly sworn states:
1 Cdn Air Svy Coy R C E

At approximately 1230 hrs 28 Dec 44 I went across to the Corner Cafe opposite the NAAFI. Cpl Robinson was there and we had a glass of beer. Shortly after that Cpl Robinson left. I did not see Cpl Robinson again until approximately twenty minutes after one when I was at the Stadt School.

Accused declines to cross-examine the witness.

W J Porter

The accused was warned as follows:-

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence, unless you wish to do so, but whatever you say, or any evidence you may give, will be taken down in writing, and may be given in evidence".

The accused: "I do not wish to make a statement".

L B Robinson

I certify that RP4 has been complied with. Taken by me in the presence and hearing of the accused this 2nd day of January 1945.

M Shandro

(M Shandro) Lt., RCE
1 Cdn Air Svy Coy R C E

(4)

3 Jan 45.

H.C. Hammond

O.C. 1 CDN. AIR SURVEY COY. R.C.E.

Sir

3. Jan 45

I desire to have an officer assigned to me to defend me at the trial.

I respectfully request that the officer be, one of the following.

Capt Thompson
~~Mr~~ Lt. Mr Quaize
Capt Dufton
Lt Timson

P. O. Robinson

EXHIBIT B.

M.F.H. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C25830	Cpl	ROBINSON Philip Osbert L	1 Cdn Air Survey Coy RCE

1. The following is a fair and true summary of the entries in the Field Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with. HCH HCH.

	Within last 12 months	Since enlistment or appointment
For AA 15(3)	nil times	1 times
For AA 40	nil times	1 times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct nil

or HCH

~~There are no entries in the conduct sheets of the accused.~~ HCH

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted.~~ HCH

or HCH

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under~~ HCH.
Air Force Act
~~Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule~~
~~annexed to the statement.~~

3. The accused is not under sentence at the present time.

or.

~~The accused at the present time is under sentence for xxxxxxx beginning on the xxxxxxx~~
~~day of xxxxxxxxxx~~ HCH.

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 8 days in Air Force military custody, making a total of 8 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 39 yrs - 5 months attestation paper is HCH

6. The date of his ~~commission~~ specified in his record of service is HCH attestation attestation paper 11 Jan 40

7. The service which the accused is allowed to reckon towards discharge is HCH 5 years

8. The accused is entitled to reckon n/a service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~no air force decoration, or air force reward (or is in~~ HCH
HCH military military HCH
~~possession of or entitled to).~~ State any air force decoration or reward.
military Cdn VS Medal & Clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force
the regimental rank of n/a

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force ..... unit ..... n/a ..... dated ....., and in his regiment (or corps), the rank of ..... n/a ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... 15 Jun 44 ..... Date of promotion.

In the rank of Cpl-6 months ..... ~~years~~. HCA.

In the rank of n/a ..... years.

In the rank of n/a ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army~~ Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Name ..... of ..... Unit ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

HCA.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~Third~~ 5th. day of January 1945 [signature] MAJOR, C.C.I. FOR AIR MARSHAL OF R.C.E.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

Maison : V. Ch. Oosterlinck
Huis : Rue des Baguettes - 62 - Bagattestraat
Gand - Gent
Tél. :
Transformations - Veranderingen
Réparations - Herstellingen

Received from Lt. M. Shandro R.C.E.
one brown fur coat, which was Exhibit
in the court martial trial of Cpl P.O. Robin
1. Can Air Survey Coy RCE.

Gabriele Toussaint

EXHIBIT C

MFM 6
(AFB 122)
40/P&S/156 (3438)

No C25830 Name Robinson, P.O. Sqn. Battery or Company Corps R.C.E. Date of enlistment 11/1/40 GC Badges Service or Proficiency Pay NA

Date of last entry in Company Conduct Sheet NA No and date of last drunk NA Period not reckoning towards freedom from extra fine NA Sheet No Signature OC Company, etc W.K. MacDonald Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
~~Xixxx~~ Sheet destroyed on 26 Sep 42, having completed six months service. (signed) W.J. MacDonald Major Royal Canadian Engineers Last entry nil, no cases of drunkeness.									
Field	9/4/41		Spr.	WOAS: Breaking out of barracks between 1300 hrs and 1600 hrs 9/4/41.	Capt Gamble Lt. Smith Cpl Nichol	7 days C.B.	10/4/41	J.M. Robinson Major	
Field	12/8/42	1/Cpl.		WOAS: Conduct to the prejudice of good roder and military discipline in that he did not carry out written instructions given to transport N.C.O. by Capt. Wass. A.A.40	Documentary Capt Wass Spr Haydock	Reprimand	12/8/42	O.H. Smith Capt.	

CERTIFIED THAT THIS IS A TRUE COPY OF THE DOCUMENT NOW HELD IN MY POSSESSION

H C Hammond
(H C Hammond) Major

5 Jan 45

(PTO)

Maison :
Huis :

Vve Ch. Oosterlinck

Rue des Baguettes - 62 - Bagattestraat
Gand – Gent
Tel. :

Transformations - Veranderingen
Réparations - Herstellingen

5 Jan. 45

Received from Lt. M Shandro R.C.E
one brown fur coat, which was Exhibit A
in the court martial trial of Cpl P.O. Robinson
1 Cdn Air Survey Coy R.C.E.

Gabriel Doremus.

148 D. Sgt Robinson, R.E.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 18 day of October, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 1st Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

*[xxxxxxxxxxxxxxxxxxxx

*(xxxxxxxxxxxxxxxxxxxx)

*(xxxxxxxxxxxxxxxxxxxx)

*(xxxxxxxxxxxxxxxxxxxx

xxxxxxx)

(xxxxxxxxxxxxxxxxxxxx)]

President.

Rank.	Name.	Regiment.
Major	J.W. Johanson,	1 Cdn Div Sigs.

Members.

Rank.	Name.	Regiment.
Capt.	M.C. Longbotham,	1 Cdn Div Amn Coy., RCASC
Lieut.	J.E. Murray,	1 Cdn Fd Coy., RCE.
(waiting) Lieut.	F. Else,	1 Div Ord Workshop., RCOC

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed G.R.Pearkes
(G.R.Pearkes) Major-General
Commanding 1st Canadian Division.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
P.22227 Sgt. ROBINSON, R.E. 4 Recce Bn(PLDG)	1st Charge A.A. Sec 40 ~~5th~~	Guilty	Guilty	I confirm the finding & sentence of the Court. G.R. Pearkes Maj Gen 1 Cdn Div. 27. Oct 41
	2nd Charge A.A. Sec 40 ~~5th~~	Guilty	Reduced to rank of Spr	
	3rd Charge A.A. Sec 15(1) ~~5th~~	Guilty		

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) G.R. Pearkes (G.R. Pearkes) Major-General
Commanding 1 Cdn Div.
Convening Officer (c)

(Signed) [illegible] Major
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23rd day of October 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)
were duly sworn.

* Omit if not applicable.

Signed this 23rd day of October 1941.

[illegible] Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 27 day of October 1941.

G.R. Pearkes Maj Gen
Confirming Officer.

Promulgated and extracts taken in the case of P.22227 Sgt. Robinson R.E. 1 Cdn Div

(a) (Dated) 30 Oct 41 (Signed) [illegible] Capt Adjt 4 CDN. RECCE. BN. (4.P.L.D.G.)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(46729) Wt. 46153—283 100 11/40 P.St. G. 840

The accused, No. P22227 Sgt Robinson, R. E., of the 4 Cdn Recce Bn (4 P.L.D.G.), a soldier of the Canadian Army, is charged with, when on Active Service:-

1st Charge
A.A.Sec.40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he, in the Field, at between 2359 hrs 8 Oct 41 and 0030 hrs 9 Oct 41, made use of a W.D. Vehicle and petrol, the property of the Canadian Government, for use other than military purposes, without permission.

2nd Charge
A.A.Sec.40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he, in the Field, at approximately midnight 8/9 Oct 41, being a senior N.C.O., allowed a W.D. Vehicle to proceed from the HQ Squadron area knowing it to be driven without authority and without a work ticket.

3rd Charge
A.A.Sec.15(1)

ABSENTING HIMSELF WITHOUT LEAVE WHILST ON "STAND TO"

in that he, in the Field, when his Troop had been ordered to "Stand To", absented himself without leave from the Squadron area from 2359 hrs 8 Oct 41 to 0030 hrs 9 Oct 41.

(F. D. Adams) Major,
Comd., 4 Cdn Recce Bn (4 P.L.D.G.)

To be tried by Field General Court Martial.

(G.R.Pearkes) Major-General
G.O.C. 1 Cdn Div.

SUMMARY OF EVIDENCE in the case of

No. P 22227 Sgt Robinson, R.E.
4 Cdn Recce Bn (4 P.L.D.G.)

By direction of the C.O. the evidence is taken on oath.

1st Witness for the Prosecution

No. C70748 Tpr Lowery, F. H., 4 Cdn Recce Bn (4 P.L.D.G.) (sworn) states: At Bn Area on 8 Oct 41 I went down to the car park and Sgt Robinson and driver were there. I left them there and paid no attention to them as they were known to me and took it for granted they had business there. I later returned to my post at the barrier and this truck pulled up with Sgt Robinson and driver. I questioned them and they replied that they were going for a little drive and would be right back.

Q. What was your duty on the night 8/9 Oct 41?
A. I was the vehicle park guard.

Q. At what time were you on duty?
A. From 2320 hrs 8 Oct 41 until 0140 hrs 9 Oct 41.

Q. What were your instructions with regard to unit vehicles leaving the area?
A. I was given no verbal instructions?

Q. Were you given written instructions?
A. Yes.

Q. Do you recognize this Vehicle Return as the written instructions given you?
A. That is the one, sir.

Exhibit A

Vehicle Return is entered as Exhibit A

Q. Do you know the number of the truck in which Sgt Robinson was a driver?
A. No, I don't know the number but I know the truck was in charge of the regular driver, Tpr Kelly.

Q. Why did you not enter the name of the driver and his number and rank, and the vehicle number, on the Vehicle Return as required by your orders?
A. I thought the occupants were only going for a little drive and did not think it should be entered.

Q. When the truck approached the barrier, did you halt it?
A. Yes.

Q. What question did you put to the occupants?
A. I asked them where they were going?

Q. Did you ask for a work ticket?
A. No.

Q. What reply did Sgt Robinson make when you asked where they were going?
A. He said in effect that they were going for a little ride and would be right back. It was my own idea that this should not be entered in the vehicle return,

Q. What time did this occur?
A. About midnight.

Q. Did this vehicle return while you were on duty?
A. It returned in about twenty minutes as far as I could judge

The accused declines to cross-examine this witness.

J.H. Lowery

2nd Witness for the Prosecution

A 3529 Tpr Kelly, J. H., 4 Cdn Recce Bn (4 P.L.D.G.) (sworn) states: At Bn Area on night of 8 Oct 41 Sgt Robinson and I went to C Sqn area. We took my truck CZ4212274 along to drive. We returned in a few minutes.

Q. Did you have a properly signed work ticket?
A. No, sir.

Q. On whose authority did you take the truck?
A. On my own, sir.

Q. Approximately what time did you leave the Bn Area?
A. After midnight, I don't know exactly.

Q. How long were you away?
A. Less than half an hour.

Q. Where did you go?
A. To Westerham and back to Oxted and then back to the parking lot.

Q. Why didn't the barrier guard take your particulars?
A. I don't know. I didn't give them to him.

Q. Did you have any conversation with the sentry?
A. I just said I was going out.

Q. Did Sgt Robinson have any conversation with the guard?
A. No, sir.

Q. What was the reason for the trip.
A. No reason.

The accused declines to cross-examine the witness.

Pte J.H. Kelly

3rd Witness for the Prosecution

P21390 Sqn.S.M. Stephen, N. 4 Cdn Recce Bn (4 P.L.D.G.) (sworn) states: At reveille 8 Oct 41 No. 11 Tp was duty Tp and on "Stand To", which means that the Tp as a whole is confined to Sqn area for 24 hours. Sgt Robinson was acting Troop Sgt in the absence of Sgt Craven. He was found to be absent from the Sqn area at approximately midnight 8 Oct 41.

Q. Have you any duty roster or written order to show that No. 11 Tp was "Stand To" on Oct 8/9?
A. Only that the Tps do their duty and Stand To in turn. I tell the orderly Cpl of various Tps the day before

whether they are duty Tp or not. Each Tp knows it is Duty Tp every fourth day.

The accused declines to cross-examine this witness.

The accused having been duly cautioned in accordance with Rule of Procedure 4 (E) reserves his defence.

Certified that Rs.P. 4 (C)(D)(E) and (F) have been complied with.

Taken down by me in the presence and hearing of the accused this 11th Day of October 1941, in the Field.

(J. N. Wood) Capt.,
4 Cdn Recce Bn (4 P.L.D.G.)

Form "A"
PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD IN THE FIELD ON THE 23rd DAY
OF October 1941.

Trial of No P 22227 Sgt Robinson R.E.

Prosecutor: Lieut J.B. Beveridge & Ldn Rice Bn

Defending Officer: Lieut D.R. MacG. Neish & Ldn Rice Bn

Officer's under Instruction:

1. The order convening the court is read in the presence of the accused.

The accused is asked the following question:
"Do you object to be tried by the President or any Members of the Court whose names you have heard read over?

Answer: No.

3. The President, Members, ~~Judge Advocate~~, ~~Officers under Instruction~~, Shorthand Writer and ~~Interpreter~~ are duly sworn

4. (A) The accused answers to his name and number, and is duly arraigned on the charges: (1) A.A 40 (2) A.A 40 (3) AA.15(1)
(B) The accused having pleaded guilty to all the Charge(s), R.P.36(B) is complied with.

5. ~~The accused is asked the question at the foot of page 2 of A.F.A. 3. and his answer is recorded beneath the question.~~

6. The Prosecutor makes (no) ~~(the Following)~~ opening address:

J. Johnson
Major

Trial of No. P22227 Sgt Robinson, R.E.,
4 Cdn Recce Bn (4 P.L.D.G.)

Prosecutor - Lieut. J.B. Beveridge,
4 Cdn Recce Bn (4 P.L.D.G.)

Defending Officer - Lieut. D.R.McG. Neish,
4 Cdn Recce Bn (4 P.L.D.G.)

The Summary of Evidence is read.

The accused is asked whether he wishes to address the Court, or to call witnesses as to Character.

The accused states:

I realize sir, that I have made a slip and would like the chance to start over again.

Lieut. W.J. Salter, 4 Cdn Recce Bn (4 P.L.D.G.) (sworn) makes the following statement in evidence of Character.

Sgt Robinson has been acting troop Sgt in my troop for two months and I have found that when given a job he has been very willing and efficient. I would like to have him back in my troop.

The Defending Officer makes the following plea in mitigation of sentence:-

There are three charges against Sgt Robinson. It all boils down to two charges. Firstly that he used a W. D. vehicle without authority. Secondly that he was absent from his sqn area during"stand to"

Now to look facts squarly in the face. With regards to the use of W. D. vehicle, it is definitly stated in the Summary of Evidence that the driver namely Tpr Kelly took the vehicle on his own authority, granted the accused was a passenger.

In regards to being absent from"stand to" it may also be found in the Summary of Evidence that the driver of this W. D. vehicle notified the Barrier Guard that he would be right back. The accused was back according to the Summary of Evidence within twenty minutes.

I ask the Court to take these facts into consideration in dealing with these charges to which the accused has pleaded guilty.

Now the facts of the case become known. The crime committed does not appear as serious as the charge sheet implies.

In conclusion I wish to remind the court that the accused has stated in his plea he wishes to soldier and that his troop leader wants him back as he states when acting as Character Witness. May the mere fact that his troop leader wants him back be enough to convince the Court to be lenient in their finding.

Form "C"

AFTER FINDING

Capt J B Lawson is sworn and states:

I produce a certified true copy of A.F. B.122 and a statement as to particulars of service of the accused relating to the accused. (The said copy is marked signed by the President, and attached to the proceedings.)

QUESTION TO THE ACCUSED:

Do you wish to address the Court, or to call evidence as to character?

ANSWER: Address the court and call a character witness

The ~~(Accused)~~ (Defending Officer) makes the following plea in mitigation of sentence:

(the proceedings)

J B Lawson Major

APPLICATION FOR F.G.C.M. - 4 CDN RECCE BN (4 P.L.D.G.)

P22227 Sgt Robinson, R. E.

Prosecuting Officer - Lieut. J. B. Beveridge,

Defending Officer - Lieut. D. R. MacG. Neisxh

. . . . .

Johnson major

APPLICATION FOR FIELD GENERAL COURT MARTIAL

P22227 Sgt. Robinson, R.E.

I desire to have Lieut. D.R.MacG. Neish, 4 Cdn Recce Bn (4 PLDG) appointed to defend me.

P22227 Sgt. R.E. Robinson.

APPLICATION FOR F.G.C.M. 4 CDN RECCE BN (4 P.L.D.G.)

P 22227 Sgt Robinson, R. E.

List of Exhibits

A - C Sqn Guard - VEHICLE RETURN for period 1630 hrs 8 Oct 41 to 0800 hrs 9 Oct 41

MEDICAL OFFICER'S CERTIFICATE
K.R.(CAN) Para. 557.

— - - —
111

I certify that I have this day examined No: P22227

Rk: sgt. Name: ~~Roamson~~ Robinson. RE, of

4th. Cdn. Recce. Bn. (4th. P.L.D.G.), and in my opinion he is

fit/~~unfit~~ to undergo Trial by Court Martial.

STATION: Field.

DATE: 23/10/41.

W R MacKinnon.
CAPT. R.C.A.M.C.

J. Hanson
major

Exhibit A

C Sqn. GUARD - VEHICLE RETURN.

From 1830 Oct 9/41 To 1830 Oct 9/41

Number	Dvr's Rank	N Name	W.D. Number	Out	In	Sentry Name
A3048	TPR	KECK	CL 4204961	1745		Hitching
C40361	Cpr	Dixon	CL 4426296	1830		Hitching
F40108	Tpr	Mischuk	CL 4125736	1830		Hitching
B12861	Cpr	Harding	C 1392947	1842	100	Hitching
F39995	"	Stevens	C2 420999	1850		

(Signed) [signature]
Guard Commander

Note:- Only vehicles of the 4 Cdn. Recce Bn.(4 PLDG) will be entered on this return. Vehicles of other Units need not be entered if they are in possession of a work ticket. If not in possession of a work ticket all particulars will be taken and handed to the R.S.M.

No vehicle will leave the Squadron area unless the driver has a written permission from the Squadron Commander.

This report will be signed by the Guard Commander and turned into the Transport office after the guard has been dismissed.

SHORT STATEMENT AS TO PARTICULARS
OF SERVICE OF THE ACCUSED

/ P22227 Sgt Robinson, R. E.

(a) The accused has been in confinement awaiting trial on the present charges for ...nil... days in Civil custody and ...nil... days in military custody making a total of ...nil... days of which ...nil... days were spent in hospital.

(b) The present age of the accused according to his attestation paper is ...23... years.

(c) The date of his attestation specified in his attestation paper is 1 Sep 39 as regards C.A.S.F. but he enlisted in the Permanent Forces of Canada 23 Jul 35

(d) The accused is ~~[illegible]~~ in possession of or entitled to CORONATION MEDAL

I hereby certify that the foregoing particulars are true extracts from the Regimental books in my custody.

.....
(Signature)
(J. B. Lawson) Capt. and Adjt.,
4 Cdn Recce Bn (4 P.L.D.G.)

No. P22227 Name Robinson, R.E. Sqn., Battery, or Company 2 Recce Corps T.O.S. 4 Cdn Recce Bn (4 P.L.D.G.) w.e.f. 8 Feb 41

Date of last entry in Company Conduct Sheet Sheet one and date last of last drunk Period not reckoning towards freedom from extra fine Date of enlistment 1 Sep 39 G.C. Badges Sheet No. Signature O.C. Company, etc Service or Proficiency Pay Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23 Nov	Pte	nil	Sec.40 A.A. taking W.D. Veh without authority (2) making a false tatement (3) Sec.15 A.W.L.from 1620 23 Nov till 2130 hrs 23 Nov Absent 5hrs 10 mins. (4)Having a pillion passenger on a solo M.C.		8 days detention	27 Nov40	Maj.Adams	
Field	3/7/41	Sgt		W.C.A.S.Sec.40 A.A. Neglect to the prej.etc.,i.e. driving a W.D. vehicle in a reckless manner.	SSM Humphries Lt.Parker	Reprimand	12 Jul 41	H.W.Foster Lt.-Col.	

Certified a true and exact copy of the original on unit files:
(J. N. Wood) Capt. and A/Adjt.,4 Cdn Recce Bn (4 P.L.D.G.)

SHORT STATEMENT AS TO PARTICULARS
OF SERVICE OF THE ACCUSED

/ P22227 Sgt Robinson, R. E.

(a) The accused has been in confinement awaiting trial on the present charges for...nil...days in Civil custody and ...nil... days in military custody making a total of...nil...days of which...nil.....days were spent in hospital.

(b) The present age of the accused according to his attestation paper is..23....years.

(c) The date of his attestation specified in his attestation paper is.1.Sep.39.as.regards C.A.S.F. but he enlisted in the Permanent Forces of Canada 23 Jul 35

(d) The accused is ~~in possession of or~~ entitled to CORONATION MEDAL

I hereby certify that the foregoing particulars are true extracts from the Regimental books in my custody.

.....
(Signature)
(J. B. Lawson) Capt. and Adjt.,
4 Cdn Recce Bn (4 P.L.D.G.)

SHORT STATEMENT AS TO PARTICULARS
OF SERVICE OF THE ACCUSED

/ P22227 Sgt Robinson, R. E.

(a) The accused has been in confinement awaiting trial on the present charges for..nil..days in Civil custody and ..nil..... days in military custody making a total of...nil..days of which...nil.....days were spent in hospital.

(b) The present age of the accused according to his attestation paper is..23....years.

(c) The date of his attestation specified in his attestation paper is.1.Sep.39.as.regards C.A.S.F. but he enlisted in the Permanent Forces of Canada 23 Jul 35

(d) The accused is ~~in possession of or~~ entitled to CORONATION MEDAL

I hereby certify that the foregoing particulars are true extracts from the Regimental books in my custody.

(Signature)
(J. B. Lawson) Capt. and Adjt.,
4 Cdn Recce Bn (4 P.L.D.G.)

T.O.S. 4 Cdn Recce Bn (4 P.L.D.G.) w.e.f. 8 Feb 41

No. P22227 Name Robinson, R.E. Sqn. Battery or Company 2 Recce Corps Sqn

Date of enlistment 1 Sep 39 G.C. Badges

Service or Proficiency Pay

Character

Date of last entry in Company Conduct Sheet Sheet one and date lost of last drunk

Period not reckoning towards freedom from extra fine

Sheet No.

Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23 Nov	Pte	nil	Sec.40 A.A. taking W.D. Veh without authority (2) making a false tatement (3) Sec.15 A.W.L.from 1620 23 Nov till 2130 hrs 23 Nov Absent 5hrs 10 mins. (4)Having a pillion passenger on a solo M.C.		8 days detention	27 Nov40	Maj.Adams	
Field	3/7/41	Sgt		W.O.A.S.Sec.40 A.A. Neglect to the prej.etc.,i.e. driving a W.D. vehicle in a reckless manner.	SSM Humphries Lt.Parker	Reprimand	12 Jul 41	H.W.Foster Lt.-Col.	

Certified a true and exact copy of the original on unit files:

(J. N. Wood) Capt. and A/Adjt.,4 Cdn Recce Bn (4 P.L.D.G.)

(P.T.O.)

5Q - 56

Cfn. Robinson R. H.

RECORDED AT CMHQ IN AB 160

RECEIVED 7 AUG 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CF AB 71 (To find or AFAO 30 of 15.6.45) 4/38B

Convened by C.O. E.G.R.A. 1st Div. Comd RCEME 4 CAD dated 21-6-45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D128503	Pte.	Robert Harry	Robinson	4 Cdn Armd Bde W/Sp RCEME

PROCEEDINGS REVIEWED WITNESS

7 Aug 45

Capt

PROCEEDINGS OF TRIAL.

... WING OFFICER, JAG BRANCH C.M.H.Q.

Held in the Fd in (country) Italy on (date(s)) 23-26 July 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1310 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans ...

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer?~~ Ans ...

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans N.O.S.I.T.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj. R.N.K. Pyne	5 Cdn A/Tk Regt. RCA
Member	Capt. N.C. Preston	23 Cdn Fd Regt SP RCA
Member	Lieut. F.J. Morgan	5 Cdn L.A.A. Regt. RCA
Judge-Advocate	Maj. E.G. Wasson	WA HQ 4 CAD.
Prosecutor	Capt. A. Jansen	4 Cdn Armd Bde Wksp RCEME.
Defending Offr	Lieut. H.R. Howitt	28 Cdn Armd Regt. CAC.

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans YES.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ... before arraignment make(s) (no) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex.....initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a seperate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFRS CERTIFICATE

I certify that I have examined D128503 Cfn Robinson R H of 4 Cdn Armd Bde Wksp RCEME and in my opinion he is fit/~~unfit~~ to undergo trial by Field General Court-Martial.

Hengelo
23 Jul 45

Capt
MO

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50. RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 1c, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D 12 8503	Cfn		Robert Harry	ROBINSON	4 Cdn Armd Bde Wkshp RCEME

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 21 Jul 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	R.J.K. Pyne	5 Cdn A Tk Regt RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J.C. Preston	23 Cdn Fd Regt RCA
Lieut	F.J. Morgan	8 Cdn Lt AA Regt RCA

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	R Fournier	23 Cdn Fd Regt RCA

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Major	E.E. Wasson	Hq 4 Cdn Armd Div

On Active Service in the Fd

in Holland (Country.)

Date 21 Jul 45

E Pallister (Signed personally. RP 105 fn 2.) Lt Col (Rank.)

(E.G. Pallister)

Commanding RCEME 4 Cdn Armd Div

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 96 (In lieu of AFA 3) 40/P & S/1647 (8143)

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused No D 126803 Gfn Robert Harry ROBINSON, 4 Cdn Armd Bde Wkshp RCEME, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 6(2)
Army Act

WHEN ON ACTIVE SERVICE STRIKING HIS SUPERIOR OFFICER

in that he
in the field at about 2315 hrs 1 Jul 45 did strike with his fist in the face No F 88053 Sgt Turpin, H.J. when ordered to take his recovery breakdown veh and recover a damaged veh.

Second Charge
(Alternative
Sec 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he
in the field at about 2315 hrs 1 Jul 45 improperly became engaged in a disorderly fracas in the Cafe Ter Welle, Hengelo, Holland.

(R.E. Lane) Major
Officer Commanding
4 Cdn Armd Bde Wkshp RCEME

In the Field
20 Jul 45

To be tried by Field General Court Martial

(E.G. Pallister) Lt Col
CRCEME 4 Cdn Armd Div

In the field
21 Jul 45

Prosecuting Officer's Opening Address:-

It is intended to prove that the accused, No. D128503 Cfn. Robinson, R.H. was guilty of an offence under A.A. Section 8(2), namely that he did strike with his fist in the face No. F88053 Sgt. Turpin H.J., when ordered to take his recovery vehicle and recover a damaged vehicle.

Sgt. Turpin will be called to give evidence ~~that~~ of what occurred on 1 July 1945 at the Café ter Welle, where the offence is alleged to have occurred.

Capt. A.G. Thompson, who gave evidence in the Summary as to the nature and extent of Sgt. Turpin's injuries, was the only M.O. on duty at 12 Lt. Fd. Amb. this morning, and could not leave on account of a heavy sick parade. He has been sent for again this afternoon. Otherwise, if it is acceptable to the Court and to the defending officer, his statement, extracted from the Summary, will be presented as documentary evidence. Otherwise his evidence will not be required unless Sgt. Turpin's own statement of his injuries is questioned by the defence.

No other witnesses will be called by the prosecution.

~~If the accused is found not guilty of the first charge~~

A. Susen Capt
Prosecuting Officer.

1

CEW

F 88053 Sgt. Turpin H.J. 4 Cdn Flrmd Bde Wksp RCEME
having been duly sworn states:-
I am transport Sgt. in my unit and was 1 July 45
1 July 45 I was at a dance at Cafe Ter Welle,
Hengelo, Holland. At approx 10.00 or 11.00 o'clock
P.M. as a result of information obtained
from Staff Sgt. Flynn I informed the
accused he was to take a break down and go
to Brigade to recce a vehicle. The accused told
me he was not on duty and he refused my
order but that if Cpl. Palmer gave the order he
would go. I told him I was laying a charge
against him if he refused the order. I looked
around and saw L/Cpl. Doan who was a
break-down driver. When I went to turn to
walk over to L/Cpl. Doan, the accused said
to me "just a minute". The accused sd I
have 3 witnesses here to say I'm under
the influence of liquor and before I could
do anything he grabbed me by the throat
with one hand and hit me with the other.
Some one grabbed him and took him
away. I recognize the accused. He is
a W. driver on the break-down.
I received a black right eye and cut on
the cheek. I had not had anything to drink
myself that night.
I am certain that the accused hit me
once then in order to defend myself I put

up my arm and pulled him in close to me
I had not had any trouble with the accused
up to this time and bore no grudge towards
him. He knew I was a Sgt.
X-examination -
There was quite a crowd at the dance.
I dont know if accused had been drinking
He told me he had been drinking when he said he
had witnesses to that effect.
The accused did carry out my order subsequently.
I did not check whether accused was on duty that
night.
There was another break-down. I was going to
send Lt Col. Doan but I didn't get there. The
accused is not in my section but in the
recovery section. I would consult the CO of
recovery section if he were around.
After the War all transport was drawn from all
sections and put under me.
When he told me he had been drinking I was
going to send someone else.
I did not speak to the CO of duty section.
I gave the order and expected it to be carried
out. If I was in the wrong I would be in the
wrong.
I laid this charge against the accused.
(R.P. 83B complied with)
B 78101 Cfn. Stevens L.E. A 58949 Cfn. Hiffley L.W.
B 84604 Pte. Franklin M.J. and B 95325 Pte.
Gandette L.P. whose names appear in
summary of evidence are not available
having gone on Far East draft.

Capt. A. G. Thompson R.C.A.M.C. is not available - the Prosecution does not ask for adjournment to procure him. The Responding Officer states that he does not contest the evidence of the Complainant with regard to his visit and does not require the presence of this witness.

Ind

The defendant's Counsel submits that a prima facie has not been made out by the Prosecution.

5

Ed.

Defence.

G45083 S/Sgt Flymt F.C. 4 Cdn Armd Bde WKSP
R C E m C - having been duly sworn stakes:-
1 July 45 at Café Ter Wilh - I entered the café
at approx. 2315 hrs. - I went up to Sgt Turpin
and told him about a wrecker being required.
Sgt Turpin turned to the accused told him
to take a wrecker and proceed. The accused
asked him to get the Cpl of the vehicle as he
was only the co-driver. There were words
which I did not hear after that. Next I
heard Sgt Turpin tell the accused he was
on the peg. At that time the accused was under
the influence of liquor in my opinion.
I turned away then. The next I heard was
Sgt Turpin: "It's O.K. you're on the peg."
The accused the had his hand out and was
talking to Turpin but not in a manner
to strike a blow. His hand was open.
Then I could hear him say he would go and
take the wrecker and bring the jeys in.
The next I knew - I heard a scuffle and
turned around - and Sgt Turpin and
the accused were against a counter. Things
happened very fast then - the next was
the accused leaving the hall with C S m.
Bye. The accused came outside and I sd
I would go with him and bring in the
wrecked jeys. So we went and picked
wrecker up and brought the jeys in.

I did not see the accused hit Sgt. Turyzin. There was not a great deal of commotion - it only lasted a few seconds - no one was concerned but those right by - and very few of those. I did not notice that Sgt. Turyzin sustained any injuries until the next morning. It is hard for me to say if such a blow could have been struck. From what I saw I would say that no blows were struck. The accused was not in fit shape to be driving the truck. ~~I don't know~~ I have no knowledge of Sgt. Turyzin touching the accused first with his hands. The break-down vehicles were under Cpl. Palmer that night. I don't believe accused break-down was on duty that night. Sgt. Turyzin made no attempt to ascertain which break-down was on duty that night.

X - examination.

I was on duty Sgt. on the night in question. I didn't know there was another break-down standing by at "recovery sec".

I decided to see Sgt. Turyzin - only one I could think of at the time.

I didn't see Cpl. Palmer in the dance hall when I first went in. I saw him about ½ hrs. afterwards.

I can't say I heard accused say "I have 3 witnesses to prove I am under the influence of liquor."

When my attention was first attracted the accused and Sgt. Turyzin were in a clinch with their arms around each other.

and immediately some of the boys stepped in and that's all there was to it - they just parked. C S re Bys and the accused left the Hall together. They were in a clinch when I first saw them. I suppose a blow could have been struck before I turned around I don't see how. There weren't words enough for any one to strike a blow. I can't be sure that no blows were struck - I am just judging it by man to man basis. It is possible that a blow could have been struck without me seeing it.

By the Court -

The accused had his hand out in such a way as though he were talking with his hand. The conversation was normal. Then I turned away. Then my attention was brought back by the scuffle. My attention was distracted for a period of maybe 6 or 7 seconds.

I had not been drinking that night.

I did not see the accused offer any violence against Sgt Turpin.

Sgt Turpin told him in a normal way to get the jugs - he customarily makes just wrs with his hands when he is talking and did so on this occasion.

The next morning I saw Sgt Turpin he had a small mark on his cheek - bone and was slightly dark about the eye.

(RP83B complied with)

Ebd

B 3853 CSM Bye B.J. 4 Can Armd Bde Wkgs.
R C E m E having been duly sworn states:-
I recognize the accused. I have known him since June 1942. I have always found him to be a good soldier. He does his work well. I have never known him to be guilty of anything but a little awk. He has carried out orders well in the unit. As far as I am concerned he has always been willing and done his job.

By the Court -
I was dancing on the evening in question. I first saw the accused when a couple of men had hold of him. I then took him outside. I would say accused had been drinking. I didn't see Sgt. Twyzin until about ½ hr. later. Sgt. Twyzin then had a mark on his face. I don't know whether Sgt. Twyzin had mark on his face or not before the disturbance.

(RP 83(B) complied with)

Defending Offrs Closing Address.

In respect to the first charge the prosecution has only produced one witness, the complainant, who said the accused struck him. His evidence is unsubstantiated by no other witness.

Sgt. Flynn for the defence gave evidence that he was standing close by and saw no blow struck. There was a scuffle which lasted a short while a matter of half a minute. He also stated that the accused carried out Sgt Keepins order although he the accused was not on duty and had been drinking. I submit that accused was forced to obey against his better judgment the order to drive a vehicle, against his better judgment because accused felt incapable of handling a vehicle.

The complainant apparently received some blow on his face. But who gave him the blow is not known. The accused may have given him the blow, but so could have anyone else. There is no evidence as to who struck the blow or when the blow was struck there.

In respect to the second charge "engaging in affrays, against the evidence is very vague and again there is only the evidence of the complainant for the prosecution. Sgt Flynn for the defence said there was a small scuffle, but there is no evidence as to who started

the scuffle. The scuffle only lasted half a minute. There was no fracas. That is evident from the lack of witnesses for the prosecution. There were all kinds of people at the dance yet the prosecution can only produce one witness. The dance was in no way interrupted.

It is my submission that the accused is guilty of neither charge and it would be doing the accused a great injustice to find him guilty of either charge.

H. H. Howitt Lieut.

EW

Ed

Closing address by prosecution:-

Sgt. Turpin stated in his evidence that Cfn. Robinson had definitely struck him with his fist. He did not touch Cfn Robinson except afterwards to hold him and prevent him from hitting him aga[illegible] Sgt. Turpin had not been drinking. Cfn. Robinson, by A/Sgt. Flynn's evidence had been drinking. Sgt. Turpin had no grudge against the accused, before the incident.

E.C.W.

J. A. Sums up.

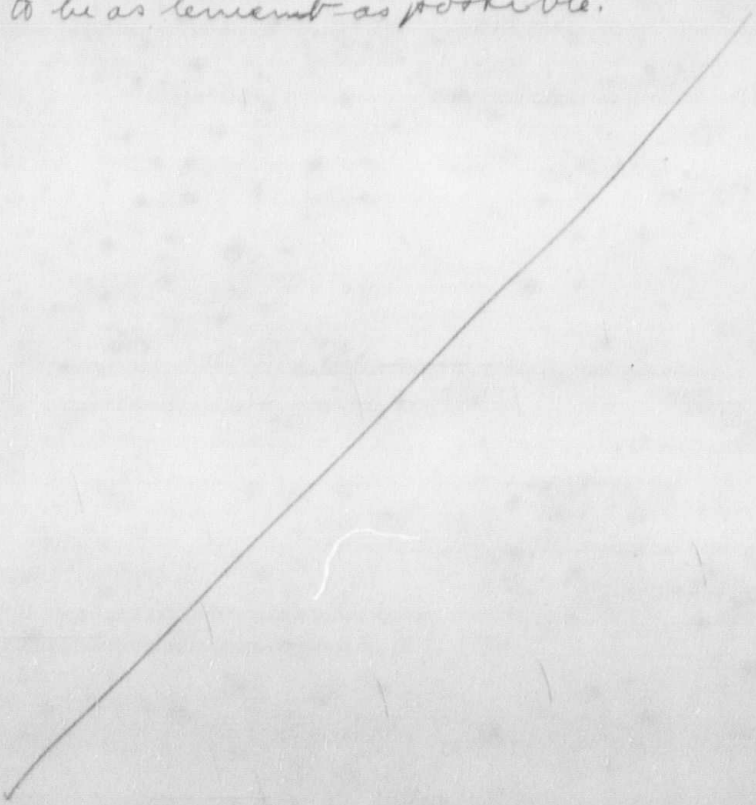
1. Onus on prosecution thru out.
2. Doctrine of reasonable doubt explained with examples.
3. Charges are in the alternative - if a finding of guilty on one - the other must be dismissed.
4. First charge:-
   In order to bring in a finding of guilty the Court must have proof that:-
   (a) There was a striking
   (b) That a superior was struck
   (c) That the person striking was an inferior in rank.
   (d) That the inferior did not strike the superior in self-defence.
   (e) That the inferior had knowledge that the person he struck was his superior.
   In this case there is evidence of some duration of service of both parties in the same unit.
5. Second charge:-
   Before the Court can make a finding of guilty it must be proven that there was a disturbance - that such disturbance was both to prejudice of good order and military discipline - that the accused was to some extent responsible for the same.
6. Drunkenness - as an excuse - p. 105 in M.L. read on this point.
7. Judicial notice - R.P. 74 read.

Plea in mitigation.

There are no changes in M.F. M.6 against accused for violence or insubordination. There are only three entries on the conduct sheet all which are for AWh. and they are for short periods only.

I submit that the accused is of good character. This is supported by the evidence of C S M Bye.

Therefore I should like the Court to be as lenient as possible.



Ed

J. A. Sums up.

1. Onus on prosecution thru out.
2. Doctrine of reasonable doubt explained with examples.
3. Charges are in the alternative - if a finding of guilty on one - the other must be dismissed.
4. First charge:-
   In order to bring in a finding of guilty the Court must have proof that:-
   (a) There was a striking
   (b) That a superior was struck
   (c) That the person striking was an inferior in rank.
   (d) That the inferior did not strike the superior in self-defence.
   (e) That the inferior had knowledge that the person he struck was his superior.
   In this case there is evidence of some duration of service of both parties in the same unit.
5. Second charge:-
   Before the Court can make a finding of guilty it must be proven that there was a disturbance - that such disturbance was both to prejudice of good order and military discipline - that the accused was to some extent responsible for the same.
6. Drunkenness - as an excuse - p. 106 in M.L. read on this point.
7. Judicial notice - R.P. 74 read.

Plea in mitigation.

There are no changes in M.F. in 6 against accused for violence or insubordination. There are only three entries in the conduct sheet all which are for A.W.L. and they are for short periods only.

I submit that the accused is of good character. This is supported by the evidence of C.S.M. Bye.

Therefore I should like the Court to be as lenient as possible.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
D128503	Cfn	ROBINSON R H	4 Cdn Armd Bde Wksp RCEME

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	AWL - one	times	two	times.
For		times		times.
For		times		times.
For		times		times.
For		times		times.

~~[illegible]~~ Nil

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, ~~[illegible]~~ Nil by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~[illegible]~~ Nil

4. The accused has been in confinement, awaiting trial on the present charges, for ~~2~~ nil days in civil custody, and ~~two~~ 21 days in military custody, making a total of ~~two~~ 21 days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper Nil is 25

6. The date of his ~~[illegible]~~ attestation Nil specified in his ~~[illegible]~~ attestation paper Nil is 24 Sep 41

7. ~~[illegible]~~ Nil

8. ~~[illegible]~~ Nil ~~[illegible]~~ Nil

9. ~~[illegible]~~ Nil ~~[illegible]~~ Nil

10. The accused is in possession of, ~~[illegible]~~ Nil ~~[illegible]~~ Nil (state any military decoration or reward)). Cdn Volunteer Service Medal & clasp

11. (If the accused is a warrant officer.) ~~[illegible]~~ Nil

12. (~~[illegible]~~ Nil ~~[illegible]~~ Nil ~~[illegible]~~ Nil dated

(*)6548) Wt.30246/662 75,000 12/40 A. & E. W. Ltd. Gp.498
(27448) Wt.48491/1987 25,000 4/41

Exhibit X
A.J.K.P.
Pres.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D128503 Rank Cfn Name Robinson H R of 4CAB Wksp Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23rd day of July 1945

(HELANE) MAJOR
4 Cdn Armd Bde Wksp RCEME

13. [illegible]

Date of Promotion.

[illegible] years,

[illegible] years

[illegible] years,

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

M.F.M. 6
A.F.B. 122
[illegible]

No. D-126503 Name ROBINSON Harry R

Sqn., Battery, or Company

Corps

Date of enlistment 24-9-41

G.C. Badges

Service or Proficiency Pay

Date of last entry in Company Conduct Sheet N/A

No. and date of last drunk N/A

Period not reckoning towards freedom from extra fine

Sheet No. 1

Signature O.C. Company, etc.

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order suspending with [illegible]	By whom awarded	Remarks
Field 15-10-43		Pte	Nil	Absent without leave (5 days 0 hrs) AA Sec 15 (1)	CSM Bye BJ S/Sgt Roberts R	14 days FP	20 Oct 43	Maj R F Johson	
Field 31-12-43		Pte	Nil	AWL 2 Jan - 4 Jan AA Sec 15 (1)	[illegible] McMullen HD	14 days FP & 14 days Pay	11-1-44	Maj J R Mellor	
Field 5-6-44		Cfn	Nil	AWL 1600 hrs 5-6-44 - 2200 hrs 8 Jun 44 (3 days 6 hrs) AA Sec 15(1)	CSM Bye B J	14 days FP & 14 days Pay	9-6-44	J R Mellor Maj	14 days pay FR&I 149(2) 4 days pay FR&I 149(1)(a)
					CERTIFIED TRUE COPY				

Extra pt. 2 of Pres

(P.T.O.)

SUMMARY OF EVIDENCE

In the case of D-128503 Cfn ROBINSON R.H. 4 Cdn Armd Bde Wksp RCEME Cdn Army Overseas charged with:-

STRIKING HIS SUPERIOR OFFICER BEING IN THE EXECUTION OF HIS OFFICE A.A. Sec 8 (1).

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS

F-88053 Sjt Turpin H J 4 Cdn Armd Bde Wksp RCEME having been duly sworn states:

I am transport Sjt of 4 Cdn Armd Bde Wksp RCEME. On the night of 1 Jul 45 at about 2330 hrs I was at a unit dance being held at the Cafe Ter Welle, Hengelo, Holland. I told Cfn Robinson to take a Breakdown lorry and go to Bde HQ to pick up a vehicle which had been in an accident. He refused to go telling me that he was off duty and did not have to take orders. He referred me to Cpl Palmer, and said that if Cpl Palmer told him to go he would go. I told him I was giving him an order and that if he refused to obey I was laying a charge against him, of disobeying an order. I happened to look over the dance hall and saw L/Cpl Dean TC and went to turn to go over to see him to send him out on the job when Cfn Robinson said "Just a minute, I have three witnesses to prove that I was drinking intoxicating liquor" He grabbed me by the collar and hit me with his other fist. somebody got hold of him and of me and they took him away.

Q. Do you recognize the accused here as the Cfn Robinson you referred to?
A. Yes Sir.
Q. What is his employment in the unit?
A. He is co-driver of a breakdown lorry.
Q. What injuries did you sustain?
A. A black right eye and a cut on the right cheek bone.

Cross-examined by the accused.

Q. Did I tell you "I am under the influence of liquor and do not feel capable of driving a vehicle?
A. You might have done. I don't remember the exact words.
Q. When I told you I was under the influence of liquor and did not feel capable of driving the vehicle, did you say " I don't care if you're drunk or sober, I gave you an order and intend for you to carry it out."?
A. I do not remember saying that. I intended him to get a driver if he could not drive the vehicle himself. S/Sjt Flynn FC and Robinson did go out on the job. I do not know who was driving.

H J Turpin

(F88053 Sjt Turpin HJ)

SECOND WITNESS B78101 Cfn Stevens L E 4 Cdn Armd Bde Wksp RCEME having been duly sworn states:

I am a soldier on strength of 4 Cdn Armd Bde Wksp RCEME On the night of 1 Jul 45 I was working at a unit dance held at the Cafe Ter Welle. At about 2300 hrs Sjt Turpin Cfn Robinson appeared to be arguing and the next I saw of them they were in a tangle and I tried to separate them.

Q. Did you overhear any of the conversation between the two?
A. I did not overhear enough to know what it was about except that it concerned taking out a vehicle. I heard Cfn Robinson say either that he was not going to take it out, or that he was in no fit condition to take it out.
Q. What did you mean, saying "They were in a tangle" ? Who hit whom?
A. I don't know. I did not see any blows struck.

The accused declines to cross-examine the witness.

B78101 Cfn Stevens L E

THIRD WITNESS A58949 Cfn Hefkey L N 4 Cdn Armd Bde Wksp RCEME having been duly sworn states:

I am a soldier on strength 4 Cdn Armd Bde Wksp RCEME On the night of 1 Jul 45 I was at a unit dance held at the Cafe Ter Welle Hengelo. At about 2315 or 2320 hrs I saw Sjt Turpin come to the accused Cfn Robinson and order him to take out a breakdown lorry. Cfn Robinson told him he was under the influence of liquor at the time, and didn't figure he was in fit condition to handle a breakdown. Cfn Robinson told Turpin to see Cpl Palmer and that there was always a night crew on the breakdown. Sjt Turpin said he was Transport Sjt and he was giving the orders. I did not see Cfn Robinson hit Sjt Turpin as there were people in front of me, and Sjt Turpin and Cfn Robinson moved away into a corner.

Q. Did you actually hear all the starements which you have attributed to Sjt Turpin and Cfn Robinson?
A. Yes Sir, I did
Q. Are there any other witnesses that you know of who saw the alleged offence take place.
A. Cfn Fountain was there with me and Laudette was there also
Q. Who separated Sjt Turpin and Cfn Robinson?
A. Fountain grabbed Sjt Turpin and I grabbed Robinson.

The accused declines to cross-examine the witness.

FOURTH WITNESS Capt A G Thompson RCAMC having been duly sworn states:

I am a Medical Officer on strength 12 Cdn Lt Fd Amb RCAMC On the morning of 3 Jul 1945 I examined the injuries sustained by F68053 Sjt Turpin H J. He has a superficial laceration on the right side of his face, and also haematoma around the right eye commonly known as a "Black eye".

Cross-examined by the accused.

Q. The condition of Sjt Turpin's face was in, If I hit him, would it show marks on my hands?
A. Not necessarily.
Q. Would you examine my hands?
A. There is no evidence of any injury to this man's hands.
Q. Would an X-Ray reveal any bruises?
A. An X-Ray would only reveal any broken bone, and there are no broken bones in his hands.

FOURTH WITNESS

Q. Could a man under the influence of liquor hit Sjt Turpin hard enough to cause the injuries he sustained?
A. It depends entirely how much under the influence of liquor the man was.

Capt A. G. Thompson

Capt A G Thompson.

The accused calls the following witnesses in his defence

FIRST WITNESS

B84604 Pte Fountain M T having been duly sworn states:

I am a soldier on strength 4 Cdn Armd Bde Wksp RCEME. On the night of 1 Jul 45 I was at a unit dance held at the Cafe Ter Welle, Hengelo. I don't know the exact time but after the refreshments had been served at the dance, Gaudette, Robinson and I were walking off the floor. When we came off Sjt Turpin came up to us and he told Robinson the accused to take a breakdown lorry to Bde HQ. Robinson told him then that he was in no state to drive as he had been drinking, also that there was a night crew on and to go see Cpl Palm[illegible] besides that he didn't know where Bde HQ was. Turpin told him "I don't give a God-Damn what you say, I am MT Sjt and I' giving you a direct order to take it. I am not running all over the lot looking for someone else. You will on a charge in the morning for disobeying an order" or words to that effect. The next thing I know there was scuffling in the corner. Sjt Turpin had Robinson around the neck and Robinson was lying on the floor. I pulled Sjt Turpin away an the other boys grabbed Robinson.

Q. Did you see Cfn Robinson Strike Sjt Turpin?
A. No sir.
Q. Did you see Cfn Robinson touch Sjt Turpin at all?
A. No sir, I did not.
Q. Could Robinson have struck Sjt Turpin without your knowing it?
A. He might have when they were falling on the floor.
Q. Who was doing the scuffling then?
A. Sjt Turpin and Robinson.
Q. How could they habe been doing that without Robinson touching Sjt Turpin?
A. I suppose he must have been touching him. The way you asked the question I thought you meant did Robinson push Sjt Turpin.

CROSS-EXAMINED BY THE ACCUSED.

Q. You say Sjt Turpin had me around the neck and that I was underneath on the floor; did you think I could hit Sjt Turpin where I was? Is that right?
A. I said probably his arms could have hit him as he was falling.
Q. Was I really intoxicated while all this was going on?
A. I think the accused was. He had had too much to be walking around on his own. He was in no state to be driving in my opinion.
Q. Was I causing any other disturbances in the dance before this occured.
A. No.

M T Fountain

B84604 Pte Fountain MT

SECOND WITNESS. G45083 S/Sjt FLYNN F C having been duly sworn states:

I am an NCO on strength 4 Cdn Armd Bde Wksp RCEME. On the night of 1 Jul 45 I was at a unit dance at the Cafe Ter Welle, Bengelo. At about 2315 hrs I went into the dance hall and saw Sjt Turpin and asked him for a wrecker and driver. Sjt Turpin went to the accused Cfn Robinson and told Robinson. "Take your wrecker and go to Bde HQ to pick up a jeep" Robinson told him "Why not get the Cpl of the vehicle. I'M only a co-driver myself." Robinson at that time was under the influence of liquor in my opinion and he didn't want to take the wrecker out. Sjt Turpin gave him an order that he had to take the wrecker. I walked away. There was more conversation which I did not hear. When I came back I heard Sjt Turpin say to Robinson "OK, then, you are on the peg" Robinson then said "OK, I'll get the wrecker and take it out". There was more conversation between Sjt Turpin and Robinson I'm not sure what was said but I did hear Sjt Turpin say again "it's OK, anyway you are on the peg". There was a small scuffle and the next I saw Robinson and Turpin were both against the counter. I did not see anyone strike a blow. Robinson came out of the hall with CSM Bye. Outside I told Robinson I would go with him. We went and picked up the wrecker and brought the wrecked jeep in.

Q. Who drove the wrecker?
A. Cfn Robinson did.
Q. Can you give more details of the scuffle?
A. Robinson and Sjt Turpin were standing close together. Robinson reached out his hand not to strike a blow, his fist was not closed. They got into a clinch and both tumbled against the counter. [illegible]
Q. How do you know Robinson did not intend to strike a blow?
A. By the manner in which he reached out with his hand.
Q. Who touched whom first?
A. I don't know.
Q. Did you see the injuries Sjt Turpin sustained?
A. Not until this morning, sir.

Cross-examined by the accused.

Q. When you went on the trip with me, was I in fit shape to be driving the truck?
A. No.

G45083 S/Sjt Flynn F C

THIRD WITNESS B 95346 Pte Morrison I M having been duly sworn states:

I am a soldier on strength of 4 Cdn Armd Bde Wksp RCEME. On the night of 1 Jul 45 I was at a unit dance at the Cafe Ter Welle Bengelo. I did not see anything of a fight between the accused Cfn Robinson and Sjt Turpin.

Cross-examined by the accused.

Q. When you last saw me at the dance, was I drunk?
A. Yes, You were under the influence of liquor.
Q. Could I have hit a man hard enough to mark a man up the way Sjt Turpin is?
A. I don't think so.
Q. Should I have been sent out with the breakdown lorry in the condition I was in?
A. No.
Q. When did you last see me?
A. shortly after 2300 hrs.

B95346 Pte Morrison I M

FOURTH WITNESS

B 95325 Pte Gaudette L P having been duly sworn states:

I am a soldier on strength 4 Cdn Armd Bde Wksp RCEME. On the night of 1 Jul 45 I was at a unit dance given at the Cafe Ter Welle. Sjt Turpin came over and told the accused Cfn Robinson that he would have to take a breakdown lorry to Bde HQ. Cfn Robinson told him that he was too drunk to drive it, and that if he saw Cpl Palmer he would get a sober driver. Then everyone started to gather around, Sjt Turpin and Robinson, and I saw the two of them go down onto the floor. I could not see any more of what happened as there were people in front of me.

Cross-examined by the accused.

Q. While Sjt Turpin was talking to me, did he lay his hand on me?
A. He was pointing at you, saying that it was an order.
Q. But did he not lay his hand on me?
A. Not that I know of.
Q. Did you see me strike Sjt Turpin at all?
A. No.

L P Gaudette

B 95325 Pte Gaudette L P

The accused was cautioned as follows:

"Do you wish to make any statement or to give any evidence on oath? you are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or to give any evidence on oath.

"I certify that the foregoing Summary of Evidence consisting of five (5) pages was taken down by me in the presence of the accused, and that RP 4(c)(d)(e)(f) and (g) have been complied with"

A. Gusen Capt

(A Gusen) Capt
Officer detailed to take
Summary of Evidence.
4 Cdn Armd Bde Wksp RCEME

In the Field
3 Jul 45

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No Sir. (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the first charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on ~~the~~ both charge(s), and allowed on the ~~charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge~~(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. Call witnesses. Do you intend to call witnesses on your behalf?
Ans. Yes. Are they witnesses as to character only? Ans. No - both facts and character.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is ~~(are)~~ recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), ~~if any~~, of Not Guilty on the Second Charge and states to the accused that the finding(s) of the Court on the First charge(s), being subject to confirmation, will be promulgated later.(1)
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No Sir.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes - they may be favourable. (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182. RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D128503 Cfn Robert Harry Robinson 4 Cdn Armd Bde W Wksp RCEME

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 8(2)	Not Guilty	Guilty	
2nd AA 40	Not Guilty	Not Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which nil days were spent in hospital. (2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

to undergo detention for a period of six (6) months.

(Sgd) [signature] Judge-Advocate, if any. 23 July 45 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) EGP

(1. AA 57A. Delete if not used.)

Date 25 July 45 (Sgd) E G Pallister Lt Col

Commanding RCEME 4 Cdn Armd Div.

Confirming Officer.

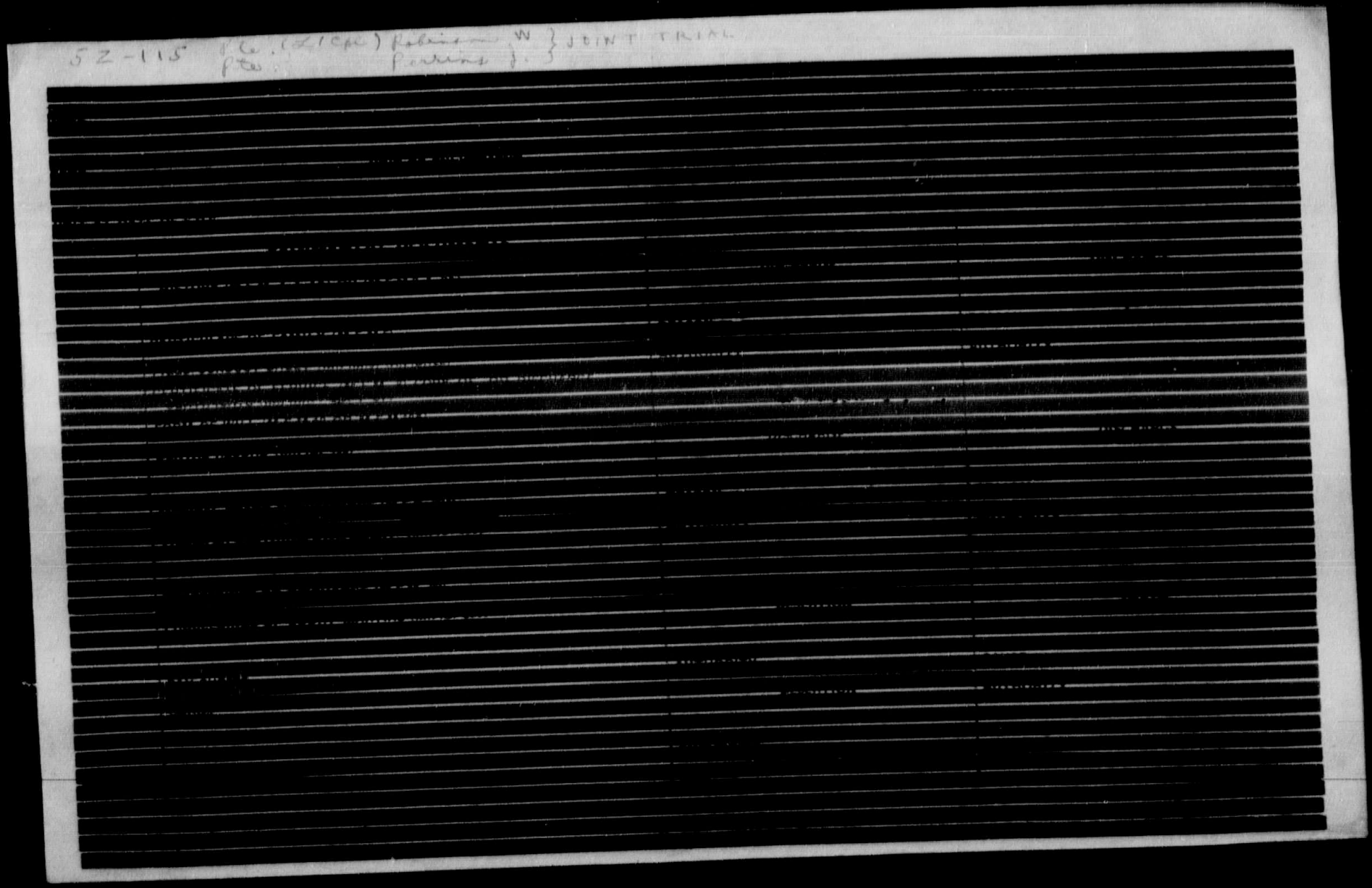
PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

D128503 Cfn. Robert Harry Robinson 27 July 45 [signature]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

52-115 Pte. (L/Cpl) Robinson W } JOINT TRIAL
Pte. Perkins J. }



SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D118639 Pte (L/Cpl) W. Robinson and L84610 Pte James Perrins

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not guilty	Not guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 752, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)

(1. See RP 45(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Acquittal.

(Sgd) ..... 29 Mar 46 (Sgd) W. G. Lucas Lt Col.

Judge-Advocate, if any. Date awarded. President. (RP 35, 80.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Noted

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 5 April 46 (Sgd) A. Rutherford Brig

Commanding Dep Comd & F W

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN 18 160 IX 52-115

CF A96 (to bec of AFA 21) 40-1-30 B/1898 (40705)

FIELD GENERAL COURT-MARTIAL

4/388

RECEIVED APR 26 1946 JAG BRANCH C.M.H.Q.

Convened by Order of Lt. Col. H. F. Baker Comd 1 Cdn Demob Dist dated 28 Mar 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D118639	Pte (L/Cpl)	William	Robinson	10 Cdn Prov Det. 3 Cdn Transit Camp
L84610	Pte	James	Perrins	10 Cdn Prov Det 3 Cdn Transit Camp

PROCEEDINGS REVIEWED

26 Apr 46 C. H. [illegible] JAG

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 29 Mar 46 Camp

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see forms for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused ~~is~~ (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused ~~is~~ (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused ~~is~~ (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused:~~ Do you object to ..... as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt. Col.	L. A. Lucas	RAC 3 Cdn Transit Camp
Member	Lt. Col.	L. D. Mac. Donald	RCOS 3 Cdn Transit Camp
Member	Lt. Col.	R. W. Wilson	C&E 3 Cdn Transit Camp
~~Judge-Advocate~~			
Prosecutor	Lt.	W. D. Callaghan	RCA 3 Cdn Transit Camp
Defending Offr	Capt.	J. C. P. Hardy	C.I.C. 3 Cdn Transit Camp

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See QL § 3.)

A8. The accused D118639 Pte W. Robinson L84610 Pte J. Perrins before arraignment make(s) ~~(no)~~ (a) plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and Finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused ~~is~~ (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused ~~does~~ (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

81

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto,* or, (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 25(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans....., I do ;.....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. Evidence on oath. Do you intend to call witnesses on your behalf ? Ans. No. Are they witnesses as to character only ? Ans.....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

The court is closed to

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)

(1. *AA* 54(3) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans.....

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)

(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans.....(2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas AO* 309, 2323. *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICER'S CERTIFICATE

Ex. 'B'
L.d.

(KR (Can) Para 557)
(SMSO CL 178)

I certify that I have this day examined L-84610 (No.)

Pte. PERRINS, J. (Rank) (Name) and in my opinion he is

fit ~~unfit~~ to undergo trial by Court-Martial.

Station 3 Cdn Transit Camp, CFN

Date 29 March 1946

[signature] (Sgd),
Medical Officer

(Unit)

Ex. "A"

L. J.

Pte.(L/Cpl.) ROBINSON, W. D-118639

(Rank) (Name) (No.)

fit to undergo trial by Court-Martial.

Station 3 Cdn Transit Camp, CFN.

Date 29 March 1946

Medical Officer (Capt), (Unit)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
D-118639	Pte.	(L/Cpl)	William	ROBINSON	10 Cdn Provost Det 3 Cdn Transit Camp
L-84610	Pte.		James	PERRINS	10 Cdn Provost Det 3 Cdn Transit Camp

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, ~~has~~ (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 28 Mar 46 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". HB

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ HB

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. HB

~~4. I am unable to appoint: (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ HB

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereof the Offr mentioned hereunder.~~ HB

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)		(Unit.)
Lt-Col.	W.A. LUCAS	RCASC	3 Cdn Transit Camp

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)		(Unit.)
Lt-Col.	L.F. MacDONALD, ED.	RCCS	3 Cdn Transit Camp
Lt-Col.	R.W. WILSON	CIC	3 Cdn Transit Camp

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in the Field (Country.)

H F Baker (Signed personally. RP 105 fn 2.) Lt-Col. (Rank.)

(H.F. Baker)Lt-Col.

Date 28 March 1946

Commanding 1 Cdn Demob Depot

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA95 (In lieu of AFA3) 40/P & S/1697 (4931)

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused, D-118639 Pte.(L/Cpl) William ROBINSON Permanent Establishment 10 Canadian Provost Detachment attached to 3 Canadian Transit Camp, Canadian Forces in the Netherlands, and, L-84610 Pte. James PERRINS, Permanent Establishment 10 Canadian Provost Detachment attached to 3 Canadian Transit Camp, Canadian Forces in the Netherlands, soldiers of the Canadian army Overseas, are charged with:-

Sec 20(2)
Army Act

WHEN ON ACTIVE SERVICE, WITHOUT REASONABLE EXCUSE ALLOWING TO ESCAPE PERSONS WHOM IT WAS THEIR DUTY TO GUARD

In that thery

In the Field, at about 0300 hrs. on 17 February 1946 allowed to escape, D-62996 Pte. MONDOUX, L., B-17791 Pte. RANGER, F., K-70816 Pte. DEROCHE, E.I., B-58117 Pte. WONG, F.W., p ersons whom it was their duty to guard, without reasonable excuse.

M.A. Frank

(M.A. Frank)Major
Officer Commanding
3 Cdn Transit Camp, CFN

IN THE FIELD
11 Ma rch 1946

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL.

H.F. Baker

(H.F. B aker)Lt-Col.
Commander
1 Cdn Demob Depot.

IN THE FIELD
2[illegible] March 1946

Evidence for prosecution

First Witness

B52231 L/Cpl Jordan L.A. C.P.C.

having been duly sworn states.

I am B52231 L/Cpl Jordan L.A. No 10 Provost Det. C.F.N. at 0700 hrs 17 Feb 46 I was about to take over my tour of duty at Wijchen Jail from L/Cpl Robinson and Rte Perrin, the accused I found them locked in two separate cells of the jail dressed in their underwear. The lock on the door of the cell in which I found Rte Perrin had been damaged. The bolts on the door of the cell occupied by L/Cpl Robinson were secured. I released the accused and reported to Sgt. Ogg. at 3 Cdn Travist Camp. The accused were not in possession of any weapons when I found them in the cells.

Questioned by the defending officer.

I know the accused. On questioning them on my arrival I was told by Rte Perrin that one of the prisoners had asked for a glass of water and when I opened the cell door to give the water the prisoner grappled with me and took away my pistol

Question by Court.

The cell door was of wood effect 1 1/2 in thick. The door has one opening 12 in by 8 in with bars effect two inches apart. I seen strips of blanket lying on the floor of the cells.

The above statement is read back to the witness.

Record writers 6467709 Pte Cunningham W.J. C.P.C. having been duly sworn states: I am 6467709 Pte Cunningham W.J. 10 Prisoners Det. C.P.C. I know the accused. At effort 0700 hrs 17 Feb 46 I arrived at Weichem Jail to release the accused. I found the accused locked in two seperate cells. They were dressed in their underwears. The top and bottom bolt of the cell in which Pte Perrins was locked had been drawn and the wood around the lock was splintered. & the accused were released. I returned to the Can Provost Camp and reported the

facts to Sgt Agg. This is my second tour of this duty. The guards on Wajchem jail are armed. Two prisoners are kept in each cell in this jail. Orders on custody of prisoners are posted in the jail.

Copy of orders read by defending order ~~read~~ accepted by court and marked Exhibit 'C'.

Questioned by defense.

I have read the orders (exhibit C) prior to 17 Feb 46. I have been in the Provost Corps for approx eighteen months. I have never seen any orders in detention barracks.

Question by Court:

I was instructed on my first tour of duty to read the orders (exhibit C) normal procedure is to have two guards present when the cell door is opened. I have not previously relieved the accused on a tour of duty. All prisoners had escaped when I arrived at approx 0700 hrs 17 Feb 46. There is free access from the cells to the door leading to the street

The above statement was read back to the witness

(Prosecution)

3 Witness C 30102 CSM Grants R.M.

C.P.C. having been duly sworn states.

I am NCO i/c regimental police at 3 Cdn Transit Camp. In my opinion the guard room at this camp was not suitable to hold prisoners. I went to Wijchen and arranged to have four prisoners secured in the jail. I arranged the guards from the ~~C.P.~~ Provost personnel attached to 3 Cdn Transit Camp. Two guards were posted on eight hour shifts at Wijchen Jail. I drew up special orders, gave them to the RSM. ~~The orders were posted~~ ~~[illegible]~~ I recognise the accused. I recognise ~~[illegible]~~ exhibit C as being the orders I drew up.

Question by Defence

I do not detail guards. Lieut Blavin laid down eight hour shifts. I consider an 8 eight hour shift satisfactory. I signed the orders (exhibit C). These are special orders for Wijchen jail

Question by Court.

I was not asked or detailed to write the orders (exhibit C). I inspected Wijchen jail before writing the orders. The prisoners were not exercised by the two guards.

(Prosecution)

3rd Witness Contd

I have knowledge that the prisoners held in Wijeken jail had broken out of other detention barracks. I consider them as desperate characters. I asked the C.O. of No 10 Provost Det. Lieut. Blowin to warn all guards about the desperate character of the prisoners

The above statement is read back to the witness

4th Witness B67849 RSM Howard J. C.P.C. having been duly sworn states. On 6 Feb 46 I took a copy of Special orders, exhibit C, to Wijeken jail. I gave instructions to the Sgt i/c of the guard to post the orders and to pass on the information contained to relieving guards.

Question by defence

I have never checked to see if the orders had been duly posted.

Question by Court.

I am RSM of No 10 Provost Det. Lieuts were in complete charge of guards at Wijeken jail

4th witness, contd

It is my responsibility to see that ~~[illegible]~~ C S M Grouls carries out his duties. I have never issued any instructions to C S M Grouls as to his duties as N C O i/c of prisoners. I inspected Wijchen jail on two separate occasions. I had read the special orders (exhibit C) before they were put in Wijchen jail. I do not know where the latrine buckets were to be emptied at the jail. I consider one guard sufficient to check the emptying of latrine buckets. I consider members of the Provost Corps sufficiently trained in guard work.

The above statement was read back to the witness.

5th witness Lieut J. P. Blavin C.P.C having been duly sworn states. I am officer in charge of No 10 Provost detachment attached to No 3 Cdn Transit Camp. I supplied the guard at Wijchen jail. I inspected the jail approx two hours before the prisoners arrived. I consider the jail and the guards supplied to be adequate

T Wilson cont'd (Prosecution)

I did not issue nor did I hear anything about special orders relating to custody of military prisoners in Wijchen jail

I recognize the accused

I present to the court copy of duties orders for 16 Feb 46. Read and initialled by President, marked exhibit D

The accused were on duty 2300 hrs 16 Feb 46 to 0700 hrs 17 Feb 46

Question by defense

I detailed the number of guards on Wijchen jail. Eight hour shifts were organized because of lack of transport. Wijchen jail is connected by telephone to 3 Cdo Troops Camp. I have knowledge that the prisoners had made previous escapes from detention barracks. I do not know how much training the accused have had in the duties and responsibility of guarding prisoners

Question by court

I do not consider it my duty to inspect the prisoners. ~~It~~ I did not

5th Witness, contd

pick especially trained guards for Wijchen jail. I instructed the section sergeants to check with the guards re their duties

The above statement was read back to the witness

6th Witness L 28257 Pte Peakman J. H. C.P.C. duly sworn states: I am L 28257 Pte Peakman JH. a member of No 10 Cdn Provost Det. On 16 Feb 46 I was detailed as guard at Wijchen jail from 1800 hrs to 2300 hrs. I was relieved at approx 2250 hrs by 4 Cdn Robinson. I recognize the accused. When I turned over to the accused the prisoners were in their cells and everything was in order. The accused were armed. I have never received any special instructions regarding the prisoners in Wijchen jail

Question by defense

I do not consider the building used in Wijchen to be a jail. It was simply a place in the basement. I did not see any Dutch policemen about. To my knowledge there is no

6th witness cont'd (Prosecution) (Defence)

telephone communication between this building and No 3 Con Training Camp.

Questions by Court.

The passage to the cells was through a steel door, along a narrow hall and down steps to the basement. I do not know the names of the prisoners. I was on duty only one day. I was never instructed regarding the type of prisoner I was guarding

The above statement was read back to the witness

The prosecution is closed.

witnesses for defence

1st witness L84610 Pte Perrin J. C.P.C. duly sworn states. I am L84610 Pte Perrin J. 10 Det. Con Provost Corps. At approx 0330 hrs 17 Jul 46 I was called by one of the prisoners Pte Wong to get a drink of water. As I approached the cell door, Pte Robinson took up a position in the

Defense

1st witness (contd)

corridor about ten yards from the cell door. I opened the cell door to hand in the ~~slop~~ pan of water. I was caught by the wrist by Pte Wong and dragged into the cell. Both prisoners overcame me. I tried to reach my pistol with my left hand but was prevented by the prisoners. Pte Wong then took my pistol and threatened Capt Robinson with it. He then locked ~~along~~ to the other cell door and released the two other prisoners. I heard Pte Wong ordering Capt Robinson to throw his pistol on the floor. The four prisoners ordered Capt Robinson and myself to disrobe. We removed all our clothes except our underwear. The prisoners took our uniforms and boots. They bound us with strips of blanket and gagged me with a strip of towel. They locked us in two seperate cells. About ½ hr later I freed myself from the bonds and called, ~~I~~ shouted, and tried to kick open the door. We were finally

released by the relieving guard at approx 0700 hrs 17 Feb 46. I have read the orders exhibit C. I did not know the type of prisoners. Both guards are on duty for eight hours. Pte Wong is of powerful build and appeared strong. I have never received any provost training. Feb 16/17 was my third tour of guard duty. The prisoners appeared orderly and docile previous to this break.

Cross examen

I have never heard of the Wong gang. I was disarmed inside the cell. From the time Wong grabbed my wrist until he had my pistol was approx ten seconds. Previously the prisoners had no arms or weapons of any kind. Only the four prisoners were involved in the escape.

The above statement was read back to the witness

2nd witness (Defense)

D 118639 L/Cpl Robinson W 10 Cdn Provost Det. duly sworn states: I was on duty as guard at Wijaden

(Defence)

2nd Welsh (Defence) Contd.

Jail the night of 16/17 Feb 46. At about 0330 hrs 17 Feb 46 I heard one of the prisoners ask for a drink of water. Pte Perrins, the other guard, got a mess tin of water. I stood by the corridor door approx 8 eight feet from the cell and watched Pte Perrin open the cell door. Pte Perrin was suddenly pulled into the cell by one of the prisoners. I came forward, starting to draw my pistol, and saw within the cell two prisoners struggling with Pte Perrin. I stood at the cell door trying to get my pistol out - when Pte Wong came toward me with a pistol in his hand. He ordered me back to the wall and to remove my webbing and pistol and throw them on the floor. He then locked up to the other cell door and released the other two prisoners. Pte Desborbo, one of the prisoners, picked up my pistol. Pte Perrins and I were ordered to remove our clothes. We did. We were bound hands to feet and gagged with strips of blanket. Pte Perrins and I were locked in separate

2nd witness (defence) contd.

cells. Apprx twenty minutes later I released myself. I tried to give a verbal alarm by shouting. No help arrived until apprx 0700 hrs 17 Jul 46 when we were released by the new guard. I did not know nor had I heard anything about the character of the prisoners. I have been employed on present duties apprx five months. It was my first ~~tour~~ duty at Wijnbergen jail. The only training received to date has been on traffic control work. I had not received any special orders re the guarding of the prisoners.

Cross-examin

I do not know if the door leading into the corridor can be locked. I do not know if there is a telephone in the jail. My pistol and holster were a new issue. The pistol was stiff in the holster.

Re-examin

I had turned my old gun in at the depot depot.

2nd witness (defense) contd.

By Court.

The pistol was still in the holster when I threw it on the floor.

The above statement was read back to the witness.

. . . . . .

Defending officer submits statement.

Prosecuting officer sums up.

Closing address (defence) 6 of 1

In the Case of {L-84610 PERRINS & {D-118639 ROBINSON.

It is the submission of the defence that the charge of "allowing" prisoners to escape "without ~~sufficient~~ reasonable excuses" is NOT substantiated by the evidence adduced by the Prosecution. There were reasons and these reasons were decidely sufficient as shown by the ~~ev~~ evidence adduced.

The Court heard witnesses state that

a) there were four men to be guarded.

b) these four men were in two cells only

c) only two men were to guard these four men from 2300 hrs on the until 0700 hrs the next day.

I am respectfully asking the Court "Is NOT this what we call to look for trouble?"

Regarding orders - I am referring to ~~appx H.~~ exhibit "C". It has been established before this court they are simply extracts from NORMAL guard room or detention Barracks orders. Some witnesses were aware of them some were NOT. There was NO special provisions for people of the outlaw type like that particular groupe of four.

witness states that above orders were posted "in view." No evidence has shown that that they had been read to the new guard. In fact Pte (Capt) Robinson states that he had no knowledge whatsoever of ~~the~~ special ~~said~~ orders - let alone any additional precautions covering the case.

Opening the door of a cell to give the inmate water is nothing unusual although in the occurence it proved fatal owing to the character of the said inmate - namely. Pte Wong.

Pte. Perrins reflexes on being grabbed by the arm were NOT, appearently, up to level. This, gentlemen ought to be blamed on the lack of realistic training before Pte Perrins was transferred to the Provost Corps. You have heard him state so under oath.

The same applies, I submit, in the case of Pvt. Robinson.

He struggled with his holster ... Well? We must agree that it was an unusual situation. And it is all very likely that training had something to do with it - or should I say "lack of training."

Above all, gentlemen, we must remember that all this has happened in such a short time -

Considering all the circumstances and, I will emphasize the fact that the guard was NOT adequately organized, I maintain, on behalf of the defendants, that the substance of the charge rests on a number of circumstances which leaves no room for any willful nor neglectfull participation on the part of the accused Robinson and Perrins.

I am, therefore, asking the Court to render a verdict of NOT guilty in both cases.

J.C. Hardy Capt
Defending Officer

~~The defense wishes to bring your attention to the fact that both soldiers had had services of good character only to date.~~

~~J.H. Capt.~~

SUMMARY OF EVIDENCE

In the case of D-118639 L/Cpl. William ROBINSON, Permanent Establishment 10 Canadian Provost Detachment attached to 3 Canadian Transit Camp, Canadian Forces in the Netherlands, a soldier of the Canadian Army Overseas and of L-84610 Pte. James PERRINS, Permanent Establishment 10 Canadian Provost Detachment attached to 3 Canadian Transit Camp, Canadian Forces in the Netherlands, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS
Prosecution

C-37221 L/Cpl. FOWLER, A. 10 Cdn Provost Det., 3 Cdn Transit Camp, C.F.N., having been duly sworn states:-

I am C-37221 L/Cpl. FOWLER, A. at present on strength of 10 Cdn Provost Det. 3 Cdn Transit Camp, On saturday 16 Feb.46, I was warned for duty as guard at WIJCHEN Jail in company with Pte. PEAKMAN to guard prisoners: D-62996 Pte MONDOUX,L.,B-17791 Pte. RANGER, F, K-70818 Pte.DEROCHE,EI, F-58117 Pte WONG,FW., My tour of duty was from 1500 hrs. to 2300 hrs. At approximately 2250 hrs. L/Cpl. ROBINSON and Pte. PERRINS appeared to releave us. The guard was turned over to them at 2300 hrs. at this time the prisoners were in their cells and everything was in order.

Question by the Officer detailed to take Summary of Evidence: At any time were you warned of any special orders for dealing with these prisoners ?

Answer: No, I have never seen these orders.

The accused decline to cross-examine this witness

A Fowler
(A. FOWLER)

SECOND WITNESS
Prosecution

L-28257 Pte. PEAKMAN, J.H., 10 Cdn Provost Det., 3 Cdn Transit Camp, CFN., having been duly sworn States:-

I am L-28257 Pte. PEAKMAN, J.H., at present on strength of 10 Cdn Provost Det., 3 Cdn Transit Camp. On sa turday 16 Feb.46, I was warned for duty as guard at WIJCHEN Jail in company with L/Cpl. FOWLER for prisoners: D-62996 Pte. MONDOUX, L, B-17791 Pte. RANGER, F, K-70818 Pte. DEROCHE, EI, F-58117 Pte. WONG, FW., My tour of duty was from 1500 hrs to 2300 hrs. At approximately 2250 hrs. L/CPL. ROBINSON and Pte PERRINS appeared to releave us. We turned over the guard to them at 2300 hrs. At this time everything was in order and the prisoners were in their cells.

Question by the Officer detailed to take the Summary of Evidence: Did you see any orders regarding the method of dealing with prisoners ?

Answer: No, I saw no orders, nor was I advised of any.

The accused decline to cross-examine this witness.

J H Peakman
(J.H. PEAKMAN)

THIRD WITNESS
Prosecution

B-52231 L/Cpl. JORDON, L.A., 10 Cdn Provost Det., 3 Cdn Transit Camp C.P.N., having been duly sworn States:-

I am B- 52231 L/Cpl. JORDON, L.A. at present on strength of 10 Cdn Provost Det., 3 Cdn Transit Camp, On Sunday 17 Feb.46 I was warned for duty at WIJCHEN Jail, at approximately 0700 hrs. I arrived at WIJCHEN Jailin the company of Pte. CUNNINGHAM to take over our tour of duty from 0700 hrs to 1500 hrs. When I a rrived I found the prisoners had escaped and the guards were locked one in each cell. The prisoners had taken the Battle-Dress from both the guards also their webbing and pistols. Pte PERRINS had attempted to break out of the cell, The Bolt at the bottom of his cell's door had been lifted by means of his lanyard and the key lock damaged in an attempt to free himself. We let L/Cpl. ROBINSON and Pte.PERRINS out and together with them returned to camp and reported the escape to Sgt. OGG who told me to report to CSM GROULX. CSM Groulx said he would look after the matter.

Questions by the Officer detailed to take the Summary of Evidence:

Q.1. Had you ever heard of or seen any special orders for the guarding of these prisoners ?

A.1. No.

Q.2. Had you ever had this duty before ?

A.2. No,I had been warned for this duty before but I was on leave and did not take the duty.

L.A. Jordan
(L.A. JORDON)

FOURTH WITNESS
Prosecution

B-46709 Pte. CUNNINGHAM, W.J., 10 Cdn Provost Det., 3 Cdn Transit Camp, C.P.N., having been duly sworn States:-

I am B-46709 Pte. CUNNINGHAM, W.J., at present on strength of 10 Cdn Provost Det., 3 Cdn Transit Camp, CPN., at approximately 0700 hrs 17 Feb 46 a ccompanied by L/Cpl. JORDON we reported to the WIJCHEN Jail to releave the previous guard L/Cpl. ROBINSON and Pte. PERRINS. On arrival we found L/Cpl. ROBINSON and Pte. PERRINS locked one in each cell and the prisoners gone. After releasing the guards we reported the escape to Sgt. OGG and Lieut.BOULIN.

Questions by the Officer detailed to take the Summary of Evidence:-

Q.1. Did you notice anything about Pte PERRINS cell door ?

A.1. Yes he had managed to open the lower and upper bolt with a pistol lanyard and there was evidence of his having tried to force the lock.

Q.2. Did you notice anything about his dress ?

(Con't)

A.3. Yes, the guards were in their underwear and their clothing, webbing and boots had been ta ken by the prisoners.

Q.4. Did you notice anything about the blankets ?

A.4. Yes they had been cut into strips evidently to be used in tying up the guards.

Q.5. Did you see any special notice for treatment of these prisoners ?

A.5. Yes, when they first came there on the 7th of Feb 46, an order was posted by the stove outlining the care to be taken with these prisoners.

Q.6. Can you say if these orders are still there?

A.6. No.

Q.7. Would you say these orders were in a position where they would be easily seen.

A.7. No, I think they could easily be missed.

The accused decline to cross-examine this Witness.

W.J. Cunningham.
(W.J. CUNNINGHAM)

FIFTH WITNESS C-30102 CSM GROULX, RN., i/c 3 Cdn Transit Camp Guard Room, having been duly sworn states:-

I am, C-30102 CSM GROULX, R.N., at present employed as CSM in charge of 3 Cdn Transit Camp Guard Room. When the four prisoners: D-62996 PTE. MONDOUX, L, B-17791 PTE. RANGER, F, K-70818 PTE. DEROCHE, E.I., F-58117 PTE. WONG, F.W., arrived here I made arrangements for them to be placed in the Civilian Jail at WIJCHEN. I inspected this Jail and found it adequote, I made arrangements with Mr. BLOUIN to supply the guards. He agreed to supply the escorts, I myself made up the orders for the guards. And handed them over to RSM HARROP who posted them at the WIJCHEN Jail. I CSM GROULX, RN presents a copy of these orders which were shown to the accused. I submit them as Exhibit "A" for the prosecution.

The accused decline to cross-examine this witness.

(CSM GROULX, R.N.)

SIXTH WITNESS PROSECUTION Lieut. BLOUIN, J.P., 10 Cdn Provost Det., 3 Cdn Transit Camp, C.F. N., having been duly sworn Sta tes:-

I am Lieut. BLOUIN, J.P. at present surplus to 10 Cdn Provost Det., 3 Cdn Transit Camp, Before the prisoners: D-62996 PTE. MONDOUX, L., S17791 PTE. RANGER, F., K-70818 PTE. DEROCHE, E.I., F-58117 PTE. WONG, F.W., arrived in Camp I was contacted by CSM GROULS who requested that I supplied a guard for these prisoners at the WIJCHEN Jail. After inspecting the Jail. I did agree to have my men do this duty. The Jail was under the supervision of CSM GROULX.

On the 15 Feb 45 Orders were published for 16 Feb 46 showing L/Cpl. ROBINSON and Pte. PERRINS to have the tour of duty, 2300 hrs 16 Feb 46 to 0700 hrs 17 Feb 46, I, Lieut. BLOUIN produces these orders which were read by the accused and are presented as Exhibit "B" for the prosecution.

At approximately 0745 hrs. 17 Feb 46 I was notified by L/Cpl. ROBINSON and Pte. PERRINS of the escape of the prisoners, I told them to report to our office and await further orders.

Question by the Officer detailed to take the Summary of Evidence:-

Q.1. Do you consider the guard as posted adequate for this particular Jail ?
A.1. Yes, I do.

The accused decline to cross-examine this witness.

(C.P. BLOUIN)Lieut.

SEVENTH WITNESS
Prosecution

B-67849 R.S.M. HARROP, J. 3 Cdn Transit Camp, C.P.N., having been duly sworn states:-

I am B-67849 R.S.M. HARROP, J. at present on strength of 3 Cdn Transit Camp., On the 6th of Feb.46 I was approached by C.S.M. GROULX who asked me to deliver standing orders to be used at WIJCHEN Jail. I personaly delivered these orders to the guard on duty at the time and I ordered them to have these orders posted and strictly complied with at all times.

The accused decline to cross-examine this witness.

(RSM HARROP, J)

The accused were cautioned as follows:-

Do you wish to make a statement or give evidence on oath ? you are not obliged to say anything or make a statement unless you wish to do so, but whatever you say or any evidence you may give, will be taken down in writing and may be given in evidence.

The accused decline to make a statement and reserve their defence.

Certified that all the provisions of R.P. 4 (c)(d)(e)(f) and (g) have been complied with. Taken down by me in the presence and hearing of the accused this 25 day February 1946, in the Field.

(T.J. Callaghan)Lieut.
Officer detailed to take
Summary of Evidence.

LIST OF WITNESSES

In the case of D-118639 L/Cpl. ROBINSON, W. and L-84610 Pte. PERRINS, J.

(For the Prosecution)

(1) C-37221 L/Cpl. FOWLER, A., 10 Cdn Provost Det., 3 Cdn Transit Camp, C.F.N.,

(2) L-28257 Pte. PEAKMAN, J.H., 10 Cdn Provost Det., 3 Cdn Transit Camp, C.F.N.,

(3) B-52231 L/Cpl. JORDON, L.A., 10 Cdn Provost Det., 3 Cdn Transit Camp, C.F.N.,

(4) B-46709 Pte. CUNNINGHAM, W.J., 10 Cdn Provost Det., 3 Cdn Transit Camp, C.F. N.,

(5) C-30102 C.S.M. GROULX, R.N., 3 Cdn Tra nsit Camp, CFN.

(6) Lieut. J.P. BLOUIN, 10 Cdn Provost Det., 3 Cdn Transit Camp, C.F. N.,

(7) B-67849 R.S.M. HARROP, J., 3 Cdn Transit Camp, C.F.N.,

(For the Defence)

NONE

LIST OF EXHIBITS

In the case of D-118639 L/Cpl. ROBINSON,W. and L/84610 Pte. PERRINS? J.

(For the Prosecution)

"A" ORDERS FOR ESCORTS AT CIVIL PRISON, dated 7 Feb 46. signed by R.N. GROULX, CSM., 3 Cdn Transit Camp CFN.

"B" STAND - TO - ORDERS, Duties for 16 Feb 46. signed by (J.P. BLOUIN)Lieut. Officer Commanding No. 10 Cdn Pro. Det. # 3 Cdn Trans Camp.

(For the Defence)

NONE

CERTIFICATE OF ACCUSED

I, D-118639 L/Cpl.ROBINSON, W. hereby acknowledge that I received, free of charge, one copy of the Summary of Evidence and one copy of the Charge Sheet therein.

I also request that an Officer be appointed to act as Defending Officer at my forthcoming Court-Martial.

W. Robinson
(W. ROBINSON)

I, L-84610 Pte. PERRINS, J, hereby acknowledge that I received, free of charge, one copy of the Summary of Evidence and one copy of the Charge Sheet therein.

I also request that an Officer be appointed to act as Defending Officer at my forthcoming Court-Martial.

J. Perrins
(J. PERRINS)

SUPPLEMENTARY SUMMARY OF EVIDENCE

In the case of D-118639 Pte.(L/Cpl.) William ROBINSON Permanent Establishment 10 Canadian Provost Detachment attached to 3 Canadian Transit Camp, Canadian Forces in the Netherlands, a soldier of the Canadian Army Overseas and of L-84610 Pte. James PERRINS, Permanent Establishment 10 Canadian Provost Detachment attached to 3 Canadian Transit Camp, Canadian Forces in the Netherlands, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Supplementary Summary of Evidence is taken on oath.

EIGHTH WITNESS
Prosecution

K-70818 Pte. DEROCHE, E.I., X-4 list, 3 Cdn Transit Camp, CFN., having been duly sworn, states:-

I am K-70818 Pte. DEROCHE, E.I., at present on strength of 3 Cdn Transit Camp. On the night of 17 of February 1946 I was held in WIJCHEN Jail as a prisoner Pte. PERRINS AND L/Cpl. ROBINSON came on shift at approximately 2300 hrs.

After this I went to sleep, having gone to sleep at approximately 2330 hrs. At about 0230 hrs I was awakened by Pte WONG who asked me if I wanted to go. He had in some manner overcome the guards. I put my clothes on and left in company with D-62996 Pte. MONDOUX, L., B-17791 Pte. RANGER, F., K-58117 Pte. WONG, F.W., the guards were then locked in the cells.

There was no one else involved in the escape except ourselves the four prisoners, there was no outside help. I do not know exactly how the other two prisoners overcome the guards. Previous to the escape we had no weapons of any kind.

The accused decline to cross-examine the witness.

E.I. DeRoche
(E.I. DEROCHE)

The accused were cautioned as follows:-

Do you wish to make a statement or give evidence on oath ? you are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given as evidence.

The accused decline to make a statement and reserve their defence.

Certified that all the provisions of R.P. 4 (c)(d)(e) (f) and (g) have been complied with. Taken down by me in the presence and hearing of the accused this day of March 1946, in the Field.

W.D. Callaghan
(W.D. Callaghan) Lieut.
Officer detailed to take Summary of Evidence.

LIST OF WITNESSES

In the case of D-118639 Pte (L/Cpl) William ROBINSON and L-84610 Pte. PERRINS

(For the Prosecution)

(8) K-70818 Pte. DEROCHE, E.I.,X-4 list, 3 Cdn Transit Camp, C.F.N.

(For The Defence)

NONE

LIST OF EXHIBITS

In the case of D-118639 Pte (L/Cpl) William ROBINSON and L-84610 Pte. PERRINS

(For the Prosecution)

NONE

(For the Defence)

NONE

CERTIFICATES OF ACCUSED

I, D-118639 L/Cpl. ROBINSON, W. hereby acknowledge that I have received, free of charge, one copy of the Supplementary Summary of Evidence therein.

D. Robinson
(W. Robinson)

I, L-84610 Pte. PERRINS, J., hereby acknowledge that I have received, free of charge, one copy of the Supplementary Summary of Evidence therein.

J. Perrins
(J. Perrins)

Ex. 'C' [illegible]

ORDERS FOR ESCORTS AT CIVIL PRISON

1. Under no circumstances will a prisoner be out of a cell.

2. The escort will take the prisoners meals direct to the cells.

3. The escort will not enter the cell alone.

4. The prisoners will wash and shave in the cells.

5. One prisoner will empty the latrine buckets every morning, he will be escorted by an armed guard.

6. There will be no smoking in the cells.

7. Prisoners boots will be removed from the sells at night between 1800 hrs and 0800 hrs.

8. Personal kit such as razors, soap, toels will be kept outside the cells when not being used by the prisoner.

9. Strict, very strict discipline will be kept at all times.

10. The prison will be inspected morning and afternoon by an officer or Warrant Officer.

7 Feb.46.

(Sgd)R.N. GROULX CSM
(R.N. GROULX)
3 Canadian Transit Camp,CFN.

CERTIFIED TRUE COPY OF THE ORIGINAL.

J.H. Watson, Lieut.
(J.H. WATSON) Lieut.
Admin. Officer
3 Cdn Transit Camp,CFN.

Enbert "A"
[illegible]

NO. 10 CANADIAN PROVOST DETACHMENT
No. 3 Canadian Transit Camp-CFN

Ex. 'D'

S T A N D - T O - O R D E R S

DUTIES FOR 16 FEB 46

STAND TO:
xxxxxxxxxxxxxx Nijmegen Civil Police Station

B-49336	L/Cpl	BUSH	IOR
H-59171	L/Cpl	FORTESCUE	JH
B-147115	Pte	IMHOFT	WM

GUARD DUTY:

B-74660	L/Cpl	BLOCK	FB fr: 0700 hrs 16 Feb 46
C-6192	Pte	LI[illegible]	AA to: 1500 hrs
C-37221	L/Cpl	FOWLER	A fr: 1500 hrs 16 Feb 46
L-55219	L/Cpl	~~[illegible]~~ FRANKMAN.	OR to: 2300 hrs
D-118639	L/Cpl	ROBINSON	W fr: 2300 hrs
JPB. L. 84610	L/Cpl	~~[illegible]~~ PERRINS. JPB.	SK to: 0700 hrs 17 Feb

NIGHT STAND TO:
Telephone Orderly Room

A-58172	L/Cpl	WISLER	HM

(fr: 1800 hrs 16 Feb to: 0600 hrs 17 Feb 46)

DUTIES STAND TO:

Effective 15 Feb 46, Stand To personnel will be at disposal in their room during the day,

J P Blouin Lieut
(J.P. Blouin)-Lieut
Officer Commanding
No. 10 Cdn Pro Det
3 Cdn Trans Camp

/agb

Exhibit "B"
Hollofer St

5-1-80

6 fn. Robinson W.

"DM"

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D77695 Cfn Wellington Robinson

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labor for two (2) years and to be discharged with ignominy from HM Service

19 Apr 45 (Sgd) "D C MacDOUGALL" Maj
Date awarded. President. (RP 45, 50.)

"DM" (Sgd) ~~Judge Advocate, Army~~.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detained barracks and further ordered~~ "JSL"
(1. AA 57A. Delete if not used.)

(Sgd) "JSLind" Brig

Date 21 Apr 45 Commanding 3 CBR Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D77695 Cfn Wellington Robinson, 9 CBR Bn	Apr 23, 1945	"C R Nelson" Capt & Adjt 9 Bn 3 CBR Gp

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MAR

Convened by Order of Brig J S H LIND Comd 3 C.B.G

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for s rank, and (b) appmt, A/rank or A/oppmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Nr
D77695	Cfn		Wellington

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 19 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 29/36

"DM" A1. The President, Members, waiting Member, JA ~~, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn KOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

"DM" A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) ~~or~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~ fit to undergo trial by court-martial.(1)

"DM" ~~The December informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

"DM" A5. ~~President to accused: Do you object to~~ ~~as interpreter in this~~ ~~The Interpreter is sworn.(1) Do you object to~~ ~~as shorthand writer in this~~ The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	D C MACDOUGALL	9 CBR Bn
Member	CAPT	F J LOWDRY	9 CBR Bn
Member	CAPT	R ROBERTS	9 CBR Bn
Judge-Advocate			
Prosecutor	LIEUT	J R FIRTH	9 CBR Bn
Defending Offr	LIEUT	J D BALFOUR	9 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No (3)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

"DM" A8. The accused before arraignment makes(s) (no) (4) plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

23May45 jwb

A9. The accused is (~~are~~) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (~~not~~ plead guilty to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A56 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ 3 CBRG Vol 1 p 41

"DM" **SCHEDULE.**

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D77695 Cfn Wellington Robinson

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

DM (1) ~~Present sentence sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labor for two (2) years and to be discharged with ignominy from HM Service

(Sgd) ~~Judge Advocate~~ 19 Apr 45 (Sgd) "D C MacDOUGALL" Maj
"DM" Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) "JSL"

(1. AA 57A. Delete if not used.)

(Sgd) "JSLind" Brig

Date 21 Apr 45 Commanding 3 CBR Gp

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D77695 Cfn Wellington Robinson, 9 CBR Bn	Apr 23, 1945	"C R Nelson" Capt & Adjt 9 Bn 3 CBR Gp

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5I-80

FIELD GENERAL COURT-MARTIAL

CFA98 (To lieu of AFA3) 40/P to B/1098 (46610) 4/38B

Convened by Order of Brig J S H LIND Comd 3 C.B.B.G. dated 16 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
D77695	Cfn	Wellington	ROBINSON RCEME	9 CBR Bn

CERTIFIED TRUE COPY

[signature]

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 19 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 29/86

"DM" A1. The President, Members, waiting Member, JA, if ~~any, and Offrs under instr, if any~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

"DM" A2. The President initials and lays before the Court the Convening Order and Charge Sheet(~~s~~) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1)

"DM" ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

"DM" A5. ~~President to accused: Do you object to~~ as interpreter? ~~The interpreter is sworn.(1) Do you object to~~ as shorthand writer? ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	D C MACDOUGALL	9 CBR Bn
Member	CAPT	F J LOWDRY	9 CBR Bn
Member	CAPT	R ROBERTS	9 CBR Bn
Judge-Advocate			
Prosecutor	LIEUT	J R FIRTH	9 CBR Bn
Defending Offr	LIEUT	J D BALFOUR	9 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 110. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

"DM" A8. The accused before arraignment make(s) (no) (~~s~~) plea (1)

(1. If a special plea is made for separate trial on one or more charges ~~(RP 62(E), 108)~~, or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB name and name of the accused making the plea.)

23May45 jwb

A9. The accused is (~~are~~) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (~~do~~) "DM" not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, use Record Form D on p 3.*

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii)*, Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A)* (B)*; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or ~~JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.~~(1) The Court decides ~~(not)~~ ~~to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). Part I of the Schedule is amended accordingly.~~

~~change(s) his (their) plea(s) on ..... charge(s).~~ The accused is (are) so informed, and he (they)

(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ..... initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A)* (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 (ns 2, 9.)*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Ss 865. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 45(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up to the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) *Or,* The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(2) (6), RP 45, 120(A).* 2. *AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans ..... Accused and witnesses are sworn. Evidence recorded per Notes.)

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1.*

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *RP 46 fn 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the ~~JA, if any~~.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138. 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 58(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused D-77695 Cfn. Wellington, ROBINSON, on strength of 31 Coy., 9 Bn. 3 C.B.R.G., a soldier of the Canadian Army overseas is charged with:-

FIRST CHARGE
AA Sec 15(1).

WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE.

in that he,

In the Field, in Belgium, did absent himself without leave from 1130 hours, 1 Jan. 1945 until apprehended at 1230 hrs. 5 April 1945.

(Total time absent:- 94 Days, 1 Hours.)

H.W. Rick
(H.W. RICK) Lieut./Col.
Commanding,
9 Bn. 3 C.B.R.G.

In the field,
12 April 1945

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

J.S. Lind
(J S H Lind) Brig
Comd 3 Cdn Base Rft Gp

In the Field
16 Apr 45

D. Mac Dougall-Maj.
President

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAM/1697 (2058)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D77695	Cfn		Wellington	ROBINSON	RCEME 9 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on "JSL" *(date)* 16 Apr 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ "JSL"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~"I am unable to appoint" (a) three Offrs to form the Court; (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "JSL"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ "JSL"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

MAJOR — D C MACDOUGALL — CAC 9 CBR Bn
(Rank.) — *(Must be named. RP 106.)* — *(Unit.)*

MEMBERS.

CAPT — To be detailed by 9 CBR Bn

CAPT or LT — To be detailed by 9 CBR Bn
(Rank.) — *(Named or detailed. RP 106.)* — *(Unit.)*

WAITING MEMBER.

CAPT or LT — To be detailed by 9 CBR Bn
(Rank.) — *(Named or detailed, if any. RP 106.)* — *(Unit.)*

JUDGE-ADVOCATE.

(Rank.) — *(Must be named, if any. RP 106.)* — *(Unit.)*

On Active Service in the Fd

in BELGIUM *(Country)*, "J S Lind" (J S H ~~Lind~~) *Signed personally. RP 105 fn 2.* Brig *(Rank.)*

Date 16 Apr 45

Commanding 3 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"D C MacDougall"

MEDICAL OFFICER'S CERTIFICATE (KR(Can) Para 567)

I certify that I have this day examined D77695 Cfn Robinson W

and in my opinion he is fit/~~unfit~~ to undergo

"SAS"

trial by Court Martial.

Station In the field

Date 19 Apr 45

"D MacDougall" Major
President

"S A Simon" Capt
Medical Officer

Unit

PLEA OF MITIGATION in the case of D77695 Tpr Robinson W

The accused has been in the Army four years three months. He has been overseas for 3 years and on the continent since 13 Sep 44 when he came over with the RCASC as a driver. He was with them till their particular job was finished and being armoured he came to 34 Coy C.B.R.C. It was from here that he went AWL

In Dec 1944 he found out that the girl that he had been going with in England was pregnant and he immediately went to the Padre to see if he could get compassionate leave to England to get married. His leave and marriage application were sent in. He assumed that everything was OK. for his leave and he assigned money to his fiance. While waiting for his leave he was transferred to 10 Bn C.B.R.C. as a driver and as a result of this he lost contact with the padre at 9 Bn and he heard no more about his leave. He inquired from the padre at 10 bn and got worried when no information was forthcoming and he decided to take it into his own hands to get to England and straighten matters out, so he went AWL. He tried all the ways he had heard of to get to England but none of them were successful. He was interviewed by an officer of the 7th Recce, as he had hopes if he got to a Regiment that possibly he could get leave there. This was all to no avail. So he came back and gave himself up. He realizes now how wrong he was in doing what he did and his intentions of getting married are still the same. He would like to give his child a name if possible. The baby is due in May. He has seen the padre in the last few days. The accused hopes that the court will take all these circumstances into consideration in rendering their verdict.

Signed
"J W Balfour" Lt

Ex A. D. Mac Dougall Maj President

SUMMARY OF EVIDENCE

In the case of D-77695 Cfn. Robinson W. of 31 Coy., 9 Bn. 3 C.B.R.G. Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS: Documentary,

The certified true copy of casualty return issued by 31 Coy., 9 Bn. 3 C.B.R.G. produced as documentary evidence, was read over to the accused, marked Exhibit "A", signed by me, and attached hereto.

W.R. Blundon Lt.
(W.R. BLUNDON) Lieut.
Officer detailed to take the Summary of Evidence

SECOND WITNESS: Documentary,

The certificate of apprehension under Army Act 163(i)(j) produced as documentary evidence, was read over to the accused, Marked Exhibit "B" signed by me and attached hereto.

W.R. Blundon Lt.
(W.R. BLUNDON) Lieut.
Officer detailed to take the Summary of Evidence

THE ACCUSED WAS CAUTIONED AS FOLLOWS:-

Q. Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. Yes, I wish to give evidence on oath.

STATEMENT OF THE ACCUSED:-

D-77695 Cfn. ROBINSON W. of 31 Coy, 9 Bn. 3 C.B.R.G. having been duly sworn states:-

I was stationed at St.Peter's Barracks in Ghent. I had applied for compassionate leave but could get no satisfaction as to when I was getting it. On 1 Jan. 45 I was on excused duty so I had my bed made down because I was lying on it most of the day. I had a touch of dysentry and after I returned from the toilet I found my kit had been removed including my blankets. I found out that some Sgt. whose name I do not know, had ordered the removal of my entire kit, beliving me to be A.W.L. I tried to find the Sgt. but failed to do so. Another Sgt told me that afternoon that he had gone on draft. I was angry and I left the camp. I have in my possession the following articles of equipment: 1 Battle Dress, First Field dressing, discs identity. I have two pair of boots in my kit but I do not know where my kit is being held now. The great coat was taken from me at St Peter's Barracks to supply an out-going draft.

W. Robinson
(D-77695 Cfn. ROBINSON W.)

SUMMARY OF EVIDENCE (CONT'D)

in the case of D-77695 Cfn. Robinson W.

I certify that the foregoing Summary of Evidence, consisting of two pages was taken down by me in the presence of the accused and that rules of Procedure 4(c)(d)(e) and (f) have been complied with.

.....
(W.R. BLUNDON) Lieut.
Officer detailed to take the
SUMMARY OF EVIDENCE

In the field,
12 April 1945

Exhibit "A" in the case of D77695 Cfn Robinson, W.

PART II ORDER EXTRACT FORM

19

EXTRACTS FROM: Unit x List RCEME

Part II Order No 13 dated 19 Jan 45

3. ABSENT WITHOUT LEAVE.

(b) AWL from 1130 hrs 1 Jan 45 (x4 List 12 Bn)

D77695 Pte Robinson, W.

Certified to be a true extract from the regimental books and documents in my custody.

(C. L. Nelson), Captain,
Adjutant,
9 Bn, 2 C.B.R.Gp.

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT SECTION 163(1)(j)

I certify that No. D77695 ....Rank Cfmn ..Name...ROBINSON W.....

of....9 Bn 3 C.B.R.G. ..... unit was arested by M44999 Sgt Matheson

9 Sec 2 Cdn LofC Pro Coy Ghent Detachment

.....GHENT.....(place) at 1230 hrs on 5th April 1945

(date). He was dressed in uniform/~~Civilian clothes~~

Date..5 April 45.. Signature of Provost Marshal, APM, or other officer into whose custody the a/m person was taken on arrest.

Ghent

Signature & Rank...."C Wood" Capt.....

(C Wood) DAPM 2 CBRG

Unit or appointment Canadian Provost Corps.....

"DM"

NOTES

1. This certificate must be signed personally by the officer concerned.
2. In no circumstances may it be signed by one officer 'for' another or by anyone not holding commissioned rank.
3. In no circumstances should the place of apprehension be described as 'In the Field'. The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

This is exhibit "B" referred to in the Summary of evidence in the case of D77695 Cfn Robinson W. of 31 Coy. 9 Bn. taken before me this 12 Apr 45

"W.R. Bunson" Lt. Offr. detached to the Summary of Evidence.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D77695	CFN	ROBINSON, W	9 Bn 3 C.B.R.G.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

~~In~~ ..... times.

~~For~~ ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet not available

Date of last entry in Field Conduct Sheet not available

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for No days in civil custody; and for 15 days in military custody, *i.e.*, No days in open arrest, 15 days in close arrest; of which No days were spent in hospital.

5. The present age of the accused is 26

6. The date of ~~his~~ attestation ~~joining up for military service~~ is 9 June 1941

7. The service which the accused is allowed to reckon is 4 yrs 2 months

‡State the military decorations (if any) held by accused.

8. The accused is in possession of‡ CVSM & Clasp

9. (*If the accused is a warrant officer or N.C.O.*). ~~The accused has served continuously, without reduction, to the present date.~~

Date of Promotion.

~~In the substantive rank of~~ .....

~~In the war substantive rank of~~ .....

~~In the acting rank of~~ .....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27855) Wt.24930/3404 24,000 7/44 A.S.E.W.Ltd. Gp.698 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

Ex B" D MacDougall" Maj
President

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 19 day of April 45

Capt & Adjt
9th S C.B.R.Gp.

TEMPORARY SHEET

No. D77695 Name Robinson W. Sqn, Battery, or Company Corps RCEME Date of enlistment GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/P&S/108 (5413)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
CERTIFIED TRUE EXTRACT FROM THE REGIMENTAL CONDUCT BOOKS HELD IN MY CUSTODY.									
				(C.L. Nelson) Capt Adjutant 9 Bn 3 C.B.R.Gp.					
				Ex "C" "Dr MacDougall" Maj President					

(PTO)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 77695 Cpl. Wellington Robinson

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for Two (2) years and to be discharged with ignominy from H.M. Service

(Sgd) ..... Judge-Advocate, if any. Date awarded 19 Apl 45 (Sgd) D.F. MacDougall Maj President. (RP 45, 80)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6;46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1) (1. AA 57A. Delete if not used.)

Date 21 Apr 45. (Sgd) J.J. Lund Brig. Commanding 3 CBR Bde. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D 77695 Cpl Wellington ROBINSON, 9 CBR Bn	APR 23 1945	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5I-80

RECEIVED 28 MAY 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFA80 (To face of AFA81) 40/P 10-5/1868 (40706) A38B

Convening Offr: Brig J.J. Lund Comd 3 Can Bde RCAC dated 16 Apr 45

ACCUSED.

(If on the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-77695	(a) Lcpl (b) Acting Capt	Wellington	Robinson	9 CBR Bn

PROCEEDINGS REVIEWED
J. Lucy Wieland Capt
28 May 45.
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held at (The F'd in (country) Belgium on (date(s)) 19 Apl 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr~~, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A45, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~
~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D.F. MacDougall	9 CBR Bn
Member	Capt.	J.J. Lowday	9 CBR Bn
Member	Capt.	R. Roberts	9 CBR Bn
Judge-Advocate			
Prosecutor	Lieut	J.R. Irish	9 CBR Bn
Defending Offr	Lieut	J.D. Balfour	9 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~(a)~~ plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed~~ and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 12.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below. ———

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or ~~JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No Sir (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ——— charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ——— charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ~~A~~, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. ~~As to~~ the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record ~~Form D on p~~ 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY ~~are~~ read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(E).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Sir
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ~~B~~, and Ex ~~C~~ respectively.(3)
(1. *AFB 355 or AFB 286.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes in Mitigation of punishment (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(2) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the ~~JA, if any~~.(3)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused D-77695 Cfn. Wellington, ROBINSON, on strength of 31 Coy., 9 Bn. 3 C.B.R.G., a soldier of the Canadian Army overseas is charged with:-

FIRST CHARGE
AA Sec 15(1).

WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE.

in that he,

In the Field, in Belgium, did absent himself without leave from 1130 hours, 1 Jan. 1945 until apprehended at 1230 hrs. 5 April 1945.

(Total time absent:- 94 Days, 1 Hours.)

H.W. Rick

(H.W. RICK) Lieut./Col.
Commanding,
9 Bn. 3 C.B.R.G.

In the field,
12 April 1945

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

J S H Lind

In the Field
16 Apr 45

(J S H Lind) Brig
Comd 3 Cdn Base Rft Gp

Dimac Dougall Maj
— president —

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-77695	Cfn		Wellington	ROBINSON	RCEME 9 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (date) 16 Apr 45 endorsed by me, ~~(or by an offr of my staff for me),~~ "To be tried by Field General Court-Martial". JM

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ JM

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder. JM

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ JM

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D C MacDOUGALL	CAC 9 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by 9 CBR Bn	
Capt or Lt	To be detailed by 9 CBR Bn	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	To be detailed by 9 CBR Bn	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Dat 16 Apr 45

J. S. Lind (Signed personally. RP 105 fn 2.)

(J S H Lind)

Commanding 3 Cdn Base Rft Gp Convening Officer.

Brig (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

D. C. MacDougall may president

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (6143)

D77695

Gen. Robinson. W.

S A Simon Capt

~~Sad~~ Sad In the Field

Date 19 Apr /45

D. MacDougall Maj.
President

Plea of Mitigation
in the case of W-77695 Tpr. Robinson W.

The Accused has been in the Army four years three months. He has been overseas for 3 years and on the continent since 13 Sept 44 when he came over with the R.C.A.S.C. as a driver. He was with them till their particular job was finished and being Armoured became to 3rd Coy. C.B.R.R; it was from here that he went A.W.L.

In Dec. 1944 he found out that the girl that he had been going with in England was pregnant and he immediately went to the Padre to see if he could get compassionate leave to England to get married. His leave and marriage application were sent in and he assumed that everything was O.K. for his leave and he assigned money to his fiancee. While waiting for his leave he was transferred to 10 Bn C.B.R.R. as a driver and as a result of this he last contact with the Padre at 9 Bn. and he heard no more about his leave. He inquired from the Padre at 10 Bn and got worried when no information was forthcoming and he decided to take it into his own hands to get to England and straighten matters out 30 he went A.W.L. He tried all the ways he had heard of to get to England but none of them were successful. He was interviewed by an Officer of the 7th Recce, as he had hopes if he got to a regiment that possibly he could get leave there, this was all to no avail. So he came back and gave himself up. He realizes now how wrong he was in doing what he did and his intentions of getting married are still the same. He would like to give his child a name if possible. The baby is due in MAY. He has seen the padre in the last few days. The Accused hopes that the Court will take all these circumstances into consideration in rendering their verdict.

Signed [illegible]

EX. A.
D. Omar Douglas Maj
President

SUMMARY OF EVIDENCE

In the case of D-77695 Cfn. Robinson W. of 31 Coy., 9 Bn. 3 C.B.R.G. Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS: Documentary,

The certified true copy of casualty return issued by 31 Coy., 9 Bn. 3 C.B.R.G. produced as documentary evidence, was read over to the accused, marked Exhibit "A", signed by me, and attached hereto.

W.R. Blundon Lt.
(W.R. BLUNDON) Lieut.
Officer detailed to take the Summary of Evidence

SECOND WITNESS: Documentary,

The certificate of apprehension under Army Act 163(i)(j) produced as documentary evidence, was read over to the accused, Marked Exhibit "B" signed by me and attached hereto.

W.R. Blundon Lt.
(W.R. BLUNDON) Lieut.
Officer detailed to take the Summary of Evidence

THE ACCUSED WAS CAUTIONED AS FOLLOWS:-

Q. Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. Yes, I wish to give evidence on oath.

STATEMENT OF THE ACCUSED:-

D-77695 Cfn. ROBINSON W. of 31 Coy, 9 Bn. 3 C.B.R.G. having been duly sworn states:-

I was stationed at St.Peter's Barracks in Ghent. I had applied for compassionate leave but could get no satisfaction as to when I was getting it. On 1 Jan. 45 I was on excused duty so I had my bed made down because I was lying on it most of the day. I had a touch of dysentry and after I returned from the toilet I found my kit had been removed including my blankets. I found out that some Sgt. whose name I do not know, had ordered the removal of my entire kit, beliving me to be A.W.L. I tried to find the Sgt. but failed to do so. Another Sgt told me that afternoon that he had gone on draft. I was angry and I left the camp. I have in my possession the following articles of equipment: 1 Battle Dress, First Field dressing, discs identity. I have two pair of boots in my kit but I do not know where my kit is being held now. The great coat was taken from me at St Peter's Barracks to supply an out-going draft.

Robinson W.
(D-77695 Cfn. ROBINSON W.)

SUMMARY OF EVIDENCE (CONT'D)

in the case of D-77695 Cfn. Robinson W.

I certify that the foregoing Summary of Evidence, consisting of two pages was taken down by me in the presence of the accused and that rules of Procedure 4(c)(d)(e) and (f) have been complied with.

.....
(W.R. BLUNDON) Lieut.
Officer detailed to take the
SUMMARY OF EVIDENCE

In the field,
12 April 1945

Exhibit "A" in the case of D77695 Cfn Robinson W.

PART II ORDER EXTRACT FORM

APR 19 1945

EXTRACTS FROM: Unit X Lists R C E M E

Part II Order No. 13 dated 19 Jan 45

3. Absent without leave.

(b) AWL from 1130 hours 1 Jan 45 (X-4 Lists 12 Bn)

D 77695 Pte Robinson W.

Certified to be a true extract from the regimental books and documents in my custody.

(C. L. Nelson), Captain,
Adjutant,
9 Bn, 2 C.B.R.Gp.

DMM

CERTIFICATE UNDER ARMY ACT. SECTION 163 (i) (j)

Certified that No. D.77695 Rank Cfmn. Name ROBINSON W.

of the 31 Coy. 9 Bn.3 C.B.R.G. Regt, ~~xxxxxxxxxxxxxxx~~ No. M.44999

Rank Sgt. Name Matheson D. was apprehended by of the 9 Sec.2 Cdn.LofC Pro.Coy.

Ghent Detachment at Ghent at 1230 hrs, on the 5th.

day of April 1945 as an absentee without leave.

He was wearing Military Uniform at the time of his ~~xxxxxxxxxxxxxxx~~ Arrest.

~~xxxxxxxxxxxxxxx~~

Place Ghent

Date 5 April 45

DTM

(C.Wood) Capt. C.
BAPC 2 DS.B.R.G.

Canadian Provost Corps.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
D-77695	CFN	ROBINSON W.	9 Bn. 3 C.B.R.G.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

~~For~~ ~~times.~~

For times.

For times.

~~For~~ ~~times.~~

Date of first entry in Field Conduct Sheet Not available

Date of last entry in Field Conduct Sheet Not available

2. ~~Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.~~

*Strike out if not applicable.

3. ~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been awaiting trial on the present charges for no days in civil custody; and for 15 days in military custody, *i.e.*, no days in open arrest, 15 days in close arrest; of which no days were spent in hospital.

5. The present age of the accused is 26

6. The date of his attestation ~~calling up for military service~~ is 9 June 1941

7. The service which the accused is allowed to reckon is 4 yrs 2 mos

8. The accused is in possession of‡ CVSM & Clasp

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). ~~The accused has served continuously, without reduction, to the present date:—~~

Date of Promotion.

~~In the substantive rank of~~

~~In the war substantive rank of~~

~~In the acting rank of~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27833) Wt.24829/3404 24,000 7/44 A.& E.W.Ltd. Gp.6/68 Forms/B.296(War)/3

CERTIFICATE UNDER ARMY ACT, SECTION 163 (1) (j)

Certified that No. D.77695 Rank Cfmn. Name ROBINSON W.

of the 31 Cov. 9 Bn. 3 C.B.R.G. Regt, ~~xxxxxxxxxxxxxxxx~~ No. M.44999

Rank Sgt. Name Matheson D. was apprehended by 9 Sec. 2 Cdn. LofC Pro. Coy.

of the 14

Ghent Detachment at Ghent at 1230 hrs, on the 5th.

day of April 1945 as an absentee without leave.

He was wearing Military Uniform at the time of his ~~xxxxxxxxxxxxxxxx~~ Arrest.

Place Ghent

Date 5 April 45

DTM

(C.W.O.) Capt. C.
Canadian Provost Corps.

This is Exhibit "B"
referred to in the Summary
of Evidence in the case of
D77695 Cfn. Robinson W. of
31 Cy. 9 Bn., taken before
me this 12 April 45

A R Blandow Lt.

Officer detailed to take
the Summary of
Evidence.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
D-77695	CFN	ROBINSON W.	9 Bn. 3 C.B.R.G.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

~~For ..... times.~~

~~For ..... times.~~

~~For ..... times.~~

~~For ..... times.~~

Date of first entry in Field Conduct Sheet Not available

Date of last entry in Field Conduct Sheet Not available

2. ~~Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.~~

*Strike out if not applicable.

3. ~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been awaiting trial on the present charges for no days in civil custody; and for 15 days in military custody, *i.e.*, no days in open arrest, 15 days in close arrest; of which no days were spent in hospital.

5. The present age of the accused is 26

6. The date of his attestation ~~calling up for military service~~ is 9 June 1941

7. The service which the accused is allowed to reckon is 4 yrs 2 mos

8. The accused is in possession of‡ CVSM & Clasp

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). ~~The accused has served continuously, without reduction, to the present date.~~

Date of Promotion.

~~In the substantive rank of .....~~

~~In the war substantive rank of .....~~

~~In the acting rank of .....~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27835) Wt.24939/3404 24,000 7/44 A.& E.W.Ltd. Gp.688 Forms/B.296(War)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

Ex B. D. MacDougall
President

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 19 day of April 45

Capt

3

No. D-77695 Name ROBINSON W. Sqn, Battery, or Company TEMPORATY SHEET Corps RCEME Date of enlistment GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/PAS/130 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE EXTRACT FROM THE REGIMENTAL CONDUCT BOOKS HELD IN MY CUSTODY.					
				(C.L. NELSON) CAPT., ADJT., 9 BN. 3 C.B.R.G.					
				Ex. C D Cmac Dougall mg — president —					

(PT6)

RECEIPT FOR CHARGE SHEET AND SUMMARY OF EVIDENCE (MML. Ch 5 Sec 5 [illegible]

I hereby acknowledge that I have this date 14 Apr. 45 received from 9 Bn. 3 CBR Gp. one copy of Charge Sheet and Summary of Evidence referring to charge(s) of _____

_____

for which I was remanded for Court-Martial.

Cfn. Robinson W.
(Signature of Accused)

REQUEST FOR DEFENDING OFFICER (MML Ch 5 Sec 5 SS 27)

I hereby request that Major Lowe R.M.R. Def. Coy if available, act in my defence. If this officer is not available, I request that the Commanding Officer of _____ (Unit) Appoint an Officer to act on my behalf.

Cfn. Robinson W.
(Signature of Accused)

I hereby certify that Lt J D Balfour (rank and name) was appointed to defend D 77695 Cfn W Robinson (number, rank and name) at his forthcoming trial by Court-Martial and that the said Lt J D Balfour (Rank and name) was notified that he is to act as defending Officer on 14 Apr 45 (date)

[illegible] 3
(Adjt of Unit)

WHEN PROSECUTING OFFICER POSSESSES LEGAL QUALIFICATIONS (MML Ch 5 Sec 5 [illegible]

I hereby certify that I have been duly warned that the prosecutor is an officer possessing legal qualifications.

Cfn. Robinson W.
(Signature of Accused)

DMM

SA-133

Mr. Robinson, W.D.

RECORDED AT CMHQ IN AB 160 SP-133

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-62053 Pte William Donald ROBINSON of CIC of 2 CITR

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) .....(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for a period of One Hundred and Fifty (150) days and to forfeit Twenty (20) days pay until he has made good the Clothing lost by him while absent without leave.

21-18-0 (Sgd) ..... Judge Advocate/President. Date awarded. 27 Mar 1945 (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 27 Mar 45 (Sgd) N Blackader Brig Comd Commanding 13 Can Inf Trg Bde

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B62053 Pte ROBINSON, WD.	29 Mar 45	D Soria Lieut

ENTERED ORDER No. 77 DATE 31 Mar 45 BY [illegible]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CP(AF) (In lieu of AFAA) 40/P & B/1698 (R1944) 4/38B

Convened by Order of Colonel C B Ware, DSO A/ Comd 13 CITB dated 24 Mar 45

RECEIVED 6 APR 1945 C.M.H.Q.

PROCEEDINGS REVIEWED Capt K Mac Stamp 7 April 45. REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16(2), 109. As to reasons for showing (a) permanent or confirmed rank and (b) appmt, A/rank or A/appmt, if any, see AA 182, 187, Ins, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-62053	Pte	William Donald	ROBINSON	CIC 2 CITR

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 27 MAR 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para numbers herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1020 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans .....~~

The Interpreter is sworn.(1) Do you object to C 28126 SGT SINCLAIR A/M as shorthand writer? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.H. BEDMAN	HQ, CAN
Member	CAPT	J.P. COX	2 CITR
Member	Lt	H.L. HYNDMAN	4 CITR
~~Judge Advocate~~			
Prosecutor	Lt	P. SAPERIA	2 CITR
Defending Offr	CAPT	W.A. MULLOCK	2 CITR

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to R&P cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, details and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO, SIR (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex 7, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans..... Do you intend to call witnesses on your behalf? Ans..... Are their witnesses as to character only? Ans.....
(1. *RP* 115. 2. *RP* 80(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*i*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans NO-SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 5 and Ex 6 respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes-Dft Offr (NOTE ATT) (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2223, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1B), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. B-62053 Private William Donald ROBINSON, C.I.C., on strength of 2 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:-

Sec 75(1) ARMY ACT

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

In the Field, at 2359 hours, 21 Jan 45, illegally absented himself without leave until he surrendered himself to the Civil Police at Manchester at 1845 hours, 7 Mar 45, thereby incurring costs in returning to unit in the amount of £1-15-0.

(Total Absence: 44 days, 18 hours, 46 minutes)

Laurentide Camp.
21 Mar 45

J A Wilson Col
(J A Wilson) Col
Comd
2 C I T R

To be tried by Field General Court Martial.

C B Ware
(C B Ware) Col
A/Comd
1st Cdn Inf Trg Bde

IN THE FIELD
24 Mar 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-62063	Pte	William Donald	ROBINSON	CIC 2 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has ~~(now)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 24 Mar 45 endorsed by me, (~~as appears by the said Charge Sheet~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is necessary to convene a General Court-Martial~~)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am aware that there is no officer available who is qualified for the appointment of President~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I have appointed the officer whose name is hereunder mentioned~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

LT COL (Rank.)	D L REDMAN, VD (*Must be named. RP 106.*)	HQ CRU (Unit.)

MEMBERS.

Captain	to be detailed by Comd	2 CITR
Lieutenant (Rank.)	to be detailed by Comd (*Named or detailed. RP 106.*)	4 CITR (Unit.)

WAITING MEMBER.

Captain (Rank.)	to be detailed by Comd (*Named or detailed, if any. RP 106.*)	1 CITR (Unit.)

~~JUDGE ADVOCATE~~

(Rank.)	(*Must be named, if any. RP 106.*)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) Colonel (Rank.)

(C B Ware)

Date 24 Mar 45 ~~Commander~~ A/Comd 13 Cdn Inf Trg Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

MED OFFRS CERTIFICATE 2 CITR/21

K.R.Can.Para 557

I certify that I have this morning examined No. R62053
Pte. ROBINSON W.D. and in my opinion he
is FIT ~~UNFIT~~ to undergo trial by Court-Martial.

Station: Laurentide Camp (RCAMC) attached to 2 CITR Capt.

Date: 27 MAR 45

PLEA IN MITIGATION ON BEHALF OF B62053. PTE ROBINSON, WILLIAM.

Pte Robinson enlisted for Active Service on Sept. 3, 1941, expressing a desire at that time to serve in the RCASC. Upon completing Basic Training he was posted to the Armoured Corps and proceeded overseas in April 1942. He served with The Fort Garry Horse for approximately 2 years and then was re-mustered to Infantry. ~~This constant re-mustering and~~ transferring from one branch of the service has had an unstabilizing effect on Pte Robinson and feeling ~~disappointed~~ disgruntled he ~~has gone~~ went absent without leave.

Pte. Robinson has expressed the ~~desire~~ determination to straighten up and asks the Court's leniency so that he might have an opportunity of serving in the field ~~so that he might~~ and in that way redeem himself for his past indiscretions.

Sir:

Wm A McCullock
Capt.
Defending Officer.

E-3
MX

SUMMARY OF EVIDENCE

In the case of B-62053 Pte William Donald ROBINSON, C.I.C., on strength of 2 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on Oath.

FIRST WITNESS FOR THE PROSECUTION

Lieut K.A. JOHNSON of Regimental Headquarters 2 CITR, having been duly sworn, states as follows:-

"I am Lieut. K.A. JOHNSON of Regtl HQ 2 CITR, and I produce the following documents pursuant to Overseas RO 5352 which have been read over and shown to the accused, and which are attached hereto as Exhibits:

Exhibit "A":- Certified True Copy of the Record of Declaration of Court of Inquiry, assembled on 22 Feb 45, In the Field, declaring that B-62053 Pte ROBINSON W D illegally absented himself without leave 2359 hrs, 21 Jan 45, and that at the date of the Court he was still so absent.

Exhibit "B":- A.F. O.1617, certifying that B-62053 Pte ROBINSON, W.D. surrendered himself to the Civil Police at 1845 hrs, 7 Mar 45, in Manchester.

Exhibit "C":- Certificate of expenses incurred in the returning of B-62053 Pte ROBINSON, W.D. to London from Manchester, which certificate is dated 9 Mar 45, and shows an amount of £1-15-0.

Which above exhibits pertain to the accused herein."

The accused declines to cross-examine this witness.

K.A. Johnson Lt.
.....
(K.A. Johnson) Lieut.

The accused was cautioned as follows:-

"Do you wish to make any statement or to give any evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of ONE page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C) (D) (E) and (F) have been complied with.

P. Saperia
.....
(P. Saperia) Lieut
Officer detailed to take
The Summary of Evidence.

Laurentide Camp.
21 Mar 45

EXA

Exhibit A

RECORD of the Declaration of a Court of Inquiry assembled at in the Field on the 22nd day of Feb 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B.62053 Pte ROBINSON W D, CIC

DECLARATION

The Court declare that No. B.62053 Pte ROBINSON, W D, CIC

illegally absented himself without leave 2359 hrs

at in the Field on the 21 day of Jan 45,

that he is still so absent, and that on the 22 Feb 45 he was deficient, and

that he is still deficient of the following articles :—

ARTICLES	VALUE	ARTICLES	VALUE
See Overleaf		See Overleaf	

ENTERED CASES No. 54
DATE 5 Mar 45
Boston

J P Cox Capt. President
(J P Cox) Captain

P Saperia Lieut Member
(P Saperia) Lieutenant

Member

Signed at in the Field

this 24th day of Feb 19 45

Signature of Commanding Officer J A Wilson Col
(J A Wilson) Col, Comd 2 C I T R

Certified true copy H. J. Brak Lt
Signature of Officer having custody of original record

3/60B MFB 375-AFB 115
40/P&S/392 (6610)

ARTICLE	No.	100%	75%
Blouses B D	2	2- 7- 6	1-15- 3
Trousers B D prs	2	2- 8- 3	1-16- 3
Boots Ankle prs	2	2- 8-10	1-16- 8
Caps, F S	1	2- 6	1-10½
Drawers, Cell, sht, prs	1	1-11	1- 5½
Greatcoat, Drab	1	2-11- 8	1-18- 9
Jackets, Sweater	1	8- 0	6- 0
Shirts Angola, drab	1	9- 1	7- 8
Shoes, Canvas, prs	1	2-11	2- 3
Socks, prs	4	6- 8	4- 4
Badges, cap	1	4½	3½
Brush, shaving	1	1- 8	1- 3
Brush, tooth	1	6	4½
Belt, web	1	3- 4	2- 6
Combs, hair	1	2	1½
Towels, hand	1	1- 5	1- 1
Bottles, water	1	3- 8	2- 9
Tins, Mess	1	1- 7	1- 1½
Respirator, Complete	1	1- 0-11	15- 8½
Mugs, Drinking	1	7	5
Sheets, ground	1	15- 2	9-10½
Cape, A/G	1	12- 4	9- 3
T O T A L S		£14- 6- 6	£10-15- 0

IMMEDIATE.

Army Form Q.1617
R.A.F. Form 1617.

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depots are shown in the Monthly Army List.

† NOTE.—Special instructions apply in war for the disposal of absentees and deserters from the Army, who surrender to the civil police; e.g., such persons will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops at the nearest military station. (A.C.I. 480/1940).

(20939) Wt.48452/452 25,000 5/42 A.& E.W.Ltd. Gp.698 Forms/Q.1617/15.

1174

Exhibit B

I CERTIFY that the man whose personal description is given below surrendered himself to* PC C122 John Sedgwick at Manchester at (hour) 6.45 pm on the 7th day of March 1945 as being No. B 62053 (Rank and Name) Private William Donald Robinson ~~a deserter~~ (or absentee without leave) from Canadian Infantry Corps and it appears to me from his confession that he is a deserter or absentee without leave.

*After the word "to" to be inserted the name and rank of the police officer concerned.

Age 26 Height 5 Feet 7 3/4 Inches

Complexion Fresh Hair Fair

Eyes Blue

Marks Tattoo right forearm cut scar 2nd forger left hand

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	3.9.41 Toronto Ontario
Probable Date of ~~Desertion or~~ beginning of absence, and from what place	20.1.45 Whitley, Romford Surrey

7 MAR 1945

Signature of Officer in charge of John C. Geddes Insp Mill Street Station.

7.3.45 Date of Signature

Army Form O.1617
R.A.F. Form 1617

PART 2

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies *only* in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds incurred by the _____ Police in the case of No. _____ who surrendered to the Police at _____ on _____

Payable to _____

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at _____

Date of Signature

Expense Voucher Re—

Exhibit C

Ref: KR & O (Can) 539

Reg No B62083 Rank Pte Name Robinson, WD Unit 2 C I R

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit from London from Manchester (1 portion)

Date	Particulars	Amount £	s	d
9 Mar 45	Escorts return fare from LONDON To Manchester		14	2
	Prisoners single fare to LONDON From Manchester		14	2
	Prisoners fare from to			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		6	8
	Total £	1	15	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

A. Johnson

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

Capt

1/35 CMHQ 100-55
40/F & S/483 (6762)

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment ~~(or unit)~~
B-62053	Pte	ROBINSON W D	2 C I T

1. The following is a fair and true summary of the entries in the ~~Service and General~~ ~~Regimental and Squadron, Battery~~ ~~Conduct sheets~~ ~~or~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

Within last 12 months			Since enlistment		
For A.A. Sec 10(4)	0	times	A.A. Sec 10(4)	~~6~~ 1	times
For A.A. Sec 15(1)	1	times	A.A. Sec 15(1)	5	times
For A.A. Sec 40	0	times	A.A. Sec 40	3	times
~~For~~		~~times~~			~~times~~

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

There are no entries in the conduct sheets of the accused.

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

~~2. The accused has not been previously convicted~~

~~or~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.F.A. 73~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for ..... beginning on the day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and 20 days in military custody, making a total of 20 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 26 years, 6 months.

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 3 Sep 41

~~7. The service which the accused is allowed to reckon towards discharge is~~

~~8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward.

C.V,S.M. & CLASP

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of .....~~

EX B

M

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force

.....dated....., and in his regiment (or corps), the rank of unit

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

In the rank of ..... Date of promotion.

~~In the rank of~~ .....years.

~~In the rank of~~ .....years.

~~In the rank of~~ .....years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number C2050 Rank Pte

Name William Donald ROBINSON of 2 Cdn Inf Trg Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	IN THE FIELD 9 Oct 44	Sec 15(1)	60 days detn.	20 days

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27 day of Mar 45 Captain Lieut
Asst Adj. 2 C I T R

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

No. B 62053 Name ROBINSON, Wm Donald | Sqn, Battery, or Company | Corps | Date of enlistment 3-9-41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (7010)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine NA | Sheet No. One | Signature OC Company, etc Signature not decipherable | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Old sheet destroyed on 28-7-42 (E.A. Lunsdell Lieut) Improper entry deleted 20-3-44 (M. Hay Cap't)									
Camp Borden	21-3-42	Tpr		(AA 10) (4) Breaking out of Barracks. AA 15 (1) AWL from 2100 hrs 21-3-42 until apprehended in Allandale by Pro. (Absent 2 hrs). AA 40 An act to the prejudice of good order and military discipline made use of document for it to be a genuine pass, knowing it to be not genuine.		Documentary 14 Days CB	22-3-42	Capt Farmer (A.F.P.)	

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Dettingen	30-5-42	Tpr		AA 15 (1) AWL from 1200 hrs 30-5-42 to 31-5-42. (Time absent 32 hrs)	Doc't'y	14 days Detn	1-6-42	Maj P.C. Griffin	Forf 1 days pay under F[illegible]
Field	18-11-42	Tpr		AA 40 WOAS An act to the prej. of good order and military discipline i.e. he was 10 mins. late in reporting for duty without suff. excuse	Sgt. Johnson, S.	3 days G.B.	18-11-42	G.W. Fletcher Capt.	
Field	28-2-43	Tpr		AA 15(1) WOAS AWL from 2359 hrs 28-2-43 until apprehended by Mil. Police at 1010 hrs 5-3-43. (4 days 10 hrs 11 min) Close Arrest from 1010 hrs 5-3-43 to 1000 hrs 8-3-43 (2days 23 hrs 50 min)Cost of apprehension £0/8/0	Cpl Harrison Doc'ty	14 days Fd Punishemtn and forfeits 28 days pay under AA Sec 46(2)(D) to make good cost of tpt	8-3-43	H.C. Blanchard A/Co	Forfeits 5 dys Maj pay AWL 3 dys pay close a[illegible] 28 dys pay under AA 46(2)(d) Total 36 days pay H.M.Sleigh,Capt & Adjt.

No. B 62053 Name ROBINSON, [illegible] Donald | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/136 (7019)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. TWO | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of Drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	27-11-43	Tpr	✓	AA 15(1) WOAS AWL from 2359 hrs 27-11-43 to 2200 hrs 28-11-43 (Time Absent 22 hrs 1 min)	Cpl Gold, H.J.	6 days pay	29-11-43	Lt.Col. R.E.A. Morton	Forfeits 1 days pay under FR&I 149 (1) (a) and make good cost of funnell
	28-11-43		✓	WOAS Neglect to the prejudice of good order and military discipline i.e. he failed to do maintenance on his vehicle and said vehicle was deficient one funnel.	Documentary Tpr Wood, F.E.				

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7 Oct 44.	Pte.		WOAS AWL from 3 CIRU from 0600 hrs 12 Sept 44 until surrender to 3 CIRU Guard Room at 0740 hrs 5 Oct 44. Total absence 23 days, 1 hr and 40 mins. AA 15 (1)	Doc'ty.	60 dys Det'n.	9 Oct 44	F.G.C.M.	Confirmed by Comdr "D" Group 10 Oct 44.
						Released from the Detention Barrack at [illegible] on 17 Nov 44 sentence having expired. Remission earned under Rules for Detention Barracks and Military Prisons. 20 Days Commandants Initials.			
Field	10 Dec 44	Pte		AA 15(1) AWL 2359 hrs 10 Dec 44 until surrender 2359 hrs 31 Dec 44 (Total absence 21 days)	B65022 Cpl Weinraub, L. Doc'y.	Forfeits 28 days pay	8 Jan 45	Col. J.A. Wilson	21 days pay FR&I 149 (1) a

No B 62053 Name ROBINSON, WM Donald | Sqn, Battery or Company | Corps | Date of enlistment | OC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (9438)

Company Conduct Sheet | Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunken cost	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY CONSISTING OF 2 PAGES DATE 12-5-45. (H.W.J. Dearness) Lt. Officer having custody of Regimental Books.					

(PTO)

LIST OF WITNESSES 2 CITR/13

In the case of B-62053 Pte ROBINSON, W.D.
(No.) (Rank) (Surname & Initials)
CIC, on strength of 2 Cdn. Infantry Training Regiment, a soldier of the Cdn. Army Overseas.

(For the Prosecution)

1. Lt. K.A. JOHNSON of Regtl HQ 2 CITR.

(For the Defence)

N I L

LIST OF EXHIBITS

In the case of B-62053 Pte ROBINSON, W.D.
(No.) (Rank) (Surname & Initials)
CIC, on strength of 2 Cdn. Infantry Training Regt., a soldier of the Cdn. Army Overseas.

(For the Prosecution)

Exhibit "A": - Certified True Copy of Rec. of Decl. of CofI held on 22 Feb 45, showing that accused was AWL from 2359 hrs, 21 Jan 45.

Exhibit "B": - A.F. C.161Y certifying that accused surrendered himself to the Civil Police at 1845 hrs, 7 Mar 45, in Manchester.

Exhibit "C": - Certificate of expenses in returning accused to London from Manchester. In the amount of £1-15-0.

(For the Defence)

N I L

REQUEST FOR DEFENDING OFFICER

I, B-62053 Pte William Donald ROBINSON
hereby request that the Convening Officer appoint
Lieut S Biggs to represent me at my forthcoming trial by Court-Martial, should he be available.

Laurentide Camp,
21 Mar 45 W.D. Robinson
(B-62053 Pte Robinson, W.D.)

RECEIPT FOR DOCUMENTS

I, B-62053 Pte William Donald ROBINSON
hereby acknowledge that I have received a true copy of the Summary of Evidence taken in England preliminary to my Court-Martial, and I further acknowledge receipt of a true copy of the Charge Sheet under which I am being brought to Court-Martial.

Laurentide Camp.
21 Mar 45 W.D. Robinson
(B-62053 Pte Robinson, W.D.)

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

4Q-40

Pte. Robinson W.D.

RECEIVED
5 JAN 1945
JAG BRANCH
C.M.H.Q.

Correspondence to be [illegible] here.

RECORDED AT CMHQ IN AB 160 [illegible] 4Q 40

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this seventh day of December, 1944.

Whereas it appears to me, the undersigned, an officer in Command of

3 Parachute Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* [I am unable to appoint :—

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~for the following reasons, namely :—~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

*Omit if not applicable.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	R.E. Coombe, MC.	Herefordshire

Members.

Rank.	Name.	Regiment.
A Capt	To be detailed by OC 1(Cdn) Para Bn	
A Subaltern	To be detailed by OC 9 Para Bn	

*Signed [signature]

Brigadier,

Commanding 3 Parachute Brigade.

Convening Officer.

PROCEEDINGS REVIEWED
[signature] Capt.
29 Jan 45
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
K-1275 Pte NORRISON W.D. 1(Gdn) Para Trg Coy	FIRST CHARGE AA Sec 15(1) ROAS absenting himself without leave.	G	G	Confirmed VJL Lt 16 12 44
	SECOND CHARGE AA sec 24(2) ROAS losing by neglect his equipment and regimental necessaries.	G	G To undergo detention for 112 days & placed under stoppages for like period V J L 3. 0. 3	BRIGADIER, 3 PARACHUTE BRIGADE.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*)

(*Signed*) V. J. L. Lt. Brigadier, *Commanding* 3 Parachute Brigade, *Convening Officer* (*e*)

(*Signed*) R.S. Combe major, The Authorised R *President*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 15 day of Dec, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 15 day of Dec 1944.

R.S. Combe major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (*b*) on page 762 M.M.L. 1929.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 16 day of December 1944

VJL Lt Brigadier
Cmd 3 Brachute Bde *Confirming Officer.*

Promulgated and extracts taken in the case of K 1275 Pte Robinson, W.D.

(*a*) (Dated) 18 Dec 44 (Signed) By Maj

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W3.857.905 110,000 4/44 F.W.D.2483/44. Sl.900

A. McCombeman

CHARGE SHEET

The Accused K-1275 Pte Robinson, W.D., 1st Cdn Para Trg Unit, Canadian Army Overseas, a soldier of the Canadian Army Overseas, placed on Active Service is charged with:-

CHARGE

AA Sec 15 (1)

Absenting himself without leave
in that he
in the field did absent himself without leave from 0615 hrs 21 Oct 44 until apprehended by C.M.P. Manchester 0145 hrs 22 Nov 44.
Total absence 29 days 13 hrs 30 mins.
Cost of Apprension £2-10-6.

CHARGE

A. A Sec 24 (2)

Losing by neglect his equipment and regimental necessaries
in that he
on 28 Nov 44 was deficient of

	100% Value	75% Value
1 pr Drawers Woollen	$1.20	.90
1 B.D. Trouser	5.39	4.05
1 Vest Woollen	1.20	.90
1 Capes A.G.	2.76	2.07
1 Sheets Ground	2.94	2.19
Total	$13.49	$10.11

Sterling equivalent £3-0-3 £2-5-2

D. J. Wilkins

2 Dec 44,
Carter Barracks,
Bulford, Wilts.

(D.J. Wilkins) Major,
CO 1st Cdn Para Trg Unit.

To be tried by FGCM.

7 Dec 44

Brig.
Cond 3 Para Bde.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL

Held in the Field on the 15th day of Dec. 1944

- - - - - - - - - - - - - - - - -

The members detailed are :-

	Rank	Name	Regt	Detailed by
1.	Captain	R.E. Harrison	1 Can Para Bn.	O.C. 1 Can. Para. Bn.
2.	Lieut.	R.O. Blair	9 Bn. Para. Regt.	O.C. 9 Bn Para. Regt.

(NB - See AP 106(c). These names must not be written by president on Page 1 of AP A3)

Trial of :- No. K. 1275 ..... Rfn. Robinson W.D. Unit. 1 Can. Para. Trg. Coy.

x Prosecutor Lieut. R.C. Hucks ..... Defending Offr Lieut. D.D. Balding ....

Offrs under Instruction:- Nono/see list marked " " .....

1. The accused answers to his name and number.
2. The convening order is read in his presence
3. The accused is asked whether he objects to trial by the president or any members and he answers ..... his .....
4. The President and members are sworn
5. The Judge Advocate, the officers under instruction, the Shorthand Writer, The Interpreter are sworn.
6. The Charge Sheet annexed to the Convening Order is signed by the President Marked 'A' and attached to the proceedings
7. The accused is arraigned on the charge(s) in Exhibit 'A'
8. The accused having pleaded guilty to the ...6th.... Charge(s) AP 35(b) is complied with
9. ~~The accused's answer to the question at the foot of page 2 of AP A3 is .....~~
10. The prosecutor makes no/the attached opening address marked " " .....
11. The evidence for the prosecution is recorded on sheets marked " " att.
12. The prosecution is closed
13. The accused is informed of his rights in accordance with AP 40(a) and Note 2 on page 664 of the Manual of Military Law.
14. The accused makes the following answers to the following questions :-
(a) Do you wish to give evidence on oath or not? Ans. .....
(b) Do you intend to call any witnesses in your defence? Ans. .....
(c) Are they witnesses as to character only? .....
15. The Defending offr makes the opening address recorded on sheets " " (He is only entitled to make an opening address if the answers to the questions in 14 are yes - yes - no).
16. The evidence for the defence is recorded on sheets " " attached.
17. The Defence is closed
18. Speeches. prosecutor marked " ". Defending officer marked " ". (There record the closing speeches of the prosecutor and the defending offr in the order indicated in AP 40(c). Having been recorded they should be attached in that order.)
19. The Court is closed to consider the Findings which is entered on page 2 of AP A3.
20. ~~The Court is re-opened and the findings of not guilty are recorded upon sheet.~~
x 21. The provisions of AP 37(b) and (c) are complied with
x 22. The accused is found guilty of the charges mentioned in 6 above and the finding is entered on page 2 of AP A3.
x 23. The Summary of Evidence is read marked " B " signed by the president and attached to the proceedings.

x Insert rank, name, unit and "barrister" or "Solicitor" if such be the case.

x If the accused pleads guilty to all charges, numbers 8, 21, 22 & 23 only are used before the finding
If the accused pleads Not Guilty to all charges, all parts except 8, 21, 22 and 23 are used
If the accused pleads Guilty to one or more and Not Guilty to one or more charges all the paragraphs are used.

sheet 2.

Sheet 2

AFTER FINDING

(If there is a finding of guilty the President announces that the findings of the Court on charges .....1.42.....will be promulgated in due course and asks the prosecutor if he has any evidence as to character)

EVIDENCE OF CHARACTER

24. H. A. C. Hawks ..... sworn states :-

I produce a certified copy of ~~AF 2122~~ MFM 6 marked " X " and attached and AF 2296 marked " X1 " and attached relating to the accused whom I recognise.

25. The accused is asked the following questions :-
"Do you wish to call witnesses as to character or to address the Court in mitigation of sentence ?" Answer .....no.....

26. The accused calls witnesses to character recorded on sheet marked " "

27. The accused's/Defending Officer's statement in mitigation is recorded on sheet marked " Y "

The Court is closed to consider sentence.

Statement in Mitigation Y

only 19 yrs old.
impulsive
ask for leniency.
hard punishment makes some a Ordin

MEDICAL OFFICER'S REPORT

I certify that No. K 1275 Pte. ROBINSON W.D.
of 1 CPTU is in a GOOD state of health,
and FIT to undergo Trial by Court martial.

W Bradley Capt RCM
Medical Officer

Station Bulford Wilts

Date 15 Dec 44

[illegible]

M. F. B. 246
3SM—6-41 (792)
H.Q. 1772-39 480

B. Albuquerque

SUMMARY OF EVIDENCE

IN THE CASE OF

K-1275 Pte Robinson W.D. 1st Cdn Para Sqn Unit C.A.O.

A soldier of the Canadian Army Placed on Active Service

Charges :-

1. Absent without Leave

The Commanding Officer directs that the evidence be taken on oath.

First Witness

K 71263 Cpl Corriveau D.M. having been duly sworn states :- I am K 71263 Cpl Corriveau D.M. I checked the company parade at 2400 hrs 31 Oct 44 and found the accused was absent

The accused declined to cross examine

K 71263 Cpl Corriveau D.M.

Second Witness

D 72302 C.S.M.S. McGlashan R.C having been duly sworn states :- I am D 72302 C.S.M.S McGlashan R.C. I kit inspected K 1275 Pte Robinson W.D at 10:00 hrs 28 Nov 44 on being notified of his apprehension and found his kit deficient as per attached list

The accused declined to cross examine

D 72302 C.S.M.S. McGlashan R.C

Question to the Accused

Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you will be taken down in writing and may be given in evidence.

The accused declines to make any statement.

I certify that the Rules of Procedure 4. C.D.E. 4. F. have been complied with.

Taken down by me in the presence of the accused, at Canter Bks, Bedford, Wilts, on this 28th day of November 1944.

A.C. Hincks Lt.
1st Cdn Para Tong.
Unit.

"A" Coy 1 Canadian Parachute Battalion 13 Nov 44

List of Deficiencies of kit of K-1275 Pte Robinson W.D.
S O S as a Deserter "A" Coy 1 Cdn Para Bn.

Items		Price	75%
Blouses B.D.	1	$ 5.25	$ 3.94
Berets, Maroon	1	1.06	.79
Drawers, woollen	1	1.20	.90
Jersey, Pullover	1	1.79	1.34
Trousers B.D.	2 ($5.39)	10.78	8.08
Vests, Woollen	2 ($1.20)	2.40	1.80
Badges, Cap	1	.05	.04
Brushes, Hair	1	.34	.25
Brushes, Shaving	1	.37	.28
Brushes, Tooth	1	.11	.08
Combs, Hair	1	.04	.04
Holdalls	1	.19	.13
Razors	1	.06	.05
Towels, Hand	1	.32	.25
Belts, Waist	1	.67	.50
Haversacks	1	1.79	1.34
Straps, Shoulder Hav	2 ($.32)	.64	.48
Veils, Face	1	.43	.32
Capes, A.G.	1	2.76	2.07
Sheets, Ground	1	2.94	2.20
		$32.79	$24.88

Certified that I have kit inspected the a/m and found him to be deficient of the items listed. (sgd) R. McGlashen CQMS 'A' Coy 1 Cdn Para Bn.

Certified that the prices listed above are in accordance with Voc. and "Prices Scales of 1944". (sgd) Ed. R. Friel (Capt) Quartermaster 1 Cdn Para Bn.

Certified that the extensions and additions listed above are correct. (sgd) J.A. Roxborough (Capt) Paymaster 1 Cdn Para Bn.

Deficiencies of K-1275 Pte Robinson W.D.

After reductions made on original list of kit returned with u/m soldier.

Drawers, woollen	1	1.20	.79
Trousers, B.D.	1	5.39	4.04
Vests, woollen	1	1.20	.90
Capes, A.G.	1	2.76	2.07
Sheets, Ground	1	2.94	2.20
		$13.49	$10.00

"A" Company, 1 C.P.B.
Tuesday, Nov 28/44

(sgd) (R. McGlashen)
C.Q.M.S. "A" Company

"CERTIFIED TRUE COPY"

(I.C. Wilson) Lt.,
Adjt 1st Cdn Para Trg Unit.

EXHIBIT 'A'

"CERTIFIED TRUE COPY"

From M.B. 68.

I.C. Wilson

(I.C. Wilson) Lt.,
Adjt 1st Cdn Para Trg Unit.

INSTRUCTIONS

1. Presidents and Members of Courts of Inquiry or Boards of Officers will familiarize themselves with the Overseas ROs dealing with the subject of Courts of Inquiry and Boards of Officers.
2. The rank, name, appointment and unit of the Convening Officer must be given.
3. The unit of all Members of the Court must be indicated.
4. The signature of each officer composing the Court or Board must be affixed at the end of these Proceedings, together with the date and place of the sitting of the Court.
5. Unless otherwise required by the Convening Order, only one copy of these Proceedings will be prepared.

PROCEEDINGS of a Court of Inquiry

assembled at Cartar Barracks, BULFORD

on the 16 November 1944

by order of Major D.J. WILKINS CO 1st Cdn Para Trg Unit.

for the purpose of inquiring into the illegal absence

and deficiencies of kit of:-

K-1275 Pte ROBINSON, W.D.

PRESIDENT

Lt R.C. CURTIN
1st Cdn Para Trg Unit.

MEMBERS

Lt A. HINCKS
1st Cdn Para Trg Unit.

Lt R. GILBERT
1st Cdn Para Trg Unit.

The court having assembled pursuant to order, proceed to examine witnesses.

1st Witness:- K-51263 Cpl Torrance, D.N. having been duly sworn states:- I checked the parade at 0615 hrs 21 Oct 44 and found K-1275 Pte Robinson, W.D. absent. I have not see or heard of this man since.

K-51263 Cpl. Torrance, D.N.
1st Cdn Para Trg Unit.

MF B.303
3/61A (Overseas Revision)
40-P & S-267 (5521)

2nd Witness:-

D-72302 CQMS McGlashan, R.C.

having been duly sworn states:- I kit inspected K-1275 Pte Robinson, W.D., immediately on being notified of his absence, at 0800 hrs 23 Oct 44 and found his kit deficient as per attached list.

(sgd) D-72302 CQMS McGlashan, R.C.
1st Cdn Para Bn.

It is the findings of this court that
K-1275 Pte Robinson, W.D. has been absent since 21 Oct 44
and is still absent on this date. This man is deficient
in kit as per attached list to the extent of $32.79

Signed at Carter Barracks this 20 day of November 1944.

(sgd) R.C.S. Curtin President.
1st Cdn Para Trg Unit.

(sgd) A.C. Hincks Lt
1st Cdn Para Trg Unit. Member

(sgd) R. Gilbert
1st Cdn Para Trg Unit. Member

"CERTIFIED TRUE COPY"

(I.C. Wilson) Lt.,
Adjt 1st Cdn Para Trg Unit.

K-1275 Pte ROBINSON W.D. 1st Cdn Para Trg Unit.

A.W.L. 2

nil 23

23 nil

19 yrs 7 mos

16 Nov 43

I hereby certify that the foregoing schedule of convictions and disposition is a true copy from the Regimental documents in my custody. Signed this..... day of ..... 1944.

(I.C. Wilson) Lt.,
Adjt 1st Cdn Para Trg Unit.

K-1275 Pte ROBINSON W.D. 1st Cdn Para Trg Unit.

A,W.L. 2

nil 23

23 nil

19 yrs 7 mos

16 Nov 43

I hereby certify that the foregoing schedule of convictions and disposition is a true copy from the Regimental documents in my custody. Signed this..... day of ..... 1944.

(I.C. Wilson) Lt.,
Adjt 1st Cdn Para Trg Unit.

It is the findings of this court that
K-1275 Pte Robinson, W.D. has been absent since 21 Oct 44
and is still absent on this date. This man is deficient
in kit as per attached list to the extent of $32.79

Signed at Carter Barracks this 20 day of November 1944.

(sgd) R.C.S. Curtin President.
1st Cdn Para Trg Unit.

(sgd) A.C. Hincks Lt
1st Cdn Para Trg Unit. Member

(sgd) R. Gilbert Member
1st Cdn Para Trg Unit.

"CERTIFIED TRUE COPY"

J.C. Wilson Lt.

(I.C. Wilson) Lt.,
Adjt 1st Cdn Para Trg Unit.

2nd Witness:-

D-72302 CQMS McGlashan, R.C.

having been duly sworn states:- I kit inspected K-1275 Pte Robinson, W.D., immediately on being notified of his absence, at 0800 hrs 23 Oct 44 and found his kit deficient as per attached list.

(sgd) D-72302 CQMS McGlashan, R.C.
1st Cdn Para Bn.

K-1275 Pte ROBINSON W.D. 1st Cdn Para Trg Unit.

A.W.L. 2

nil

23 23

nil

19 yrs 7 mos

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(I.C. Wilson) Lt.,
Adjt 1st Cdn Para Trg Unit.

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K-1275 Pte Robinson, W.D. has been absent since 21 Oct 44
and is still absent on this date. This man is deficient
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Signed at Carter Barracks this 20 day of November 1944.

(sgd) R.C.S. Curtin — President.
1st Cdn Para Trg Unit.

(sgd) A.C. Hincks Lt
1st Cdn Para Trg Unit. — Member

(sgd) R. Gilbert — Member
1st Cdn Para Trg Unit.

"CERTIFIED TRUE COPY"

(I.C. Wilson) Lt.,
Adjt 1st Cdn Para Trg Unit.

2nd Witness:-

D-72302 CQMS McGlashan, R.C.

having been duly sworn states:- I kit inspected K-1275 Pte Robinson, W.D., immediately on being notified of his absence, at 0800 hrs 23 Oct 44 and found his kit deficient as per attached list.

(sgd) D-72302 CQMS McGlashan, R.C.
1st Cdn Para Bn.

X. 1 Allowing

K-1275 Pte ROBINSON W.D. 1st Cdn Para Trg Unit.

xzxzxzxxzxzxzxx x xzxzxzxzxzx $cw
$cw

A,W.L. 2

xzxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzx $cw
xz
xzxzxzxzxzxzxzxzx zxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzxz

K-1275 Pte ROBINSON W.D. 1st Cdn Para Trg Unit.

A.W.L. 2

23 nil

nil 23

19 yrs 7 mos

16 Nov 43

I hereby certify that the foregoing schedule of convictions and disposition is a true copy from the Regimental documents in my custody. Signed this..... day of ....., 1944.

(I.C. Wilson) Lt.,
Adjt 1st Cdn Para Trg Unit.

Plea of Mitigation of K1275 Pte Robinson W.D.

Sir,

Y. Number [illegible]

The accused has pleaded guilty and by so doing has not sought to escape punishment by showing justification for absence without leave.

One thing that the defense requests is that the court bear in mind the youth of Pte. Robinson. Youth sometimes signifies impulsiveness and the defense believes that this same impulsiveness may be found in the character of Pte Robinson. It does further believe that this was the predominating factor in the absence of Pte Robinson when he became tired of the monotony of steady training.

The accused now realizes

seriousness of absence without leave and the punishment which may follow it. He does not expect to escape punishment but in the interests of Pte Robinson, the defense would request that the court bear in mind that many a good soldier has become soured on the Army by a long period of confinement, where he might have become a first class soldier by intelligent disciplining. The accused Pte Robinson throws himself on the mercy of the Court.

STATEMENT BY THE ACCUSED

I, K-1275 Pte Robinson, W. D. desire to have an officer assigned to defend me at my [redacted] Court Martial.

2 Dec 44,
Carter Barracks,
Bulford, Wilts.

W D Robinson
(K-1275 Pte Robinson, W.D.,)
1st Cdn Para Trg Unit.

4A-67

Pte Robinson W.D

40 Bm

15

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 62053 Pte William Donald ROBINSON CIC - 3 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lost of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 4 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of Sixty (60) Days.

(Sgd) _____ 9 Oct 44 (Sgd) _____

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) _____

Date 10 Oct 44 Commanding _____ Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B62053, Pte. Robinson, W.D.	11 Oct 1944 Part II D.O. #238 d/12 Oct 44	W.G. Moore Lieut. (W.G. Moore) A/Adjt 3 Cdn Inf Rft Unit

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 19 OCT 1944 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160, 4467

FIELD GENERAL COURT-MARTIAL

CFA66 (In lieu of AFA41) 40/P & B/169A (6144) 4/38B

Convened by Brigadier J.E. Ganong, ED Comd "D" Gp, CRU dated 7 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 62053	Pte	William Donald	ROBINSON	CIC 3 CIRU

PROCEEDINGS REVIEWED 19 Oct 44 Counsel Assessor JAG REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 9 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (~~& attached thereto~~).(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 46, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to as interpreter? Ans~~

~~The Interpreter is sworn.~~(1) Do you object to F.26186 SGT SINCLAIR A.E. as shorthand writer? Ans NO The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO, SIR

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.J.	ENDEAN	H. CRU
Member	Capt	G.V.	ROBINSON	1 CIRU
Member	Lt	B.	DONDEN	8 CIRU
~~Judge-Advocate~~				
Prosecutor	Lt	R.P.D.	BIRCHALL	3 CIRU
Defending Offr	Capt	H.A.	CHEATS	3 CIRU

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) (~~a~~) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP fn 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (ii); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(D), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO, SIR. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)*
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans .....
Ans ..... Do you intend to call witnesses on your behalf?
Ans ..... Are they witnesses as to character only? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans TO GIVE NO EVIDENCE NOTE-PAD
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans NO, SIR. NOTE-PAD (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused Number B.62053 Private William Donald ROBINSON Canadian Infantry Corps, on the strength of 3 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE Army Act Sec 15(1) WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 3 Canadian Infantry Reinforcement Unit, from 0600 hours the 12th day of September, 1944, until surrendering himself to 3 Canadian Infantry Reinforcement Unit Guard Room at 0740 hours the 5th day of October, 1944.

Total time absent - 23 days, 1 hour and 40 minutes.

(A.S. Pearson) Colonel
Comdr
3 Cdn Inf Rft Unit

In the Field,
5th day of October,
1944;

To be tried by Field General Court Martial

(J.E. Gascong) Brigadier
Commanding
"D" Group, Cdn.Rft.Units

In the Field
7 Oct.44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 67(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 62053	Pte		William Donald	ROBINSON	CIC 3 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 7 Oct 44 endorsed by me, ~~(or by an offr of my staff for me)~~," To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt.-Col	D.L. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
1 Captain	to be detailed by Commanding Officer	1 CARU
1 Lieutenant	to be detailed by Commanding Officer	2 CARU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 7 Oct 44

Commanding HQ "D" Group, Cdn Hft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A(FAGS (To take of AFA3) 40/P & S/1807 (4031))

(See overleaf for oaths and notes for use on trial.)

MEDICAL CERTIFICATE

This is to certify that I have this morning examined, No. B.62053

Name Robinson, W.D. and found him fit XXXXX to undergo trial by Court Martial

XXXXXXXXXX

Time: 0715 hrs

Date: 9 Oct.44

M. M. Wanerman Capt.
M.C.A.M.C.

Statement By The Accused

I met a girl in February 1943 in a pub in Manchester. I didn't find out until after the second time I'd met her that she was married and had two children.

In the meantime, I had been quite friendly with this girl and her husband found out through friends of his of our friendship.

Her husband went home on leave in February 1944 and told his wife that he was suing for a divorce. At that ime, regarding the divorce, I didn't really think it would amount to very much and that it would clear itself up in time. Unfortunately, this girl carried on writing to me.

I had forgotten about the divorce proceedings until I received notice from the solicitor whom her husband had seen to appear for him for evidence regarding the divorce. I applied for leave through Col. Pearson, who was at No. 2 C.A.C.R.U., but leaves were cancelled and I could not get away. I was promised that I would get leave at the first opportunity. I was granted leave on 5 September 1944 and decided during this leave to clear up the divorce difficulties with this girl and her husband, as in the meantime, I had met a very nice girl to whom I have become engaged to.

I definitely don't want my fiancée to hear about this past business and I thought by going directly to this girl, the matter could be straightened out. When I arrived there, I saw the solicitor and he was doing his best to get in touch with her husband through telegrams and letters.

Her husband is a sailor and as far as we knew, he was back with his ship, but in any case, we never heard from him.

Unfortunately, I didn't think of applying for an extention as I thought the solicitor would eventually reach her husband and we could settle it once and for all.

When my leave expired I knew that by staying away, I would be A.W.L. and would be punished for it, but everything was so mixed up and my mind was just set on seeing the husband and having it out with him. Unfortunately we didn't get in touch with her husband and we weren't making any headway at all, so I decided that the best thing for me to do would be to return to the Unit and report to the Guardroom, which I did.

W.D. Robinson

(B.68053 Pte. Robinson, W.D.)

E-1

WHEN REPLYING WRITE TO

194

Sir

you can see that pte Robinson has quite a few problems on his mind

unfortunately he did not think of applying for an extension as he thought in a day or so the husband would be home. By staying over a few days extra the difficulties could be ironed out in a sensible way.

WHEN REPLYING WRITE TO

(2)

194

As you have heard by Mr Robinson's statement he is engaged to be married and his application has been sent forward. He does not want his fiancée to know about his past life as all this happened before he met her.

Even with telegrams and letters they never heard from the husband. He is in the navy and most likely was away.

WHEN REPLYING WRITE TO

(3)

194

Pte Robinson affairs with the girl Lasset had to any family affairs such as children.

Twenty three days does sound quite a time to be away but with troubles such as he had time goes very quickly especially when your future life is at stake.

Pte Robinson volunteered for active service Sept 1941. He is cat A2 and has been

WHEN REPLYING WRITE TO

(H)

194

since enlistment He arrived overseas April 1942 with the armoured corps.

He was amusted from the armoured corps to the infantry in May 1944 and has been employed with the transport since April. He is a driver fc (w)

I trust sir you can see you was clear to keep the Rotoman get to a

WHEN REPLYING WRITE TO

(5)

194

fighting front as his own anxious to go. It would not only straighten him out but it would free himself of this girl and her family affairs.

I have recommended pte Robinson to see our legal aid officer but if you could recommend it to higher authority it may likely would

WHEN REPLYING WRITE TO

(6)

194

be looked into most thoroughly and hurried to a decision.

I place pt. Robinson's case before the mercy of the court.

Your Obedient Servant

Hacreatus Capt

[illegible]

Exhibit A

3 CANADIAN INFANTRY REINFORCEMENT UNIT
DAILY ORDERS PART II
issued by
COLONEL A.S. PEARSON, O.B.E., E.D.,
COMMANDER

Last Order
No. 213
13 Sep 44

No. 214
14 Sep 44

11. ABSENCE WITHOUT LEAVE

(a) B62053 PTE ROBINSON W D
CIC

Absent without leave from 0600 hrs 12 Sep 44

for "J.H. Galloway" Lieut.
(M.R. Medland) Capt & A/Adjt.,
3 Cdn Inf Reinforcement Unit

CERTIFIED TRUE EXTRACT OF THE ORIGINAL DOCUMENT WHICH IS IN MY POSSESSION.

(M.R. Medland) Capt & A/Adjt
3 Cdn Inf Rft Unit.

SUMMARY OF EVIDENCE

In the case of Number B62053, Private William Donald ROBINSON, Canadian Infantry Corps, on the strength of 3 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas:

By direction of the Commanding Officer, this Summary of Evidence is taken on Oath.

FIRST WITNESS FOR THE PROSECUTION

Lieut James Howard Galloway, Canadian Infantry Corps, Assistant Records Officer, 3 Canadian Infantry Reinforcement Unit, having been duly sworn, states:-

I am Lieut. J.H. Galloway, Canadian Infantry Corps, Assistant Records Officer, 3 Canadian Infantry Reinforcement Unit. I now produce from my custody, as Exhibit "A", to this Summary of Evidence, a certified true extract from 3 Canadian Infantry Reinforcement Unit Part II Daily Order No. 214 dated the 14th day of September, 1944, issued by Colonel A.S. Pearson, OBE, ED, Officer Commanding, showing the accused, B62053, Pte. Robinson, W.D., as being absent without leave from 0600 hours, the 12th day of September, 1944. This evidence pertains to the accused whom I now recognize.

J.H. Galloway Lieut
(J.H. Galloway) Lieut.

The accused declines to cross-examine this witness.

SECOND WITNESS FOR THE PROSECUTION

B73407, A/L/Cpl Kyle, J., Canadian Infantry Corps, on the Permanent Establishment of 3 Canadian Infantry Reinforcement Unit, having been duly sworn, states:-

I am B73407, A/L/Cpl Kyle, J., Canadian Infantry Corps, on the Permanent Establishment of 3 Canadian Infantry Reinforcement Unit, attached to the Regimental Police of this Unit. On the 5th day of October, 1944, I was the N.C.O. in charge of the Guard Room, when at 0740 hours, the accused, B62053, Pte. Robinson, W.D., whom I now recognize, surrendered to me as an absentee. I immediately placed him in close arrest.

J Kyle
(B73407, A/L/Cpl Kyle J)

The accused declines to cross-examine this witness.

The accused having been warned according to Rules of Procedure 4(E) reserves his defence.

I certify that the foregoing Summary of Evidence consisting of One Page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c) (d) (e) (f) and (g) have been complied with.

EXA

W.G. Moore Lieut.
(W.G. Moore) Lieut.
Officer detailed to take the Summary of Evidence.

In the Field,
5th day of October,
1944.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Aldershot Hants, on the 5th day of October, 1944, preliminary to My Court Martial.

I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

W.D. Robinson
(B62053, Pte. Robinson, W.D.)

Dated at Aldershot, Hants,
this 5th day of October, 1944.

I hereby request that the Convening Officer appoint an Officer to represent me at my Trial.
I desire the services of Capt H Creates
if he is available.

W.D. Robinson
(B62053, Pte. Robinson, W.D.)

Dated at Aldershot, Hants,
this 5th day of October, 1944.

M.F.B. 355
225M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B 62053	PRIVATE	ROBINSON, W.D.	CIC 3 CIRU

1. The following is a fair and true summary of the entries in the Field Service and General ~~Regimental and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. 15(1)	1 times	A.A. 15(1)	4 times
For	A.A. 40	1 times	A.A. 40	3 times
For		times	A.A. 10(4)	1 times
For		times		times

Number of instances of gallantry or distinguished conduct NIL

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted ~~by a court-martial or a civil court, of summary awards under~~ Air Force Act Section 47 of the Army Act ~~and dispensations with trial under~~ A.F.A.73 A.A. 73 are set out in the Schedule ~~annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence for beginning on the~~ day of

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and 4 days in ~~Air Force~~ military custody, making a total of 4 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his record of service is 26 years, ~~attestation paper is~~

6. The date of his ~~commission~~ attestation specified in his record of service is 3 Sep 41 ~~attestation paper is~~

7. The service which the accused is allowed to reckon towards discharge is 3 years,

8. The accused is entitled to reckon 3 years service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to no air force decoration, or air force reward~~ (or is in ~~military~~ possession of or entitled to). State any ~~air force~~ military decoration or reward. C.V.S.M. and Clasp.

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held~~ Air Force ~~the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Unit ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 4th day of October 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

(W.E. THORNE) CAPT.,
Records Officer,
3 Cdn. Inf. Rft. Unit.

No B62053 Name ROBINSON, Wm Donald | Sqn, Battery, or Company | Corps CIC | Date of enlistment 3-9-41 | GC Badges | Service or Proficiency Pay NA | MFM 6 (AFB 122) 40/PAS/136 (3488)

Date of last entry in Company Conduct Sheet | No and date of last drunk NA | Period not reckoning towards freedom from extra fine NA | Sheet No ONE | Signature OC Company, etc (Signature not decipherable) Captain(s)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
~~Old Sheet destroyed on 28-7-42.--(E.A. Lunsdell Lt.)~~ Improper entry deleted 20-3-44 (M. Hay Capt.)									
Camp Borden	21-3-42	TPR		AA 10(4) Breaking out of Barracks AA 15(1) AWL from 1200 hrs 21-3-42 until apprehended in Allandale by Pro.(Absent 2 hrs). AA 40 An act to the prejudice of good order and military discipline made us of document for it to be a genuine pass knowing it to be no genuine.	Documentary	14 days C.B.	22-3-42	Capt Farmer (A.F.) Major F.C. Griffin	Forf 1 days p. under FR&I
Dettingen	30-5-42	TPR		AA 15(1) AWL from 1200 hrs 30-5-42 to 31-5-42 (Time Absent 32 hrs)	Doc't'y	14 days Detn	1-6-42	G.W.Fletcher	
Field	18-11-42	TPR		AA 40 WOAS An act to the prej.of good order and military discipline i.e. he was 10 mins.late in reporting for duty without suff.excuse.	Sgt Johnson S.	3 days C.B.	18-11-42	Capt.	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28-2-43	TPR		AA 15(1) WOAS AWL from 2359 hrs 28-2-43 until apprehended by Mil. Police at 1010 hrs 5-3-43 (4 days 10 hrs 11 mins) Close Arrest from 1010 hrs 5-3-43 to 1000 hrs 8-3-43 (2 days 23 hrs 50 mins) Cost of Apprehension £0/8/0	Cpl Harrison Documentary	14 days Fd Punishment and P. Forfeits 28 days pay under AA Sec 46(2(d)) To make good cost of tpt to amount of £0/8/0	8-3-43	H.C. Blanchard Major A/CO	Forfeiture 5 days pay AWL, 3 days pay Close Arr. 28 days pay under AA 46(2)(d). Total 36 days pay. HM Sleigh, Capt & Adjutant.
Field	27-11-43 to 18-11-43	TPR		AA 15(1) WOAS AWL from 2359 hrs 27-11-43 to 2200 hrs 28-11-43 (Time Absent 22 hrs 1 min) WOAS Negelct to the prejudice of good order and military discipline i.e. he failed to do maintenance on his vehicle and said vehicle was deficient one funnel.	Cpl Gold H.J. Documentary Tpr Wood F.E.	6 days pay	29-11-43	Lt.Col. R.E.A. Morton.	Forfeits 1 days pay under FR&I 149 (1)(a) and make good cost of funnel.
Field	5-10-44			CERTIFIED TRUE COPY OF ORIGINAL MFM 6 IN MY POSSESSION.					

(W.E. THORNE) CAPT.,
Records Officer, 3 Cdn.Inf.Rft.Unit.

51 - 51

Pte. Robinson, W. S.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L-67059 Pte William Samuel ROBINSON--1 Cdn Repat Dep

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(2)	GUILTY		except that my absence
2nd		commuted not on 20 Oct/45 but at 1600 hrs		
3rd		22nd Oct/45 - The Proceedings pursuant to reference of		
4th		convening appointment The Court accepted the		
5th		Plea FINDING GUILTY with variations as		
6th		Pleaded		

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) .....(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 27 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of Sixty (60) days.

(Sgd) ..... 30 Oct/45 (Sgd) ..... President. (RP 45, 50.)

Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) .....

Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed.

I direct that ~~the accused be not committed to prison or detention barracks until further order~~. (1) NIL

(1. AA 57A. Delete if not used.)

Date 1 Nov 45 (Sgd) .....

Commanding E. Sqn C.R.H.C. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
L67059 Pte William Samuel ROBINSON	2 NOV 45	

D to 128A 4/5 NW 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AE 168 27-57

FIELD GENERAL COURT-MARTIAL

CFA96 (To Rep of AFA3) 40/P & B/1098 (5144) 4/38B

RECEIVED 19 Nov 45 JAG BRANCH

Convened by Order of Brig T J Rutherford Comd "E" Gp CRU dated 28 Oct 45

(1. As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number (a) Prmnt R. (b) Appmt, A/R or A/Appmt. Full Christian Names. Surname. Unit.

L-67059 Pte William Samuel ROBINSON--1 Cdn Repat Dep

PROCEEDINGS REVIEWED 19 Nov 45 [illegible] REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 30 Oct 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 117, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1315 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans .....

~~The Interpreter is sworn.~~(1) Do you object to MAJOR P.E. RIMMER as shorthand writer? Ans N.O. SIR.

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans N.O. SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any,~~ and Offrs ~~under instr~~, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL.	D.L. REDMAN VD	HQ CRU
Member	MAJOR	G.W. THOMPSON	1 CGRU
Member	CAPT.	D.L. WAGNER	1 CGRU
~~Judge-Advocate~~			
Prosecutor	LIEUT.	G.D. WEBB	1 C REP DEP
Defending Offr	CAPT.	R.J. STALLWOOD	1 C REP DEP

Questions by President: Is the Prosecutor a lawyer? Ans N.O. Is the Defending Offr a lawyer? Ans N.O.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 2.)

A8. The accused ..... before arraignment make(s) (no) ~~objection~~ plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or on bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 140, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*); *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge[s](1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the ~~sentence~~ to be awarded after he has been given an opportunity to make a statement in reference to the charge[s], call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge[s].(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO STATEMENT.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge[s] to which the plea[s] of Guilty is ~~(are)~~ not changed the President records finding[s] of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part 1 of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. I have evidence. NOT-ATT
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement[s] as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet[s](2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier[s] having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement[s] and Conduct Sheet[s], and in mitigation of punishment?(1) Ans. I have evidence. NO-STM
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 44(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 52. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, L 67069 Private William Samuel ROBINSON, on the Transient strength of No 1 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:-

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

First Charge
AA Sec 15 (1)

in the Field, in England absented himself without leave from 1130 hours the 25th day of August 1945 until surrendering himself at 1600 hours the 20th day of October 1945.

Time Absent:- 56 days 4 hours 30 minutes.

(J.R. Barber) Lt Col
A/Commanding Officer
No 1 Cdn Repat Depot
(Lorne Scots)

SUPERIOR CAMP,
LUDSHOTT, HANTS.,
ENGLAND
24 Oct 45

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL.

(W.H. RUTHERFORD) Brig
Comd
"E" GP CRU

In the Fd.
28 Oct 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, ~~see AA 182, 183, fns, KR Can 308, 328, 330.~~)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-67069	Pte		William Samuel	ROBINSON	1 Cdn Repat Dep

CONVENTING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 28 Oct 45 endorsed by me, ~~for trial by an offr of my staff for and~~, "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior authority~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am advised by the Judge Advocate to appoint to the Court, (B) as Pres. an Offr of Field rank (for the reason I have attached hereto).~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt col	D L Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	To be detailed by CO 1 CGRU	1 CGRU
Capt	To be detailed by CO 1 CGRU	1 CGRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(*Country.*)

Date 28 Oct 45

(*Signed personally. RP 105 (n 2.)*)
(T J RUTHERFORD) Brig
(*Rank.*)
Commanding "E" Gp CRU
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA85 (To Item of AFA3) 40/P & S/1697 (40031)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

I hereby that I have carefully examined the u/n soldier and find him fit/~~unfit~~ to ~~xxxxxxxxxxxxx~~ undergo trial by FIELD GENERAL COURT MARTIAL

L 67069 PTE ROBINSON, W.G.
No. Rank Name

Remarks:

Date 30 Oct 45

(Signature) A Lerman Capt
Medical Officer
1 Cdn Repat Depot (2 Inf)

STATEMENT [illegible]

I accept [illegible]

Sir, I would like to speak in my own defense ~~to show~~ in order to point out that my action in going A.W.L. was the result of extreme personal difficulties and that I had, what seemed to me, sufficient reason for not trying to find a solution to my problem by regular channels.

I enlisted in July 1942 in Saskatchewan, and was accepted although, due to faulty eyesight, was E1 category. I did not realize that my low category would condemn me to those classes of work in the army which would, many times, be distasteful and ~~most~~ ~~times~~ which definitely seemed to bar me from the type of work I had hoped to obtain, that is, driving.

In July 1943 I married in Sask. There are no children. Almost a year later, in March 1944, I made earnest attempts to either get overseas or to get my discharge. As a result my category was raised to E B1 and I was placed on draft.

In England I was eventually placed on the ~~[illegible]~~ P/E of 18 Cdn. Gen. Hosp. but still barred from driving. In June 1944 I took part in the medical evacuation from

Normandy, for a period of 2 days before D Day until about 2 weeks after. Then B was returned to 15th C.G.H. (Colchester)

In June 1943 I was transferred to 9 Con Sen Hosp. During this time I was anxious to get to the continent instead of continuing my previous existence at a C.G.H. but did not succeed in doing so. After VE day I volunteered for the Far East and was accepted. Finally this attempt failed after VJ Day.

I submit that my whole career in the army has been a struggle against the barriers put up by my category. It has developed in me a feeling of frustration and a lack of confidence in turning to Army authorities for assistance in a great personal problem that arose later.

While in England I met and kept company with the widow of an English soldier, living at Horsham. As a result of this association while at 9 C.G.H. I was told by her that she was going to have a child by me. The shock of this news threw me into a panic and to increase

my difficulty I was moved to No. 1 Con Depot and reported shortly to be placed on draft for Canada. Knowing the serious situation that had been created for the widow, particularly from the eventual loss of her pension, I could not stand further inaction. I felt that I had to take urgent steps to try to make some provision for her before I left England. In the bewilderment of the moment and feeling that the army could do nothing to help me in this matter, I decided to return to Horsham to make what arrangements I could. Unfortunately, the question is no nearer settlement than at the start. My wife will not divorce me and therefore would not give this for me to arrange matters with the widow, I returned to 1 Con Depot Kept and gave myself into custody.

I realize that my actions in going A.W.O.L. was the result of hasty and bad judgment on my part, and I am willing to pay the price involved. In conclusion, I submit that part of my punishment lies in the remorse and worry which this unsolved problem still presents to me,

and which will be my first concern upon my release.

Pvt Leo J. Robinson

SUMMARY OF EVIDENCE

In the case of L.87069 Pte. ROBINSON, W.S. on the Transient strength of No. 1 Canadian Repatriation Depot, 2 Wing (B) a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary is taken upon oath.

FIRST WITNESS FOR THE PROSECUTION

Lieut. N. Dankiw, Adjutant of No. 1 Cdn Repatriation Depot, 2 Wing (B) having been duly sworn states:-

"I am Lieut. N. Dankiw, Adjutant of No. 1 Cdn Repatriation Depot, 2 Wing (B). The accused was taken on strength this Depot from 9 C.G.H. w.e.f. 12 Aug. 45. He was SOS to 1 C.G.R.U. w.e.f. 25 Aug. 45 and was dispatched to Records at Tweedsmuir Camp. I submit in accordance with A.A. ss 163 a certified true copy of a Court of Inquiry showing the accused as having been illegaly absent without leave from 1130 hrs 25 Aug. 45 and being still absent at 1130 hrs 1 Oct. 45, which is marked Exhibit "A".

N. Dankiw Lt Lieut.
(N. Dankiw)

The accused declines to cross-examine this witness.

SECOND WITNESS FOR THE PROSECUTION

B.77345 Cpl. LAMBLE, R.B. on the staff of the Regimental Police at No. 1 Canadian Repatriation Depot, 2 Wing (B) having been duly sworn states:-

"I am B.77345 Cpl. LAMBLE, R.B. On 2 Oct. 45 I was NCO in charge of the camp guard room between 0800 hours and 1600 hours at 1 Cdn Repatriation Depot, 2 Wing (B). At approximately 1600 hours 2nd Oct. 45 the accused entered the guard room. He said he had been A.W.L. I placed him under close arrest and reported the arrest to Lieut. J.L. Smith."

I recognize the accused.

(B.77345 Cpl. Lamble, R.B.

The accused declines to cross-examine this witness.

Certified True Copy of Declaration of a Court of Inquiry marked Exhibit "A" read over, shown to the accused and attached to this Summary.

G.H. Milsom A/Capt.
(G.H. Milsom) Officer Detailed to take the Summary of Evidence.

The accused was warned in accordance with R.P.4(3) as follows:-

"Do you wish to make any statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused reserves his defence.

I certify that the foregoing Summary of Evidence consisting of ONE page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C), (D), (E), and (G) have been complied with.

G.H. Milsom A/Capt.
(G.H. Milsom) Officer Detailed to Take the Summary of Evidence.

SUPERIOR CAMP, LUDSHOTT, HANTS
1 Oct. 45

DTA
MY

This is Exhibit "A" as referred to by me in the case of L 67069 Pte ROBINSON, W.S.

Signature of Officer detailed to take the Summary of Evidence.

RECORD of the Declaration of a Court of Inquiry assembled at Superior Camp, Ludshott, Hants. on the 1 st day of October 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. L.67069 Pte. ROBINSON, W.S. 1 Cdn Repat Depot, 2 Wing (B)

DECLARATION

The Court declare that No. L.67069 Pte. ROBINSON, W.S. No. 1 Canadian Repatriation Depot illegally absented himself without leave from 1 Canadian Repatriation Depot 2 Wing (B) at 1130 hours on the 25th day of August 45., that he is still so absent, and that on the 1st October 1945 he was deficient, and that he is still deficient of the following articles :—

ARTICLES	VALUE	ARTICLES	VALUE
SEE ATTACHED LIST			

President

(G.H. Milsom) Capt. Member

Signed at Superior Camp, Ludshott, Hants (J.L. Smith) Lieut. Member

this 1st day of October 1945 (D.M. Holton) Lieut.

Signature of Commanding Officer

(M.B.K. Gordon) Colonel
Commanding Officer
1 Cdn Repat Depot
(Lorne Scots)

Certified true copy

Signature of Officer having custody of original record

3/60B MFB 375-AFB 115 40/P&S/392 (8703)

APPENDIX "A" 12 Oct 45

KIT DEFICIENCIES OF:-
L 67069 Pte. Robinson, W.S.

ITEM	NO	VOC PRICE £	S	D	VOC Value Less 25 % £	S	D
Boots Ankle prs	1	1	6	0		19	6
Shirts Flannel	1		10	9		8	3
Socks Worsted prs	1		2	[illegible]		8	[illegible]
Kit Bag	1		4	7		3	[illegible]
Brass Cleaning	1			2			1½
Blouse Battledress	1	2	9	1	1	1	9½
Trousers "	1	1	9	3½	1	0	10½
Drawers Cell	1		1	11		1	5½
TOTAL		5	3	10	[illegible]	3	3½

Checked by:-

H. Cumble

B 105049
COMB RUMBLE, H.W.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
[illegible]069	Pte	ROBINSON, W.S.	1 Cdn Repat Depot

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec. 15(1) 11 times.

For A.A. Sec. 15(2) 2 times.

For A.A. Sec. 11 1 times.
A.A. Sec. 10(4) 1

For A.A. Sec. 19(2) 1 times.
A.A. Sec. 24(2) 1

Date of first entry in Field Conduct Sheet 13 Feb 43

Date of last entry in Field Conduct Sheet 12 Jun 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for beginning on the day of

4. The accused has been awaiting trial on the present charges for No days in civil custody; and for 27 days in military custody, *i.e.*, days in open arrest, 27 days in close arrest; of which No days were spent in hospital.

5. The present age of the accused is 25 years

6. The date of his attestation is 28 Jul 42

7. The service which the accused is allowed to reckon is 3 years 1 month

8. The accused is in possession of‡ CVSM & Clasp, France Germany Star, Defense Medal

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*).—The accused has served continuously without reduction, to the present date—

Date of Promotion.

In the substantive rank of

In the war substantive rank of

In the acting rank of

Ex B

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*28072) Wt.30721/3701 $2,000 9.44 A.&E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 30th day of October 1915

[illegible]

MFM 6
(AFB 122)
40/FAS/156 (2438)

No L67[illegible] Name ROBINSON, William Samuel | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 28 Jul 42 | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | To and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Badges | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Maple Creek	13-2-43	Pte		AA Sec 15(1) AWL 17 hrs	Doc.	1 days pay	15-2-43	C.O.	2 days pay
Maple Creek	8-3-43	Pte		AA Sec 15(2) AWL from parade	Doc.	10 days C.B.	10-3-43	C.O.	
Maple Creek	16-3-43	Pte		AA Sec 15(2) Absent from place of duty	Doc.	14 days C.B.	17-3-43	C.O.	forf 1 days pay
Maple Creek	21-4-43	Pte		AA Sec 15(1) AWL 9 hrs 5 min AA Sec 11 Out of bounds	Doc.	168 hrs Detn	24-4-42	C.O.	1 days pay
Maple Creek	20-5-43	Pte		AA Sec 15(1) AWL 8 hrs	Doc.	168 hrs Detn	5-5-43	C.O.	1 days pay
Maple Creek	17-8-43	Pte		AA Sec 15(1) AWL 8 hrs A.A. Sec 10(4) Breaking out of barracks	Doc.	3 days pay 7 days C. B.	24-8-43	C.O.	1 days pay

(PTO)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Maple Creek	21-7 43	Pte		AA Sec 15(1) AWL 25 days 2 hrs 15 min	Doc.	28 days Detn	22-8-43	S.O.	26 days pay
				AA Sec 24(2) Losing by neglect kit to the amt of $3.54. Cost of apprehension $6.96					
Camp Borden	28-10 43	Pte		AA Sec 19(2) Disobeying a lawful command	Doc.	5 days C.B.	28-10-43	C.O.	
Camp Borden	2-1 44	Pte		AA Sec 15(1) AWL 14 days 2 hrs 30 min	Doc.	21 days pay	18-6-44	C.O.	15 days pay
Field	19-1-45	Pte		AA Sec 15(1) AWL 1 day 8 hrs	Doc.	4 days pay	18-2-44	CO	2 days pay
Field	1-2	Pte		AA Sec 15(1) AWL 8 hrs 6 min	Doc.	2 days pay	23-1-45	C.O.	1 days pay
				AA Sec 15(1) AWL	Doc.	17 days pay	2-2-45	C.O.	

SHEET THREE

No L67069 Name ROBINSON, William Samuel — Sqn, Battery, or Company: Corps C.I.C. — Date of enlistment: 28 Jul 42 — Service or Proficiency Pay: MFM 6 (AFB 122) 40/PAS/125 (5438)

Date of last entry in Company Conduct Sheet — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No — GC Badges — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12-6-45	Pte		AA Sec 15(1) AWL	Doc.	23 days pay		C.O.	

CERTIFIED TRUE COPY OF EXTRACTS FROM MFM2

Signature of Officer having custody of original document

(PTO)

25 Oct 45

I, L 67069 Private William Samuel ROBINSON, request that the Convening Officer detail an Officer to defend me at my forth coming trial by FIELD GENERAL COURT MARTIAL.

W. S. Robinson

L 67069 Pte ROBINSON, W.S.

25 Oct 45

I, L 67069 Private William Samuel ROBINSON, hereby certify that I have received a copy of the Summary of Evidence and the Charge Sheet in the case against me.

W. S. Robinson

L 67069 Pte ROBINSON, W.S.

LIST OF WITNESSES

FOR THE PROSECUTION:-

First Witness:- Lieut N. Dankiw, Adjutant, No 2 Wing "B" No 1 Canadian Repatriation Depot.

Second Witness:- B 77345 Cpl LAMBLE, R.D., on the staff Regimental Police, No 2 Wing "B" No 1 Canadian Repatriation Depot.

FOR THE DEFENSE:-

Nil

(G.H. Milsom) A/Capt
Officer detailed to take the
Summary of Evidence

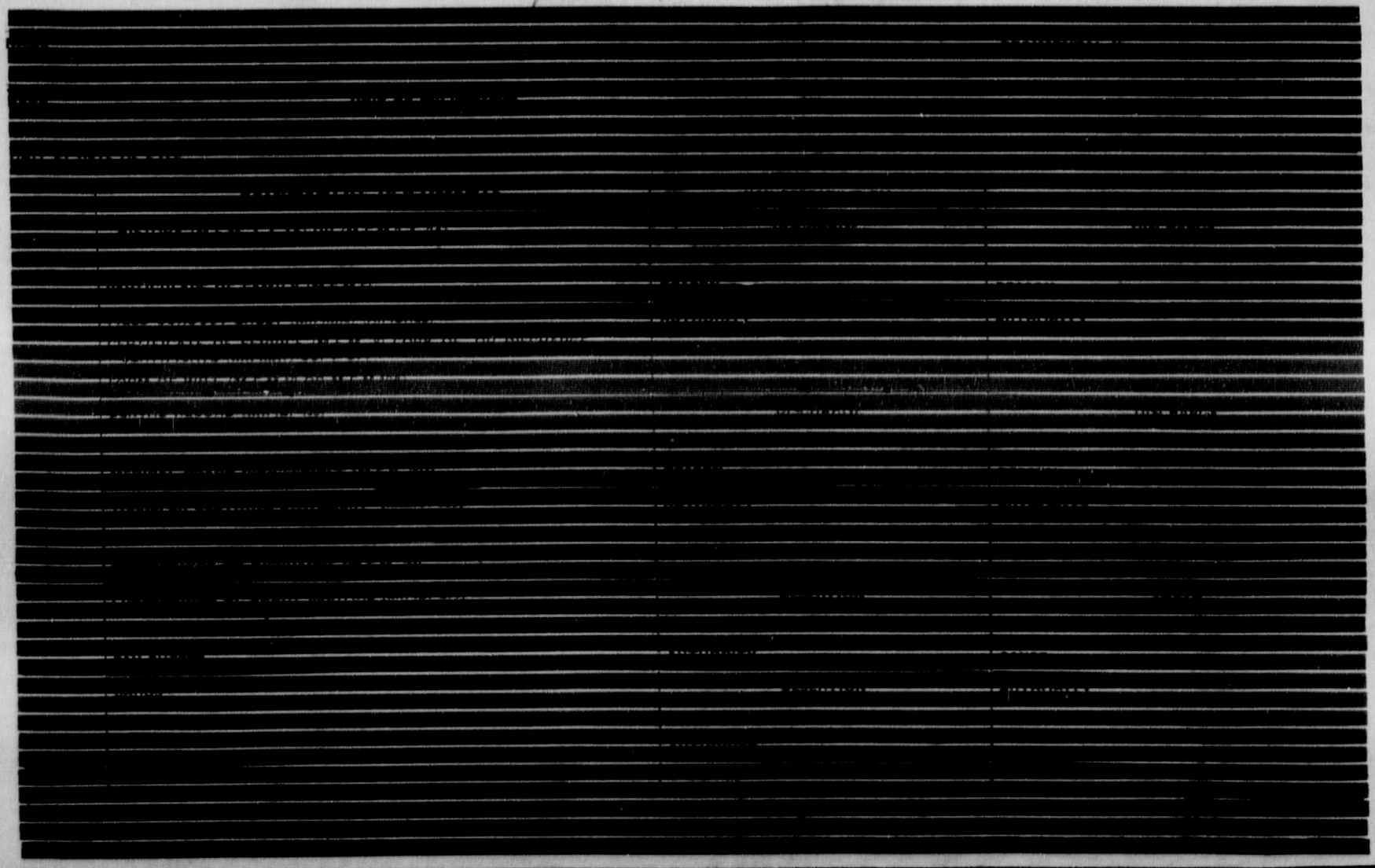
LIST OF EXHIBITS

FOR THE PROSECUTION:-

Exhibit "A":- Certified True Copy of a Declaration of a Court of Inquiry.

(G.H. Milsom) A/Capt
Officer detailed to take the
Summary of Evidence.

5Z-116 S.G. Robitaille A. Missing



HHH-130

PTE ROBITAILLE A

Certified True Copy
R Cordeau Capt
(R. CORDEAU)

HHH. 130

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty Second day of March, 1944.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde.

, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [~~and that it is not practicable to delay the trial for a forence to a superior (planned officer.~~] (104) "TGG"

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [~~I am unable to appoint:~~

~~*(1 Three Officers to form the Court.)~~

~~*(2 A Field Officer as President.)~~

~~in the following terms, namely:~~ "TGG"

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	R.J. Orr	Carlt & York R.

"R.J.O."

Members.

Rank.	Name.	Regiment.
Capt.	J.M. Bursey	Carlt & York R.
Capt.	Y Dube	R 22e R
Waiting Capt.	H. Tellier.	R 22e R

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialed by him.

*Signed "T G Gibson" Brigadier.

Commanding 3 Cdn Inf Bde.

Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E-5597 Pte Albert ROBITAILLE, Royal 22e Regiment.	First Charge. Sec 9 (2)	Not Guilty	Guilty	
	2nd Charge. Sec 16 (1)	Guilty	Guilty	I reserve confirmation of the finding and sentence for superior authority. 26 Mar 44. "T.G.G."
			To under go penal servitude for a period of three years "R.J. Orr" Major.	I confirm the findings and sentence and I direct that a part of the sentence not exceeding 2 years shall be served in a military prison (sgd) P. J. Montague Maj.-Gen Major-General IC Administration Canadian Military Headquarters. 19 Apr 44

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(*Signed*) "T.G. Gibson" Brigadier (*Signed*) "R.J. Orr. Major.

Commanding 3 Cdn Inf Bde.
Convening Officer (e) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 24 day of March 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

*(~~3. The interpreter~~) "R.J. Orr"

*(~~4. [illegible]~~)

were duly sworn.

*Omit if not applicable.

Signed this 24th day of March 1944

"R.J. Orr" Major.

President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (b) on page 767 M.M.L. 1929.

Signed this day of 19

"RJO"

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~) PJM.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 19th day of April 1944.

(sgd) P. J. Montague. Maj.-Gen Major-General IC Administration Canadian Military Headquarters

Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] A.S.E.W. Ltd. Gp.498

CHARGE SHEET

The accused E.5597 Private ROBITAILLE Albert, a soldier of the Royal 22e Regiment, Canadian Army Overseas, on Active Service is charged with:--

1st Charge
AA Sec 9 (2)

WHEN ON ACTIVE SERVICE
DISOBEYING A LAWFUL COMMAND
GIVEN BY HIS SUPERIOR OFFICER

in that he

In the Field, on the 17 February 1944 when ordered by L/Sgt Eglinton, R.22e.R. to go on sentry duty did not do so.

2nd Charge
AA Sec 15 (1)

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, on 18 February 1944, absented himself without leave at 0900 hours until apprehended at "A" Coy 4 CBRD at 1400 hours on 1 Mar 44.

Total absence: 12 days, 5 hrs.

"J.G.Charlebois"
(J.G. CHARLEBOIS) Major,
T/Commanding Royal 22e Regiment.

In the Field
22 Mar 44

B.2.
"R.J.O rr" Major

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"T.G. Gibson",
(T.G. Gibson), Brigadier
Commanding, 3 C dn Inf Bde

In the Field
22 Mar 44

ME DICAL OFF ICER S CERT IFICATE

I certify that I have this morning examined No.E-5597.....

R ank...Pte.....Name..Rebitaille.....of.....R.22.Regt.....

and in my opinion he is fit/unfit to undergo T rial by Court Martial.

Station..In.the.Field.....

Date.....24.Mar.1944.....

"C. B. Caswell" Capt.....

"R.J. Orr" Major Medical Officer

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

Army Form A 9.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field on the 24th day of March 19 44 by order of Brigadier T.G. Gibson Commanding 3 Cdn Inf Bde dated the 22nd day of March 19 44

President.

Major R.J. Orr Carlt & York R.

Members.

Capt. J.M. Bursey Carlt & York R.

Capt. Y. Dube R 22e R

Trial of* E-5597 Pte. Albert Rebitaille, ~~Judge Advocate.~~ R 22e R

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

"R.J.O." ~~The Court satisfy themselves as provided by Rules of Procedure 22 & 23. The accused is brought before the Court.~~

~~Prosecutor,† Counsel‡ or defending officer† At o'clock the Trial commences.~~

~~The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.~~

~~The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.~~

~~Question by the President to the accused.~~ ~~Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? Answer.~~

~~"R.J.O."~~ ~~(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)~~

~~*Here insert No., Rank, full Name, Regiment, and Appointment (if any).~~
~~† Here state Rank and Name, and Regiment (if any).~~
~~‡ Qualification to be stated.~~

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut J.A. Gerolami R 22e R

Counsel‡ or defending officer† Lieut F.R. de Saint Victor R22eR

At 1050 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No.

"R.J.O."

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

30057 W1/W4182/5/21 10,000 pds. (2/41) S. & S., Ltd. 5462/11. Forms A9/20.

B

The President, members ~~and judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Capt H. Fellier R 22e R

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

– *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to the second charge, the provisions of Rule of Procedure 35 (B) are here complied with.

"R.J.O." *Instruction.* If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No.

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.] No.

The prosecutor proceeds to call witnesses.

First witness for prosecution. D-124731 Cpl Poulin, P.E.

being duly sworn, is examined by the prosecutor.

Q1 - Can you identify the accused person?
A1 - Yes sir; he is Pte. Robitaille, Albert.
Q2 - Can you tell the court what you knew in the case of Pte Robitaille.
A2 - On the night of 17 Feb 1944, Pte Robitaille was detailed to go on guard at 2400 hrs. At 2330 hrs I went and woke him up, telling him to get ready to go on guard. But he refused to do so saying he was sick. I told Sgt Eglington about it, who came and ordered Pte. Robitaille to go on guard duty. But Pte. Robitaille kept refusing, still saying he was sick. On the morning of the 18th I accompanied Pte. Robitaille to the Stretcher Bearers of our Coy, having received orders to do so from Lieut Dusseault. I haven't seen him since.
Q3 - Where was Pte. Robitaille supposed to go from the Stretcher Bearer's Post?
A3 - To the R.A.P., sir.

"R.J.C."

2nd Witness: E-100336 L/Sgt Eglington, U. (M.M.)

Q1 - Sergeant, sworn would you identify the accused?
A1 - Yes, Sir, he is Pte Robitaille Albert.
Q2 - Could you tell the court what you know about the accused.
A2 - On the night of Feb the 17th around 2400 hrs, I went to wake up Pte Robitaille to go on guard duty: he refused saying that he was sick. I explained to him that we were short of men and that he would have to go just the same. Answering that he wouldn't go, I told him that he would have to report to the R.A.P. in the morning, which he started off for.
Q3 - What else did you tell him when you told him to go on guard duty?
A3 - That we were short of men, and that he had to go just the same.

Question by the court:

Q1 - Did Robitaille go on guard?
A1 - No, sir, he didn't.

"R.J.O."

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No sir.

Question. Do you intend to call any other witness in your defence?

Answer. Yes, sir.

Question. Is he a witness as to character only? *Answer.* No, sir.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence? Yes, sir.

Answer. The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

On the 17th Feb, 1944 at around 2330 hrs, I was lying down in my slit trench, when the Sgt arrived and told me it was time to go on guard. I told him I was sick. The Sgt then went to the Platoon Commander and reported to him that I was sick. The Officer told him to send me to the R.A.P. on the next morning. Pte. Halleway came to my slit trench and I was vomiting. He asked me what was the matter with me and I answered I didn't know. He stayed with me for about 15 minutes and afterwards left to go on guard. Pte. Blackburn then came in and I told him I was sick, that I couldn't sleep. In the morning Cpl. Poulin took me on sick parade. I went with Pte. Woods until we reached the first house; Pte. Woods and I stopped there for about 5 minutes. When we had rested, he asked me if I was able to keep going, and I answered him I couldn't walk any more. Pte. Desgagne, who was in the house, said he would take care of

"R.J.O."

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

me. Pte. Desgagne helped me lie down, and I slept there for 2 or 3 hourse. At around 5 or 6 o'clock at night they woke me up, saying they were going away. Around 2300 hrs that same night I left for the R.A.P. which I could not find. So I went up to St. Vito, and reported to a rest camp in there. A Sgt asked me why I was there, and I answered I was sick. He told me I needed a note from my Unit. I got discouraged and left.

In England I was transferred from the R 22e R to Le Regiment de le Chaudiere for 2 1/2 months. I was then supposed to be reboarded, but while waiting I was sent to the Helding unit. A week after I was drafted, so I told the M.O. about my reboard. He examined me, and said you will have your reboard in Avelline. At Avelline they told me; "You'll have your reboard at the unit, before going up to the front line." A t the unit I went and saw the M.O. telling him I was sick. He asked what was wrong with me. And I told him I had had stomache-ache for the last nine months, and he didn't even examine me. From then on I was always sick, so I got discouraged and went away.

"R.J.O."

The defence proceeds to call witnesses.

First witness
for the defence H-3068 Pte Halloway, A.E.

having been duly sworn states:

Q. Did you see Pte Robitaille on the night of 17 Feb 44?
A. Yes sir.
Q. What dondition was Pte Robitaille in that night?
A. He did not appear to be very well. As a matter of fact he complained to me.
Q. What gave you that opinion?
A. He had a pallid expression on his face and seemed nauseated.
Q. Did anything else happen while you were in the trench with him? Did he vomit?
A. Yes sir.

Cross-examination by prosecuter:

Q. Did you know the reason for his sickness?
A. No, sir.

Second Witness E-100582 Pte Weeds, W.

Q1 - Will you tell the court what you knew in the case of Pte Robitaille, about what happened on the morning of Feb the 18th, 1944.
A1 - On the morning I asked the Sgt to go and see the M.O. We went and saw the S.B's and left for the R.A.P. Pte Robitaille was walking behind me, and I asked him what he had. He answered I couldn't walk any further. We then arrived at a house where Robitaille and I entered. Pte Desgagne and Pte Gagnon were in that house. After a while I asked Robitaille if he was coming to the R.A.P. But he said he couldn't walk any more. Desgagne told me, leave him here we'll take care of him.

"R.J.O."

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused E-5597 Pte Albert Robitaille is found guilty of the second charge as laid.

"R.J.O."

†The summary (~~abstract~~) of evidence is read, marked M signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

No

Answer. The accused in mitigation of punishment says:—

[*or* hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

"R.J.O."

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character? **No.**

Question to the accused.

Answer.

Evidence as to character.

"R.J.O."

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused E-5597 Pte Albert Robitaille quilty of the first charge as laid.

"R.J. Orr" Major.

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut J.A. Girolami R 22e R is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked C & D signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* No

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. N/A

Cross-examined by the accused.

No

(Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any existence punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

"R.J.O."

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused E-5597 Pte Albert Rebitaille Sentence to undergo penal servitude for a period of three years.

"R.J. Orr" Major

40-72

Pte Robitaille A.

O. H. M. S.

M. F. B. 270
1000M-12-40 (8665-02-70)
H.Q. 1772-30-67

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E. 5597 Pte Albert, Robitaille.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A A 15(1)	Guilty	Guilty	
2nd A A 15 (1)	Guilty	Guilty	
3rd A A 15 (1)	Guilty	Guilty	
4th A A 15 (1)	Guilty	Guilty	
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for 3 years Penal Servitude beginning on (date) 24 Mar 44 (1) "TWB"
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial, or total of ____ days of which ____ days were spent in hospital~~ (1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.) "TWB"

Sentence Awarded by the Court:

To be imprisoned with hard labour for 2 (Two) years. And to be discharged with ignominy from His Majesty's Service.

(Sgd) ____ Judge-Advocate, if any. 8 Jan 45 Date awarded. (Sgd) "T.W. Beauclerk Maj" President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ____ (Sgd) ____ Commanding ____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not punished in (a) manner of execution) pending until further orders.~~ (1) "TGG"
(1. AA 57A. Delete if not used.)

(Sgd) "T.G. Gibson" Brig
Date 8 Jan 45
Commanding 1 Cdn Base Rft Group
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
E.5597 Pte Robitaille A.	11 Jan 45	"Vincent McKenna Lt Col" Officer Commanding 1 Bn 1 Cdn Base Reinforcement Depot.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY
(DM [illegible])
Cdn Sec GHQ 2 Echelon AFHQ

40-72

FIELD GENERAL COURT-MARTIAL

CFA96 (1st Issue of AK33) 10/P & R/1698 (3864)

Convened by Order of Col S.A. Lee T/Comd 1CBRGp-CMF dated 4 Jan 45
25 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt. A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
E.5597	Pte	Albert	Robitaille	1Bn 1 CBRD

PROCEEDINGS REVIEWED
"W P TAYLOR" Major
DJA
Cdn Sec GHQ 2 Ech AFHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 8 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3) "TWB" "TWB"
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1330 hours trial commenced. "TWB"

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial. (1) "TWB"
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2) "TWB"
(1. KR Can 557. 2. AA 46(2), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~as Interpreter, I Aug~~
~~The Interpreter is sworn.(1) Do you object to~~ ~~on shorthand writer is duly~~ "TWB"
~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	T.W. Beauclerk	CIC 2 Cdn Reall Centre
Member	Lieut	W.X. Boucher	CIC 2 Cdn Reall Centre
Member	Lieut	J.L. Bond	RCA 2 Cdn Reall Centre
~~Judge Advocate~~	"TWB"		
Prosecutor	Lieut	F.R. Lafleche	CIC 1 Bn 1 CBRD
Defending Offr	Lieut	S.A. Harper	CIC 1 Bn 1 C"D

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 68 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ____ before arraignment make(s) (no) (~~a~~ plea. "TWB" (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ "TWB" not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML, p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (not) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with it the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. Do you intend to call witnesses on your behalf ?

Ans. Are they witnesses as to character only ? Ans.

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 895.*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. No.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex J and Ex K respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *MML 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. No.

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"TWB"

CHARGE SHEET

The accused, D. 5597, Pte. Albert ROBITAILLE, 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy at about 0700 hrs. 10 April 1944, absented himself without leave until apprehended at about 1900 hrs. 15 May 1944. (Total absence, 35 days, 12 hours.

SECOND CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, at about 0430 hrs. 31 May 1944, absented himself without leave when in confinement until apprehended at about 0400 hrs. 31 Aug 1944 (Absent, 92 days.)

THIRD CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, at about 0530 hrs. 8 Sept. 1944, absented himself without leave until apprehended at about 1200 hrs. 14 Oct 1944. (Absent, 36 days, 6 hours, 30 minutes.)

"TWB"

CHARGE SHEET RE: E.5597, Pte. Albert ROBITAILLE, (Cont'd)

FOURTH CHARGE — WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

Sec 15 (1)

Army Act — in that he,

In the Field, in Italy, at about 1805 hrs. 27 Oct. 1944, absented himself without leave until apprehended at about 1100 hrs. 7 Dec. 1944. (Absent, 40 days, 16 hours, 55 minutes.)

"Vincent McKenna" Lt-col
(VINCENT McKENNA)
Officer Commanding,
1 Cdn Base Rft Bn, 1 C.B.R.D.

In the Field,

2 Jan 1945.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
4 Jan 45

"S A Lee"
(S.A. LEE) Colonel
T/Comd, 1 Cdn Base Rft Gp
Cdn Army-CMF

"TWB"

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
$0/FAS/1607 (2508)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E 5597	Pte		Albert	ROBITAILLE	1 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[X] named above as the accused, being subject to military law, has [XXX] committed the offence(s) set forth in the Charge Sheet[X] attached and on (*date*) 4 Jan 45 endorsed by me, ([illegible]), "To be tried by Field General Court Martial". "SAL"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ([illegible]) "SAL"
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person[X], and to consist of the Offrs appointed or detailed hereunder.

4. [illegible] "SAL"
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. [illegible] "SAL"
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)		(Unit.)
Major	T W BEAUCLERK	(CIC)	2 Cdn Reallocation Centre	

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)		(Unit.)
Lieut	P S BAKER	(CIC)	2 Cdn Reallocation Centre	
Lieut	W X BOUCHER	(CIC)	2 Cdn Reallocation Centre	

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)		(Unit.)
Lieut	J L BOND	(RCA)	2 Cdn Reallocation Centre	
	[illegible] "SAL"			
(Rank.)		(Must be named, if any. RP 106.)		(Unit.)

On Active Service in the Fd

in Italy (Country.)

Date 4 Jan 45

"S.A. Lee" (Signed personally. RP 105 fn 2.)

Colonel (Rank.)

(S.A. LEE)
T/Commanding 1 Cdn Base Rpt Gp-CMF
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICER'S CERTIFICATE "TWB"
(KR (Can) 557)

I certify that I have this morning examined No D 5597 Rank Pte Name ROBITAILLE, A. of # 1 Bn. and in my opinion he is fit to undergo trial by Court Martial.

In the Field
Date
8 Jan 45

"John M Fraser Capt"
(Medical Officer)

SUMMARY OF EVIDENCE Ex "A" "TWB"
in the case of

E-5597 Pte Robitaille, Albert., 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be given under oath.

First Witness for Prosecution K-78420 Sgt Hooper, R.K., Training Sgt, 1 CBRBn, 1 CBRD, having been duly sworn states:-

I am K-78420 Sgt Hooper, R.K. While acting as Provost Sgt, 1 Bn 1 CBRD on the 31 May 1944 at approx 0430 hrs I came around the back of 1 Bn Guard Room and I noticed that two of the bars on the cell window were bent up. I went in the Guard room and had M-31564 L/Cpl Lacombe G R J Check the prisoners. Whilst he was checking them I escorted other prisoners to the vehicle proceeding forward as these prisoners were absent from field units. When I returned L/Cpl Lacombe reported two prisoners absent. I called the roll and found D-5597 Pte Robitaille A. was missing. The time of the roll call was about 0515 hrs. I recognize the accused.

"R K Hooper Sgt"

The accused declines to cross-examine the witness.

Second Witness for Prosecution M-31564 L/Cpl Lacombe GRJ, 1 Canadian Convalescent Depot having been duly sworn will state:

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in the Summary of Evidence and marked Exhibit "A". Having regard to the exigencies of the service the expense and loss of time involved the attendance of this witness cannot in my opinion be readily procurred.

"W Jas Rinn Lieut"
Signature of Officer taking Summary

The accused does not demand the attendance of this witness for cross-examination.

Third Witness for Prosecution D-10107 Cpl Rae, AH, Orderly Room Clerk, 1 Bn, 1 CBRD, having been duly sworn states:-

I am D-10107 Cpl Rae, AH, Orderly Room Cler, 1 Bn, 1 CBRD, I present Record of the declaration of a Court of Inquiry assembled in the field on the 6 May 1944 for the purpose of investigating and recording the absence without leave from his duty and deficiencies if any in the kit of E-5597 Pte Robitaille A. The Court declares that E-5597 Pte Robitaille A, Royal 22e Regt illegally absented himself without leave at 0700

hours on the 10th day of April 1944 and that he was deficient articles to the value of £3-14s,2½d. Presented and as Exhibit B.

I also present "X" List Royal 22e Regt Part II Order No 65 dated 15 Jun 44 issued by Canadian Section GHQ 2nd Echelon AAI, which states that E-5597 Pte Robitaille, A. was TOS X-4 List 1 Bn on app from des. 1900 hrs 15 May 44. Presented as Exhibit "C"

I present "X" List Royal 22e Regiment Part II Order 94 dated 10 Sep 1944 issued by Canadian Section GHQ 2nd Echelon AAI which states that E-5597 Pte Robitaille A TOS "X" 4 List 1 Bn on app from des. at 0400 hrs 31 August 1944. Presented as exhibit "E".

I also present Record of the Declaration of a Court of Inquiry assembled at the

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15th Canadian General Hospital on the 1st day of October 1944 for the purpose of investigating and recording the absence without leave from his duty and deficiencies if any of kit of E-5597 Pte Robitaille, A. [illegible] in this Hospital, Royal 22nd Regt, has been illegally absent from 0830 hrs 8 Sep 44 and is still absent. Presented as Exhibit F.

I also present "X" List Royal 22nd Regiment Part II Order No. 113 dated 25 Oct 44 issued by Canadian Section GHQ 2nd Echelon AAI which states that E-5597 Pte Robitaille A was TOS "X"4 List 1 Bn on app from des. at 1200 hrs 14 Oct 44. Presented as Exhibit "G".

I present "X" List Royal 22nd Regiment Part II Order No 131 dated 3 Dec 44 issued by Canadian Section, GHQ 2nd Echelon AAI which states that E-5597 Pte Robitaille A. was SOS X-3 List (15 CGH) as a des 28 Nov 44 having been dec illegally absent by Ct of Inq from 1805 hrs 27 Oct 44. Deficiencies in kit unstated. Presented as Exhibit "H".

I also present "X" List Royal 22nd Regt Part II Order No 137 dated 17 Dec 1944 issued by Canadian Section GHQ 2nd Echelon AAI which states that E-5597 Pte Robitaille, A. TOS X4 List 1 Bn on app from des.

1100 hours 7 Dec 44. Presented as Exhibit "I"

"A H Ray"

The accused declines to cross examine the witness.

The Record of the Declaration of a Court of Inquiry assembled 6 May 1944, "X" List Royal 22e Regt No 65 dated 15 Jan 44, The "X" List Royal 22e Regt No 94 dated 10 Sept 44, The Record of the Declaration of a Court of Inquiry assembled 1st October 1944, The "X" List Royal 22e Regiment No 113 dated 25 Oct 44 and the "X" list Royal 22e Regiment No 131 dated 3 Dec 44 referred to by the witness, produced, read over, shown to the accused, marked exhibits "B", "C", "E", "F", "G","H", and "I" respectively and attached to the Summary.

"W Jas Rinn Lieut"
Signature of Officer taking Summary.

Question to the accused

Do you wish to make a statement or to give evidence under oath. You are not obliged to do so but any statement you may make or any evidence you give will be taken down in writing and may be given in evidence.

Answer by the Accused

I reserve my defence.

I certify that the foregoing Summary of Evidence consisting of six (6ø) pages was taken down by me in the presence of the accused and the Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

"W Jas Rinn Lieut"
Officer taking Summary of Evidence

In the Field
26 Dec 1944.

Second Witness

M.31564 L/Cpl Lacombe, G R J., 1 CBR Bn, 1 CBRD having been duly sworn, states:-

I was N.C.O., i/c night Regimental Police for 1 Bn, 1 CBRD during the shift 0001 hrs 31 May 44 to 0800 hrs 31 May 44. At 0030 hrs, I checked the two cells in 1 Bn guardroom and the prisoners were all quiet. At about 0430 hrs 31 May 44, Sgt Hooper, Prov. Sgt came in to the guard-room and told me that the bars were broken in the window of one of the cells. I, immediately checked the cells and saw two broken bars in the window of one cell. I counted the prisoners and saw that there were two missing, G.53615 Pte Landry W.R. and E.5597 Pte Robitaille A. When Sgt Hooper returned from outside a few minutes later I reported to him that the two men were Ptes Landry and Robitaille. I was in the guard-room, at all times, from the time I took over my tour of duty till 0800 hrs and I did not hear any disturbance in the cells or any noise until 0300 hrs. We had nine absentees to proceed on draft to Field Units at 0500 hrs 31 May 44. I woke up these men at 0300 hrs, had them wash and dress up, eat their breakfast, and get ready to leave. The bars were probably broken while these men were doing this.

"G. R. Lacombe"

This is Exhibit "A" referred to in the Summary of Evidence in the case of E-5597 Pte Robitaille A. taken before me this 26th day of December 1944.

"W. Jas Winn Lieut"
Signature of Officer taking Summary.

THIRD WITNESS

F.86575 Pte Williams M.R. 1 CBHBn, 1 CBRD having been duly sworn states:-

I am on the Regt'l Police of #1 Bn 1 CBRD. I was on the shift from 0001 hrs 31 May 44 to 0800 hrs 31 May 44. I checked the cells at 0030 hrs, 0230 hrs and 0300 hrs and everything was in order. The prisoners were apparently all sleeping and I went to the bars and checked them. They seemd to be as usual. I did not know that anything was wrong until about 0530 hrs when Sgt Hooper advised us that Ptes Landry and Robitaille had escaped I had been away from the guard-room from a little before 0430 hrs until 0530 hrs on escort duty.

"Williams M.R."

Finding of the Court.

(i) The court finds that G.53615 Pte Landry W.R. And E5597 Pte Robitaille A escaped from the Guard Room of 1 Bn 1 CBRD at approximately 0400 hrs 31 May 44.

(ii) The court finds that this escape was not due to any negligence on the part of the Regimental Police.

I Concur.
"R.D. Clendenning Major" O.C.
1 Bn 1 Cdn Base Reinforcement Depot

President: C.E. Senechal Lt"
1 CBRBn, 1 CBRD
Member: W.S.K. Jones Lt.
1 CBHBn, 1 CBRD

I Concur.
"Vincent McKenna Lt.Col
Commant 1 Cdn Base Reinforcement Depot.

This is Exhibit "B" referred to in the Summary of Evidence "TWB"
in the case of E.5597 Pte Robitaille A taken before me this 26th
day of December 1944. "W.Jas Rinn Lieut "
Signature of Officer taking Summary

RECORD of the Declaration of a Court of inquiry assembled in the field the 6th May 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, ammunition, Equipments, instrucments, Regimental necessaries, or Clothing of No. E.5597 Pte Robitaille A. Royal 22e Regiment.

DECLARATION.

The Court declare that No. E.5597 Pte Robitaille A... Royal 22e Regiment..... Illegally absented himself without leave at 0700 hrs....on the 10th day of April 1944.....that he is still so absent, and that on the 6th of May 1944 he was deficient and that he is still deficient of the following articles.

Articles.	VALUE 75%
1 Blouse B.D.	£ 0.17.7½
1 Trouser B.D.	0.18.1½
1 Boot Ankle.	0.18.3½
1 Ankle Web.	0.3.3½
1 F.S. Cap.	0.1 .10½
1 Drawers woollen	0.4.03/8
1 Vest woollen	0.4.03/8
1 Shirt Angola	0.6.9½
1 Socks pr.	0.1.3

President: Capt H Tellier R 22e R
Member Lieut A.R. DesRosiers R 22e R
Member: Lieut A. Letarte R 22e R

Signature of Commanding Officer "J.V. Allard"
(J.V. Allard)Lieut-Colond

Certified true copy ....."J.R. Housseau Capt. Adj.

Certified true copy "RWB"
"D.W. Owen Capt"
For Officer i/c Custody of Regimental Documents.

Last Order No. 64 14 Jun 44 — "X" LIST ROYAL 22e REGIMENT PART II Orders issued by CANADIAN SECTION, GHQ., 2 ECHELON A.A.I. — This Order No. 65 15 Jun 44

This is Exhibit "C" referred to in the Summary of Evidence in the case of E.5597 Pte Robitaille A. taken before me this 26th day of December 1944.

"W.Jas Rinn Lieut"
Signature of Officer taking Summary

"B" Other Ranks

2. STRENGTH INCREASE
(c) T.O.S. X-4 List (1Bn) on app from des 1900 hrs 15 may 44
E.5597 Pte Robitaille, A.

Page 2

5. ABSENT WITHOUT LEAVE
(a) A.W.L. from 0400 hrs 31 May 44 Still absent0400 hrs 6Jun44
E.5597 Pte Robitaille A. X4 (1Bn) (6th day).

This is Exhibit "E" referred to in the Summary of Evidence in the case of E.5597 Pte Robitaille A. taken before me this 26th Dec 1944. " W. Jas Rinn Lieut"

Signature of Officer taking Summary "TWB"

Last Order No.93 7 Sep 44 — "X" LIST ROYAL 22e REGIMENT Part II Orders issued by CANADIAN SECTION, GHQ 2 ECHELON, A.A.I. — This Order No. 94 10 Sep 44

"B" OTHER RANKS

5. STRENGTH INCREASE

(e) T.O.S. A-4 List(1Bn) on app from des 0400hrs 31 Aug 44
E.5597 Pte Robitaille, A.

Certified True Copy.
"W Jas Rinn Lieut"
Signature of Officer taking Summary.

RECORD OF THE DECLARATION OF A COURT OF INQUIRY ON THE ILLEGAL ABSENCE OF A SOLDIER

"TWB"

RECORD of the Declaration of a Court of Inquiry assembed at 15 Cdn Gen Hosp on the 1st day of October 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. E.5597 Pte. Robitaille, A. R 22e R.

DECLARATION

The Court declare,

It is the opinion of the Court that E.5597 Pte. Robitaille, A. R22eR, a patient in this hospital has been illegaly absent from 0530 Hrs. 8 Sep 44 and is still absent at the expiration of 21 clear days.

This is Exhibit "F" referred to in the Summary of Evidence in the case of E.5597 Pte Robitaille A. taken before me this 26th day of December 1944.

"W Jas Rinn Lieut".
Signature of Officer Taking Summary.

Reverse Side.

President Major J. Balfour.
Members: Capt. R. L. Bird
Lieut W. R. Hyndman.

Names of President and Members.

Signature of Commanding Officer."F.B. Bowman Col".

Certified True Copy.

"W.R. Hyndman Lt".
Signature of Officer having custody of the Original Record.

CERTIFIED TRUE COPY

"D.M. OWEN CAPT" "T.W.B."

Officer i/c Custody of Regt'l Documents

Last Order No. 112 22 Oct 44 — "X" LIST ROYAL 22e REGIMENT Part II Orders issued by CANADIAN SECTION GHQ., 2 ECHELON, AAI — This Order No. 113 25 Oct 44

"B" OTHER RANKS
Page 2

4. STRENGTH INCREASE (CONT'D)

(f) T.O.S. X-4 List (1Bn) on app from des 1200 hrs 14 Oct 44
E.5597 Pte Robitaille, A.

This is Exhibit "G" referred to in the Summary of Evidence in the case of E. 5597 Pte Robitaille A, taken before me this 26th day of December 1944.

"W Jas Rinn Lieut"
Signature of Officer takin Summary.

This is Exhibit "H" referred to in the Summary of Evidence in the case of E.5597 Pte Robitaille A. taken before me this 26th day of December 1944.

"W. Jas Rinn Lieut" "TWB"
Signature of Officer taking Summary.

Last Order No. 130 30 Nov 44 — "X" List ROYAL 22e REGIMENT Part II Orders issued by CANADIAN SECTION, GHQ., 2 ECHELON, A.A.I. — This Order No. 131 3 Dec 44

"B" OTHER RANKS
Page 4

9. STRENGTH DECREASE
(b) S.O.S. X-3 List (15 CGH) as a des 26 Nov 44 having been dec illegally absent by Ct of Inq from 1805 hrs 27 Oct 44
Deficiencies in kit - unstated.
E. 5597 Pte Robitaille, A.

Certified True Copy
"W. Jas Rinn Lieut"
Officer having Custody of Regtl Books.

This is Exhibit I referred to in the Summary of Evidence in the case of E.5597 Pte Robitaille A. taken before me this 26th day of December 1944. "W. Jas Rinn Lieut"
Officer taking Summary of Evidence.

Last Order No. 136 14 Dec 44 — "X" List ROYAL 22e REGIMENT Part II Orders issued by CANADIAN SECTION, GHQ., 2 ECHELON A.A.I. — "TWB" This order No. 137 17 Dec 44

"B" OTHER RANKS
Page 2

3 STRENGTH INCREASE (CONT'D)
(e) T.O.S. X-4 List (1Bn) on app from Des 1100 hrs 7 Dec 44
E.5597 Pte Robitaille, A.

Certified true copy.
"W. Jas Rinn Lieut.
Officer having Custody of Regt'l Books.

Ex "J" "TWB"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or at the case may be).*
E.5597	Pte	R BITAILLE A.	1 CBRBn, 1 CBRD.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For AA Sec 15 (1) 1 Time 10 times.

For AA Sec 40 1 Time 3 times.

For _____ _____ times.

For _____ _____ times.

~~Date of first entry in Field Conduct Sheet~~ "WJR"

~~Date of last entry in Field Conduct Sheet~~ "WJR"

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

de *3. The accused at the present time is under sentence for 3 yrs penal servitude beginning on the 24 ~~2~~day of Mar 1944

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for Nil days in military custody, *i.e.*, Nil days in open arrest, NIL days in close arrest; of which NIl days were spent in hospital.

5. The present age of the accused is 22 yrs.

6. The date of his attestation ~~calling up for military service~~ is 5 Dec 1939 "WJR"

~~7. The service which the accused is allowed to reckon is "WJR"~~

†State the military decorations (if any) held by accused.

8. The accused is in possession of†

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date— "WJR"

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.* "WJR"

Wt 55900/1602 20,000 3/44 51-4751. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	Field 24/3/44	AA Sec 9(2) A.A. Sec 15 (1) "WJR"	3 years pehal servitude.	
		"WJR"		
		"WJR"		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 29th day of December 1944

"W Jas Rimn Lieut"
Officer ~~having~~ having Custody of Regt'l Books.

No E.5597 Name ROBITAILLE A Sqn. Battery or Company EX "K"

Date of last entry in Company Conduct Sheet | No and date of last drunk | Corps CIC | Period not reckoning towards freedom from extra fine | Date of enlistment 1 May 40 | GC Badges | Sheet No 1 | Signature OC Company, etc | Service or Proficiency Pay "TWB"

MFM 6 (AFH 122) 40/P&S/136 (3438)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Character Remarks
Field	Pte			AWL		3 days C.B.	25Feb41		
Field	Pte			AA 40		1 days Pay			
Field		Pte		AA 40		1 days pay	21 Jul 41		
Field		Pte		Place under civil custody 22 Jan42	Forfs 7 days pay under FR&I-149 (1) (b)	7 days F.P.	23 Aug 41		
Field		Pte		AA 15 (1)	Forfs 14 days pay under FR&I 149(1)(b)	14 days F.P.	13 Dec 41		
Field		Pte		A.A.15(1) (Absent 18 days10hrs 45 mins)	Forfs 188 days pay under FR&I-149(1)(b)(c) (i)	3 mos impr.	9Apr 42		
					Forfs 1 days pay.	7 days C.B.	26 Dec 42		
					Forfs 27 days pay under FR&I 149(1)(b)	27 days F.P.	20Mar43		
					Forfs 19 days pay under (FR&I 149(1) (a)				

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		(1)AA15(1) (Absent 2days2hrs30mins) (2)AA15(1) (Absent10hrs 30 mins)		1 days pay Forfs 1 days pay under FR&I 149(2) Forfs 3 days pay under FR&I 149(1)(a) Total 4 Days forf of pay.	23 Jul 43		
Field		Pte		AWL (Absent 2 days 6 hrs 40 mins)		Total 9 days forf of pay Stopp of pay £0-5-10 for cost of apprehension.	25 Aug 43		
Field		Pte		(1) AWL (Absent 2 hrs 15 mins) (2) AWL (Absent 8 hrs) (3) AWL (Absent 1 hrs 10 Mins)		28 days F.P. Total 29 days Forf of pay.	1 Nov 43		
Field		Pte		(1) AA 40 (2) AWL (Absent 4 days 23 hrs. 25 mins)		28 days pay	13 Oct 43		
Field		Pte		FGCM. (1) AA 9(2) (2) AA15(1)(Absent12 days 5 hours)		3yrs penal servitude Forfs 13 days pay under FR&I -149 (1) (a) Forfs 1095 days pay under FR&I -149 (1) (b) Forfs 22 days pay under FR&I 149(1)(c)(i) Total Forf of pay- 1130 days.	24 Mar 44		

No E.5597 Name ROBITAILLE A Sqn. Battery or Company

Date of last entry in Company Conduct Sheet | No and date of last drunk | Corps CIC | Period not reckoning towards freedom from extra fine | Date of enlistment 1May40 | GC Badges | Service or Proficiency Pay

Sheet No 2 | Signature OC Company, etc

MFM 6 (AFB 122) 40/P&S/136 (3438)

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
CERTIFIED TRUE EXTRACTS FROM MFM4 TO DATE (29 Dec 44)					-----(Signed) (J.L. [illegible]) Captain, For Officer i/c., Cdn Sec GHQ 2 Ech AAI.				
CERTIFIED TRUE COPY FROM REGTL BOOKS IN MY CUSTODY					"W JAS RIKE LIEUT" (Officer in Custody of Regtl Books)				

(PTO)

NAME Robitaille, D.

Reg. No. D-121976

Tr. Centre No.

Clearing Depot No.

Contents	H. Q. File No.	Non-Effective By
M. F. M. 103 or 103A (Enrol. Form)		
M. F. M. 101 or 101A (Enrol. Form)		
M. F. M. 82 or 82A (Enrol. Form)		
N. W. .S 1AR or 1AR FR (Med. Exam)		
M. F. B. 227 (Med. Board)		
CASE HISTORY SHEETS		
MORNING SICK REPORT (M. F. B. 292)		
CONDUCT SHEETS		
DECLARATION of C. of I. (Copy of Record from M. B. 68)		
M. F. M. 110 (Particulars of Family)		
M. F. M. 30 or 30A (X-Ray Report)		
M. F. D. 930A (Last Pay Certificate)		
M. F. B. 350 or 350A DISCHARGE CERT. (Copy)		
M. F. M. 7A or 7C DISCHARGE CERT. (Dup.)		
M. F. B. 483 DESERTERS-DESCRIPTIVE RETURN OF		

M.F.W. 258SA.
100M-9-42 (6199)
H.Q.1772-39-1377

DOCUMENTS N.R.M.A.

~~510~~/ROBITAILE D/1
99/37

D 121976 Pte Robitaile D

XUK 279

CENTRAL REGISTRY	DATE	P.A. OR B.F.	INTIALS	REFERED TO	REMARKS	INITIALS	DATE
MAY 21 1945	30 Mar	BF	W	AG 11	Papers	CR	18-5-45
MAY 25 1945	25 Mar	PA	W	AG 10	WITH PAPERS C.R.		MAY 25 1945
	8 Jun	C	DSC	AG 10	PER B.F.	C.R.	MAY 30 1945
JUN - 8 1945	9 Jun	BF	W				
1[illegible] JUN 1945				AG 10	PER B.F.	C.R.	JUN 10 194[illegible]
JUN 20 1945				AG 12	Signature GO i/c	DSC	16 Jun 45
JUN 26 1945	[illegible]	BF	W	AG 10			
AUG 5 1945	20 Aug	BF	DSC	AG 10	PER B.F.	C.R.	AUG 5 1945
AUG 18 1945	25 Aug	BF	DSC	AG 12	Paper	CR	27-8
				AG 12	PER B.F.	C.R.	25 AUG 1945
SEP - 1 1945	15 Sep	BF	DSC	AG 12	Signature GO i/c	DSC	28 Aug.
6 SEP 1945	6 Sep	PA	DSC	AG 12	WITH PAPERS C.R.		6 SEP 1945
13 SEP 1945	19 Nov	BF	DSC	AG 11	with papers	CR	13/9
15 OCT 1945	19 Nov	BF	[illegible]	A 8	BF	CR	15/10
	15 Oct	PA	[illegible]				
17 OCT 1945	16 Oct	PA	[illegible]	A 8	WITH PAPERS		16 OCT 1945
18 OCT 1945	18 Oct	PA	[illegible]	A 8	Papers	CR	18/10
20 NOV 1945	19 Dec	BF	[illegible]	A 8	BF	CR	19/11
DEC 20 1945	5 Jan	BF	[illegible]	A 8	BF	CR	19 DEC 1945
	26 Feb	BF	[illegible]				
	20 Jan	BF	[illegible]				

~~510~~/ROBITAILE D/1
99/37

COUNTER NUMBER 573422

HOUR 15:50

OPERATOR'S INITIALS R.D

RELIEVING OPERATOR

COUNTER NUMBER 573422

HOUR 15 50

OPERATOR'S INITIALS R.D.

RELIEVING OPERATOR

99/37/ROBITAILLE D/1 (AE)

2ND ECHELON HEADQUARTERS CAOF

16 Jan 46

CMHQ

(Attn: AAG Dis)

D121976 Pte Robitaille D.
1 Cdn Repat Depot

1 Ref HQ 3 Cdn Inf Div CAOF letter 220/SUSS/
8 Bde/1 d/10 Jan 46 to your HQ copy to this HQ.

2 Records at this HQ show the m/n soldier as
SOS to No 1 Cdn Repat Depot on 22 Dec 45 for return to Canada on
compassionate leave.

3 ----------AF A3104 for the m/n SUSS was despatched
to your HQ attached to the m/n HQ 3 Cdn Inf Div CAOF letter.

4 Enclosed herewith is a certified copy of
PGCM proceedings for your retention, please.

(J J P de Salaberry) Major
DAAG Pers
for Officer i/c
2nd Echelon Headquarters CAOF

WHP/LPB

COURIER/

ENCL(1)

220/SUS/6 Bde/1

HQ 3 Cdn Inf Div CAOF
10 Jan 46

CMHQ
AG 5

SOLDIER UNDER SUSPENDED SENTENCE
D 121978 Pte HOBITAILLE D
3/R de Chaud CAOF

1. Under your authority A 171815 dated 201600Z the marginally named soldier is being despatched on compassionate leave.

2. This soldier is under suspended sentence and relevant AF A3104 is fwd herewith.

3. Our AG 92 dated 091700A Jan 46 refers.

(C. VOKES) Maj-Gen
GOC 3 Cdn Inf Div CAOF

Enc:
EHKH/b

Copy to: Cdn Sec 2 Ech HQ BAOR

99/37/ROBITAILLE D/1 (AG)

2ND ECHELON HEADQUARTERS CAOF

31 Dec 45

HQ
3 Cdn Inf Div (CAOF)

D121976 Pte Robitaille D.
3/R de Chaud (CAOF)

1 Ref telephone conversation Major CADE - Capt KING-HILL d/29 Dec 45.

2 Records at this HQ show the m/n soldier SOS to 1 Cdn Repat Depot on 22 Dec 45 (Auth HQ 3 Cdn Inf Div CAOF AG-266 d/22 Dec 45).

3 Please advise if compassionate return to Canada was granted. May advice also be received as to whether or not you desire the m/n soldier to be taken off draft.

WHP/LPB

COURIER/

(W H Pope) Capt
for Officer i/c
2nd Echelon Headquarters CAOF

99/37/Mathews E.T/1
99/37/Robitaille D/1 (A.G)

2ND ECHELON HEADQUARTERS CAOF

27 Dec 45

HQ
3 Cdn Inf Div CAOF

D.78882 Pte. Mathews, E. T.
D.121976 Pte. Robitaille, D.

1. Ref telephone conversation Capt. King-Hill - Lt Pope to-day's date.

2. Herewith original AFs A5104 for the m/n soldiers as requested.

3. AF A5104 for D.1192 Pte. Belanger A is presently at CMHQ. C of S/DAAQMG HQ CFN directed on 30 Nov 45 that the sentence be remitted.

(W. H. Pope) Lt
for Officer IC
2nd Echelon Headquarters CAOF

WHP:EBN

XI.

Space for further Review (continued from page 2).

Date	Directions	Signature and Appointment of Authority giving the directions	If sentence suspended, date of release, No. of marks earned to count towards remission, and Signature of O.C. Prison or Detention Barracks

XII.—Remarks and recommendations of C.O. on Second Trial.

Date		Signature

XIII.—Remarks and recommendations of Confirming Officer on Second Trial.

Date		Signature

Certified true copy
[illegible] Capt.

Form Form A 3104.

REVIEW OF SENTENCES AWARDED BY COURT MARTIAL.

I.—Case of No. D.121976 Pte Robitaille D Unit 10 CBR Bn

Sentenced to detn for one yr on 10 Mar 45

Age on, and date of, enlistment 27 yrs 8 Sep 41 Term of service 3 yrs 4 mos

FIRST TRIAL.

For details of offences, see paragraph VII.
For C.O.'s remarks, see paragraph IX.

II.—To

Superior Military Authority.

I have directed that the above-named be not committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) for reasons given in paragraph X.

Place

Date

Confirming Authority.

III.—I direct that the sentence (which I hereby commute to) (of which I remit) (1) (2) (be suspended) (be put into execution) (1) and be reviewed on (3).

Place

Date

Superior Military Authority (4).

(For action on review, see paragraph VI.)

SECOND TRIAL.

For details of offence, see paragraph VIII.
For C.O.'s remarks, see paragraph XII.

IV.—(5) To

Superior Military Authority.

This man was again convicted on and sentenced to and I have directed that he shall not be committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) and run (concurrently) (consecutively) (1) with the previous (6) sentence for the reasons given in paragraph XIII.

Place

Date

Confirming Authority.

V.—(5) I direct that the sentence (which I hereby commute to) (of which I remit) (1) (2) (be suspended) (be put into execution) and that it run (concurrently) (consecutively) (1) with the previous (6) sentence of and be reviewed on (3).

Place

Date

Superior Military Authority (4).

(1) Erase words not required, and initial erasures.
(2) A sentence of penal servitude or imprisonment, combined with Discharge with Ignominy, cannot be suspended unless the Discharge with Ignominy is remitted.
(3) A suspended sentence must be reviewed at least once every three months, and a sentence put into execution should be reviewed in not more than six months.
(4) An order directing a sentence to be put into execution must be signed by the Superior Military Authority personally.
(5) This paragraph to be left unused until required. If the man is convicted a third time, a fresh form, using only paragraphs IV and V, will be made out and attached to this form, and all further reviews will be on the attached form.
(6) A previous sentence of imprisonment or detention in a state of suspension is avoided by the award of a subsequent sentence of penal servitude

(*26502) Wt.49340/415 38,000 1/44 A.S.E.W.Ltd. Gp.698 Forms/A.3104/12

VI.—Action on Review.

(Whether the sentence or sentences are suspended or in execution.)

Any Reviewing Authority *under Section 57 of the Army Act* may under that Section mitigate, remit or commute a sentence which is in execution, and if the sentence as commuted or mitigated is penal servitude, imprisonment or detention, it will remain subject to the powers granted by Section 57A of the Army Act. A partial remission of a sentence in suspension is not legal.

All recommendations, etc., considered upon review, should be pasted here.

Date	Directions	Signature and Appointment of Authority giving the directions	If sentence suspended, actual date of release and marks earned to count towards remission, and signature of O.C. Prison or Detention Barracks
	No remission BF 30 Aug 45	MLM BURNS MAJ GEN GO i/c Cdn Sec 1 Ech HQ 21 A Gp 19 Jun 45	
	Suspend wef 10 Sep 45	do 30 Aug 45	sent susp wef 10 Sep 45 marks earned wef 10 Sep 45 - 1480 days in susp - 180 released 10 Sep 45 WD Cain, Major, Comd 1 Cdn Detn & FP Bks
	remain in suspension BF 15 Mar 46	C Vokes, Maj-Gen GOC 3 CID CAOF 10 Dec 45	

(Continued on page 4.)

Charge or Charges giving particulars	Date of Offence	Date of Trial
VII.—First Trial. AA Sec 15 (1) First charge; when on active service absenting himself without leave in that he in the field at approx 0900 hrs 22 Oct 44 absented himself without leave until apprehended at 1830 hrs 28 Nov 44 by personnel of the First Cdn Army Leave Centre (Total time absent 37 days 9 hrs 30 mins) AA Sec 15 (1) Second charge WOAS AWL in that he in the field at 1900 hrs 10 Dec 44 while in arrest at 10 CBR Bn absented himself without leave until apprehended at 1330 hrs 23 Dec 44 by Cdn Provost Corps at Ghent. TTA 12 days 18 hrs 30 mins) Signature of Officer making entry.	22 Oct 44 10 Dec 44	10 Mar 45 10 Mar 45 CMG Arthurs Capt Adjt 10 CBR Bn

If further space required, an additional slip should be pasted here.

VIII.—Second Trial.

AA Sec 18 (4) Third charge WOAS stealing public property in that he in the field at approx 1830 hrs 28 Nov 44 stole one WD blankets public property.

Signature of Officer making entry.

IX.—C.O.'s remarks and recommendations on First Trial.

Date		Signature
Mar 18/45	Recommend sentence be served in full	J Runcie Lt col OC 10 CBR Bn

X.—Confirming Officer's remarks and recommendations on First Trial.

Date		Signature
20 Mar 45	This is a deliberate and premeditated crime. I recommend that the sentence be served in full	GGN Gostling Brig Comd 2 CBR Gp

Robitaille, D.

Date 19 Dec 45

HQ
2 Cdn Inf Div CAOF

D.121976 Pte. Robitaille, D.
3/R de Chaud CAOF

19 Nov 45.

HQ
3 Cdn Inf Div CAOF

Date 19 Nov 45

D121976 Pte Robitaille D.
3/R de Chaud CAOF

6.

1 CD/PP/BKS/ 1209

1 CDN DETN & PP BKS
CDN HQ CORPS

10 Sep-45

Cdn Sec 1 Ech
HQ 21 A Gp

ATT AG 11

SUSPENSION OF SENTENCE

D-121976 Pte ROBITAILLE D

1. Under Auth:- Cdn Sec 1 Ech HQ 21 A Gp 510/ROBITAILLE D/1 (AG 12/) 31 Aug-45 the m/n soldier's sentence has been placed in suspension wef 10 Sep-45 and he was despatched to 13 CDR Bn Attached please find AF A310A with Pt VI Completed.

2. For your information, please

WDC/el

W D Cain Major
COMMANDANT
1 CDN DETN & PP BKS
CDN HQ CORPS

510/ Robitaille D /1 (AG 12)

CDN SEC 1 ECH HQ 21 A GP

21 Aug 45

I.
Cmd.
1 Cdn Detn & P P Hks

SENTENCE PLACED IN SUSPENSION
D.121976 Pte. Robitaille, D.

The m/s soldier was sentenced by FCCM on 10 Mar 45 to undergo detn for one year for two offences under AA Sec 15 (1) and one offence under AA Sec 15 (4).

2. This sentence was reviewed by the GO i/c this HQ on 30 Aug 45 and the following direction was made:-

"Suspend wef 10 Sep 45"

3. This soldier on release will be permitted to the GO and the following explained to him:-

(a) that his sentence is suspended NOT remitted,

(b) that unsatisfactory conduct may lead to its reimposition,

(c) that he is being posted to a unit until such time as he earns by effective service the final remission of his sentence,

(d) that when remission has been earned he will be eligible for reallocation in accordance with his point score and CF A576.

4. Herewith AF A5104 bearing direction in para 2 above. May Part VI be completed showing actual date of release and remission marks earned, and the form returned to this HQ with a statement that the instructions in para 3 above have been carried out.

5. Cdn Sec 2 Ech HQ 21 A Gp will issue necessary instructions to post and despatch this soldier in accordance with the policy outlined in 520/REVIEWS/1 (GO i/c) d/17 Aug 45. Copy of instructions will be forwarded to this HQ.

DSC.
(A.E. Kearns) Major
DAAG "Dis"
Cdn Sec 1 Ech HQ 21 Army Gp

REGISTERED SDS
SDS/APO/HAND
ENCL-/

Copies to:- Cdn Sec 2 Ech HQ 21 A Gp (Attn:- Records)
Cdn Sec 2 Ech HQ 21 A Gp (Attn:- P. & T.)
CDN, Cdn Army Overseas,
Govt Bldg, Bromyard Ave.,
ACTON, W.3 (Attn:- 2C)

II. 2 Ech posting inst
on 510/ Sunland R/3
DSC.

No 1 Cdn Detn/ 1209
No 1 Cdn Detn & FP Bks Cdn Pro C

14 August 1945

PFSS
2nd Review

Cdn Sec GHQ
1 Ech 21 A GP

SENTENCE UNDER REVIEW

D121976 Pte Robitaille D.

1. Reference 510/Robitaille D/1 (AG 12)d/25 Jun 45 relative to sentence under review for the m/n soldier.

2. The u/m infm is appended:

(a)	Date sentenced by FGCM	. 10 Mar 45
(b)	Date admitted to detn bks	. 15 Mar 45
(c)	Number of days remission already lost	. NIL
(d)	Number of marks already earned	. 1256 out of 1920
(e)	Date of release with full remaining remission	. 4 Nov 45

3.	Attentiveness to drill and parade square work	. Attentive
	Reaction to strict military discipline	. Favorable
	Appearance and bearing	. Smart and soldierly
	Cleanliness in person and clothing	. Clean in person and kit
4.	Application to work and ingenuity	Employed in tailor shop
5.	Military employment upon release from detn	. Willing to serve in COF

6 (a) This soldier is anxious to redeem himself and serve in COF until such time as he earns by his good conduct his full remission of sentence.

(b) Conduct and deportment have been very satisfactory.

(c) It is recommended that sentence be suspended that the m/n be posted to COF.

W D Clair Major
Commandant
1 Cdn Detn & FP Bks
Cdn Pro Corps

WDC/fa

K 230 22.3.45

PERR

WORK SHEET

REVIEW OF SENTENCES AWARDED BY COURT-MARTIAL

1. FA to CO 1/c

Date 16 Jun 45

11. No D.121976 Rank Pte Name NORITAILLE D

Unit 10 CBR Bn

Age 30

Date of Enlistment 8 Sep 41

Offence: AA Sec 18 (4) - Stole 22 WD blankets, public property
AA Sec 15 (1) - AWL 37 days 0 hrs 30 minutes
AA Sec 15 (1) - AWL 12 days 18 hrs 30 minutes

Sentence: To undergo detn for one (1) year

WEF 10 Mar 45

Last Reviewed FIRST REVIEW

111. Extenuating Circumstances: Nil

Rec by Court: Nil

Character (previous convictions):
One offence Under AA Sec 40 for which he was awarded 14 days CB and 28 days forf of pay on 13 May 44
In action from "D" Day to 13 Aug 44 -- Wounded.

IV. Rec by CO: 10 CBR Bn: Recommend sentence be served in full.

V. Rec by next senior officer: Comd., 2 CBR Gp: This is a deliberate and premeditated crime. I recommend that the sentence be served in full.

VI. Rec re review by AG. 12: There are no special facts in connection with the 2 AWL charges. On the first charge the accused and a Pte Blanchette were both found guilty of stealing 22 Army blankets from an OR's Leave Hotel in Ghent. You reviewed the case of Pte Blanchette (who received an identical sentence) on 2 Jun 45, and directed:

"No remission - BP 30 Aug 45."

Comd., 1 Cdn Detn & F P Bks: (a) - No - willing to continue military service until such time as he is demobilized.
(b) - Satisfactory
(c) - No

1944 - DEC

1945 - JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

1946 - JAN FEB MAR

D.S. Clapperton

(D. S. Clapperton) Capt
AG 12
Cdn Sec 1 Ech HQ 21 A Gp

510/ROBITAILLE D/1 (AG 12)

25 Jun 45

D.121976 Pte Robitaille D
No 1 Cdn Detn/1209 d/30 May 45.

10 Mar 45
19 Jun 45

"No remission - BF 30 Aug 45."

510/ROBITAILE D/1 (AG 12)

25 Jun 45

D.121976 Pte Robitaille D
"C" 1 Cdn Detn/1209 d/30 May 45.

10 Mar 45
19 Jun 45

"No remission - BF 30 Aug 45."

MESSAGE FORM

ARMY FORM C2136 (Small)

Call | Srl. No. | Priority | Registration Time | Register No.

ABOVE THIS LINE FOR SIGNALS USE ONLY

C.R. 1995 CONVEYED BY 1 ECH 21 ARMY GROUP

Date Time Originator | Office Date Stamp

FROM (A) 1 CDN DISCIPLINE CENTRE

For Action

TO CANFOR (EXFOR REAR)

(A) For Information (INFO)

Message Instructions GR

Originator's No.

1 CDC/215 (.) RESTRICTED (.) D 121976 Pte. ROBITAILLE D

committed to 1 CDN DETN & FP BKS on 15 Mar 45

This Message may be sent AS WRITTEN by any means except

If unable to be transcripted or to fall into enemy hands, this message must be sent IN CIPHER

Originator's Instructions Degree of Priority

Time | System | Op.

THI or TOR

Time cleared

Signed Admin. Offr.

Name

1 Cdn Disciplinary Centre

W/S

No 1 Cdn Detn/ 1209
No 1 Cdn Detn & FP Bks Cdn Pro C

30 May 45

Cdn Sec GHQ
1 Ech 21 A GP

SENTENCE UNDER REVIEW

D 121976 Robitaille D

1. Reference 510/Robitaille D/1(AG12)8/21 May 45 relative to sentence under review for the m/n soldier.

2. The u/m infm is appended.

(a)	Date sentenced by FGCM	- 10 Mar 45
(b)	Date admitted to detn bks	- 16 Mar 45
(c)	Number of days remission already lost	- Nil
(d)	Number of marks already earned	- 632
(e)	Date of release with full remaining remission	- 4 Nov 45

3.	Attentiveness to drill and parade square work	- Attentive
	Reaction to strict military discipline	- Favourable
	Appearance and bearing	- Average
	Cleanliness in person and clothing	- Clean and Tidy
4.	Application to work and ingenuity	Good Worker
5.	Military employment upon release from detn	- Does not wish further service.

6.
(a) This soldier whilst wishing to redeem himself has not volunteered for CPEF or COF service. He is willing to continue military service and employment until such time as he is demobilized.
(b) Conduct and deportment has been satisfactory since admission.
(c) It is recommended that consideration be given towards suspension at some future review.

J. Rocker Lt Col
COMMANDANT (APM)
1 CDN DETN & FP BKS
CDN PRO CORPS

COR/er

O.R.
JAN 1945
CDN SEC GHQ 1 ECH
21 ARMY GROUP

K 230 22.3.45

ARMY FORM C2136 (Small)

MESSAGE FORM

Register No.

Call	Art. No.	Priority	Transmission Instructions
			510/Robitaille D/1 (AG 12)

ABOVE THIS LINE FOR SIGNALS USE ONLY

FROM (A)	Originator	Date-Time of Origin	Office Date Stamp
	CANFOR (EXFOR REAR)	03/1720B	June 45

For Action

1 Cdn Disciplinary Centre

TO

(W) For Information (INFO)

Message Instructions — GR

Originator's No.

A2203 (1) RESTRICTED (.) D-121976 Pte ROBITAILLE D sentenced
1 year detention 10 Mar 45 (.) Advise where committed

1 Cdn Det'n - FP Bks
[illegible] Mar 45

This Message May Be Sent AS WRITTEN BY ANY MEANS (EXCEPT WIRELESS)	If Liable to be Intercepted or to Fall Into Enemy Hands, this Message Must Be Sent IN CIPHER	Originator's Instructions Degree of Priority	Time	Signature	Op
[illegible] Capt	Signed	IMPORTANT	THI TOR		
			Time cleared		

510/Robitaille D/1 (AG .

CDN SEC 1 ECH HQ 21 ARMY GP

30 May 45

Comd
1 Cdn Detn & F P Barracks

4

Sentence Under Review
D-121676 Pte Robitaille D.
10 C B R Bn

1. Ref this HQ letter, same file number as above d/ 21 May 45.

2. No reply has yet been received to the a/m correspondence. Please expedite or advise reason for delay.

for (E.C.Brown) Lt Col
AAG
Cdn Sec 1 Ech HQ 21 Army Gp

SDS/APO/HAND

CANADIAN SECTION 2nd ECHELON HEADQUARTERS 21 ARMY GROUP

99/21/Docs Gen/16(A5X)
24 May 45.

G.O. IC,
Cdn Sec 1 Echelon,
HQ 21 Army Group.

AG11 - 2 yrs AG10

E42230 Pte BLANCHETTE O
D121976 Pte ROBITAILLE D AG11
MFM 6

1. Reference your message A2033 dated 21 May 45.

2. Please find attached MFM 6 for the m/n soldier.

RSCWilliams

(R S C Williams) Lieut,
for Officer i/c,
Cdn Sec 2 Ech HQ 21 Army Gp.

RSCW/hg

Time of Signature 10 30 B Hrs
DRLS

PFH on
Pol 2

MFM 6
(AFB 122)
40/PA8/136 (3438)

No D121976 Name ROBITAILLE D | Sqn, Battery, or Company | R de Chaud Corps | Date of enlistment Sep 41 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
		Pte		AA 40		14 days CB 28 days pay FR&I 149(2)	13May44		
		"		AA 15(1) AWL from 0900 hrs 22 Oct 44 until 1830 hrs 28 Nov 44 (2) AWL from 1900 hrs 10 Dec 44 until 1330 hrs 23 Dec 44 (3) AA 18(4) (4) AA40		1 year detn	9 Mar 45	FGCM	Forfs51 days pay FR&I 149(1) (a) Forfs 365 days pay FR&I 149(1)b Forfs 84 days pay F R&I 149 (1)(c)(i)

Certified to be a true extract from the regimental books and documents in my custody

A S Williams Lieut
Officer IC Records X
Cdn. Sec. 2 Ech. HQ. 21 A Gp.

510/Robitaile D /1 ('G 12)

CDN SEC 1 ECH HQ 21 ARMY GP

21 May 45

2

Comd
1 Cdn Detn & F P Barracks

Sentence Under Review
D.121976 Pte Robitaille D
10 CBR Bn

1. The m/n soldier was sentenced by FGCM on 10 Mar 45 to undergo detn for one year for two offences under AA Sec 15 (1) and one offence under AA Sec 18 (4).

2. May a report be forwarded to this HQ on his conduct and behaviour since date of commitment to assist in reviewing sentence.

(J.T. Harvey) Major
DJAG 'Dis'
Cdn Sec 1 Ech HQ 21 Army Gp

DS/APO/HAND

Ct F42230 Blankets for prisoner

MESSAGE FORM

ARMY FORM C2186 (Small)

Call	Sri. No.	Priority	Transmission Instructions
			510/Robitaille D/1 510/Blanchette O/1 (AO.12)

ABOVE THIS LINE FOR SIGNALS USE ONLY

FROM (A)	Originator	Date/Time of Origin	Office Date Stamp
	CANFOR (NIFOR DEAN)	211100B May 45	

For Action

CDN 02E

TO (W) For Information (INFO)

Message Instructions — GR

Originator's No.

A.2033 (.) Restricted (.)

FORWARD CERTIFIED COPY NFW 6 E42230 Pte Blanchette O
D121976 Pte Robitaille D

MESSAGE MAY BE SENT AS WRITTEN
CARD { RECEPT } WIRELESS

IF LIABLE TO BE INTERCEPTED OR TO FALL INTO ENEMY HANDS, THIS MESSAGE MUST BE SENT IN CIPHER

ORIGINATOR'S INSTRUCTIONS
ORDER OF PRIORITY

Time	System	Op.
THI or TOR		
Time cleared		

Capt. SIGNED

5 V. 3.
5 I. 4.
Pte. Robitaille. D.
Pte. Blanchette C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D-121976 Pte Donat ROBITAILLE, R de Chaud 2 10 CMR Bn
E- 42230 Pte Odina BLANCHETTE R de Chaud 2 10 CMR Bn

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 19(2)	NOT GUILTY	GUILTY	This applies to Robitaille & Blanchette
2nd	AA Sec 42	NOT GUILTY	NOT GUILTY	This applies to ROBITAILLE & BLANCHETTE
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

D-121976 Pte ROBITAILLE, D - TO UNDERGO DETENTION FOR ONE (1) YEAR

E-42230 Pte BLANCHETTE, O - TO UNDERGO DETENTION FOR ONE (1) YEAR

(Sgd) "A.M. Encelstone" Lt 10 Mar 45 (Sgd) "Donald MacKenzie" Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56. 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

CONFIRMED & TO BE PROMULGATED ON A BM PARADE.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

Date 12 Mar 45 (Sgd) "GEW Keetling" Brigadier
Commanding 2 CDRG
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D-121976 Pte ROBITAILLE, Donat R de Chaud 10 CMR Bn	1610 hrs 14 Mar 45	"Jas H Varty" Lt Asst AAG 10 CMR Bn
E-42230 Pte BLANCHETTE, Odina R de Chaud 10 CMR Bn		

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

(PAMPHLET [Heu of AP 88] 40-1-8, D.1.8.1944 (21-44))

5I-5

4/38B

Convened by Order of Lt-Col T.W. Brennan, A/Comd 2 CDRG dated 6 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-121976	Pte	Donat	ROBITAILLE	R de Chaud 10 CMR Bn
E-42230	Pte	Odina	BLANCHETTE	R de Chaud 10 CMR Bn

Certified true copy
Pro. D. Poole maj.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date(s)) 10 March 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused ~~is~~ (are) amenable to military law, and each charge discloses an offence.(2)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused ~~is~~ (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused ~~is~~ (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans ~~N/A~~
The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans N/A
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans ~~Accused not present~~ (2) N/A
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	D MacKENZIE	Depot Scot R-9 Lst 2 Cdn CRMP
Member	Captain	F A BAILLARGEON	Can Lst - 1 Cdn Disciplinary Centre
Member	Captain	E B VAN DINE	BCASC - 1 Cdn Disciplinary Centre
Judge-Advocate	Lieutenant	A M ENGLESTONE	Legal Offr att ADJA 2 CMRO
Prosecutor	Lieut	G E COLLINS	att Cdn Sec 1 Feb HQ 21 A Gp
Defending Offr	Capt	W DONOVAN	10 CMR Bn

Questions by President : Is the Prosecutor a lawyer ? Ans Yes. Is the Defending Offr a lawyer ? Ans Yes (1)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused ~~if~~ D-121976 Pte Donat ROBITAILLE & E-42230 Pte Odina BLANCHETTE before arraignment make(s) (no) (a) plea(s) (2)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 44, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused ~~is~~ (are) arraigned (separately) on all charges in the charge sheet.(1) The accused ~~does~~ (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(arraigned and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D, B, C, E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CDRG Vol. 4 P.114

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B--PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his plea(s) (their plea(s)) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be cloted to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C--PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a seporate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

E-47250 PTE BLANCHETTE O. ONLY

RECORD FORM D--PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. TO BOTH ARTICLES - NO BLANCHETTE - NO
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1) NIL
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~ NIL
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans TO BOTH ARTICLES - NEITHER - BLANCHETTE - NEITHER. Do you intend to call witnesses on your behalf ? Ans NO/TAILLE - NO BLANCHETTE - NO. Are they witnesses as to character only ? Ans N/A.
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the Finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para 1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the FIRST charge(s), being subject to confirmation, will be promulgated later.(1) Or, ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)
(1. *AA 54(7) (6), RP 45, 120(A).* 2. *AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E--PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO/TAILLE - NO BLANCHETTE - NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D.E. and Ex F.C. respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans NO/TAILLE - YES THIS MY DEFENDING OFFICER. BLANCHETTE - YES
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-738. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO .....(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement.* *Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B).* *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B).* *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3.* *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him ~~(them)~~ again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2.* *If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

D/21976 PTE ROBITAILLE D. ONLY

CHARGE SHEET NO.1

The accused persons, D-121976 Pte Donat ROBITAILLE (R de Chaud) 10 CBR Bn and E-42230 Pte Odina BLANCHETTE (R de Chaud) 10 CBR Bn, soldiers of the Canadian Army Ove seas, are charged with:

FIRST CHARGE
AA Sec 18(4)

WHEN ON ACTIVE SERVICE STEALING PUBLIC PROPERTY

in that they

in the Field at approximately 1830 hrs 28 Nov 44 stole 22 WD blankets, public property.

SECOND CHARGE
ALTERNATIVE
AA Sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that they

in the Field, at approximately 1830 hrs 28 Nov 44 were improperly in possession of 22 WD blankets, public property.

"J Runcie" Lt-Col
Officer Commanding,
10 CBR Bn

In the field
5 Mar 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"W H Hugman" Lt-Col
A/Commander
2 Canadian Base Reinforcement Group

In the Field
6 Mar 45

Approved on behalf of the Judge Advocate General pursuant to KR (Can) 540.

"H A Hanson" Capt
ADJA
HQ 2 Cdn Base Rft Gp

In the Field
6 Mar 45

DLG

CHARGE SHEET NO.2

The accused, E-42230 Pte Odina BLANCHETTE, R de Chaud, on strength 10 CBR Bn, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field at 0815 hrs on 8 Nov 44 absented himself without leave until apprehended by personnel of the First Cdn Leave Centre at 1830 hrs 28 Nov 44.

(Total time absent 20 days 10 hrs 15 mins)

SECOND CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, at 1900 hrs 10 Dec 44 while in attest at 10 CBR Bn absented himself wihtout leave until apprehended at 0415 hrs 28 Dec 44 by Cdn Provost Corps at GRENT.

(Total time absent 17 days 9 hrs 15 mins)

In the Field
5 Mar 45

"J Buncie" Lt-Col
Officer Commanding
10 CBR Bn

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
6 Mar 45.

"V W Hugman" Lt-Col
A/Commander
2 Canadian Base Reinforcement Group

CHARGE SHEET NO.3

The accused D-121976 Pte Donat BORTHAIRE, R de Chaud, of A2 Coy 10 CBR Bn, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Ai Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field at a proximately 0900 hrs 3 Oct 44, absented himself without leave until apprehended at 1830 hrs 28 Nov 44 by personnel of he First Cdn Army Leave Centre

(Total time absent: 57 days 9 hrs 30 minutes)

SECOND CHARGE
Ai Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field at 1900 hrs 10 Dec 44 while in arrest at 10 CBR in absented hiself without leave until apprehended at 1350 hrs 23 Dec 44 by Cdn Provost Corps at HUNST.

(Total time absent: 12 days 18 hrs 30 minutes)

"J Dussie" Lt-Col
Officer Commanding
10 CBR Bn

In the Field
5 Mar 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"T B Thurman" Lt-Col
A/Commander
2 Canadian Base Reinforcement Group

In the Field
5 Mar 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, QF B7(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, ~~has~~ (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) [illegible] endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs~~ to form the Court, ~~(b) a Fd Offr as President, for the reasons I have attached hereto.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
[illegible]	[illegible]	[illegible]

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
[illegible]	[illegible]	[illegible]

On Active Service in the Fd

in [illegible] (*Country.*)

(*Signed personally. RP 105 fn 2.*) [illegible] (*Rank.*)

Dat[illegible] Commanding [illegible] Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

4/38A CFA 95 (In lieu of AFA 5) 40/P & S/1697 (5143)

[illegible]

MEDICAL OFFICER'S CERTIFICATE (KR(Can) Para 85[illegible]) [illegible]

I certify that I have this day examined D-121976 Pte ROBITAILLE D

10 CBR Bn and in my opinion he is fit/~~unfit~~ to undergo

trial by Court Martial.

Station Field

Date 10 Mar 45

"R H Chalmers" Capt

Medical Officer

10 CBR Bn

Unit

MEDICAL OFFICER'S CERTIFICATE (MR(Can) Para 557)

I certify that I have this day examined BRITAILLE, D. Pte

D-121976 and in my opinion he is fit to undergo

trial by Court Martial.

Station Field

Date 9 Mar 45

??????????????Capt

Medical Officer

Regt de la Chaudiere

Unit

LM

MEDICAL OFFICER'S CERTIFICATE (KR(Can) Para 557)

I certify that I have this day examined F-2230 Pte BLANCHARD, C

10 CBR Bn and in my opinion he is fit/~~unfit~~ to undergo

trial by Court Martial.

Station Field

Date 10 Mar 45

"R H Chalmers" Capt
Medical Officer

10 CBR Bn
Unit

DM

MEDICAL OFFICER'S CERTIFICATE (KR(Can) Para 5071)

I certify that I have this day examined BLANCHETTE, C. Pte

E-42230 and in my opinion he is fit ~~xxxxx~~ to undergo

trial by Court Martial.

Station Field

Date 9 Mar 45

??????????? Capt

Medical Officer

Regt de Chaudière

Unit

NOTICE OF INTENTION TO TRY ACCUSED PERSONS TOGETHER

Take notice that it is intended to try

D-121976 Pte ROBITAILLE D, (R de Chaud) 10 CBR Bn

and

E-42230 Pte BLANCHETTE O, (R de Chaud) 10 CBR Bn

together on one charge of stealing public property and one charge of conduct to the prejudice of good order and military discipline in that they were in improper possession of public property.

"W B Hugman" Lt-Col
A/Commander
2 Canadian Base Reinforcement Group.

In the Field
6 Mar 45

TO: D-121976 Pte ROBITAILLE, D. (R de Chaud) 10 CBR Bn
D-42230 Pte BLANCHETTE, O. (R de Chaud) 10 CBR Bn

D-121976 Pte Donat ROSITAILLE (R de Chaud)
E-42230 Pte Odina BLANCHETTE (R de Chaud)
////--------//////

JOINT TRIAL

D-2 Prosecutor's Opening Remarks

Reference the actual articles alleged to have been stolen the facts are not in dispute re these. (1) There were 22 Army issue blankets in 2 bundles (2) Each bundle was tied up.

The Defending Officer does not dispute the above.

D-3 1st WITNESS FOR THE PROSECUTION Lieut C N Power, O i/c ORs Hotel, Cd Army Leave Centre, GHENT, Belgium, having been duly sworn states :-

I am now A/Capt C.N. Power. I was Lt i/c ORs Hotel in Nov 44. At approx 1900 hrs 28 Nov 44 I was called for at my quarters at GOEN ST GEO HOTEL and summoned to TOMMAI SCHOOL which is the ORs Hotel. There I had 2 men presented to me and they were identified by their Pay Bllkr as Pte ROSITAILLE and BLANCHETTE. Sgt MONROE presented them to me. He accused them of participating in the theft of 2 bundles of blankets The y were present. I saw the bundles. The y were in my Ord Rm at the time. I tried to interrogate them but got no satisfaction as one spoke no English and the other spoke very poor English. They were not in possession of any passes so I placed them in protective custody.

Judge Advocate rules that because the accused speak no English that any statements made in their presence is not admissable.

Cross examination:

It would be impossible to say how many soldiers were going in and out of the Hotel between 1700 and 1900 hrs that date. I will say that no one except my Staff and/or guests would be going in or out. It is not impossible for a person without a pass to get into the Centre. Between 5 and 7 P.M. in front of the Centre there may be 2 or 12 going to and fro. It is not a busy thoroughfare. I would say it got dark about 5 p.m. There has always been a balckout but has not been very rigid. It is never as thoroughly checked on as it is in England.

By the Court I had a look at the bundles. I recognize them as being BD Blankets.

RP 83(b) complied with.

The accused declines to have the evidence read back in French.

2nd WITNESS FOR THE PROSECUTION M-66663 WSM La Croix, J.E.A., No.1 Gdn Army Leave Centre having been duly sworn states:

I recall 28 Nov 44 at approx 1800 hrs. I was walking down the street and passing near the end of the leave Centre Bldg. I noticed two men standing near the Bldg. One man went out to the edge of the sidewalk and looked up toward the windows. He was wearing a gas cape.

Appd. Dd

I walked past, stopped and looked back. The man had proceeded out to the kerb looked upwards and proceeded back in towards the men against the bldg. I walked on further and looked back again. He went to the edge of the sidewalk again. At that time Cpl FRITH and Gnr DODD were coming down the street towards me. I stopped them and told them to keep an eye on the 2 men as they were acting suspicious. I proceeded on my way. I cannot identify these two men. It was dark.

I produce Ex "A" which is a reasonable sketch of the Cdn Army Leave Centre.

Witness points out bldgs on sketch and show a the court his movements as per his evidence, also indicates movements of the soldier in the gas cape. "A" on sketch is position of soldiers. "B" is witness' position when he first spotted the soldiers. "C" is position where witness turned around. "D" is position where witness turned around 2nd time.

Cross examination:

I was about 10 feet from them when I saw the man for the 1st time. It was raining and dark and I cannot identify them. It was approx 1800 hrs. There was no moon. Not raining very heavy. I live at the Centre and was at that time. Approx 450 to 500 were in the Centre at that time. There were not many people coming in and out. The street was pretty well deserted. There were only 2 civilians near the Centre when I saw the 2 soldiers. The traffic is not usually heavy on that street that time of night. Very few people on the street.

By the J.A. The civilians were men, part of my staff. They were proceeding up the street to the entrance in the opposite direction from me. They spoke to me and that's all.

By the Court.

It was possible to see a man's form about 10 yds away. Lights from the street cars help. I saw the reflection of lights from a street car on the gas cape. When there is no street car you'd have to be 2 ft from the man to see him There is a street car terminal at the corner.

By the J.A. I could see by aid of street car lights the man walking to the edge of the kerb. I was 20 or 25 feet from him when I saw him the 2nd time.

RP 83(b) complied with

The accused decline to have the evidence read back in French.

3rd WITNESS FOR THE PROSECUTION

H-87360 CPL FRITH, R.M., att'd Cdn Army Leave Centre, having been duly sworn states:

At approx 1800 hrs 28 Nov 44, Gnr DODD and myself left the Leave Centre. We met RSM LA CROIS down past the Leave Centre. I recognize Ex "A". We met RSM LA CROIS at point "D" on the sketch. As a result of what he told us we stayed there and then Gnr DODD went down the street . We were watching 2 soldiers standing along side the Leave Centre.

(Witness points to point "B" on Ex "A" as place where soldiers were standing) Gnr DODD went toward Leave Cent e gate. In the meantime while he was away from me, one soldier crossed the street to the door of the bldg opp the Leave Centre. He was dressed in bat le dress. The one that stood beside the Leave Centre was wearing a gas cape. Gnr DODD rejoined me. The man across the street appeared to give signals with his arms. He was standing in the doorway of the bldg. across the street. (Witness marks this point as "E" on Ex "A") In a few minutes a large bundle was thrown from the upstairs window of the Leave Centre. The soldier at point "E" came across the street, picked up the bundle and started across the street with it. I told Gnr DODD to go after him Then as he got across the street another bundle was thrown out of the window. I got a look at the last bundle that was thrown out. I didn't know what was in it. I came up to where the 2nd bundle landed and the soldier in the gas cape was standing beside it. The bundle was wrap ed in a blanket. Cpl DODD was across the street with the otherman. I didn't get a good look at the man with the gas cape. Sgt MONROE and Pte ROLFE came along then. I crossed the street after speaking to them I crossed to take the man in charge that Gnr DODD had. I took him in charge and crossed the street with him and rejoined the others. I did not get a good look at him. I wouldn't be able to recognize them again. We all went into the Leave Centre Orderly Room. As soon as we got in there the driver and I left. Pte ROLFE and Sgt MONROE remained. The driver and I went to get Lt (now A/Capt) POWER. We got him but I didn't go into the Orderly Room. I didn't see the bundles in the Orderly Room. They were brought in after we had gone in.

Cross examination:

I first saw RSM LA CROIS when I went out. Several people passed after that. Perhaps 5 or 6. I can't say if they w re soldiers. It is long ago. I left the centre with Gnr DODD. I was employed there since JULY. I can't say how any people were there at that time. Guests dance or go down town at night from the Centre. The la gest percentage go downtown, they go down town between 1800 & 1900 hrs. I did not notice many go down town that night. Very few passed us. It was fairly clear that night. I don't think there was any rain. It was not real dark. It got dark about 1730 or 1745 hrs. I am not sure about that. We saw the soldiers for the 1st time at "A" and RSM LA CROIS at Point "D" on Ex "A" We saw RSM LA CROIS first. We walked past the 2 men but took no notice of them It was not real dark. RSM LA CROIS was the 1st one we spoke to. We could see plainly - about 50 yards. We could see from pt "D" to Pt "A" on Ex "A". The front of the Leave Centre is not a plain wall all along. There is a bit jute out(marked by witness on Ex "A" in pencil - points "F" and "G".) We were approx 20 feet when RSM told us to keep an eye on the men. I cannot identify the 2 men because I did not see them real close and never took any particular notice. Sgt MONROE told me to get a man who was with Pte DODD. I obeyed that order. I was standing beside the Leave Centre with the other soldier when he told me. I was close to him. Th t is right. I cannot identify him now because I didn't look at him then. It is not because it was dark. I went to Pte DODD and the other man. I came back with Gnr DODD and the other man. I was walking beside him, about 2 ft away. I cannot identify this man for the same reason. I was in front of the Centre when Sgt MONROE gave me the order. I went across to Gnr DODD and the soldier in front of the Museum. I am positive there was nothing in the street in front of the Museum. I don't know if there were 2 trucks parked in the street not far from the Museum. The 1st bundle was dropped from the window approx 15 minutes after the RSM told us to watch the men. I stood in the same place for those 15 minutes. I noticed no lights coming from trains at the corner. I saw no trams passing.

By J.A. I could see the soldier all the time when he picked up the bundle and walked across the street. When the 2nd bundle was thrown out the other soldier walked up, did not touch it but stood beside it until I came up. It was the same soldier I had been watching. I told Gnr DODD to go after the 1st soldier as soon as he picked up the bund e and started across the street. The soldier with the gas cape was on the Leave Centre side of the street.

By the Court:

Gnr DODD and I left the Centre from the Front Gate. As soon as RSM pointed these soldiers out they were under our continual observation. As far as the one on my side of the street is concerned he was under my observation until taken to the Orderly Room. He went in ahead of me. I didn't get a look at him.
(Pres refers to Summary of Evidence - Witness points out that evidence in Supplementary Summary re man wearing gas cape crossing the street is not correct.)

RP 83(b) complied with.

The accused declines to have the evidence read back in French.

4th WITNESS FOR THE PROSECUTION

K-45986 Gnr DODD, D.J., No 1 Cdn Army Leave Centre having been duly sworn states:

At approx 1800 hrs 28 Nov 44 Cpl FIRTH and I were stopped when we left the Leave Centre by RSM LA CROIS. As a result of this meeting we watched 2 men who were acting suspiciously in front of the Leave Centre.

(Witness examines Ex "A" and points to point "B"/

They were watching the Hotel and standing at point "B". I was standing at point "D" on Ex "A" and watching them I went to the Leave Centre main entrance - the front entrance. I met Sgt MONROE at the gate. As a result of my conversation I watched a man in front of the Museum entrance across the street from the Hotel. He must have been one of the two we originally watched because when I returned to Cpl FIRTH there was only one in front of the bldg. Then a bundle was thrown from a window in the Centre and the man I was watching came over from the Museum, picked up the bundle and went back to the Museum side of the street with the bundle. I followed. The man placed the bundle behind some bushes beside the Museum wall. I stood at the fence in front of the Museum wall. The man moved down the street a few yards. I stayed at the bundle. The outside wrapper of the bundle was a blanket. I paid no attention to the other man. I never watched the windows. Sgt MONROE and CPL FIRTH came over a few minutes later and Cpl FIRTH took the man in custody on Sgt MONROE's orders. I did not speak to the man. Sgt MONROE ordered me to take the bundle to the Orderly Room. It was rather large. I did not get a good look at him. I did not get close to him. It was dark. I followed them into the Orderly Room with the bundle. The 2 men who were picked up were there. I could not recognize them. The orderly room is small and it was crowded. Their backs were to me. Somebody else of the party was carrying a bundle too. I saw this other bundle on the street. I did not see it being thrown out of the window. I have seen the accused at the Summary of Evidence. I can't recall seeing them around the Centre.

Cross examination.

I saw RSM LA CROIS first that night. I was coming out from the front gate. I saw the 2 men for the first time as we were walking along the fence of the bldg. When I first saw them they were pointed out to us by the RSM. The RSM was almost opposite the Rear Gate at that time. We walked on the sidewalk along the Leave Centre. It didn't occur to me to notice anyone. It wasn't a black night. Visibility was poor. It had been drizzling. I had been employed there ever since it had been GHENT. I cannot say within a 100 how many were in the centre. Approx between 300 and 400 were guests. Guests mostly stay in, in the Leave Centre. They go to Cinemas, shows etc. The biggest percentage go out at night They go out between 5 pm and 7 pm. I wouldn't know if many guests went out that night. I was standing at the rear gate watching a man. The front wall of the Centre is not plain. In some places there are outcroppings as if some bricks have been added on. I never paid any attention to trams at the corner. There must have been vehicles. I never paid any attention.

That night I could make out an object about 50 yds away. It wasn't like some of these black nights where you walk right into a telephone pole. I paid no attention to vehicles parking in the street that night. It is approx 60 yds from the entrance of the Museum to the place I was watching from. I walked back to the front entrance of the Leave Centre while I was watching. I cannot remember if soldiers came out from the Centre while I was at the front gate. There must have been soldiers and civilians passing in front of the Centre. I was never close at any time to the 1st soldier who put the bundle in the bushes. I was never nearer to him than 4 yards. He was not looking at me. His back was to me. Cpl FRITH took him in charge. While I was watching I walked from the rear gate to the entrance of the Leave Centre and stopped in and had a look. It was not possible at that time to see the man who was standing in front of the Museum door. It is possible that the man who was standing in the door of the Museum changed places. Just I liked inside the door, looked around and we had out of the main entrance. During the time we were watching we talked, looked and watched - Cpl FRITH and myself. We were standing just past the rear gate. We were leaning against the bldg. Cpl FRITH or I was not facing the wall. I was leaning against the bldg. I can't say what his position was. It is about 60 yds from the Museum door. We were together a matter of minutes. After I went to the main entrance I went back to see the Cpl. He was still at the same place. It is possible for a man to get through the gate, come along the Centre bldg and not be seen by a person standing at the place where Cpl FRITH and I were. It had been raining that night.

By J.A. I saw a bundle land on the street. I saw a man pick it up. I followed that man. Until Sgt MONROE came over with Cpl FRITH he was in my sight at all times. I saw Sgt MONROE and Cpl FRITH take the man into custody. There were 4 or 5 on the sidewalk when I walked from the main entrance to rejoin Cpl FRITH. I wasn't paying any attention to that side of the street so I didn't see the man that Cpl FRITH and I had been watching on the Leave Centre side of the street. I never noticed any other people standing around in that neighborhood.
The man in front of the Museum was wearing battledress. I couldn't remember if he was wearing headgear. He was a soldier. The one on the Leave Centre side had a gas cape on. I saw that earlier. He watched them about 15 minutes until the 1st bundle was thrown out. The one on the Museum side was there when I came out from the Main Entrance. I went into the Leave Centre to see if my pals were around to come out and help me watch. Cpl FRITH stayed watching. The man raised no objections to going with the Cpl when the Cpl came over to where I was watching that man and took him in charge. I cannot remember any conversation between them. The 4 or 5 soldiers I met coming from the front entrance to rejoin Cpl FRITH were on the Leave Centre side of the street.

RF 13 (b) complied with.

The accused decline to have the evidence read back in French.

The Court adjourns until 0900 hrs 10 March 45.

The Court reassembles at 0900 hrs 10 March 45, pursuant to adjournment. Present same J.A. and Members.

6th WITNESS FOR THE PROSECUTION

F.67150 Sgt MONROE, A.J. Can Army Leave Centre, having been duly sworn states:-

At approx 1815 hrs 28 Nov 44, MR DE KERSEL who was then civil mgr Can Leave Centre spoke to me. As a result of this talk I went outside and saw 1 soldier with a gas cape on leaning against the Leave Centre. Another soldier was across the street by the Museum. I walked past on the Leave Centre side of the street without stopping and located Cpl FRITH and a civilian timekeeper of the Leave Centre. They were standing by the Station Gate or rear gate. I told Cpl FRITH to keep his eye on the man and I went down the road, crossed the street ad came back on the opposite side. One man was still in the Museum doorway. I went inside the Centre to locate Sgt GRAY to tell him to keep his eye on 109,110 and 111 and 203, 204, 205 rooms

in the Hotel. I could not find Sgt GRAY. As a result of meeting another civilian I went ou side. Cpl FRITH was standing with one soldier against the Leave Centre bldg. There was a bundle beside them. The soldier had on a gas cape. I picked up Pte ROLFE on the way out and ordered him to take charge of the man that Cpl FRITH was standing b side. I took FRITH across the street. Gnr DODD was standing approx 2 yds from another soldier who was standing at Point "E" on Ex "A". I told Cpl FRITH to bring this man into the Orderly Room. I despatched Gnr DODD to retrieve the bundle. He did this. I saw his get them. I mark Point "F" on Ex "A" - 3rd bush on right of Museum door as point where Gnr DODD retrieved the bundle. I crossed the street again - picked up the other bundle and went to the Leave Centre Orderly Room. I got a good look at these 2 soldiers in the Orderly Room. I would know them if I saw them again. The 2 accused are these two men. I brought them in for questioning. But I could not question them. I sent for It POWER. I was there when It (now Capt) POWER took their names from their Pay books. Their names were BLANCHETTE and ROBITAILLE. One had a gas cape - he was the shorter of the two - BLANCHETTE. The QM and I examined the bundles and counted 22 blankets. I saw only 1 man in the Museum doorway. I saw Gnr DODD jump over the fence by the museum to retrieve the bundle. Before that I saw no one jump over the fence. I saw no one throw a bundle over this fence. I saw a man waving his arms in front of the Museum. When I walked out the first time I saw the man in the doorway with his right hand over his head waving his head (witness demonstrates) I saw other men besides my own group in the immediate area at that time. None of them came into the Orderly Room with me.

Cross examination.

I went out approx 1815 hrs. Darkness came very early those days; at approx 1815 hrs dark fell. There were lootein lights lighted in the Centre. I do not know why. In the front of the Leave Centre is an outside hallway It is on the 1st floor. It is about 100 feet long. There are no blackouts on that hallway. There are blue bulbs which throw a diffused light on the street. The first thing I noticed as I walked along the Leave Centre was a man leaning against the wall with a gas cape on. I could not identify him; he was in a shadow. I could not identify the man standing in front of the Museum. The light was behind him. He was in silhouette. He was facing the Leave C entre. The light from the Museum doorway which was open was behind this man. I wouldn't say that it was raining. The outside blankets were wet when we brought them in. It was not raining after 1815 hrs. Walking toward Cpl FRITH I met very few people. I have no idea how many guests were at the Centre. I am a maintenance man there. I was present when the 2 men were arrested in the Orderly Room. I brought the 2 men in myself to the Orderly Room. I was not outside when the man who was standing across the street picked up the bundle. I was not ou side when the man recrossed the street and put the bundle behind the bush. I will not swear that the person who placed the bundle behind the bush and the person I placed under arrest is the same one. I cannot swear that the person on the sidewa k on the Leave Centre side had something to do with the second bundle of blankets, that was there; I can swear that the person who was standing on the sidewalk by the second bundle is the person who was a rrested, Pte ROLFE did not leave that man until he was brought into the Orderly Room. It is right that I went into the Leave Centre after I was out for the 1st time. It is right that 2 bundles fell to the sidewalk while I was in the Leave Centre. When I came out after that it is right that I saw a bundle of blankets and a person standing approx 4 feet away. When I went in the Centre I was looking for SGT GRAY. His room is between the ground floor and the 1st Floor. It is the 1st door to the left above the office. I stayed inside about 2 minutes. When I came outside the 2nd time I noticed 2 guards between the front entrance and the front gate. I walked from the main entrance to the front gate. I walked from the front gate to the bundle on the Leave Centre side. I can't swear whether I met soldiers and/or civilians. I can't say whether I pas ed anybody or not.

Re-examination:

Our DODD went over the fence to retrieve the bundle at my direction. Cpl FRITH brought in the man by the Museum door. Pte BOLTE brought in man with gas cape, who had been standing by Leave Centre. Pte BOLTE brought in the smaller of the two men.- the one with the gas cape who had been beside the Leave Centre. I recall which was DORTAILLE and which was BLANCHETTE. DORTAILLE was the taller man and BLANCHETTE the shorter man.

By J.A.

You could see a moving object at 50 yards that night in that area. In the shade of the bldg. you have to be on top of him. There were lights on in the Museum. I walked immediately with Pte BOLTE to the bundle. There was a man with a gas cape standing 4 ft from the bundle. I instructed Pte BOLTE to take him in charge. I crossed the street with Cpl FRITH and instructed Cpl FRITH to take the other man in charge. I walked back with Cpl FRITH and the other man toward the Orderly Room. I was present when the blankets were counted. There were 2 bundles of 11 each. In my judgement they were Army blankets. Half of our blankets haven't got the arrow on it. I subsequently learned that some blankets were missing from the rooms in the Leave Centre.

By the Court:

Both bundles had 10 inside with one tied outside in a granny knot. Neither objected to going along with FRITH or BOLTE. There is no rule in the Leave Centre which forbids soldiers wearing gas capes when it rains.

By the J.A.

Pte BOLTE started to walk with the other man toward the Orderly Room. Cpl FRITH walked diagonally across the street to meet him and they went to the Orderly Room. I was with FRITH. I picked up blankets on the Leave Centre side. The man who was in the Museum doorway was with FRITH.

DP 93(2) complied with.

The accused decline to have the evidence read in French.

The Prosecutor does not require Pte BOLTE as a witness.

D.6 Prosecutor's Closing Address - attached p-21

Defending Officer's Closing Address - Attached pp23 - 26

Remarks by Judge Advocate - attached.

D-3 Defending Officer's Address - attached p-27

The fourth witness; Sgt WOODS came in the box this morning ready to give full evidence but he did not see a thing of the incident. He was at the Leave Centre when the bundle was thrown out of the window. He cannot swear the man he arrested on the Eastern side of the street is the same who crossed the street with the bundle. He cannot swear that the man standing four or five feet of the bundle had something to do with the bundle on the sidewalk near the Centre.

We submit that on account of darkness, on account of the way Cpl SMITH and Pte DODD carried out their duties, on account of the facing of the Leave Centre that a reasonable doubt of the identity of the suspicious persons and that the relation between the accused and the suspicious persons has been established by a person who came on the scene of the incident afterward and has seen nothing and therefore can only submit that he arrested two soldiers.

"Maurice Bourassa" Capt

SUMMING UP OF JUDGE ADVOCATE

I wish to point out that it is part of my duty as JA to sum up the evidence and avise the court on the law. The court is however the sole judge of the facts and anything I may say now, may previously have said and may say indicating my personal views as to the facts should be entirely disregarded. The Court and the court alone is the sole judge of the facts. I wish briefly to sum up the evidence.

Lt nor Capt C.M. Power arrived in the Orderly Room of the ONs leave centre at approx 1900 hrs 22 Nov 44. He saw two men whom he identified by their pay books to be SCHITTAILLE and BLANCHETTE, he does not not recognize the accused. He looked at the bundles and recognize them as WD blankets.

RSM Lacroix at approx 1800 hrs in front of the leave centre saw two men standing near the bldg, one wearing a Gas Cape went to the edge of the sidewalk and liiked up, he did this twice. He ordered Cpl Firth and Gnr Dodd whom he met to keep his eye on the two men. He states it was very dark, raining and he could see only by aid of tram lights. He saw two civilians near the Hotel.

Cpl Frith was with Gnr Dodd. They wer watching two soldiers near the leave centre -- Frith saw one of the soldiers cross the street, he was dressed in Battle Dress. The one near the leave centre had a Gas Cape -- man across street gave signals a few minutes later a large bundle was thrown from upstairs window. Soldier across street come over picked up bundle and sarted back, Gnr Dodd followed him. Anotherbundle was thrown out, soldier on leave centre side moved closer to second bundle. Sgt Munroe and Pte Rolfe came dong.. He crossed street and took man in charge Gnr Dodd was with. He can identify neither of the men. Between 1700 to 1900 hrs the majority of guests leave the hotel to go down town. He did not notice many that night it was dark but you could distinguish and object at 50 yds. The front of the leave centre is not plain ports jut out. The witness says he as mistaken in the summary of evidence re t e man wearing the Gas Cape crossing the street.

Gnr Dodd: He corroborates evidence of Cpl Firth. His job was to watch the man in the museum side across from the leave centre. He admitted going tinto the leave centre once so the man across the street was not in his observation at all times. He did see the bundle thrown from the leave centre and the man across the street came over andpicked it up. He followed him and saw him hide it. The outside of the bundle was a blanket. He watched the man until Cpl Frith took him in charge. He then took te bundle into the leave centre orderly room. He cannot identify either man. He did not see the men until pointed out to him by RSM LaCroix. There were approx 300-400 guests in the centre the biggest percentage go downtown from 1700 to 1900 hrs. He could see an object 50 yds away. He stated there must have been soldiers and civilians pass by while watching. He was never at any time close to the soldier who put the bundle in the bushes.

Sgt Munroe: He saw a soldier with a Gas Cape leaning against the leave centre wall and the man in the museum doorway. Went into leave centre to speak to a Sgt whom he could not find, on way out he got Pte Rolfe. Saw Cpl Frith standing beside a soldier on leave centre side with abundle near them. He ordered Pte Rolfe to take the man in charge. He took Cpl Frith across the street to where man Gnr Dodd was watching and ordered Cpl Frith to take that man in charge. He picked bundle from leave centre side. He later opened bundles with QM and states there were 11 WD blankets in each bundle. He recognizes the accused as the men in the orderly room. This witness states that there was some light from the leave centre and also some from the museum. You could not see a man in the shades of the bldg but you could see a moving object at 50 yds. Neither man placed into custody objected.

The charge here is Theft of Public Property with an alternative of Improper Possession. With regard to the first charge the Prosecution must prove that the accused stole WD property, namely, 22 blankets. The law relating to stealing is found in MML p.22, p.118, 119 --- Archbold p.484-490 (extracts read).

I wish also to direct the courts attn to the doctrine of Recent Possession MML p.73. With regard to possession, if the cou t should find thatthe accused or one of them was acting with a common design or common inent with a person or persons unknown, then possession by that person or persons would be possession of all, even though one of the persons may never have been in physical possession at any time. With regard to the law of common in ent I read MML p.107 and also the Sec dealing with assisting in the commission of an offence.

Inasmuch as the evidence in this case is to some extent circumstantial I direct the court to the law with regard to circumstantial and read MML p.81 dealing with circumstantial evidence. The charge of improper possession means that the accused was improperly in possession but that some element necessary in the first charge is not proven, such as intention to permanently deprive the owner thereof. And finally I advise the court that under English law no man is guilty until found guilty and the onus of proving him guilty beyond a reasonable doubt rests upon the prosecution. The accused is entitled to the benefit of any reasonable doubt, I say reasonable doubt, that is some doubt which is based on the facts before the court and not some doubt which is purely imaginary. If the court has reasonable doubt after hearing and weighing the evidence then the accused are entitled to that doubt.

That is all I wish to say unless the court or prosecution or defending offr require some explanation any any question I may have overlooked.

Mr President have you any questions? "No"
Mr Prosecutor have you any questions? "No"
Mr Defending Offr have you any questions? "No"

"A M Ecclestone" Lt
Judge Advocate.

Ex. F
Dm

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
D-121976	Pte	Const DORITAILLE	8 de Chaud

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

* Strike out if not applicable

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For Temporary sheet attached ..... times

For ..... times

For ..... times

For ..... times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* The accused at the present time is under sentence for ..... EWS

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 77 days in military custody, making a total of 77 days of which NIL days were spent in hosp.

5. The present age of the accused is 27 years

6. The date of his attestation is 3 Sep 41

7. The service which the accused is allowed to reckon is 3 yrs 4 mos

8. The accused is in possession of #

State the military decorations (if any) held by accused.

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date -

Date of Promotion

In the substantive rank of WMS. ....

In the war substantive rank of ....

In the acting rank of ....

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Army Form B.296 (War)

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended

...REBY CERTIFY that the foregoing particulars, which have been extracted from the ...mental books in my custody, are correct to the best of my knowledge and belief.

...gned this Fourteenth day of February 1945

??????????????????Capt

SCHEDULE OF CONVICTIONS BY A COURT - MANUAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this fourteenth day of February 1945

.....

Ex 'G'
Ch

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
N-A2230	Pte	BLANCHETTE, O	Rade Chaud 10 CUR Bn

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For Original MFN 6 not available ..... times

For .... times

For .... times

For .... times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* The accused at the present time is under sentence for Zero ..... beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 72 days in military custody, making a total of 72 days of which NIL days were spent in hosp.

5. The present age of the accused is 30 yrs 11 mos 21

6. The date of his attestation is 29 Jun 41

7. The service which the accused is allowed to reckon is 3 yrs 7 mos 9 days

8. The accused is in possession of # CVSM & Clasp

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date -

Date of Promotion

In the substantive rank of Zero ....

In the war substantive rank of ....

In the acting rank of ....

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

* Strike out if not applicable

State the military decorations (if any) held by accused.

Army Form B.296 (War)

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this eighth day of February 1945

.....

TOS 10 GBR Bn w.e.f. 29 Sep 41

No D-121976 Name BORITAILLE, D Sqn, Battery, or Company Corps GTC Date of enlistment 8 Sep 41 GC Badges Service or Proficiency Pay

MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET ONLY					
				"HM ARTHUR" Capt					
				Officer in charge of Regimental Books					

(PTO)

No E-42230 Name BALNCHETTE Odine

Sqn, Battery, or Company

Corps GIC

Date of enlistment 29 Jun 43

GC Badges

Service or Proficiency Pay

MFM 6 (AFB 122) 40/PAS/136 (3428)

Date of last entry in Company Conduct Sheet

No and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No

Signature OC Company, etc

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET TOS 10 CDR Bn ref 28 Nov 44					
				CERTIFIED TRUE COPY					
					"HM ARTHUR" Capt				
					Offr i/c Naval Books				

(PTO)

PLEA IN MITIGATION

Pte BLANCHETTE has been in the service 3 years and 9 months.

He has served in the front line with La Chaudiere Regiment from July to August and was wounded in left arm and in the back by shrapnell.

He returned to the front line at the beginning of October and was taken prisoner by Fermans in the last days of the same month.

He spent 8 days as a prisoner and escaped and came back in North Nova Scotia lines.

He was turned back immediately to his unit.

Pte Blanchette claims that he suffers pains in his right ear for along time.

He was sent to the front line without having a chance to see a specialist. He had medical treatments by three doctors who recommended him to specialist.

He is 21 years old and is single.

The accused has spend 72 days close argest awaiting trial and has a good conduct stripe.

Pte Robitaille has been in the service 3 years 7 months.

He has spent in the front line with La Chaudiere Regiment from "D" Day until the 13th of August last.

He was wounded in left upper leg by shrapnell. He was operated but it was impossible to take off that piece of shrapnell.

The accused is single and is 26 years of age.

He has spent 77 days close argest awaiting trial.

"Maurice Rousseau" Capt

EBN

SUPPLEMENTARY SUMMARY OF EVIDENCE

In the case of E-42230 Pte Odina BLANCHETTE, (R de Chaud) on the strength of 10 GBR Bn, a soldier of the Cdn Army Overseas.

By direction of the Commanding Officer this evidence is taken on oath.

D-95177 Pte CAUMARTIN, L., is duly sworn as interpreter.

FIRST WITNESS
Prosecution

M-66663 RSM LeCROIX, TEA, of No.1 Cdn Leave Centre.
At approx 1800 hrs 28 Nov 44, I left Cdn Leave Centre proceeded along street, passing beside the Leave Centre. I noticed two men standing beside the bldg. One man walked out from the bldg and looked towards the upstairs windows. I went past them and looked back. The man standing at the curb was wearing a gas cape. He moved back into the bldg again and once more moved out to the curb and looked upwards. I proceeded on a little further stopped again and looked back. Then I met Cpl Frith and Gnr Dodd who must have been following a short distance behind me. I ordered them to stay there and watch the two men. I then proceeded on my way. I thought the two men were acting suspiciously so I ordered Cpl Frith and Gnr Dodd to watch the two men. (The Witness marks his route in green pencil).

RP 83(b) complied with.

"T E A LeCroix" RSM M-66663

The accused declines to cross examine witness.

SECOND WITNESS
Prosecution

M-87360 Cpl FRITH, R.M.(attached to the Cdn Leave Centre) having been duly sworn states:

I am M-87360 Cpl FRITH, R.M. attached to the Cdn Leave Centre. At approx 1815 hrs 28 Nov 44, Gnr Dodd and myself were leaving the leave centre. Past the end of the Leave Centre near the gate we met RSM LeCroix, who was standing there. He ordered us to wait there and observe the actions of two soldiers standing beside the Leave Centre. A couple of minutes later, Gnr Dodd returned to the Leave Centre gate. While he was away one of the soldiers crossed the street. He was the soldier who was wearing the gas cape. (Cpl Frith marks on Exhibit "A" where the one soldier went.) This soldier stood in the Museum doorway and waved his arms, as though he was signalling someone. Gnr Dodd then rejoined me. Shortly after a bundle was thrown from an upstairs window. The man who was standing in the doorway across the street came back to the Leave Centre side of the street and picked up the bundle. He returned to the Museum side of the street. As this soldier left, I told Gnr Dodd to follow him. Gnr Dodd left. As he was crossing the street a second bundle was thrown from the window. I left my position and moved to the second bundle. The second soldier had moved to the edge of the side-walk near the bundle. Sgt Munro and Pte Rolfe came up then. Sgt Munro gave my orders to cross the street and take charge of the other soldier, whom Gnr Dodd had followed. I brought the man back to Sgt Munro and Pte Rolfe. (Cpl Frith marks his movements on blue pencil). He all came into the Leave Centre together. Sgt Munro, Pte Rolfe, myself and the two men.

RP 83(b) complied with.

"R M Frith" Cpl M-87360

The accused declines to cross-examine witness.

Prosecution

K-45986 Gnr D'ORAY D J, attached to the 1 Cdn Leave Centre, having been duly sworn states:

I am K-45986 Gnr D'ORAY, D.J. attached to the 1 Cdn Leave Centre. At approx 1215 hrs on 20 Nov 44, proceeding along the street in front of the Leave Centre Cpl Frith and I were stopped by M.P.'s. LaPrete who ordered me to keep an eye on the windows of the Leave Centre. I watched this two and for awhile, then I walked [illegible] the face of the building past the two men who were standing against it. At that time I walked on for an the entrance to the building, turned around and went out where I met Cpl [illegible] at the gate. He told me to keep an eye on the men at the entrance to the museum. I walked back to Cpl Frith and the one man near the building in the same spot. A few minutes later a bundle was thrown from the Leave Centre. The man [illegible] across the street moved over to the bundle which he picked up and returned to the other side. I followed him. I saw him [illegible] the bundle behind a bush against the museum building. [illegible] to the movements of the man who picked up the bundle [illegible] I walked to the place where the bundle was and [illegible] museum. [illegible] Cpl Frith picked him up. He [illegible] I picked up the bundle and took it in the Leave Centre.

RP 83(B) complied with.

"D J D'ORAY" Gnr K-45986

The accused declines to cross-examine witness.

Prosecution

K-46157 Pte Wolfe, G.L., attached to 1 Cdn Leave Centre having been duly sworn states:

I am K-46157 Pte WOLFE, G.L. attached to 1 Cdn Leave Centre. On 20 Nov 44 at approx 1830 hrs I went outside with Sgt Munro. Then he ordered me to take over a soldier who was standing against the building. We proceeded along until we met Cpl Frith with another soldier. We all came in together. The soldier from 7 brought in had been with Cpl Frith. He was Pte Blanchette. (Pte Wolfe knows on [illegible] this was his [illegible])

RP 83(b) complied with.

G L WOLFE Pte K-46157

The accused declines to cross-examine witness.

The accused having been cautioned as follows: Desirez-vous faire une declaration ou rendre temoignage sous permanit Vous n'etes pas obliger le dire quoi que ce soit et de rendre temoignage a moins que vous ne le desiriez vous-meme ou que vous dites ou ecrite deposition que vous faites sera pris ecrit et pourra servir de preuve." declines to give any evidence and reserves his defence.

I Certify that the foregoing Summary of Evidence, consisting of two pages was taken down in writing by me in the presence and hearing of the accused.

I certify that RP 4 (a) (d) (e) and (f) have been complied with.

J G Scott Lt
Officer detailed to take Summary of Evidence

In the Field
28 Feb 45.

Ex "C"
DM

SUMMARY OF EVIDENCE

In the case of D-121976 Pte Donat ROBITAILLE (R de Chaud) of 42 Coy on strength of 10 CBS Bn a soldier of the Canadian Army Overseas.

By Direction of the Commanding Officer this evidence is taken on oath.

FIRST WITNESS
PROSECUTION

Lieut C. N. Power, Officer i/c ORs Hotel of Cdn Army Leave Centre, having been duly sworn states:

I am Lieut C N Power, Officer i/c ORs Hotel of Cdn Army Leave Centre. At approx 1900 hrs 28 Nov 44 while I was in my quarters, St George Hotel, Pte LaFour informed me that two men were apprehended by my staff. I proceeded to the leave Centre where E-42230 Pte Blanchette, O and D-121976 Pte Robitaille, D. were held. As they did not speak good English I placed them in protective custody and sent them to 11 Bn, 2 CBRG.

Declines to cross examine the witness.
RP 83(b) complied with.

"C N Power" Lieut

SECOND WITNESS
PROSECUTION

H-87360 Cpl Frith, R.M. attached to Cdn Army Leave Centre, havin been duly sworn states:

I am H-87360 Cpl Frith, R.M. At ached to Cdn Army Leave Centre. On 28 Nov 44 at ap rox 1815 hrs Gnr Dodd and myself were going out the gate when we were stopped by R.S.M. LaCroix who ordered us to wait down the street and observe the actions of two soldiers who were standing beside the Leave Centre. One of these soldiers was standing in a doorway across the street from the Leave Centre and appeared to be making signals to someone upstairs in the Leave centre. He was signalling with his arms. I do not know what the signaal were but they appeared to be definite signals to someone on the upper floors of the leave centre. At ap rox 1830 hrs a bundle was thrown from an upstairs window. The soldier who had been signalling crossed the street and picked up the bundle. He started to leave with it. Gnr Dodd went after him and stopped him. I moved closer to the building, the other man was standing along the wall beside the leave centre a few minutes later a second bundle was thrown from a window. The soldier standing near the building was about to pick it up when I stopped him. We turned the men over to Sgt Munro. The Bundles were Blankets.

"R M Frith" H-87360, Cpl

Declines to cross examine the witness
RP 83(b) complied with.

THIRD WITNESS
PROSECUTION

K-45986 Gnr Dodd, D.J. Attached to the Cdn Army Leave Centre, having been duly sworn states:

I am K-45986 Gnr Dodd, D.J. Attached to the Cdn Army Leave Centre. At ap rox 1815 hrs 28 Nov 44 while walking in front of the leave Centre in company with Cpl Frith, we were stopped by R.S.M. LaCroix, he ordered us to keep an eye on two men who were acting suspiciously in front of the Building. We took up post at the end of the leave centre.

THIRD WITNESS (CONTD)
PROSECUTION

They were watching the windows as if expecting someone to appear or something. One of these men moved over to the museum side fothe street. I walked down the street beside the leave centre keeping an eye on this man until I reached the gate. There I met Sgt Munro who told me to rejoin Cpl Frith at the other end of the building and continually watch the men. It was dark. Shortly after one bundle was thrown from an upstairs window. A Second bundle was throwm out almost immediately after the first. The soldier from across the street came over to the Leave Centre and picked up one of the bundles. He returned to the other side of the street and placed it behind the bushes near the museum building. I followed him and took up a position near the bundle and he moved a few yards down the street. He stopped there and a little la ter Cpl Firth came across and took him in charge. He did not attempt to move away as I did not say anything to him. I picked up the bundle and took it into the leave centre. The bundle was a number of blankets tied together.

Declines to cross examine the witness.
RP 33(b) complied with.

"D J Dodd" K-[illegible] Gnr

FOURTH WITNESS
PROSECUTION

K-67150 Sgt Munro, A.J. attached to Cdn Leave Centre.
Having been duly sworn states:

I am K-67150 Sgt Munro A.J. Attached to Cdn Leave Centre. At ap rox 1815 hrs 28 Nov 44 I was standing in the main hallway of the Cdn Leave Centre when informed about two men acting suspiciously outside. I went outside and saw tow soldiers, one standing in the doorway of the museum across the street and the other near the building. I walked past the men without stop ing and located Cpl Frith and a civilian standing at the corner of the building. I went further down the street and crossed over, walking past the men standing in the doorway of the museum. He saw still th ere. I decided to go inside the leave centre. Just as I was entering the building, was informed that bundles were thrown from a window. I took Pte Wolfe with me and had the two men and the two bundles brought inside. The bundles were placed in the Quartermasters Office where the Q.M. counted the blankets in my presence. There were 22 blankets, 11 on each bundle. The two men were Pte Robitaille, and Pte Blanchette.

Declines to cross examine the witness.
RP 33 (b) complied with.

"A J Munro" K-67150 Sgt

FIFTH WITNESS
PROSECUTION

B-96025 CQMS HEBERT, C.T. attached to Cdn Leave Centre.
Having been duly sworn states:

I am B-96025 CQMS HEBERT, C.T. attached to Cdn Leave Centre. At first Canadian Leave Centre I counted the two bundles of blankets in the presence of Sgt Munro. There were 22 blankets, 11 blankets in each bundle. This was on the night of 28 Nov 44. I put the blankets back in stores.

Declines to cross examine the witness.
RP 33(b) complied with.

"C T Hebert" B-96025 CQMS

SIXTH WITNESS
PROSECUTION

F-67167 Pte Rolfe, G.I. attached to Can Army Leave Centre.
Having been duly sworn states:

I am F-65167 Pte Rolfe, G.I. attached to Can Leave Centre
On the night of 29 Nov 44 at approx 1830 hrs I went
outside with Sgt Munro where he ordered me to take a
soldier in charge and taken him into the leave centre. This
soldier was Pte Blanchette.

Declines to cross examine the witness.
RP 83(b) complied with.

"s L Rolfe" F-65167 Pte

SEVENTH WITNESS
PROSECUTION

B-67733 L/Cpl PARTRIDGE, J.L. on P.E. with 10 CBB Bn
Having been duly sworn states:

I am B-67733 L/Cpl PARTRIDGE J L on P.E. with 10
CBB Bn. (Continental Police). At approx 1845 hrs
10 Dec 44, I was on duty in the office of 10 Bn
cell blocks making the guard report, when a soldier
whom I recognized as H-115 Pte Hyde, H.M. entered the
office with a revolver and told me to get on my feet
and in a cell. He locked me along with L/Cpl MORTON
in cell number 8, we were in the cell for about ten
minutes until released by another soldier in the cell
block. After our release I detailed L/Cpl Morton to
check the prisoners. There were 19 soldiers missing
with the others. I checked the cell blocks myself
at 2359 hrs before turning over the cell block to the
next duty cpls. Pte Robitaille was was missing. At 1600
hrs 10 Dec 44 when I assumed charge of the cell block,
Pte Robitaille was present.

Declines to cross examine the witness.
RP 83(b) complied with.

"s L Partridge" B-67733
L/Cpl

EIGHTH WITNESS
PROSECUTION

B-118090 L/Cpl Morton, H.A. on the strength of 20
Spec Emp Coy having been duly sworn states:

I am B- 118090 L/Cpl Morton, H.A. on the strenght of 20
Spec Emp Coy. On the 10 Dec 44 at 1730 hrs I was on duty
as R.P. in the guard room of 10 CBB Bn. The accused
whom I not recognize returned to his cell from meal
parade. At 1950 hrs while I was on guard at the door
two soldiers jumped me and took my pistol and forced L/Cpl
Partridge and myself into a cell at gun point and locked
the door. About 10 minutes later we were released by
some of the other prisoners. I reported to the main gate
the occurrence and then returned and checked the cells at
approx 1930 hrs. I found the accused had escaped along
with 19 others.

The accused declines to cross examine the witness.
RP 83(b) complied with.

"s A Morton" B-118090 L/Cpl

DOCUMENTARY EVIDENCE

EXHIBIT "A"

The Part II orders produced as documentary evidence was read over to the accused marked Exhibit "A" signed by me and attached hereto.

EXHIBIT "B"

The certificate of apprehension in accordance with AA 163(1) (j) produced as documentary evidence was read over to the accused marked, Exhibit "B" signed by me and attached hereto.

The accused having been cautioned as follows:" Desirez-vous faire une declaration ou rendre temoignage sous serment? Vous n'etes pas obliga de dire quoi que ce soit ni de rendre temoignage a moins que vous ne le desiriez mais tout ce que vous direz ou toute deposition que vous ferez sera pris ecrit et poutta servir de preuve." Having been duly sworn states:

On le Dec annee 1900 hre the door of the cell block was open. I took advantage of it. I didn't hinder anyone or cause any disturbance in the cell block. I just left.

The night I was arrested, on the accusations of stealing the blankets I was only two minutes along the wall. When the bundle of blankets fell, the Cpl passed and the second bundle of blankets fell after that. I was standing by the wall about 10 feet from where the blankets fell. The cpl came to me and told me to "Come here" After he told me to "Stay with him" After he told me to come with him to the orderly room. I did not know xxxx why he was bringing me in. I thought it was only to be a witness for the blankets that fell from the windows. After I was here an officer came and questioned me. There was a French interpreter for me. After all the questions the Officer said he was obliged to take me up to 11 Ba CBRO. All the witnesses that came here except the Cpl and Officer, I did not see them that night.

"B Robitaille" D-121976 Pte

I certify that the foregoing summar of Evidence consisting of four(4) pages was taken down by me in writing in thepresence and hearing of the accused.

I certify that R.P. 4 (c) (d) (e) and (f) have been complied with.

"G C Scott" Lieut
Officer detailed to take
Summary of Evidence.

SUPPLEMENTARY SUMMARY OF EVIDENCE

In the case of D-121976 Pte Donat BODITAILLE (R de Chaud) on the strength of 10 CRR Bn a soldier of the Cdn Army Overseas.

By direction of the Commanding Officer this evidence is taken on oath.

D-95177 Pte CAUMARTIN, L. is duly sworn as interpreter.

FIRST WITNESS
Prosecution

B-66663 RSM LaCROIX, T.E.A. on the strength of 1 Cdn Leave Centre having been duly sworn states:

I am M-66663 R.S.M. LaCROIX, T.E.A. of No. 1 Cdn Leave Centre. At approx 1800 hrs 28 Nov 44, I left Cdn Leave Centre proceeded along street, passing beside the Leave Centre. I noticed two men standing beside the bldg. One man walked out from the bldg and looked towards the upstairs windows. I went past them and looked back. The man standing at the curb was wearing a gas cape. He moved back into the bldg again and once more moved out to the curb and looked upwards. I proceeded on a little further stopped again and looked back. The I met Cpl Frith and Gnr Dodd who must have been following a short distance behind me. I ordered them to stay there and watch the two men. I then proceeded on my way. I thought the two men were acting suspiciously so I ordered Cpl Frith and Gnr Dodd to watch the two men. (The witness marked his route in green pencil).

RP 83(b) complied with.

The accused declines to cross-examine witness.

"T E A LaCROIX, RSM M-66663

SECOND WITNESS
Prosecution

B-87360 Cpl FRITH, R.M. (attached to the Cdn Leave Centre) having been duly sworn states:

I am M-87360 Cpl FRITH, R.M. attached to the Cdn Leave Centre. At approx 1815 hrs 28 Nov 44 Gnr Dodd and myself were leaveing the leave Centre. Past the end of the Leave Centre near the gate we met R.S.M. LaCroix, who was standing there. He ordered us to wait there and observe the actions of two soldiers standing beside the Leave Centre. A couple of minutes later, Gnr Dodd returned to the Leave Centre gate. While he was away one of the soldiers crossed the street. He was the soldier who was wearing a gas cape. (pl Frith marks on Exhibit "A" where the one soldier went/. This soldier stood in the Museum doorway and waved his arms, as though he was signalling someone. Gnr Dodd then rejoined me. Shortly afte a bundle was thrown from an upstairs window. The man who was standing in the doorway across the street came back to the Leave Centre side and picked up the bundle. He returned to the Museum side of the street. As this soldier left, I told Gnr Dodd to follow him. Gnr Dodd Left. As he was crossing the street a second bundle was thrown from the window. I left my position and moved to the second bundle. The second soldier had moved to the edge of the side-walk near the bundle Sgt Munro and Pte Rolfe came up the. Sgt Munro gave me orders to cross the street and take charge of the other soldier, when Gnr Dodd had followed. I brought the man back to Sgt Munro and Pte Rolfe. (Cpl Frith marks his movements in blue pencil/. We all came into the Leave Centre together. Sgt Munro, Pte Rolfe, myself and the two men.

RP 83(b) complied with.

"R M Frith" Cpl M-87360

The accused declines to cross-examine witness.

THIRD WITNESS
Prosecution

K-45986 Gnr Dodd, D.J. attached to the 1 Cdn Leave Centre, having been duly sworn states:

I am K-45986 Gnr DODD, D.J. attached to the 1 Cdn Leave Centre. At approx 1815 hrs 28 Nov 44 proceeding along the street in front of the Leave Centre Cpl Frith and I were stopped by R.S.M. LeCroix who ordered us to keep an eye on the windows of the Leave Centre. I watched the two men for awhile, then I walked down the face of the building past the two men who were standing against it. At that time I walked as far as the entrance to the building, turned around and went out where I met Sgt Munro at the gate. He told me to keep an eye on the man at the entrance to the museum. I walked back to Cpl Frith passing the one man near the building in the same spot. A few minutes later a bundle was thrown from the Leave Centre. The man from across the street moved over to the bundle which he picked up and returned to the other side. I followed him. I saw him place the bundle behind a bush against the museum building. (Gnr Dodd traces in the movements of the man who picked up the bundle in red crayon). I followed to the place where the bundle was and the man moved down the street to the museum entrance. He stopped there and stayed there until Cpl Frith picked him up. He did not attempt to leave. I picked up the bundle and took it to the Leave Centre.

R.P. 83(b) complied with.

"D J Dodd" Gnr K-45986

The accused declines to cross-examine witness

FOURTH WITNESS
Prosecution

F-65157 Pte ROLFE, G.L. , attached to 1 Cdn Leave Centre having been duly sworn states:

I am F-65157 Pte ROLFE, G.L. attached to 1 Cdn Leave Centre. On 28 Nov 44 at approx 1830 hrs I went outside with Sgt Munro Then he ordered me to take over a soldier who was standing against the building. We proceeded along until we met Cpl Frith with another soldier. We all came in together. The soldier whom I brought in had been with Cpl Frith. He was Pte Blanchette. (Pte Rolfe traces on Exhibit "A" his movements)

RP 83(b) complied with.

"G L Rolfe" Pte F-65157

The accused declines to cross-examine witness.

The accused having been cautioned as follows: "Desirez-vous faire une declaration ou rendre temoignage sous serment? Vous n'etes pas oblige de dire quoi que ce soit ni de rendre temoignage a moins que vous ne le desiriez mais tout ce que vous direz ou toute deposition que vous ferez sera pris exrit et poutra servir de preuve." declines to give any evidence and reserves his defence.

I certify that the foregoing SUMMARY OF EVIDENCE, consisting of two pages was taken down in writing by me in the presence and hearing of the accused.

I certify that RP 4 (c)(d)(e) and (f) ahve been complied with.

"G C Scott" Lieut
Officer detailed to take
SUMMARY OF EVIDENCE

In the Field
28 Feb 45.

In the case of R42233 Pte Odina BLANCHETTE, 3 de Chasseurs Canadiens, 4 Cdn Base Sub Dp, a soldier of the Cdn Army Overseas.

By direction of the Commanding Officer, this evidence is taken on oath.

R 122770 Pte CASTAGNE, L is sworn in as interpreter.

FIRST WITNESS
Prosecution

Lt C H POWER, Offr i/c Hotel of Cdn Army Leave Centre, having been sworn, states:

I am Lt C H Power, Offr i/c Cdn Hotel of Cdn Army Leave Centre. At approximately 1900 hrs Tuesday 20 Nov 45, while I was in my quarters, St George Hotel, Pte LATOUR informed me that two men were apprehended by my staff. I proceeded to the leave centre where R42233 Pte BLANCHETTE O, and B121976 Pte ROBITAILLE D were held. As they did not speak good English I placed them in protective custody and sent them to 11 CHR Bn

RP 83 (B) complied with.

(CH Power) Lt

The accused declines to cross-examine this witness

SECOND WITNESS
Prosecution

H.87360 Cpl. FRITH R.M. Attached to Cdn Leave Centre, having been duly sworn, states:

I am H.87360 Cpl. FRITH, RM, attached to the Cdn Army Leave Centre. On 20 Nov 45 at approximately 1815 hours Gnr DODD and myself were going out the gate when we were stopped by RSM LaCROIX who ordered us to wait down the street and observe the actions of two soldiers who were standing beside the leave centre. One of the soldiers was standing in a doorway across the street from the leave centre and appeared to be making signals to someone upstairs in the leave centre. He was signalling with his arms. I do not know what the signals were but they appeared to be definite signals to someone on the upper floor. At approximately 1830 hours a bundle was thrown from an upstairs window. The soldier who had been signalling crossed the street and picked up the bundle. He started to leave with it. Gnr DODD went after him and stopped him. I moved closer to the building and the other man was standing along the wall beside the Leave Centre. A few minutes later a second bundle was thrown from the window. The soldier standing near the building was about to pick it up when I stopped him. We turned the man over to Sgt MUNRO who came up to us immediately after the bundles had been thrown out of the window. I was present when the bundles were brought to the Leave Centre. They were blankets.

QUESTION The one whom you stopped, did he pick up the blankets?
ANSWER No. He walked over to where the blankets were.

R.P. 83 (B) complied with

[R.M. Frith"
(R.M. Frith) Cpl. H. 87360

THIRD WITNESS

K-45996 Gnr DODD, DJ, attached to the Cdn Army Leave Centre, having been duly sworn, states:

I am K-45996 Gnr DODD, D.J. attached to the Cdn Army Leave Centre../2

THIRD WITNESS
con'td

At approximately 1815 hrs 28 Nov 44 while walking in front of the Leave Centre in company with Cpl FRITH, we were stopped by RSM LACROIX. He ordered us to keep an eye on two men who were acting suspiciously in front of the building. He took up post at the end of the leave centre. The men were watching the windows as if expecting someone to appear or something. One of these men moved over to the museum side of the street. I walked down the street beside the Leave Centre keeping an eye on this man until I reached the gate. There I saw Sgt MUNRO who told me to rejoin Cpl FRITH at the other end of the building and continue to watch the men. It was dark. Shortly after this one bundle was thrown from an upstairs window. A second bundle was thrown out almost immediately after the first. The soldier from across the street came over to the Leave Centre and picked up one of the bundles. He returned to the museum side with it and placed it behind the bushes near the museum building. I followed him and took up a position near the bundle and he moved a few yards down the street. He stopped there and a little later Cpl FRITH came across and took him in charge. He did not attempt to move away so I did not say anything to him. I picked up the bundle and took it into the Leave Centre. The bundle was a number of blankets tied together.

RP 83(b) complied with.

"D J Dodd" Gnr K-45926

The accused declines to cross examine the witness.

FOURTH WITNESS
Prosecution

K-67150 Sgt MUNRO, A.J. attached to the Cdn Army Leave Centre, having been duly sworn, states:

I am K-67150 Sgt MUNRO AJ, attached to the Cdn Army Leave Centre. At approximately 1815 hrs 28 Nov 44 I was standing in the main hallway of the Cdn Leave Centre when I was informed about two men acting suspiciously outside. I went outside and saw two soldiers, one man standing in the doorway of the museum across the street and the other near the building. I walked past the men without stopping and located Cpl FRITH and a civilian. I went further down the street and crossed over, walking past the man standing in the doorway of the museum. He was still there. I decided to go inside the building. Just as I was entering the building I was informed that bundles were thrown from the window. I took Pte ROLFE with me and I had the two men and the two bundles brought inside. The bundles were placed in the Quartermaster's office where the QM counted the blankets in my presence. There were 22 blankets, 11 in each bundle. The two men were Pte ROBITAILLE and Pte BLANCHETTE.

"A J Munro" Sgt
K-67150

The accused declines to cross examine the witness.

FIFTH WITNESS
Prosecution

B-96925 CQMS HUGGETT, CT, attached to the Cdn Army Leave Centre, having been duly swonr, states:

I am B-96925 CQMS HUGGETT, CT, in charge of the QM Stores at the First Cdn Army Leave Centre. I counted the two bundles of blankets in the presence of Sgt MUNRO. There were 22 blankets, 11 in each bundle. This was on the night of 28 Nov 44. I put the blankets back in stores.

RP 83(b) complied with.

"C T Huggett" CQMS B-96925

The accused declines to cross examine the witness

...../3

644

SIXTH WITNESS
Prosecution

F-65157 Pte ROLFE, GL, attached to the First Cdn Army Leave Centre, having been duly sworn, states:

I am F-65157 Pte ROLFE, GL, attached to the First Cdn Army Leave Centre. On the night of 28 Nov 44 at approximately 1830 hrs I went outside with Sgt MUNRO where he ordered me to take a soldier in charge and take him into the Leave Cenrre. This soldier was Pte BLANCHETTE.

RP 83(b) complied with.

"G L Rolfe" Pte F-65157

The accused declines to cross examine the witness.

SEVENTH WITNESS
Prosecution

B-63733 L/Cpl PARTRIDGE, FL, on strength 10 Cdn Base Rft Bn, employed as Regtl police. At approximately 1855 hrs on 10 Dec 44 I was on duty in the office of 10 CBR Bn cell block making out the guard report when a soldier whom I recognized as H-115 Rfn HYDE MG, entered the office with a revolver and told me to get on my feet and in a cell. He locked me in along with L/Cpl MORTON in cell number 8. We were in the cell for about ten minutes until released by another soldier in the cell block. After our release I detailed L/Cpl MORTON to check the prisoners. There were 19 soldiers missing. Pte BLANCHETTE was missing with the others. I checked the cell blocks myself at 2359 hrs before turning over the cell block to the next duty cpl. Pte BLANCHETTE was missing. At 1600 hrs on 10 Dec 44 when I took over the cell block Pte BLANCHETTE was present.

RP 83(b) complied with.

"F L Partridge" L/Cpl B-63733

The accused declines to cross examine the witness.

EIGHTH WITNESS
Prosecution

B-118099 L/Cpl MORTON, HA, on the strenght of 20 Cdn Special Employment Coy, having been duly sworn, states:

I am B-118099 L/Cpl MORTON HA, on the strenght of 20 Cdn Special Employment Coy. On 10 Dec 44 at 1730 hrs I was on duty as Regtl Police in the guardroom of 10 Cdn Base Rft Bn. The accused, Pte BLANCHETTE, whom I now recognize, was returned to his cell from meal parade. At 1850 hrs, while I was on guard at the door, two soldiers jumped me and took my pistol and forced L/Cpl PARTRIDGE and myself into a cell at gun point and locked the door. About two minutes later we were released by some of the other prisoners. I reported the occurrence to the main gate, then returned and checked the cells at approximately 1900 hrs. I found the accused, along with 19 others, had escaped.

RP 83(b) complied with.

"H A Morton" L/Cpl B-118099

The accused declines to cross examine the witness.

The Part II Order Extract Form, produced as documentary evidence, was read over to the accused, marked Exhibit A, signed by me and is attached hereto.

"G C Scott" Lt
Officer detailed to take
The Summary of Evidence.

...../4

The certificate of apprehension under AA Sec 163(1)(J), produced as documentary evidence, was read over to the accused, marked Exhibit B and is attached hereto.

"G C Scott" Lieut
Officer detailed to take
The Summary of Evidence.

The accused, having been cautioned as follows: "Do you wish to make any statement or give any evidence on oath? You are not oblited to say anything or give any evidence unless you wish to do so but whatever you say or any evidence you may give will be taken down in writing and may be given in evidence."

having been duly sworn, states:

I am E-42230 Pte BLANCHETTE, O. R de Chaud, on strength 10 Cdn Base Rft Bn. At approximately 1900 hrs 10 Dec 44 I proceeded to the latrine and on returning notices the door of the cellblock open, and, noticing another soldier going out the door, I followed him out.

On the night of 22 Nov 44 I was coming along the street. I was coming down the right side of the street and when I came to the Leave Centre, I heard something fall on the ground. I could not see what it was as it was too dark. When I was passing in front of the door of the museum I saw a soldier standing in the door way and two other soldiers pass on the other side. When the two others soldiers passed in front of that man they said something which I did not understand as it was in English. A soldier who was standing in the door jumped over the fence and hid himself in a little bush there. At that moment I stopped and looked on the other side of the street. I thought a man had fallen from the window as some people were standing there. I stopped for about one minute and a soldier came up to me and said "come with me". I went with the soldier into the leave centre. ROBITAILLE was brought in at the same time in company with these soldiers. I knew him as he was in the same regiment. I did not know he had been on the other side of the street. The Lieutenant asked us some questions and then we were taken to 11 Bn.

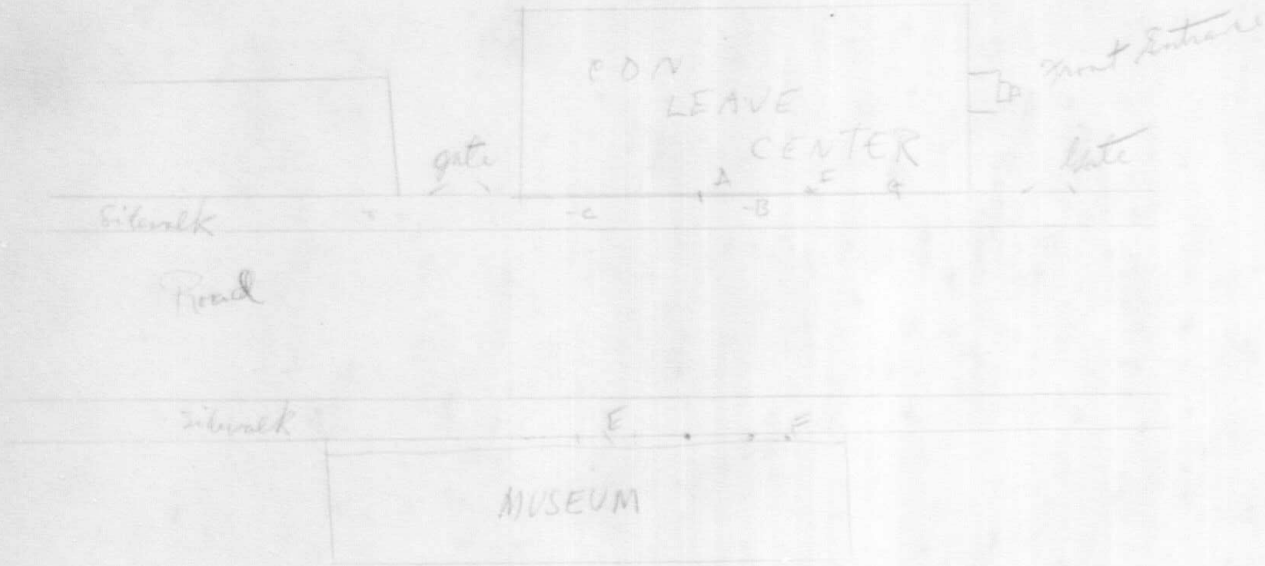
"(O Blanchette)"Pte E-42230

I CERTIFY THAT THE FOREGOING SUMMARY OF EVIDENCE CONSISTING OF FOUR (4) PAGES WAS TAKEN DOWN BY ME IN THE PRESENCE AND HEARING OF THE ACCUSED.

I CERTIFY THAT RULES OF PROCEDURE 4 (C) (D) (E) & (F) HAVE BEEN COMPLIED WITH.

(G C Scott) Lt
Officer detailed to take
The Summary of Evidence

In the Field
8 Feb 45

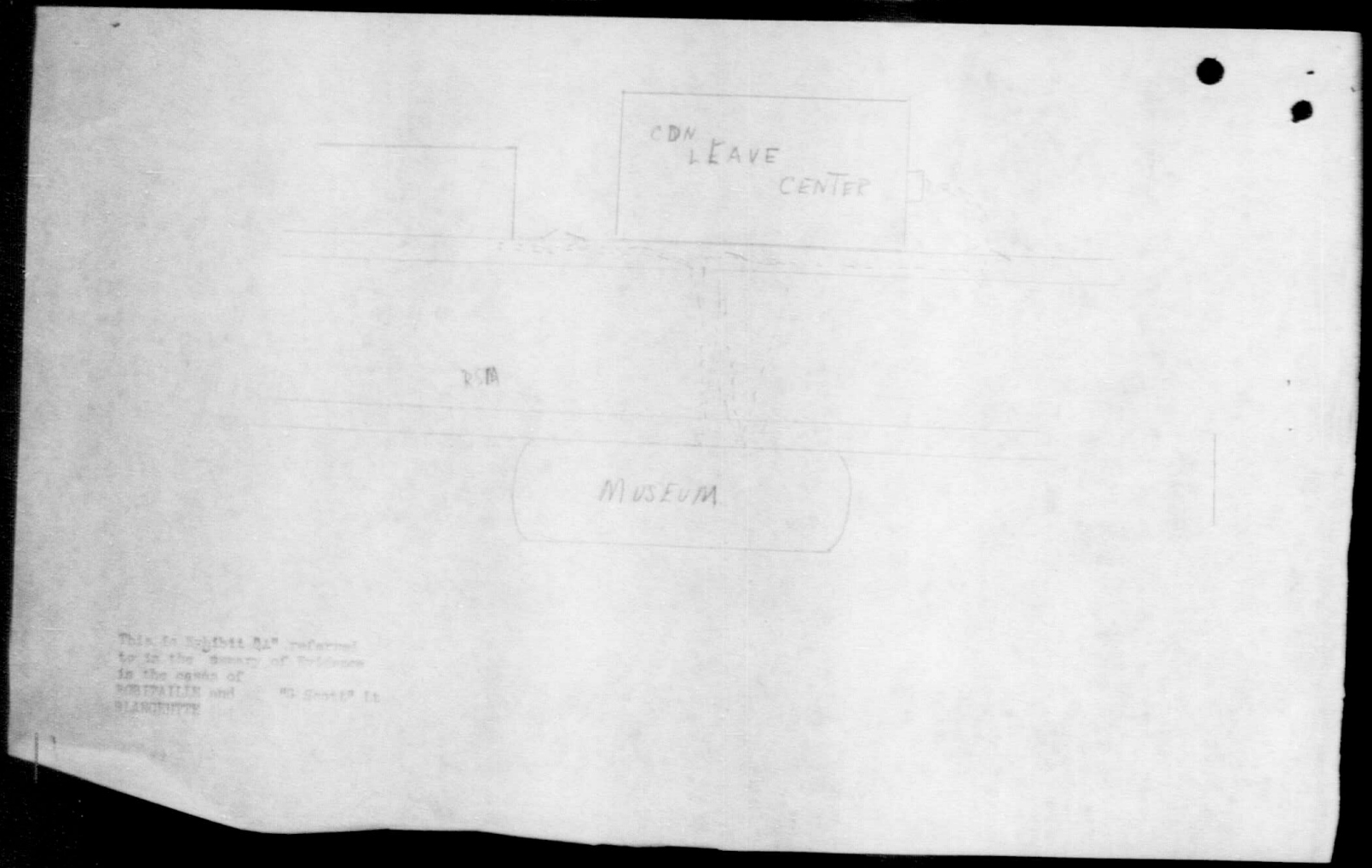


This is exhibit "A" referred
to in the Summary of Evidence
in the cases of Pte Robitaille & Blanchette

"G C Scott" Lt

RSM Lacroix

A - Two men standing next to bldg
B - witness' 1st sight of the 2 men
C - witn turns around 1st time
D - witn " " 2nd time
E - men waving his arms - signals
F - 3rd Burb from Mus doorway and point
where Cpl Dodd discovers a bundle


CDN
LEAVE
CENTER
MUSEUM

PART II ORDER EXTRACT FORM

[illegible]/ Chaud) 1(A5b)

TO: Officer Commanding
10 Sp 2 CBPG
Cdn Army Overseas

4 Jan 19[illegible]

EXTRACTS FROM: UNIT LE REGIMENT DE LA CHAUDIERE

Part II Order No. 103 dated 31 Dec 44

ABSENT WITHOUT LEAVE

AWL from 0815 hrs 8 Nov 44 Apr from AWL 1830 hrs 28 Nov 44
E-42230 Pte BLANCHETTE, O

Certified to be a true extract from the regimental books and documents in my custody

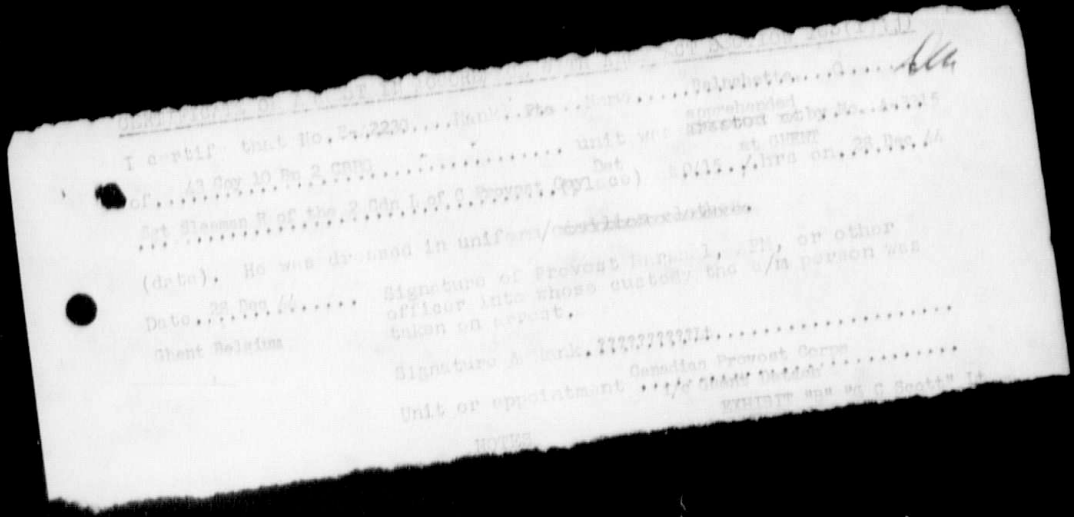
"G E Marin" Lieutenant for
(H A Murphy) Lieutenant
Officer IC Records
Cdn Sec HQ 2 Can Ex Army Gp

Exhibit "A"
"G C Scott" Lt

attached. Please ack receipt on all duplicate

The following documents are required. Please forward same.

Originating clerks initials ..... for
Officer in Charge
Canadian Section GHQ 2nd Echelon



CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT SECTION 163(1)(j)

I certify that No. D-131976 Rank Pte Name PORITAILLE, D.

of 10 Bn 2 CBRG unit was apprehended by A-103180 ~~[illegible]~~

L-Cpl Hanley W.F. of the 2 Cdn L of C Prov Coy Ghent Det (place) GHENT Belgium at 1330 hrs on the 23 day of Dec 44 as an absentee without leave (date). He was dressed in uniform/~~civilian clothes~~.

Date 23 Dec 44

Place GHENT Belgium

Signature of Provost Marshal, APM, or other officer into whose custody the s/m person was taken on arrest.

Signature & Rank "H W Mahaffy" Lieut. i/c GHENT DETACH

Unit or appointment 2 CDN L of C PROV Coy 21 A Sp

EXHIBIT "B"

"G C Scott" Lt

NOTES

1. This [illegible]

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence now, if on oath as to the facts of the charge or both, in which case you will be subject to cross-examination.(2)

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

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Pin here. Loose Sheets of Record.

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SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : [illegible]

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st [illegible]	GUILTY	GUILTY	
2nd [illegible]	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

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D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s). (2) The Court the latter charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on

(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

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D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D-121976 Rte SOBITAILLE, D Charge Sheet No. 3

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st At Sec 15(1)	GUILTY	GUILTY	
2nd At Sec 15(1)	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D-121976 Pte Donat ROBITAILLE — R de Chaud - 10 CBR Bn
E-42230 Pte Odina BLANCHETTE — R de Chaud - 10 CBR Bn

CHARGE SHEET No 1

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA SEC 15 (4)	NOT GUILTY	GUILTY	This applies to Robitaille & Blanchette.
2nd	AA SEC 40 (ALTERNATIVE)	NOT GUILTY	NOT GUILTY	This applies to Robitaille & Blanchette.
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ROBITAILLE 77 days, of which ROBITAILLE 77 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under 62.)

Sentence Awarded by the Court :
D-121976 Pte ROBITAILLE D. To undergo detention for one (1) year
E-42230 Pte BLANCHETTE D. To undergo detention for one (1) year

(Sgd) A M Ecclestone Lt — 10 MAR 45 — (Sgd) Lieutenant Mackenzie
Judge-Advocate, if any. — Date awarded. — President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :
~~Confirmed~~ Not promulgated as to parade.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)
(1. AA 57A. Delete if not used.)

Date 12 Mar 45 (Sgd) [illegible] Brigadier
Commanding 2 C.B.R.B.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D-121976 Pte Donat ROBITAILLE R de Chaud 10 C.B.R.Bn	1610 hrs	
E-42230 Pte Odina BLANCHETTE R de Chaud 10 C.B.R.Bn	14 Mar 45	Lt Col Commdg 10 C.B.R.Bn.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CPA86 (To accompany AF B301 40/P.M.R./1608)

Convening Order : Lt-Col V.W. Hugman A/Comd 2 CBRG dated 6 Mar 45

RECEIVED 18 MAY 1945 G.M.H.Q.

ACCUSED.

(Where the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) A/rank or A/appoint, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Permt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.
D-121976	Pte	Donat	ROBITAILLE
E-42230	Pte	Odina	BLANCHETTE

PROCEEDINGS REVIEWED 21 May 45

PROCEEDINGS OF TRIAL.

Held in the [illegible] at G.M.H.Q. on (date(s)) 9 Mar 45 10 MAR 45

REVIEWING OFFICER, JAG BRANCH, G.M.H.Q.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins RDs. For guidance on procedure when a variation in this form arises, see form for CGM in MML pp 761 to 739. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number here. See back of Convening Order, for directions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused ~~is~~ (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused ~~is~~ (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused ~~is~~ (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (1).~~
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to CAPT. W.E. SUTHERLAND - 9 MAR 45 / LT. J.C. BEDARD - 10 MAR 45 the Interpreter(1)? Ans ROBITAILLE - NO / BLANCHETTE - NO
The Interpreter is sworn.(2) Do you object to N/A as shorthand writer ? Ans N/A
The shorthand writer is sworn.(2)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ? Ans ROBITAILLE - NO / BLANCHETTE - NO
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	D. MacKENZIE	Essex Scot X-9 List 3 Cdn NETD
Member	Captain	F.A. BAILLARGEON	Gen List - 1 Cdn Disciplinary Centre
Member	Captain	E.B. VAN DINE	RCASC - 1 Cdn Disciplinary Centre
Judge-Advocate	Lieutenant	A.M. ECCLESTONE	Legal Offr att ADJA 2 CBRG
Prosecutor	LT.	G.E. COLLINS	ATT. CON SEC 1 ECH HQ 2 C.A. Gp
Defending Offr	CAPT.	M ROUSSEAU	10 C.B.R. BN.

Questions by President : Is the Prosecutor a lawyer ? Ans YES Is the Defending Offr a lawyer ? Ans YES (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused D-121976 Pte Donat ROBITAILLE / E-42230 Pte Odina BLANCHETTE before arraignment make(s) (no) ~~a~~ plea(s). (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), (J)), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused ~~is~~ (are) arraigned (separately) on all charges in the charge sheet.(1) The accused ~~does~~ (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.R.C.E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 C.B.R.G. Vol. 4 P. 144

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO (5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) You may make a statement without being sworn, and you will not be subject to cross-examination.(2) You may, however, make a statement on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(3) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ROBITAILLE — NEITHER BLANCHETTE — NEITHER. Do you intend to call witnesses on your behalf ? Ans ROBITAILLE — NO BLANCHETTE — NO. Are they witnesses as to character only ? Ans N/A

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court (is) (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the FIRST charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith.~~(2) ~~and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(3)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans ROBITAILLE — NO BLANCHETTE — NO

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(i) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Exs D E and Ex F G respectively.(3)

(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 556. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans ROBITAILLE — NO BLANCHETTE — YES. THRO MY DEFENDING OFFICER (2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 390, 563-566, Overseas RO 309, 2322, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO (5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

~~B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on 1st & 2nd charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~ Dm Dm Dm

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ Dm (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex. C, initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (~~them~~ Dm) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

D 121976 PTE ROBITAILLE D. ONLY
CHARGE SHEET NO 3.

CHARGE SHEET No 1

The accused persons, D-121976 Pte Donat ROBITAILLE (R de Chaud) 10 CBR Bn and E-42230 Pte Odina BLANCHETTE (R de Chaud) 10 CBR Bn, soldiers of the Canadian Army Overseas, are charged with:

FIRST CHARGE
AA Sec 18(4)

WHEN ON ACTIVE SERVICE STEALING PUBLIC PROPERTY

in that they

in the Field at approximately 1830 hrs 28 Nov 44 stole 22 WD blankets, public property.

SECOND CHARGE
ALTERNATIVE
AA Sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that they

in the Field, at approximately 1830 hrs 28 Nov 44 were improperly in possession of 22 WD blankets, public property.

In the Field
5 Mar 45

(J. Runcie), Lt-Col.,
Officer Commanding,
10 CBR Bn

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(V.W. Hugman), Lt-Col.,
A/Commander
2 Canadian Base Reinforcement Group.

In the Field
6 Mar 45

Approved on behalf of the Judge Advocate General pursuant to KR (Can) 540.

(H.A. Hanson), Capt.,
ADJA
HQ 2 Cdn Base Rft Gp.

In the Field
6 Mar 45

CHARGE SHEET No 2

The accused, E-42230 Pte Odina BLANCHETTE, R de Chaud, on strength 10 CBR Bn, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field at 0815 hrs on 8 Nov 44 absented himself without leave until apprehended by personnel of the First Cdn Leave Centre at 1830 hrs 28 Nov 44

(Total time absent 20 days ~~0~~ hrs)

SECOND CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field at 1900 hrs 10 Dec 44, while in arrest at 10 CBR Bn absented himself without leave until apprehended at 0415 hrs 28 Dec 44 by Cdn Provost Corps at GHENT.

(Total time absent 17 days 9 hrs 15 minutes)

(J. Rancie) Lt-Col.,
Officer Commanding
10 CBR Bn

In the Field
5 Mar 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(V.W. Hugman), Lt-Col.,
A/Commander
2 Canadian Base Reinforcement Group

In the Field
6 Mar 45

CHARGE SHEET No 3

The accused D-121976 Pte Donat ROBITAILLE, R de Chaud, of 42 Coy, 10 CBR Bn, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field at approximately 0900 hrs 22 Oct 44, absented himself without leave until apprehended at 1830 hrs 28 Nov 44 by personnel of the First Cdn Army Leave Centre.

(Total time absent: 37 days 9 hours 30 minutes)

SECOND CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field at 1900 hrs 10 Dec 44 while in arrest at 10 CBR Bn absented himself without leave until apprehended at 1330 hrs 23 Dec 44 by Cdn Provost Corps at GHENT.

(Total time absent: 12 days 18 hours 30 minutes)

(J. Roncie), Lt-Col.,
Officer Commanding,
10 CBR Bn

In the Field
5 Mar 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(V.W. Hugman), Lt-Col.,
A/Commander
2 Canadian Base Reinforcement Group.

In the Field
6 Mar 45

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/F&S/1697 (2862)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-121976	Pte		Donat	ROBITAILLE	R de Chaud 10 CBR Bn
E-42230	Pte		Odina	BLANCHETTE	R de Chaud 10 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, ~~has~~ (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 6 Mar 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) D. MacKENZIE (Must be named. RP 106.) Essex Scot X-9 List 3 Cdn NETD (Unit.)

MEMBERS.

Captain F.A. BAILLARGEON Gen List - 1 Cdn Disciplinary Centre

Captain (Rank.) E.B. VAN DINE (Named or detailed. RP 106.) RCASC - 1 Cdn Disciplinary Centre (Unit.)

WAITING MEMBER.

(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

Lieutenant (Rank.) A.M. ECCLESTONE (Must be named, if any. RP 106.) Legal Offr att ADJA 2 CBRG (Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally. RP 105 fn 2.)
(V.W. Hugman)
Lt-Col (Rank.)

Date 6 Mar 45

Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

On behalf of the JAG Cdn Army Overseas, I approve the appointment of Lt A.M. ECCLESTONE as Judge Advocate, the said Lt ECCLESTONE having legal qualifications.

(H.A. Hanson) Capt
ADJA 2 C B R T

Medical Officers Certificate

I certify that I have this day examined Rabitsella D. Pfc

D121976 and in my opinion he is fit/~~unfit~~ to undergo trial by

Court Martial.

Station Field

Date 9 Mar 48

W Dracmill Capt
Medical Officer

Regt. De La Chaudière
Unit

Medical Officers Certificate

I certify that I have this day examined D121976 Pte Robitaille D

10 CBRBn and in my opinion he is fit/unfit to undergo trial by

Court Martial.

Station Field

Date 10 Mar 45

R H Chalmers Capt
Medical Officer

10 CBRBn
Unit

JM

Medical Officers Certificate

I certify that I have this day examined Blanchette O. Pte

$42230 and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

NBL

Station Field

Date 9 Mar 42

W. Maxwell Capt
Medical Officer

Regt de Chaudière
Unit

Medical Officer's Certificate

I certify that I have this day examined E42230 Pte Blanchette

10 C B K Bn and in my opinion he is fit/~~unfit~~ to undergo trial by

Court Martial.

Station Field

Date 10 Mar 45

[illegible]
Medical Officer

10 C B K Bn
Unit

NOTICE OF INTENTION TO TRY ACCUSED PERSONS TOGETHER

Take notice that it is intended to try

D-121976 Pte ROBITAILLE D, (R de Chaud) 10 CBR Bn

and

E-42230 Pte BLANCHETTE O, (R de Chaud) 10 CBRBn

together on one charge of stealing public property and one charge of conduct to the prejudice of good order and military discipline in that they were in improper possession of public property.

(V.E. Hugman), Lt-Col.,
A/Commander,
2 Canadian Base Reinforcement Group.

In the Field
6 Mar 45

TO: D-121976 Pte ROBITAILLE, D. (Rde Chaud) 10 CBR Bn

E-42236 Pte BLANCHETTE, O, (R de Chaud) 10 CBR Bn

Am 2

D-121 916 Pte Donat Robitaille (R de Chaud)
E-41[illegible]0 Pte Odina Blanchette (R de Chaud)

JOINT TRIAL

Prosecutor's Opening Remarks

D-2

Reference the actual articles alleged to have been stolen the facts are not in dispute as these ① there were 22 Army issue blankets in 2 bundles ② Each bundle was tied up.
The Defending Officer does not dispute the above.

D-3

1st Witness for the Prosecution

Lieut C N Power, O i/c OR's Hotel, Caen Army Leave Centre, Ghent, Belgium having been duly sworn states:
I am now a/Capt C.N. Power. I was Lt i/c OR's Hotel in Nov 44. At approx 1900 hrs 28 Nov 44 I was called for at my quarters at Coer St. Geo. Hotel and summoned to Normal School which is the OR's Hotel. There I had 2 men presented to me and they were identified by their Pay Books as Pte Robitaille and Blanchette. Sgt Monroe presented them to me. He accused them of participating in the theft of 2 bundles of blankets. They were present. I saw the bundles. They were in my Ord Rm at the time. I tried to interrogate them but got no satisfaction as one spoke no English and the other spoke very poor English. They were not in possession of any pass so I placed them in protective

Custody.

Judge Advocate rules that because the accused speak no English that any statements made in their presence is not admissable.

Cross examination:

It would be impossible to say how many soldiers were going in and out of the Hotel between 1700 and 1800 hrs that date. I will say that no one except my staff and/or guests would be going in and out. It is not impossible for a person without a pass to get into the Centre. Between 5 and 7 p.m in front of the Centre there may be 2 or 12 going to and fro. It is not a busy thorofare. I would say it got dark about 5 p.m. There has always been a blackout but it has not been very rigid. It is never as thoroughly checked on as it is in England.

By the Court:

I had a look at the bundles. I recognize them as being WD Blankets.

RP 83(b) complied with.

The accused decline to have the evidence read back in French.

2nd Witness for the Prosecution

M 66663 RSM La Croix, J. E. A., No. 1 Cdn Army Grave Centre having been duly sworn States:

I recall 28 Nov 44 at approx 1800 hrs. I was walking down the street and passing near

the end of the Leave Centre Bldg. I noticed two men standing near the Bldg. One man went out to the edge of the sidewalk and looked up toward the windows. He was wearing a gas cape. I walked past, stopped and looked back. The man had proceeded out to the kerb, looked upwards and proceeded back in towards the man against the Bldg. I walked on farther and looked back again. He went to the edge of the sidewalk again. At that time Cpl Firth and Gnr Dodd were coming down the Street towards me. I stopped them and told them to keep an eye on the 2 men as they were acting suspicious. I proceeded on my way. I cannot identify these two men. It was dark.

I produce "Ex A" which is a reasonable sketch of the Calw Army Leave Centre.

Witness points out Bldgs a sketch and shows the Court his movements as per his evidence, also indicates movements of the soldiers in the gas cape. "A" in sketch is position of soldiers. "B" is witness' position when he first spotted the soldiers. "C" is position where witness turned around "D" is position where witness turned around 2nd time.

Cross-examination:

I was about 10 feet from them when I saw the men for the 1st time. It was raining and dark and I cannot identify them. It was approx 1800 hrs. There was no moon. Not raining very heavy. I live at the Centre and was at that time. Approx 450 to 500 were in the Centre at that time. There were not many people coming in and out. The street was pretty

Wall deserted. There were only 2 civilians near the Centre when I saw the 2 soldiers. The traffic is not usually heavy on that street that time of night. Very few people on the street

By the J.A.

The civilians were men, part of my staff. They were proceeding up the street to the entrance in the opposite direction from me. They spoke to me and that's all.

By the Court.

It was possible to see a man's form about 10 yds away. Lights from street cars help. I saw the reflection of lights from a street car on the gas cape. When there is no street car you'd have to be 2 ft. from the man to see him. There is a street car terminal at the corner.

By J.A.

I could see by aid of street car lights the man walking to the edge of the kerb. I was 20 or 25 feet from him when I saw him the 2nd time.

RP 83(B) complied with.

The accused decline to have the evidence read back in French

3rd Witness for the Prosecution

R.M. [illegible]

H 87360 Cpl Futh, ~~[illegible]~~, attd Cdn Army Leave Centre, having been duly sworn states:

At approx 1800 hrs 28 Nov 44, Gnr Dodd and myself left the Leave Centre. We met RSM La Crois down past the Leave Centre.

I recognize Ex "A". We met RSM La Crois at point "D" on sketch. ~~He told us to~~ As a result of what he told us we stayed there and then Gnr Dodd went down the street. We were watching 2 soldiers standing along side

Amt

The Leave Centre.

(Witness points to point "B" on Ex "A" as place where soldiers were standing) Gnr Dodd went toward Leave Centre gate. In the meantime while he was away from me, one soldier crossed the street to the door of the bldg. opp. the Leave Centre. He was dressed in battle dress. The one that stood beside the Leave Centre was wearing a gas cape. Gnr Dodd rejoined me. The man across the street appeared to give signals with his arms. He was standing in the doorway of the bldg. across the street.

(Witness marks this Point as "E" on Ex "A")

In a few minutes a large bundle was thrown from the upstairs window of the Leave Centre. The soldier at point "E" came across the street, picked up the bundle and started across the street with it. I told Gnr Dodd to go after him. Then as he got across the street another bundle was thrown out of the window. I got a look at the last bundle that was thrown out. I didn't know what was in it. I came up to where the 2nd bundle landed and the soldier in the gas cape was standing beside it. The bundle was wrapped in a blanket. Cpl Dodd was across the street with the other man. I didn't get a good look at the man with the gas cape. Sgt Monroe and Pte Roffe came along then. I crossed

the street after speaking to them. I crossed to take the man ~~[illegible]~~ in charge that Gur Dodd had. I took him in charge and crossed the street with him and rejoined the others. I did not get a good look at him. I wouldn't be able to recognize them again. We all went into the Leave Centre Orderly Room. As soon as we got in there the driver and I left. Pte Rolfe and Sgt Monroe remained. The driver and I went to get Lt (Now A/capt) Power. We got him but I didn't go into the Orderly Room. I didn't see the bundles in the Orderly Room. They were brought in after we had all gone in.

Cross examination.

I first saw RSM La Crois when I went out. Several people passed after that. Perhaps 5 or 6. I can't say if they were soldiers. It is long ago. I left the Centre with Gur Dodd. I was employed there since July. ~~There were~~ ~~approx~~ I can't say how many people were there at that time. Guests dance or go down town at night from the Centre. The largest percentage go downtown. They go down town between 1800 + 1900 hrs. I did not notice many go down town that night. Very few passed us. It was fairly clear that night. I don't think there was any rain. It was not real dark. It got dark about 1730 or 1745 hrs. I am not sure about that. We saw the soldiers for the 1st time at "A" and RSM La Crois at Point "D" on Ex "A"

We saw RSM Mc Cross first. We walked past the 2 men but took no notice of them. It was not real dark. RSM Mc Cross was the 1st one we spoke to. We could see plainly about 50 yards. We could see from Pt "D" to Pt "A" on Ex "A." The front of the Reave Centre is not a plain wall all along. There is a bit juts out (marked by witness on Ex "A" in pencil - points "F" and "G.") We were appox 20 feet when RSM told us to keep an eye on the men. I cannot identify the 2 men because I did not see them real close and never took any particular notice. Sgt Monroe told me to get a man who was with Pte Dodd. I obeyed that order. I was standing beside the Reave Centre with the other soldier when he told me. I was close to him. That is right. I cannot identify him now because I didn't look at him then. It is not because it was dark. I went to Pte Dodd and the other man. I came back with Gnr Dodd and the other man. ~~The other man~~ was. I was walking beside him, about 2 ft. away. I cannot identify this man for the same reason. I was in front of the Centre when Sgt Monroe gave me the order. I went across to Gnr Dodd and the soldier in front of the Museum. I am positive there was nothing in the street in front of the Museum. ~~There~~ I don't know if there were 2 trucks parked in the street not far from the Museum. ~~The~~ 1st bundle was dropped from the window approx 15'

minutes after the RSM told us to watch the men. I stood in the same place for those 15 minutes. I noticed no lights coming from trams at the corner. I saw no trams passing.

By J.A.

I could see the soldier all the time when he picked up the bundle and walked across the street. When the 2nd bundle was thrown out the other soldier walked up, did not touch it but stood beside it until I came up. It was the same soldier I had been watching. I told Gnr Dodd to go after the 1st soldier as soon as he picked up the bundle and started across the street. The soldier with the gas cape was on the Leave Centre side of the street.

By the Court.

Gnr Dodd and I left the Centre from the Front Gate. As soon as RSM pointed these soldiers out they were under our continual observation. As far as the one on my side of the street as concerned he was under my observation until taken to the Orderly Room. He went in ahead of me. I didn't get a look at him.

(Res refers to Summary of Evidence – Witness points out that evidence in Supplementary Summary re man wearing gas cape crossing the street is not correct).

RP 83 (B) complied with.

The accused declines to have the evidence read back in French.

GW

GW

one

4th Witness for the Prosecution

K 45786 Gnr Dodd D. J. No 1 Coln Army Leave Centre having been duly sworn states:

At appx 1800 hrs 28 Nov 44 Cpl Firth and I were stopped when we left the Leave Centre by RSM La Croix. As a result of this meeting we watched 2 men who were acting suspiciously in front of the Leave Centre.

(Witness examines Ex "A" and points to point "B".)

They were watching the Hotel and standing at point "B". I was standing at point "D" on Ex "A" and watching them. I went to the Leave Centre main entrance - the front entrance. I met Sgt Howse at the gate. As a result of my conversation I watched a man in front of the Museum entrance across the street from the Hotel. He must have been one of the two we originally watched because when I returned to Cpl Firth there was only one in front of the bldg. Then a bundle was thrown from a window in the Centre and the man I was watching came over from the Museum, picked up the bundle and went back to the Museum side of the street with the bundle. I followed. The man placed the bundle behind some bushes beside the Museum wall. I stood at the fence in front of the Museum wall. The man moved down the street a few yards. I stayed at

the bundle. The outside wrapper of the bundle was a ~~wrapper~~ blanket. I paid no attention to the other room. I never watched the windows. Sgt Monroe and Cpl Firth came over a few minutes later and Cpl Firth took the room in custody on Sgt Monroe's orders. I did not speak to the man. Sgt Monroe ordered me to take the bundle to the Orderly Room. It was rather large. I did not get a good look at him. I did ~~not~~ look at him close to him. It was dark. I followed them into the orderly room with the bundle. The 2 men who were picked up were there. I could not recognize them. The orderly room is small and it was crowded. Their backs were to me. Somebody else of the party was carrying a bundle too. I saw him ~~the other~~ bundle on the street. I did not see it being thrown out of the window. I have seen the accused at the Summary of Evidence. I can't recall seeing them around the Centre.

Cross-examination:

I saw RSM Le Cocq first that night. I was coming out from the front gate. I saw the 2 men for the first time as we were walking along the face of the bldg. ~~It was dark when~~ I first saw them, they were pointed out to us by the RSM. The RSM was almost opposite the Rear gate ~~then~~ at that time. We walked on the sidewalk along the Leave Centre. It didn't occur to me to notice anyone. It wasn't a black night. Visibility was poor. It had been drizzling. I had been employed there ever since it had been in Ghent. I cannot say within a 100

how many were in the centre. Approx between one
~~500 and~~ 400 were guests. Guests mostly
stay in, in the Leave Centre. They go to
Cinemas, shows etc. The biggest percentage
go out at night. They go out between 5 P.M.
and 7 P.M. I wouldn't know if many guests
went out that night. I was standing at the
rear gate watching a man. The front wall
of the Centre is not plain. In some places there
are outcroppings as if some bricks have
been added on. I never paid any attention to
trams at the corner. There must have been
vehicles. I never paid any attention. That
night I could make out an object about
50 yards away. It wasn't like some of these
black nights where you walk right into a
telephone pole. I paid no attention to vehicles
parking in the street that night. It is approx 60 yds
from the entrance of the Museum to the place I was
watching from. I ~~was~~ ~~there~~ walked back to
the front entrance of the Leave Centre while I was
watching. I cannot remember if soldiers came
out from the Centre while I was at the front gate.
There must have been soldiers + civilians pass-
ing in front of the Centre. I was never close at
any time to the 1st soldier who put the bundle in
the bushes. I was never nearer to him than 4
yards. He was not looking at me. His back was
to me. Cpl Frith ~~arrested him~~ took him in charge.
While I was watching I walked from the rear gate
to the entrance of the leave catre and stopped in
and had a look. It was not possible at that
time to see the man who was standing in front of the

Museum door. It is possible that the man who was standing in the door of the Museum changed places. I just looked inside the door, looked around and walked out of the main entrance. During the time we were watching we talked, smoked and walked — Cpl Frith and myself. We were standing just past the west gate. We were leaning against the bldg. Cpl Frith or ~~me~~ I was not facing the wall. I was leaning against the bldg. I can't say what his position was. It is about 60 yds from the Museum door. We were together a matter of minutes. After I went to the main entrance I went back to see the Cpl. He was still at the same place. It is possible for a man to get through the gate, come along the Centre bldg and not be seen by a person standing at the place where Cpl Frith and I were. It had been raining that night

By J.A. I saw a bundle land on the street. I saw a man pick it up. I followed that man. Until Sgt Monroe came over with Cpl Frith he was in my sight at all times. I saw Sgt Monroe and Cpl Frith take the man into custody. There were 4 or 5 on the sidewalk when I walked from the main entrance to rejoin Cpl Frith. I wasn't paying any attention to that side of the street so I didn't see the man that Cpl Frith and I had been watching on the Reserve Centre side of the street. I never noticed any other people standing around in that neighborhood.

The man in front of the Museum was wearing battledress. I couldn't remember if he was wearing headgear. He was a soldier. The one on the Leave Centre side had a gas cape on. I saw that earlier. We watched them about 15 minutes until the 1st bundle was thrown out. The one on the Museum side was there when I came out from the Main Entrance. I went into the Leave Centre to see if my pals were around to come out and help me watch. Cpl Frith stayed watching. The man raised no objections to going with the cpl when the cpl came over to where I was watching that man and took him in charge. I cannot remember any conversation between them. The 4 or 5 soldiers I met coming from the front entrance to reform Cpl Frith were on the Leave Centre side of the street.

RP 53(B) complied with.

The accused decline to have the evidence read back to them.

The Court adjourns until 0900 hrs. 10 March 45.

The Court ~~opens~~ reassembles at 0900 hrs 10 March 45 pursuant to adjournment. Present same JA and Members.

5th Witness for the Prosecution

K 67150 Sgt Munro, A.J. Cdn Army
Leave Centre having been duly sworn states:

At approx 1815 hrs 28 Nov 44, Mr. De Kessel who was then civil mgr Cdn Leave Centre spoke to me. As a result of this talk I went outside and saw 1 soldier with a gas cape on leaning against the Leave Centre. Another soldier was across the street by the Museum. I walked past on the Leave Centre side of the street without stopping and located Cpl Frith and a civilian tune keeper of the Leave Centre. They were standing by the Ration Gate or rear gate. I told Cpl Frith to keep his eye on the men and I went down the road, crossed the street and came back on the opposite side. One man was still in the Museum doorway. I went inside the Centre and to locate Sgt Gray to tell him to keep his eye on 109, 110 and 111 and 203, 204 205 - rooms in the Hotel. I could not find Sgt Gray. As a result of meeting another civilian I went outside. Cpl Frith was standing with one soldier against the Leave Centre bldg. There was a bundle beside them. The soldier had on a gas cape. I picked up Pte Rolfe on the way out and ordered him to take charge of the man that Cpl Frith was standing beside. I took Frith across the street. Gnr Dodd was standing approx 4 yds from another soldier who was standing at Point "E" on Sx "A". I told Cpl Frith to bring this man into the Orderly Room. I despatched Gnr Dodd to retrieve the bundle.

He did this. I saw him get them. I mark Point "F" on "Ex "A" — 3rd Bush on right of Museum Door as point where Gnr. Dodd retrieved the bundle. I crossed the street again, picked up the other bundle and went to the Leave Centre Orderly Room. I got a good look at these 2 soldiers in the Orderly Room. I would know them if I saw them again. The 2 accused are those two men. I brought them in for questioning. But I could not question them. I sent for Lt Power. I was there when Lt (now A/Capt) Power took their names from their Pay Books. Their names were Blanchette and Robitaille. One had a gas cape — he was the shorter of the two — Blanchette. ~~I did not look any much at the 2 bundles.~~ The QM and I examined the bundles and counted 12 blankets. I saw only 1 man in the Museum doorway. I saw Gnr Dodd jump over the fence by the museum to retrieve the bundle. Before that I saw no one jump over the fence. I saw no one throw a bundle over this fence. I saw a man waving his arms in front of the Museum. When I walked out the first time I saw the man in the doorway with his right hand over his head waving his hand (witness demonstrates). I saw other men besides my own group in the immediate area at that time. None of these came into the orderly room with me.

Cross examination:

I went out about 1815 hrs. Darkness came very early those days; at about 1815 dusk fell. There were electric lights lighted in the Centre. I do not know why. In the front of the Leave Centre is an outside hallway. It is on the 1st floor. It is

about 100 feet long. There are no blackouts on that hallway. There are blue bulbs which throw a diffused light on the street. The first thing I noticed as I walked along the Keave Centre was a man leaning against the wall with a gas cape on. I could not identify him; he was in a shadow. I could not identify the man standing in front of the Museum. The light was behind him. He was in silhouette. He was facing the Keave Centre. The light from the Museum doorway which was open was behind this man. I wouldn't say that it was raining. The outside blankets were wet when we brought them in. It was not raining after 1815 hrs. Walking toward opp Bath I met very few people. I have no idea how many guests were at the Centre. I am a ~~maintenance~~ maintenance man there. I was present when the 2 men were arrested in the Orderly Room. I brought the man in myself to the Orderly Room. I was not outside when the man who was standing across the street picked up the bundle. I was not outside when the man crossed the street and put the bundle behind the bush. I will not swear that the person who placed the bundle behind the bush and the person I placed under arrest ~~was~~ was the same one. I cannot swear that the person on the sidewalk on the Keave Centre side had something to do with the second bundle of blankets that was there; ~~the one that remained on the~~ SAV ~~sidewalk~~ SAV I can swear that the person who was standing on the sidewalk by the second bundle is the person who was arrested. Pte Rolfe did not leave that man until he

Am 2

was brought into the Orderly Room. It is right that I went into the Leave Centre after I was out for the 1st time. It is right that 2 bundles fell to the sidewalk while I was in the Leave Centre. When I came out after that it is right that I saw a bundle of blankets and a person standing approx. 4 feet away. When I went in the Centre I was looking for Sgt Gray. ~~It is~~ His room is between the ground floor and the 1st floor. It is the ~~seven~~ 1st door to the left above the office. I stayed inside about 2 minutes. When I came outside the 2nd time I noticed 2 guards between the front entrance and the front gate. I walked from the main entrance to the front gate. I walked from the front gate to the bundle on the Leave Centre side. I can't swear whether I met soldiers and civilians. I can't say whether I passed anybody or not.

Re-examination:

Gnr Dodd went over the fence to retrieve the bundle at my direction. ~~Pte Rolfe~~ Cpl Futh brings in the man by the Museum door. Pte Rolfe brings in man with gas cape who had been standing by Leave Centre. Pte Rolfe brought in the smaller of the two men - the one with the gas cape who had been beside the Leave Centre. I recall which was Robitaille and which was Blanchette. Robitaille was the taller man and Blanchette the shorter man.

By D.D.: You could see a moving object at 50 yards that night in that area. In the shade of the bldg you have to be on top of him. There were lights on in the Museum. I walked immediately with Pte Rolfe to the bundle. There was a man with a gascape standing 4 ft from the bundle. I instructed Pte Rolfe to take him in charge. I crossed the street with Cpl Faith and instructed Cpl Faith to take the other man in charge. I walked back with Cpl Faith and the other man toward the Orderly Room. ~~Pte~~ Rolfe ~~united with the other man until I joined them~~ (CMD) I was present when the blankets were counted. There were 2 bundles of 11 each. In my judgement they were army blankets. Half of our blankets haven't got the arrow on it. I subsequently learned that some blankets were missing from the rooms in the Leave Centre.

By the Court: Both bundles had 10 winds with one tied ontride in a granny knot. Neither objected to going along with Faith & Rolfe. There is no rule in the Leave Centre which forbids soldiers wearing gas capes when it rains.

am 2

by the JA:

Pte Rolfe started to walk with the other man toward the Orderly Room. Cpl Frith walked diagonally across the street to meet him and they went to the Orderly Room. I was with Frith. I picked up blankets on the leave centre side. The man who was in the Museum doorway was with Frith.

RP 81(B) complied with

The accused decline to have the evidence read in French

The Defence does not require Pte Rolfe as a witness.

D-6 Prosecutor's Closing Address – attached. p-21
Defending Officers Closing Address – attached. pp 23-25
Remarks by Judge Advocate – attached.

E-3. Defending Officers Address – attached. p-27

Prosecutor's Closing Address

RSM Lacroix has his suspicions aroused by the presence of two men on the street in front of the leave Centre. At the time he saw them one of the men left the side of the building and walked out to the curb to look up at upstairs windows of the leave centre. Lacroix orders Frith and Dodd to keep these men under observation.

Two bundles are seen coming out of a window in the centre and landing in the street. One man who Frith had seen crossing to the museum side of the street comes across to pick up the first bundle which landed. Other man under observation remained by leave centre wall.

Man by leave centre was dressed in a yoke cape.

Dodd sees man who brought bundle to museum side like it in bundles. Dodd later retrieved this bundle at direction of Sgt Munro and brought it into the orderly room.

Frith accosted man who was about to pick up other bundle and ~~brought~~ Rolf detailed to bring him into the orderly room. Munro says that man who ~~Rolfe~~ brings in is dressed in yoke cape and was ~~this~~ the Blanchette. Frith was detailed to bring man by museum in. This was man whom Dodd detailed to watch. Munro sent Dodd after hidden bundle and Frith brought man inside. Munro discovers this man to be Robitaille.

Both men presented to Capt Power who identifies them as Robitaille & Blanchette from their pay books.

At the instigation of Lacroix at least 4 men concerned in conducting the apprehension and observation of the two men who were acting suspiciously.

There is no evidence to show that man who hid bundle over fence was not man who was eventually led in to orderly room and identified as Robitaille.

There is no evidence to show that man accosted by Frith and brought in by Rolfe from in front of leave centre was not man eventually identified as Blanchette.

There is here a series of facts which the prosecution submits are causally connected in such a way as to eliminate any suggestion that the two accused are not the same soldiers who were handling or about to handle the two bundles of WD property.

The bundles were tossed out of the window - i.e. taken from WD premises - and to all intents and purposes the bundles passed into possession of the two arrested men. The prosecution submits that these two men are the two accused and that the necessary elements of theft are present. In the absence of positive explanation the elements of the offence of improper possession are at least existing.

G E Collins

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G E Collins

Closing Address
in the case of Pte Blanchette and Robitaille. -

Over

May he pleased the Court,

The defense in the present case as to deal with an alternative charge of stealing or being found in improper possession of public property, that is to say, 22 blankets, army issue. -
There is quite a defference existing between steal of something and the illegal possession
The defense respectfully refers the members of this Court to section 40 A.A. footnote for the illegal possession and to Chap. M.M.L. page 22 section 32, 33 for robbery or thieft of military articles. -
The defense submits that a person will have an illegal possession of an article if the said person has control of this same article without the permission of its owner. - So the person can use this article for a while at his discretion because the said person has full control. - The elements of illegal possession are first of all the absolute control, secondly no permission of the owner, thirdly no intention deprived its owner of his title of property. -
The elements of thieft are: 1) illegal possession
2) intention to consider the article as its own, so the illegal possesser uses the said article, he can even destroy it because he considers himself as owner. -
3) intention to deprive the real owner of his title of property. -

Now let's see the facts: -
The first witness is R.S.M. Lacroix. - He stated that the incident happened at night. - There was no moon and it was dam dark. - He saw two suspicious persons because of the light of a street car otherwise he would have missed their presence near the Leave Centre. - This took place on the 28 November 1944. - "It was dam dark he said "and without the light of the tramway it was impossible to see a man farther than two feet away". - At that time there were 400 to 500 guests at the Leave Centre. - I submit that this statement is quite good and exact with the conditions at that time. - At the end of november the days are short and the darkness come earlier at night and it comes fast. - That night, it was dark also because the sky was covered with clouds "It was raining a little". And if R.S.M. Lacroix states that without the help of the light coming from tramways he could not see "sweet nothing" farther than two feet I submit that he tells the truth. - Everybody in this court, by his own experience, can believe the statement of Lacroix. - I tried that myself, last night, for my own benefit I will not tell the Court the result of my experience because I cannot be a witness. -
The second witness cannot identify the suspicious persons. - He is 6 pl Frith. - He is ordered by R.S.M. Lacroix to watch two persons. - He concentrated on one only, the one that stood on the sidewalk along the leave Centre. - He stated that "it was not too dark on the 28 November 45. - But he also stated that on the order of Sgt Munro he crossed the street to pick up a person standing near the museum. - He cannot identify this person because it was too dark and they was walking side by side. - We submit if it was impossible to identify somebody when walking side by side it is because at that time complete darkness

.25

has come. – We submit also as a deduction from this fact that it was almost impossible to see at long distance and keep a constant sight on a man fifty or sixty yards away. – Cpl Frith was standing along a Cinlian building and near this building and Gnr Dodd states a person was able to go out of the front gate and come along the Centre [illegible] noticed by Cpl Dodd on account of the particular shape of the face of Leave Centre. – Gnr Dodd

Gnr Dodd is the next witness. He was with Cpl Frith at the beginning. – He is not able to identify the suspicious men either. This is the way he acted. – He was speaking to Cpl Frith they were standing along a Cinlian building. He decided to go the front gate so he did. He passed along the Leave Centre and noticed 4 or 5 men walking along the sidewalk. He went into the Leave Centre himself. – He had to watch the man standing in the door of the Museum. – I submit that this job done by Gnr Dodd was not continuous and he cannot swear that the man in the front door was not replaced by somebody else. –

The fourth witness: Sgt Munro came in the box this morning ready to give a full evidence but he did not see a thing of the incident. He was at the Leave Centre when the bundle were thrown out the window. He cannot swear the man he arrested on the Museum side of the street is the same who crossed the street with the bundle. – He cannot swear that the man standing four or five feet of the bundle had something to do with the bundle on the sidewalk near the Centre. –

We submit that on account of darkness, on account of the way Cpl Frith and Pte Dodd carried out their duties, on account of the facing of the Leave Centre, that a reasonable doubt of the identity of the ~~[illegible]~~ suspicious persons and that the relation between the accused and the suspicious persons have been established by a person who came on the scene of the incident afterward and has seen nothing and therefore can only submit that he arrested two soldiers. –

Maurice Rousseau Capt

SUMMING UP OF JUDGE ADVOCATE:

I wish to point out that it is part of my duty as JA to sum up the evidence and advise the court on the law. The court is however the sole judge of the facts and anything I may say now, may previously have said and may say indicating my personal views as to the facts should be entirely disregarded. The court and the court alone is the sole judge of the facts. I wish briefly to sum up the evidence:

Lt now Capt C.M. Power arrived in the Orderly Room of the Gas leave centre at approx 1900 hrs 28 Nov 44. He saw two men whom he identified by their pay books to be ROBITAILLE and BLANCHETTE, he does not now recognize the accused. He looked at the bundles and recognized them as WD blankets.

RSM LaCroix at approx 1800 hrs in front of the leave centre saw two men standing near the bldg, one wearing a Gas Cape went to the edge of the sidewalk and looked up, he did this twice. He ordered Cpl Frith and Gnr Dodd whom he met to keep his eye on the two men. He states it was very dark, raining and he could see only by aid of tram lights. He saw two civilians near the Hotel.

Cpl Frith was with Gnr Dodd. They were watching two soldiers near the leave centre--Frith saw one of the soldiers cross the street, he was dressed in Battle Dress. The one near the leave centre had a Gas Cape--man across street gave signals--a few minutes later a large bundle was thrown from upstairs window. Soldier across street come over picked up bundle and started back, Gnr Dodd followed him. Another bundle was thrown out, soldier on leave centre side moved closer to second bundle. Sgt Munroe and Pte Rolfe came along...He crossed street and took man in charge Gnr Dodd was with. He can identify neither of the men. Between 1700 to 1900 the majority of guests leave the hotel to go down town. He did not notice many that night it was dark but you could distinguish an object at 50 yds. The front of the leave centre is not plain ports jut out. The witness says he was misstaken in the summary of evidence re the man wearing the Gas Cape crossing the street.

Gnr Dodd: He corroborates evidence of Cpl Frith. His job was to watch the man in the museum side across from the leave centre. He admitted going into the leave centre once so the man across the street was not in his observation at all times. He did see the bundle thrown from the leave centre and the man across the street came over and picked it up. He followed him and saw him hide it. The outside of the bundle was a blanket. He watched the man until Cpl Frith took Him in charge. He then took the bundle into the leave centre orderly room. He cannot identify either man. He did not see the men until pointed out to him by RSM LaCroix. There were approx 300-400 guests in the centre the biggest percentage go downtown from 1700 to 1900 hrs. He could see an object 50 yds away. He stated there must have been soldiers and civilians pass by while watching. He was never at any time close to the soldier who put the bundle in the bushes.

Sgt Munro: He saw a soldier with a Gas Cape leaning against the leave centre wall and the man in the museum doorway. Went into leave centre to speak to a Sgt whom he could not find, on way out he got Pte Rolfe. Saw Cpl Frith standing beside a soldier on leave centre side with a bundle near them. He ordered Pte Rolfe to take the man in charge. He took Cpl Frith across the street to where man Gnr Dodd was watching and ordered Cpl Frith to take that man in charge. He picked bundle from leave centre side. He later opened bundles with QM and states there were 11 WD Blankets in each bundle. He recognizes the accused as the men in the orderly room. This witness stated that there was some light from the leave centre and also some from the museum. You could see a man in the shadow of the bldg but you could see a moving object at 50 yds. Neither man placed into custody objected.

The charge here is Theft of Public Property with an alternative of Improper Possession. With regard to the first charge the Prosecution must prove that the accused stole WD property, namely, 22 blankets. The law relating to stealing is found in MML p.22, p.118, 119---Archbold p.484-490 (extracts read).

I wish also to direct the courts attn to the doctrine of Recent Possession MML p.73. With regard to possession, if the court should find that the accused or one of them was acting with a common design or common intent with a person or persons unknown, then possession by that person or persons would be possession of all, even though one of the persons may never have been in physical possession at any time. With regard to the law of common intent I read MML p.107 and also the Sec dealing with assisting in the commission of an offence.

Inasmuch as the evidence in this case is to some extent circumstantial I direct the court to the law with regard to circumstantial and read MML p.81 dealing with

(over)

circumstantial evidence. The charge of improper possession means that the accused was improperly in possession but that some element necessary in the first charge is not proven, such as intention to permanently deprive the owner thereof. And finally I advise the court that under English Law no man is guilty until found guilty and the onus of proving him guilty beyond a reasonable doubt rests upon the prosecution. The accused is entitled to the benefit of any reasonable doubt, I say a reasonable doubt, that is some doubt which is based on the facts before the court and not some doubt which is purely imaginary. If the court has reasonable doubt after hearing and weighing the evidence then the accused are entitled to that doubt.

That is all I wish to say unless the court or prosecution or defending offr require some explanation on any question I may have overlooked.

Mr President have you any questions? "No".
Mr Prosecutor have you any questions? "No".
Mr Defending Offr have you any questions? "No".

A.M. Emerson Lt
Judge Advocate

E x F

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
D-121976	Pte. Donat ROBITAILLE		R. de Chaud.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

* Within last 12 months. *Since Enlistment.

For Temporary sheet attached times times.

~~For times times.~~

~~For times times.~~

~~For times times.~~

~~For times times.~~

~~Number of instances of gallantry or distinguished conduct.~~

~~—or—~~

~~There are no entries in the conduct sheets of the accused.~~

~~2. The accused has not been previously convicted, or~~

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. ~~The accused is not under sentence at the present time, or The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 49 days in military custody, making a total of 49 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 27 years

6. The date of his ~~xxxxxxxx~~ attestation specified in his record of service is 8 Sept 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 yrs, 4 mons

8. The accused is entitled to deferred pay or gratuity in respect of 3 yrs, 4 mons service.

9. The accused is entitled to reckon 3 yrs, 4 mons service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~or entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or reward)~~ †.

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

12. ~~(In the case of an officer.) The accused holds in the army the rank of dated and in his regiment (or corps or department) the rank of dated~~

(*25800) Wt.34898/1730 20,000 10/43 A.& E.W.Ltd. Gp.698
(26006) Wt.55954/1499 12,000 3/44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. Rank Name of Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this fourteenth day of February 1915

Capt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion.
In the rank of	
In the rank of years,	
In the rank of years	
In the rank of years.	

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information necessary be collected from such sources as are available and the paragraphs concerned amended accordingly.)

E & G

ARMY FORM B.200

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
E 42230	Pte	BLANCHETTE O	R de Chaud 10 CBR Bn

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary must be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement and not annexed to the proceedings.

† See para. 671, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

* Within last 12 months. *Since Enlistment.

For Original MFM 6 not available times.

~~For~~ times times

~~For~~ times times

~~For~~ times times

~~For~~ times times

~~Number of instances of gallantry or distinguished conduct,~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

~~2. The accused has not been previously convicted, or~~

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 40 72 days in military custody, making a total of 40 72 days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 20 yrs 11 mos 21 days

6. The date of his ~~commission~~ attestation specified in his ~~attestation paper~~ record of service is 29 Jun 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 yrs 7 mos 9 dys

8. The accused is entitled to deferred pay or gratuity in respect of 3 yrs 7 mos 9 dys service.

9. The accused is entitled to reckon 3 yrs 7 mos 9 dys service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~or entitled to, no military decoration or military award (or is in possession of, or entitled to (state any military decoration or award)).~~ CVSM & Clasp

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~ ~~dated~~

~~12. (In the case of an officer.) The accused holds in the army the rank of~~ ~~dated~~ ~~and in his regiment (or corps or department) the rank of~~ ~~dated~~

(*25500) W1.34895/1730 20,000 10/43 A.& E.W.Ltd. Gp.498
(26926) W1.35934/1499 15,000 2/44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (*or as the case may be*).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this eighth day of February 1915

Adjt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of _____ years, _____

In the rank of _____ years _____

In the rank of _____ years _____

(Instruction.—If any matter in any of the above four paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be entered from such sources as are available and the paragraphs concerned amended accordingly.)

MFM 6
(AFB 12)
40:P&S/156 (3435)

No D121976 Name ROBITAILLE, D. Sqn, Battery, or Company | TOS 10 CBR Bn w.e.f. 29 Sept 44 Date of enlistment | 8 Sept 44 GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Corps CIC | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Mark	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing with that	By whom awarded	Remarks
				TEMPORARY SHEET ONLY					

Officer in charge of Regimental Books

(PTO)

No. E 42230 Name BLANCHETTE Odine | Sqn, Battery, or Company | Corps CIC | Date of enlistment 29 Jun 41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFR 122) 40/P&S/136 (3438) Ex E Cpn

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET TOS 10 CBR Bn wef 28 Nov 44					
				CERTIFIED TRUE COPY					
				[signature] Capt					
				Offr i/c Regtl Books					

(PTO)

27

Plea in mitigation

Pte Blanchette has been in the service 3 years and 9 months.
He has served ~~spent~~ in the front line with La Chaudiere Regiment from July to
August and was wounded in left arm and in the back by shrapnells.
He returned to the front line at the beginning of October and was taken
prisoner by Germans in the last days of the same month.
He spent 8 days as a prisoner and escaped and came back in North Nova
Scotia lines.
He was turned back immediately to his unit.
Pte Blanchette claims that he suffers pains ~~from~~ in his right ear for a long time;
he was sent to the front line without having a chance to see a
specialist. He had medical treatments by three doctors who recommended him to a specialist
He ~~has~~ is 21 years old and is single.
The accused has spend 72 days close arrest awaiting trial and has
a good conduct stripe.
Pte Robitaille has been in the service 3 years 7 months
He has spent in the front line with La Chaudiere Regiment from "D" Day
until the 13th of August last.
He was wounded in left ~~la~~ upper leg by a shrapnell he was operated but it was impossible to take off that piece of shrapnell.
The accused is single and is 26 years old.
He has spent 77 days close arrest awaiting trial.

Maurice Rousseau Capt

SUPPLEMENTARY SUMMARY OF EVIDENCE

In the case of E-42230 Pte. Odina BLANCHETTE, (Rle Chasd) on the strength of 10 C.A.P.C. Bn, a soldier of the Cdn Army Overseas.

By the direction of the Commanding Officer this evidence is taken on oath.

D-95177 Pte. CAUBARTIN, L., is duly sworn as interpreter.

FIRST WITNESS
Prosecution

M-66663 R.S.M. LaCROIX, T.E.A. of No. 1 Cdn Leave Centre. At approx 1800 hrs, 28 Nov 44, I left Cdn Leave Centre proceeded along street, passing beside the Leave Centre. I noticed two men standing beside the bldg. One man walked out from the bldg and looked towards the upstairs windows. I went past them and looked back. The man standing at the curb was wearing a gas cape. He moved back into the bldg again and once more moved out to the curb and looked upwards. I proceeded on a little further stopped again and looked back. Then I met Cpl. Frith and Gnr. Dodd who must have been following a short distance behind me. I ordered them to stay there and watch the two men. I then proceeded on my way. I thought the two men were acting suspiciously so I ordered Cpl. Frith and Gnr. Dodd to watch the two men. (The witness marks his route in green pencil).

R.P. 83 (b) complied with.

T.E.A. LaCROIX) RSM M-66663

The accused declines to cross-examine witness.

SECOND WITNESS
Prosecution

M-87360 Cpl. FRITH, R.M.(attached to the Cdn Leave Centre) having been duly sworn states:

I am M-87360 Cpl. FRITH, R.M. attached to the Cdn Leave Centre. At approx 1815 hrs, 28 Nov 44, Gnr Dodd and myself were leaving the leave Centre. Past the end of the Leave Centre near the gate we met R.S.M. LaCroix, who was standing there. He ordered us to wait there and observe the actions of two soldiers standing beside the Leave Centre. A couple of minutes later, Gnr. Dodd returned to the Leave Centre gate. While he was away one of the soldiers crossed the street. He was the soldier who was wearing a gas cape. (Cpl. Frith marks on Exhibit "A" where the one soldier went). This soldier stood in the Museum doorway and waved his arms, as though he was signalling someone. Gnr Dodd then rejoined me. Shortly after a bundle was thrown from an upstairs window. The man who was standing in the doorway across the street came back to the Leave Centre side of the street and picked up the bundle. He returned to the Museum side of the street. As this soldier left, I told Gnr. Dodd to follow him. Gnr. Dodd left. As he was crossing the street a second bundle was thrown from the window. I left my position and moved to the second bundle. The second soldier had moved to the edge of the side-walk near the bundle. Sgt. Munro and Pte. Wolfe came up then. Sgt. Munro gave me orders to cross the street and take charge of the other soldier, whom Gnr. Dodd had followed. I brought the man back to Sgt. Munro and Pte. Wolfe. (Cpl. Frith marks his movements in blue pencil). We all came into the Leave Centre together. Sgt. Munro, Pte. Wolfe, myself and the two men.

R.P. 83 (b) complied with.

(R.M. FRITH) Cpl. M-87360

The accused declines to cross-examine witness.

THIRD WITNESS
Prosecution

K-45986 Gnr. DODD, D.J. attached to the 1 Cdn Leave Centre, having been duly sworn states:

I am K-45986 Gnr. DODD, D.J. attached to the 1 Cdn Leave Centre. At approx 1815 hrs, 28 Nov 44, proceeding along the street in front of the Leave Centre Cpl. Frith and I were stopped by R.S.M. LaCroix who ordered us to keep an eye on the windows of the Leave Centre. I watched the two men for awhile, then I walked down the face of the building past the two men who were standing against it. At that time I walked as far as the entrance to the building, turned around and went out where I met Sgt. Munro at the gate. He told me to keep an eye on the man at the entrance to the museum. I walked back to Cpl. Frith passing the one man near the building in the same spot. A few minutes later a bundle was thrown from the Leave Centre. The man from across the street moved over to the bundle which he picked up and returned to the other side. I followed him. I saw him place the bundle behind a bush against the museum building. (Gnr. Dodd traces in the movements of the man who picked up bundle in red crayon) I followed to the place where the bundle was and the man moved down the street to the museum entrance. He stopped there and stayed there until Cpl. Frith picked him up. He did not attempt to leave. I picked up the bundle and took it in the Leave Centre.

R.P. 83 (b) complied with.

D J Dodd
(D.J. DODD) Gnr K-45986

The accused declines to cross-examine witness.

FOURTH WITNESS
Prosecution

P-65157 Pte. Relfe, C.L., attached to 1 Cdn Leave Centre having been duly sworn states:

I am P-65157 Pte. RELFE, C.L. attached to 1 Cdn Leave Centre. On 28 Nove 44 at approx 1830 hrs I went outside with Sgt. Munro. Then he ordered me to take over a soldier who was standing against the building. We proceeded along until we met Cpl. Frith with another soldier. We all came in together. The soldier whom I brought in had been with Cpl. Frith. He was Pte. Blanchette. (Pte. Relfe traces on Exhibit "A" his movements.

R.P. 83 (b) complied with.

(C.L. RELFE) Pte P-65157

The accused declines to cross-examine witness.

The accused having been cautioned as follows: "Desirez-vous faire une declaration ou rendre temoignage sous serment? Vous n'etes pas oblige de dire quoi que ce soit ni de rendre temoignage a moins que vous ne le desiriez mais tout ce que vous direz ou toute deposition que vous ferez sera pris ecrit et pourra servir de preuve." declines to give any evidence and reserves his defence.

I Certify that the foregoing Summary of Evidence, consisting of two pages was taken down in writing by me in the presence and hearing of the accused.

I Certify that R.P. 4 (C)(D)(E) and (F) have been complied with.

H.G. Scott
(H.G. SCOTT) Lt.
Officer detailed to take Summary of Evidence

In the Field
28 Feb 45

SUMMARY OF EVIDENCE

Exc

In the case of D121976 Pte Donat ROBITAILLE (R de Chaud) of 42 Coy on strength of 10 CBR Bn a soldier of the Canadian Army Overseas.

By Direction of the Commanding Officer this eficence is taken on oath.

FIRST WITNESS PROSECUTION

Lieut C.N. Power, Officer i/c OR's Hotel of Cdn Army Leave Centre, having been duly sworn states:

I am Lieut C.N. Power, Officer i/c OR's Hotel of Cdn Army Leave Centre. At approx 1900 hrs, 28 Nov 44 while I was in my quarters, St George Hotel, Pte LaTour informed me that two men were apprehended by my staff. I proceeded to the Leave Centre where E42230 Pte Blanchette, O and D121976 Pte Robitaille, D. were held. As they did not speak good English I placed them in protective custody and sent them to 11 Bn, 2 CBR GP.

Declines to cross examine the witness.
R.P. 83(b) Complied with.

(C.N. Power) Lieut.

SECOND WITNESS PROSECUTION

H87360 Cpl Frith, R.M. Attached to Cdn Army Leave Centre, having been duly sworn states:

I am H87360 Cpl Frith, R.M. Attached to Cdn Army Leave Centre. On 28 Nov 44 at approx 1815 hrs Gnr Dodd and myself were going out the gate when we were stopped by R.S.M. LaCroix who ordered us to wait down the street and observe the actions of two soldiers who were standing beside the leave Centre. One of these soldiers was standing in a doorway across the street from the Leave Centre and appeared to be making signals to someone upstairs in the leave centre. He was signalling with his arms. I do not know what the signals be were but they appeared to be definite signals to someone onthe upper floors of the leave centre. At approx 1830 hrs a bundle was thrown from an upstairs window. The soldier who had been signalling crossed the street and picked up the bundle. He started to leave with it. Gnr Dodd went after him and stopped him. I moved closer to the building, the other man was standing along the wall beside the leave centre a few minutes later a second bundle was thrown from a window. The soldier standing near the building was about to pick it up when I stopped him. We turned the men over to Sgt Munro. The Bundles were Blankets.

(R.M. Frith) H87360, Cpl

Declines to cross examine the witness
R.P. 83 (b) Complied with.

THIRD WITNESS PROSECUTION

K45986 Gnr Dodd, D.J. Attached to the Cdn Army Leave Centre, having been duly sworn states:

I am K45986 Gnr Dodd, D.J. Attached to the Cdn Army Leave Centre. At approx 1815 hrs 28 Nov 44 while walking in front of the leave centre in company with Cpl Frith, we were stopped by R.S.M. LaCroix, he ordered us to keep an eye on two men who were acting suspiciously in front of the Building. We took up post at the end of the leave centre.

THIRD WITNESS CONT'D PROSECUTION

They were watching the windows as if expecting someone to appear or something. One of these men moved over to the museum side of the street. I walked down the street beside the leave centre keeping an eye on this man until I reached the gate. There I met Sgt Munro who told me to rejoin Cpl Frith at the other end of the building and continually watch the men. It was dark. Shortly after one buncle was thrown from an upstairs window. A second bundle was thrown out almost immediately after thefirst. The soldier from across the street came over to the leave Centre and picked up one of the bundles. He returned to the other side of the street and placed it behind thebushed near the museum building. I followed him and took up a position near thebundle and he moved a few yards down the street. He stopped there and a little later Cpl Frith came across and took him in charge. He did not attempt to move away so I did not say anything to him. I picked up thebundle and took it into the leave centre. The bundle was a number of blankets ties together.

Declines to cross examine the witness.
R.P. 83(b) Complied with.

L.J. Dodd

(D.J. Dodd)K45986, Gnr.

FOURTH WITNESS PROSECUTION

K67150 Sgt Munro, A.J. Attached to Cdn Leave Centre. Having been duly swornstates:

I am K67150 Sgt Munro, A.J. Attached to Cdn Leave Centre. At approx 1815 hrs 28 Nov 44 I was standing in the main hallway of the Cdn Leave Centre when informed about two men acting suspiciously outside. I went outside and saw two soldiers, one standing in thedoorway of the museum across the street and the other near the building. I walked past the men without stopping and located Cpl Frith and a civilian standing at the corner of the building. I went furtherdown the street and crossed over, walking past the man standing in the doorway of the museum. He was still there. I decided to go inside the leave centre. Just as I was entering the building, was informed that bundles were thrown from a window. I took Pte Rolfe with me and had the two men andthe two bundles brought inside. Thebundles were placed in the Quartermasters Office where the Q.M. counted the blankets in my presence There were 22 blankets, 11 in each bundle. The two men were Pte Robitaille, and Pte Blanchette.

Declines to cross examine the witness.
R.P. 83(b) Complied with.

A.J. Munro

(A.J. Munro)K67150, Sgt.

FIFTH WITNESS PROSECUTION

B96925 CQMS Hugget C.T. Attached to Cdn Leave Centre. Having been duly sworn states:

I am B96925 CQMS Hugget C.T. Attached to Cdn Leave Centre. At approx First Canadian Leave Centre I counted the two bundles of blankets in the presence of Sgt Munro. There were 22 blankets, 11 blankets in each bundle. This was on the night of 28 Nov 44. I put the blankets back in stores.
Declines to cross examine the witness.
R.P. 83(b) Complied with.

C.T. Hugget

(C.T. Huggett)B96926, CQMS

SIXTH WITNESS PROSECUTION

F65157 Pte Rolfe, G.L. Attached to Cdn Army Leave Centre. Having been duly sworn states:

I am F65157 Pte Rolfe, G.L. Attached to Cdn Leave Centre. On the night of 28 Nov 44 at approx 1830 hrsI went outside with Sgt Munro where he ordered me to take a soldier in charge and take him into leave centre. This soldier was Pte Blanchette.

Declines to cross examine the witness.
R.P. 83 (b) Complied with.

(G.L. Rolfe)F65157,Pte

SEVENTH WITNESS PROSECUTION

B63733 L/Cpl Partridge, J.L. On P.E. with 10 CBR Bn. Having been duly sworn states:

I am B63733 L/Cpl Partridge, J.L. on P.E. with 10 CBR Bn. (Regimental Police). At approx 1855 hrs 10 Dec 44, I was on duty in the office of 10 Bn cell block, making theguard report, when a soldier whom I recognized as H115 Rfn Hyde, M.C. entered the office with a revolver and told me to get on my feet and in acell. He locked me along with L/Cpl Morton in cell number 8, we were in the cell for about ten minutes until released by another soldier in the cell block. After our release I detailed L/Cpl Morton to check the prisoners. There were 19 soldiers missing with the others. I checked the cell blocks myself at 2359 hrs before turning over the cell block to the next duty Cpls. Pte Robitaille was missing. At 1600 hrs 10 Dec 44 when I assumed charge of the cell block, Pte Robitaille was present.

Declines to cross examine the witness.
R.P. 83(b) Compliedwith.

(F.L. Partridge)B63733, L/Cpl.

EIGTH WITNESS PROSECUTION

B118099 L/Cpl Morton, H.A. on the strength of 20 Spec Emp Coy having beenduly sworn states:

I am B118099 L/Cpl Morton, H.A. on the strength of 20 Spec Emp Coy. On the 10 Dec 44 at 1730 hrs I was on duty as R.P. in the guard room of 10 CBR Bn. The accused whom I now recognize returned to his cell from meal parade. At 1850 hrs while I was on guard at the door two soldiers jumped me andtook my pistol and forced L/Cpl Partridge and myself into a cell at gun point and locked the door. About 10 minutes later we were released by some of the other prisoners. I reporte to the main gate the occurance andthen returned andchecked the cells at approx 1900 hrs. I found the accused had escaped along with 19 others.

The accused declines to cross examine the witness.
R.P. 83 (b) Complied with.

(H.A. Morton)B118099,L/Cpl.

DOCUMENTARY EVIDENCE

EXHIBIT "A"

The part 11 orders produced as documentary evidence was read over to the accused marked Exhibit "A" signed by me and attached hereto.

EXHIBIT "B"

The certificate of apprehension in accordance with AA 103 (1) (j) produced as documentary evidence was read over to the accused marked, Exhibit "B" signed by me and attached hereto.

The accused having been cautioned as follows: " Desirez-vous faire une declaration ou rendre temoignage sous serment? Vous n'etes pas obligé de dire quoi que ce soit ni de rendre temoignage a moins que vous ne le desiriez mais tout ce que vous direz ou toute deposition que vous ferez sera pris ecrit et pourra servir de preuve." Having been duly sworn states:

On 10 Dec approx 1900 hrs the door of the cell block was open. I took advantage of it. I didn't hinder anyone or cause any disturbance in the cell block. I just left.

The night I was arrested, on the accusations of stealing the blankets, I was only two minutes along the wall. When the bundle of blankets fell, the Cpl passed and the second bundle of blankets fell after that. I was standing by the wall about 10 feet from where the blankets fell. The Cpl came to me and told me to "Come Here" After he told me to "Stay with him" After he told me to come with him to the orderly room. I did not know why he was bringing me in. I thought it was only to be a witness for the blankets that fell from the windows. After I was here an Officer came and questioned me. There was a French interpreter for me. After all the questions the officer said he was obliged to take us up to 11 Bn CHRC. All the witnesses that came here except the Cpl and Officer, I did not see them that night.

D. Robitaille

(D. Robitaille) D121976, Pte

I certify that the foregoing summary of Evidence consisting of four (4) pages was taken down by me in writing in the presence and hearing of the accused.

I certify that R.P. 4 (c) (d) (e) and (f) have been complied with.

(G.C. Scott) Lieut
Officer Detailed to take Summary of Evidence.

SUPPLEMENTARY SUMMARY OF EVIDENCE

In the case of D-121976 Pte Donat ROBITAILLE, (Bte Chaud) on the strength of 10 C.B.R. Bn, a soldier of the Cdn Army Overseas.

By direction of the Commanding Officer this evidence is taken on oath.

D-95177 Pte. CAUBARTIN, L., is duly sworn as interpreter.

M-66663 R.S.M. LaCROIX, T.E.A., on the strength of 1 Cdn Leave Centre having been duly sworn states:

FIRST WITNESS
Prosecution

I am M-66663 R.S.M. LaCROIX, T.E.A. of No. 1 Cdn Leave Centre. At approx 1800 hrs, 28 Nov 44, I left Cdn Leave Centre proceeded along street, passing beside the Leave Centre. I noticed two men standing beside the bldg. One man walked out from the bldg and looked towards the upstairs windows. I went past them and looked back. The man standing at the curb was wearing a gas cape. He moved back into the bldg again and once more came out to the curb and looked upwards. I proceeded on a little further stopped again and looked back. Then I met Cpl. Frith and Gnr. Dodd who must have been following a short distance behind me. I ordered them to stay there and watch the two men. I then proceeded on my way. I thought the two men were acting suspiciously so I ordered Cpl. Frith and Gnr. Dodd to watch the two men. (The witness marks his route in green pencil).

R.P. 83 (b) complied with.

The accused declines to cross-examine witness.

T. LaCroix
(T.E.A. LaCROIX) RSM M-66663

SECOND WITNESS
Prosecution

H-87360 Cpl. FRITH, R.M. (attached to the Cdn Leave Centre) having been duly sworn states:

I am H-87360 Cpl. FRITH, R.M. attached to the Cdn Leave Centre. At approx 1815 hrs, 28 Nov 44, Gnr Dodd and myself were leaving the leave Centre. Past the end of the Leave Centre near the gate we met R.S.M. LaCroix, who was standing there. He ordered us to wait there and observe the actions of two soldiers standing beside the Leave Centre. A couple of minutes later, Gnr. Dodd returned to the Leave Centre gate. While he was away one of the soldiers crossed the street. He was the soldier who was wearing a gas cape. (Cpl. Frith marks on Exhibit "A" where the one soldier went). This soldier stood in the Museum doorway and waved his arms, as though he was signalling someone. Gnr Dodd then rejoined me. Shortly after a bundle was thrown from an upstairs window. The man who was standing in the doorway across the street came back to the Leave Centre side and picked up the bundle. He returned to the Museum side of the street. As this soldier left, I told Gnr. Dodd to follow him. Gnr. Dodd left. As he was crossing the street a second bundle was thrown from the window. I left my position and moved to the second bundle. The second soldier had moved to the edge of the side-walk near the bundle. Sgt. Munro and Pte. Relfe came up then. Sgt. Munro gave me orders to cross the street and take charge of the other soldier, whom Gnr. Dodd had followed. I brought the man back to Sgt. Munro and Pte. Relfe. (Cpl. Frith marks his movements in blue pencil). We all came into the Leave Centre together. Sgt. Munro, Pte. Relfe, myself and the two men.

R.P. 83 (b) complied with.

R. M. Frith
(R. M. FRITH) Cpl H-87360

The accused declines to cross-examine witness

THIRD WITNESS
Prosecution

K-45986 Gnr. Dodd, D.J. attached to the 1 Cdn Leave Centre, having been duly sworn states:

I am K-45986 Gnr. DODD, D.J. attached to the 1 Cdn Leave Centre. At approx 1815 hrs, 28 Nov 44, proceeding along the street in front of the Leave Centre Cpl. Frith and I were stopped by R.S.M. LaCroix who ordered us to keep an eye on the windows of the Leave Centre. I watched the two men for awhile, then I walked down the face of the building past the two men who were standing against it. At that time I walked as far as the entrance to the building, turned around and went out where I met Sgt. Munro at the gate. He told me to keep an eye on the man at the entrance to the museum. I walked back to Cpl. Frith passing the one man near the building in the same spot. A few minutes later a bundle was thrown from the Leave Centre. The man from across the street moved over to the bundle which he picked up and returned to the other side. I followed him. I saw him place the bundle behind a bush against the museum building. (Gnr. Dodd traces in the movements of the man who picked up the bundle in red crayon). I followed to the place where the bundle was and the man moved down the street to the museum entrance. He stooped there and stayed there until Cpl. Frith picked him up. He did not attempt to leave. I picked up the bundle and took it in the Leave Centre.

R.P. 83 (b) complied with.

D J Dodd
(D.J. DODD) Gnr K-45986

The accused declines to cross-examine witness.

FOURTH WITNESS
Prosecution

F-65157 Pte. HOLZE, G.L., attached to 1 Cdn Leave Centre having been duly sworn states:

I am F-65157 Pte. HOLZE, G.L. attached to 1 Cdn Leave Centre. On 28 Nov 44 at approx 1630 hrs I went outside with Sgt. Munro. Then he ordered me to take over a soldier who was standing against the building. We proceeded along until we met Cpl. Frith with another soldier. We all came in together. The soldier whom I brought in had been with Cpl. Frith. He was Pte. Blanchette. (Pte. Holze traces on Exhibit "A" his movements.)

R.P. 83 (b) complied with.

(G.L. HOLZE) Pte F-65157

The accused declines to cross-examine witness.

The accused having been cautioned as follows: "Desirez-vous faire une declaration ou rendre temoignage sous serment? Vous n'etes pas oblige de dire quoi que ce soit ni de rendre temoignage a moins que vous ne le desiriez mais tout ce que vous direz ou toute deposition que vous ferez sera pris ecrit et pourra servir de preuve." declines to give any evidence and reserves his defence.

I certify that the foregoing SUMMARY OF EVIDENCE, consisting of two pages was taken down in writing by me in the presence and hearing of the accused.

I certify that R.P. 4 (C)(D)(E) and (F) have been complied with.

(C. G. SCOTT) Lt.
Officer detailed to take
SUMMARY OF EVIDENCE

In the Field
28 Feb 45

Ex B
Cdn

SUMMARY OF EVIDENCE

In the case of E42230 Pte Odina BLANCHETTE, R de Chaud on strength 10 Cdn Base R't Bn, a soldier of the Cdn Army Overseas.

By direction of the Commanding Officer, this evidence is taken on oath.

D 109779 Pte CARRIERE, L. is sworn in as interpeter.

FIRST WITNESS
Prosecution

Lt C.N. POWER, Offr i/c Hotel of Cdn Army Leave Centre, having been sworn, states:

I am Lt C.N. POWER, Offr i/c ORs Hotel of Cdn Army Leave Centre. At approximately 1900 hrs Tuesday 28 Nov 45, while I was in my quarters, St George Hotel, Pte LATOUR informed me that two men were apprehended by my staff. I proceeded to the leave centre where E 42230 Pte BLANCHETTE, O., and D121976 Pte ROBITAILLE, D. were held. As they did not speak good English I placed them in protective custody and sent them to 11 CBR Bn.

RP 83(B) complied with.

(C N Power) Lt

The accused declines to cross examine the witness.

SECOND WITNESS
Prosecution

H 87360 Cpl FRITH, R.M., attached to Cdn Leave Centre, having been duly sworn, states :

I am H 87360 Cpl FRITH, RM, attached to the Cdn Army Leave Centre. On 28 Nov 45 at approximately 1815 hrs Gnr DODD and myself were going out the gate when we were stopped by RSM LaCROIX, who ordered us to wait down the street and observe the actions of two soldiers who were standing beside the leave centre. One of the soldiers was standing in a doorway across the street from the leave centre and appeared to be making signals to someone upstairs in the leave centre. He was signalling with his arms. I do not know what the signals were but they appeared to be definite signals to someone on the upper floor. At approximately 1830 hrs a bundle was thrown from an upstairs window. The soldier who had been signalling crossed the street and picked up the bundle. He started to leave with it. Gnr DODD went after him and stopped him. I moved closer to the building and the other man was standing along the wall beside the Leave Centre. A few minutes later a second bundle was thrown from the window. The soldier standing near the building was about to pick it up when I stopped him. We turned the men over to Sgt MUNRO who came up to us immediately after the bundles had been thrown out of the window. I was present when the bundles were brought to the Leave Centre. They were blankets.

QUESTION The one whom you stopped, did he pick up the blankets?
ANSWER No. He walked over to where the blankets wer.

RP 83 (B) complied with.

(R M Frith) Cpl H 87360

THIRD WITNESS

K 45986 Gnr DODD DJ, attached to the Cdn Army Leave Centre, having been duly sworn, states :

I am K 45986 Gnr DODD DJ, attached to the Cdn Army Leave Centre.

...../2

THIRD WITNESS Cont'd

At approximately 1815 hrs 28 Nov 44 while walking in front of the Leave Centre in company with Cpl FRITH, we were stopped by RSM LaCROIX. He ordered us to keep an eye on two men who were acting suspiciously in front of the building. We took up post at the end of the Leave Centre. The men were watching the windows as if expecting someone to appear or something. One of these men moved over to the museum side of the street. I walked down the street beside the Leave Centre keeping an eye on this man until I reached the gate. There I men Sgt MUNRO who told me to rejoin Cpl FRITH at the other end of the building and continue to watch the men. It was dark. Shortly after this one bundle was thrown from an upstairs window. A second bundle was thrown out almost immediately after the first. The soldier from across the street came over to the Leave Centre and picked up one of the bundles. He returned to the museum side with it and placed it behind the bushes near the museum building. I followed him and took up a position near the bundle and he moved a few yards down the street. He stopped there and a little later Cpl FRITH came across and took him in charge. He did not attempt to move away so I did not say anything to him. I picked up the bundle and took it into the Leave Centre. The bundle was a number of blankets tied together.

RP 83 (B) complied with.

(D J Dodd) Gnr K45986

The accused declines to cross examine the witness.

FOURTH WITNESS Prosecution

K 67150 Sgt MUNRO AJ, attached to the Cdn Army Leave Centre, having been duly sworn, states :

I am K 67150 Sgt MUNRO AJ, attached to the Cdn Army Leave Centre. At approximately 1815 hrs 28 Nov 44 I was standing in the main hallway of the Cdn Leave Centre when I was informed about two men acting suspiciously outside. I went outside and saw two soldiers, one man standing in the doorway of the museum across the street and the other near the building. I walked past the men without stopping and located Cpl FRITH and a civilian. I went further down the street and crossed over, walking past the man standing in the doorway of the museum. He was still there. I decided to go inside the building. Just as I was entering the building I was informed that bundles were thrown from the window. I took Pte ROLFE with me and I had the two men and the two bundles brought inside. The bundles were placed in the Quartermaster's office where the QM counted the blankets in my presence. There were 22 blankets, 11 in each bundle. The two men were Pte ROBITAILLE and Pte BLANCHETTE.

RP 83 (B) complied with.

(A J MUNRO) Sgt K 67150

The accused declines to cross examine the witness.

FIFTH WITNESS Prosecution

B 96925 CQMS HUGGETT CT, attached to the Cdn Army Leave Centre, having been duly sworn, states :

I am B 96925 CQMS HUGGETT CT, in charge of the QM stores at the First Cdn Army Leave Centre. I counted the two bundles of blankets in the presence of Sgt MUNRO. There were 22 blankets, 11 in each bundle. This was on the night of 28 Nov 44. I put the blankets back in stores.

RP 83 (B) complied with.

(C T Huggett) CQMS B69625

The accused declines to cross examine the witness.

...../3

SIXTH WITNESS
Prosecution

F 65157 Pte ROLFE GL, attached to the First Cdn Army Leave Centre, having been duly sworn, states :

I am F 65157 Pte ROLFE, GL, attached to the First Cdn Army Leave Centre. On the night of 28 Nov 44 at approximately 1830 hrs I went outside with Sgt MUNRO where he ordered me to take a soldier in charge and take him into the Leave Centre. This soldier was Pte BLANCHETTE.

RP 83(B) complied with.

(G L Rolfe) Pte F 65157

The accused declines to cross examine the witness.

SEVENTH WITNESS
Prosecution

B 63733 L/Cpl PARTRIDGE, FL, on strength 10 Cdn Base Rft Bn, having been duly sworn, states :

I am B 63733 L/Cpl PARTRIDGE, FL, on strength 10 Cdn Base Rft Bn, employed as Regtl Police. At approximately 1855 hrs on 10 Dec 44 I was on duty in the office of 10 CBR Bn cell block making out the guardreport when a soldier whom I recognized as H 115 Rfm HYDE MC, entered the office with a revolver and told me to get on my feet and in a cell. He locked me in along with L/Cpl MORTON in cell number 8. We were in the cell for about ten minutes until released by another soldier in the cell block. After our release I detailed L/Cpl MORTON to check the prisoners. There were 19 soldiers missing. Pte BLANCHETTE was missing with the others. I checked the cell blocks myself at 2359 hrs before turning over the cell block to the next duty cpl. Pte BLANCHETTE was missing. At 1600 hrs on 10 Dec 44 when I took over the cell block Pte BLANCHETTE was present.

RP 83(B) complied with.

(P L PARTRIDGE) L/Cpl B63733

The accused declines to cross examine the witness.

EIGHTH WITNESS
Prosecution

B 118099 L/Cpl MORTON, HA, on the strength of 20 Cdn Employment Coy, having been duly sworn, states :

I am B 118099 L/Cpl MORTON HA, on the strength of 20 Cdn Special Employment Coy. On 10 Dec 44 at 1730 hrs I was on duty as Regtl Police in the guardroom of 10 Cdn Base Rft Bn. The accused, Pte BLANCHETTE, whom I now recognize, was returned to his cell from meal parade. At 1850 hrs, while I was on guard at the door, two soldiers jumped me and took my pistol and forced L/Cpl PARTRIDGE and myself into a cell at gun point and locked the door. About ten minutes later we were released by some of the other prisoners. I reported the occurrence to the main gate, then returned and checked the cells at approximately 1900 hrs. I found the accused, along with 19 others, had escaped.

RP 83(B) complied with.

(H A MORTON) L/Cpl B 118099

The accused declines to cross examine the witness.

The Part II Order Extract Form, produced as documentary evidence, was read over to the accused, marked Exhibit A, signed by me and is attached hereto.

(G C Scott) Lt
Officer detailed to take
The Summary of Evidence

...../4

The certificate of apprehension under AA Sec 163(i)(j), produced as documentary evidence, was read over to the accused, marked Exhibit B and is attached hereto.

(G C Scott) Lieut
Officer Detailed to take
The Summary of Evidence

The accused, having been cautioned as follows :'Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give any evidence unless you wish to do so but whatever you say or any evidence you may give will be taken down in writing and may be [redacted] given in evidence'

having been duly sworn, states :

I am E 42230 Pte BLANCHETTE, O. R de Chaud on strength 10 Cdn Base Rft Bn. At approximately 1900 hrs 10 Dec 44 I proceeded to the latrine and on returning noticed the door of the cellblock open, and, noticing another soldier going out the door, I followed him out.

On the night of 28 Nov 44 I was coming along the street. I was coming down the right side of the street and when I came to the Leave Centre, I heard something fall on the ground. I could not see what it was as it was too dark. When I was passing in front of the door of the museum I saw a soldier [redacted] standing in the doorway and two other soldiers pass on the other side. When the two others soldiers passed in front of that man they said something which I did not understand as it was in English. A soldier who was standing in the door jumped over the fence and hid himself in a little bush there. At that moment I stopped and looked on the other side of the street. I thought a man had fallen from the window as some people were standing there. I stopped for about one minute and a soldier came up to me and said 'come with me' I went with the soldier into [redacted] the leave centre. ROBITAILLE was brought in at [redacted] the same time in [redacted] company with three soldiers. I knew him as he was in the same regiment. I did not know he had been on the other side of the street. The Lieutenant asked us some questions and then we were taken to 11 Bn.

(O Blanchette) Pte E 42230

I CERTIFY THAT THE FOREGOING SUMMARY OF EVIDENCE CONSISTING OF FOUR (4) PAGES WAS TAKEN DOWN BY ME IN THE PRESENCE AND HEARING OF THE ACCUSED.

I CERTIFY THAT RULES OF PROCEDURE 4 (C)(D)(E) & (F) HAVE BEEN COMPLIED WITH.

(G C Scott) Lt
Officer detailed to take
The Summary of Evidence.

In The Field
8 Feb 45.

DEC 19 AM

EXHIBIT "A"

X LIST

LE REGIMENT DE LA CHAUDIERE

Last Order No 83 — PART II ORDERS — Issued By — No 84

3 DEC 44 — CANADIAN SECTION G H Q 2nd ECHELON 21 ARMY GROUP — 7 DEC 44

"A" OFFICERS

1. STRENGTH INCREASE
(a) TOS X-3 List from R de Chaud wef dates shown

Lt-Col	PEGJ	MATHIEU		13 NOV 44
Capt	PJA	LABREQUE		24 NOV 44

2. EMBARKATION AND DISEMBARKATION
(a) Embarked UK 24 NOV 44 Disembarked HV EUROPE 25 NOV 44
TOS X-4 Staff List (12 Bn) wef 25 NOV 44

Capt	TP	TASCHEREAU	

3. INTERNAL POSTING
(a) Posted from X-4 List (10 Bn) to X-3 List wef 27 NOV 44

Lieut	WE	DELANEY	

4. STRENGTH DECREASE
(a) TOS X-4 List (13 Bn) to R de Chaud wef 22 NOV 44
Auth: AR3/1170 d/19 NOV 44

Lieut	JAJ	GUERIN	

"B" OTHER RANKS

5. STRENGTH INCREASE
(a) TOS X-3 List from R de Chaud wef dates shown

H10559	Pte	ARSENAULT	L		18 NOV 44
H19156	Pte	BILODEAU	R		23 NOV 44
H109520	Pte	BELANGER	R		18 NOV 44
D106078	Pte	BEAUDU	CLR		18 NOV 44
D143536	Pte	CHAGNON	R		15 NOV 44
H110648	Pte	CHIASSON	L		25 NOV 44
H6210	Pte	COTE	M		18 NOV 44
H10645	Pte	DIONNE	M		7 NOV 44
H48400	Pte	DUPERE	F		22 NOV 44
D106121	Pte (A/L s/t)	GIROUX	F		14 NOV 44
H11125	Pte	GODBOUT	PE	Carpenter "C"	23 NOV 44
H110088	Pte	GOLEAU	J		21 NOV 44
D157795	Pte	LEFEBVRE	E	Dvr Mech MV "C"	18 NOV 44
D51027	Pte	PAQUIN	R		24 NOV 44
D157690	Pte	PIGEON	A		24 NOV 44
H17768	Pte	VERREAULT	R		16 NOV 44
G53817	Pte	VIENNEAU	J.		24 NOV 44

(b) TOS X-3 (a) List from X-4 List wef 29 NOV 44 Att 20 Cdn Special Emp Coy

G51044	Pte	HACHEY	R

(c) AMENDMENT: Part II Order No 83 para 4 (j) d/13 JUL 44 insofar as it refers to the u/m is cancelled

G878	Pte	ROY	LW	X-6 List

6. ATTACHMENTS
(a) Ceases att 20 Cdn Special Emp Coy wef 17 NOV 44 Att 19 Cdn Special Emp Coy Remains on X-3 (a) List

D139174	Pte	DEMERS	JOR	Dvr Mech MV "C"
G57577	Pte	LAMTEIGNE	P	
G34826	Pte	ROBILLARD	E	

(b) Ceases att 20 Cdn Special Emp Coy wef 21 NOV 44 Att 19 Cdn Special Emp Coy Remains on X-3 (a) List

H12013	Pte	ROBITAILLE	JVR

X LIST

LE REGIMENT DE LA CHAUDIERE

6. ATTACHMENTS (CONT'D)

(e) Ceases att 21 Cdn Special Emp Coy wef 16 NOV 44 Att 19 Cdn Special Emp Coy Remains on X-3 (a) List
E10409 Pte VAILLANCOURT P

(d) Ceases att 20 Cdn Special Emp Coy wef 19 OCT 44 Att 21 Cdn Special Emp Coy Remains on X-3 (a) List
E13109 Pte ROBERT J

(e) Ceases att 19 Cdn Special Emp Coy wef 31 OCT 44 Att 20 Cdn Special Emp Coy Remains on X-3 (a) List
D157724 Pte MARTIN A

(f) Ceases att 20 Cdn Special Emp Coy wef 22 NOV 44 Att 19 Cdn Special Emp Coy Remains on X-3 (a) List
E11172 Pte LANDRY C Dvr Mech "C"

(g) Ceases att 21 Cdn Special Emp Coy wef 20 NOV 44 Att 19 Cdn Special Emp Coy Remains on X-3 (a) List
D157672 Pte LANGLOIS JP
E12077 Pte LAROCQUE P

7. INTERNAL POSTING

(a) Posted from X-2 List to X-4 List (10 Bn) wef 28 NOV 44
E42164 Pte FALARDEAU JP

(b) Posted from X-3 List to X-4 List (13 Bn) wef 20 NOV 44
E12113 Pte COUTURE G

(c) Posted from X-3 (a) List to X-3 List wef 19 NOV 44
Ceases att 19 Cdn Special Emp Coy
E10409 Pte VAILLANCOURT P

(d) Posted from X-3 (a) List to X-3 List wef 11 NOV 44
Ceases att 21 Cdn Special Emp Coy
E10423 Pte BIZIER A

(e) Posted from X-3 (b) List to X-4 List (10 Bn) wef 11 NOV 44
Ceases att 10 Bn 2 CBRG
Auth: 1 Can/344/Gen/1/3/AAG d/5 NOV 44
E101160 Pte HOULE A

(f) Posted from X-3 (b) List to X-4 List (10 Bn) wef 24 NOV 44
Ceases att 10 Bn 2 CBRG
Auth: 1 Can/344/Gen/1/3/AAG d/5 NOV 44
H67222 Pte ZASTRE LS

(g) Posted from X-4 List (10 Bn) to X-4 List (13 Bn) wef 29 NOV 44

E9232	Cpl	FROTEAU	L
E10404	Pte	SOUCHARD	R
F116481	Pte	CARTIER	AJ
E106658	Pte	DUBE	PE
D62378	Pte	LEDOUX	B
D157727	Cpl	RICHARDS	R
E5965	Pte	THERIAULT	P

(h) Posted from X-4 List (10 Bn) to X-3 List wef 22 NOV 44
E10461 Pte BEAUDIN A

X LIST

LES REGIMENT DE LA CHAUDIERE

7. INTERNAL POSTING (CONT'D)

(i) Posted from X-4 List (10 Bn) to X-4 List (13 Bn) wef 22 NOV 44

B149854	Pte	GIRARD	N
D157715	Pte	EMOND	JR
E42157	Pte	GAGNON	R
E48501	Pte	GALLANT	C
D146917	Pte	LYON	LM
A108617	Pte	PARE	C
043522	Pte	REGIMBALD	AJ
D141321	Pte	ROSS	JC
D46961	Pte	TESSIER	JG
E10190	Pte	THIBODEAU	X

(j) Posted from X-4 List (10 Bn) to X-3 (b) List wef 9 NOV 44
Att 10 Bn 2 CBRG

057549	Pte	DAIGLE	G

(k) Posted from X-4 List (10 Bn) to X-3 (b) List wef 9 NOV 44
Att 10 Bn 2 CBRG

E57683	Pte	DUBE	A

(l) Posted from X-4 List (10 Bn) to X-3 (b) List wef 9 NOV 44
Att 10 Bn 2 CBRG

D66821	Pte	OSBOURN	JR

(m) AMENDMENT: Part II Order No 71 para 3 (r) d/17 NOV 44
Insofar as it refers to the a/n is cancelled

B133358	Pte	GOSSELIN	A X-4 List (10 Bn)

8. ABSENT WITHOUT LEAVE

(a) AWL from 0830 hrs 21 OCT 44

C102404	Pte	LOYER	M	X-3 List

(b) AWL from 0830 hrs 21 OCT 44 Still absent 0830 hrs 29 OCT 44
(8th day)

C102404	Pte	LOYER	M	X-3 List

(c) AWL from 0830 hrs 21 OCT 44 Still absent 0830 hrs 12 NOV 44
(22nd day)

C102404	Pte	LOYER	M	X-3 List

(d) AWL from 0830 hrs 24 OCT 44

E10361	Pte	GIRARD	P	X-3 List

(e) AWL from 0830 hrs 24 OCT 44 Still absent 0830 hrs 1 NOV 44
(8th day)

E10361	Pte	GIRARD	P	X-3 List

(f) AWL from 0830 hrs 24 OCT 44 Still absent 0830 hrs 15 NOV 44
(22nd day)

E10361	Pte	GIRARD	P	X-3 List

(g) AWL from 2200 hrs 12 NOV 44

F36251	Pte	OUELLETTE	L	X-4 List (10 Bn)
E101160	Pte	HOULE	A	X-4 List (10 Bn)

(h) AWL from 2200 hrs 12 NOV 44 Still absent 2200 hrs 20 NOV 44
(8th day)

F36251	Pte	OUELLETTE	L	X-4 List (10 Bn)
E101160	Pte	HOULE	A	X-4 List (10 Bn)

8. ABSENT WITHOUT LEAVE (CONT'D)

(i) AWL from 2000 hrs 24 OCT 44
D133358 Pte GOSSELIN A X-4 List (10 Bn)

(j) AWL from 2000 hrs 24 OCT 44 Still absent 2000 hrs 1 NOV 44
(8th day)
D133358 Pte GOSSELIN A X-4 List (10 Bn)

(k) AWL from 2000 hrs 24 OCT 44 Still absent 2000 hrs 15 NOV 44
(22nd day)
D133358 Pte GOSSELIN A X-4 List (10 Bn)

(l) AWL from 1630 hrs 22 NOV 44
Z68014 Pte PICARD O X-4 List (10 Bn)

(m) AWL from 0930 hrs 26 NOV 44
H67222 Pte ZASIE LE X-4 List (13 Bn)

(n) AWL from 1400 hrs 25 NOV 44
E12113 Pte COUTURE G X-4 List (13 Bn)

9. PUNISHMENTS

(a) On 22 NOV 44 severely reprimanded for an off under AA 15 (1) AWL from 1730 hrs 21 NOV 44 to 1945 hrs 21 NOV 44 (Absent 6 hrs 15 mins) Forfs 1 days pay FRAI 149 (1) (a)
E9331 Cpl DERLOIS V X-4 List (10 Bn)

10. REMISSION OF SENTENCE

(a) Released from 1 Cdn Fd Pun Camp wef 26 NOV 44 20 days remission of sentence earned under RULES FOR DETENTION BKS AND WIL
PRISONS
E42164 Pte FALARDEAU JF X-2 List

11. STRENGTH DECREASE

(a) SOS as dos wef 15 NOV 44 having been dos illegally absent by A OT IMQ from 0830 hrs 24 OCT 44 Deficiencies in kit nil
E10361 Pte GIRARD P X-3 List

(b) SOS as dos wef 15 NOV 44 having been dos illegally absent by A OT IMQ from 0830 hrs 21 OCT 44 Deficiencies in kit nil
C102404 Pte LOYER X X-3 List

(c) AMENDMENT: Part II Order No 29 parn 10 (b, d/11 AUG 44 Insofar as it refers to the w/n is cancelled
E10435 Pte LARBEE R X-3 List

(d) SOS X-4 (a) List to 1 Cdn PW Transit Camp wef 26 NOV 44 Ceases att 1 Cdn PW Escort Unit
Auth: EA7X/180 d/29 NOV 44
D57220 Sjt AUCHON JCG

(e) SOS X-4 List (10 Bn) to X-9 List wef 1 DEC 44
Att 10 Bn 2 CBRG
D139058 Pte LAPORTE JF

(f) SOS X-4 List (10 Bn) to X-9 List wef 27 NOV 44
Att 10 Bn 2 CBRG
E4360 Pte (A cpl) GAGNON E

(g) SOS X-4 List (10 Bn) to X-9 List wef 25 NOV 44
Att 10 Bn 2 CBRG
E21407 Pte GARNEAU JG

11. STRENGTH DECREASE (CONT'D)

(h) SOS X-4 List (10 Bn) to R de Chaud wef 5 NOV 44
Auth: 2 Ech99/18/DAAG/1 d/4 NOV 44
E42702 Pte BOUDRAULT N
C103182 Pte LECLERC K

(i) SOS X-4 List (10 Bn) to R de Chaud wef 17 NOV 44
Auth: EA3/1119 d/12 NOV 44
L102793 Pte LETOURNEAU AEL

(j) SOS X-4 List (10 Bn) to R de Chaud wef 4 NOV 44
Auth: AR3/1053 d/29 OCT 44
A107087 Pte MARCHAND HA

(k) SOS X-4 List (10 Bn) to R de Chaud wef 4 NOV 44
Auth: AR3/1053 d/29 OCT 44
M56341 Pte DUFRESNE L

(l) SOS X-4 List (10 Bn) as des wef 21 NOV 44 having been dec illegally absent by A CT INQ from 0800 hrs 25 OCT 44 Deficiencies in kit $61.27
E12130 Pte PERRON R

(m) SOS X-4 List (10 Bn) as des wef 21 NOV 44 having been dec illegally absent by A CT INQ from 1600 24 OCT 44 Deficiencies in kit $61.27
G51046 Pte LEBACY JE

(n) SOS X-4 List (10 Bn) as des wef 21 NOV 44 having been dec illegally absent by A CT INQ from 2000 hrs 24 OCT 44 Deficiencies in kit $61.27
D133356 Pte GOSSELIN A

(o) SOS X-4 List (13 Bn) as des wef 28 OCT 44 having been dec illegally absent by A CT INQ from 0800 hrs 27 SEP 44 Deficiencies in kit $92.48
E6171 Pte DESROCHERS R

(p) SOS X-4 List (13 Bn) to R de Chaud wef 21 NOV 44
Auth: AR3/1170 d/19 NOV 44
D157657 Pte BEAUDOIN P
E42286 Pte COLLIN P
E11160 Pte DUGUAY K

(q) SOS X-4 List (13 Bn) to R de Chaud wef 17 NOV 44
Auth: AR3/1119 d/12 NOV 44
E10231 CQMS LECLERC A
D157770 Pte MOREAU JP

(r) SOS X-4 List (13 Bn) to R de Chaud wef 7 NOV 44
Auth: AR3/1070 d/5 NOV 44
D157658 Pte BRIAND J
E9353 Pte LEBLANC E
C9508 Pte MARIER RV
B110109 Pte RIOUX BJ
G6185 Pte VOTOUR AJ

(s) SOS X-4 List (13 Bn) to R de Chaud wef 21 NOV 44
Auth: AR3/1170 d/19 NOV 44
E6203 Pte CHAMBERLAND R Dvr Mech "C"
E29478 Pte LANGLOIS G

11. STRENGTH DECREASE (CONT'D)

(t) SOS X-4 List (13 Bn) to R de Chaud wef 17 NOV 44
Auth: AR3/1119 d/12 NOV 44

E6096	Pte	BELANGER	M	
E42289	Pte	BOURGET	A	
D56451	Pte	BROUSSEAU	PE	
M107245	Pte	BROWN	AR	
E10630	Pte	CAISSY	L	
E5785	Pte	CHICOINE	S	
E42174	Pte	COTE	V	
D143325	Pte	DE GAGNE	A	
E11090	Pte	DEGARIE	G	
E10397	Pte	DOUCET	E	
D138992	Pte	DUMONTIER	JCOA	
E12150	Pte	DUPUIS	A	
E5521	Pte	GIRARD	M	
E10363	Pte	(A cpl) HACHEY	L	
D143212	Pte	HUOT	L	
E5846	Pte	ISABELLE	V	Dvr Mech "C"
E1633	Pte	LACHANCE	R	

(u) SOS X-4 List (13 Bn) to R de Chaud wef 23 NOV 44
Auth: AR3/1170 d/19 NOV 44

B149254	Pte	GIRARD	M	
D157715	Pte	EMOND	R	
E42157	Pte	GAGNON	R	Motor Mech "B"
E48501	Pte	GALLANT	C	
D140917	Pte	LYONNAIS	LW	
A108617	Pte	PARE	C	
C41522	Pte	REGIMALD	AJ	
D141321	Pte	ROSS	JC	
D46961	Pte	TESSIER	JC	
E10190	Pte	THIBODEAU	X	

(v) SOS X-4 List (13 Bn) to R de Chaud wef 17 NOV 44
Auth: AR3/1119 d/12 NOV 44

D124705	Pte	(A cpl) LAMONTAGNE	R	
E13179	Cpl	LEBLANC	M	
B111430	Pte	LEGENDRE	RJ	
E42368	Pte	LEMELIN	HL	
E28313	Pte	MICHAUD	J	
E106699	Pte	OUELLET	J	
C34069	Pte	SIMARD	A	

(w) SOS X-4 List (13 Bn) as des wef 22 NOV 44 having been dec illegally absent by A CT INQ from 0930 hrs 29 OCT 44
Deficiencies in kit $104.42

D36050	Pte	LAROUCHE	A

(x) SOS X-4 List (13 Bn) as des wef 21 NOV 44 having been dec illegally absent by A CT INQ from 0900 hrs 22 OCT 44
Deficiencies in kit $104.42

D121976	Pte	ROBITAILLE	D

Exhibit A
G.C. Scott Lt.

(G C STEWART-PATTERSON) Lieutenant
For Officer IC
CANADIAN SECTION G H Q 2nd ECHELON 21 ARMY GROUP

DMS.

Date: 7 Feb 45

E 42230 Pte BLANCHETTE O
(NAME OF ACCUSED)

1. I hereby acknowledge receipt of one copy of CHARGE SHEET and one copy of the SUMMARY OF EVIDENCE delivered to me 14 Feb 45.
(Date)

2. (a) ~~I request that~~ _____
~~if available, be appointed. OR~~

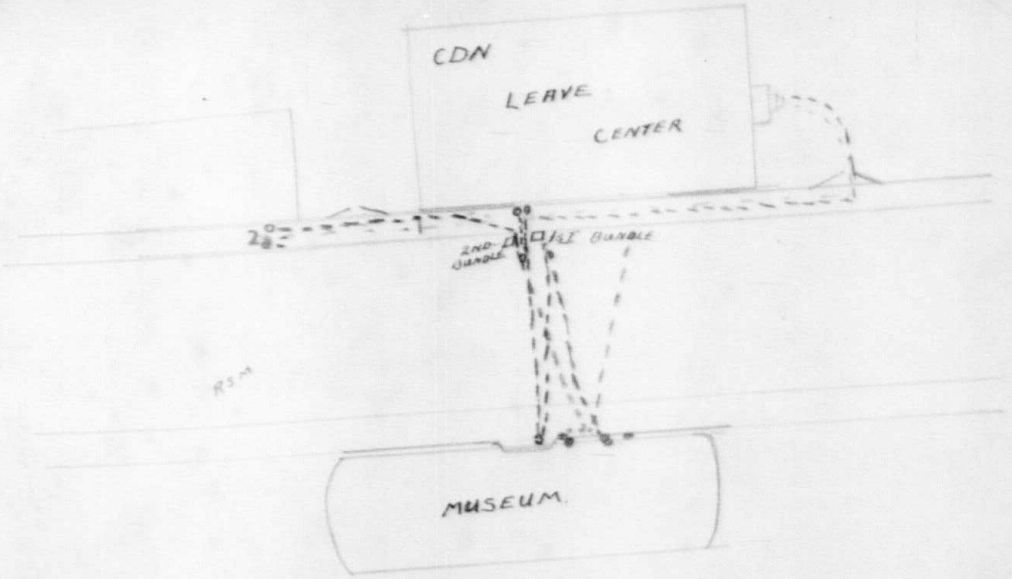
(b) I request that an officer be appointed as my Defending Officer at my trial by Court Martial.

(Delete either (a) or (b))

(SIGNED) O Blanchette
(O Blanchette)

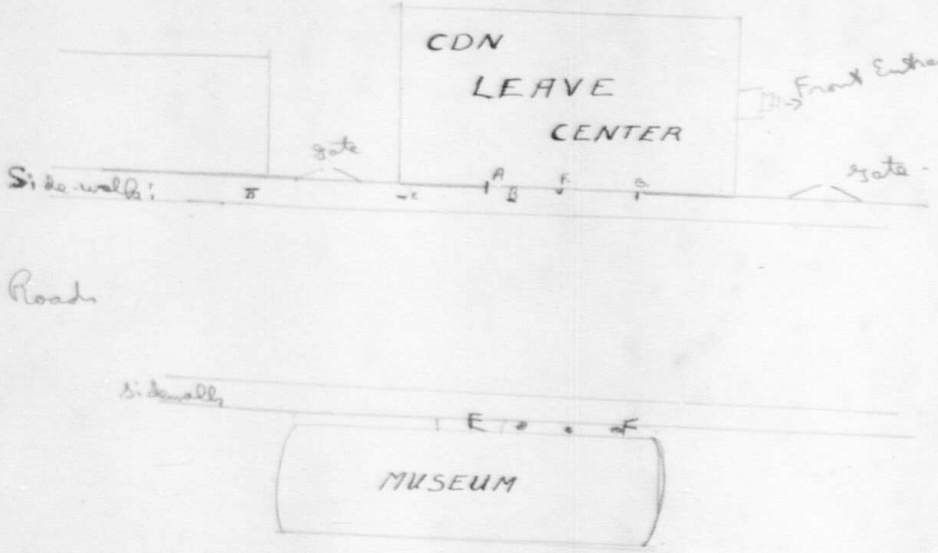
I hereby certify that LT J.L.M. LAMARCHE was appointed to defend E-42230 Pte BLANCHETTE O at his forthcoming trial by Court Martial and that the said Officer was notified that he was Defending Officer on 14 Feb 45
(Date)

J.M. Warty Jr
Ass. (Adjutant)
15 Cdn. Base Rft. Hq.,



This is Exhibit "A" referred to in the Summary of Evidence in the cases G Scott Lt of Robitaille and Blanchette

Σ "A"
Our Executive Ho
J A.



This is Exhibit "A" referred to in the Summary of Evidence in the cases of Pte Robitaille & Blanchette

G C Scott Lt

RSM - Lacroix

A - Two men standing next to bldg.
B - with 1st sight of the 2 men
C - with turns around 1st time
D - with " " 2nd time

Frith:

E - man waving his arms - signals -
F - 3rd bush from mus. doorway & point where Gnr Dodd discovers a handle

PART II ORDER EXTRACT FORM

TO: Officer Commanding
10 Bn 2 CBRG
Cdn Army Overseas

99/20/Chaud/1 (A5b)

6 JAN 19 45

EXTRACTS FROM: Unit LE REGIMENT DE LA CHAUDIERE

Part II Order No. 103 dated 31 DEC 44

ABSENT WITHOUT LEAVE

AWL from 0815 hrs 8 NOV 44 App from AWL 1630 hrs 28 NOV 44
E42230 Pte BLANCHETTE O

Exhibit A
Gilbert St.

The following documents are: ~~attached. Please acknowledge receipt on attached duplicate.~~
~~required. Please forward same.~~

CERTIFIED TO BE A TRUE EXTRACT FROM THE REGIMENTAL BOOKS AND DOCUMENTS IN MY CUSTODY

Originating Clerk's Initials GV

G. E. Marin
(G.E. Marin) Lieutenant for
(W.A. Murray) Lieutenant for
Officer in Charge Records "B"
Canadian Section, GHQ, 2nd Echelon 21 A Gp

ECH—6
40 P & S 1276 (4032)

CERTIFICATE UNDER ARMY ACT. SECTION 53 (1) (j)

Certified that No. E.42230 Rank Pte Name Blanchette, O.

of the 43 Coy 10 Bn 2 CBRG Regt., ~~surrendered to~~ No. A.3.15

was apprehended by

Rank Sgt Name Sleeman, R. of the 2 Cdn L of C Provost Coy

Detach at Ghent at 0415 hrs, on the 28 Dec 44.

day of December as an absentee without leave.

He was wearing Military Uniform at the time of his ~~Surrender~~ Arrest.

~~Civilian Clothes.~~

Place Ghent Belgium

Date 28 Dec 44

H.W. Mahaffy

Canadian Provost Corps.

1/6 Ghent Detach

GHENT 2 CDN. L. of C. PROVOST COY

Exhibit B

CERTIFICATE UNDER ARMY ACT. SECTION 163 (1) (j)

Certified that No. D121976 Rank. PTE Name ROBITAILLE D.

of the 10 BN. 2 C.B.R.G. Regt, [redacted] No. A103180

was apprehended by

Rank. L/CPL Name. HANLEY W.F. of the 2 CDN. L. of C. PROV. COY.

GHENT DETACH at GHENT BELGIUM at 1330 hrs, on the 23

day of DEC. 44 as an absentee without leave.

He was wearing Military Uniform at the time of his [redacted] Arrest.

[redacted]

Place GHENT BELGIUM

Date 29 DEC. 44.

GHENT DET.

H. W. Mataffy LIEUT

[redacted] GHENT DETACH

2 CDN. L. of C. PROV. COY. 21 A. GRP.

Exhibit B

Gilbert W.

LIST OF WITNESSES

FIRST WITNESS	Lieut, C.N. Power,	Officer i/c Cdn Leave Centre.
SECOND WITNESS	H87360 Cpl Firth, R.M.	Attached to Cdn Leave Centre.
THIRD WITNESS	K45986 Gnr Dodd, D.J.	Attached to Cdn Leave Centre.
FOURTH WITNESS	K67150 Sgt Munro, A.J.	Attached to Cdn Leave Centre.
FIFTH WITNESS	B96925 CQMS Hagget, C.T.	Attached to Cdn Leave Centre.
SIXTH WITNESS	P65157 Pte Rolfe, G.L.	Attached to Cdn Leave Centre.
SEVENTH WITNESS	B63733 L/Cpl Partridge, J'L.	10 CBR Bn. 2 CBR Gp.
EIGTH WITNESS	B118099 L/Cpl Morton, H.A.	20 Spec Emp Coy, 10 CBR Bn.

LIST OF EXHIBITS

EXHIBIT "A"	The part 11 orders.
EXHIBIT "B"	Certificate of apprehension.

I CERTIFY THAT I HAVE RECEIVED FREE OFCHARGE A COPY OF THE CHARGE SHEET, SUMMARY OF EVIDENCE, LIST OF WITNESSES, AND A LIST OF EXHIBITS.

I DO DESIRE THE SERVICES OF AN OFFICER TO REPRESENT ME AT MY TRIAL BY COURT MARTIAL.

H Robitaille

(H. Robitaille) D121976, Pte.

LIST OF WITNESSES

FOR THE PROSECUTION

M-66663	RSM	LaCROIS, J.E.A.	No. 1 Cdn Leave Centre
M-87360	Cpl	FLYNN, R.M.	attached No. 1 Cdn Leave Centre
M-45906	Gnr	DODD, D.F.	attached No. 1 Cdn Leave Centre
M-66157	Pte	HOLME, C.E.	attached No. 1 Cdn Leave Centre

FOR THE DEFENCE

NIL

LIST OF EXHIBITS

Exhibit "A" - Sketch of routes taken.

I CERTIFY THAT I HAVE RECEIVED FREE OF CHARGE, THE CHARGE SHEET, SUPPLEMENTARY SUMMARY OF EVIDENCE, THE LIST OF WITNESSES, AND A LIST OF EXHIBITS.

I DO DESIRE THE SERVICES OF AN OFFICER TO REPRESENT ME AT MY TRIAL BY COURT MARTIAL.

J. Robitaille

(J. ROBITAILLE) Pte M-121975

Date: 7 Feb 45

D121976 Pte. ROBITAILLE, D.
(NAME OF ACCUSED)

1. I hereby acknowledge receipt of one copy of CHARGE SHEET and one copy of the SUMMARY OF EVIDENCE delivered to me 13 Feb 45.
(Date)

2. (a) ~~I request that~~

~~if available, be appointed. OR~~

(b) I request that an officer be appointed as my Defending Officer at my trial by Court Martial.

(Delete either (a) or (b))

(SIGNED) D Robitaille
(D121976 Pte ROBITAILLE, D)

I hereby certify that LT. LMA LAMARCHE ~~[illegible]~~ was appointed to defend D-121976 Pte ROBITAILLE R at his forthcoming trial by Court Martial and that the said Officer was notified that he was Defending Officer on 13 Feb 45
(Date)

[illegible] Warty Jr
(Adjutant)
12 Cdn. Base Rft. Bn.,

LIST OF WITNESSES

FOR THE PROSECUTION

M-66663	RSM	LaCROIS,	J.E.A.	No. 1 Cdn Leave Centre
H-87360	Cpl	FRITH,	R.M.	attached No. 1 Cdn Leave Centre
K-45986	Gnr	DODD,	D.J.	attached No. 1 Cdn Leave Centre
F-65157	Pte	ROLFE,	G.L.	attached No. 1 Cdn Leave Centre

FOR THE DEFENCE

NIL

LIST OF EXHIBITS

Exhibit "A" - Sketch of routes taken

I CERTIFY THAT I HAVE RECEIVED FREE OF CHARGE, THE CHARGE SHEET, SUPPLEMENTARY SUMMARY OF EVIDENCE, THE LIST OF WITNESSES, AND A LIST OF EXHIBITS.

I DO DESIRE THE SERVICES OF AN OFFICER TO REPRESENT ME AT MY TRIAL BY COURT MARTIAL.

(O. BLANCHETTE) Pte E-42230

LIST OF WITNESSES

Lt C.N. POWER		
H 87360	Cpl FRITH RM	First Cdn Army Leave Centre
K 45986	Gnr DODD DJ+	First Cdn Army Leave Centre
K 67150	Sgt MUNRO AJ	First Cdn Army Leave Centre
B 96925	CQMS HUGGETT CF	First Cdn Army Leave Centre
F 65157	Pte ROLFE GL	First Cdn Army Leave Centre
B 63733	L/Cpl PARTRIDGE FL	First Cdn Army Leave Centre
B118099	L/Cpl MORTON HA	10 Cdn Base Rft Bn Att 10 Cdn Base Rft Bn

LIST OF EXHIBITS

EXHIBIT A	Part II Order Extract Form
EXHIBIT B	Certificate of Apprehension under AA Sec 163(1)(d)

I CERTIFY THAT I HAVE RECEIVED FREE OF CHARGE A COPY OF THE CHARGE SHEET, SUMMARY OF EVIDENCE, LIST OF WITNESSES, AND A LIST OF EXHIBITS.

I DO DESIRE THE SERVICES OF AN OFFICER TO REPRESENT ME AT MY TRIAL BY COURT MARTIAL.

O Blanchette

(O Blanchette) E 42230

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D121976 PTE ROBITAILLE D. CHARGE SHEET No 3

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. SEC 15(1)	GUILTY	GUILTY	
2nd A.A. SEC 15(1)	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

Om E
J A

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E 42230 PTE BLANCHETTE. O. CHARGE SHEET No 2.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. SEC 15(2)	GUILTY	GUILTY	
2nd A.A. SEC 15(1)	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

4H-15.

Pte. Robitaille M.D.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p. 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Charge	Not Guilty	Not Guilty	Mod
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for beginning on (date)
(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of days, of which days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

6 Nov 44 (Sgd) President (RP 45, 50.)
Date awarded.

(Sgd) Judge-Advocate, if any.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd)

Date Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED "BOFF" DEC 44 JAG BRANCH CMHQ

RECORDED AT CMHQ IN AB 160

FIELD GENERAL COURT-MARTIAL

Convened by Order dated 8 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.
B/139634	Pte	MORRIS DONALD	ROBICHAUD

PROCEEDINGS REVIEWED

REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS REVIEWED Date 17 DEC 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 8 NOV 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 13/5 4

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for duties and powers and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to as interpreter ? Ans

The Interpreter is sworn.(1) Do you object to as shorthand writer ? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc

President	LT-COL	J.A. DESTRAZE	3rd Can. A.A. Bde
Member	CAPT.	T.J. MURRAY	3rd Can. Inf. Div.
Member	LT	W.J. NEILL	3rd Can. Inf. Div.
Judge-Advocate			
Prosecutor	CAPT.	A.M. MATHESON	J. Adv. G.
Defending Offr	LT	H.K. ROBERTSON	J. Adv. G.

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dr p 83.)

A8. The accused B/139634 Pte ROBITAILLE M.O. before arraignment make(s) (no) (a) plea (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and Finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 39, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB 160 Ref- Vol III Fol 26.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is ~~disallowed on the~~ ..... ~~charge(s) and~~ allowed on ~~the~~ ..... charge(s), ~~and that, accordingly, the trial will proceed on the former,~~ but the accused is ~~(are)~~ found Not Guilty on the ~~latter~~ charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. 3 As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused B-139634 Private Morris Donald ROBITAILLE SOUTH SASKATCHEWAN REGIMENT, a soldier of the Canadian Army Overseas, is charged with, when on active service,

FIRST CHARGE
Sec 41
ARMY ACT

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY STEALING

in that he.

In the Field on 4 Nov 44 stole a box containing 3000 Belgian f ancs the property of Mr. Pieter Kerseboom-Pearce, Willebrook, Belgium.

In the Field
7 Nov 44

Geo B. Buchanan
(George B. Buchanan) Major.,
A/Officer Commanding,
South Saskatchewan Regiment,
C.A.(O).

Approved on behalf of the Judge Advocate General in accordance with R.R.(Can) 540
J.H. Haugh Major
D.J.A. Cdn Sec GHQ 2 Ech

TO BE TRIED BY FGCM

8 Nov 44.

[illegible]
Maj

FIELD GENERAL COURT-MARTIAL

CFA66 (In lieu of AFA8)
40/FA8/1607 (2869)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court, RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 139634	Pte. —	MORRIS DONALD	ROBITAILLE	S. SASK. R.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 8 NOV 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint ~~(a) three Offrs to form the Court, (b) a Pd Offr as President~~, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint an Judge-Advocate thereat the Offr mentioned~~ hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	J A DEXTRAZE	Fus. MR

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	T. D. MURRAY	Cameron of C
~~Lt~~ Lt	W. G. NEILL	Cameron of C

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
—	—	—

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
—	—	—

On Active Service in the Fd

in BELGIUM (Country.)

K. L. Lethbridge (Signed personally. RP 105 fn 2.)

Maj (Rank.)

Date 8 NOV 44

A/ Commanding 6 Cdn Inf Bde.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE
(K.R. Can Para 557)

I certify that I have this morning examined No. B 139 634

Pte ROBITHILLE N.D. of South Saskatchewan Regiment, and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station Field

Date 8 Nov 54

R F Ingram Capt
Medical Officer

Copy per

INTERPRETER

L.86889, Pte. Hintz, A.O. having been duly sworn, acted as interpreter for Mr. Kerneboom-Pearce who gave evidence in German.

(Sgd) D D Hintz
L.86889 Pte. Hintz, A.O.

Mr. Robinaillo

1st Charge

Witness identifies Mrs Kerrebrum - Pearce etc

I identify accusing as being in Cafe.

Was he alone at any time A. — No.

I felt attack coming and sat in kitchen and felt nothing else for a few moments.

Q. Where was cash box.

A. In kitchen.

Q. Could it have been stolen before.

A. No.

Q. When did you notice cash box was gone.

A. I don't know other stroke.

Q. Could any come down from the room during this time.

A. Yes.

Q. If someone could go out your Cafe ~~[illegible]~~ over the fence could not someone come in that way

A. — Yes.

2

Mr. Pearce.

Mr. Soldiers in Kitchen when I changed money.
I saw accused digging in manure ~~[illegible]~~
and took out what looked like my
money box.
I recognize accused as digging in
manure pile by the light.
Q. Where was the cash box.
A. In the cupboard in the Kitchen.
Q. How many times was accused digging
in manure.
A. Once.
Q. How many of the seven could have taken
the box.
A. Any one of the seven.

SUMMARY OF EVIDENCE IN THE CASE OF B.139634, Pte. Robitaille, M.D., South Saskatchewan Regiment, a soldier of the Canadian Army Overseas.

The C.O. has directed that the evidence be taken on oath.

FIRST WITNESS for the prosecution.
Having been duly sworn states:
I am Mrs. Kerseboom-Pearce proprietress of a cafe in Willebrook, Belgium. These two boys, Pte. Caldwell and Pte. Robitaille, came into the kitchen. There were 5 other boys. There came about 20 boys into the pub, and my husband had to shave 2 or 3 of them, and I had to leave the boys alone in the kitchen to go out and tap the beer. During that time my husband changed money out of the box in the cupboard. I was in the bar. Later they were going home out the back and I told them they couldn't go out the back as there was no entrance. They went to the front door, came back again into the kitchen, and said they were going to the lavatory. I asked my husband to see what they they were doing there. The garden gate was open, and my husband saw Pte. Robitaille, M.D., take the box out from under the manure. As I had a breakdown I had to remain in the house. Later an armed soldier, a neighbor and myself reported the incident to an officer of the South Saskatchewan Regiment at the Odeon Theatre.

Accused declines to cross-examine.

(Sgd) Mrs Kerseboom Pearce
Mrs. Kerseboom-Pearce

SECOND WITNESS for the prosecution:
Having been duly sworn states:
I am Mr. Kerseboom-Pearce proprietor of a cafe in Willebrook, Belgium. Pte. Caldwell and Pte. Robitaille came into the kitchen along with 5 others. We invited them in the kitchen because there was a fire and it was warm. I was back and forth between the bar and the kitchen where I was cutting hair for some of the men, during which time I was changing money from the cash box in the cash box where the seven men were. They were still there when my wife had a nervous breakdown. These two men left and there were only three others in the kitchen, but these two returned immediately. Pte. Caldwell and Pte. Robitaille then went out the back. They were gone a long time so my wife asked me to go out and see what they were doing. I went out and looked through the gate and saw Pte Robitaille digging in the manure, and take out our cash box. I said, "What are you doing there?" I could not understand what they answered. Pte. Caldwell was urinating. He came over and slammed the gate jamming my head between the gate and the post. I wasslightly stunned and went back into the house and told my wife that I had nearly been killed out there. I locked the doors when I came back in. Then my wife, a neighbor, an armed soldier, and myself went out in the back to search, but there was no sign of anyone. Before going out to search, I checked on the cash box but it was gone. My wife, the nieghbor, and the armed soldier reported it to a South Saskatchewan Regiment officer at the Odeon Theatre.

Cross-Examined by the accused:

Q.1. Was I present when you were changing money from the cash box?
A.1. Yes.
Q.2 How did you know it was me by the manure?
A.2. Pte. Caldwell and Pte. Robitaille were the only ones that went out to the back and Pte. Caldwell came close to me and I recognized him and thought the other was Pte. Robitaille.

Q.3. How do you know we were the only ones to leave the kitchen by the back door?
A.3. As far as I know you were the only ones that went out in the back.
Q.4. Is it not true that some soldiers left the cafe by the back door to go elsewhere?

(Sgd) _____
Mr. Kerseboom-Pearce

The accused having been duly cautioned in accordance with RP 4 (e), says:
I am B.139634, Pte. Robitaille, M.D., South Saskatchewan Regiment. On the evening of 4 Nov 44 I went into a cafe operated by Mr. Kerseboom-Pearce and was in the bar for about 15 minutes and Mrs. Kerseboom-Pearce invited me into the kitchen. Pte. Caldwell was in the kitchen drinking beer with 6 other soldiers. I was there for several hours and during that time I also went upstairs with the girl who was there. I came down and we drank some more beer. During the several hours we were there quite a number of soldiers were in and out of the kitchen. Mrs. Kerseboom-Pearce had a nervous breakdown while we were there so we decided to leave their cafe. We went out the back way and we stopped to urinate and then went on to another cafe.

(Sgd) _____
B.139634 Pte. Robitaille, M.D.

FIRST WITNESS for the defence:
Having been duly sworn states:
I am B.26358 Pte. Caldwell, H.J., South Saskatchewan Regiment. On the evening of 4 Nov 44 I went into a cafe operated by Mr. Kerseboom-Pearce, and went into the kitchen were it was warm. Later Pte. Robitaille came in and we were there for several hours, drinking beer and I went upstairs with a girl who was there. I stayed there for a while and then came back to the kitchen. Later I left the pub with Pte. Robitaille by the back way and I stopped to urinate. The gate was open so I pushed it shut and ~~#~~ and we left. As far as I know there was no one standing in the gateway.

(Sgd) _____
B.26358 Pte. Caldwell, H.J.

I wish a defending officer.

(Sgd) _____
B.139634 Pte. Robitaille, M.D.

CERTIFIED THAT RP 4 complied with.
In the Field
7 Nov 44

_____ Capt.

SOUTH SASKATCHEWAN REGIMENT

B-139634
To : Pte. Robitaille, M.D.

Take notice that at your trial Mr. Pieter Kerseboom-Pearce will give evidence that the box allegedly stolen from him contained 3000 Belgian francs, and that Mrs. Kerseboom-Pearce will also give evidence that the said box contained 3000 Belgian francs.

(Sgd) [illegible]

4/N-46

Pte. Robitaille M. D.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-139634 - Pte ROBITAILLE - M.D. S. Sask R.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for two (2) years.

(Sgd) ..... Judge-Advocate, if any. 20 Dec 44 Date awarded. (Sgd) F. Lee Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.(1)~~ (1. AA 57A. Delete if not used.)

Date 22 Dec 44 (Sgd) A.G. Kemp Brig Commanding 6 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

B/139634 Pte. Robitaille, M. D. 22 Dec 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 31 JAN 1945 ADJUTANT GENERAL'S BRANCH

RECORDED AT CMHQ IN AB 160. JAN-46

FIELD GENERAL COURT-MARTIAL

CPA&R (To lieu of AFA&R) 40/P & R/1000 (8144) 4/38B

Convened by Order of Major F. Lee Comdg 6 C I D dated 20 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-139634	Pte.	MORRIS DONALD	ROBITAILLE	Can. Inf. Sask R.

PROCEEDINGS REVIEWED Judge Advocate's Dept 8 Feb 45 WING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 20 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins RPs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132).

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1123 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: Do you object to ..... as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F. LEE	S. Sask R.
Member	Capt	F. W. A. GLOSSOP	Can. A.C.
Member	Lt.	L. TANGUAY	Fus. M.R.
Judge-Advocate			
Prosecutor	Capt	E.S. HASLETT	S Sask R.
Defending Offr	Lt.	G.W. WICKARD	S Sask R.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 1.)

A8. The accused B-139634 Pte Robitaille - M.D. before arraignment make(s) (no) (a) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is ~~closed~~ and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 5.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Vol III Fol 43

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, ete, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement.* Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Insert Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans..... Do you intend to call witnesses on your behalf ? Ans..... Are they witnesses as to character only ? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans.....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 40 fn 1 para 3.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans.....
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(7), KR Con 564. Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*
2. *RP 50. As to release from arrest by*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B 139634 Pte ROBITAILLE, Morris Donald, South Saskatchewan Regiment, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
A.A. Sec 15 (1)

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 1800 hrs 14 Nov 44 until apprehended by the Cdn Pro Corps at Antwerp at 1330 hrs 11 Dec 44.

Absent 26 days, 19 hrs, 30 mins.

In the Field
17 Dec 44

(V. Stott) Lt-Col.
Officer Commanding
S Sask R CA (O)

To be tried by a Field General Court Martial.

(R.H. Keefler) Brig
Comd 6 Cdn Inf Bde

In the Field
19 Dec 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fnt, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B139634	Pte	MORRIS DONALD ROGERVILLE (A1)		1 Sask R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 Dec 44 ~~endorsed by me (or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". by an Offr of my staff for me A.M.K.

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~) A.M.K.

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ A.M.K.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint an Judge-Advocate thereat the Offr mentioned hereunder.~~ A.M.K.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	F LEE	S. SASK R.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt.	F.W.H GLOSSOP	Can of C.
LT.	L TANGUAY	Fus. M. R.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
LT.	J.A MacLEAN	Can of C.

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
–	–	–

On Active Service in the Fd

In HOLLAND (Country.)

Dat 19 Dec 44

(Signed personally. RP 107 fn 2.) (Rank.)

Commanding 6 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE
(K.R. (Can) Para 557)

I certify that I have this morning examined No. B139634.....
Pte. Robitaille M.D. ....of South Saskatchewan Regiment, and in my
opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station W.H. Field.....
Date Wed. Dec. 20th 44

[illegible] Capt

Plea for Mitigation

for

Pte. Rohtaille M.D.

Mr. President And Members Of the Board.

Pte Rohtaille is now only 18 years old. He joined the ~~army~~ army at the age of 17 in Jan. 1943. He went into action with the R.H.R. around July 24th, was wounded in Caen and spent three weeks in hospital.

On returning to the regt his nerves were in bad shape but he stayed with the regt for six weeks, until finally the mortar fire and shelling were more than he could stand and he left.

G.W. Trimble Lieut

A

SUMMARY OF EVIDENCE IN THE CASE OF No. B 139634 Pte ROBITAILLE, Morris Donald, of the South Saskatchewan Regiment, a soldier of the Canadian Army Overseas charged with:-

(1) WOAB - Absence without leave. A.A. Sec 15 (1)

By direction of the Commanding Officer the evidence is to be taken on Oath.

FIRST WITNESS - Capt. G.S. Haslett, South Saskatchewan Regiment, Canadian Army Overseas, sworn states:-

I present Certified True Copy of Extract from Part II Orders signed by Officer in charge of Records, South Saskatchewan Regiment and purporting to show the accused B 139634 Pte ROBITAILLE, Morris Donald, whom I recognize as AWL from 1800 hrs 14 Nov 44 (Attached as Exhibit "A"). I present also Army Form W 3011A signed by Officer in charge of Records, South Saskatchewan Regiment purporting to show the accused B 139634 Pte ROBITAILLE, Morris Donald to be still absent at 1800 hrs 6 Dec 44 (22nd day)(Attached as Exhibit "B"). I present also Certificate of Apprehension signed by Sgt R.H. GROULX, 7 Cdn Provost Section and purporting to show the accused B 139634 Pte ROBITAILLE, Morris Donald was apprehended at Antwerp at 1330 hrs 11 Dec 44 (Attached as Exhibit "C")

The accused declines to cross examine.

Haslett

(G.S. Haslett) Capt.
South Saskatchewan Regiment

SECOND WITNESS - L84537 A/Sgt. Ault, A.K. South Saskatchewan Regiment, Canadian Army Overseas, sworn states:-

I am L84537 A/Sgt. Ault, A.K. Platoon Sgt. of 15 platoon C Coy. South Saskatchewan Regiment. On 14 Nov.44 at 1800 hrs. when I checked the platoon I found B139634 Pte ROBITAILLE, M.D. absent which I reported to CSM Smith J.A., MM. Since that date Pte Robitaille, M.D. has been absent from 15 platoon. The first information I had of his whereabouts was when I learned that he had been returned to the battalion under close arrest and was held by the regimental provost.

The accused declines to cross examine.

L.84537 A/Sgt Ault A.K.
L84537 A/Sgt. Ault, A.K.
SouthSaskatchewan Regiment.

The accused having been duly cautioned in accordance with R.P. 4(e) says:-

" I do not wish to make a statement".

B-139634 Pte. Robitaille M.D.
B139634 Pte Robitaille, M.D.
South Saskatchewan Regiment.

The accused does not wish to call witnesses in his defence.

Certified that RP 4 has been complied with.

In the Field
18 Dec 44

(A.F.W. Watkinson) Lieut.
Officer detailed to take the Summary

List of witnesses

For Prosecution: Capt. G.S. Heslett, S. Sask. R.
L 84537 A/Sgt Ault, A.K., S. Sask. R.

For Defense: Nil

List of Exhibits

"A" Certified True Copy of Extract from Part II Orders.

"B" Certified True Copy of Army Form # 3011A.

"C" Certificate of Apprehension.

The accused wishes an officer to defend him at his trial.

Exhibit "A"

THE SOUTH SASKATCHEWAN REGIMENT
Part II Orders Issued by
CANADIAN SECTION GHQ 2nd ECHELON
21 ARMY GROUP

No 78
6 Dec 44

4. ABSENT WITHOUT LEAVE

(e) AWL from 1600 hrs 14 Nov 44. Still absent 1600 hrs 22 Nov 44 (8th Day).

B-139634 Pte. Robitaille M.D.

CERTIFIED TRUE COPY OF EXTRACT

A.P.W. Watkinson Lt.
(A.P.W. Watkinson) Lieut.
Adjutant, S.Bask.R. C.A.(C).

(Margin for filing purposes)

Exhibit "B"

Army Form W.3011A.

Serial No. 170

Number of sheets to this return Page 4

CASUALTIES (OTHER THAN BATTLE, ACCIDENTS AND SICKNESS)—OTHER RANKS.

Army No.	Rank	Name and Initials	Corps or Regt.	Casualty: Nature of Casualty	Casualty: Date	Remarks
ABSENT WITHOUT LEAVE A/L from 1700 hrs 14 Nov 44. Still absent 1200 hrs 6 Dec 44 (22nd Day).						1
B-139634	Pte.	Robitaille		M.D.		

CERTIFIED TRUE COPY

A.F.W. Watkinson Lt

(A.F.W. Watkinson) Lieut.
Adjutant, S.Sask.R. C.A.(C).

(Date) 8 Dec 44 194

(Signature and appointment of Officer).

SOUTH SASKATCHEWAN REGIMENT (Unit)
6 Cdn Inf Bde, 2 Cdn Inf Div.

(Bde., Div., Area, etc., with which unit is serving).

Exhibit "C"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42

I CERTIFY THAT No8-139634 Rank Pte. Name Abbitaille M.D.

was arrested at Antwerp (Place)

Unit R.C.A.

at 1330 hrs. (hour) on 11 Dec 44 (date) and that at the time of his arrest he was wearing (military uniform) or (civilian clothes).

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding officer of the portion of His Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on arrest.

7 CDN. L. OF. C PRO. SGT
2 CDN. L. OF. C. PRO. CO

Y. Fur

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B139634	Pte	ROBITAILLE M.D.	S Sask R.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, R.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For	times	times.
For MFM 6 ~~[illegible]~~ available	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, NIL

or

There are no entries in the conduct sheets of the accused. —

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for — beginning on the — day of —

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 9 days in military custody, making a total of 9 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service ~~attestation paper~~ is ~~21~~ 19 ~~[illegible]~~

6. The date of his ~~commission~~ attestation specified in his record of service ~~attestation paper~~ is ~~8 Dec 42~~ 26 Jan 43 ~~[illegible]~~

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is —

8. The accused is entitled to deferred pay or gratuity in respect of — service.

9. The accused is entitled to reckon — service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). NIL

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of — dated —

12. (*In the case of an officer.*) The accused holds in the army the rank of — dated — and in his regiment (*or* corps *or* department) the rank of — dated —

(*25000) Wt.34895/1730 20,000 10/43 A.& E.W.Ltd. Gp.698
(24906) Wt.55954/1499 12,000 8/44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B139639 Rank Pte Name Robitaille MD of 5 Sask Regiment (or as the case may be).

(INSTRUCTION.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 19 day of Dec 44

W.D. Watkinson Lt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

In the rank of ____ Date of Promotion ____

In the rank of ____ years, ____

In the rank of ____ years ____

(Instructions.—*If any matter in any of the above paragraphs caused by digit from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

SHEET #1 destroyed 29 Jan 44.

B 139634 No Name Robitaille, Morris Donald Sqn. Battery or Company Corps C I C Date of enlistment 4-2-43 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/PAM/136 (3438)

Company Conduct Sheet Date of last entry in — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No 1 — Signature OC Company, etc J.G. Leuty, Capt — Adjutant

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden Ont.	2Sep 43	Pte		A.A. 15 (1) AWL from 0100 hrs 2 Sep 43 until apprehended by civil authorities at Gravenhurst Ont. at 1700 hrs 8 Sep 43. Total Absence 160 hrs (Close Arrest)	Sgt Rust (Doc) Constable Elliot, Lt. L.E. Schaster (Doc)	Stoppage of pay make good cost of apprehension and return to Corps 4.44. 14 days C.B.	23 Sep 43	Lt.- Col. H.E. Machell	7 days pay FR&I 149 1 (a) J.G.L.
Fr. Rupert B.C.	9 Nov 43	"		AWL from 0600 hrs 9 Nov 43 until 2400 hrs 9 Nov 43. Total 18 hrs. A.A. Sec 15(1)	L/C Bowman, A	4 days C.B.	10 Nov 43	Capt. J.G.Leuty	1 days pay FR&I 149 1 J.G.L. (a)
Fr. Rupert B.C.	16 Jan 44	"		AWL from 0001 hrs 16 Jan 44 until 2330 hrs 16 Jan 44. Total 23 hrs 30 mins. A.A. Sec 15 (1)	Documentary	5 days C.B.	17 Jan 44	Capt. J.G.Leuty	1 days pay FR&I 149 1 (a) J.G.L.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Windsor, NS	12-4-44	Pte		AWL from 0920 hrs 12-4-44 until 0920 hrs 15-4-44. Absent 4 days	Documentary	7 days C.B.	15-4-44	Major G.M. McNeil	Forfeits 3 days pay. Art 149(1)(a) FR&I
Debert Camp	21 Apr44	Pte		AA 15 (1) AWL from 0745 hrs 21 Apr 44 until apprehended by C-Pro-C at Sackville NB at 1530 hrs 21 Apr 44. (absent 7 hrs 45 mins) Close Arrest. Cost of App $8.98	Sgt PG Carr (Written) Sgt LH Nicherson L/Cpl AA Allen Capt GW Bonnell (Documentary) CS&TC (Documentary)	3 days Pay AA 46	24 Apr 44	J.G. Cumming Major, OC	1 days pay under Art 149 FR&I Forfeits 8.98 costs of Apprehension. N.A.L.
Debert, NS	28-4-44	Pte		AA Sec 15 (1) AWL from 0100 hrs 28-4-44 until 1800 hrs 1-5-44 Total time Absent 3 days 17 hrs.	Documentary	28 days detention	16-5-44	Lt-Col. WE Gillespie	4 days pay AWL 16 days pay Close arrest. Cost of appre. $28.04

Certified true copy of M.F.M. 6 in unit possession.

A.F.W. Watkinson Lt.
(A.F.W. Watkinson) Lieut.
S. Sask. R.

4N-46

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA2)
D/P & E (Misc) (2064)

Convened by Order of Brig R.H. Keefler Comd 6 C I D dated 20 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, frs, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-139634	Pte	Morris Donald	ROBITAILLE	S. Sask R.

Certified true Copy
W.D. Thompson
Capt
a D.J.A.
Can Sec G.C.M.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 20 Dec 44. 17/71

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) "FL" The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and "FL" each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1125 hours trial commences. "FL"

A4. The Prosecutor produces a Medical Certificate that accused is ~~have~~ fit to undergo trial by court-martial.(1) "FL"
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ "FL"
"FL"

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to as interpreter? Ans

The Interpreter is sworn.(1) Do you object to "F. Lee" as shorthand writer? Ans
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F. LE.	S. Sask R.
Member	Capt.	F.H.A. Glossop	Can of S.
Member	Lt.	L. Tanguay	Fus. M.R.
Judge-Advocate			
Prosecutor	Capt.	C.S. Enslett.	S. Sask. R.
Defending Offr	Lt.	G. E. Nichols	S. Sask. R.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B-139634 Pte Robitaille, M.D. before arraignment make(s) (no) (~~a~~) plea "FL" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 63; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Vol III Fol 43

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-139634 - Pte ROBITAILLE, M.D. S. Sask R.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn b.)

At present under sentence for: "F. Lee" beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: to be imprisoned with hard labour for two (2) years.

(Sgd) Judge-Advocate, if any. 20 Dec 44 Date awarded. (Sgd) "F. Lee. Major" President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn b, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-573. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barrack, until further orders.(1)~~ "RHK"

(1. AA 57A. Delete if not used.)

(Sgd) "R H Keefler, Brig"

Date 22 Dec 44 Commanding 6 Cdn Inf Bde. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
B139634 Pte Robitaille, M.D.	23 Dec 44	"V Stott, Lt-Col."

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to less, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 105 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*D*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No Sir. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para. If submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 116.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.
(*1. See fn 6.*)

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans
Ans Do you intend to call witnesses on your behalf ?
Ans Are they witnesses as to character only ? Ans
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF AFB. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA, under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Sir.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3)
(*1. MFB 355 or AFB 296. 2. MAM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Plea of Mitigation.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B 139634 Pte ROBITAILLE, Morris Donald, South Saskatchewan Regiment, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
A.A. Sec 15(1)

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 1800 hrs 14 Nov 44 until apprehended by the Cdn Pro Corps at Antwerp at 1330 hrs 11 Dec 44.

Absent 26 days, 19 hrs, 30 mins.

In the Field
17 Dec 44.

"V. Stott Lt. Col."
(V. Stott) Lt-Col.
Officer Commanding
S Sask R CA(O)

To be tried by a Field General Court Martial.

"C. L. Fuson Maj
DAA & QMG 6 Cdn Inf Bde
For (R.H. Keefler) Brig
Comd 6 Cdn Inf Bde

In the Field
19 Dec 44.

"F. Lee"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
B139634	Pte		Morris Donald	ROBITAILLE	S. Sask R.

"F. Lee Major"

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 19 Dec 44 ~~(endorsed by me, (or by an offr of my staff for me)~~ by an offr of my staff for me, " To be tried by Field General Court-Martial ". "RHK" "RHK"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~) "RHK"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "RHK"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ "RHK"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

MAJOR	F LEE	S. SASK. R.
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

CAPT.	F.W.N. GLOSSOP	CAM OF C.
LT.	L. TANGUAY	Fus. M.R.
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

LT.	J.A. MacLEAN	CAM OF C.
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

HOLLAND	" R. H. Keefler"	Brig.
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in	.....	.....
(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)

Date 19 Dec 44 Commanding 6 Cdn Inf Bde.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA95 (In lieu of AFA3) 40/P & S/1697 (4931)

(See overleaf for oaths and notes for use on trial.)

MEDICAL (PSYCHIATRIC) CERTIFICATE
(F.M. (Gen) Para 557)

I certify that I have this morning examined No B139634

Pte Robitaille, R.D. of South Saskatchewan Regiment, and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

"ISR"

Station In The Field

Date Wed. Dec 20th, 44 "I S Robb Capt"

the army at the age of 17 in Jan 1943. He went into action with the S.S.R. armd July 24th, was wounded in Caen and spent three weeks in hospital. On returning to the regt. his nerves were in bad shape, but he stayed with the regt for six weeks, until finally the morter fire and shelling were more than he could stand and he left.

"G. E. Nichols Lieut."

"F. Lee"

MEDICAL OFFICER'S CERTIFICATE
(K.R. (Can) Para 557)

I certify that I have this morning examined No B159634

Pte Robitaille, E.D. Of South Saskatchewan Regiment, and in my

opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

"ISM"

Station In The Field

Date Wed. Dec 20th, 44

"I S Robb Capt"

PLEA OF MITIGATION

For

Pte Robitaille, M.D.

Mr. President and Members of The Board

Pte. Robitaille is now only 18 years old. He joined the army at the age of 17 in Jan 1943. He went into action with the S.S.R. arnd July 24th, was wounded in Caen and spent three weeks in hospital. On returning to the regt. his nerves were in bad shape, but he stayed with the regt for six weeks, until finally the morter fire and shelling were more than he could stand and he left.

"G. A. Nichols Lieut."

"F. Lee"

A "F.Lee"

SUMMARY OF EVIDENCE IN THE CASE OF NO. B.139634 Pte ROBITAILLE, Morris Donald, of the South Saskatchewan Regiment, a soldier of the Canadain Army Overseas, charged with:-

(1) WOAS - Absence without leave. A.A. Sec 15(1)

By direction of the Commanding Officer the evidence is to be taken on oath.

FIRST WITNESS - Capt. G.S. Haslett, South Saskatchewan Regiment, Canadian Army Overseas, sworn states:-

I present Certified True Copy of Extract from Part II Orders signed by Officer in charge of Records, South Saskatchewan Regiment and purporting to show the accused B 139634 Pte ROBITAILLE, Morris Donald, whom I recognize as ASL from 1800 hrs 14 Nov 44 (Attached as Exhibit "A"). I present also Army Form W 3011A signed by Officer in charge of Records, South Saskatchewan Regiment purporting to show the accused B 139634 Pte ROBITAILLE, Morris Donald to be still absent at 1800 hrs 6 Dec 44(28th day) (Attached as Exhibit "B"). I present also Certificate of Apprehension signed by Spt. R.P. Greula, 7 Cdn Provost Section and purporting to show the accused B 139634 Pte ROBITAILLE, Morris Donald was apprehended at Antwerp at 1330 hrs 11 Dec 44(Attached as Exhibt "C")

The accused declines to cross examine.

"G S Haslett"
(G.S. Haslett) Capt.
South Saskatchewan Regiment

SECOND WITNESS - 184537 A/Sgt. Ault, A.K. South Saskatchewan Regiment, Canadian Army Overseas, sworn states:-

I am 184537 A/Sgt. Ault, A.K. Platoon Sgt. of 15 platoon C Coy. South Saskatchewan Regiment. On 14 Nov. 44 at 1800 hrs. when I checked the platoon I found B139634 Pte ROBITAILLE, M.D. absent which I reported to CSM Smith J.A., MM. Since that date Pte Robitaille, M.D. has been absent from 15 platoon. The first information I had of his whereabouts was when I learned that he has been returned to the battalion under close arrest and was held by the regimental provost.

The accused declines to cross examine.

"L.84537 A/Sgt Ault A.K."
184537 A/Sgt. Ault, A.K.
South Saskatchewan Regiment.

The accused having been duly cautioned in accordance with A.F. 4 (e) says:-

"I do not wish to make a statement".

"B-139634 Pte. Robitaille, M.D."
B139634 Pte Robitaille, M.D.
South Saskatchewan Regiment.

The accused does not wish to call witnesses in his defence.

Certified that RP 4 has been complied with.

"A.P.W. Watkinson Lt."
(A.P.W. Watkinson) Lieut.
Officer detailed to take the Summary.

In the Field
16 Dec 44.

List of Witnesses

For Prosecution: Capt. G.S. Haslett, S. Sask. R.
L. 84527 A/Sgt Ault, A.K., S. Sask. R.

For Defence. Nil.

List of Exhibits

"A" Certified True Copy of Extract from Part II Orders.

"B" Certified True Copy of Army Form W 3011A.

"C" Certificate of Apprehension.

The accused wishes an officer to defend him at his trial.

"F.Lee"

THE SOUTH SASKATCHEWAN REGIMENT
Part II Orders Issued by
CANADIAN SECTION (HQ 2nd ECHELON
21 ARMY GROUP

Exhibit "A"

No 78
6 Dec 44

4. ABSENT WITHOUT LEAVE

(a) AWL from 1800 hrs 14 Nov 44. Still absent 1800 hrs 22 Nov 44 (8th Day).

B-139634 Pte. Robitaille, E.D.

CERTIFIED TRUE COPY OF EXTRACT.

"A.P.W. Watkinson Lt."
(A.P.W. Watkinson) Lieut.
Adjutant, S.Sask.R. C.A.(C)

"F Lee"

(Margin for filing purposes) Exhibit "B"

Army Form W.3011A.

CASUALTIES(OTHER THAN BATTLE,ACCIDENTS AND SICKNESS)--OTHER RANKS Serial No. 170

Number of Sheets to this return Page 4

Army No.	Rank	Name and Initials	Orps or Regt.	Casualty Nature of casualty	Date	Remarks
ABSENT WITHOUT LEAVE						
AWL from 1800 hrs 14 Nov 44. Still absent 1800 hrs 6 Dec 44 (22nd day).						
R-139634	Pte	Robitaille, E.D.				

CERTIFIED TRUE COPY

"A.F.W. Watkinson Lt"

(A.F.W. Watkinson) Lieut.

Adjutent, S.Sask. R.C.A.(C)

(Date) 8 Dec 44 194 "F.Lee"

(Signature and appointment of Officer).

SOUTH SASKATCHEWAN REGIMENT (Unit)

6 Cdn Inf Bde, 2 Cdn Inf Div.

(Bde.,Divn.,Area,etc with which unit is serving).

Exhibit "C"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42

I CERTIFY THAT No B-139634 Rank Pte Name Robitaille, M.D.

Unit S.S.R. was arrested at Antwerp (Place)

at 1330 hrs.(hour) on 11 Dec 44 (date) and that at the time of his arrest he was wearing (Military uniform) or (civilian clothes).

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on arrest.

SGT I/C

7 CDN.L.OF.C.PRO.SEC.
2 CDN.L.OF.C.PRO.COY. "F.Lee"

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

"F Lee"

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B139634	Pte	ROBITAILLE, M.D.	S Sask R.

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	..... times	..... times
For	LFM 6 available times	..... times
For	..... times	..... times
For	..... times	..... times

Number of instances of gallantry or distinguished conduct Nil

or,

There are no entries in the conduct sheets of the accused. ------

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time. --------

or,

The accused at the present time is under sentence for ------- beginning on the -------- day of ----------

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 9 days in Air Force military custody, making a total of 9 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is ~~attestation paper is~~ 19

6. The date of his ~~commission~~ attestation specified in his record of service is ~~attestation paper~~ 26 Jan 43

7. The service which the accused is allowed to reckon towards discharge is --------

8. The accused is entitled to reckon -------- service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward. military military ---------

military Nil

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force ----------

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number R159654 Rank Pte Unit

Name Robitaille, E.D. of S Sask R Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 19 day of Dec 54

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "A P C Watkinson" Lt. signed by the president, and annexed to the proceedings.

Z "F. Lee"

No B139634 Name Robitaille, Morris Donald | Sqn. Battery or Company | Corps C I C | SHEET #1 destroyed 29 Jan 44. Date of enlistment 4-2-43 | OC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc J.G. Leuty, Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	2 Sep 43	Pte		A.A.15(1) AWL from 0100 hrs 2 Sep 43 until apprehended by civil authorities at Gravenhurst Ont. at 1700 hrs 8 Sep 43. Total Absence 160 hrs (Close Arrest)	Sgt Rust (Doc) Constable Elliot, Lt. L.E. Schacter (Doc)	Stoppage of pay make good cost of apprehension and return to Corps $4.44 14 days C.B.	23 Sep 43	Lt.-Col H.E.Machell	7 days pay FR&I 149 1(a) J.G.L.
Pr Rupert B.C.	9 Nov 43	"		AWL from 0600 hrs 9 Nov 43 until 2400 hrs 9 Nov 43. Total 18 hrs. A.A. Sec 15(1)	L/C Bowman, A	4 days C.B.	10 Nov 43	Capt J.G. Leuty	1 days pay FR&I 149 1 J.G.L. (a)
Pr Rupert B.C.	16 Jan 44	"		AWL from 0001 hrs 16 Jan 44 until 2330 hrs 16 Jan 44. Total 23 hrs 30 mins. A.A.Sec 15(1)	Documentary	4 days C.B.	17 Jan 44	Capt J.G. Leuty	1 days pay FR&I 149 1(a) J.G.L.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Windsor, NS	18-4-44	Pte		AWL from 0920 hrs 18-4-44 until 0920 hrs 15-4-44. Absent 4 days	Documentary	7 days C.B.	15-6-44	Major G.M. McNeil	Forfeits 3 days pay, Art 149(1)(a) FR&I
Debert Camp	21 Apr 44	Pte		AA 15(1) AWL from 0745 hrs 21 Apr 44 until apprehended by C-Pro-C at Sackville NB at 1530 hrs 21 Apr 44. (absent 7 hrs 45 mins) Close Arrest. Cost of App $8.98	Sgt PG Carr (Written) Sgt IH Nicherson L/Cpl AA Allen Capt GW Bennell (Documentary) Cpl C (Documentary)	3 days pay AA 46	24 Apr 44	J.C. Cuffling Major, DC	1 days pay under Art 149 FR&I Forfeits $8.98 costs of Apprehension. N.A.L.
Debert, NS	28-4-44	Pte		AA Sec 15(1) AWL from 0100 hrs 28-4-44 until 1800 hrs 1-5-44 Total time absent 3 days 17 hrs	Documentary	28 days detention	16-5-44	Lt-Col EE Cillespie	4 days pay AWL 16 days pay Close Arrest. Cost of appre. $28.04

Certified true copy of L.F.W. 6 in unit possession.
"A.P.W Watkinson Lt"
(A.P.W. Watkinson) Lieut.)
S. Cask. R.

4N-42

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig R.H. Keefler Comd 6 C I D dated 20 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-139634	Pte	Morris Donald	ROBITAILLE.	S.Sask.R.

Certified true copy
W.A. Thompson Capt
a/Cdr Sec'd

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Holland on (*date(s)*) 20 Dec 44. 17/71

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) "FL"
The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and "FL"
each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1125 hours trial commences. "FL"

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) "FL"
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ "FL"

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 503(c). Delete, if not applicable.)

A5. President to accused: Do you object to as interpreter ? Ans
The Interpreter is sworn.(1) Do you object to "F Lee" as shorthand writer ? Ans
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if not employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F. LEE.	S. Sask R.
Member	Capt.	F.W.A. Glassop	Can of C.
Member	Lt.	L. Tanguay	Fus. M.R.
Judge-Advocate			
Prosecutor	Capt.	G.S. Haslett.	S. Sask. R.
Defending Offr	Lt.	G. W. Nichols	S. Sask. R.

Questions by President: Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B-139634 Pte Robitaille, M.D. before arraignment make(s) (no) (~~a~~) plea "FL"
(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Vol III Fol 43

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-139634 - Pte ROBITAILLE. M.D. S. Sask R.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for "F Lee" beginning on (*date*) (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). ~~Information should be found on MF B355 or AF B296.~~)

Time in confinement awaiting present trial—a total of 9 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: to be imprisoned with hard labour for two (2) years.

(Sgd) Judge-Advocate, if any. 20 Dec 44 Date awarded. (Sgd) "F. Lee. Major" President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be sent unconditional or prison or detention barracks (until further order(s)).~~ -"RK"
(1. AA 57A. Delete if not used.)

(Sgd) "R E Keefler, Brig"
Date 22 Dec 44 Commanding 6 Cdn Inf Bde. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B139634 Pte Robitaille, M.D.	25 Dec 44	"V Stott, Lt-Col."

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No Sir (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~charge(s).~~ The accused (is/are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly. ~~"I Leo"~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1) ~~"I Leo"~~
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

File here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither. "I Leo"

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans .....
Do you intend to call witnesses on your behalf ? Ans .....
Are they witnesses as to character only ! Ans .....
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fn 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A25. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (b), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3) "I Leo"
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Plea of Mitigation.
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 306, 320, 563-566, Overseas AO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B 139634 Pte ROBITAILLE, Morris Donald, South Saskatchewan Regiment, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
A.A. Sec 15(1)

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 1800 hrs 14 Nov 44 until apprehended by the Cdn Pro Corps at Antwerp at 1330 hrs 11 Dec 44.

Absent 26 days, 19 hrs, 30 mins.

In the Field
17 Dec 44.

"V. Stott Lt. Col."
(V. Stott) Lt-Col.
Officer Commanding
S Sask R CA(C)

To be tried by a Field General Court Martial.

"C. L. Fuson Maj
DAA & QMG 6 Can Inf Bde
For (R.H. Keefler) Brig
Comd 6 Can Inf Bde

In the Field
19 Dec 44.

"Y. Lee"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B139634	Pte		Morris Donald	ROBITAILLE	S. Sask R.

"F. Lee Major"

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 19 Dec 44 ~~Ordered by me, (or by an offr of my staff or me)~~ by an offr of my staff for me "FLM" "FLM" Martial", (~~and that it is not practicable to try the said offence(s) by an ordinary General Court-Martial~~); "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for the reason for such opinion published orally~~). "FLM"

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.) "FLM"

5. ~~I also appoint an Judge Advocate the next the Offr mentioned hereunder.~~ "FLM"

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

MAJOR (Rank.)	F LEE (Must be named. RP 106.)	S. SASK. R. (Unit.)

MEMBERS.

CAPT.	F.W.R. GLOSSOP	CAM OF C.
LT. (Rank.)	L. TANGUAY (Named or detailed. RP 106.)	Fus. M.R. (Unit.)

WAITING MEMBER.

LT. (Rank.)	J.A. MacLEAN (Named or detailed, if any. RP 106.)	C/M OF C. (Unit.)

JUDGE-ADVOCATE.

HOLLAND (Rank.)	" R. H. Keefler" (Must be named, if any. RP 106.)	Brig. (Unit.)

On Active Service in the Fd

in ~~Normandie~~ (Country.)

~~Norman Lapointe~~ (Signed personally. RP 105 fn 2.)

~~Major~~ (Rank.)

Date 19 Dec 44 Commanding 6 Can Inf Bde.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPASS (In lieu of APAS) 40/P & S/1697 (4651)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE
(K.R. (Can) Para 557)

I certify that I have this morning examined No R139634
Pte Robitaille, M.D. Of South Saskatchewan Regiment, and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station In The Field

Date Wed. Dec 20th. 44

"I S Webb Capt"

PLEA OF MITIGATION

For

Pte Robitaille, M.D.

Mr. President and Members of The Board

Pte. Robitaille is now only 18 years old. He joined the army at the age of 17 in Jan 1943. He went into action with the S.S.R. armd July 24th, was wounded in Caen and spent three weeks in hospital. On returning to the regt. his nerves were in bad shape, but he stayed with the regt for six weeks, until finally the morter fire and shelling were more than he could stand and he left.

"C. W. Nichols Lieut."

"F. Lee"

A "F.Lee"

SUMMARY OF EVIDENCE IN THE CASE OF NO. B.139634 Pte ROBITAILLE, Morris Donald, of the South Saskatchewan Regiment, a soldier of the Canadain Army Overseas, charged with:-

(1) WOAB - Absence without leave. A.A. Sec 15(1)

By direction of the Commanding Officer the evidence is to be taken on oath.

FIRST WITNESS - Capt. G.S. Haslett, South Saskatchewan Regiment, Canadian Army Overseas, sworn states:-

I present Certified True Copy of Extract from Part II Orders signed by Officer in charge of Records, South Saskatchewan Regiment and purporting to show the accused B 139634 Pte ROBITAILLE, Morris Donald, whom I recognize as AWL from 1800 hrs 14 Nov 44 (Attached as Exhibit "A"). I present also Army Form W 3011A signed by Officer in charge of Records, South Saskatchewan Regiment purporting to show the accused B 139634 Pte ROBITAILLE, Morris Donald to be still absent at 1800 hrs 6 Dec 44(22nd day) (Attached as Exhibit "B"). I present also Certificate of Apprehension signed by Sgt. R.N. Croulx, 7 Cdn Provost Section and purporting to show the accused B 139634 Pte ROBITAILLE, Morris Donald was apprehended at Antwerp at 1330 hrs 11 Dec 44(Attached as Exhibt "C")

The accused declines to cross examine.

"G S Haslett"
(G.S. Haslett)Capt.
South Saskatchewan Regiment

SECOND WITNESS - L84537 A/Sgt. Ault, A.K. South Saskatchewan Regiment, Canadian Army Overseas, sworn states:-

I am L84537 A/Sgt. Ault, A.K. Platoon Sgt. of 15 platoon C Coy. South Saskatchewan Regiment. On 14 Nov. 44 at 1800 hrs. when I checked the platoon I found B139634 Pte ROBITAILLE, M.D. absent which I reported to CSM Smith J.A., MM. Since that date Pte Robitaille, M.D. has been absent from 15 platoon. The first information I had of his whereabouts was when I learned that he had been returned to the battalion under close arrest and was held by the regimental provost.

The accused declines to cross examine.

"L.84537 A/Sgt Ault A.K."
L84537 A/Sgt. Ault, A.K.
South Saskatchewan Regiment.

The accused having been duly cautioned in accordance with R.P. 4 (e) says:-

"I do not wish to make a statement".

"B-139634 Pte. Robitaille, M.D."
B139634 Pte Robitaille, M.D.
South Saskatchewan Regiment.

The accused does not wish to call witnesses in his defence.

Certified that RP 4 has been complied with.

"A.P.W. Watkinson Lt."
(A.P.W. Watkinson) Lieut.
Officer detailed to take the Summary.

In the Field
18 Dec 44.

List of Witnesses

For Prosecution: Capt. G.S. Haslett, S. Sask. R.
L. 84337 A/Sgt Ault, A.K., S. Sask. R.

For Defense. Nil.

List of Exhibits

"A" Certified True Copy of Extract from Part II Orders.

"B" Certified True Copy of Army Form W 3011A.

"C" Certificate of Apprehension.

The accused wishes an officer to defend him at his trial.

"F.Lee"

Exhibit "A"

THE SOUTH SASKATCHEWAN REGIMENT
Part II Orders Issued by
CANADIAN SECTION GHQ 2nd ECHELON
21 ARMY GROUP

No 78
6 Dec 44

4. ABSENT WITHOUT LEAVE

(a) AWL from 1800 hrs 14 Nov 44. Still absent 1800 hrs 22 Nov 44 (8th Day).

B-139654 Pte. Robitaille, M.D.

CERTIFIED TRUE COPY OF EXTRACT.

"A.P.W. Watkinson Lt."
(A.P.W. Watkinson) Lieut.
Adjutant, S.Sask.R. C.A.(O)

"F 188"

Exhibit "B"

(Margin for filing purposes)

Army Form W.3011A.

Serial No. 170

Number of sheets to this return Page 4

CASUALTIES(OTHER THAN BATTLE,ACCIDENTS AND SICKNESS)--OTHER RANKS

Army No.	Rank	Name and Initials	Corps or Regt.	Casualty Nature of casualty	Date	Remarks
ABSENT WITHOUT LEAVE						
AWL from 1800 hrs 14 Nov 44. Still absent 1800 hrs 6 Dec 44 (22nd day).						
R-139634	Pte	Robitaille, M.D.				

CERTIFIED TRUE COPY
"A.P.W. Watkinson Lt"
(A.P.W. Watkinson) Lieut.
Adjutant, S.Sask.R.C.A.(O)

SOUTH SASKATCHEWAN REGIMENT (Unit)

(Date) 8 Dec 44 194 "F.Lee" (Signature and appointment of Officer).

6 Cdn Inf Bde, 2 Cdn Inf Div. (Bde.Divn.,Area,etc with which unit is serving).

Exhibit "C"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 APR 42

I CERTIFY THAT No B-139634 Rank Pte Name Robitaille, M.D.

Unit S.S.R. was arrested at Antwerp (Place)

at 1330 hrs.(hour) on 11 Dec 44 (date) and that at the time of his arrest he was wearing (Military uniform) or (civilian clothes).

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadain Provost Corps, Canadian Army, into whose custody the above named person was taken on arrest.

SGT I/C

7 CDN.L.OF.C.PRO.SEC.
2 CDN.L.OF.C.PRO.COY. "Yves"

I

"F Lee"

M.F.B. 358
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B139634	Pte	ROBITAILLE, M.D.	S Sask R.

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For		
For	NFM 6	available times
For		times
For		times
For		times

Number of instances of gallantry or distinguished conduct times

or,

There are no entries in the conduct sheets of the accused. Nil

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time

or,

The accused at the present time is under sentence for beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 9 Air Force days in military custody, making a total of 9 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 19

6. The date of his attestation specified in his record of service is 26 Jan 43

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military military possession of or entitled to). State any air force decoration or reward. military

Nil

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force
unit
..... dated ....., and in his regiment (or corps), the rank of .....

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number R139624 Rank Pte
Unit
Name Bobitaille, M.D. of S Sask R Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 19 day of Dec 44

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "A P E Watkinson" Lt. signed by the president, and annexed to the proceedings.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Windsor, NS	15-4 44	Pte		AWL from 0920 hrs 15-4-44 until 0920 hrs 19-4-44. Absent 4 days	Documentary	7 days C.B.	19-4-44	Major G.K. McNeil	Forfeits 3 days pay. Art 149(1)(a) FR&I
Debert Camp 21 Apr 44		Pte		AA 15(1) AWL from 0745 hrs 21 Apr 44 until apprehended by C-Pro-C at Sackville NB at 1520 hrs 21 Apr 44. (absent 7 hrs 45 mins) Close arrest. Cost of Appr $8.98	Sgt PC Burr (Written) Sgt LH Nicherson L/Cpl AA Allen (Illegible) Connell	3 days pay	24 Apr 44	J.C. Cumming Major, CC	1 days pay under Art 149 FR&I Forfeits $8.96 costs of Appre-hension, R.A.L.
Debert, NS	28-4 44	Pte		AA Sec 15(1) AWL from 0100 hrs 28-4-44 until 1800 hrs 1-5-44 Total time Absent 3 days 17 hrs.	CS&TO(Documentary) AA 46 Documentary	88 days detention	16-5-44	Lt-Col WE Gillespie	4 days pay AWL 16 days pay close arrest. Cost of appre. $98.04

Certified true copy of N.P.B. 6 in unit possession.

"A P W Watkinson Lt".
(A.P.W. Watkinson) Lieut.
S. Bask. R.

Z "F Lee"

No B139634 Name Robitaille, Morris Donald

Date of last entry in Company Conduct Sheet

Sqn, Battery or Company

No and date of last drunk

Corps C I C

Period not reckoning towards freedom from extra fine

Sheet No 1

Date of enlistment 4-2-43

Sheet #1 destroyed 29 Jan 44.

GC Badges

Service or Proficiency Pay

Signature OC Company, etc J.G. Lenty, Capt.

Character

MFM 6 (AFB 122) 40/P&S/136 (3438)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	2 Sep 43	Pte		A.A.15(1) AWL from 0100 hrs 2 Sep 43 until apprehended by civil authorities at Gravenhurst Ont. at 1700 hrs 8 Sep 43 Total Absence 160 hrs (Close Arrest)	Sgt Rust (Doc) Constable Elliot, Lt. L.E. Schacter (Doc)	Stoppage of pay make good cost of apprehension and return to Corps $4.44	29 Sep 43	Lt-Col H.E.Machell	7 days pay FR&I 149 1(a) J.G.L.
Pr. Rupert B.C.	9 Nov 43	"		AWL from 0600 hrs 9 Nov 43 until 2400 hrs 9 Nov 43. Total 18 hrs. A.A.Sec 15(1)	L/C Bowman, A.	14 days C.B.	10 Nov 43	Capt J.G. Leuty	1 days pay FR&I 149 1 J.G.L.(a)
Pr. Rupert B.C.	16 Jan 44	"		AWL from 0001 hrs 16 Jan 44 until 2330 hrs 16 Jan 44. Total 23 hrs 30 mins. A.A.Sec.15(1)	Documentary	4 days C.B.	17 Jan 44	Capt J.G. Leuty	1 days pay FR&I 1491(a) J.G.L.

(PTO)

PP. 31 (case #2)
PTE ROBSON A.
see U-14 for 1st case

PR31

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 6th day of September, 19 43

Whereas it appears to me, the undersigned, an officer in Command of HQ 2 Cdn Corps Tps, RCASC, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [illegible]

*Omit where Convening Officer is Commanding Officer or is of Field rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

[illegible]

*Omit if not applicable.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names &c., of the members of the Court, as constituted, will be recorded on the proceedings.

JA

*Must be signed personally by the Officer actually to command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	W. H. Copeland	33 Cdn Corps Tps Coy RCASC

Members.

Rank.	Name.	Regiment.
Captain	F. C. DeVenne	2 Cdn Mot Amb Convoy RCASC
Lieutenant	R. M. Rollins	33 Cdn Corps Tps Coy RCASC
Captain	G H Jermyn	HQ 2 Cdn Corps

*Signed [signature]

Commanding 2 Cdn C Tps, RCASC

Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C.31913 Pte. ROLSON, A. 34 Cdn Corps Tps. Coy RCASC	First Charge Sec 40 AA Improperly and without authority used a WD Vehicle and damaged said vehicle to the amount of £24.10.0	GUILTY	GUILTY To undergo detention for a period of 180 days and to be reduced to the rank of Pte and to forfeit pay to the amount of £10-0-0 in respect of damage to WD Vehicle C.L. 4203 Hqs W.H.C. Holland Major 6 Sept/43	confirmed confirmed 6 Sep 43

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) J. B. [illegible] Ryder (Signed) W.H.C. Holland Major.

Commanding 2 Cdn Corps RCASC
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B.

I certify that the above Court assembled on the 6TH day of September/43 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

Certificate of President as to proceedings.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The Interpreter~~ WHC Judge Advocate WHC
4. *(~~The officers under instruction~~) WHC

*Omit if not applicable

were duly sworn.

Signed this 6TH day of September 1943

W.H.C. Holland Major.
President of the Court Martial.

C.

Certificate in case of death sentence.

*See footnote (b) on page 702 M.M.L. 1929.

~~I~~ certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this WHC day of WHC 19

President of the Court Martial.

D.

Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 6TH day of Sep 1943.

J. B. [illegible] Ryder.
Confirming Officer.

Promulgated and extracts taken in the case of C31913 Pte Rolson A

(a) (Dated) 7 Sep 43 (Signed) A L Mowat.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(20000) W.18500/4/41 30,000 12/42 A. & E.W. Ltd. Gp. 688

CHARGE SHEET

The accused C-31912, Pte Albert Rolson, 34 Cdn Corps Tps Coy, RCASC, a soldier of the Canadian Army Overseas, is charged with.

FIRST CHARGE

Sec 40 AA

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.

in that he

in the field on or about 28 Aug 43 improperly and without authority used WD Vehicle CL 4203400 for private purposes and so negligently drove the said vehicle that it was damaged to the amount of £24-10-0

In the Field
2 Sept 43

(A.L.Morris) Major,
Officer Commanding,
34 Cdn Corps Troops Coy RCASC.

To be tried by Field General Court Martial.

6 Sep 43

(J G Bisson) Lt-Col.
Comd 2 Cdn Corps Tps RCASC

MEDICAL CERTIFICATE (K.R. (Can) 557)

I certify that I have this morning examined No. C 31 9 12 Robson A.

of 34 Cdn. Corps Troops Coy RCASC and in my opinion he is fit ~~unfit~~ to under go trial by

Court-Martial.

Station Hq No 1 C BUD Medical Officer [illegible]

Date 6 Sept 43

[illegible]

PAGE 1

Record of Proceedings of a Field General Court Martial

Held in the Field in Eng land (Country) on 6 Sept 43 (Date) to try

Accused C-31913 (Number) Pte (Rank) Albert Rolson (Christian Names) (Surname) 34 Cdn Corps Tps Coy RCASC (Unit)

	Rank	Name	Unit
President	Maj.	W.H. Copeland	33 Cdn Corps Tps Coy RCASC
Member	Capt.	F.C. McVenne	2 Cdn MAC RCASC
Member	Lt.	R.M. Rollins	33 Cdn Corps Tps Coy RCASC
Judge Advocate (if any)	Capt.	J.H. Jermyn	HQ 2 Cdn Corps.
Officers Under Instruction (if any)			
Prosecuting Officer	Capt.	J.S. Rogers	34 Cdn Corps Tps Coy RCASC
	Lawyer? Ans	No.	
Defending Officer	Lt.	H.W. Slater	34 Cdn Corps Tps Coy RCASC
	Lawyer? Ans	No	

(The following procedure must actually be carried out)

1. The President produces the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs.P.17(E), 22(A)).

   (If a waiting member substituted, record is on separate sheet, initialled by the President and attached hereto). (For form of record see M.M.L. p.742 top).

2. The President, in closed court (R.P.22, fn 1) reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted (A.A.49: Rs.P.106, 107), that the accused is (are) amenable to Military Law, and that each charge discloses an offence (Rs.P.23,108).

3. The accused is (are) brought before the Court and at 1430 hours the trial commences.

4. The Prosecuting Officer produces a Medical Certificate under K.R.(Can) 557 (See CMHQ Circular Letter 173) that the accused has (have) this day been examined and is (are) fit to undergo trial by Court Martial. The certificate is signed by the President and attached to the proceedings.

(Over)

~~5. President to accused:~~

Q - Do you object to _____ as interpreter?
A - _____

The interpreter is duly sworn. (Form of oath on Page "D").

Q - Do you object to _____ as shorthand writer?
A - _____

~~The shorthand writer is duly sworn. (Form of oath on Page "D").~~

6. The Convening Order is read in the hearing of the accused. The names of the President and Members of the Court are read to the accused and they severally answer to their names (R.P.25).

7. President to accused:

Q - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A - No SIR

(If objection is made it is recorded on separate sheet, initialled by the President and attached hereto. (R.P.25). (For form of record see M.M.L. p. 742 Variation).

8. The President, Members, Judge-Advocate ~~and Officers under Instruction~~ are duly sworn (Rs.P.26, 27). (Forms of oath on page "D").

9. The Charge Sheet(~~s~~) is (~~are~~) signed by the President.

10. The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (A.A.46(8)).

(If special plea(s) is (are) made for separate trial on one or more charges (Rs.P.62(E), 108); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.130; R.P.52), such plea and evidence (if any) are recorded on separate sheet(s), initialled by the President and attached hereto). (For form of record see M.M.L. p. 744, 745, Variations).

11. Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge GUILTY
Second Charge
Third Charge
Fourth Charge
Fifth Charge
Sixth Charge
Seventh Charge
Eighth Charge

(For procedure on alternative charges, see R.P. 37(A) and fn. 2). (For form of record see M.M.L. P. 744 Instructions).

Further proceedings are recorded on pages _____ hereto attached.

FORM 'A'

(For use when accused pleads "Guilty" to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President).

1. The President complies with R.P.35(B) by ascertaining that the accused understands the nature of the charge(s) (fn. 3) and his plea thereto, explaining the difference in procedure caused by the plea (R.P. 37(B) & fn. 3) and advising him to withdraw his plea if he thinks the accused ought to plead "Not Guilty" thereto.

2. The finding(s) of the Court is (are) recorded on p. 2 of A.F.A.3.

3. President to accused:

Q - Do you desire to make any statement of the circumstances in reference to the charge(s)? (R.P.37(B)).

A - No SIR.

(Statement (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

4. The Summary of Evidence is read aloud, in the presence of the accused, signed by the President and attached to the proceedings.

(If no such Summary, sufficient evidence for determination of the sentence is taken and recorded on separate sheets, initialled by the President and attached hereto). (R.P.37(B)).

5. President to accused:

Q - Do you wish to make any statement in mitigation of punishment? (R.P.37(C)).

A - YES SIR

(Statement (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

(If from paras. 3, 4 or 5 it appears to the Court that the accused did not understand the effect of his plea see R.P. 37(B) fn. 3; 37(C); 37(D) fns. 5 & 6; M.M.L. p. 747 Variations).

6. President to accused:

Q - Do you wish to give evidence yourself or to call any witnesses as to character? (R.P.37(C)).

A - No SIR

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto).

7. Statement of Character and Service (A.F.B.296 or M.F.B.355) and Field Conduct Sheet (M.F.M.6), signed in the manner required by A.A.163(1)(h) and purporting to refer to the accused by his number, rank, name and Corps, are produced to the Court, read, marked "X", and "Y", signed by the President and attached to the proceedings. (R.P.46; Overseas R.O.3131).

8. President to accused:

Q - Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)).

A - No SIR

(Address (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

(Over)

9. The President announces:

"The Court is closed for consideration of the sentence. The sentence to be awarded by the Court, being subject to confirmation, will not be announced but will be promulgated later and the proceedings in Open Court are accordingly terminated".

10. The Court is closed to consider the sentence.

11. The sentence is recorded, dated and signed by the President (R.P.50) on p. 2 of A.F.A.3.

(Punishments, A.A.44; M.M.L. p.130-134; K.R.(Can)563-566; Overseas R.Os.309, 2303).
(One sentence is awarded in respect of all offences, R.P.48).
(For form of sentence see M.M.L. p.756-759).

12.

(Signature of President)

(S Can Form 15-6-43)

Defending Officer's plea in mitigation of Punishment

The accused has pleaded guilty but there are two points I wish to bring up. In the charge the damage is set out at the full cost of a tyre. I submit that the tyre has a salvage value and this should be taken into account. Accused admits damaging the tire but not completely.

Secondly, the accused after the parade did admit the whereabouts of the lorry and admit his guilt. He was not required to do so. By his admission he has saved this coy considerable time and money. I submit that this should be taken into account.

The prosecuting officer informs the court that the tread was scraped off the tire by the bumper but not down to the ~~tread~~ lining.

W H Chatfield Lyon
Pres

Summary of Evidence in the case of C31912, Pte Rolsen A, 34 Canadian Corps Troops Company RCASC, Canadian Army Overseas, charged with conduct to the prejudice of good order and military discipline in that he was in improper possession of a WD Vehicle No. Ch 4203400 and misusage of Government petrol; neglect to the prejudice of good order and military discipline in that he negligently drove a WD Vehicle No Ch 4203400 in an accident causing damage to the said vehicle to the extent of £24-12-0

The Commanding Officer directs that the Evidence be taken on Oath.

First Witness

M42022 Cpl Jackson L.F. 34 Can Corps Tps Coy RCASC, sworn, states:

I was on the 29 Aug 43; and am still, a Corporal in A platoon, 34 Can Corps Tps Coy. I am well acquainted with C31912 Pte Rolsen A, whom I recognise as the accused, and known for the past four months. At 1200 hrs on 29 Aug 43 I was informed that one of the pl lorries was missing. I immediately checked and found that lorry No Ch 4203400 was missing. I called a parade of my pl and questioned all on parade but could not ascertain the whereabouts of the missing lorry. Shortly after the parade M55605 Cpl Chapman L.F. contacted me and told me where the lorry could be found. I immediately despatched L8754 Pte Watson, and B 82891 Pte Jordan G.B. and C31912 Pte Rolsen A to pick up the lorry. This party returned at approximately 1500 hrs 29 Aug 43 and I immediately inspected my pl. lorry. On examining the lorry I noticed that the front left tire had been damaged by rubbing against the bumper. There was also some damage to the tail gate. I immediately placed C31912 Pte Rolsen A under close arrest.

The accused declines to cross examine the Witness

Jackson L/Cpl

Second Witness

1155605 Cpl Chapman L.F. A Pl 34 Edn Corps

Sps Coy RCASC, sworn, states.

I was on 29 Aug 43, and am still, Cpl in A pl 34 Edn Corps Sps Coy RCASC. I am well acquainted with C31912 Pte Rolson A, whom I recognise as the accused and who has been a member of my section for the past two weeks. On the 29 Aug 43 I attended a pl parade called by M42022 Cpl Jackson L.P. After this parade C31912 Pte Rolson A contacted me and stated that he knew the whereabouts of the missing lorry. I immediately passed this information on to M42022 Cpl Jackson L.P.

The accused declines to cross examine the Witness

L.F. Chapman Cpl.

Third Witness

48754 Pte Nelson G.L. A platoon, 34 Edn Corps

Sps Coy RCASC, sworn states

I was on 29 Aug 43 and still am, a soldier of 'A' pl, 34 Edn Corps Sps Coy. I am well acquainted with C31912 Pte Rolson C the accused, and I recognise him as the accused here. On 29 Aug 43 I was detailed by M42022 Cpl Jackson to go with B~~M~~Pte 82891 Pte Jordan and C31912 Pte Rolson A ~~and~~ to locate the missing lorry. Under the direction of Pte Rolson we proceeded to the outskirts of the

Village of Shere after going up and down one or two roads we located lorry no CL 4203400. This lorry was jammed against a tree on the side of the road. With the help of Pte Jordon and Rabson we towed the lorry clear of the tree and hooked the tow chain on the bumper of lorry no CL 4203400 and pulled the bumper clear of the tree. We disconnected the auxiliary drive shaft and drove the lorry home under its own power.

The accused declines to cross examine the witness

J L Waters PTE
L8754

Fourth Witness

Lt Borgal E.W. 34 Cdn Corps Sps Coy RCASC, sworn, states

I am the officer in charge of the Workshop platoon of the 34 Cdn Corps Sps Coy RCASC. On the 31 Aug 43 I inspected lorry no CL 4203400 and made an estimate of repairs necessary to repair the lorry. A detailed list of repairs and cost is signed by me and submitted herewith

The accused declines to cross examine the witness.

J W Borgal Lieut

The list referred to by the witness, produced, read over to the accused, marked exhibit "A", signed by me and attached here to.

J Rogers Capt.

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The Accused. I have nothing to say, Sir.
A Robson. Pte
C 31412.

I certify that RP II has been complied with.

Taken by me in the presence and hearing of the accused this 2nd day of September 1943.

J S Rogers Capt.

Additional Evidence in the case of C31912 Pte Rolson A 34 Canadian Corps Troops Company RCASC.

Witness

Lt Scott G.C. 34 Can Corps Sps Coy RCASC Sworn, States

I was on 28 Aug 43, and am still, the pl comd of "A" pl 34 Can Corps Sps Coy. I am acquainted with C31912 Pte Rolson A who I recognise as the accused. On or about 1630 hrs 29 Aug 43 I was speaking to the accused and he admitted to me that he State Lorry no C4203400.

The accused declines to cross examine the witness

G.C. Scott Lieut

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say any thing or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused. I have nothing to say, Sir
A. Rolson.

I certify that R.P.4 has been complied with

Taken by me in the field in the presence and hearing of the accused this 4th day of September 1943 J.S. Keyes Capt

F G C M
C.31912 Pte Rolson, A.
34 Cdn Corps Tps Coy RCASC

List of Exhibits

Estimated Cost of Damage — Appendix A.

ESTIMATED COST OF DAMAGE 31 Aug 43

Estimated Cost to repair damage to 60 CWT Lorry CL 4203400

Straighten bumper	)	
" left front fender	)	Total labour 5 hrs.
" tail gate & rod & repaint	)	
Line up front end	)	

Replace left front tyre 1050 x 20 - 2 hrs.
Replace left front spring bracket & tie bolt - 1 hr.

Parts

L.F. spring bracket	15s.
L.F. spring tie bolt	1s.
1050 x 20 R.F. tire	£22.10.0
	£23.6.0

Labour Costs	8 hrs - 24s.
Parts Costs	£23.6s.0
Total Cost	£24-10-0

(E.W.Borgal) Lieut.
O i/c Workshops.
34 Cdn Corps Troops Coy RCASC.

This is exhibit "A" referred to in the summary of evidence in the case of C-31912 Pte Rolson, A. taken before me on the 2nd day of September, 1943.

J S Rogers Capt

FGCM C 31912 Pte. Rolson, A.
1st Cdn Corps Tps Coy RCASC

I desire the Convening Officer to detail an Officer to represent me at my forth coming trial by Field General Court-martial.

A. Rolson

M.F.B. 355
H.Q. 1772-39-620
10M-8-40 (M19)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C-31912	Pte	Rolson, A.	34 Gdn Corps Tps Coy

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For AA Sec 19 Drunkness	NIL	times	two	times
For AA Sec 15(1) AWL	One	times	three	times
For AA Sec 40 Improper		times		times
For Possession	two	times	two	times

Number of instances of gallantry or distinguished conduct NIL

~~[illegible]~~

~~[illegible]~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~[illegible]~~

~~[illegible]~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.A. 73~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~[illegible]~~

~~[illegible]~~

4. The accused has been in confinement awaiting trial on the present charges, for — days in civil custody, and 8 days in military custody, making a total of 8 days in custody, of which No days were spent in hospital.

5. The present age of the accused according to his record of service is ~~[illegible]~~ 29

6. The date of his ~~[illegible]~~ attestation specified in his record of service is ~~[illegible]~~ 23 Jul 41

7. The service which the accused is allowed to reckon towards discharge is 2 years, 1 month

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~[illegible]~~ ~~[illegible]~~). State any air force military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit .....dated....., and in his regiment (or corps), the rank of .....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

ABP N.A. .....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number C31912 Rank Pte

Name Rolson, A. of R.C.A.S.C. Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
FGCM	Field 1 Dec 42	AA 6(2) (F) leaving his guard	28 days Detention	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~3~~ 6 (3) day of Sept 43 J. R. Parkinson Capt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked.....signed by the president, and annexed to the proceedings.

No. C31912 Name ROLSON A. Sqn., Battery, or Company — Corps R.C.A.S.C. Date of enlistment 23Jul41 G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (corresponding with 1010)	By whom awarded	Remarks
Canada	15Oct41	Pte	1	Drunk AASec 19	Cpl.Weeks	Admonished	16Oct41	Maj.Naylor	
Canada	5Feb42	Pte	2	Drunk AASec 19	Documentary	Fined $5.00	7Feb43	Capt.Adams	
Canada	2Mar42	Pte		AWL 16 hrs 45 mins	Documentary	6 days Deten		Col.Ruttan	1 days pay
Field	28Jun42	Pte		AWL 2 days 16 hrs	I/C Ward Cpl.McBride	7 days Pay 7 days C.B.	2 Jul42	Maj.Simmons	3 days pay
Field	1Dec42	Pte		AASec 6(2)(f) Leaving his guard	I/C Wurster	FGCM 28 days detem	9Dec42	DDST	
Field	15Feb43	Pte		AASec 15(1) AWL 1 day 15 hrs 45 mins	Cpl.Spatafore	28 days FP	16Feb43	Maj.Morris	
Field	3Jul43	Pte		AASec 40 Conduct - improper poss of a veh and using petrol	Lt.Scott Cpl.Chapman	28 days pay 14 days CB	5Jul43	Maj.Morris	
Field	3Jul43	Pte		AASec 40 Improper poss of WD Veh	Cpl.Chapman Pte. Street Pte. St.Onge				

Officer Commanding
34 Can. Corps Tps. Coy R.C.A.S.C.

CERTIFIED TRUE COPY OF ORIGINAL MEMO IN MY CUSTODY

M.F.M. 6

5E - 131

Mr. Robson, C. G.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.139719 Pte (A/Cpl) ROBSON, Charles, Garnet - 1 CASCRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 40	Not Guilty	Not Guilty.	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial - a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: -

(Sgd) ..... Judge-Advocate, if any. Date awarded. 19 Apr 45 (Sgd) ..... President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 55/131
SECRET

FIELD GENERAL COURT-MARTIAL

(Page (1a) (in lieu of AF A32) AG 13 A 0-1108 (3864))

RECEIVED 27 APR 1945 JAG BRANCH CMHQ

Convened by Order of Col H.R. Tyner A/Comd "BB" Gp CRU dated 17 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.139719	Pte (A/Cpl)	Charles, Garnet	ROBSON	- 1 CASCRU

PROCEEDINGS REVIEWED
reps. de Rio 19 Apr 45
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(1)) 19 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~Judge Advocate, JA if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans ~~No~~
~~The Interpreter is sworn.~~(1) Do you object to 97647 Dvr M Boudreau as shorthand writer? Ans No
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 187, MML p 742.)

A7. The President, Members, ~~JA if any~~, and Offrs under instr, ~~if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.V. Miller ED KC	HQ CRU
Member	Captain	R.D. MacLean	1 CGRU
Member	Lieutenant	W.W. Evans	1 CGRU
~~Judge Advocate~~			
Prosecutor	Lieut	J.R. Taylor	1 Can Re.
Defending Offr	Lieut	J.J. Hambly	Can Re

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dr p 3.)

A8. The accused ..... before arraignment make(s) (no) plea (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed~~ (considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and allowed on the ..... charge(s), and that, ~~accordingly, the trial will proceed on the former, but~~ the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans .....

..... Do you intend to call witnesses on your behalf ?

Ans .....

..... Are they witnesses as to character only ? Ans .....

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans .....

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)

(1. *MFB 335 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

ACCUSED ELECTS TRIAL by FGCM

CHARGE SHEET

The accused B.139719 Pte (A/Cpl) Charles Garnet, ROBSON, RCASC, on strength of 1 Cdn ASC Rft Unit, a soldier of the Cdn Army Overseas, is charged with:-

First Charge
A.A. Sec 40

WHEN ON ACTIVE SERVICE, NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Headley (MR 25275568 Aldershot Command Sheet) at approximately 1500 hrs, 14 Mar 45, so negligently drove Veh No CH 421745 without due care and caution as to cause an accident, thereby damaging said military veh to the extent of £9-3-6.

H L Pease

(H.L. Pease) Col.,
Comd.,
1 Cdn ASC Rft Unit

IN THE FIELD
16 Mar 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

H R Tyner

(H.R. Tyner) Col
A/Comd "B" Gp
Cdn Rft Units

IN THE FIELD
17 Apr 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(6).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.139719	Pte	(A/Cpl)	Charles, Garnet	ROBSON	- 1 CASCRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(es)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) 17 Apr 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior quainted offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.N. Miller ED KC	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by OC	1 CGRU
Lieutenant	to be detailed by OC	1 CGRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Dat: 17 Apr 45

(H.R. Tyner) (Signed personally. RP 105 fn 2.)

Colonel (Rank.)

A/ Commanding "B" Gp., Cdn Rft Units.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 2) 40/P & S/1697 (6145)

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certif.
K.R. (Can) para 557

I certify that I have this morning examined No: B139719....

Cpl. Robson C.G. and in my opinion he is fit to ~~unfit~~ 27
(rank) (name)

undergo trial by Court Martial.

Station: Blenheim Bks

Date: 19 Apr 45

M. Finkelstein Capt
(Medical Officer)
1 Cdn A.S.C. Rft Unit

617

CASE OF

D-3 B.139719 Private (A/Corporal) ROBSON, C.G. 1 CASCRU

FIRST WITNESS

L-89668, L/Cpl NEALE, W.A., No. 4 VRD, No. 1 CCOD, sworn, states:-

Q. Tell the Court what you know about an accident that happened on 14 Mar 45?
A. I was driving a Michigan crane from No. 4 VRD upon taking it to No. 1 VRD over the Headley Rd on 14 Mar 45 at approx 1500 hrs. I was driving up a hill towards Headley just around a bend when I saw a tank transporter coming in the opposite direction. The road was very narrow; so I crowded over to the left side of the road, as far as possible. There appeared to be enough room for both of us to pass by. As the tank transporter neared me, the front bumper of my lorry caught the rear right wheels of the tank transporter, causing an accident.

Q. What was your approximate speed at the time?
A. Five to eight miles an hour, Sir.

Q. What was the approximate width of the road?
A. Just off the road it would be 18 feet wide.

Q. Did you measure the width of the accused's lorry?
A. No, Sir.

Q. Was is the width of your own?
A. 8 feet, Sir.

Q. Would you look at this diagram and tell the Court if it fairly sets out the situation at that point of the road.
A. Yes, Sir.

Q. In what direction were you going according to this diagram?
A. I was going towards Headley from Bordon (pointing to the road leading to Headley on the diagram). There is a very long curve there, Sir. The accident took place going up the hill about 50 yards from the right-hand turn to Liphook which I had just passed.

PROS OFFR TO THE COURT

I'd like to submit this diagram as an exhibit?

COURT TO DEF OFFR

Have you any objection?
No, Sir.

(FILED AND MARKED EX "A")

Q. On what part of the road were you driving?
A. On the left-hand side, Sir.

Q. How close were you to your left-hand side?
A. When I came around the bend, I wouldn't say that I was close to the bend but when I did see the transport, I crowded towards the bend to the left side.

Q. Would the rear part of your lorry be out further when your front part was turning in?
A. No, Sir, that wouldn't be out.

Q. At the moment you saw the approaching vehicle, would the end of your vehicle be in the centre?

A. It might have been for a few feet until I straightened it out.

Q. Are there any embankments on the sides of this road?
A. Yes, Sir, about 9 to ten feet high and almost straight up, that is where the accident happened.

CROSS-EXAMINATION

Q. How long have you been driving this kind of vehicle?
A. That was the first time I had driven that type of vehicle.

Q. On seeing the tractor approaching was there any doubt in your mind that the two vehicles could pass safely?
A. There appeared to be room for both of us, Sir.

Q. Have you driven over that particular road before?
A. Yes, Sir.

Q. Did the tractor appear to be driven without care or caution to you?
A. No, Sir, it appeared to be driven with care.

Q. In what position was the boom of the crane at the time of the accident?
A. It was directly in front of ~~him~~ it. It was in a forward posn.

Q. Did you see the learner sign displayed on the tractor as it approached you?
A. Yes, Sir.

Q. What disciplinary action has been taken against you in this accident?
A. I was paraded before my CO and I have asked for a CM.

PRESIDENT OF THE COURT TO THE ACCUSED

- The Court should have been informed of this before'
(President of the Court read para 95 of Chap 6 of the MML)

QUESTIONS BY THE COURT

Q. Would you just describe the vehicle that you were driving?
A. It is a vehicle with a big long crane to lift heavy eqpt. The boom is about 30 feet long and it is on top of the truck. It is not sticking very high. There is no cab for the dvr. It is a left-hand drive vehicle and the boom lays right along the side of the dvr when not in use posn and it is right over the top of the motor.

Q. What kind of body has this vehicle?
A. Just a chassis. The crane is operated from ~~the~~ a little cab at the rear of the vehicle.

Q. How long is the vehicle overhaul?
A. Same length as a 160cwt lorry.

Q. What is it from the front to the rear?
A. I would say about 15 feet, Sir.

Q. Shorter than a station wagon?
A. Approximately the length of a 160cwt lorry, Sir.

Q. Did you notice any damage on the other vehicle?
A. Yes, Sir; the rim of the back wheel and the two tires were damaged; the rim was slightly bent outwards and there was a cut on the two tires. They didn't deflate.

Q. Was the vehicle still able to run?
A. Yes, Sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

SECOND WITNESS

D-91606, NSM BALLER, P.P., No. 1 CASCRU, sworn, states:-

Q. On 14 Mar 45 were you driving with the accused?
A. Yes, Sir.

Q. Just before the accident, was the accused on his own side of the road?
A. Yes, Sir, just about as far as he could get.

Q. Did you meet another vehicle?
A. Yes.

Q. Was the other vehicle over the centre line prior to the accident?
A. That I couldn't say, it must have been to cut into the two rear tires.

Q. Where were you looking at the time?
A. I was looking ahead.

Q. Did you see the other vehicle?
A. Yes, Sir, it was about 40 feet ahead of us. It was pretty close to the centre of the road at the time; that is, the front was, Sir.

Q. What is the approximate width of the lorry in which you were driving?
A. 7 feet.

Q. Did you hear the accused blow his horn on that day?
A. No, Sir.

Q. How many wheels on that lorry?
A. 8, Sir.

Q. Are they flush with the chassis of the vehicle?
A. With the side of the body, Sir.

CROSS-EXAMINATION

Q. Did you consider it your duty as a senior NCO to order the accused to be careful or to take certain precaution in this case?
A. No, Sir, I had every confidence in the accused's driving.

Q. Did you notice the posn of the boom of the crane?
A. Yes, Sir, it was in a forward posn.

Q. Do you consider that the posn of the boom might have presented an obstruction to the crane dvr's vision?
A. It could, Sir.

Q. Explain to the Court the relative clearance between the greatest overhaul width of the accused's vehicle and the width of the front tires?
A. It was an inch/on each side of the two front mudguards wider than the rear tires.

Q. In your own opinion, could it have been reasonable for the accused to assume rear clearance of his vehicle after the front fender had passed an obstruction?
A. Yes, Sir.

Q. Was the accused driving without care or caution at the time of the accident?
A. No, Sir.

QUESTIONS BY THE COURT

Q. If you had been driving, would you have done anything different?
A. No, Sir.

Q. Was the accused under instructions?
A. No, Sir.

Q. Was there an "L" sign on the vehicle?
A. Yes, Sir.

Q. Did this have anything to do with the dvr?
A. No, Sir, he is the instr on the vehicle.

Q. Did you measure the road?
A. I took the approximate width, Sir; I had nothing to measure it with.

Q. What was the accused's vehicle width?
A. It was about 7 feet, Sir. I had nothing to measure it.

Q. Was the accused's vehicle a left or right-hand drive?
A. A left-hand drive, Sir.

Q. Were you watching the space between the two vehicles?
A. Yes, Sir, as close as I got.

Q. Where was the accused?
A. Over by the bank.

Q. Did you see anything that would cause you to tell him to stop?
A. No, Sir, both dvrs seemed to be driving with care.

Q. Did you see what points collided?
A. No, Sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

THIRD WITNESS

Lt J.H. Tappin, No. 1 CASCRU, sworn, states:-

Q. (Pointing to Ex "A") Did you make this drawing?
A. Yes, Sir, it is the drawing of the portion of the road between Gordon and Headley as the place was indicated to me by the Road Accident Report.

Q. Are the facts true on Ex "A"?
A. Yes, Sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH R.P 83 (B).

FOURTH WITNESS

D-91702, MSS JOHNSTON, W., No. 1 CASCRU, sworn, states:-

Q. Will you tell the Court what your job is at No. 1 CASCRU?
A. I am Mech S/Sgt employed in the workshop and we do the repairs.

Q. What are your qualifications?
A. I am an MVA Fitter.

Q. On or about the 14 March, did you check up the damages on MV CH4017440?
A. I cannot remember.

Q. You gave the number of a vehicle on the taking of the summary is that number correct?
A. I cannot say, Sir.

Q. On or about the 14 Mar, did you see the accused drive the vehicle into you?
A. Yes, Sir.

Q. Did he ask you to check the vehicle?
A. Not the accused but Lt Marshall.

Q. Did you check it?
A. Yes, Sir.

Q. What did you find wrong with the vehicle?

A. The two rear tires were cut and the fender and the rim were bent.

Q. Can you estimate what it will cost to repair these?
A. I cannot remember.

Q. Do you remember giving evidence at the taking of the summary?
A. Yes, Sir.

Q. Is that evidence correct?
A. I can't say, Sir, I signed some slips at the time.

Q. Were they correct?
A. I don't know, I didn't check if they were right.

Q. (Showing him some figures) Did you at any time make this list of figures?
A. No, Sir.

(The witness retired to refer to his memo)

Q. Can you now give the Court your estimate of the cost of repair?
A. I estimate that to vulcanize the two tires would cost £8-19-00 and the labour for straightening the fender 1½ hr or 4/6, making a total of £9-3-6.

CROSS-EXAMINED

Q. Have these repairs been done?
A. I believe so, Sir.

Q. What did they actually cost?
A. I don't know, Sir.

Q. Do you know that the accused straightened out the rim and fender himself?
A. I believe he did, Sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

STATEMENT BY THE DAT OFFR ON THE FINDINGS

I submit there is no case against the accused. He is charged with negligence (Read Note to AA 40). Nothing in the evidence even suggests negligence. On the contrary the evidence shows that the accused drove slowly and carefully, was fully over on his own side of the road, and the road, while narrow, was wide enough for both to safely pass. There was inadvertently some slight accident but in no way due to any culpable negligence. The accused was on the left-hand side of the vehicle. He was relying on his Sr NCO i/c the vehicle, who was on the right-hand side, who said the accused was going slowly and carefully. This NCO says he was satisfied they could safely pass. He was watching closely as he was sitting nearer to the middle of the road and he saw no occasion to tell Robson to stop. He states he would have done what Robson did. I submit this is not evidence of any negligence.

STATEMENT BY THE PROS OFFR ON THE FINDINGS

We submit that there is a good charge and that we have brought the evidence out, taking into consideration the width of Neale's vehicle, 8 feet wide, and the accused's vehicle, approx 7 feet wide, and the other conditions, namely that the road was approx 15 feet wide, which by pure arithmetic would leave no space at all for the vehicles to pass. Neale was over the centre of the road; with this being so it was a physical impossibility for the two vehicles to pass each other. Therefore, the accused drove at his own peril when he proceeded on down the road and without stopping. I will go back to a certain law

case, Sir. It was Davis versus Brewster. An oncoming dvr saw and proceeded right over a donkey in the middle of a road and killed it. The Court held that the oncoming dvr should have stopped. The oncoming dvr had the last chance of avoiding the accident. So it is with this case. The oncoming vehicle should have stopped. We have Neale over the centre of the road. We have a lorry 8 feet wide. We have the accused's lorry 7 feet wide; that coupled with the fact that Neale was coming around the corner and it was natural for him to swing out and the natural swing for him would be to go towards the centre of the road. On the other hand, it was natural for the accused to hold the outside of the road. Would you see that Neale was coming up a grade and couldn't pull off quickly? Would you also see that it would be a very tough squeeze for him to get pass and that again must be coupled with the fact that Robson was on the left-hand side of his vehicle and being an instr he should have stopped then. He, in fact, gave Neale no chance whatsoever. The Common Law also lays down that accidents are inevitable unless due allowance is made for possible errors on the part of others. We say that Neale was in the wrong in two places, in that he was over the centre of the road. Also, if one was driving at 10 mi per hour and the accused was going between 5 and 6 mi per hour they would pass each other at about 16 mi and the prosecution claims it was too fast if all these points are taken into consideration. The prosecution submit that Neale was over the centre of the road and we are submitting that the accused was on his own side of the road; we do not deny that. The accused had the last chance of avoiding the accident, had he stopped. It is contributory neglect. In this case Robson had the last chance of avoiding the accident, had he stopped and giving Neale a fair chance of pulling in. Actually they did meet. "Accidents are inevitable unless due allowance is made on the part of others". What allowance did Robson give for the errors on the part of Neale?

My

SUMMARY OF EVIDENCE

IN THE CASE OF B.139719 Pte. (a/Cpl) Charles Garnet Robson, RCASC, on strength of 1 Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

1st WITNESS (For the prosecution) L.59665 Pte. (a/L/Cpl) Neale, W.A., RCOC, on strength of # 4 V.R.D. (CCOD), having been duly sworn states:-

I am L.59665 Pte. (a/L/Cpl) Neale, W.A., RCOC, on strength of # 4 V.R.D. (CCOD). I was driving Cl-4276391 from 4 VRD to 1 VRD on 14 Mar 45 at approx 1500 hrs. I was on the road between Linford and Headley, travelling towards Headley. I had just rounded a sharp curve on the road when I came upon a Diamond T Tractor without trailer and bearing an "L" sign. I was going up hill in second gear at a speed of approx 5 to 8 mph. Although the road is narrow there appeared to be sufficient room to pass and as the vehs neared each other I crowded over to the left side of the road as far as possible. There are high embankments on each side of the road which leaves no room for any road shoulder. We had almost past each other when the right wheel of the other veh caught the front bumper of my veh. Both of us stopped and on getting out I paced off the road where we collided and it was approx 15' wide and the width of the Diamond T was 7'

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS

L.59665 Pte (a/L/Cpl) Neale W.A.
(L.59665 Pte. (a/L/Cpl) Neale, W.A.)

2nd WITNESS (For the prosecution) D.91606 M.S.M. Baller, D., RCASC, on strength of 1 Cdn ASC Rft Unit, having been duly sworn states:-

I am D.91606 M.S.M. Baller, D., RCASC, on strength of 1 Cdn ASC Rft Unit. While riding as spare driver in WD Veh No CH-4217445 travelling from Headley to Borden at approx 1500 hrs 14 Mar 45 did witness an accident at MR-25275568 as follows;

At the point along the road indicated by MR-25275568 the road bends and is very narrow allowing just enough room for two fair sized vehicles to pass this point at one time. As we reached the bend we met a Michigan Crane coming from the opposite direction. Cpl Robson, driver of WD veh No CH-4217445 in which I was riding drove his veh as close to the bank on his side of the road as possible in order to allow sufficient room for the other veh to pass, but the bumper of the Crane was protruding too far over the right side of the road and as a result caught the two rear tires of our vehicle cutting them both. Our speed at the time of the accident was approx 10 mph.

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS

D.Baller M.S.M.
(D.91606 M.S.M. Baller, D.)

(Cont'd)

3rd WITNESS (for the prosecution)

Lt. J.E. Tappin, RCASC, on strength of 1 Cdn ASC Rft Unit, having been duly sworn states:-

I am Lt. J.E. Tappin, RCASC, on strength of 1 Cdn ASC Rft Unit. Acting on instructions I proceeded to Headley, MR2527b568 (Aldershot Command Sheet) and took measurements and made a diagram of the road at this point.
(Diagram attached as Exhibit "A")

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS.

J.E. Tappin
(J.E. Tappin) Lt.

4th WITNESS (for the prosecution)

D.91702 M.S.(M) Johnston, W., RCASC, on strength of 1 Cdn ASC Rft Unit, having been duly sworn states:-

I am D.91702 M.S.S. Johnston, W., RCASC, on strength of 1 Cdn ASC Rft Unit and am a Mechanist Staff Sergeant. On 18 Mar 45, acting on instructions, I checked Military Vehicle No CH 4217445 and found it to be damaged to the extent of £9-3-6. The estimated cost of repairs in detail being:-

Vulcanize two tires	£8-19-0
Straighten Fender & Rim (Labor)	4-6
Total	£9-3-6

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS.

W.S.S. Johnston W.
(D.91702 M.S.S. Johnston, W.)

The accused was cautioned as follows, "Do you wish to make any statement or give evidence on oath ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

THE ACCUSED DECLINED TO MAKE A STATEMENT AT THIS TIME.

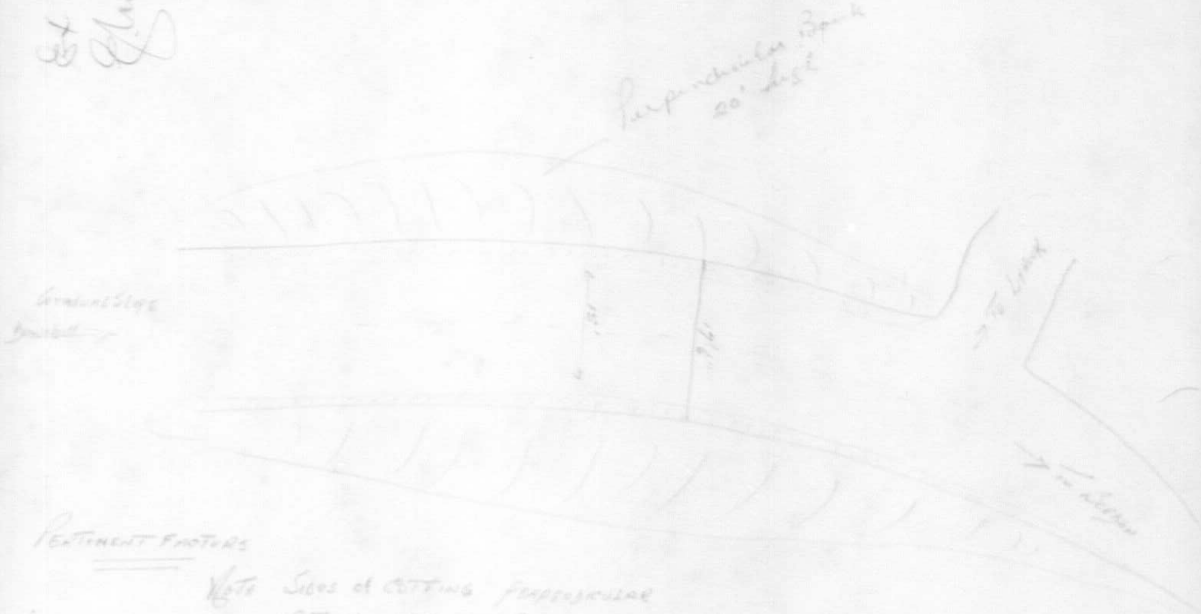
I hereby certify that the foregoing Summary of Evidence consisting of two (2) pages was taken down by me in writing on the 11 April, 1945, in the field in the presence of the hearing of the accused and that R.P. 4 (c) (d) (e) and (f) have been complied with.

J.R. Taylor
(J.R. Taylor) Lt., RCASC
Officer detailed to take Summary of Evidence.

IN THE FIELD
11 APRIL, 1945.

EXHIBIT "A"

Ex A
Clm. B



PERTINENT FACTORS

Note Sides of cutting perpendicular
Actual width of pavement 15'
Width between banks
Narrowest point 14'6"
Widest " 19'
Length of cutting
Throughout 150' app.
Bank at highest point 20'

Diagram drawn by
Lieut [illegible] from
actual measurments
made 11 apr 45

IN THE CASE OF

B-139719 Pte (A/cpl) Charles Garnet ROBSON

LIST OF WITNESSES FOR THE PROSECUTION

L-59665	L/cpl Neale, W.A.	No 4 VRD CCOD
D-91606	MSM Baller, D.	1 Cdn ASC Rft Unit
Lt	J.E. Tappin	1 Cdn ASC Rft Unit
D-91702	MSS Johnston, W.	1 Cdn ASC Rft Unit

LIST OF WITNESSES FOR THE DEFENCE

NIL

LIST OF EXHIBITS

(a) Diagram drawn by Lt J.E. Tappin from actual measurements made 11 Apr 45.

TO WHOM IT MAY CONCERN

This is to certify that I, the accused B-139719 Pte (A/cpl) Robson, C.G. RCASC of 1 Cdn ASC Rft Unit, have received one (1) copy of Charge Sheet and Summary of Evidence in connection with my forthcoming Trial by Field General Court Martial.

C.G. Robson

(B-139719 Pte (A/cpl) Robson, C.G.)

I, the accused, B-139719 Pte (A/cpl) Robson, C.G., RCASC, on strength of 1 Cdn ASC Rft Unit, desire the services of Lt J.F. Hambly, RCASC, 1 Cdn ASC Rft Unit, to defend me at my forthcoming Trial by Field General Court Martial.

C.G. Robson

(B-139719 Pte (A/cpl) Robson, C.G.)

53C. Sgt Rabeon J.

M-9090 Sgt. Robson, J.
No.1 Cdn Sigs Hldg Unit

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 28th day of July, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~XXXX

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M-9090 SGT. ROBSON,J. No.1 Cdn Sigs Hldg Unit.	First Charge A.A. sec 37(1)	NOT GUILTY	GUILTY TO BE SEVERELY REPRIMANDED. See charge sheet attached.	Confirmed A.F.B. Turner Brig

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— NO.

(Signed) L. F. Page - Brigadier (Signed) A E Gott Brig-Gen
Commanding Cdn Base Units, Cdn Army. President.
Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 31st day of July, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~) Court Stenographer
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 31st day of July 19 41.

A E Gott Brig-Gen
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 782 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

Signed this day of 19 .

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack, until further orders.~~)

Signed this 7th day of August 19 41

A.F.B. Turner Brigadier.
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) DEC 1 1 1941 (Signed) H.R. Symes Lt.-Col.
Commanding
No. 1 Cdn. Signals Holding Unit
(Cdn. A.)

Promulgated and extracts taken in the case of

(Dated) 11 AUG 19 DEC 1 1 1941 (Signed) W. D. Smith Lieut.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[84] Wt. 38692/1335 70m 2/41 W & Co., Ltd. Gp. 748/2

C H A R G E S H E E T

The accused, No. M-9090 Sgt. Robson, J. No. 1 Canadian Signals Holding Unit, Canadian Army Overseas, is charged with:-

1st Charge
Sec. 37(1)
Army Act.

When on active service, striking a private soldier,

in that he, at Guadalcupe Barracks, Bordon, Hants, at approximately 1415 hours 10 Jul 41, did, in the Men's Mess, strike C-5175 Pte. Reilly, R., cutting his forehead and tearing his shirt.

H.R. Tyner

(H.R. Tyner) Lt. Col.,
Officer Commanding
No. 1 Cdn Signals Holding Unit.

21 July 1941

Bordon, Hants.

To be tried by Field General Court Martial

L. I. Page Maj Gen

~~(F.R. Phelan) Brigadier~~
Commanding Cdn Base Units.

Bordon, Hants
This 28th day of July 41.

A. J. [illegible]
Maj. [illegible]

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

NO M 9090 Sgt. Robson J.

of 1. Edu Signals Holding Unit

and in my opinion he is fit to undergo Trial by ~~unfit~~

Court Martial.

Station Bordon

Date 21.7.41

J. V. Tilley

Medical Officer

A97

No.M.9090 Sgt. Robson, J., No.1 Cdn Signals Holding Unit, tried by Field General Court Martial at Bordon, Hants, on the 31st day of July, 1941.

The order convening the Court, the charge sheet, summary of evidence and medical certificate are laid before the Court.

The accused is brought before the Court.

Prosecutor - Capt H.M. Millar, R.C.C.S.
Defending Officer - Lieut H.S. Smith, P.P.C.L.I.

At 1400 hrs the Trial commences.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No, sir.

The President and members are duly sworn.

Q2 - Do you object to M.15577, S/Sgt. Stanley Fidler, The Edmonton Regiment, H.Q., C.D.M., acting as Court Stenographer?
A2 - No, sir.

The Court Stenographer is duly sworn.

The officer under instruction is duly sworn.

The charge sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon the charge in the above mentioned charge sheet.

Q3 - Are you guilty or not guilty of the charge against you, which you have heard read?
A3 - Not guilty, sir.

The Prosecutor proceeds to call witnesses.

1st Witness for the Prosecution, M.9626 L/Cpl Gentry, R.D., R.C.C.S., No.1 Cdn Signals Holding Unit, having being duly sworn, is examined by the Prosecutor.

Q4 - Will you give the Court your number, rank, name, initials and your unit?
A4 - I am L/Cpl Gentry, R.D., M.9626 of No.1 Cdn Sigs Holding Unit.
Q5 - I want you to tell the Court the story of what happened on the 10th day of July, 1941, as you saw it?
A5 - On the afternoon of 10th of July, I was working in my larder. I heard an argument in the kitchen. I walked out to see what it was, thinking that some of the fatigue men were arguing. As I came out past the tables I found Sgt. Robson and Pte. Reilly arguing. I didn't see the start of it. By the time I got around the end of the table Pte. Reilly had a hold of Sgt. Robson by the shirt. I took a hold of Sgt. Robson and pulled him apart. By that time there were a couple of blows struck. I don't know who struck the first blow. Then Sgt. Robson told me to go down to the Orderly Room with him. Pte. Reilly went along with us. When we were going down the road Pte. Reilly said: "This is just what I wanted."
Q6 - What happened after that?
A6 - We went down to the Orderly Room.
Q7 - Were you with Sgt. Robson going down the road?
A7 - Yes, sir. Sgt. Robson and I were going down to the Orderly Room. Pte. Reilly went to the Medical Officer and we continued over to the Orderly Room. Sgt. Robson went into the Orderly Room and I stayed outside.

Q8 - What did he go there for?
A8 - I don't know sir.
Q9 - He didn't tell you?
A9 - No, sir.
Q10 - Do you know anything else?
A10 - No, sir, except that Sgt. Robson warned Pte. Reilly around 0900 hrs in the morning to quit talking behind his back.
A11 - The same day?
A11 - Yes, sir. He told Pte. Reilly to quit talking behind his back, in the mess hall, in the Soldiers' Club or anywhere else.
Q12 - What time of the day did you happen to see the fight?
A12 - Approximately 2.15 in the afternoon.
Q13 - You say that you were in the pastry room?
A13 - No, sir, in the larder room, next to my meat room.
Q14 - What attracted you to go outside?
A14 - Raised voices.
Q15 - Did you hear any particular voice?
A15 - No, sir, I just heard high voices. It is quite a distance between the larder room, and the place where the argument was going on.
Q16 - Did you recognize any voice?
A16 - No, sir.
Q17 - You came out to see what the trouble was?
A17 - Yes, sir, I was 2 i/c of the kitchen.
Q18 - After you had got around the table how far were you away from Sgt. Robson?
A18 - About six to eight feet.
Q19 - Reilly was there?
A19 - Yes, sir.
Q20 - You are about six to eight feet from Sgt. Robson now, do you recognize him?
A20 - Yes, sir.
Q21 - He was the man?
A21 - Yes, sir.
Q22 - Were there any people around?
A22 - Yes, sir.
Q23 - How many were there?
A23 - I couldn't tell you, there were a number of fellows, and more came as I came around the table.
Q24 - Surrounding the two of them?
A24 - Yes, sir,
Q25 - You didn't see very much?
A25 - No, sir.
Q26 - You heard voices?
A26 - Yes, sir, I couldn't understand them.
Q27 - You say you separated them?
A27 - Yes, sir.
Q28 - You went behind the table?
A28 - There were two tables. I went between them.
Q29 - You went around this little crowd of men between you and the accused?
A29 - Yes, sir.
Q30 - What happened when you did get around the crowd and actually saw Robson and Reilly full on. Did you heard any words spoken?
A30 - No, sir. When I got around I grabbed Robson from behind and a couple of the other boys caught Reilly and we pulled them apart.

Q31 - Will you explain what made you grab Sgt. Robson?
A31 - Well, he was closest to me and I figured if I could grab one of them I could stop the fight.
Q32 - What happened was you grabbed Sgt. Robson. Did you hear any words after that?
A32 - No, sir.
Q33 - Nobody said a word?
A33 - No, sir, because I pulled him apart and a couple of others grabbed Reilly and I think Robson said something to Reilly about going to the orderly room.
Q34 - But you couldn't swear to anything else?
A34 - No, sir.
Q35 - Previous to this disturbance you said Sgt. Robson warned Reilly to stop talking behind his back?
A35 - Yes, sir.
Q36 - Did that have any connection?
A36 - I think so, sir.
Q37 - How?
A37 - Sgt. Robson warned Reilly around nine o'clock in the morning to stop talking about him behing his back in the Soldiers' Club, the kitchen or anywhere else.
President - You heard him say that?
Witness - Yes, sir.

Cross-examination by the defending officer.

Q38 - One thing I want to clear up. During the disturbance....The question that was asked, I think you misunderstood it.....These people that were milling around, you didn't mean the people responsible for the fight, you meant the men next to you?
A38 - Yes, sir.
Q39 - You said you didn't know who struck the first blow. I suggest it might have been Reilly.
A39 - It might have been, I couldn't say.
Q40 - You mentioned that you saw Reilly grab Sgt. Robson by the shirt?
A40 - Yes, sir.
Q41 - Would you say it was a deliberate movement?
A41 - I don't know whether he was protecting himself or making a grab at Sgt. Robson.
Q42 - Was it a definite movement?
A42 - He kind of swung his arm; whether he meant to hit him or hold him by the arm I don't know.
Q43 - The possibility is you might think it could have been the beginning of a blow?
A43 - It could have, sir.
Q44 - What do you think Reilly meant when, after he had been struck by Sgt. Robson, he said "That is just what I want."
A44 - He has said before in the kitchen, it is quite a while ago, that he would strip him. Whether it was just talk or not I don't know.
Q45 - Would you say Reilly is a trouble maker?
A45 - Very erratic, sir, I have heard him bawl men out at the steam table and at the tables.
Q46 - Has he ever been in any other fights?
A46 - Not to my knowledge. I have heard of one or two others but I have only heard of them.

Questions by the Court.

Q47 - Somewhere at the first of your evidence you said you didn't know who struck the first blow. Did you see any struck?
A47 - Arms were swinging but I couldn't see whose was the first blow.
Q48 - Did you see each man striking?
A48 - Both arms were striking back and forth.
Q49 - You are quite sure they were hitting each other?
A49 - I think so.
Q50 - But you are not sure?
A50 - No, sir, I am not sure.

Second witness for the prosecution, C-5175, Pte. Reilly, R., No. 1 Cdn. Signals Holding Unit, being duly sworn, is examined by the prosecutor.

Q51 - Would you identify yourself by giving your number, name and rank to the Court?
A51 - C-5175, Pte. Reilly, R., Hastings & Prince Edward Regiment, on the strength of No. 1 Cdn. Signals Holding Unit.
Q52 - Will you tell us what happened on the 10th July, Pte. Reilly?
A52 - Yes, sir, just exactly what happened on the 10th July. I was in the kitchen in the pastry room helping to make up some buns and I took the pan of buns to the steam table. I closed the door there and walked around to get an empty pan and on my way back Sgt. Robson was using abusive language to Carrignan.
Q53 - How far away from you was he?
A53 - About five feet, sir, between five and six feet.
Q54 - Did you hear what he was saying?
A54 - I didn't hear. All I did hear was he was swearing and he left Pte. Carrignan and came over to me and shook his finger in front of my face and said "You cock-sucking son of a bitch, I will tear your fucking heart out." And I said having the rank he had that was no way to talk and he said "I don't give a fuck" and he struck me. On the way from the kitchen after the scrap was over, Sgt. Robson, L/Cpl. Gentry and myself came out and he used quite a lot of slang words which I paid no attention to and he left me at the barracks on the parade square there and instead of me going to the orderly room I let him go and I followed on. I followed on because I was going down to the other hut and thought I would change my shirt and when I got inside the hut I said "I guess I will keep it on and go just the way I am" which I did. I paraded myself in front of C.S.M. Clarke and he paraded me in front of Capt. Kennedy.
Q55 - This shirt that you mention; I have a shirt here which I want you to identify. Will you absolutely -- does this look like a shirt you have seen before?
A55 - Yes, sir, that looks like my shirt.
Q56 - Tell me about this shirt. Whose shirt is it?
A56 - It belongs to me.
Q57 - How can you identify it?
A57 - There are no marks but it is mine.
Q58 - Have there been any tears in that shirt since it was handed in to the adjutant and put in his custody?
A58 - That is quite a hard thing to say, sir.

The prosecutor produces in evidence a torn under-shirt which is alleged to be the property of Pte. Reilly. This evidence is accepted by the Court.

Cross-examination by the defending officer.

Q59 - Before you came down to the kitchen that afternoon where had you been?
A59 - I was in the club and had one glass of beer.
Q60 - I have just asked where you had been. Had you been in the Soldiers' Club?
A60 - Yes, sir.
Q61 - Was anybody with you?
A61 - No, sir, I was drinking alone.
Q62 - Drinking alone?
A62 - Definitely. I just had the price of one glass of beer and that was all I had.
Q63 - Have you ever had any fights in the cookhouse?
A63 - Not what you could call a fight.
Q64 - What do you consider a fight?
A64 - Blow for blow.
Q65 - That is the only one you have had?
A65 - That is the only one I have been in.
Q66 - When you first joined the unit it was at Tournay lines?
A66 - Yes, sir.
Q67 - Did you not have the impression when you came there that you were to take charge of the cookhouse?
A67 - I definitely didn't.
Q68 - You didn't?
A68 - No.

Re-examination by the prosecutor.

Q69 - Will you tell the Court who struck the first blow?
A69 - Sgt. Robson struck the first blow and I think he got me with the ring on his finger and when he drew blood I caught hold of him to defend myself.
Q70 - You have said this was the first fight in the cookhouse?
A70 - Yes, sir.
Q71 - Blow for blow?
A71 - Right.
Q72 - Did you give a blow for every blow you received?
A72 - I didn't strike him once because in the first place I have only two fingers on this hand and a thumb, and only three and a thumb on this. I swear I never touched him if God were to crack me dead right here.
Q73 - Have you any reason why this should happen to you?
A73 - I had no reason to think it was coming.

Third witness for the prosecution, D-23308, C.S.M. Clarke, A., No. 1 Cdn. Signald Holding Unit, being duly sworn, is examined by the prosecutor.

Q74 - Will you identify yourself by giving your number, name and rank to the Court?
A74 - D-23308, C.S.M. Clarke, A., Headquarterw Company, No. 1 Cdn. Signals Holding Unit.
Q75 - Will you tell your story of what happened in this case?
A75 - I am C.S.M. of Headquarters Company. Pte. Reilly came to the orderly room with his shirt torn and I immediately asked him what he was doing going around barracks in that condition and he said he wished to lay a charge against Sgt. Robson for tearing his shirt and hitting him on the forehead. He had a cut over his right eye. I questioned him as to what it was all about and he said he had got into a fracas and Sgt. Robson had hit him and torn his shirt. I paraded him before the acting company commander and showed him the condition he was in. I was detailed to go to the kitchen and investigate Sgt. Robson's condition. I did so. I questioned Sgt. Robson and told him he was charged with striking Pte. Reilly and tearing his shirt. I reported back to Capt. Kennedy.
Q76 - Does that look like the shirt Reilly had on? (Indicates exhibit)
A76 - Yes, sir, that looks like it.
Q77 - Was it torn that much?
A77 - Torn on the right shoulder.

Cross-examination by the defending officer.

Q78 - When Pte. Reilly came down to the company orderly room Capt. Kennedy asked you to investigate the case. Did you hear Sgt. Robson's side of the story?
A78 - Yes, sir.
Q79 - When?
A79 - In the cookhouse when I went to investigate.

Fourth witness for the prosecution, B-34590, Sgmn. Drury, G.E., No. 1 Cdn. Signals Holding Unit, being duly sworn, is examined by the prosecutor.

Q80 - Will you give your number, name and initials to the Court?
A80 - B-34590, Sgmn. Drury, G.E.
Q81 - Your company and unit?
A81 - Attached to Headquarters Company, my unit the R.C.C.S.
Q82 - Do you recognize the accused, Sgt. Robson?
A82 - I do, sir.
Q83 - Will you tell your story of what happened on the 10th July in the cookhouse?
A83 - On this date in the morning we were working around the cookhouse and Sgt. Robson came around and warned each individual in the cookhouse and every man in the cookhouse if they didn't stop talking about him both in the cookhouse and outside he would bring it to a head. In the afternoon at the particular time the incident occurred I was baking buns in the large baking oven and Pte. Reilly came out and put

them on the steam table and was walking back to the pastry room when Sgt. Robson said "Come here, Reilly, I want to talk to you." Reilly said "If you have anything to say to me, say it right here in front of everyone here." Sgt. Robson warned him to not talk about him behind his back anywhere. At this time there was an argument back and forth between the two. I didn't catch all the argument and the next thing Reilly reached to grab Sgt. Robson by the arm and grabbed him by the shirt front and he held his hand up in this manner (indicates) whereupon Sgt. Robson warned him and there was a good deal of cursing on both sides and I can't remember the exact words and Sgt. Robson warned him and said "I am warning you" and after that he struck Reilly three or four blows and the boys got in between, including myself, and the next thing they were walking down the road.

Q84 - You saw all these actions?
A84 - Yes, sir.
Q85 - You said Reilly had his hand up here? (indicates)
A85 - Yes, sir.
Q86 - He made the first movement did he?
A86 - I would say so, sir.
Q87 - What did it look like?
A87 - At that particular time he had Sgt. Robson by the front of the shirt and his arm was drawn back like this. (Indicates)

The defending officer declines to cross-examine this witness.

Questions by the Court.

Q88 - Did Reilly have his fist clenched?
A88 - I couldn't say whether he had it clenched or not.
Q89 - Did you feel at the time his action was one of defending himself?
A89 - Who, sir?
Q90 - Reilly?
A90 - No, sir.

Fifth witness for the prosecution, H-26115, Gnr. Ashcroft, W.J., No. 1 Cdn. Signals Holding Unit, being duly sworn, is examined by the prosecutor.

Q91 - Will you give to the Court your number, rank, name, initials, company and Unit?
A91 - I am H-26115, Gnr. Ashcroft, W.J., R.C.A., attached No. 2 Company, No. 1 Cdn. Signals Holding Unit.
Q92 - Will you tell us the story of what happened in the men's mess cookhouse on the 10th July, 1941.
A92 - I walked into the kitchen after working in the mess hall which was my detail for the week and I noticed a scuffle in the corner and walked closer and noticed Reilly and Sgt. Robson were scuffling together and all I saw was Sgt. Robson striking Reilly two or three times and they turned around and went out.
Q93 - How far away were you when you actually saw them?
A93 - About thirty feet, sir.
Q94 - There was nobody between you and this little scuffle?
A94 - Just the people around the scuffle.

Cross-examination by the defending officer.

Q95 - Gnr. Ashcroft, you didn't see the first of this, you came in at the middle, so you don't know what happened before?
A95 - No, sir.

Sixth witness for the prosecution, U-1518, Sgmn. Cooke, J.G.B., No. 1 Cdn. Signals Holding Unit, being duly sworn, is examined by the prosecutor.

Q96 - Will you give the Court your number, name, rank and initials?
A96 - U-1518, Sgmn. J.G.B. Cooke.
Q97 - What is your occupation?
A97 - I am a butcher in the Signallers, sir.
Q98 - On the strength of No. 1 Cdn. Signals Holding Unit?
A98 - That is right, sir.
Q99 - Will you tell us, Cooke, what you know of what happened in the men's mess on the 10th July and tell the Court what happened?

A99 - Well, I was cutting beef up in the meat room and I heard a noise going on in the kitchen so I went out and saw Sgt. Robson fighting with Pte. Reilly and I went up and held Sgt. Robson back.
Q100 - Did you see the start of it?
A100 - No, sir.
Q101 - Who was doing the fighting?
A101 - Sgt. Robson, sir.
Q102 - What was Pte. Reilly doing?
A102 - Backing away.
Q103 - How far away were you when you first saw this happening; roughly speaking?
A103 - Twenty feet.
Q104 - Did you hear any words spoken?
A104 - No, sir.
Q105 - Did Pte. Reilly make any attempt.....?
A105 - No, sir, he was backing up the same as a dog that was beat.

Cross-examination by the defending officer

Q106 - You were in the butcher shop when it started?
A106 - Yes.
Q107 - You didn't get a look at the first of it?
A107 - Right.

Seventh witness for the prosecution, D-36688, Gnr. Caine, N.C., No. 1 Cdn. Signals Holding Unit, being duly sworn, is examined by the prosecutor.

Q108 - Would you give your number, name, initials, company to the Court, please?
A108 - D-36688, Gnr. Caine, N.C., No. 2 Company, No. 1 Cdn. Signals Holding Unit.
Q109 - Do you recognize the accused?
A109 - Yes, sir.
Q110 - Who is he?
A110 - Sgt. Robson.
Q111 - Will you tell your story as you know it of what happened in the men's mess on the 10th July?
A111 - Our company was duty week and I was working under Sgt. Robson and working in the bread room and at the time of the incident I had just finished slicing for the afternoon and had come for a broom to pick up the bread crumbs and Sgt. Robson was talking to a little French lad in the kitchen and he told Pte. Carrignan if he caught him doing it again he would beat his head off and take him up for orders. Pte. Carrignan said it would be alright with him if he thought he could do it.
Q112 - Do you think you could recognize this boy if you saw him?
A112 - Yes, sir.

At the request of the Court Pte. Carrignan is brought before the Court for identification by the witness.

Q113 - Is this the man?
A113 - Yes, sir.

Pte. Carrignan is dismissed from the court-room.

Q114 - Then what happened?
A114 - Then he called Reilly and told him to come outside he wished to speak to him and Reilly told him to do it there. The sergeant cursed at Reilly and when he threatened to beat him up Reilly put his hand up in front of his face and Sgt. Robson struck him and Cpl. Gentry rushed in front and grabbed Sgt. Robson and I had hold of Reilly but he didn't attemp to follow and I let him go and they marched outside and Cpl. Gentry went with them.

Cross-examination by the defending officer.

Q115 - You went to get the broom to sweep up the crumbs and then you passed where Sgt. Robson was talking to Pte. Carrignan?
A115 - Yes, sir.

Q116 - When Reilly grabbed Sgt. Robson's shirt did he make a quick movement?
A116 - No, he didn't. After the sergeant struck him he did.
Q117 - I think you said before that Reilly grabbed Sgt. Robson's shirt and Sgt. Robson struck him.

The court-stenographer is directed to read back the statement of the witness and no mention is made of Pte. Reilly having grabbed Sgt. Robson's shirt. The defending officer proceeds with his cross-examination.

Q118 - When he put his arm before his face did he do it quickly?
A118 - Sgt. Robson shook his finger in front of Reilly's face and he was cursing at him and he put his arm in front of his face.

Re-examination by the prosecutor.

Q119 - How is it that you happened to be in the cookhouse?
A119 - I was working there on duty company.
Q120 - Your detail was to work in the men's mess?
A120 - It was the duty week of No. 2 Company and I was detailed to work in the men's mess. I reported to Sgt. Robson in the morning.
Q121 - Have you ever worked in the men's mess before?
A121 - No, sir.
Q122 - Except when you went through for your meals have you seen Sgt. Robson or Pte. Reilly before?
A122 - No, sir, the only time was during meal hours in the mess.

Eighth witness for the prosecution, E-5179, Pte. Carignan, No. 1 Cdn. Signals Holding Unit, being duly sworn, is examined by the prosecutor.

Q123 - Would you give the Court your number, rank and name?
A123 - E-5179, Pte. Carignan, C., R22eR., No. 1 Cdn. Signals Holding Unit.
Q124 - What is your job?
A124 - Fireman.
Q125 - In the men's mess?
A125 - Yes, sir.
Q126 - Do you know Sgt. Robson?
A126 - Yes, sir.
Q127 - Can you tell the Court just what happened on this day between Sigmn. Reilly and Sgt. Robson and yourself? Tell the Court exactly what happened.
A127 - We were in the kitchen at about a quarter to two and I had started me fires for the tea. Sgt. Robson come and told me "Frenchy, if you talk about me in tea. Sgt. Robson come and told me "Frenchy, if you in the club but I will break his fucking neck" and I said "Come back and do it." He told Reilly a little later on "You are a little cock-sucker Irish son of a bitch". The fight started. Reilly grabbed Robson and Robson punched him. Robson punched him four times and after that somebody come and split them up and Sgt. Robson said "You will follow me up in front of the colonel" and he said "Come on, Reilly" and Reilly started to go with Sgt. Robson.
Q128 - Who started it?
A128 - Sgt. Robson started it; he started to hit the man.

Cross-examination by the defending officer

Q129 - Did you say Pte. Reilly put his hand up like that?
A129 - Yes, sir, Reilly wanted to protect himself.
Q130 - But he did put his hand up?
A130 - Yes, sir.
Q131 - He did it first?
A131 - If you know a man wants to hit you, you move fast.
Q132 - Were you in the Soldiers' Club before with Reilly?
A132 - I was in the Soldiers' Club but not with Reilly; I was by myself.
Q133 - In the summary of evidence you say you were drinking with Reilly.
A133 - No, sir.

At the request of the defending officer the statement of the witness is read from the summary of evidence.

Q134 - One time you tell me one story and another time you tell me another.
A134 - I am here to tell the truth. I was asked how much did Reilly take and I said one glass and I had two glasses and I never said we were together.

Q135 - You signed this and it was read to you and explained to you. I submit that you are lying and that you were with Reilly and you came down from the Soldiers' Club with Reilly, I don't know in what condition, and you were with Reilly.
A135 - I never drank with Reilly that day.
Q136 - Then you lie.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Prosecutor - During the taking of this summary of evidence Major Smart was the commanding officer of the company and the question put by the accused to Carignan was "Had you been drinking with Reilly?" His answer was "Yes, in the Soldiers' Club. I had two beers and Reilly had one. That was all he had money for." Carignan does not understand English very well and it is altogether likely that this was put under his nose for signature.

Defending Officer - I object; he is presuming.

Prosecutor - Before discrediting this witness I would ask the Court to judge whether or not Carignan understood what he was signing or not.

Question by the Court.

Q137 - How long have you worked in the kitchen?
A137 - Five months.
Q138 - Do you know Reilly very well?
A138 - Just the same as Sgt. Robson; five months.

Ninth witness for the prosecution, C-41531, Sgmn. Derby, A., No. 1 Cdn. Signals Holding Unit, being duly sworn, is examined by the prosecutor.

Q139 - Will you give your number, name and unit to the Court?
A139 - C-41531, Sgmn. Derby, A., On strength No. 1 Cdn. Signals Holding Unit.
Q140 - Do you recognize the accused?
A140 - Yes, sir.
Q141 - What is your job?
A141 - In the cookhouse.
Q142 - Permanently?
A142 - Yes, sir.
Q143 - Will you tell the Court the story of what happened on the 10th July in the men's mess?
A143 - The only thing I saw was Pte. Reilly had his hand on Sgt. Robson and I saw Sgt. Robson hit Reilly about three or four times and that is all I can say.
Q144 - Who started it?
A144 - Sgt. Robson, sir.

Cross-examination by the defending officer

Q145 - The first thing you saw, Derby, when you looked up was Reilly putting his hand to Sgt. Robson?
A145 - I didn't see him put it on; it was on.
Q146 - Did you see anything before that?
A146 - No.
Q147 - How do you know Sgt. Robson started the fight?
A147 - I don't know Sgt. Robson started the fight.
Q148 - Then you don't know whether Robson or Reilly started the fight?
A148 - I wouldn't say, sir.
Q149 - You don't know who started the fight?
A149 - No, sir.

Questions by the Court.

Q150 - Was there any interval of time when you first saw this fracas going on. Were there blows being struck when you first saw them?
A150 - At the same time Robson hit Reilly.
Q151 - When you came on the scene Robson was hitting Reilly?
A151 - Yes, sir.
Q152 - Reilly wasn't holding him off?
A152 - He had one hand on him trying to protect himself.

Q153 - (Defending Officer) Derby, how did you know that Reilly was trying to protect himself because he had his hand on Robson?
A153 - I saw Robson hit Reilly.
Q154 - How do you know? Do you know what was in Reilly's mind?
A154 - No, sir.
Q155 - Then you don't know, do you?
A155 - No, sir.

Defending Officer - I intend to offer a defence if my application is denied, but in view of the contradiction between the witnesses and in view of the fact that the mere movement of the arm of Reilly as happening first constitutes common assault as laid down in Chapter Seven of the Manual (Reads) and as the evidence as offered by the prosecution shows that Reilly made the first movement, therefore I ask for dismissal on the ground that there was common assault against Sgt. Robson and therefore any act of Robson's part was in self-defence.

Prosecutor - It is for the Court to judge which witnesses were discredited. One, Gnr. Ashcroft, was not discredited. He stated that Reilly did not strike Sgt. Robson. There is the fact that it is claimed that Reilly was defending himself. The defence claims that Sgt. Robson was defending himself from common assault. Sgt. Robson showed his intention by his threatening attitude towards Carignan which was proven and not discredited and by his attitude and words used to Reilly. This points to the fact that the accused had in the back of his mind putting into effect what he actually said. The second point, even if the man did put up his arm in an effort that might have been thought of by the accused as an attack upon himself, Sgt. Robson is an n.c.o. and they do not strike signalmen. It was pointed out that Sgt. Robson warned him first and then struck him. He warned him about something. What he should have done was warn him and he could have ordered any one of a number of cooks to fall in as an escort. If there was any cause for discipline, Sgt. Robson seems to have taken it into his own hands.

Defending Officer - There is a very old saw that sticks and stones may break my bones.....No matter what threatening language may have been used, it does not constitute an assault. Capt. Millar points out that one witness out of eight says this was unprovoked. One witness that didn't see the arm go up. That arm going up, I submit as a point of law, is assault and many people may feel that if an arm is put in front of their face they are jum py and hit back. Then an n.c.o. never striking a signalman. I know very well if a signalman attacked me I would soon hit him. Self-defence is one of the first laws. I submit, rather than take up the time of the Court any further, this case be dismissed now as not proven; not sufficient evidence.

The Court is closed for the consideration of the motion.

The Court being re-opened the President states as follows:

President - The Court has duly considered the motion of the defending officer and has ruled that the motion for dismissal shall not be accepted and the trial will proceed.

Q156 - Do you apply to give evidence yourself as a witness?
A156 - Yes, sir.
Q157 - Do you intend to call any other witness in your defence?
A157 - Yes, sir.
Q158 - Is he a witness as to character only?
A158 - No, sir, facts.

First witness for the defence, M-9090, Sgt. Robson, J., No. 1 Odn. Signals Holding Unit, being duly sworn, is examined by the defending officer.

Q159 - Will you give your number, name, rank and unit, please?
A159 - M-9090, Sgt. Robson, J., no. 1 Odn. Signals Holding Unit.
Q160 - I want you to tell the story in your own words, starting from why you objected to remarks being passed about you down to the time this argument started.

A160 - S[illegible] over Reilly who was one of the cooks and
several [illegible] remarks behind my back in my
camp and I had wa[illegible] remarks behind my back in my
had come into the unit [illegible] to be of no use. Reilly
over the kitchen and he seemed [illegible] that he was to take
me stripped. This had been going on [illegible] me and out to have
to have Reilly taken out of the kitchen and replaced [illegible] I had asked
done. I had him placed over inthe Sergeants' Mess to save incon-
venience and to save trouble in the cookhouse of the men's mess.
The day in question, it was in the morning time the day before, I
had heard Reilly using criticizing and provoking remarks and they
were hard to take and got under my skin and I went to him and said
"For Christ's sake, this has got to fucking well stop, I don't want
to charge you." He has a sneering way and at this time just gave me
a laugh and I let it go. Around the noon hour, 1245, I enquired
where Reilly and two or three other cooks were and they said over
in the Soldiers' Club. When they came back in I paid no attention.
I have a cousin working in the club who was reared by my parents and
she writes to my wife and she has told about him calling me a rotter
and has asked why I worked the boys so hard, she has asked me on
several occasions why and I told her I had to have the food produced.
Around half past one or two o'clock I seen Reilly just before putting
the pans in the oven and I said "Reilly, you had better stop talking
about me behind my back" and he said very quietly in a sneering
remark "Oh, go fuck yourself". When I came over later he gave me
another sneer and I said "You are going to stop talking about me or
I will take you down before the colonel" and I said "Come here, I
want to talk to you anyway." I wanted to draw him over by the
french fry out of the way to one side and he said in a low voice,
"Fuck you" and he said in a loud voice "Say what you have to say here."
I started to use abusive language and told him what I thought of him,
that he was a rat and he then grabbed a hold of my shirt and raised
his hand seemingly to strike me. In my excitement when he raised
his hand, and in the second when he grabbed my shirt and raised his
hand, I struck him first. I was excited and the boys came and drew
me away. This had been leading up for several months and he had
threatened to strip me.

Q161 - You say you sent Reilly to the Sergeants' Mess; why didn't he stay
there?

A161 - There was the same trouble over there and the sergeant-major had me
take him out of there.

Cross-examination by the prosecutor.

Q162 - These irritating remarks, were they personal or could you indicate?

A162 - They were very personal to me as a sergeant cook. I had to see these
men fed and if Reilly didn't do his work I had to pull him up and he
had the idea in his head that I was a rotter and a dirty cur and a
rotter and had been going over to the Soldiers' Club and had been
criticizing and telling my cousin that I was a no-good and a rotter
and not fit to be a sergeant and things like that. It was common
knowledge throughout the camp that it was this man's attitude.

Q163 - You knew this was going on. I know you would have to have food
produced and the pressure was turned on all cooks. You might have
thought you needed Reilly, but did you need him so much that you
stood it and refused to bring him up?

A163 - In the cookhouse we have to take a lot of things into consideration.
I asked that Reilly be taken out of the cookhouse and Capt. Kennedy
couldn't see his way clear. I sent him to the sergeants' mess to
make it an easier kitchen for everyone concerned.

Questions by the Court.

Q164 - Have you any idea why he should make these remarks about you?

A164 - I was with the General Holding Unit which comprised all holding units
at the beginning of last May and when the Signals was formed they
more or less formed the cookhouse with it and I was with the General
Holding Unit and previously with the Signals. When they formed up
they went to Tournay Barracks and the corporal cook was in charge
while I was at the General. Reilly had the idea he was being taken

ASA

A160 - Sir, as sergeant I come over Reilly who was one of the cooks and several times he had made agitating remarks behind my back in my camp and I had warned him but it seemed to be of no use. Reilly had come into the unit under the impression that he was to take over the kitchen and he seemed to be out to get me and out to have me stripped. This had been going on for months and I had asked to have Reilly taken out of the kitchen and replaced and this wasn't done. I had him placed over inthe Sergeants' Mess to save inconvenience and to save trouble in the cookhouse of the men's mess. The day in question, it was in the morning time the day before, I had heard Reilly using criticizing and provoking remarks and they were hard to take and got under my skin and I went to him and said "For Christ's sake, this has got to fucking well stop, I don't want to charge you." He has a sneering way and at this time just gave me a laugh and I let it go. Around the noon hour, 1245, I enquired where Reilly and two or three other cooks were and they said over in the Soldiers' Club. When they came back in I paid no attention. I have a cousin working in the club who was reared by my parents and she writes to my wife and she has told about him calling me a rotter and has asked why I worked the boys so hard, she has asked me on several occasions why and I told her I had to have the food produced. Around half past one or two o'clock I seen Reilly just before putting the pans in the oven and I said "Reilly, you had better stop talking about me behind my back" and he said very quietly in a sneering remark "Oh, go fuck yourself". When I came over later he gave me another sneer and I said "You are going to stop talking about me or I will take you down before the colonel" and I said "Come here, I want to talk to you anyway." I wanted to draw him over by the french fry out of the way to one side and he said in a low voice, "Fuck you" and he said in a loud voice "Say what you have to say here." I started to use abusive language and told him what I thought of him, that he was a rat and he then grabbed a hold of my shirt and raised his hand seemingly to strike me. In my excitement when he raised his hand, and in the second when he grabbed my shirt and raised his hand, I struck him first. I was excited and the boys came and drew me away. This had been leading up for several months and he had threatened to strip me.

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A161 - There was the same trouble over there and the sergeant-major had me take him out of there.

Cross-examination by the prosecutor.

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A162 - They were very personal to me as a sergeant cook. I had to see these men fed and if Reilly didn't do his work I had to pull him up and he had the idea in his head that I was a rotter and a dirty cur and a rotter and had been going over to the Soldiers' Club and had been criticizing and telling my cousin that I was a no-good and a rotter and not fit to be a sergeant and things like that. It was common knowledge throughout the camp that it was this man's attitude.

Q163 - You knew this was going on. I know you would have to have food produced and the pressure was turned on all cooks. You might have thought you needed Reilly, but did you need him so much that you stood it and refused to bring him up?

A163 - In the cookhouse we have to take a lot of things into consideration. I asked that Reilly be taken out of the cookhouse and Capt. Kennedy couldn't see his way clear. I sent him to the sergeants' mess to make it an easier kitchen for everyone concerned.

Questions by the Court.

Q164 - Have you any idea why he should make these remarks about you?

A164 - I was with the General Holding Unit which comprised all holding units at the beginning of last May and when the Signals was formed they more or less formed the cookhouse with it and I was with the General Holding Unit and previously with the Signals. When they formed up they went to Tournay Barracks and the corporal cook was in charge while I was at the General. Reilly had the idea he was being taken

to be in charge of the kitchen. Then he had the idea that someone was going over his head. I had the same trouble in Tournay and I asked Capt. Kennedy to have him taken out of the kitchen. He has got a spiteful nature and every time I have pulled him up for coming up late it seemed to come out of him when I wasn't there or when he had a chance to get at me.

Q165 - Have you been sergeant of this cookhouse all the time?
A165 - Yes, sir.
Q166 - Ever since Reilly was taken on? You were there before him?
A166 - Originally, sir, with the R.C.C.S. in Canada. I came over with my brigade which formed the General Holding Unit and some were picked up by General Ashton when the General Holding Unit was formed. I was with the General Holding Unit until the colonel -- Col. Tyner -- had me brought back to the ~~xxxxxxx~~ Signals when the Signals formed as a holding unit by themselves.
Q167 - When did Reilly come in?
A167 - Just previous to that. I was held back with the General Holding Unit until six weeks after the Signals was formed. Cpl. Simcox was in charge.
Q168 - You were sergeant right from the beginning over him?
A168 - I was sergeant with the General Holding Unit and he was in the kitchen and he figured he was in charge of the cookhouse.
Q169 - Was he ever in charge at any time?
A169 - No, sir, the only time he could be in charge was when an n.c.o. was missing.

Re-examination by the defending officer

Q170 - From the very beginning and before you came, Cpl. Simcox was in charge and Reilly was under him?
A170 - Yes, sir.

Questions by the Court.

Q171 - Are you a lance-sergeant?
A171 - No, sir.
Q172 - You are confirmed in your rank?
A172 - Yes, sir.

Second witness for the defence, H-3570, Sgt. Simcox, J., No. 1 Gdn. Engineer Holding Unit, being duly sworn, is examined by the defending officer.

Q173 - Will you give your number, name, rank, unit and what you are doing?
A173 - I am H-3570, Sgt. Simcox, J., No. 1 Engineer Holding Unit, sergeant cook.
Q174 - Where were you before you went to the Engineer Holding Unit?
A174 - No. 1 Signals Holding Unit, sir.
Q175 - What was your rank?
A175 - Corporal cook.
Q176 - How long had you been corporal cook at Signals?
A176 - Eight months.
Q177 - Were you the corporal cook who opened the kitchen at the beginning?
A177 - Yes, sir.
Q178 - Did you have Pte. Reilly with you at the start?
A178 - Yes, sir.
Q179 - Did you have any trouble with Pte. Reilly with regard to control in the kitchen? If so, tell us.
A179 - Reilly reported to me the first morning there and I ordered him to do something and he said he didn't see why he had to take orders from me and he said he had been sent to take charge and he didn't see why he should take orders from me.
Q180 - Did you ever hear Reilly threaten Sgt. Robson when he came six weeks after?
A180 - A couple of weeks afterwards he threatened to have him stripped. He was going to have a fight with him one afternoon.
Q181 - What kind of an influence did you find Reilly?
A181 - Very trying to get along with at times.
Q182 - Did you ever have any personal trouble with him?
A182 - Not at Tournay Barracks.
Q183 - On March 1st?
A183 - Yes, sir.

Q184 - What happened?
A184 - We got into an argument.
Q185 - What kind?
A185 - A fist fight.
Q186 - Blow for blow?
A186 - Yes, sir.

Cross-examination by the prosecutor.

Q187 - How do you happen to remember it was March 1st when you had this fist fight?
A187 - I went to the Engineer Holding Unit on the 25th March and it was two or three weeks before.
Q188 - That was a long time ago and yet the evidence given here is on oath. The information we want here is to clear up a case. You are here to help operate the thing. You are not the accused, you are purely giving evidence. We don't want concocted evidence.
A188 - I have not concocted any evidence, sir.

Third witness for the defence, D-32015, Pte. Povey, G., Canadian Training School, being duly sworn, is examined by the defending officer.

Q189 - Will you give your name, rank, number and unit?
A189 - Pte. Povey, G., D-32015, C.T.S.
Q190 - What do you do at C.T.S?
A190 - I am working in the cookhouse at Signals.
Q191 - Do you know Pte. Reilly in the Signals Holding Unit?
A191 - Yes, sir.
Q192 - Tell me what you know about Reilly.
A192 - As far as I know we got along pretty well but we had an argument. We had been drinking at the Soldiers' Club and went back to the cookhouse and had a little argument there and I hit him once and Sgt. Simcox came in and separated us.
Q193 - Is that all you know about Reilly?
A193 - We worked together ever since October.
Q194 - But you had a fight in the cookhouse?
A194 - I would say an argument, not what I would call a fight.

Cross-examination by the prosecutor.

Q195 - You say you had a fight?
A195 - An argument, I hit him once.
Q196 - Just a family squabble among cooks?
A196 - Yes, sir.
Q197 - What caused it?
A197 - He said something to me and I said something and he picked it up again and I can't remember what he said.
Q198 - You say you had both been drinking?
A198 - It was seven-thirty when we went in and closing time when we came out.
Q199 - How long ago was that?
A199 - Five months ago; I have been away three months.
Q200 - You haven't forgotten that occasion?
A200 - No, sir.
Q201 - Did Reilly seem to have trouble with the corporal cook or anyone in charge at that time?
A201 - No, sir, not to my knowledge.
Q202 - Did he go around the country trying to be obnoxious?
A202 - No, sir.

Re-examination by the defending officer.

Q203 - Did Reilly not strike back?
A203 - No, he never struck back.

Defending Officer - I have called this witness and in view of the fact he is not giving the story he gave me before, I wish to have him declared a hostile witness by the Court.

Witness - This morning when you were over you asked me if he raised his hand to hit back.

Q204 - Did you have a fight?
A204 - If I remember rightly I said I hit him once. He walked around the side of the table and he said he would hit me but I got in the first blow.

Defending Officer - This witness isn't telling the same story as this morning but I don't want to squabble about it.

Fourth witness for the defence, L-22441, Sigmn. Foley, W.A., No. 1 Cdn. Signals Holding Unit, being duly sworn, is examined by the defending officer.

Q205 - You are L-22441, Sgmn. Foley, W.A., No. 1 Cdn. Signals Holding Unit?
A205 - Yes, sir.
Q206 - What do you do in the holding unit?
A206 - Cooking.
Q207 - Where do you work?
A207 - In the cookhouse.
Q208 - Do you know Sgt. Robson?
A208 - Yes, sir.
Q209 - Do you know Pte. Reilly?
A209 - Yes, sir.
Q210 - Have you ever heard Pte. Reilly say anything regarding Sgt. Robson and, if so, what?
A210 - On one occasion he came in one night with Cpl. O'Brien and Sgmn. Innes and I were night cooks and Sgmn. Drury was in the kitchen and he came in with Cpl. O'Brien and Reilly was in a bad mood and looking for Sgt. Robson and said he was going to tear him to pieces. They waited for a while and Cpl. O'Brien said "Come down to bed" but he said he was going to wait and then started after O'Brien and then went down to Sgt. Robson's room because we were in bed next day, Innes and I, and Reilly was talking to us and Sgt. Robson said someone told him that he was going to tear him to pieces. On another occasion, on a Sunday, Sgt. Robson had spoken to Reilly regarding cooking that hadn't been done properly and he was in a bad mood that day and he was making a lot of threats.
Q211 - Did you ever know Reilly to make any out-burst which was uncontrollable?
A211 - When he was drinking he generally had more to say than when he was sober.

Cross-examination by the prosecutor.

Q212 - What was the reason for Reilly making all these remarks about Sgt. Robson?
A212 - Well I couldn't give you any reason unless there always seemed to.... It seems that Reilly used to work in the Sergeants' Mess and was moved to the men's mess but I don't know if they had any argument before that but I think he resented that and when he had a drink or two he became nasty.
Q213 - Did Reilly like working in the cookhouse?
A213 - I couldn't tell you that, sir.
Q214 - Are you happy in the cookhouse?
A214 - I have got along quite well with Sgt. Robson. He has always been very fair with me and I have never heard him run down any of his men.

Fifth witness for the defence, C-64457, Sgmn. Innes, O.R., No. 1 Cdn. Signals Holding Unit, being duly sworn, is examined by the defending officer.

Q215 - Will you give your name, number, rank and unit?
A215 - C-64457, Sgmn. Innes, O.R., No. 1 Cdn. Signals Holding Unit.
Q216 - Do you know Pte. Reilly who works in the cookhouse?
A216 - Yes, sir.
Q217 - What do you know about him?
A217 - I have worked with him in the kitchen.
Q218 - How does he react towards authority?
A218 - How do you mean?
Q219 - How does he like authority over him?
A219 - He doesn't get along any too well with Sgt. Robson. He seems to back-bite him and threatens him.
Q220 - Threatens what?
A220 - To get him.

Q221 - Other than this fight we are dealing with now, do you know of anything else?
A221 - I did, sir, one night he came in to the cookhouse between nine and ten and said you have just missed the fun.
Q222 - Who was the fight between?
A222 - I don't know, I wasn't there.

Cross-examination by the prosecutor.

Q223 - You say Reilly was back-biting and making a lot of remarks. Just what kind of remarks?
A223 - I couldn't tell you the exact words, I just heard him talking.
Q224 - Can you give us even one word?
A224 - He was talking with other guys and saying this and that.
Q225 - Did he say anything to you that you know of?
A225 - Well, he came into the kitchen one night and said "I wish he was in here now, I'd punch his nose in." I think that was what he said.
Q226 - Had he been drinking?
A226 - Just a little I suppose. He had a few beers and was mad and I quietened him down.
Q227 - Do you think Reilly had any reason for saying that?
A227 - None at all, the sergeant never done anything that I know of to make him [redacted].
Q228 - Yet you say he was back-biting. I can't see any facts which would show he was slandering Sgt. Robson. Do you understand what I mean? Have you got any actual case where Reilly would say something which really was harmful to Sgt. Robson?
A228 - I just can't say that but I think I can remember him talking. I don't remember what the words were.

Re-examination by the defending officer.

Q229 - I am not going to ask you for definite words, but I am wanting to know if the general trend of the conversation that was generally held as far as Reilly was concerned was nasty?
A229 - At times I have heard it.

Questions by the Court

Q230 - Did Reilly have any reason to talk about the sergeant?
A230 - I don't know.
Q231 - Was Reilly the only person going about talking about Sgt. Robson?
A231 - No, I wouldn't say that as other guys were talking about him too.
Q232 - When Reilly does his grousing or back-biting does he refer to anyone in particular?
A232 - Just grumbling.

Lieut. H.S. Smith, defending officer, No. 1 Cdn. Signals Holding Unit, being duly sworn, produces statement of evidence by Capt. C. Kennedy, No. 1 Cdn. Signals Holding Unit. The submission of this document is not contested by the prosecution and it is accepted in evidence by the Court.

Sixth witness for the defence, M-9001, R.S.M. Watt, K.M., No. 1 Cdn. Signals Holding Unit, being duly sworn, is examined by the defending officer.

Q233 - Would you give your name, rank, number and unit to the Court?
A233 - M-9001, R.S.M. K.M. Watt, No. 1 Cdn. Signals Holding Unit.
Q234 - Did you have, at one time, a Pte. Reilly as cook in the Sergeants' Mess?
A234 - Yes, sir.
Q235 - Would you kindly tell us why he left?
A235 - We found, or at least believe, that he could be a little better and we had a number of complaints from members of the mess that he tended to be slightly insolent. We had no personal complaints but he proceeded on leave and we got a replacement and found him to be doing a good job at the time Reilly came back and he never came in again.
Q236 - Do you recognize that document and that signature? (Shows witness Capt. Kennedy letter)
A236 - Yes, sir.
Q237 - Whose signature is that?
A237 - Capt. Kennedy, A.D. Officer, No. 1 Cdn. Signals Holding Unit. That is your signature.

Q236 - Where was that taken?
A236 - Mons Barracks, Aldershot.

Questions by the Court.

Q239 - In what capacity was Reilly working in the Sergeants' Mess?
A239 - Cook in charge.
Q240 - Then it was quite a come-down to be put in the men's mess?
A240 - We didn't know the cooks very well at that time and I didn't wish to recommend anybody until we knew what it was all about. I am a firm believer in making a man earn any rank he gets. As a matter of fact did pay him in addition to his regular pay.

Defending Officer

Q241 - He had worked in the men's mess before going to the sergeants' mess?
A241 - Yes, sir.
Q242 - So that would be quite a step-up too?
A242 - Yes, sir.

Closing address by the defending officer.

I think it has been proven that Reilly has been causing the trouble. He has been an insolent and disturbing influence practically everywhere he has gone. Sgt. Robson has been tolerant and I think we all know that a men's mess is not a parade ground and it has to be run somewhat on civilian lines. He, Reilly, lied in his evidence. He said he had never had a fight in the kitchen. He also stated he never had any idea when he came to Tournay Barracks that he was to take over the cookhouse. He made continuous threats to have Sgt. Robson stripped and has been carrying tales, whatever they are, to someone a close relative of Sgt. Robson who is in communication with his relatives at home. He irritated Sgt. Robson and Sgt. Robson spoke to him about it. Sgt. Robson is a very good man in the mess and through his not being in the mess at present people are suffering in the way of food. There hasn't been sufficient evidence brought forward to show there was no common assault. It is very doubtful that Sgt. Robson struck the first blow out of malice. There is all sorts of evidence to show this man raised his hand in such a way as to make him believe he would be struck and therefore he defended himself. The witnesses, some for the prosecution, were not quite as credible as they might be. Working under a strain is likely to fray anyone's nerves and I might say the dog days might excuse Reilly but they don't as a fomenter of trouble and a liar he has placed a sergeant on trial before a court. A sergeant who has done his job and he has taken up the time of the court and I feel the case isn't proven against Sgt. Robson and I feel the case should be dismissed. Well, I won't say anything about Reilly.

Closing address by the prosecutor.

The charge reads Section 37(1) which is before the Court. Striking a private soldier in that he at Guadaloupe Barracks did strike Pte. Reilly cutting his forehead and tearing his shirt. Credibility of witnesses presented on both sides is for the Court to judge. Whether or not from those witnesses the Court can judge whether it was common assault against Sgt. Robson, that is also for the Court to decide. It might have been aggravated, but it still remains that Sgt. Robson did strike a private soldier and the evidence is there to prove it. The fact was brought out by the defence that Sgt. Robson's absence from the 10th July from the cookhouse is noticeable. That is not brought forward in evidence. I suggest that it be deleted. The fact still remains that he did commit an offence under Section 37(1) of the Army Act.

The Court is closed for the consideration of the finding.

Capt. A.M. Millar, No. 1 Cdn. Signals Holding Unit, is duly sworn.

Q243 - Have you any evidence to produce as to the character and particulars of service of the accused?
A243 - Yes, sir, A.F.B. 296 and M.F.M. 6.
Q244 - Is the accused the person named in the statement which you have heard read?
A244 - Yes, sir.

Q245 - Have you compared the contents of the above statement with the regimental books?
A245 - No, I have not, Mr. Smith is our Records Officer and he, I believe, has done so but I am not sure. I can only identify the adjutant's signature.

The accused declines to cross-examine.

Q246 - Do you wish to address the Court?
A246 - (Defending Officer) The fact that the accused is a sergeant speaks for itself. He must have gained the confidence of his superiors to become a sergeant. Not only that, but he is a confirmed sergeant. He has done a very fine job with the unit. He has two crimes one of which is only a matter of thirty-six hours and the other a crime for which a great many of us might fall by the way-side and have pinned on us. There is nothing very much more I have to offer, his record speaks for itself and I hope the Court will consider this in their finding and consider that the people who are over him have a great confidence in him.

The Court is closed for the consideration of the sentence.

SUMMARY OF EVIDENCE

In the case of M-9090 Sgt. Robson,J. (R.C.C.S.) H.Q. Coy., No.1 Cdn Signals Holding Unit, Canadain Army (Overseas).

The Commanding Officer directs that the evidence be taken under oath.

Officer taking Summary of Evidence, Major G.W. Smart (R.C.C.S.) No.1 Canadian Signals Holding Unit, Canadian Army (Overseas)

FIRST WITNESS

C-41531 Sgmn Derby,A., (R.C.C.S.) No.1 Cdn Signals Holding Unit Canadian Army Overseas, having been duly sworn states:

"I am C-41531 Sgmn Derby,A., No.1 Cdn Signals Holding Unit, On the afternoon in question, I was standing in the south east corner of the men's mess and heard a row by the second table. I looked up and saw Sigmn Reilly trying to protect himself from three or four blows delivered by Sgt. Robson, by putting up his arm. I did not see any of the row before this, nor did I hear any of the conversation passed. L/Cpl Gentry and Sgmn Cooke separated the two men

Question by Accused: "Did you hear more than one voice?"

Answer: "No."

Question "Did Pte Reilly have hold of my shirt?"

Answer: "No."

Question "When his arm was raised, had I struck him before then?"

Answer: "No, not to my knowledge."

Question: "Did he have his hand on my shirt?"

Answer: "Yes, it was on your shoulder."

A Derby

.....
C-41531 Sgmn Derby,A.

SECOND WITNESS

~~M-9626~~ ~~E-6179~~ L/Cpl Gentry,H.D., (R.C.C.S.) No.1 Cdn Signals Holding Unit, Canadian Army (Overseas) having been duly sworn, states:

"I am ~~M-9626~~ ~~E-6179~~ L/Cpl Gentry, H.D. No.1 Cdn. Signals Holding Unit. I was working in the larder at about 1415 hours on 10 Jul when I heard raised voices out in the kitchen. I walked out around the stove and steamer and between the first two tables and found Sgt. Robson and Pte Reilly each holding the other by the shirt. There was some swearing going on but no threatening language. I grabbed Sgt. Robson and held him. At the same time, blows were struck but I could not say by whom in the excitement. I could not swear which man did the striking. I did not see any of the fighting until I actually arrived by the table. I thought it was a couple of the fatigue men until then. The shirt, which Reilly had on (a white P.T. shirt) was ripped from shoulder to the waist.

Question : (Court) "Did you hear anything that would indicate the cause of the quarrel?"

Answer: "No.

Question (Accused: "Previous to this, have you ever heard Pte Reilly make

SECOND WITNESS (C ont'd)

insulting remakrs?"

Answer: "No, the only thing I have heard him say, is that you were crazy and I have heard many of the men say that, in fact, I have myself, but it was only when you raised your voice or something like that in the mess."

Question: "Do you think Reilly irritable or aggravating?"

Answer: "Yes, I have heard him jump on the men who were getting served."

Question: Were you present on the morning of this incident, when I warned Pte Reilly to stop talking behind my back and backbiting?"

Answer: "Yes, I overheard you do so--you said something about stopping the talk behind your back, here, or over at the Soldiers' Club or anywhere else."

Court: "Have you heard Reilly say anything to or about Sgt. Robson which could be considered more than the usual soldiers remarks?"

Answer: "No."

Accused: "Did you hear Reilly s ay anything after we left the mess?"

Answer "Yes, on the way down, I heard Reilly say something which sounded like, this was just what I wanted."

Qourt: "Did you see any sign of a cut or wound on Pte.Reilly?"

Answer: "No."

.....
~~C-5179~~ L/Cpl Gentry, R.D.
M-9626

THIRD WITNESS

C-5175 Pte Reilly, R. No.1 Cdn Signals Holding Unit, Canadian Army, Overseas, having been duly sworn, states:

"I am C-5175 Pte Reilly, R., No.1 Cdn. Signals Holding Unit. I was in the pastry room just before this thing happened, helping Sgmn Chantigny to make buns. I came out with a pan full and put them in one of the steamers. I then walked round to get another pan. I saw Sgt Robson bawling Carrignan out. Sgt Robson came over to me and shook his finger in front of my face and used abusing and threatening language to me. He then struck me and I grabbed him with both hands by the shirt on both sides of his shoulders. He struck me several times. I definitely did not strike him. We were separated by L/Cpl Gentry and Pte Cook.. We then both left the building with L/Cpl Gentry. I was going down to change my shirt, which was badly torn, but changed my mind and went to the Company Office and reported to C.S.M. Clarke and he paraded me in front of Capt Kennedy. This is the shirt which I had on at the time and which was torn by Sgt Robson when he grabbed a hold of me, and this is the cut which I received from a blow by Sgt.Robson. (Note: The shirt, a white undershirt, with tears on the shoulder was taken and retained. A small cut was observed over Reilly's right eye)

Exh.6.A

Court: "Why do you think Sgt Robson threatened you etc?"

THIRD WITNESS (Cont'd)

Answer: "I don't know."

Question: "Had you been drinking?"

Answer: "Yes, I had one glass of beer in the Soldiers Club."

Question: "Had Sgt Hobson been drinking?"

Answer: "That, I cannot say."

Accused: "Did I ask you in the morning of the incident not to pass any more insinuating or resentful remarks about me?"

Answer: "No, you did not. But you did say, if I find out the person who had done so I will get him, or words to that effect."

Question: "Have you passed any threatening or insulting remarks about me in the cookhouse previous to this?"

Answer: "I cannot remember doing so."

Question: "Have you had fights with other cooks in the cookhouse?"

Answer: "No."

Question: "Did you say after this fight, that it was just what you wanted, to get me stripped?"

Answer: "No."

Question: "At the start, did I ask you to come over to one side?"

Answer: "Yes."

Question: "Did you raise your fist in front of me at any time?"

Answer: "No."

Question: Did you say to me or to anyone after the fight "If you hadn't gone to the Orderly Room, I wouldn't have?"

Answer: "No, to no one."

Question: "Has this been a resentment in your heart against me ever since you have been in the cookhouse?"

Answer: "No, it never has."

Question: "Were you ever under the impression that you were sent to the Unit to take charge of the cookhouse at Tournay Barracks?"

Answer: "No."

R. Reilly
C-5175 Pte. Reilly, R.

FOURTH WITNESS

D-23308 C.S.M.Clarke, A., (R.C.C.S.) H.Q. Company, No.1 Canadian Signals Holding Unit, Canadian Army (Overseas), having been duly sworn, states:

" I am D-23308 C.S.M. Clarke, A., C.S.M. of H.Q. Company, No.1 Canadian Signals Holding Unit.

At about 1430 hours on 10 Jul 41, Pte Reilly reported to me as Company Sergeant Major H.Q. Company, No.1 Cdn Signals Holding Unit, with a torn shirt on and a cut over his right eye. I asked him what he was doing going around in such a condition. He said this was the way Sgt Robson had left him after attacking him in the men's mess just previously. He also stated he wanted to lay a charge against Sgt. Robsch. I paraded him before Capt Kennedy acting Company Commander H.Q. Company. Capt Kennedy instructed me to investigate the case and find out whether there was evidence to support the charge. I did so and reported back to Capt Kennedy The Regimental Orderly Sergeant (A/Sgt Archer) accompanied me. Capt Kennedy instructed me to lay a charge against Sgt. Robson which I did."

Accused: "Did I come down to the Company Office previous to Pte Reilly coming down?"

Answer: "Yes, I saw you in the Company Office some ten or fifteen minutes before Reilly came in, but I was not talking to you."

XXXXXXXXX

A. Clarke C.S.M.
.....
D-23308 C.S.M.Clarke,A.

FIFTH WITNESS

~~D-24590~~ B-24590 Sgmn DEVEY G.E. HQ
~~-16100 Cpl Duty,R.,~~ (RCCS) ~~H.Q.~~ Company, No.1 Cdn Signals Holding Unit, Canadian Army (Overseas), having been duly sworn, states:

"I am ~~T-16100 Cpl Duty, R.~~ B-24590 Sgmn DEVEY G.E. No.1 Canadian Signals Holding Unit. At the time this happened I was at the stove taking care of cooking buns. Pte Reilly came out of the pastry room and put a pan of buns in the steamer. Sgt Robson then called to Reilly to come over, as he wanted to speak to him. Reilly replied that if he had anything to say, to say it here in front of the others. Sgt Robson took Reilly by the arm as if to guide him away. They talked for a moment and Reilly grabbed Sgt Robson by the shirt. They argued for a moment and Sgt Robson said I am warning you apparently meaning that he didn't want any trouble as far as a fight was concerned. Then Sgt Robson struck Reilly four or five times. They were then pulled apart by several of the boys. I got in between them. There was swearing and threatening language but as I did not leave the stoves until the blows were struck, I could not say who said it. When I heard the beginning of the arguement, I watched the two of them until they were separated."

Court: "Didn't you think it strange that Reilly refused to go over to Sgt Robson when he was asked?"

Answer: "No, because it was the kind of answer to be expected as Sgt Robson had been warning everybody in the kitchen to stop talking behind his back."

Question: "Did you see Pte Reilly strike Sgt Robson at any time?"

Answer: "No."

Question: "When he had a hold on my shirt, did you see him

FIRST WITNESS (Cont'd)

swingin his other arm?"

Answer: "No. The way it looked to me, he reached over to grab your xxxxx arm, missed, and grabbed your shirt."

Question: "Did I then strike him?"

Answer: "No, you warned him first and then struck him."

Question: "Is Reilly aggravating in his behaviour most of the time?"

Answer: "Yes."

Question: "Were you present in the morning when I warned Reilly about his tactics towards me?"

Answer: "Yes, you said something like "If I catch anyone doing it etc."

Question: (Court("Did you notice Reilly's shirt particularly?"

Answer: "Yes, he had on a white P.T. shirt and after the fight it was torn from shoulder to the waist."

Question: "Did you see any cuts on Reilly?"

Answer: "Not particularly, but he had bruises on his face."

Question: (Accused) "Could Reilly have got the bruises from the table or stock pot?"

Answer "Yes it is possible." J.E. Dunn
B.30790 Sjt-Pay GE

SIXTH WITNESS

H-26115 Gnr Ashcroft, W.J.(RCA) No.2 Company, No.1 Cdn Signals Holding Unit, Canadian Army (Overseas), having been duly sworn, sates:

" I am H-26115 Gnr Ashcroft, W.J. No.2 Company, No.1 Cdn Signals Holding Unit.
I was in the dining room at the time and came into the kitchen for a light and saw Sgt Robson and Pte Reilly grappling with each other. Reilly was holding Sgt Robson off and Sgt Robson was striking him. They were separated by some of the boys. Reilly did not strike Sgt Robson. I don't know anything more about the fight."

W.J. Ashcroft
H-26115 Gnr Ashcroft, W.J.

The accused declines to cross-examine this witness.

SEVENTH WITNESS

U-1516 Sgm Cooke, J.G.B. (R.C.C.S.) No.1 Cdn Signals Holding Unit, Canadian Army (Overseas) having been duly sworn, states:

" I am U-1516 Sgmn Cooke, J.G.B. No.1 Cdn Signals Holding Unit.
I was in the butcher shop when I heard a noise out in the kitchen. I went out and saw Sgt Robson fighting with Pte Reilly. Reilly was backing away. Sgt Robson was striking Pte Reilly and Reilly did not strike Sgt Robson. I grabbed Sgt Robson as soon as I could get over within reach and held him. L/Cpl Gentry also held Sgt Robson. No one held Reilly and he went out. I did not notcie if either had a torn shirt, I only wanted to stop the fighting. By the time I arrived, it was not necessary to hold Pte Reilly, as

SEVENTH WITNESS (Cont'd)

it appeared to me he was beaten."

Accused: "Did anyone come in between us before you arrived?"

Answer: "No, I did not see anyone."

Question: Did L/Cpl Gentry, Reilly and myself walk out together?"

Answer: "After it was over you went out but Reilly went out first."

Question: "When you came over did not Reilly have a hold on my shirt?"

Answer: "No, he was backing away."

Question: "Did you hear Reilly make any remarks after the fight?"

Answer: "No."

J. G. B. Cooke
.....
W/1818 Sgmn Cooke, J.G.B.

EIGHTH WITNESS

D-36688 Gnr Caine,N.C., (RCA) No.2 Company, No.1 Cdn Signals Holding Unit, Canadian Army (Overseas) having been duly sworn, states:

"I am D-36688 Gnr Caine, N.C. No.2 Company, No.1 Cdn Signals Holding Unit.
At the time I was returning with a broom from near the coal room and I heard Sgt Robson say to one of the men, a little French lad, that if he had any more from him he would take him outside and beat him up and then put him up for orders. The man replied that he could ~~xxx~~ do it any time he liked. Sgt Robson then spoke to Pte Reilly, and said "I want to see you outside." Pte Reilly said "If you want to talk to me, you can do it here." Sgt Robson swore at him and said he would beat his head off at the same time he shook his finger in his face. Reilly put his arm up in front of his face and then Sgt Robson struck him. Reilly grabbed the Sgts Shirt with both hands and then Sgt Robson hit him several times. The corporal and several of the boys grabbed Sgt Robson and I grabbed Reilly but he did not need holding as he did not make any attempt to go on, so I let him go. They walked out arguing.

Accused: "Could it appear that when Reilly put his arm up that he was going to strike me?"

Answer: "No, because you had threatened the french lad and then threatened Reilly, and if anyone had spoken to me in the same way I would have felt it necessary to protect myself."

Question: "Did not Reilly have a hold of my shirt when I struck him?"

Answer: "No, you struck him when he only had his arm up."

Question: "Did you hear Reilly make any remarks afterwards?"

Answer: "No."

N. P. Caine
.....
D-36688 Gnr Caine,N.C.

NINTH WITNESS

WITH WITNESS

E-5179 Pte Carrignan,C.No.1 Canadian Signals Holding Unit, Canadian Army (Overseas)having been duly sworn, states:

"I am E-5179 Pte Carrignan, C. No.1 Canadian Signals Holding Unit.
At the time Sgt Robson came up to me in the kitchen, and said if he could find out who was talking behind his back he would break his neck. I said if you think its me, go ahead and break it. He then went over to Reilly and asked him to come outside. Reilly replied that he could say what he wanted right here. Sgt. Robson then started to use abusive language and Reilly answered him and then the fight started. Sgt Robson struck the blows. The boys then separated them, and Sgt Robson told Reilly to come with him and Reilly said yes sir and they went out."

Accused: Had you been drinking with Reilly?"

Answer: "Yes, in the Soldiers Club. I had two beers and Reilly had one. That was all he had money for."

Court: "Did you notice Reilly's clothes?"

Answer: "Yes, he had on a white R.T. shirt and it was torn during the fight. It was not torn before.

Question: "Did you notice any effects from the fight on Reilly's face?"

Answer: "Yes, there was a small scratch on his forehead and his cheek."

Accused: "Could Reilly's scratches been caused by the table or stock pot?"

Answer: "No, I don't think so."

.....
E-5179 Pte Carrignan,C.

The accused, having been duly cautioned, declines to make a statement at this time.

Certified that R.F. 4 (c),(d),(e) and (f) have been complied with.

Taken down by me, in the presence of the accused, at Bordon, Hants., this 15th day of July 1941.

.....Major
(G.W.Smart)
O.C., H.Q. Coy.,
No.1 Cdn. Signals Holding Unit.

A37

CANADIAN YMCA

ON ACTIVE SERVICE

PLEASE WRITE ON BOTH SIDES

CANADIAN
YM·C·A

ON ACTIVE SERVICE

PLEASE WRITE ON BOTH SIDES

M.F.M. 6
(A.F.B. 122)
50004 8-39 (1702)
H.C. 72-45-19

No. M9090 Name John Robson Sqn., Battery, or Company

Corps A.A. Group Signals A.C. Sigs

Date of enlistment Sept. 16 1939

G.C. Badges

Service or Proficiency Pay

Character

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No. 1

Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Nil entries at the end of 6 mths.					
Bordon, Hants.	22 Sept. 40	Sgt.		A.A. Sec. 15 (1) W.O.A.S. A.W.L. from 1200 hrs., 22 Sept. 40 till 2359 hrs., 23 Sept. 40 Absent 36 hrs.		Forfeits 2 days pay.	24 Sept. 40	Major R.W. Frost.	
Guadaloupe Barracks, Bordon, Hants.	29 May 41	Sgt.	1	A.A. Sec. 19 (Drunkeness)	Lt. J.E.I. Gaymer L/Bdr. Townley, JR Gnr. Mason, B.C.	Severely Reprimanded	3 Jun 41	LT. COL. H.R. TYNER	

J MacLean Lieut

(I. MacLean) Lieut. & Adjt.,
No. 1 Con Signals Holding Unit.

CERTIFIED TRUE COPY
25 July 1941

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M-9090	Sgt.	Robson, J.	No. 2 Can Signals Holding Unit

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement, but not annexed to the proceedings.

† See para. 617, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.W.L.	1 times	1 times.
For Drunkeness	1 times	1 times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct.

x OCX

There are no entries in the conduct sheets of the accused

2. The accused has not been previously convicted, *or*

~~Previous conviction of the accused by court martial or civil court, summary award under section 47 of the Army Act, and dispensations granted under section 71 of the Army Act are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~*or* The accused at the present time is under sentence for~~ _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for — days in civil custody, and 10 21 days in military custody, making a total of 10 21 days, of which — days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 41 34

6. The date of his ~~enlistment~~ / attestation specified in his record of service / attestation paper is 16 Sept. 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is _____

8. The accused is entitled to deferred pay or gratuity in respect of _____ service.

9. The accused is entitled to reckon _____ service for the purpose of determining his pension, etc.

10. ~~The accused is in possession of, or entitled to, the military decoration or military medal for the possession of which~~ _____ ~~is entitled to (or as the case may be).~~

11. ~~If the accused is a commissioned officer :~~ ~~The annual value of~~ _____

12. ~~If the accused is an officer :~~ ~~The accused holds the appointment of~~ _____ ~~and is not in the regimental establishment of the unit.~~

(*18545) Wt.30249/862 75,000 12/40 A.& E.W.Ltd. Gp.A/9

A32

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or station of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 19th day of July 1941

Capt. & Adjt.
No. 1 Canadian Signals H.U. (Cdn. A.)

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of Lance Corporal (Cook)	years,	16 Sept 39
In the rank of Corporal (Cook)	years	1 Feb 40
In the rank of Sergeant (Provisional 9 Oct 40)	years,	1 Mar 40

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs inserted amended accordingly.*)

47-24

P6 Robson W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H-17106 Pte Walter ROBSON 1 CASCRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	NOT GUILTY	GUILTY	except that his absence commenced not at 2230 hrs 23rd Jan/45 but at 2230 hrs 28 Jan/45
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital. (1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court:
To undergo detention for a period of Sixty (60) days

6 MAR/45 (Sgd) [signature] President. (RP 45, 50.)
(Sgd) ..... Judge-Advocate, if any. Date awarded.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Conformed

I ~~direct that the accused be not committed to (trial) or detention barracks until further orders~~ (1) HQ7
(1. AA 57A. Delete if not used.)

(Sgd) T.R. Tyner. Col

Date 7 MAR 45. A/ Commanding "B" Group, Cdn Rft Units.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 57, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H-17106 Pte Robson, W.	9 Mar 45	(R.J. Dufresne) Lt-col
D.O. 59 d/10 Mar 45.		A/Comd No 1 Holding Wing
		1 Cdn ASC Rft Unit

To Crewmke capt

OFFICER I/C RECORDS
CDN. A.S.C. REIN. UNIT.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 42-24

RECEIVED 20 MAR 45 JAG BRANCH C.M.H.Q.

CFA96 (To Hell of AFAS1 40/P & B/1698 (6/44) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of (T.R. Tyner) Colonel A/Comd "B" Gp, CRU, dated 5 Mar 45.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-17106	Pte	Walter	ROBSON	1 CASCRU

PROCEEDINGS REVIEWED
21 Mar 45
K.Y. Rib. Capt.
JAG OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date) 6 Mar 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (~~if~~) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At ..... hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused:~~ Do you object to ..... as interpreter? Ans .....
~~The Interpreter is sworn.~~(1) Do you object to 2/Lt 126 Sgt SINCLAIR A.P. as shorthand writer? Ans NO
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO (1) (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L. Redman VD	Hq CRU
Member	Capt	A.C. McCOUGAN	3 CITA
Member	Lieut	C.H. SUNDELL	3 CITA
~~Judge-Advocate~~			
Prosecutor	A/T	S. ROUTON	1 CASCRU
Defending Offr	A/T	J.C. DRAGER	1 CASCRU

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 85 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment make(s) (no) (~~or~~ plea ..... (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans NO STMT (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex 7 initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO - SIR (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE - ATT
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not ~~establish a prima facie case against~~ the accused on the charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence save on ground of irrelevance. (RP 80(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or as to character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans NO - SIR. Do you intend to call witnesses on your behalf ?
Ans Yes. Are they witnesses as to character only ? Ans NO - SIR
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1) Or, The President announces that the accused is found Not Guilty on all charges and he is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(*1. AA 54(3) (6), RP 43, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO - SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 5 and Ex 6 respectively.(3)
(*1. MFB 355 or AFB 295. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans NOTE - ATT Barbour (NOTE ATT) (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 64, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 120. When accused already under sentence of imprisonment or detention see AA 64(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, H-17106 Private Walter ROBSON, on strength of 1 Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas, is charged with:

1st Charge
Army Act
Sec 18 (1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

IN THE FIELD, absented himself without leave from 2230 hours 25 January 1945 until 1400 hours 28 February 1945 when he surrendered himself to the Unit Guard Room, 1 Cdn ASC Rft Unit.

TOTAL TIME ABSENT :- 35 days 15 hours 30 minutes

(H.L. Passe) Colonel, RASC
Commanding
1 Cdn ASC Rft Unit

IN THE FIELD
1 MARCH 1945

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(H.R. Tyner) Col,
A/Comd "B" Group,
Cdn Rft Units.

IN THE FIELD
5 MARCH 1945.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-17106	Pte		Walter	ROBSON	1 CASCRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (date) 5 Mar 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D.L. Redman VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by CO	3 CITR
Lieut	To be detailed by CO	5 CITR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

H.R. Tyner

(H.R. Tyner) (Signed personally. RP ~~105~~ fn 2.)

Colonel (Rank.)

Date 5 Mar 45.

A/Commanding "B" Gp, Cdn Rft Units.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (6143)

Medical Officers' Certif.
K.R. (Can) para 557

I certify that I have this morning examined No: H.17106.....

pte: ROBSON. W. ....and in my opinion he is fit to ~~unfit~~ A

(rank) (name)

undergo trial by Court Martial.

Station:

Date: 6 Mar. 45

A. Jean Capt.
(Medical Officer)

PLEA IN MITIGATION OF PUNISHMENT

H-17106 Private Robson, W.

Having been found guilty, it is the desire of the accused that the following be brought forward on his behalf.

Date of Enlistment: 24 Apr 40

Arrived Overseas: Aug 40

Reason For Enlisting: The accused firmly believed that he would be taking part in active operations against the enemy. Due only to the nature of this war he was not afforded the opportunity.

Employed and Trained as an Infantryman with the PPCLI until approximately July 41. Due to shortage of Cooks in Cdn Army at the time, he was persuaded to try his hand at cooking and eventually qualified as a Cook "C".

Injured. The accused broke his shoulder while on duty with the PPCLI in Apr 42. He spent six months in hospital and upon return to his unit found that cooks were no longer hard to get. Consequently, he was moved from unit to unit, eventually being transferred to ASC.

Family Trouble. The accused's mother had undergone and operation for cancer in 1933 and had been more or less an invalid since then. Just before Christmas, 1943 the accused heard that his mother was ill again and bed-ridden with Shingles and Gall-stones. He himself was being troubled by his injured shoulder, but all attempts on his part to obtain treatment were discouraged. (Exhibit "D")

SUMMARY:

The accused had been living a very unhappy life since his injury in April 42 and unfortunately had fallen into the category of the Army's "Forgotten men". A man who had once belonged to the PPCLI now found himself a man without a unit. He began to drift from unit to unit in the Army and could find no one who would take enough interest in him, even to obtain proper medical treatment for his injured and still painful shoulder. He was offered a lower medical category but the accused was not interested in this. He wanted his shoulder treated and restored to its original usefulness so that he could rejoin his old unit. This was denied him. After months of this treatment, the accused's morale and mental condition was very poor indeed.

However, he had found true friends in this country - civilian friends. When things became unbearable he went to these friends and after having listened to their words of comfort and advice returned to the Army voluntarily and gave himself up. The accused now desires only a fair chance to serve his country after he has undergone whatever punishment this Court sees fit to adjudge.

J. Shaw Lt.

CASE OF

H.17106 Pte ROBSON W 1 CASCRU

PROSECUTION

The Prosecutor produced:

(1) AFB 115 which related to the accused.

DOCUMENT MARKED EXHIBIT 1

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

FIRST WITNESS

L.102104 Cpl DRISCOLL, G., 1 CASCRU, having been duly sworn, states:

I am a member of the Regtl Police 1 CASCRU, and on 28 Feb 45 I was on duty in the Gd Room when the accused, whom I now recognize, reported to me at 1400 hrs saying he was reporting from AWL. He was properly dressed, and I immediately placed him under arrest.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

THE PROSECUTOR SAID HE WAS CALLING ANOTHER WITNESS WHOSE EVIDENCE WAS NOT IN THE SUMMARY.

THE DEF OFFR SAID HE HAD NO OBJECTION.

SECOND WITNESS

C.12573 Cpl DUBORD GM, 1 CASCRU, having been duly sworn, states:

I am the NCO IC of Hut A-7 1 CASCRU, and was IC of the Tattoo Roll Call on the 28 Jan 45, and at 2230 hrs I noticed that the accused, whom I now recognize, was absent. I made a search of the huts and failed to locate him, and then I reported him to the Ord Room as being absent. I did not see him the next day or any day afterwards. The next time I saw the accused was about a week ago when he came back to the Recep Coy to make up his card.

CROSS-EXAMINED

Q. When was the last time prior to a week ago that you saw him?
A. When he reported to us in the morning from dtn, 2 days before the 28th, the day he went absent.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

THE PROSECUTION IS CLOSED

DEFENCE

THE DEF OFFR PRODUCED A PT II ORDER OF 1 CASCRU DATED 19 JUN 44 NUMBER 143 and POINTED OUT THAT PARA 16(P) SHOWS THE ACCUSED AS BEING SOS to 1 DET RCOC WEF 16 JUN 44

PT II ORDER MARKED EXHIBIT 2

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

FIRST WITNESS

B.81843 Pte STORY JN, 1 DET RCOC, having been duly sworn, states:

I'm employed at No. 1 Det RCOC as a cook, and on 23 Jan 45 we, the accused and I, were employed in our unit. He was working with me for quite a number of months.

Q. Was he there the next day, the 24th?
A. Yes. There are 3 cooks in the 2 kitchens and while 1 cook is away the other 2 men don't get the day off. The other cook was due back from leave the 24th, and that's how I remember that day so well.

NO CROSS-EXAMINATION

QUESTIONS BY THE COURT:

Q. Did you see the accused on the 25th?
A. Yes.

Q. On the 26th?
A. I'm pretty sure I did, Sir.

Q. How about the 27th and the 28th?
A. It was around the 27th or 28th, some days after the other cook came back, that the accused left our unit, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

THE DEFENCE IS CLOSED

STATEMENT BY THE DEFENDING OFFICER ON THE FINDING

Sir, the accused has been charged with AWL from 23 Jan until 28 Feb 45. I have produced a document which shows that he was on the str of 1 Det RCOC in Jun 44 and was still employed with that unit 1 23 Jan 44, and I have also produced a witness to this effect. Therefore I ask the Court to dismiss the charge.

STATEMENT BY THE PROSECUTOR ON THE FINDING

The Charge Sheet is made out to read from 23 Jan 45 until 28 Feb 45. The evidence produced shows that the accused was absent from 28 Jan until 28 Feb 45 and I request a special finding to be made.

THE COURT IS CLOSED TO CONSIDER THE FINDING

THE COURT IS REOPENED

PLEA IN MITIGATION

(NOTE ATT)

EXHIBIT "A"

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

Record of the Declaration of a Court of Inquiry assembled at Blenheim Barracks, Farnborough, Hampshire, on the 21st day of February 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. H-17106 Pte Robson, W., 1 Cdn ASC Rft Unit.

Ex 1

DECLARATION.

The Court declare, that H-17106 Pte Robson, W., 1 Cdn ASC Rft Unit, illegally absented himself without leave from 1 Cdn ASC Rft Unit, Blenheim Barracks, Farnborough, Hampshire at 2250 hrs 28th January 1945, and that he is still so absent and on this 21st day of February 1945 he was deficient clothing, equipment and regimental necessaries to the value of £4 - 14s - 4d, which is 75% of the Vocabulary Price, as per att'd list app. "A" for

PRESIDENT (T.O. Riecken) Lieut., RCASC., 1 Cdn ASC Rft Unit.

MEMBER (M.J. Bastien) Lieut., RCASC., 1 Cdn ASC Rft Unit.

Names of President and Members

Signature of Commanding Officer H.C. Pease

CERTIFIED TRUE COPY

E.A. Lynch Major

Signature of Officer having custody of the Original Record.

(4167) Wt. 57607/1049 40,000 5/44 C.S.S.L.P & P.Co.Ltd. 51-7 Forms/B.115/58

LAST DO. NO. 142 17 Jun 44

I CDN. A.A.B.C. REINFORCEMENT UNIT
CANADIAN ARMY OVERSEAS
DAILY ORDERS PART II
BY
COLONEL H.F. BOWICK, COMMANDING

THIS DO. NO. 143 19 Jun 44

SECTION "A"

1. ATTACHMENTS

(a) The u/m Officers are attached fap from 1 CGRU wef. 16 Jun 44.
Major Robert Howard GREEN — Major Richard Eustry Marryat YERBURGH

(b) Lt. Wm. Norval DOWALD — Attached fap to 24 Cdn Educ.Sec.(Hosps.UK) wef. 17 Jun 44. (Auth: 9/Educ/1 (MS5) Pers Files d/9 Jun 44).

2. APPOINTMENTS

(a) Lt. Alexander Harry Lawson STEPHENS — Vacates the appointment of Instr. "I" Wing (Basic W.E.) wef. 15 Jun 44.

SECTION "B"

3. STRENGTH INCREASE

(a) The u/m personnel are TOS from X-3 List RC.SC wef. dates shown on discharge from Hospitals shown:

A-9272	Pte.	Barnes, H.L.	16 Jun 44	4 Conv Depot
B-85708	Pte.	Coveyduck, J.T.	16 Jun 44	18 General Hosp.
G-19781	Pte.	Hamilton, S.	16 Jun 44	12 General Hosp.
M--174 (Cook "C")	Cpl.	Kirby, T.F.	16 Jun 44	18 General Hosp.
L-101867	Pte.	Kohlen, L.C.	16 Jun 44	1 Spec. Hosp.
H-103564	Pte.	Marshall, D.	16 Jun 44	1 Spec. Hosp.
C-75900 (Cook "C")	Pte.	Smith, J.P.	16 Jun 44	4 Conv. Depot

(b) The u/m personnel are TOS from Y-3 List wef. dates shown on discharge from Hospitals shown:

C-30988	Pte.	Peppin, A.G.	16 Jun 44	1 Spec. Hosp.
K-42229	Pte.	Ruth, D.F.	16 Jun 44	1 Spec. Hosp.

(c) The u/m personnel are TOS from Cdn Bks. Service wef. 15 Jun 44. (Auth: Rec/4187 d/13 Jun 44).

D-91295 (Clerk "B")	Cpl.	Burns, P.	D-91033 (Storeman T&D "C")	Pte.	Delafosse, R.C.
L-7631 (Clerk "C")	Pte.	George, R.	D-91953 (Storeman T&D "C")	Pte.	Good, J.H.
L-105898 (Clerk "C")	Pte.	Schachter, M.B.	M-62216 A/L/Cpl. (Storeman "C")		Sweet, J.W.
C--697	Pte.	Tuttle, W.G.W.--			

(d) The u/m personnel are TOS from 1 CGRU wef. 16 Jun 44 (Auth: CRU/A-5038 d/9 Jun 44).

B-36932	Sgt.	Carey, C.L.	G-7021 (Cook "C")	Pte.	Colburn, J.J.
B-92234 (M/Mech "B")	Pte.	Collins, R.A.	C-11827	Pte.	Delauniere, J.E.

(e) The u/m personnel are TOS from 3 CACRU pending transfer to RC.SC wef. 16 Jun 44. (Auth: CRU 408/Trans/2 (Org 2) d/12 Jun 44).
L-39094 Tpr. Davison, D.G. L-106427 Tpr. Roy, E.J.

(f) The u/m personnel are TOS from 3 CIRU wef. 6 Jun 44 (Auth: DGHQ A.38).
D-71819 Pte. Beauchamp, J.R.L.E. G-22162 Pte. Thompson, C.A. (Butcher "C") (Butcher "C")

(g) The u/m personnel are TOS from 1 A.P.I.S. wef. 11 Jun 44 (Auth: EM7/5332 d/10 Jun 44).
G-27503 Pte. Church, G.F. B-110364 Pte. Petrosky, B.W.

(h) H-16104 (Cook "C") Pte. Jones, M. — TOS from 1 Spec. Salvage Det. RUOC wef. 14 Jun 44 (Auth: 408/C&B Wing/1 (Org 2) d/7 Jun 44).

(i) E-1641 Gnr. Lessard, G. — TOS from 2 CARU wef. 16 Jun 44 pending transfer to RC.SC (Auth: 408/C&B Wing/1 (PTA) d/9 Jun 44).

STRENGTH (Cont'd)

(j) C-54341 Sgt. MacDonald, D.W. — TOS from 3 CIRU wef. 18 Jun 44. (Auth: 408/Spec. Employ Coy/1 (Org 2) (408/Trans Mc/1) (452/MacDonald DW/1) d/12 Jun 44).

(k) D-127533 Pte. Pascis, S. — TOS from Desertion wef. 2200 hrs. 14 Jun 44.

(l) B-136063 Pte. Partington, M.M. — TOS from 1 CGRU wef. 16 Jun 44 pending transfer to RCASC (Auth: 408/Trans/2 (Org 2) d/12 Jun 44).

(m) F-63208 (Cook "C") Pte. Pearson, E.W. — TOS from R.H.L.I. wef. 16 Jun 44. (Auth: EA7/4777 d/29 May 44).

(n) A-3974 Pte. Popham, F.H. — TOS from 2 CIRU wef. 17 Jun 44 pending transfer to RCASC (Auth: CL 96 d/21 Aug 42).

(o) AMENDMENT — D.O. 83 para 6(d) d/10 Apr 44 in so far as it refers to "H-65688 Pte. Andrews, F." is amended to read: wef. 5 Apr 44.

(p) AMENDMENT — D.O. 83 para 6(f) d/10 Apr 44 in so far as it refers to "K-89038 S/Sgt. Berridge, G.A.L." is amended to read:wef. 4 Apr 44.

(q) AMENDMENT — D.O. 100 para 5(a) d/29 Apr 44 in so far as it refers to "C-12384 Pte. Caloren, C.M." is amended by: Delete: M/Mech "C" Sub: M/Mech "B".

(r) AMENDMENT — D.O. 225 para 9(n) d/17 Sep 43 in so far as it refers to "L-36194 Cpl. Churchill, E.G." is amended by: Delete: Cpl. Sub: A/Cpl.

(s) AMENDMENT — D.O. 7 para 6(w) d/10 Jan 44 in so far as it refers to "B-54106 Pte. Little, F." is amended to read: wef. 17 Nov 43.

(t) AMENDMENT — D.O. 141 para 5(k) d/16 Jun 44 in so far as it refers to "M-24132 Pte. Shewchuk, P.T." is amended by: Delete: Pharmacist "A".

(u) AMENDMENT — D.O. 141 para 5(b) d/16 Jun 44 in so far as it refers to "B-87407 Pte. Williams, E." is amended by: Delete: Dr/Mech "C" Sub: FitterMV "C".

4. TRANSFERS

(a) C-54341 Sgt. MacDonald, D.W. — TRANSFERRED from Cdn Inf Corps to RCASC wef. 18 Jun 44. (Auth: 408/Trans MC/1 d/12 Jun 44).

5. ATTACHMENTS.

(a) The u/m personnel are attached fap from 1 C.G.R.U. wef. 16 Jun 44 (Auth: CRU/G.O.1. d/1 Jun 44).
F-27930 SM. Dunn, M. — L-25223 A/S/Sgt. Lynch, F.L.

(b) The u/m personnel are attached fap to 3 CIRU wef. 6 Jun 44 (Auth: DGHQ A.38).
B-71819 Pte. Beauchamp,J.R.L.E. — C-22162 Pte. Thompson, C.A.

(c) The u/m personnel cease to be attached fap to 1 Cdn Admin Tpt Coy RCASC wef. 2 Jun 44.
H-194911 Pte. Cutler, E.K. — C-90089 Pte. Dick, G.H.
B-112602 Pte. Giscombe, J.G.

(d) The u/m personnel are attached fap to No. 6 (CW) Wing C.T.S. wef. 18 Jun 44 to 8 Jul 44. Attending CMHQ Course 1111 Ser. 7 (Gas Officers & NCO's).
C-92097 Cpl. Hocking, J.J. — C-32719 L/Sgt. Patrick, F.A. (Clerk "C")
C-20291 Sgt. Turgeon, J. (Clerk "C")

(e) B-136683 Pte. Boland, J.G. — Attached fap to Adv H.Q. CRU wef. 16 Jun 44. (Auth: AN/997 d/16 Jun 44).

(f) M-67236 Pte. Bothwell, F. — Ceases to be attached fap to 1 CGRU wef. 14 Jun 44. (408/C&B Wing/1 (Org 2) d/10 Jun 44).

ATTACHMENTS (Cont'd)

(g) B-86495 Pte. Cox, A.T. — Attached fap to Adv. H.Q. CRU wef. 18 Jun 44. (Auth: AN/997 d/16 Jun 44).

(h) B-134046 Pte. Draper, H. — Ceases to be attached fap to 1 Cdn Base Pk. Coy RCE wef. 12 Jun 44.

(i) B-86573 Pte. Griggs, A.E. — Ceases to be attached fap to 1 Pl. RMOC, Parsons Bks., Aldershot on completion of trade test wef.15 Jun 44.

(j) B-81543 RSM Hare, W.C. — Attached fap to 1 Cdn N.E.T.D. wef. 18 Jun 44. (Auth: CRU AN/990 d/15 Jun 44).

(k) B-91891 Pte. Hodgson, C.W. — Attached fap to No. 1 R&S Det. CMHQ wef. 17 Jun 44, whilst being Trade Tested.

(l) B-81256 Pte. Patterson, S.C. — Attached fap to 1 CCRU wef. 18 Jun 44, whilst being Trade Tested.

(m) A-9155 Sgt. Shuttleworth, F.E. — Attached fap to No. 1 Wing C.T.S. wef. 18 Jun 44 to 24 Jun 44. Attending CMHQ Course 1204 Ser. 1 (Methods of Instruction).

(n) B-114656 Cpl. Theoret, L.A.J. — Ceases to be attached fap to 2 CACRU wef. 7 Jun 44.

(o) CANCELLATION — D.O. 137 para 6(d) d/12 Jun 44 in so far as it refers to "B-121378 Pte. O'Neil, L.P." is CANCELLED.

6. PUNISHMENTS

(a) B-84524 A/L/Sgt. Bennett, N.L. ("E" Coy) — Was, on 16 Jan 44 reduced to the rank of Pte. for AWL from 0800 hrs. 6 Jun 44 to 1840 hrs. 15 Jun 44 (Absent 9 days, 10 hrs. 40 mins) A.A.Sec. 15(1). Forfeits 10 days pay Art. 149(1)(a) FR&I.

(b) F-95021 Pte. Bugley, G.E. ("C&B Wing") — Was, on 16 Jun 44 awarded a forfeiture of 7 days pay for AWL from 2230 hrs. 14 Jun 44 to 1130 hrs. 15 Jun 44 (Absent 13 hrs.) A.A.Sec. 15(1). Forfeits 1 days pay Art. 149(1)(a) FR&I. Forfeits 7 days pay Art. 149(2) FR&I. Total forfeiture of 8 days pay.

(c) E-14827 Pte. Harvey, J.H. ("B" Coy) — Was, on 16 Jun 44 awarded a forfeiture of 7 days pay for an offence contrary to A.A. Sec. 11. Forfeits 7 days pay Art. 149(2) FR&I.

(d) D-127860 Pte. Julien, J.L.G.E.R. ("B" Coy) — Was, on 16 Jun 44 awarded a forfeiture of 7 days pay for an offence contrary to A.A. Sec. 11. Forfeits 7 days pay Art. 149(2) FR&I.

(e) L-1011 Pte. Walker, J.E. ("G" Coy) — Was, on 15 Jun 44 awarded 7 days C.B. for AWL from 2230 hrs. 13 Jun 44 to 0800 hrs. 14 Jun 44. (Absent 9 hrs., 30 mins) A.A. Sec. 15(1). Forfeits 1 days pay Art. 149(1)(a) FR&I.

(f) L-103824 Pte. Wiklund, R.C. ("E" Coy) — Was, on 16 Jun 44 awarded a forfeiture of 10 days pay for AWL from 0800 hrs. 9 Jun 44 to 1015 hrs. 16 Jun 44 (Absent 7 days, 2 hrs., 15 mins) A.A.Sec. 15(1). Forfeits 8 days pay Art. 149(1)(a) FR&I. Forfeits 10days pay Art. 149(2) FR&I. Total forfeiture of 18 days pay.

7. PROMOTIONS

(a) B-92307 Pte. (A/Cpl.) Akey, K.B. — To be Cpl. wef. 10 Jun 44. (App. O.R.O. 4668 para 24(a)).

(b) B-121700 Pte. (A/Cpl.) Crawford, R. — To be Cpl. wef. 10 Jun 44. (App. O.R.O. 4668 para 24(b)).

(c) K-65637 Pte. (A/Cpl.) Archibald, D.Mc. — To be Cpl. wef. 10 Jun 44. (App. O.R.O. 4668 para 24 (a)).

(d) L-7369 Pte. (A/Sgt.) Arnold, A.W. — To be Sgt. wef. 10 Jun 44. (App. O.R.O. 4668 para 24(a)).

PROMOTIONS (Cont'd)

(e) B-82788
Pte. (A/Sgt.) Coombes, H. — To be Sgt. wef. 10 Jun 44. (App. O.R.O. 4668 para 24(a)).

(f) D-97991
Pte. (A/Cpl.) Davies, G.L. — To be Cpl. wef. 10 Jun 44. (App. O.R.O. 4668 para 24(a)).

(g) L-102104
Pte. (A/Cpl.) Driscoll, G. — To be Cpl. wef. 10 Jun 44. (App. O.R.O. 4668 para 24(a)).

(h) F-49642
Pte. (A/Sgt.) Isnor, C.R. — To be Sgt. wef. 10 Jun 44. (App. O.R.O. 4668 para 24 (a)).

(i) H-65683
Pte. (A/Cpl.) Middleton, G.A. — To be Cpl. wef. 10 Jun 44. (App. O.R.O. 4668 para 24(b)).

(j) B-88144
Pte. (A/Cpl.) Murphy, J.D. — To be Cpl. wef. 10 Jun 44. (App. O.R.O. 4668 para 24(a)).

(k) M-28254
Pte. (A/Sgt.) McLean, W. — To be Sgt. wef. 10 Jun 44. (App. O.R.O. 4668 para 24(a)).

(l) B-85549
Pte. (A/CSM) Wilson, C.D. — To be Cpl. wef. 10 Jun 44. (App. O.R.O. 4668 para 24(b)).

(m) D-126451
Pte. (A/Cpl.) Koga, G. — To be Cpl. wef. 10 Jun 44. (App. O.R.O. 4668 para 24(a)).

(n) C-36053
Pte. (A/CQMS) Wilson, M.A. — To be Cpl. wef. 10 Jun 44. (App. O.R.O. 4668 para 24(a)).

8. APPOINTMENTS

(a) M-50338
Cpl. McCullough, E.T.W. — Relinquishes appointment to Standard Incr ("F" Coy) wef. 15 Jun 44.

9. QUALIFICATIONS

(a) The u/m personnel Qualified as Cooks Group "C" wef. 16 Jun 44 (Auth: TTB/HQ/CRU d/18 Jun 44).

D-13516	Pte.	Dingman, A.C.	68%	B-30601	Sigmn.	Frost, D.W.	71%
B-41013	Pte.	Mole, J.	78%	C-102028	Pte.	Quenville, J.A.	7
M-35713	Spr.	Simpkins, R.W.	65%				

(b) The u/m personnel Qualified as Cooks Group "C" wef. 17 Jun 44 (Auth: TTB/HQ/CRU d/19 Jun 44).

L-100357	Pte.	Gillies, A.L.	80%	H-100966	Pte.	McClelland, C.W.	
C-70739	Cpl.	Wright, R.P.	85%				

(c) The u/m personnel Failed as Cooks wef. 17 Jun 44 (Auth: TTB/HQ/CRU d/19 Jun 44).

P-6722	Pte.	Kelly, J.F.	A-38352	Pte.	Miles, C.W.E.	
M-105442	Pte.	Neigel, J.M.	C-20758	Pte.	Smith, H.	

(d) B-11623
Pte. Cramer, F.R. — Failed as Cook wef. 16 Jun 44. (Auth: TTB/HQ/CRU d/18 Jun 44).

(e) B-56244
Pte. Huculak, D.L. — Qualified as B/Smith "C" wef. 15 Jun 44. (Auth: TTB/HQ/CRU d/14 Jun 44).

(f) D-114706
Cpl. Lachance, R. — Qualified as Butcher "C" wef. 15 Jun 44. (Auth: TTB/HQ/CRU d/16 Jun 44).

(g) K-89703
L/Cpl. Laidlaw, R.A. — Qualified as Carpenter "B" wef. 13 Jun (Auth: TTB/HQ/CRU d/14 Jun 44).

(h) G-52240
Pte. Lavigne, H.D. — Qualified as Carpenter "B" wef. 13 Jun 44 (Auth: TTB/HQ/CRU d/14 Jun 44).

(i) F-55738
Pte. MacKay, W.E. — Qualified as B/Smith "C" wef. 13 Jun 44. (Auth: TTB/HQ/CRU d/14 Jun 44).

10. TRADES PAY

(a) The u/m personnel are granted Trades Pay as shown wef. dates shown (Art. 147(5) FRAI).

B-139705	Pte.	Atkinson, H.	Dr/Mech	"C"	23 May 44.
B-82065	Pte.	Bell, G.W.	FitterMV	"C"	30 May 44.
A-23041	Pte.	Bird, E.G.	FitterMV	"B"	3 Apr 44.
K-49412	Pte.	Bissette, W.G.	Dr/Mech	"C"	24 May 44.
K-50645	Pte.	Cook, L.E.	Dr/Mech	"C"	24 May 44.
H-59064	Pte.	Edwards, S.	Cook	"C"	1 Jun 44.
B-14158	Pte.	Gadoury, M.A.	Cook	"C"	9 May 44.
B-80837	Pte.	Gallagher, J.O.	M/Mech	"B"	30 May 44.
L-102464	Pte.	Hanson, A.H.	M/Mech	"B"	30 May 44.

TRADES PAY (Cont'd)

(b) The u/m personnel are granted Trades Pay as shown wef. dates shown (Art. 147(5) FRAI).

K-76619	Cpl.	Koski, J.E.	FitterMV	"C"	30 May 44.
F-77710	Pte.	LeBlanc, E.M.	FitterMV	"C"	30 May 44.
G-54510	Pte.	Lindsay, G.A.	Dr/Mech	"C"	23 May 44.
B-107511	Pte.	Malesh, S.	Dr/Mech	"C"	23 May 44.
B-107511	Pte.	Malesh, S.	M/Mech	"B"	16 Jun 44.
M-58652	Pte.	Marks, A.G.	M/Mech	"B"	30 May 44.
D-71286	Pte.	Martin, A.	Dr/Mech	"C"	6 May 44.
K-46477	Pte.	Minshull, J.	Type/Mech	"B"	18 Jun 44.
I-9619	Pte.	Mockford, O.M.	FitterMV	"C"	30 May 44.
B-41013	Pte.	Molo, J.	Cook	"C"	16 Jun 44.
B-86438	Pte.	Mulholland, R.G.	Dr/Mech	"C"	24 May 44.
D-127521	Pte.	Monette, E.P.	Dr/Mech	"C"	30 May 44.
B-54371	Pte.	Musselman, L.	Dr/Mech	"C"	23 May 44.
G-54341	Sgt.	MacDonald, D.W.	Cook	"C"	18 Jun 44.
M-75990	Pte.	MacKenzie, M.L.	M/Mech	"B"	30 May 44.
F-65244	Pte.	MacLeod, I.L.	Dr/Mech	"C"	23 May 44.
M-55663	Pte.	McLaren, I.	FitterMV	"C"	30 May 44.
C-120525	Pte.	Overholt, H.L.	Dr/Mech	"C"	23 May 44.
H-195399	Pte.	Paxson, D.F.	M/Mech	"B"	30 May 44.
K-69104	Pte.	Powell, J.F.E.	Dr/Mech	"C"	3 Jun 44.
H-100966	Pte.	McClelland, C.W.	Cook	"C"	17 Jun 44.
C-102028	Pte.	Quenville, J.A.	Cook	"C"	16 Jun 44.
A-102588	Pte.	Randall, R.A.	Dr/Mech	"C"	23 May 44.
K-45992	Pte.	Roller, V.R.	Dr/Mech	"C"	23 May 44.
K-45992	Pte.	Roller, V.R.	M/Mech	"B"	30 May 44.
L-105523	Pte.	Spani, L.J.	Printer(Comp)	"B"	18 Jun 44.
G-53225	Pte.	Steen, A.G.	FitterMV	"C"	30 May 44.
K-71281	Pte.	Strohmaier, W.J.	FitterMV	"C"	30 May 44.
H-103312	Pte.	Sutherland, R.D.O/Smith		"C"	10 May 44.
B-11444	Pte.	Wilson, A.W.	Dr/Mech	"C"	24 May 44.

(c) The u/m personnel Revert to Regt'l Rates of Pay wef. dates shown:

A-23041	Pte.	Bird, E.G.	Dr/Mech	"C"	2 Apr 44.
K-76619	Cpl.	Koski, J.E.	Dr/Mech	"C"	29 May 44.
F-77710	Pte.	LeBlanc, E.M.	FitterMV	"B"	29 May 44.
B-107511	Pte.	Malesh, S.	Dr/Mech	"C"	15 Jun 44.
A-38352	Pte.	Miles, C.W.E.	Cook	"C"	17 Jun 44.
M-55663	Pte.	McLaren, I.	Dr/Mech	"C"	29 May 44.
M-105442	Pte.	Neigel, J.M.	Cook	"C"	17 Jun 44.
K-45992	Pte.	Roller, V.R.	Dr/Mech	"C"	29 May 44.
C-20758	Pte.	Smith, H.	Cook	"C"	17 Jun 44.
G-53225	Pte.	Steen, A.G.	M/Mech	"C"	29 May 44.
K-71281	Pte.	Strohmaier, W.J.	Dr/Mech	"C"	29 May 44.

(d) M-53912 (Butcher "C")
Pte. Mihalek, J.
Reverts to Regt'l Rates of Pay wef. 11 Feb 44.

(e) AMENDMENT
D.O. 140 para 13(b) d/15 Jun 44 in so far as it refers to "C-12384 Pte. Caloren, C.M." is amended by: Delete: M/Mech "C" Sub: M/Mech "B".

(f) CANCELLATION
D.O. 141 para 12(b) d/16 Jun 44 in so far as it refers to "M-24132 Pte. Shewchuk, P.T." is CANCELLED.

11. PAY AND ALLOWANCES
(a) B-84524
Pte. Bennett, N.L.
To draw Regt'l Rates of Pay of $2.25 per day (Fitter "A") wef. 16 Jun 44 having been reduced to rank of Pte. on 16 Jun 44. (Auth: G.O. 486/42).

12. ABSENT WITHOUT LEAVE

(a) B-84524
A/L/Sgt. Bennett, N.L.
AWL from 0800 hrs. 6 Jun 44 (8th day)
Ceases to be AWL wef. 1840 hrs. 15 Jun 44

(b) F-66695
Pte. Doucette, E.J.
AWL from 3 CID Residue wef. 0600 hrs. 3 Jun 44. Still Absent (CR d/5 Jun 44).
Ceases to be AWL wef. 1015 hrs. 16 Jun 44.

(c) L-103824
Pte. Wiklund, R.C.

13. BIRTHS AND MARRIAGES

(a) B-132707
Pte. Dobson, W.C.
Married with permission to Miss Doreen Mary Woods, on 10 Jun 44 at Cathedral Church, Guildford, Surrey, England.

(b) D-27181
Pte. Fiddes, E.
Married with permission on 29 Jan 44 at London, England to Miss Murial Francis Pratt.

(c) F-54660
Pte. MacDonald, H.
Born, on 31 May 44 to Mrs. Margaret Jane MacDonald (Wife) a Son (Eric John) at Port Elgin, N.B., Canada.

14. NEXT OF KIN

(a) B-132707
Pte. Dobson, W.C.
Verified next-of-kin:
Mrs. Doreen Mary Dobson (Wife)
6 Ashenden Rd., Guildford, Surrey, England.

(b) D-27181
Pte. Fiddes, E.
Verified next-of-kin:
Mrs. Murial Francis Fiddes (Wife)
143 Wulfstan St., East Acton, London, W.12, England.

(c) L-150514
Pte. Kowalsky, L.D.
Change of address of next-of-kin:
Mrs. Carol Kowalsky (Wife)
New address: 56 Worsley St., Barrie, Ont., Canada.

(d) C-32201
Pte. Lorimer, D.H.
Change of address of next-of-kin:
Mrs. Loretta G. Lorimer (Wife)
New address: 433 Church St., Windsor, Ont., Canada.

(e) D-139976
Pte. Prappas, E.
Change of address of next-of-kin:
Mrs. Mary Ellis (Friend)
New address: 1673 Wellington St., Pt. St. Charles, Montreal, Que., Canada.

(f) B-142341
Pte. Timpson, G.S.
Change of address of next-of-kin:
Mrs. Eileen Rose Timpson (Wife)
New address: 93-13th St., New Toronto, Ont., Canada.

(g) B-80747
Pte. Wright, H.H.
Verified next-of-kin:
Mrs. Geraldine Doris Ann Wright (Wife)
198 St. Helen's Ave., Toronto, Ont., Canada.

15. HONOURS AND AWARDS

(a) D-6949
Pte. Hebert, E.T.A.
Awarded the Cdn Volunteer Service Medal and Clasp wef. 15 Jan 44, in accordance with R.O. 4167.

16. STRENGTH DECREASE

(a) The u/m personnel a re SOS to 2 M.A.C.Inc of 1 Cdn Admin Tpt Coy RCASC wef. 2 Jun 44 (Auth: Adm Order 102/44).

H-194911 Pte. Cutler, E.K. (Clerk "C")
C-90089 Pte. Dick, G.H.
B-112602 Pte. Giscombe, J.G. (Cook "C")

(b) The u/m personnel are SOS to Units shown wef. 17 Jun 44 (Auth: 608/CAB Wing/1 (Org) d/12 Jun 44).

F-59609	Pte.	Aitken, C.J.	4 CIRU
G-28552	Spr.	Despres, J.	1 CERU
A-87081	Tpr.	Dougall, E.J.	1 CACRU
L-103059	Tpr.	Frogner, O.R.	2 CACRU
B-47089	Gnr.	Gauthier, D.	2 CAKU
F-66643	Pte.	Hennebery, R.J.	1 CGRU
B-148995	Pte.	Lloyd, F.R.	1 CGRU
B-130133	Pte.	Porteous, H.	3 CIRU

STRENGTH DECREASE (Cont'd)

(c) The u/m personnel are SOS to Units shown wef. 17 Jun 44 (Auth: 608/C&B Wing/1 (Org) d/12 Jun 44).

D-159008	Gnr.	Rouleau, J.P.R.	1 CARU
M-45720	Tpr.	Thibault, A.J.B.	1 CACRU
L-1011	Pte.	Walker, J.E.	1 CSRU

(d) B-134046(Cook "C") Pte. Draper, H. — SOS to 6 Cdn Gen Pioneer Coy wef. 12 Jun 44 (Auth: 422/Att Away/1 (Org 2) d/12 Jun 44).

(e) C-100825 Pte. Gallagher, W.R. — SOS to 4 Cdn Conv Depot RCAMC wef. 17 Jun 44 (Auth: AN/936 d/13 Jun 44).

(f) A-9118 Cpl. Hodgson, F.M. — SOS to 1 NETD wef. 18 Jun 44. (Auth: AT/234 d/17 Jun 44).

(g) B-56024 Pte. Johnston, F.E. — SOS to 1 CGRU wef. 17 Jun 44. (Auth: CRU (Org) A/5179 d/13 Jun 44).

(h) C--579 (Cook "C") Pte. Martin, R.M. — SOS to 2 Cdn Gen Pioneer Coy wef. 17 Jun 44. (Auth: 408/Gen Pnr/1 (Org 2) d/12 Jun 44).

(i) B-47919(Cook "C") Pte. Matiesh, C. — SOS to 1 Cdn Admin Tpt Coy RCASC wef. 17 Jun 44 (Auth: AN/947 d/13 Jun 44).

(j) K-2130 Pte. Morrow, H.A. — SOS to 1 CERU wef. 17 Jun 44. (Auth: 408/1 Pers Adj M/1 d/12 Jun 44).

(k) C-54341 (Cook "C") Sgt. MacDonald, D.W. — SOS to 19 Spec. Employ Coy wef. 18 Jun 44 (Auth: 408/Spec Employ Coy/1 (Org 2) d/12 Jun 44).

(l) B-121378 Pte. O'Neil, L.P. — SOS to 1 Cdn Admin Tpt Coy RCASC wef. 7 Jun 44 (Auth: CRU (Org) 452/O'Neil, LP/1 d/1 Jun 44).

(m) L-8986 Pte. Person, J.P. — SOS to 2 M.A.C. Incr of 1 Cdn Admin Tpt Coy RCASC wef. 1 Jun 44 (Auth: Adm. Order 102/44).

(n) E-14632 Pte. Poulin, O. — SOS to Y-3 List wef. 7 Jun 44 on admission to EMS Hosp Beverley.

(o) F-85041 (Cook "C") Pte. Refuse, J.C. — SOS to 4 CAD Ser.Incr wef. 17 Jun 44. (Auth: EA2/9852 d/13 Jun 44).

(p) H-17106 (Cook "C") Pte. Robson, W. — SOS to 1 Det. RCOC wef. 16 Jun 44. (Auth: 408/C&B Wing/1 (Org 2) d/11 Jun 44)

(q) B-114656 (Butcher "C") Cpl. Theoret, L.A.J. — SOS to 6 CIRU wef. 7 Jun 44. (Auth: CRU/408/C&B Wing/1 d/4 Jun 44).

(r) AMENDMENT — D.O. 98 para 20(k) d/27 Apr 44 in so far as it refers to "B-75952 Pte. Brooks, H.J." is amended to read: attached fap.

(s) AMENDMENT — D.O. 49 para 15(g) d/28 Feb 44 in so far as it refers to "L-36194 Cpl. Churchill, E.G." is amended by: Delete: Cpl. Sub: A/Cpl.

(t) AMENDMENT — D.O. 97 para 23(g) d/26 Apr 44 in so far as it refers to "D-16349 Pte. McCarthy, C.J." is amended to read: attached fap.

J.H. Whitelaw
Capt & Adjt

for (H.P. Bonnick) Colonel,
Commanding,
1 Cdn A.S.C. Rft. Unit.
Canadian Army Overseas.

SUMMARY OF EVIDENCE

IN THE CASE OF H.17106 Private Walter ROBSON of 1 Cdn ASC Rft Unit a soldier of the Canadian Army Overseas

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st WITNESS (For the prosecution)

Capt. E.H. Fitzsimmons, RCASC, on strength of 1 Cdn AS Rft Unit, having been duly sworn states:

I am Capt. E.H. Fitzsimmons, on strength of 1 Cdn ASC Rft Unit, and I produce the following document relating to the accused, whom I now recognize.

(a) Certified True Copy of AFB 115 Record of Declaration of a Court of Inquiry, declaring that H.17106 Pte. Robson, W. illegally absented himself without leave from 1 Cdn ASC Rft Unit at 2230 hours 23 January, 1945.
Marked Exhibit "A"

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS.

E.H. Fitzsimmons Capt.
(E.H. Fitzsimmons) Capt.

2nd WITNESS (For the prosecution)

L.102104 Cpl. Driscoll, G, RCASC, on strength of 1 Cdn ASC Rft Unit, having been duly sworn states:

I am L.102104 Cpl. Driscoll, G., a member of the Regimental Police at 1 Cdn ASC Rft Unit. I was in charge of 1 Guard Room at 1 Cdn ASC Rft Unit when the accused H.17106 Pte. Robson, W., whom I now recognize, reported to me at 1400 hrs, 28 February 1945. He told me that he was an absentee. I placed him under close arrest. He was properly dressed and sober.

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS.

George Driscoll
(L.102104 Cpl. Driscoll, G.)

The accused was cautioned as follows, "Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but, whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

THE ACCUSED DECLINED TO MAKE A STATEMENT AT THIS TIME.

I hereby certify that the foregoing Summary of Evidence consisting of one (1) page was taken down by me in writing on the 1st day of March, 1945, in the Field, in the presence and hearing of the accused and that R.P. 4 (c) (d) (e) and (f) have been complied with:

S. Rowton
(S. Rowton) Lieut. RCASC
Officer detailed to take Summary of Evidence.

IN THE FIELD
1 March, 1945

IN THE CASE OF

H.17106 Private Walter ROBSON

LIST OF WITNESSES FOR THE PROSECUTION

Capt. E.H. Fitzsimmons — 1 Cdn ASC Rft Unit

L.102104 Cpl. Driscoll, G. — 1 Cdn ASC Rft Unit

LIST OF WITNESSES FOR THE DEFENCE

Nil

LIST OF EXHIBITS

(a) Certified True Copy of AFB 115 Record of Declaration of a Court of Inquiry, declaring that H.17106 Pte. Robson, W., illegally absented himself without leave from 1 Cdn ASC Rft Unit at 2230 hours 23 January, 1945.

TO WHOM IT MAY CONCERN

This is to certify that I, the accused, H.17106 Pte. Robson, W., RCASC, 1 Cdn ASC Rft Unit, have received one (1) copy of Charge Sheet and Summary of Evidence in connection with my forthcoming Trial by Field General Court Martial.

(H.17106 Pte. Robson, W.)

I, the accused, H.17106 pte. Robson, W. RCASC on strength of 1 Cdn ASC Rft Unit desire the services of a competent officer to defend me at my forthcoming Trial by Field General Court Martial.

(H.17106 Pte. Robson, W.)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H-17106	Pte	ROBSON, W.	1 Cdn ASC Rft Unit

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers hereto stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 15 (1) TWO times.

For A.A. Sec 11 ONE times.

For _____ times.

For _____ times.

Date of first entry in Field Conduct Sheet 28 Jun 44

Date of last entry in Field Conduct Sheet 30 Sep 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. ~~The accused has the present instant sentence~~ ~~xxxx~~

~~xxxx

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

CERTIFIED TRUE COPY OF ORIGINAL DOCUMENTS IN MY POSSESSION.
Officer having custody of Regtl Books

(Offr i/c Regtl Books)
1 Cdn AGC Aft Unit
Cdn Army Overseas
2 March 1945

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 6th day of March 45 S Howlett Lt

No. H.17106 Name ROBSON, W. Sqn, Battery, or Company Corps RCASC Date of enlistment 24 Apr 40 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/P&S/130 (5412)

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 1 Signature OC Company, etc Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
SUPPLEMENTARY MFM 6, 28 Apr 44, ORIGINAL NOT AVAILABLE.									
Field	28 Jun 44	Pte		AA Sec 11 - Neglecting to obey Unit Daily Orders in that he at Bentley on 27 Jun 44 proceeded outside the Aldershot Area without a Pass, contrary to GRU RO #154 republished in Unit DO Pt I #88 d/28 Mar 44.	D. 3944 SQMS Rennie, J.R.	2 days forf. of Pay	28-6-44	Major D.D. Ross	
Field	3-7-44	Pte.		AA Sec 15 (1) WOAS absented himself without leave from 0630 hrs 3-7-44 to 0815 hrs 3-7-44. TTA - 1 hr, 45 mins	A-86049 Sgt Ritchie, R.	5 days C.B.	3-7-44	Major D.D. Rose	

Ex L
MY

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dissensing with trial	By whom awarded	Remarks
Crookham, Hants	30-9-44	Pte		AA Sec 15 (1) WOAS was AWL from 0630 hrs 30 Sep 44 to 0825 hrs 30 Sep 44 TTA 1 hr 45 mins.	S/Cdr Knight, H.F.	7 days CB	30 Sep 44	Major D.D. Ross	

CERTIFIED TRUE COPY OF ORIGINAL DOCUMENTS IN MY POSSESSION.

E H Fitzgerald Capt
Officer i/c Documents
1 Cdn ASC Rft Unit.
Cdn Army Overseas
6 March 1945

GG-67 (Case #2)

PTE ROCCO A

See K-149 for 1st case

GG 67

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 11th day of June, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[illegible]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

~~*I am unable to appoint~~

~~*(1) Three Officers to form the Court~~

~~*(2) A Field Officer as President~~

~~for the following reasons, namely:~~

Blair Major

Blair Major President

(21)

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J. Blair	4 Cdn Fd Coy RCE

Members.

Rank.	Name.	Regiment.
Captain	W.H. Roberts	1 Cdn Fd Regt RCHA
Captain	J.T. Wood	2 Cdn Lt AA Regt RCA
Lieut	J. Roy	~~[illegible]~~ R22 R.

Waiting

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier,

Commanding 3 Cdn Inf Bde.

Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B4655 Pte ROCCO, ~~Albert~~, R 22e R Antonio	1st Charge Sec 15 (1) A.A.	Guilty	Guilty One years imprisonment with hard labour. 12 June 1943 [illegible] Major	Confirmed Hard 12 June 43

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— n/a

(Signed) [illegible] Brigadier (Signed) [illegible] Major,
Commanding 3 Cdn Inf Bde. 4 Fd Coy RCE
Convening Officer (*c*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the 12 day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B.** Certificate of President as to proceedings.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

*Omit if not applicable.

Signed this 12 day of June 1943.

[illegible] Major
President of the Court Martial.
4 Fd Coy RCE

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this ~~day of~~ 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

*To be omitted unless the soldier is serving or is to be punished by detention, having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this Twelfth day of June 1943.

[illegible] Brigadier,
Confirming Officer. Comd 3 Cdn Inf Bde.

Promulgated and extracts taken in the case of B4655 Pte Rocco R 22e R.

(*a*) (Dated) 14th June 1943 (Signed) [illegible] R 22e R.

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

23572 W1-46176-800 50,000 2-43 A.& E.W.Ltd. Gp.A93

B2

C H A R G E S H E E T

The accused E. 4655 Private Albert ROCCO, a soldier of the Royal 22e Regiment, Canadian Army, Overseas, is charged with:

FIRST CHARGE WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE, A. A. sec.15(1)

In that he,

In the Field, was absent without leave from 1800hrs the 4 May 1943, until he was he was arrested by the Military Police in Glasgow at about 0930hrs the 31 May 1943.

Total absence: 26 days, 15hrs, 30 minutes.

(J. P. E. BERNATCHEZ), Lt-Col.,
Commanding Royal 22e Regiment.

In the Field,
5 June, 1943.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(M.H.S. Penhale), Brigadier,
Commanding 3 Cdn Inf Bde.

In the Field
11 Jun 43

Major
A/Fd Coy RCE
President.

Rocco A. of R 22° R

Station In the field

Date 12-6-43

Guy Latimer Capt.

Physician Officer

[illegible] Maj.

Pressure

Army Form A 9.

A

**Form of Proceedings for General and District Courts-Martial.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

Proceedings of a FIELD General Court-Martial held ~~at~~ IN THE FIELD on the 12 day of June 1943 by order of

BRIGADIER M.H. PENHALE

Commanding 3 C I B

dated the 11 day of June 1943

President.

MAJOR J. BLAIR 4 FD COY RCE

Members.

CAPTAIN W.H. ROBERTS 1 CDN FD REGT RCHA.

CAPTAIN J.T. WOOD 2 CDN LAA REGT RCA.

, ~~Judge Advocate.~~ JB

Trial of* E4655 Pte Rocco, Albert R22° R

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available~~ JB ~~to serve owing to~~ JB

, ~~waiting member takes his place as a member of the Court.~~ JB

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† LIEUT. P.E. CHASSÉ R22° R

Counsel‡ or defending officer† LIEUT J.P. CHARETT R22° R

At 1030 o'clock the Trial commences.

The order convening the Court is read, and is marked A, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. Wt.W16839/78. 25,000 sets. 6/40. K. & H., Ltd. G657/11. Forms A 9/55.

Blair Major

B

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the ~~first~~ charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to the charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

7

CC

Proceedings on Plea of Guilty.

* To be struck out in case of trial of "Not Guilty" has been proceeded with.

*~~[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]~~

The accused E 46055 Pte ROCCO Antonio R22°R
is found guilty of A.W.L. A.A. 15(1) 1ST CHARGE.

†The summary ~~(or abstract)~~ of evidence is read, marked C
signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment ?

Yes Sir

Answer. The ~~accused~~ Deputing Officer in mitigation of punishment says :—

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~

Pte Rocco has been in trouble mainly because of his youth. He can be a very good soldier and is willing to do his duty to the utmost.

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Deasi Magi

DD

Do you wish to give evidence yourself or to call any witnesses as to character ?

Question to the accused.

Answer.

~~*Evidence as to character.*~~ DB

no Sir

Jesai Maji

E

Finding.* JB

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~ JB

The Court find that the accused

Guilty of 1st charge
Sec 15(1) A.A.

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

~~*The Court being re-opened, the accused is again brought before it.~~ JB

Lieut P. E. CHASSÉ R22°R is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes sir. I have a certified copy of MFM6 and statement MFB 555 of Pte Rocco.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] and MFM6 is read, marked D+E respectively, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes sir

Cross-examined by the accused.

The accused declines to cross-examine the witness

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No sir.

The Court is closed for the consideration of the sentence.

Jocai Lagi

10

F

Sentence.

The Court sentence the accused E 4655 Pte Rocco A Sentence.
to one years imprisonment with hard labour.

J Bean's major RCC
President F.G.C.M.

File No. . . . . .

Officer Commanding,
R.22 Regt.
Re:-E-4655 Pte. Rocco A.

1. Forwarded for your information and necessary action, please, and disposal under C.A.R.O. No. 388 dated 20 Oct. 4[illegible].

J. S. Dyler .....Cpl.
(M-11659 J.S.Dyler)for i/c
No.2 Detachment,Cdn. Provost Corps.

Glasgow
31 May 43.

J B Laird Major
4 Field Coy RCE
Pres.

Army into whose custody the above named person was taken in arrest.
(Strike out part inapplicable).

J. S. Dyler .....Cpl.
(M-11659 J.S.Dyler)for i/c
No.2 Detachment Cdn. Provost Corps.

J B Laird Major
4 Fdy RCE
Pres

C

S U M M A R Y OF EVIDENCE

In the case of

E. 4655 Rrivate Antonio ROCCO, Royal 22e Regiment, a soldier of the Canadian Army, Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS FOR PROSECUTION — E. 4378 Cpl. S. Pilotte, Royal 22e Regiemnt, having been duly sworn states:

Acting as C. O. S. on the 4th May 1943, at about 1800hrs, I reported the absence of Pte A. Rocco. He was absent from C. B. Parade.

Pilotte S Cpl.

The accused declines to cross examine this witness.

SECOND WITNESS FOR PROSECUTION — E. 57624 L/Cpl. H. Otis, Royal 22e Regiment, having been duly sworn states:

On the 4th May 1943, at about 1800hrs, I reportd the absence from C. B.Parade, of Pte Rocco. I was with Cpl. Pilotte.

H.O.T. Otis H L/.Cpl.

The accused declines to cross-examine this witness.

THIRD WITNESS FOR PROSECUTION — Lieut. Arthur Cannon, Royal 22e Regiment, will be called as a witness at the trial of the above mentionned soldier, to produce in evidence the fellowing documents. In accordance with Army Act. 163.
Certificate of apprehension in accordance with Sec. 163 of the Army Act.Dated the 31st of May 1943.

The accused having been duly cautionned in accordance with Rule of Procedure 4 (e) declines to make a Statement and reserves his defence.

I certify that the forgoing Summary of Evidence was taken down by me in the presence of the accused, and that Rule of Procedure 4 (c) (d) (e) (f), have been complied with.

Pierre Ed, Chasse, Lieutenant,
Officer detailed to take down
the Summary of Evidence.

In the field,
This 5 June 1943.

E 15

J Blair

No. F 4655 Name Rosco A Sqn., Battery, or Company Corps Rose R. Date of enlistment 16-11-39 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 17554—7-41 (212-20) H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On the 16-5-40 this soldier completed 6 months service and in accordance with Appx to R.O. (a) 319 his previous sheet was destroyed on the 18 [illegible]									
Vacation	26-8-40	Pte		A.W.L. from 1300 hrs 26-8-40 until 1300 hrs 20-9-40 total 24 days 10 hours		28 days Det	23-9-40	[illegible]	Forf. 25 days pay
"	25-5-40	"		A.W.L.		72 hours Det			
"	5-8-40	"		A.W.L.		4 days pay			
"	4-10-40	"		A.W.L.					
"	12-9-40	"		A.W.L. from 2200 hrs 22-11-40 until 2600 hrs 13-11-40 and	Capt Langevin				
				A.W.L. from 1400 hrs 13-11-40 until 2030 hrs 11-12-40	Capt Langevin Summary	28 days Det	16-12-40	[illegible]	Forfeits 29 days pay

Certified true copy

[illegible]

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Valcartier	[illegible]	[illegible]		A. W. L. from 2200 hrs [illegible] until 2600 hrs 12-1-41	Sgt Reynolds	28 days Det	22-1-41	Lt Col Truscott	Forf. 4 days pay
				A. W. L. from 1000 hrs 3-1-41 until 1130 hrs 16-1-41	Sgt Lizotte				
"	18-2-41	"		A. W. L. from 2200 hrs 18-2-41 until 2750 hrs 20-2-41	Sgt Cabranche	28 days Det	24-2-41	Lt Col Truscott	Forf. 5 days pay
"	9-3-41	"		Total 8 days 1 hr 5 min A. W. L. from 2200 hrs 9-3-41 until 1030 hrs 25-3-41	Wm Bigeonette	14 days Det	27-3-41	Sgt Parker	Forf. 6 days pay
"	6-4-41	"		Total 2 days 12 hrs 30 min A. W. L. from 2215 hrs 10-4-41 until 0215 hrs 9-5-41	Sgt Irigue				
				Total 28 days 4 hours	Sgt Barette				
Bucker					Sgt Mallard		9-5-41	Sgt Moulton	Forf. 29 days pay
Valcartier	3-5-41	"		A. W. L.					
"	9-5-41	"		A. W. L.		12 hrs Det	24-5-41		Forf. 4 days pay
"	17-8-41	"		A. W. L.					1 day pay
"	4-10-41	"		A. W. L. (6 days 1 hr)		4 days pay 12 days Det		[illegible]	Forf. 19 days pay

Retained [illegible]

16

M.F.M. 6
A.F.B. 177
(1951—T.41 (1)212-20)
H.Q. 1779-99-1652

No. 650 Name [illegible] Eqn., Battery, or Company [illegible] Corps R.C.A.F. C.A.O. Date of enlistment 26-11-38 G.C. Badges [illegible] Service or Proficiency Pay [illegible]

Date of last entry in Company Conduct Sheet [illegible] No. and date of last drunk [illegible] Period not reckoning towards freedom from extra fine [illegible] Sheet No. 2 Signature O.C. Company, etc. [illegible] Character [illegible]

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order ceasing with trial	By whom awarded	Remarks
				A. W. O.					Forfeits 2 days pay
Valcartier	6-12-41	Pte		A. W. O.		28 days det			
	15-11-41	"		A. W. O.	Evidence obt.				
Lethbridge	28-8-42	"		Breaking out of billets while on disciplinary					
				AWOL	Con Stapleton	21 days det	29-8-42	Capt Brown	
				Failing to appear on Parade appointed	pte Sutherland				
				by O.C. AWOL 8-9-42 (1)		7 days C.B.	8-9-42	Capt Russell	
				AWOL 8-9-42 (2)					
				A. W. Upon 8-9-42					Forf. 12 days pay
Lyncombe	8-9-42	"		AWOL 8-9-42	Cpl Sinclair	28 days C.B.	29-9-42	Capt Russell	Cost of appn. $5.00
				AWOL 8-9-42 & 11-9-42	Summary				
				AWOL 8-9-42 & 11-9-42

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Absent without leave from Tattoo 10th inst. to Reveille 11th inst.					
				Absent without leave from Tattoo 11th inst. to Reveille 12th inst.					
				Absent without leave from Tattoo 12th inst. to Reveille 13th inst.					
				Absent without leave from Tattoo 13th inst. to Reveille 14th inst.					
				Absent without leave from Tattoo 14th inst. to Reveille 15th inst.					
				Absent without leave from Tattoo 15th inst. to Reveille 16th inst.					
				Absent without leave from Tattoo 16th inst. to Reveille 17th inst.					
				Absent without leave from Tattoo 17th inst. to Reveille 18th inst.					
				Absent without leave from Tattoo 18th inst. to Reveille 19th inst.					
				Absent without leave from Tattoo 19th inst. to Reveille 20th inst.					
				Absent without leave from Tattoo 20th inst. to Reveille 21st inst.					
				Absent without leave from Tattoo 21st inst. to Reveille 22nd inst.					
				Absent without leave from Tattoo 22nd inst. to Reveille 23rd inst.					
				Absent without leave from Tattoo 23rd inst. to Reveille 24th inst.					
				Absent without leave from Tattoo 24th inst. to Reveille 25th inst.					
				Absent without leave from Tattoo 25th inst. to Reveille 26th inst.					
				Absent without leave from Tattoo 26th inst. to Reveille 27th inst.					
				Absent without leave from Tattoo 27th inst. to Reveille 28th inst.					
				Absent without leave from Tattoo 28th inst. to Reveille 29th inst.					
				Absent without leave from Tattoo 29th inst. to Reveille 30th inst.					
				Absent without leave from Tattoo 30th inst. to Reveille 31st inst.					
				Absent without leave from Tattoo 31st inst. to Reveille 1st inst.					
				Absent without leave from Tattoo 1st inst. to Reveille 2nd inst.					
				Absent without leave from Tattoo 2nd inst. to Reveille 3rd inst.					
				Absent without leave from Tattoo 3rd inst. to Reveille 4th inst.					
				Absent without leave from Tattoo 4th inst. to Reveille 5th inst.					
				Absent without leave from Tattoo 5th inst. to Reveille 6th inst.					
				Absent without leave from Tattoo 6th inst. to Reveille 7th inst.					
				Absent without leave from Tattoo 7th inst. to Reveille 8th inst.					
				Absent without leave from Tattoo 8th inst. to Reveille 9th inst.					
				Absent without leave from Tattoo 9th inst. to Reveille 10th inst.					

D 19

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 295

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E46 65	PTE	ANTONIO ROCCO	ROYAL 22° REGT.

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. SEC. 15	30-7-42 times	18 TIMES A.W.L. SEC. 15 A.A. times
For A.A. SEC. 15	6-8-42 times	times
For A.A. SEC. 15	21-8-42 times	times
For A.A. SEC. 40	26-4-43 times	times
Number of instances of gallantry or distinguished conduct	N.A.	times

or,

There are ~~no~~ entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has ~~not~~ been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.—

or,

The accused at the present time is under sentence for —— beginning on the —— day of ——

4. The accused has been in confinement awaiting trial on the present charges, for —— days in civil custody, and 11 days in military Air Force custody, making a total of 11 days in custody, of which —— days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 21 YEARS OLD.

6. The date of his commission specified in his record of service is attestation attestation paper 16-11-39

7. The service which the accused is allowed to reckon towards discharge is ——

8. The accused is entitled to reckon —— service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward. military military ——

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of ——

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit ..... dated ——, and in his regiment (or corps), the rank of —— dated ——.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

—— Date of promotion.

In the rank of —— years.

In the rank of —— years.

In the rank of —— years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number E4655 Rank PTE Name ANTONIO ROCCO of ROYAL 22° REGT. Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
G. C. M.	4-10-41 Valcartier Camp.	A.A. 15(1)	112 days det.	——
F. G. C. M.	In the Field 21-8-42	A.A. 15(1)	180 days det.	60 days

Certified true extracts of Regimental Books.

[illegible signature]

Officer in charge of Records

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15th day of June 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked D signed by the president, and annexed to the proceedings.

[illegible signature]

149 N.

Pte. ROCCO, A

O. H. M. S.

M. F. B. 270
1000M-12-40 (8868-69-70)
H.Q. 1771-49-67

E-4655 Pte. Antonio ROCCO 149 N
R. 22e R. - 1 C.D.I.R.U.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 15th day of Sep, 1942.

Whereas it appears to me, the undersigned, an officer in Command of "A" Group Cdn.Reinf. Units, C.A.(O), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ✓ *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~] ✓

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

NG

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

✓ *[~~I am unable to appoint~~ :—

*(1. ~~Duty Officers to form the Court.~~)

*(2. ~~A Field Officer as President.~~

~~for the following reasons, namely~~ ✓

*Omit if not applicable.

NG

PROCEEDINGS REVIEWED
[illegible]
Reviewed [illegible]
23 Sep 42

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.		Regiment.
Major	J. C. DAWSON	(General List)	1 C.D.I.R.U.

Members.

Rank.	Name.		Regiment.
Capt.	G. T. Blair	(Edmn. Regt.)	1 C.D.I.R.U.
Lieut.	Y. David	(R. de Mais.)	2 C.D.I.R.U.
Waiting Member Lieut.	C. E. Wood	(Seaforth of C.)	1 C.D.I.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*S[illegible] Brigadier,
Commanding "A" Group Cdn. Reinf. Units, C.A.(O)
Convening Officer.

J C Dawson Maj
Pres of Court.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
E-4655 Pte. Antonio ROCCO R. 22e R. 1 C.D.I.R.U.	FIRST CHARGE A.A. Sec. 15(1) (SEE CHARGE SHEET ATTACHED)	GUILTY	GUILTY 180 DAYS DETENTION AND TO UNDERGO STOPPAGES OF PAY TO THE AMOUNT OF $0-2-10 16/9/42 JGL.	I confirm the finding and Sentence of the Court [signature] Brigadier 16.9.42

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [signature] Brigadier, (Signed) J.C. Lawton Maj
Commanding "A" Group Cdn.Reinf.Units, Convening Officer (or C.A.(O). President. Conf.to 1 CDIRU

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 16th day of SEPTEMBER, 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
~~2. The witnesses~~ JGL
~~*(3. The interpreter)~~ JGL
~~*(4. The officers under instruction)~~ JGL

were duly sworn.

* Omit if not applicable.

Signed this 16th day of September 1942.

J.C. Lawton Maj
Pres.Conf.to 1 CDIRU
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (*b*) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~ JGL

~~Signed this day of 19 .~~

~~President of the Court Martial.~~ JGL

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ JGL

Signed this 16th day of September 1942.

[signature] Brigadier
A/Group CAU
Confirming Officer.

Promulgated and extracts taken in the case of E-4655 Pte. Rocco, A. (22eR) 1 CDIRU
Promulgated in R.C.R.O. II d/18/9/42

(*a*) (Dated) 16 Sept 42 (Signed) [signature] Lt.Col. (Actg Basher) Commander, No.1 Cdn.Div.Inf.Reinf.Unit.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

O.L. 4778211937 35 M. 3/41 KJL/GC/GC Cp. 4883

I hereby vary my order dated 16 Sept 42 convening a F.G.C.M. for the trial of E-4655 Pte. Rocco, A. of R.22e R. 1 C.D.I.R.U. on charges laid under Sec. 15 (1) of the A.A. by detailing as member of the said C.M. Lieut. G.G. Charon, R. de Mais 2 C.D.I.R.U. in place of Lieut. Y. David, R. de Mais. 2 C.D.I.R.U.

(A. Hamilton Gault) Brigadier
Commanding
"A" Group Cdn. Rein. Units,
C.A.(O).

Witley, Surrey.
15 Sept 42.

CHARGE SHEET

The accused, E-4655 Private Antonio ROCCO, of the Royal 22e Regiment, on the strength of No. 1 Canadian Division Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army (Overseas) is charged with:-

FIRST CHARGE
Sec. 15 (1)
Army Act

When on Active Service absenting himself without leave,

in that he,

while undergoing Field Punishment at Algonquin Camp, Witley, Surrey, absented himself without leave from 1800 hours on the 21st day of August 1942 until being apprehended at Harrow at 0650 hours on the 9th day of September 1942; thereby incurring expenses to the public for the costs of his apprehension in the amount of £0-8-10.

Total absence:- 16 days 12 hours 50 minutes.

G. Hedley Basher .....Col.
(G. Hedley Basher) Commander,
No. 1 Cdn. Div. Inf. Reinf. Unit.

Algonquin Camp,
Witley, Surrey,

15th day of September 1942

To be tried by Field General Court Martial.

(A. Hamilton Gault) Brigadier,
Commanding,
"A" Group Cdn. Reinf. Units,
C. A. (O).
(Convening Officer).

Witley, Surrey.
15 Sep. 1942.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT ALGONQUIN CAMP. NOICDIRU IN THE 16th. DAY OF Sept. 42

TRIAL OF: No. E-4655 PTE. ROCCO, ANTONIO. Unit R22R. NOICDIRU.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor: LIEUT. J. R. TURNER ..... Unit EDMONTON REGT NOICDIRU

Defending Officer LIEUT. M. TRUDEAU ..... Unit R.22 R. NOICDIRU

At 0930 hrs. the trial commences.

The order convening the court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 - NO

The President, members and judge-advocate (if any) are duly sworn.

The following constitute the Court:

President MAJ. J. C. DAWSON, E.D. (Unit) GEN LIST NOICDIRU

Members CAPT. G.T. BLAIR ..... (Unit) EDMN. REGT NOICDIRU

LIEUT. G.G. CHARRON ..... (Unit) R. de MAIS NO2CDIRU

The officers under instruction are duly sworn.

~~Q2 Do you object to ..... acting as shorthand writer? A2 -~~

~~The shorthand writer is duly sworn.~~ JCD

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P. 35 (B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court is closed to consider its finding. Court is re-opened.

Name LIEUT. J. R. TURNER ..... Unit EDMN. REGT. NOICDIRU sworn, produces AFB 296 and MFM 6 and upon being questioned by Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3 (To accused) - Do you wish to make any statement in mitigation of punishment? A3 - YES

Q4 Do you wish to give evidence yourself or to call any witnesses as to character? A4 - NO

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

THE DEFENDING OFFICER LIEUT M. TRUDEAU. R22R STATES:—

THAT THE ACCUSED HAD ON SEVERAL OCCASIONS ASKED S/MAJ. DES COTEAU. TO HAVE HIM TRANSFERED TO THE FIELD. OR TO ALLOW HIM TO ATTEND COURSES. HE WAS ALWAYS REFUSED

J.C. Dawson Maj
Gen List NOICDIRU
Pres.

SUMMARY OF EVIDENCE

In the case of E-4665 Pte A. ROCCO, Royal 22e Regiment, on the strength of No. 1 Canadian Division Infantry Reinforcement Unit.

By direction of the Commanding Officer, this Summary of Evidence is taken under oath.

FIRST WITNESS for the PROSECUTION — Lieut. H.J. McDougall, Assistant Records Officer No. 1 C.D.I.R.U. having been duly sworn, states:-

I am Lieut. H.J. McDougall, Assistant Records Officer. No. 1 C.D.I.R.U. I produce Part II Daily Order No. 208 dated 1 September 1942 showing Pte. Rocco, the accused whom I now recognize, absent without leave from 1800 hrs. 21 August 1942 and still absent after 8 days. This order is marked Exhibit "A".
I produce Army Form C 1618 relating to the accused and purporting to be signed by the committing Magistrate at Wealdstone. This document is marked Exhibit "B".
I produce an expense voucher relating to the accused purporting to be signed by the Officer issuing railway warrants and expense monies for the return of the accused and his escort. This certificate is marked Exhibit "C".

The accused declines to cross-examine this witness.

A. McDougall .....Lieut.

SECOND WITNESS for the PROSECUTION — E-39040 Sgt. J.H. BOUTET, of the Royal 22e Regiment, No. 1 C.D.I.R.U., having been duly sworn, states:-

I am E-39040 Sgt. J.H. Boutet, R22eR., No. 1 C.D.I.R.U. On the 21st of August 1942 I was orderly Sergeant for the R22eR., Coy. At 1800 hours on this day I called the roll of the defaulters parade. I found that Pte. Rocco, the accused whom I now recognize was absent. The accused should have been on this parade because he was undergoing Field Punishment. I also called the roll at 2200 hours on the same day and the accused was still absent.
The accused declines to cross-examine this witness.

J.H. Boutet .....

THIRD WITNESS for the PROSECUTION — E-5551 Cpl. A. Ringuette, Royal 22e Regiment, having been duly sworn, states:-

I am E-5551 Cpl. A. Ringuette, R22eR., No. 1 C.D.I.R.U. I was orderly Sergeant for the R22eR. Coy from 24 Aug. 1942 until 7 September 1942. I called the Roll of the R22eR Coy at Tattoo and from this date until the 7th of September 1942 I called the Coy Roll each day at Reveille and Tattoo and on the 7th of September, I called the Reveille. The accused whom I now recognize was absent from every one of these roll calls.
The accused declines to cross-examine this witness.

Cpl. A. Ringuette ...

The accused having been duly warned in accordance with Rule of Procedure 4 (E) reserves his defence.
(C.A.R.O. 1484 has been complied with.)
I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused, at Algonquin Camp, Witley, Surrey on the 14th day of September 1942, and that Rules of Procedure 4 (C)(D)(a) and (F) have been complied with.

J.R. Turner .....Lieut.
(Officer taking Summary)

Algonquin Camp, Witley, Surrey,
14 Sept. 1942

J.C. Lawson Maj.
Sr. Ld. No. 1 C.I.R.U. Rec.

Ex "A"

No. 1 CANADIAN DIVISION INFANTRY
REINFORCEMENT UNIT
PART II DAILY ORDERS
SHEET FIVE

LAST ORDER NO. 2 07 31 AUG. 42

THIS ORDER NO. 208 1 SEPT. 42.

19- CONFIRMATION OF RANK

H-17332 a/Sgt. LEAR W.A. (AWing) Confirmed in the rank of Sgt. w.e.f. 5-8-42.

20- REVERSIONS AMENDMENTS

B-75190 a/L/Cpl. JONES C.C. (48th) D.O. 168 dated 17-8-42 para 23 insofar as it relates to the n/n is amended by adding w.e.f. 16 July 42.

21- AMENDMENTS LEAVE OF ABSENCE

B-40222 Pte. ANDREWS L. (AWing) D.O. 196 dated 18-8-42 para 20 insofar as it relates to the n/n is amended to read a/L/Cpl.Andrews L.

22- ABSENTEES

H-16510 Pte. ANDREWS V. (ACCLI) AWLfrom 2200hrs. 28-8-42.
G-51244 Pte. BARKER H.W. (CYR) AWL from 2200hrs. 30-8-42
K-53820 Pte. BASSETT J.R. (SHOFC) AWL from 2359hrs. 9-8-42 still absent after 21 days.
K-53506 Pte. BOLTON V.F.A. (SHOFC) AWL from 2200hrs. 29-8-42
C-6169 Pte. BOOKOUT H.R. (HPE) AWL from 0900 hrs. 28-8-42.
P-40121 Pte. CHEELMAN A.D. (WNSR) AWL from 1330 hrs. 19-8-42 still absent after 8 days.
G-10227 Pte. EARLS E.P. (A Wing) AWL from 0830 hrs. 15-8-42 still absent after 8 days.
H-16440 Pte. JOHNSON G.T. (AWing) AWLfrom 2359 hrs. 30-8-42.
E-4773 Pte. LALANNE H. (H22eR) AWL from 0600hrs. 31-8-42.
K-53150 Pte. McMANUS L.E. (SHOFC) AWL from 2359hrs. 20-8-42 stillabsent after 8 days.
G-73958 Pte. McMASTER V.G. (48th) AWL from 1400hrs. 29-8-42.
C-5587 Pte. POTTS L. (A WING) AWL from 0930 hrs. 30-8-42.
E-4655 Pte. ROCCO A. (H22eR) AWL from 1800hrs. 21-8-42 still absent after 8 days.
D-51162 Pte. SASSEVILLE R. (H22eR) AWL from 0600hrs. 17-8-42 still absent after 8 days.
A-3281 Pte. SCHAUB J.H. (RCR) AWL from 0900 hrs. 24-8-42 still asbsent after 8 days.
B-75094 Pte. SPERO C. (48th) Returned AWL 2300hrs. 29-8-42.
G-18251 Pte. THERIAULT A. (CYR) AWL from 2200hrs. 30-8-42.
C-4636 Pte. HANSFORD A. (HPE) AWL from 1800hrs. 28-8-42.
C-4393 Pte. DAVERICK C. (HPE) AWL from 1800hrs. 28-8-42.

23- AMENDMENTS ABSENTEES

A-102018 Pte. CROMLEY D. (RCR) D.O. 207 dated 31-8-42 para 23 insofar as it relates to the n/n is hereby cancelled.

K-70818 Pte. DEROCHE E. (SHOFC) D.O. 172 dated 21-7-42 para 19 insofar as it relates to the n/n is amended to read - apprehended by C.P.C. at 1030 hrs. 15-7-42.

B-5497 Pte. LEPHAGE H. (H22eR) D.O. 85 dated 14 apr.42 para 14 insofar as it relates to the n/n is amended to read - B-4497 Pte. LEPAGE H.

C-5633 Pte. PRINGLE L. (H/E) D.O. 144 dated 19-6-42 para 13 insofar as it relates to the n/n is amended to read AWLfrom 2359hrs.16-6-42.

Certified true copy consis ting of one sheet:

.....Capt.
Officer i/c Charge of Records.

NO. 1 CANADIAN DIVISION INFANTRY
REINFORCEMENT UNIT
PART I DAILY ORDERS
SHEET SIX

THIS ORDER
NO. 208
1 SEPT. 42.

24- TRADESPAY

A-32919 Pte. HADDEN G.C. (A Wing) Ceases to draw trades pay Group C as Driver Mech w.e.f. 31-8-42.

A-3017 Pte. JONES R.E. (UHQ) To draw tradespay Group G as Clerk w.e.f. 23 July 42.

A-19193 A/Cpl. LANGILLE A. (CYR) Ceases to draw trades pay Group C as Cook w.e.f. 27 Aug. 42 on being S.O.S. to CYR F.U.

25- PUNISHMENTS

E-4746 Pte. SIMARD F. (A Wing) Was on 31 Aug. 42 awarded 7 days Field Punishment for WOAS AWL from 2200hrs. 20-8-42 to 0700hrs. 21-8-42. (Absent 9 hrs)
Forfs. 1 days pay FRI 149(1)(a)
Forfs. 7 days pay FRI 149(1)(b)
Total forf. 8 days pay.

A-102018 Pte. CROWLEY D.J. (FGR) Was on 31-8-42 awarded 10 days Field Punishment for WOAS AWL from 2200hrs. 28-8-42 to 1300hrs. 29-8-42. (Absent 15 hrs.)
Forfs. 1 days pay FRI 149(1)(a)
Forfs. 10 days payFRI 149(1)(b)
Total forf. 11 days pay.

B-73695 Pte. FORRESTER E.C. (48th) Was on 31-8-42 awarded 6 days Field Punishmen for WOASAWL from 2359hrs. 29-8-42 to 2200hrs. 30-8-42. (Absent 22 hrs)
Forfs. 1 days pay FRI 149(1)(a)
Forfs. 6 days pay FRI 149(1)(b)
Total forf. 7 days pay.

B-46030 Pte. HEALEY F.S. (48th) Was on 31-8-42 awarded 8 days Field Punishment for WOAS AWL from 2359hrs. 28-8-42 to 1600hrs. 29-8-42. (Absent 15 hrs.)
Forfs. 1 days pay FRI 149(1)(a)
Forfs. 8 days pay FRI 149(1)(b)
Total forf. 9 days pay.

G-18031 Pte. COGSTELL A.C. (CYR) Was on 28 Aug. 42 before and FGCM arraigned and charged as follows A.A.Sec.15(1) whilein lawful custody AWL from 0600hrs. 28 May 42 until apprehended by civil police at 1730 hrs. 24 June 42. (27 days 11 hours 30 mins)
FINDING - Guilty.
SENTENCE - 4 months detention.
CONFIRMATION - Finding and sentence of the court was confirmed by Commander A Group CRU on 28 Aug. 42.
The accused was in custody awaiting trial from 1730hrs. 24 June 42 until 28 Aug. 42 (64days 6hrs 30 mins)
Period of custody awaiting trial and sentence of 4 months detention are concurrent with sentence of 12 months detention awarded 16 Mar 42.
Forfs. 28 days pay FRI 149(1)(a).

George Auckeland

The following Statement of expenses (if any) incurred by the Police and chargeable to Army Funds should be certified by a Superintendent or Officer in charge of a station.

No expenses incurred in conveying a Deserter or Absentee from the Court to prison should be charged to Army funds. Such expenses can be included in the claim made on the Prison Commissioners.

The total amount allowed on account of expenses before committal will not together with the reward exceed 40/-.

I CERTIFY that the following expenses were incurred by the_____

Police in connection with the apprehension of_____and are

payable to_____

_____ {Superintendent or Officer i/c Police Station at

Date_____

AUTHORITY for the PAYMENT of a REWARD. *(For Army use only.)*

The Command Paymaster_____is hereby authorised to pay to_____being the person recommended by the Committing Magistrate, a reward of_____for the apprehension of_____

Date_____ _____(O.C. Unit)
Officer Commanding.

Where no reward is authorised though one was recommended by the Magistrate, or where the reward authorised is less than that recommended, a brief explanation will be given below :—

Army Form O.1618.

IMMEDIATE.

PART I.

DESCRIPTIVE RETURN of a Deserter or Absentee without Leave.

INSTRUCTIONS FOR THE GUIDANCE OF MAGISTRATES.

(1) When a man is apprehended by the Civil Power as an absentee without leave, or as a deserter, if the information tendered leaves no doubt in the mind of the Magistrate that the prisoner is a soldier, this return should be completed and given to the Police to hand to the escort on arrival.

(2) To avoid delay on the arrival of the escort a telegram stating the Number, Rank, Name and Unit of the soldier should be sent by the Police, as soon as the man is committed, to the Officer Commanding the soldier's Unit. The place where the escort is required to attend should be stated, also whether the soldier *surrendered* or was *arrested*.

(3) Any recommendation for a reward should be made on Part II of this return.

(4) The Court fees chargeable for Descriptive Returns should be claimed periodically from the Command Paymaster of the Command in which the Court is situated.

(5) The stations of all Units are shown in the Monthly Army List, as are also the Depots of Corps.

In the case of doubt as to the location of a particular Unit reference should be made to the nearest O.C. Troops. Where the soldier's Unit is stationed overseas (outside Great Britain, Northern Ireland District, and the Channel Islands) the telegram for an escort should be despatched to the O.C. Depot, who will take all necessary action for its provision.

(*1937) (1756) W4.20178/3077 W1.47497/3853 70,000 10,000 11/40 5/41 A.A. E.W.Ltd. Gp.698 " " Forms/O.1618/32

DESCRIPTIVE RETURN OF [6] Antonio ROCCO who was apprehended at Harrow (hour) 6-30 PM in the 9th day of September and was committed to confinement at Wealdstone on the 9th day of September 1942 as a Deserter [or] Absentee without leave) from the [7] of the Royal 22nd Regiment of Canadian Army.

Age	21	Height	5 feet 6 inches
Complexion	Fresh	Hair	Brown
Eyes	Brown		
Marks		In uniform or plain clothes	Uniform

Probable date and place of attestation	16-11-39 Montreal
Probable date of desertion or beginning of absence and from what place	4-9-42 Guildford
Name, occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured	1.6.144 Joff Harrow Station Metropolitan Police Force.

Particulars of the evidence on which the prisoner is committed, and showing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.

Found sleeping in a shelter and on being questioned by police admitted he was an absentee

I DO HEREBY CERTIFY that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he [8] was the person mentioned in the [9] Corps.

Signature — Committing Magistrate
Board House — Residence
Wealdstone — Post Town
9-9-42. — Date of Signature

Ex B

A. Rocco — Signature of Prisoner

1 Goff PC 177 [10] — Signature of Informant

[11] where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming.

I HEREBY CERTIFY that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the ____ day of ____ for the purpose of obtaining such evidence.

Signature — Committing Magistrate
Residence — Committing Magistrate
Post Town — Committing Magistrate
Date of Signature

[6] Care should be taken to insert Army No. and Rank.
[7] Insert "was apprehended" or "surrendered," as the case may be.
[8] It is important for the public Service, and for the interest of the Deserter or Absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.
[9] Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs," or "does not belong to," as the case may be

Army Form D.1618.

PART II.

This portion of the Form, after the Magistrate has committed the soldier and completed the recommendations as to reward, will be handed by the Clerk of the Court to the Police, who will add overleaf a statement of any expenses incurred by them.

Apprehension of No. ____ of ____

Regiment at ____ on ____ by ____

who was committed as a Deserter (or Absentee without leave) on the ____

RECOMMENDATION FOR REWARD.

I RECOMMEND* ____

Address ____

for a reward of ____

Signature of Committing Magistrate.

Date.

*The Magistrate will insert the name and address (in full) of the person for whom the reward is recommended, and the amount (5/-, 10/-, 15/-, or 20/-) which in his opinion should be granted in this particular case, having regard to the following rules :—

1. When soldiers are apprehended in uniform near their quarters it is considered that as a general rule 5/- is a sufficient reward. Not more than 10/- will be allowed in any case where the soldiers were in uniform.

2. When soldiers are apprehended in plain clothes, at a distance from their units, and after having been absent for some time, the reward may be increased to 10/- or 15/- according to the nature of the cases and the trouble incurred in apprehension. A reward in excess of 15/- will seldom be granted.

3. The reward of 20/- should be strictly reserved for cases where superior intelligence has been displayed in apprehending men in plain clothes, or under difficult or exceptional circumstances.

Rewards and expenses attendant upon apprehensions will be paid by the Command Paymaster of the Command or District in which the soldier's Unit is stationed.

4. No reward can be authorised if the Deserter or Absentee voluntarily surrendered, or if it shall appear that he was in collusion with the person who apprehended him, or if the apprehended man was not a Deserter or Absentee.

Ex'C

Expense Voucher Re—:

Ref: K.R. & O. (Can) 539

Reg. No. E-4655 Rank Pte Name Rocco, A Unit 16 D1 R.O.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~

~~Unit From~~ London from Harrow

Date	Particulars	Amount	
10 Sept 44	Escorts return fare from LONDON To Harrow	1	8
	Prisoners single fare to LONDON From Harrow	1	2
	Prisoners fare from To		
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		
	Total £	2	10

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000 55
4[illegible] & 5/483

ARMY FORM B 200.

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
E-4655	Private	A. ROCCO	R.C.A.R. No. 1 C.D.I.R.U.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheets mentioned should be produced in court with this statement and not annexed to the proceedings.

† See para. 427, K.R., 1940.

* The numbers therein stated should correspond with the number of entries in the conduct sheets, pre-sumptive being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec.15(i) A.W.L.	3 times	15 times.
For A.A. Sec.10(4)	1 times	1 times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, Nil

or

~~There are no entries in the conduct sheets of the accused.~~

~~2. The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

~~3. The accused is not under sentence at the present time, or The accused at the present time is under sentence~~ beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 6 days in military custody, making a total of 6 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 21 years

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 16 November 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr. 115 days

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr. 115 days service.

9. The accused is entitled to reckon 1 yr. 115 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~or is in possession of or entitled to issue any military decoration or reward~~.

~~11. (If the accused is a warrant officer.)~~ The accused before he was made a warrant officer last held the regimental rank of ~~dated~~

~~12. (In the case of an officer.)~~ The accused holds in the army the rank of ~~dated~~ and in his ~~regiment (or corps or department)~~ the rank of ~~dated~~

(71830) W.(.)952/744 175,000 6/41 A.A.F.W.Ltd. Gp.698

J. Rowton Major Pres

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. E-4655 Rank Pte Name A. ROCCO, of R22e Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
D.C.M.	Valcartier 26-11-41	A.A. Sec. 15 (1) A.W.L. 69 days 1 hr.	112 days Detention	[illegible]

Sector Maj Pres.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 16th day of Sept 1942

George [illegible] Capt.
Officer i/c Records, No. 1 C.D.T.R.U.

43 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of years.

In the rank of years.

In the rank of years.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*

M.F.M. 6
(A.F.B. 122)
500M—8-39 (1703)
H.Q. 1772-45-18

No. E4655 Name Rocco A Sqn., Battery, or Company Corps R22eR Date of enlistment 16-11-39 G.C. Badges Service or Proficiency Pay Character

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On the 16/5/40 this soldier completed 6 months service and in accordance with Appx to R.O (O) 819 his previous sheet was destroyed on the 18-8-42									
Valcartier	26/8/40	Pte		AWL fr 1300 26/8/40 until 0300 hrs 20/9/40 Total 24 days 14 hrs		28 days detention 72 hrs det 4 days pay 28 days detention	23/9/40	Lt A.P. Ansaud	For 75 days pay
"	25/8/40	"		AWL					
"	8/8/40	"		AWL					
"	4/10/40	"		AWL from 2300 hrs 22/10/40 until 0600 hrs 13-11-40 and from 1400 hrs 13/11/40 until 0030 hrs 11/12/40	Acpt Langevin Documentary	28 days detention	18/10/40	Major Lewis	For 29 days pay
	12/11/40	"							

Certified True Copy
[illegible] Capt
Officer having custody of original document

J.C. [illegible] Maj
Pres

Place	Date of offence	Rank	Cause of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Valcartier	11/1/41	Pt		AW h from 2200 hrs 11/1/41 until 0600 hrs 13/1/41 and from 1400 hrs 13/1/41 to 0130 hrs 16/1/41	Cpl Lagimbald Documentary	28 days Det.	22/1/41	Lt Col Pineault	For 4 days pay
"	18/2/41	"		AW h from 2200 hrs 18/2/41 till 2359 hrs 20/2/41 (2 days 1 hr 59 mins)	Sgt Lebranche	28 days Det	24/2/41	Lt Col Pineault	For 3 days pay
"	19 19/3/41	"		AW h from 2200 hrs 19/3/41 till 1030 hrs 25/3/41 (6 days 12 hrs 30 mins)	CSM Bigaouette	14 days Det	27/3/41	Major Lacus	For 6 days pay
Valcartier	10/4/41	"		AW h 2215 hrs 10-4-41 until 0715 9/5/41 (28 days 9 hours)	Sgt Moses Cpl Baudette Cpl Mallins	72 hrs Det	9/5/41	Major Monetti	For 29 days pay
"				AW h			24/5/41		For 4 days pay
Quebec	3/7/41	"		AW h		4 days pay 112 days Det	26/11/41	DCM	For 3 days pay
Valcartier	8/8/41	"		AW h					For 1 day pay
"	17/8/41	"		AW h					6 days pay
"	4/10/41	"		AW h 69 days 1 hr)					

Certified True Copy

[illegible] Capt

Officer having custody of original document

M.F.M. 6
(A.F.B. 133)
500M — 8-39 (1701)
H.Q. 1771-45-18

No. E4655 Name Rocco A Sqn., Battery, or Company Corps R22eR Date of enlistment 16/11/39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Valcartier	6/12/41	Pte		AWL } AWL }		28 days Det.			Forf 29 days pay
Littlehampton	18/12/41 25/3/42	"		1) WOAS. Breaking out of billets while a defaulter AA Sec 10(1) 2) WOAS. Failing to appear on parade appointed by C.O. (AA Sec 15(1)	CSM Stapleton Sgt Plescha	21 days Detention	29/5/42	Lt Col Pierson	F
Algonquin	30/7/42	"		AWL from 1800 hrs 30/7/42 till 2130 hrs 30/7/42	Telets L/C Longpré	7 days C.B.	31/7/42	Maj. Turcot	
Algonquin	6/8/42	"		AA Sec 15(1) AWL fr 1800 hrs 6/8/42 till appr. at 1035 hrs 18/8/42 (11 days 16 hrs 35 mins)	Documentary	28 days F.P.	20/8/42	Lt Turcot Maj.	Forf 17 days pay

Certified True Copy consisting of two sheets

[illegible] Capt

Officer having custody of original documents

[illegible] Maj Pres.

(P.T.O.)

[illegible]

[illegible]

I certify that I have [illegible] No. E-4655

Private, A. ROCCO, R22e Regiment,

No. [illegible] Inf. Reinf. Unit, and in my opinion,

he is fit ~~unfit~~ to undergo trial by Court-Martial.

Algonquin Camp,
Witley, Surrey,
16th September 1942.

[illegible]
(Medical Officer) RCAMC

[illegible] Pres

(1) I hereby acknowledge that I have been served with a true copy of the summary of evidence taken at Algonquin Camp, Witley, Surrey, preliminary to my court-martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to court-martial.

Dated at Witley, Surrey,
this 14 day of
Aug., 1942.

A. Rocco

(2) I hereby acknowledge that I have been served with a true copy of an additional summary of evidence taken at Algonquin Camp, Witley, Surrey, preliminary to my court-martial.

Dated at Witley, Surrey,
this ___ day of
_____, 1942

.....

(3) I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of _____

if he is available.

Dated at Witley, Surrey,
this 14 day of
Aug., 1942

A. Rocco

286D

Q. 21283 Pte Rock. P.H.

A-21263 Pte. Roch, P.H.
No.1 Cdn Gen Hldg Unit

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 26th day of October, 19 41.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not possible.

*[illegible]

*(1. [illegible])

*(2. [illegible])

*(3. [illegible])

[illegible]

President.

Rank.	Name.	Regiment.
Major	J.W. Wilkinson	No.2 Cdn Arty Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	D.F. Storey	No.3 Cdn Inf Hldg Unit
Lieutenant	T.W. Macdonald	No.2 Cdn Arty Hldg Unit
Lieutenant	W.G. Scherk	No.3 Cdn Inf Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding Cdn Base Units, Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A-21283 PTE. HOCH, F.H. No.1 Cdn Gen Hldg Unit.	First Charge A.A. sec 15(1)	Guilty	Guilty.	Confirmed [illegible] Brig
	Second Charge A.A. sec 41	not Guilty	Guilty.	
	Alternative Third Charge A.A. sec 40	not Guilty	not Guilty.	
	See charge sheet attached.		To be imprisoned with hard labour for one year	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) [illegible] Brigadier (Signed) [illegible] Major

Commanding Cdn Base Units, Cdn Army. *Convening Officer* (e) *President*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in the column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

C H A R G E S H E E T

The accused, A-21283 Pte. Paul Henry ROCK, No.1 Canadian General Holding Unit, a soldier of the Canadian Army (Overseas), is charged with:

FIRST CHARGE
SEC. 16(1)
ARMY ACT

ABSENTING HIMSELF WITHOUT LEAVE,

in that he, at Bordon, Hants, absented himself without leave from the 20th day of June 1941 till he was apprehended at 1815 hrs. the 7th day of July 1941.

SECOND CHARGE
SEC. 41
ARMY ACT

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, FORGERY,

in that he, at a place and time unknown, with intent to defraud, forged entries in his pay book, the said entries purporting to be signed by Captain S.M.Alway, and purporting to record credits of pay for the months of July, August and September 1941.

THIRD CHARGE
(ALTERNATIVE)
SEC. 40.
ARMY ACT

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he, at a place and time unknown, made entries in his pay book purporting to record pay credits for the months of July, August and September 1941 without authority to make such entries.

(R.W.Frost) D.S.O., Lt-Col
Commanding Officer,
No.1. Canadian General
Holding Unit.

Cove, Hants
Oct.20, 1941.

To be tried by Field General Court Martial

(F.R. Phelan) Brigadier
Commanding Cdn Base Units.

Farnborough, Hants
This 20th day of Oct 41.

DRAFT PROCEEDINGS OF COURT MARTIAL

FIELD GENERAL COURT MARTIAL

A Field General Court Martial, Members as under, has convened at Delville Barracks, Cove, at 1000 hours Thursday, 30th October, 1941, for the purpose of trying one, A.21283 Pte. Paul Henry Rock of No. 1 Cdn. Gen. Holding Unit, :-

PRESIDENT: Major J.W. Wilkinson, No. 2 Arty Holding Unit

MEMBERS: Capt. D.F.Storey, No. 3 Infantry H. U.
Lieut. W.G. Shirk, No. 3 Infantry H.U.
Lieut. T.W. Macdonald, No. 2 Artillery H.U.

QUESTION: I will show you a document which purports to be a soldiers Pay Book issued to A.21283, Pte. Rock, Paul Henry. Do you recognize that document?

ANSWER: I Capt. R.F. Farniger, R.C.A.P.C., Paymaster, No.1 Cdn. General Holding Unit recognize this document as the Pay Book of Pte. Rock, P.H. On the 2nd October, 1941, I had this soldier paraded to my office to cancel an assignment of pay to the amount of $16.00 in favour of the Receiver General of Canada War Savings Certificates. On examination of the book, on pages 16 and 17, I noticed that the pay for July, August and September, 1941, had been entered in the Pay Book and that the name of B.M. Alway, Captain, appeared after these entries, purporting to be the signature of B.M. Alway, Captain. I recognized that this was not the signature of Captain B.M. Alway from previous knowledge of his signature and comparison with signatures on previous pages of the pay book.

I then turned to page 4 of the Pay Book and saw that the assignment of $16. in favour of the Receiver General of Canada War Savings Certificates had been deleted with lead pencil. I questioned the accused in the presence of my Corporal, Cpl. H. Fortnum, asking him who had made these entries in the Pay Book. He admitted that he had made the entries on pages 16 and 17 under reference and had signed the name of B.M. Alway, Captain. He also admitted that he had deleted the record of assigned on page 4.

page 2 follows.

QUESTION: What Captain, would be the effect if the entries being seen by the Paymaster who did not know the case?

ANSWER: The effect of the cancellation of the assigned pay on page 4 would be that he would still continue to receive the War Savings Certificates to the amount of $16. from the Receiver General of Canada each month and at the same time for the months of July, August and September. The amount credited to deferred pay would be released to reduce the debit balance caused in his pay book after forfeiture of pay covering approximately those three months.

QUESTION: Would a Paymaster, acting as a reasonable person, act on the entries you are referring to?

ANSWER: Paymasters are presumed to take reasonable precautions but with the volume of work which we are expected to do, it is impossible to check up on every entry, and, if on the face of things, the pay book appears to be correct, we have to reason to check up on previous entries.

QUESTION: Did you caution the accused before questioning him on this matter? Did you offer any inducements if he would tell you about the entries?

ANSWER: I did not.

QUESTION: Did you place him under any duress at all?

ANSWER: I did not.

QUESTION: Is it usual for a Paymaster to sign one signature for three months in a Pay Book.

ANSWER: It is not correct, but it is frequently done.

QUESTION: If a Paymaster signed the way it is signed in the pay book and then just filled in the first line would that not leave two lines open which might be filled in by any body and covered by his signature?

ANSWER: That is possible, but not the case in this instance.

QUESTION: Why?

ANSWER: That signature covers three lines.

QUESTION: The Paymaster does not pay three pays at once does he.

ANSWER: That depends upon where the man has been. I have

Page 3 follows.....

seen cases where a soldier has been in a British Hospital and the pay has been entered for three successive months or more at one time.

QUESTION: A signature across three lines in the pay book is not strictly speaking, correct.

ANSWER: It is not, although I have seen hundreds of cases of the same thing being done.

QUESTION: On page 4, is it not usual that where an entry on assignment of pay or a cancellation of it is made, is it not usual for the entry or cancellation to be initialled by the officer making the entry?

ANSWER: It is not.

QUESTION: You stated that the effect of these alterations would be that the accused would continue to receive $16.00 from the same source or other and at the same time his $20.00 entry as deferred pay would be used to retire forfeiture of pay.

ANSWER: I do.

QUESTION: Is a soldiers pay book the only record of assignment of pay and deferred pay which a Paymaster relies upon?

ANSWER: In England, yes. That is, insofar as the Paymaster and the soldier are concerned. There are periodic audits of the pay books by treasury and these would eventually turn up when the pay book was forwarded for audit.

QUESTION: Then, if a soldier chose to strike out the amount and the name of the assignee on page four, would he do it with a new Paymaster who did not know his case? That Paymaster would rely on these strokes without further investi ation in handling that man's pay.

ANSWER: In the case of single personnel no further investigation would necessarily be entailed for the simple reason that in the United Kingdom all other ranks have their deferred or assigned pay according to their rank, and if the amount according to the rank was not withheld in the assigned pay column, it would be withheld in the deferred pay column.

QUESTION: I suggest that the pay book such as this in which there is no

Page 4 follows.....

deferred pay entered for June, or most of the preceding months, and on which page four the $18.00 and date after it is cancelled is pencil, and where one signature is used to cover three months, would not in fact, mislead a Paymaster who was being reasonably careful, so as to enable the accused to take advantage of the faults of the case?

ANSWER: Examination of this pay book shows that deductions have been made for deferred pay previous to June, 1941, and this amount and these amounts credited to deferred pay for July, August and September, 1941 would be released to reduce a debit balance for the forfeiture referred to in my previous evidence.

QUESTION: I did not mean, Sir, that if relied upon by the Paymaster, the accused could derive a deficiency, I mean to enquire whether in effect he would be likely to deceive a Paymaster in order that the accused derive a deficiency?

ANSWER: The policy is, in cases of forfeiture, to release a portion of the deferred pay for the period covered by the forfeiture. In other words, if a man had a forfeiture for the months of July, August, and September, and had deferred pay of $20.00 each month, the entire $60.00 would be released to reduce the debit caused by the forfeiture.

QUESTION: A Paymaster would take this book on its face value and release the funds as you have stated.

ANSWER: Yes.

QUESTION: He would consider himself acting with reasonable care in taking this book at its face value without any further investigation?

ANSWER: As Paymaster of a Holding Unit, thousands of pay books pass through my hands each month and it is only reasonable to assume that it is a physical impossibility to check each and every entry and in view of the fact that on page 2 of the Pay Book, para. 3. states that "This pay book is the property of the Canadian Government and a soldier who loses it by neglect or alters any official entry in the same or makes any unauthorized entries therin, may be charged with a serious offence under the Army Act." That is placed there for our protection to deter soldiers from making any unauthorized entries in their Pay Books.

Page 5 follows.....

QUESTION: You were not in effect, fooled by this pay book?

ANSWER: Knowing the accused, I was not.

QUESTION: So Then the accused has not in fact defrauded anybody.

ANSWER: He has not defrauded anybody owing to the fact that I know the history of the case, and being on strength of No. 1 Cdn. General Holding Unit as Paymaster, I would have to make the necessary release from deferred pay in his Pay Book

QUESTION: Had this pay book been presented to you on a regular Pay Day, might you have made payments on the strength of the entries which have been referred to?

ANSWER: Yes, if I had not known the case.

Second Witness B.83758, Cpl. Fortnum, H. No. 1 Cdn. General Holding Unit.

QUESTION: Do you recognize the accused.

ANSWER: Yes Sir.

QUESTION: As whom

ANSWER: As Pte. Rock, P.H.

QUESTION: On or about October 2nd, 1941, did you have occasion to see the accused?

ANSWER: Yes.

QUESTION: Under what circumstances?

ANSWER: I had to fetch the prisoner from the Guard Room to the Pay Office to have his assignment stopped.

QUESTION: What did you do?

ANSWER: I took the accused into the Paymaster, Capt. Farlinger.

QUESTION: What do you recollect of the interview?

ANSWER: The Captain asked me to be pay attention while he asked the accused a question.

QUESTION: What was that question?

ANSWER: He asked the accused who made the entries on pages 16 and 17 of his pay book.

QUESTION: What did the accused answer?

ANSWER: He said yes, he had made the entries.

Page 6 follows:

QUESTION: I show you a document which purports to be a soldiers' Pay Book issued to A.81283, Pte. Rock, Paul Henry, - do you recognize it?

ANSWER: Yes, Sir.

QUESTION: Is it or is it not the Pay Book that was referred to in my previous question?

ANSWER: That is the Pay Book.

QUESTION: Did Captain Farlinger promise the accused anything if he would answer questions in regard to the pay book?

ANSWER: No Sir:

QUESTION: Did he threaten him in any manner?

ANSWER: No Sir.

QUESTION: Did he use any force in order to obtain information?

ANSWER: No.

Third Witness: Major Bruce Mowbrey Alway, No. 1 Cdn. Armoured Corps Holding Unit.

QUESTION: Do you recognize the accused in this Court?

ANSWER: Yes.

QUESTION: As whom?

ANSWER: As Pte. Rock.

QUESTION: I will show you a document which purports to be a soldier's Pay Book, issued to A.81283, Pte. Rock, Paul Henry. Do you recognize that document?

ANSWER: Yes.

QUESTION: When have you had occasion to see it?

ANSWER: It would be around January or February of 1941.

QUESTION: On what occasion?

ANSWER: At that time as 2 i/c of the 4th Recce. Squadron and when I also acted as Paymaster.

QUESTION: Is your signature in that Pay Book?

ANSWER: Yes.

QUESTION: Will you describe where?

ANSWER: On page 15 on the dates 15th February, 28th February, 8th and 15th March, 1941.

QUESTION: Is your signature on page 17 of the book?

Page 7 follows.....

ANSWER: No.

QUESTION: Does your name appear there?

ANSWER: Yes.

QUESTION: Does it purport to be your signature?

ANSWER: Yes.

QUESTION: At one time you acted as a Paymaster?

ANSWER: Yes.

QUESTION: If a soldier came to you in such circumstances that he had a large forfeiture of pay and his Pay Book were signed in this manner across three lines showing three months deferred pay, but showing three months deferred pay and preceding cancellation such as that on page 4, would you, acting with reasonable care, take steps to have the deferred pay shown applied to this large forfeiture on the strength of that book alone? In short, would this book fool a Paymaster acting with reasonable care?

ANSWER: No.

QUESTION: Major, if you accepted the entries for July, August, and September which entries are made on pages 16 and 17 of the Pay Book as correct, would you make payment to a soldier who tendered you that Pay Book.

ANSWER: Yes.

QUESTION: Is it quite usual for the Pay Book to be signed one signature for five entries?

ANSWER: No. We get a signature often covering two entries, but it is yet unusual to use one signature covering five entries.

QUESTION: Does the accused wish to give evidence on his own behalf as to fact?

ANSWER: No Sir.

QUESTION: Do you intend to call any witnesses as to character?

ANSWER: No Sir.

SUMMARY

Page 8 follows.....

SUMMARY

The second charge in this case has been laid under Section 41 of the Army Act. In other words it is a civil offence that is charged. I refer the Court to Chapter 1 and to para 68 in that chapter which defines the civil offense of forgery, namely the charge now before the court. The essence of the charge is intention to defraud and it is not essential to the Court that the following documents when these are completed, should be in such a form as would be binding in law, so that in the present case it is not necessary that the entries in the Pay Book be strictly in accordance with the instructions which have been issued to Paymasters in order that the document will be a false one and such as might be acted upon. It is not necessary for the prosecution to show that anyone has in fact, been defrauded or have been deceived by the entries. I only need to say the intention that the document that should be used or acted on is a genuine document or that someone might be influenced by a belief that it was genuine. The evidence which has been brought out shows that these entries were capable of defrauding or capable of deceiving the Paymaster in making payments. There has been put before this Court no evidence to any contrary intention. There has been evidence that the accused omits having made the entries. The reasonable inference other than this evidence is that the accused made the entries and that at that time he had the intention to defraud. Whether or not he ever subsequently acted in such a manner as to defraud is not material. Only his intention at the time of the making of the entries is important. The only evidence as to who made the entries has been that of the accused person, rather his omission and in that regard, I have shown that these omissions were given voluntarily.

DEFENCE SUMMARY

Sir: There is no question that the accused made false entries. There is no evidence that he did in fact defraud

Page 9 follows.....

anybody. There has been no evidence that he intended to defraud anybody. The prosecution has relied on the faults of occasions, information giving a presumption or an inference of intention to defraud. At the bottom of page 185 of the Manual of Military Law, it is stated: "If a person is charged with the forgery of any particular instrument, it must be shown that the document has such a resemblance to it as would be likely to deceive an ordinary person. I submit that the law as to forgery goes little further than that and that where the altered document can only be used to defraud, a particular class of persons that it must have such a resemblance to the true one as will be likely to deceive a member of that class of persons.

To forge an Army Pay Book you must do a job likely to deceive a reasonably competent paymaster. Where it is a question of a considerable amount as in the case of this forfeiture, I suggest that the Paymaster will take reasonable care if the amount is owing to him before he acts on the Pay Book. Capt Farlinger admitted that the way in which this Pay Book was signed was not correct but he stated that in the press of business it might be acted upon. Major Alway answered plainly and bluntly that no one asked if it would be acted upon without further investigation. Further, he stated if it were believed that the accused could from it, but he had just denied that it would be believed on the contention that the prosecution has failed to show that the Pay Book was falsified in the way this one has been, that one signature covering several entries and assignments of pay or cancelled similarly by the stroke of a pencil unverified by a Paymasters' initials or any other manner is not likely to deceive a Paymaster exercising reasonable care, In the light of the circumstances that a man has a very considerable forfeiture to pay. Proving that is essential to showing the necessary intent to prove the crime of forgery. I suggest to the Court that the accused should be found guilty of the military offense charged

Page 10 follows.....

under Section 40 of the Army Act and not guilty of the special offence of forgery.

QUESTION: Pte. Rock, you have pleaded guilty to absenting yourself without leave from the 20th day of June until apprehended at 1815 hours 7th day of July, 1941. Do you fully understand the nature of this plea?

ANSWER: Yes Sir, I do.

QUESTION: It is the duty of this Court, if you are not clear, to explain to you that the Court to find you guilty of the first offense you are charged with. Has the evidence any objection to the Civil Boards descriptive return marked Exhibit "B"?

ANSWER: No.

QUESTION: Pte. Roch, do you wish to have a summary of the evidence read to you; you were present when it was taken down? Are you familiar with its contents? You do not wish it read to you again?

ANSWER: No Sir.

QUESTION: On a plea of guilty on any charge the summary of evidence is attached to the evidence as there is no other evidence presented before this court.

PRESIDENT: No. A.21283 Pte. Paul Henry Rock, the Court finds you not guilty of the third charge of conduct to the predjudice of good order and military discipline.

I Lieut. F.D. Egener, Lorne Scots Company, No. 1 General Holding Unit, do present to the Court a certified copy of the conduct sheet of the accused. I have verified that this conduct sheet does refer to the accused. It has been certified by the officer in command of the Records, No. 1 General Holding Unit, the Accused's unit.

QUESTION: Do you recognize this signature?

ANSWER: It is that of Lieut. McPhee of No. Cdn. General Holding Unit.

I produce to the Court a statement of the character and particulars of service of the accused which has been signed by

Page 11 follows.....

Lieut. F.M. Pardee as Adjutant of No. 1 Cdn. General Holding Unit. I have myself checked the entries in this document and find them to be correct and I have verified that the numbers refer to the accused.

QUESTION: Does the defence wish the contents of A.F.B.296 read?

ANSWER: No Sir, it does not.

QUESTION: Do you recognize the signature on this form.

ANSWER: I do recognise the signature of Lieut. F.M. Pardee.

QUESTION: Does the defence wish to give any evidence as to good character.

ANSWER: No Sir.

QUESTION: Does the defence wish to say anything in mitigation of punishment?

ANSWER: Yes Sir, I would like to point out to the Court that the second charge of Forgery did in fact produce no [illegible] in any way, that the army was notdefrauded in connection with the accused be delivered,so that for whatsoever reasons alternatives are made, the results in no way go beyond tampering with the documents and that this should be taken into consideration in determining the sentence.

Certified that this transcript is, to the best of my knowledge and ability, true.

E.L. Baldry, S/Sgt. C.M.S.C.
No. 1 Cdn. Gen. Holding Unit.

SUMMARY OF EVIDENCE IN THE CASE OF
A21283 PTE.Paul Henry ROCH, No.1.
CANADIAN GENERAL HOLDING UNIT.

Directed by Lt.-Col. R.W.Frost D.S.O., Commanding Officer, No.1.Canadian General Holding Unit that a summary of evidence in this case be taken by Lieut F.T.Egener, Lorne Scots, No.1. Canadian General Holding Unit and directed that the evidence be taken upon oath.

FIRST WITNESS — Lieut. F.M. Pardee, A/Adj., No.1. Canadian General Holding Unit. having been duly sworn, states:

I produce Army Form B 115 being a true copy of the "Record of the Declaration of a Court of Inquiry assembled at Bordon, Hants on the 19th day of July 1941, for the purpose of investigating and recording the absence, without leave from his duty, and the deficiency, if any, in the Arms, Ammunitions, Equipments, Instruments, Regimental Necessaries, or Clothing of No.; A-21283, Private Roch, H."The original record is in my possession as Adjutant of No1.C.G.H.U..

I also produce Army Form O1618 being a Descriptive Return of Paul Henry Roch A-21283.

I have verified that these two documents relate to the accused and they are evidence that the accused illegally absented himself without leave at Bordon, Hants, on the 20th day of June 1941 until apprehended at 1815 hrs. the 7th day of July 1941 and that on the 19th day of July 1941 he was deficient of certain articles totalling in value £3 11s. 5d.
(A.F. B115, produced, marked Ex.A; A.F. O1618, produced, marked Ex.B)

F.M. Pardee Lt.

The accused declined to question this witness.

SECOND WITNESS — H-11176, C.Q.M.S. Friell T., No.1. Canadian General Holding Unit having been duly sworn, states:

On the 26th Sept.1941 I inspected the kit of the accused and found him to be deficient articles totalling in value £1 8s. 10½d as listed in the statement which I now produce and which is signed by me.
(Statement marked Ex.C)

Thomas Friell CQMS.

The accused declies to question the witness.

THIRD WITNESS — Capt. F.E.Farlinger, Paymaster, No.1. Canadian General Holding Unit having been duly sworn, states:

I recognize the accused as the man who came to my office and identified the document which I now produce as his pay book -- M.B. M1 Part 11 (Received as Ex. D.) I questioned him regarding the entries made on pages 16 and 17 for July, Aug. and Sept. pay and the entries for deferred pay for the same three months; which entries purport to be signed by "B.M.Alway, Capt.". He admitted that he had made the entries and written the name "B.M.Alway, Capt.". I noticed that the amount of $20.00 per month was shown as deferred pay and knowing from from my official records that an assignment of 16 dollars per month was in effect payable to the Receiver General of Canada War Savings Certificates I turned to page four of his pay book which shows a record of

assigned pay and an examination of this shows the assignment of 16 dollars to have been crossed out. I questioned the accused as to who had done this and he told me that he had done it. The effect of the crossing out of this assignment on page four of the pay is that the accused would continue to receive the War Savings Certificates from the Receiver General of Canada and at the same time the same amount would be released from deferred pay to reduce any debit balance in his pay book caused by forfeiture of pay. I know from my records that the accused was subject to forfeitures of pay during July, August and Sept. I did not caution the accused before questioning him. I offered him no inducement conditional upon his telling me about his pay book. I placed him under no duress whatever; his answers to my questions were voluntary.

H Darlinger Capt.
(H.W. DARLINGER) Capt.

The Accused declined to question the witness.

FOURTH WITNESS B-83758, Cpl. Fortnum, H, No. 1 Canadian General Holding Unit, having been duly sworn, states:-

I took the accused in to see Capt. Darlinger the paymaster Thurs. Oct. 2 1941 and I remained in the office the whole time he was there. Capt. Darlinger questioned the accused regarding the accused's pay book and asked him as to who made the entries on pages 16 and 17 and the accused admitted that he had. The accused answered voluntarily. Capt. Darlinger asked me whether I heard the accused admit that he had made the entries mentioned and I verified that I had. I do not recall any questions regarding entries on page four. The accused was not placed under duress at any time nor was he offered any reward.

H Fortnum
(H. FORTNUM) Cpl.

The Accused declined to question the witness.

FIFTH WITNESS

Major B.M. Alway, No.1. Cdn. Armoured Corps Holding Unit., having been duly sworn, states:

(Having been shown exhibit d) The signature on pages seventeen covering July, Aug. and Sept. pay is not mine. It is my name but is not my signature. The exhibit is the pay book of Tpr. Roch whom I recognize as the accused. I have on other occasions made [illegible] this pay book and in particular on pages 12 and 13. The signatures on page 13 are mine. In July, Aug. and Sept. I did not have the rank of Capt. I held the rank of Major. The accused was not in No.1. C.A.C.H.U. during those months. When the accused last knew me in the 8th Recce. Bn. I held the rank of Lt.

B.M. Alway Maj.

Question by the accused; Were you a Captain in the month of June?
A No.

The accused declined to question the witness further.

I certify that I have complied with R.P.4(C),(D), (E) & (F).

After having been duly warned in the manner required by R.P. 4(E) the accused declined to make a statement or to give evidence.

Taken down at Cove, Hants in the presence of and withing the hearing of the accused.

Signed this 20th day of Oct. 1941.

F.T. Egener Lt.

(F.T. EGENER) Lieut.
Lorne Scots,
No 1 Cdn Gen Hold Unit.

NO I CANADIAN GENERAL HOLDING UNIT
CANADIAN ARMY (OVERSEAS)

30 Oct 1941.

This is to certify that I have this day,
examined A-21283 Pte. Roch, P.H., of this Unit and find
him fit for trial by Court Martial.

Medical Officer
No.1 Cdn Gen Holding Unit
Canadian Army (Overseas)

Ex "A" #115 Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier

RECORD of the Declaration of a Court of Inquiry assembled at Bordon, Hants on the 19th. day of July 1941, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. A-21283, Private Roch, H.

DECLARATION.

The Court declare, that A-21283, Private Roch, H., No.1 Canadian General Holding Unit, illegally absented himself without leave at Bordon, Hants, on the 20th. day of June 1941; that he is still so absent and that on the 15th. day of July 1941 he was deficient, and that he is still deficient of the following articles:

ARTICLE	QUANTITY	PRICE £	s.	d.
Anklets web prs.	1	0	4	4
Boots Ankle prs.	1	1	2	6
Brushes shaving	1	0	1	2
Cap comforter	1	0	1	8
Cap, Field Service	1	0	2	5
Comb, hair	1	0	0	2
Discs, identity sets	1	0	0	3
Dressing, field first	1	0	1	1
Knife clasp	1	0	3	4
Vests cotton gym	1	0	1	11
Drawers cotton short	2	0	4	4
Bags, ration	1	0	0	2½
Covers, mess tin	1	0	0	3
Helmets, steel	1	0	7	0

ARTICLE	QUANTITY	PRICE £	s.	d.
Respirator A.G.				
Facepieces	1	0	9	6
Containers	1	0	4	3
Haversacks	1	0	4	7
Outfits A.D.	1	0	0	2½
Eyeshields prs	6	0	2	3
Total		23	11	5

Names of President and Members

Capt. John R. McGillivray - President

Lieut. F.T. Egener - Member

Lieut. M.K.D.J.St.Pierre - Member

Signature of Commanding Officer (R.W.Frost) Lt-Col., O.C. No.1 Cdn Gen Hold Unit.

CERTIFIED TRUE COPY.

Fm Pardee St.

Signature of Officer having custody of the Original Record.

(12281) Wt.24318/1622 75,000 10/39 A.& E.W.Ltd. Gp.698 Forms/B/115/55

The following Statement of expenses (if any) incurred by the Police and chargeable to Army Funds should be certified by a Superintendent or Officer in charge of a station.

No expenses incurred in conveying a Deserter or Absentee from the Court to prison should be charged to Army funds. Such expenses can be included in the claim made on the Prison Commissioners.

The total amount allowed on account of expenses before committal will not together with the reward exceed 40/-.

I CERTIFY that the following expenses were incurred by the_____

Police in connection with the apprehension of_____ and are

payable to_____

_____ {Superintendent or Officer i/c Police Station at

Date_____ _____

AUTHORITY for the PAYMENT of a REWARD. *(For Army use only.)*

The Command Paymaster_____ is hereby authorised to pay to_____ being the person recommended by the Committing Magistrate, a reward of_____ for the apprehension of_____

Date_____ _____ (O.C. Unit) Officer Commanding.

Where no reward is authorised though one was recommended by the Magistrate, or where the reward authorised is less than that recommended, a brief explanation will be given below :—

Army Form O.1618.

IMMEDIATE.

PART I.

DESCRIPTIVE RETURN of a Deserter or Absentee without Leave.

INSTRUCTIONS FOR THE GUIDANCE OF MAGISTRATES.

(1) When a man is apprehended by the Civil Power as an absentee without leave, or as a deserter, if the information tendered leaves no doubt in the mind of the Magistrate that the prisoner is a soldier, this return should be completed and given to the Police to hand to the escort on arrival.

(2) To avoid delay in the arrival of the escort a telegram stating the Number, Rank, Name and Unit of the soldier should be sent by the Police, as soon as the man is committed, to the Officer Commanding the soldier's Unit. The place where the escort is required to attend should be stated, also whether the soldier *surrendered* or was *arrested*.

(3) Any recommendation for a reward should be made on Part II of this return.

(4) The Court fees chargeable for Descriptive Returns should be claimed periodically from the Command Paymaster of the Command in which the Court is situated.

(5) The stations of all Units are shown in the Monthly Army List, as are also the Depots of Corps.

In the case of doubt as to the location of a particular Unit reference should be made to the nearest O.C. Troops. Where the soldier's Unit is stationed overseas (outside Great Britain, Northern Ireland District, and the Channel Islands) the telegram for an escort should be despatched to the O.C. Depot, who will take all necessary action for its provision.

(*10054) Wt.12205/256 10,000 5/39 A.& E.W.Ltd. Gp.698 Forms/O.1618/32
(*12307) Wt.32225/1716 50,000 11/39 " "

Ex "B" Private

DESCRIPTIVE RETURN OF § Paul Henry Roch B.21283 who was apprehended at 6:15 p.m. (hour) on the 7th day of July, 1941, and was committed to confinement at ..... on the ..... day of ..... ~~as a Deserter~~ (or Absentee without leave) from the 1st Bn. of the Essex Scottish Regiment of Canadian Active Service Force.

Age 26 Height 5 feet 4½ inches
Complexion Yellow Hair dark brown Eyes brown
Marks Scar rt. side neck In uniform or plain clothes uniform.

Probable date and place of attestation	Windsor, Ontario, Canada, 6-9-39.
Probable date of desertion or beginning of absence and from what place.	21st June, 1941
Name occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured	Mr. Harry Gilbert. 5 Wardour Street, W.1. Hairdresser.
Particulars in the evidence on which the prisoner is committed, and showing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.	*Prisoner was brought to West Hill Central Police Station by informant for interrogation in connection with an offence, during the course of this it was ascertained that he was an absentee.

I DO HEREBY CERTIFY that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he† is an absentee the before-mentioned Corps.

Robt Dunnett Signature
Residence
Post Town
of Committing Magistrate.

One of the Magistrates of the Courts of the Metropolis sitting at the West Street Police Court

Date of Signature

Paul Henry Roch Signature of Prisoner

Peter Butler Det. Con. "C" Signature of Informant

2d POLICE COURTS

where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then g

...ERY CERTIFY that the above-named ...confessed to the circumstances ...ed, but that evidence of the truth ...d of such confession is not forthcoming, and that the case was adjourned until the ..... day of ..... for the purpose of obtaining such evidence.

Signature
Residence
Post Town
of Magistrate.

Date of Signature

§ Care should be taken to insert Army No. and Rank.
‡ Insert "was apprehended" or "surrendered," as the case may be.
* It is important for the public Service, and for the interest of the Deserter or Absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.
† Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs," or "does not belong to," as the case may be.

Army Form O.1618.

PART II.

This portion of the Form, after the Magistrate has committed the soldier and completed the recommendations as to reward, will be handed by the Clerk of the Court to the Police, who will add overleaf a statement of any expenses incurred by them.

Apprehension of No. ..... of .....

Regiment at ..... on ..... by .....

who was committed as a Deserter (or Absentee without leave) on the .....

RECOMMENDATION FOR REWARD.

I RECOMMEND* .....

Address .....

for a reward of .....

..... Signature of Committing Magistrate.

..... Date.

*The Magistrate will insert the name and address (in full) of the person for whom the reward is recommended, and the amount (5/-, 10/-, 15/-, or 20/-) which in his opinion should be granted in this particular case, having regard to the following rules :—

1. When soldiers are apprehended in uniform near their quarters it is considered that as a general rule 5/- is a sufficient reward. Not more than 10/- will be allowed in any case where the soldiers were in uniform.

2. When soldiers are apprehended in plain clothes, at a distance from their units, and after having been absent for some time, the reward may be increased to 10/- or 15/- according to the nature of the cases and the trouble incurred in apprehension. A reward in excess of 15/- will seldom be granted.

3. The reward of 20/- should be strictly reserved for cases where superior intelligence has been displayed in apprehending men in plain clothes, or under difficult or exceptional circumstances.

Rewards and expenses attendant upon apprehensions will be paid by the Command Paymaster of the Command or District in which the soldier's Unit is stationed.

4. No reward can be authorised if the Deserter or Absentee voluntarily surrendered, or if it shall appear that he was in collusion with the person who apprehended him, or if the apprehended man was not a Deserter or Absentee.

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30th day of October/41

Fred Pardey Sgt Adjutant
No. 1 General Holding Unit, C.A.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

A-21283, Pte ROCH, P.H. of the No.1. Cdn,. Gen. Hold. Unit

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

(See Para. 864, R.R., 1935.)

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For A.W.L. Sec. 15(1)	1	times	5	times. Fmp
For Absent from duty Sec. 15(2)	1	times	3.	times. Fmp
For Conduct to the prejudice etc. Sec. 40	2	times	2	times.
For		times		times.

Number of instances of gallantry or distinguished conduct, Nil.

or,

~~There are no entries in the Conduct sheets of the accused.~~

2. ~~The accused has no Civil previous convicts.~~

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Jar

Wt. 42848/864 36,000 2/40 W. S. Ltd. 31—8004

3. The accused is not under sentence at the present time,

or,

~~The accused at the present time is under sentence for~~

~~beginning on the~~

4. The accused has been in confinement, awaiting trial on the present charges

for 0 days in Civil Custody, 23 Sept 41 - 30 Oct 41

and 37 days in Military Custody.

Total 37 days.

Of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 27

6. The date of his ~~commission~~ ~~enrolment~~ ~~appointment~~ ~~promotion~~ ~~re-engagement~~ specified in his attestation paper is 26 Sept. 39

~~declaration~~

7. The service which the accused is about to reckon towards discharge or ~~qualifying for~~ ~~his reward~~ is

8. ~~The accused is entitled to deferred pay or gratuity in respect of~~

~~years service~~

9. ~~The accused is entitled to reckon~~ ~~years service for the purpose of determining his pension, &c.~~

10. ~~He~~ accused is in possession of, or entitled to, no military decoration or military reward [*or* ~~is in possession of, or entitled to~~].

11. ~~(If the accused is a warrant officer.)~~ The accused before he was made a ~~warrant officer~~ had the ~~substantive~~ rank of

12. ~~(In the case of an officer.)~~ The accused holds in the army the rank of dated and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously ~~without reduction~~ to the present date,

Date of Promotion.

In the rank of , years,

In the rank of , years,

In the rank of , years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name A-21823, Pte. MacLean, F.H. Mo.A. Canadian General Holding Unit. of the

NOTE.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of Court by which tried, or status of Officer awarding of the charge or dispensing with Trial	Date and place of Trial, or summary award, or Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority	Punishment remitted
Magistrate	23 ~~Sept.~~ July 1941	Larceny	three months hard labour.	Released Sept. 23/41

(*Continued overleaf*)

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 30th day of October, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 30th day of October 1941.

Jasmine Kinson Major
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

Jasmine Kinson Major
~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 11th day of November 1941.

J. H. Whelan Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) November 13/41 (Signed) Fw Pardee St A/ Adjutant
No. 1 General Holding Unit, C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] P. St. G. [illegible]

III-24 (Case #2)

GNR ROCHE C.E.

See I-116 for last case

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G 44221 Gnr. Clarence Ethelbert Roche.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 8 (2)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which No days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

120 days detention.

(Sgd) ..... Judge-Advocate, if any. 30 Mar '44 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the ~~accused be not committed to prison or detention barracks~~ until further orders.[1]

(1. AA 57A. Delete if not used.)

(Sgd) [signature]

Date 30 Mar 44 Commanding 1 CIBA 1 Cdn Corps. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G.44221 Gnr. Roche, C.E. 1 Cdn LAA Regiment	4 Apr 44	(F.J. Thorne) Lt.-Col. Commanding 1 Cdn LAA Regiment

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 149 5254

CPA86 (To Dept of AF&D) 47-P-30 37(1808 (2804)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier E.C. Plow Comd 1 Cdn Corps Adty dated 28 Mar-44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G. 44221	Gnr	Clarence Ethelbert	Roche	1 Cdn LAA. Regt. R.C.A.

PROCEEDINGS REVIEWED [signature] REVIEWING OFFICER, JAG BRANCH, H.Q. [illegible]

CANADA 8 APR 1944 JAG BRANCH H.Q. C.M.F.

F 15

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 30 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1335 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to an interpreter? Ans~~ ~~The interpreter is sworn.(1) Do you object to a shorthand writer? Ans~~ ~~The shorthand writer is sworn.~~ (1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.A. Hornibrook	1st Cdn Svy Regt. R.C.A.
Member	Capt	D.K. Dawes	7 Cdn A/Tk Regt. R.C.A.
Member	Lieut	H.J. Gedell	1st Cdn Svy Regt. R.C.A.
~~Judge-Advocate~~			
Prosecutor	Lieut.	A.H. Braden	1st Cdn. LAA Regt. R.C.A.
Defending Offr	Lieut	R.P. Summers	7 Cdn A/Tk Regt R.C.A.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment, when RP 89 (B) and fn 2 were not followed. See DI 8.)

A8. The accused G 44221 Gnr. Clarence Ethelbert Roche before arraignment make(s) (no) objection(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (23).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) and call witnesses as to character and make an address in mitigation of punishment.(1)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(1), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused : Do you wish to make a statement ? Ans No(4)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (5). The Court decides (not) to advise accused to change his plea ; plea of Guilty to Not Guilty on charge(s). The accused is (not) so informed, and to change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 29(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence upon oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans .....

..... Do you intend to call witnesses on your behalf ?

Ans .....

..... Are they witnesses as to character only ? Ans .....
(1. *RP 165.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 7.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF Adv. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42. 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans One Character Witness
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes.
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 30(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 96(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, G.44221 Gnr. Clarence Ethelbert ROCHE, 1 Cdn LAA Regiment, a soldier of the Canadian Army (Overseas) is charged with:-

FIRST CHARGE:

Army Act Sec. 8(2) WHEN ON ACTIVE SERVICE, USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER,

in that he,

at 8th Army Rest Camp, BARI, Italy, on 17 Mar 44 at approximately 2100 hours, said to D.10611 Sgt. Whelan, A.S., 1 Cdn LAA Regiment, "You are a yellow, cock-sucking bastard" or words to that effect.

F.J. Thorne Lt-col

(F.J. Thorne) Lt.-col.
Commanding
1 Cdn LAA Regiment

In the Field
27 Mar 44.

To be tried by Field General Court-Martial

E.C. Plow

(E.C.Plow) Brigadier
C.C.R.A. 1 Cdn Corps

In the Field,
28 MAR 44

CFA95 (In lieu of AFA3)
40/P&S/1697 (2663)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-44221	Gnr		Clarence Ethelbert	ROCHE	1 Cdn L.A.A. Regt, R.C.A.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 28 MAR 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". 3/P

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ 3/P
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ 3/P
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.A. Hornibrook 3/P	1 Cdn Svy Regt, R.C.A.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	D.K. Dawes	7 Cdn A/Tk Regt, R.C.A.
Lieut	H.J. Bedell 3/P	1 Cdn Svy Regt, R.C.A.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	A.Saunders	7 Cdn A/Tk Regt, R.C.A.

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (Country.)

(E.C.Plow) (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 28 MAR 44

Commanding 1 Cdn Corps Artillery
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Appendix A
Jack

MEDICAL CERTIFICATE

I certify that I have this morning examined G-44211
(Number)

Gunner ROCKE, C.E. 35 Battery, 1 Cdn LAA Regiment
(Rank) (Name) (Unit)

and in my opinion he is fit/~~unfit~~ to undergo trial by court martial.

In the Field

30.3.44
(Date)

J. D. Pritt Capt
(Medical Officer)

E 1 2nd Witness for the defence.

D 9510 Sgt. Macdonald, J. A. sworn, states:

I am D 9510 Sgt. Macdonald J. A. a detachment commander in A Troop 35 Bty. 1 Cdn. L. A. A. Regt. Gnr. Roche, C. E. is in my detachment. I have always found him a capable worker and an efficient soldier. Gnr. Roche has been in my detachment since 20 Aug 43 and as far as I am concerned he has always been a handy and a good man to have in the detachment.

Exam. by prosecution:

Have you implicit faith in the accused, when given an order, in carrying out an order?

Yes.

RP 83 (B) complied with

jpd

Plea for Mitigation.

Gnr. Roche has pleaded guilty. He realizes that he did wrong and that a certain penalty will be imposed. I point out to the Court that the accused had been drinking and for that reason was in an uncertain frame of mind as well as because he was returning to camp after a leave. The trouble started due to a misdirected sense of loyalty.

It is difficult to analyze the motives behind the actions of a lot of our men but at least we can appreciate that there are reasons for these actions.

His detachment commander under oath has shown that he has rendered worth-while service whilst in uniform.

LIST OF WITNESSES

in the case of

G.42211 Gnr. CLARENCE NATHANIEL BROWN, 35 Battery, 1 Con Lt.A.A. Regiment R.C.A.

FOR THE PROSECUTION

D.10611 Sgt. WHELAN, A.S.	:	35 Battery 1 Con Lt. A.A. Regiment.R.C.A.
3967494 Sgt. RICHARDS, G.A.	:	1st Bn. Welch Regiment
968844 Sgt. DONALD, W.	:	Royal Artillery
7882725 Sgt. DOUGLAS, G.H.	:	8th Army Rest Camp
14795076 L/Bdr.MORRIS, P.	:	8th Army Rest Camp

FOR THE DEFENCE

N I L

Ex-D
Jud.

SUMMARY OF EVIDENCE

in the case of

44221
G.42211 Gnr. CLARENCE ETHELBERT ROCHE, 35 Battery, 1 Cdn Lt.A.A. Regiment R.C.A.

Taken under oath at the direction of the Commanding Officer.

FIRST WITNESS for the Prosecution:

D.10611 Sgt. WHELAN, A.S., 35 Battery, 1 Cdn Lt.A.A. Regiment, R.C.A. having been duly sworn, states:-

"I, D.10611 Sgt. WHELAN, A.S. while on leave on March 17, 1944 at 8th Army Rest Camp, San Spirito, at approximately 2100 hrs. arrived at Leese wing office with my kit for the purpose of returning to my Unit. On arriving there, I saw L/Bdr. Morphy, another member of the leave party from my Unit, and of whom I asked if everyone was present. He replied, "No. Sgt. Duncan is not here yet." I suggested we take a look around and give a yell for him as it was dark and a lot of men were standing around. L/Bdr. Morphy and I proceeded in different directions to see if we could locate Sgt. Duncan and failing to do so within a couple of minutes, we both returned to the front of Leese wing office where I suggested to L/Bdr. Morphy that we try to arrange to leave regardless of Sgt. Duncan not being there. Sgt. Duncan was in charge of the party. At this point, Gnr. ROCHE, C.E. spoke up declaring that he was not going to leave without Sgt. Duncan. At the same time saying to me, 'You wouldn't let a fellow down, a member of your own Unit. I'm not going without Sgt. Duncan.' I replied that it was of no interest to me whether he waited for Sgt. Duncan or not. I was going to arrange to leave if it were possible. After a few minutes some person unknown to me came along and stated that he had seen Sgt. Duncan in his hut about five minutes ago. I replied that I had just came down from the hut a few minutes ago. At this point Gnr. ROCHE, C.E. interrupted saying, 'Tell him the truth, tell him the truth. You've been down here quite a few minutes, five minutes.' I replied to Gnr. ROCHE, C.E., whether I have been down here two minutes, a few minutes, or five minutes is none of your business. And then I said, I am going to leave without Sgt. Duncan being here. Where he is is not my business or your business. He is responsible for his own actions. At this point Gnr. ROCHE, C.E. dropped whatever he was holding in his hands and approached me in a threatening manner at the same time saying, 'So its none of my business, eh, ~~well I'll~~ goddam soon show you. At this point the witnesses, which are Sgt. RICHARDS, C.A., L/Bdr. MORRIS, H., Sgt. DONALD, D., and Sgt. DOUGLAS, G.H., demanded that this man be put under arrest which I did. Gnr. ROCHE, C.E. then slipped out into the darkness before we were able to provide escorts. The aforesaid witnesses then went in search of the accused and returned him to the front of Leese wing office. At this point there was interferenceby Gnr. KINCH, W.H. who tried to get me to drop the charge but I told Gnr. KINCH, W.H. to go away and mind his own business.

No. 1 WITNESS for the prosecution: (Contd.)

The accused evaded us again going out into the dark but was once more brought back to the front of the Leese wing office where Sgts. RICHARDS, C.A., DONALD, D. and DOUGLAS, G.H. detailed escorts to take him to the Guardhouse. Gnr. KINCH, T.H. again interferred but was again told by me to go away and mind his own business but was insistent and finally got abusive so I put him under arrest also. As soon as I put Gnr. KINCH, T.H. under arrest I went into Leese wing office to take down the names of witnesses. While doing so L/Bdr. MORRIS, H. came in and said, 'The two accused had evaded the escort.' Then I went out to help look for the accused but failing to locate them in a few minutes, returned to Leese wing office and carried on with taking the names of the witnesses. A few moments later, that is approximately 2115 hrs. Gnr. ROGERS, C.E. was brought into Leese wing office where he was detained until transportation was provided to San Spirito station. While making the journey to the station, the accused tried to make me a figure of ridicule by stating, 'Where's Ma Whelan. Get Ma Whelan the hot-water bottle. His rheumatism is bad.' and at one time offering me a cigarette which was refused. The accused then said 'Touch and I'll break your arm.' From then on there was no more trouble or abusive language from the accused. The accused was not drunk at the time of the offence but had been drinking."

The accused declines to cross-examine the witness.

A S Whelan

(D.1761) A.S. Whelan, Sgt.

2nd Witness:- 3967494. Sgt. Richards, C.A. - 1st Bn. Welch Regt., having been duly sworn, states:-

I, No. 3967494. Sgt. Richards, 1st Bn. Welch Regt. was on duty at Eighth Army Rest Camp, SAN SPIRITO, on 17th March, 1944, at approximately 2115 hrs. and was outside Leese Wing Office trying to control the soldiers who were going back to their Units by train. When I passed Cpl. Roche and Sgt. Whelan I could not help but overhear Roche using obscene language to the Sgt. So far as I can remember the accused referred to Sgt. Whelan as a "cock-sucking yellow bastard." I told Sgt. Whelan to put the accused under close arrest and Sgt. Donald came up then and he detailed off two men to act as escort. Whilst he was getting the two men to fall in, Roche, the accused, ran behind the office and disappeared. I did not see the accused again until I saw Sgt. Donald bring him back approximately 10 minutes later. I was in the same truck as the accused, and although I heard several remarks passed against Sgt. Whelan, I cannot identify them, as the truck was dark.

[signature] Sgt.
3967494. Sgt. Richards, C.A.
1st Bn. Welch Regt.

The accused declines to cross-examine the witness.

3rd Witness:- 908844. Sgt. Donald, W. - R.A. having been duly sworn, states:-

I, No. 908844. Sgt. Donald, D. - R.A. was on duty on 17 Mar. '44, at Eighth Army Rest Camp, SAN SPIRITO. I was on duty at Leese Wing Office at approximately 2100 hrs. when I heard Cpl. Roche call Sgt. Whelan a "cock-sucking bastard." That statement, together with a stream of obscene language, was repeated several times and directed towards Sgt. Whelan. The accused was placed under close arrest by me. I turned around to detail two men to act as escorts and when I turned back the accused had disappeared. It took us approximately 15 to 20 minutes to find him. When I found the accused he was hiding behind a tree very close to the office. I took him into the office and warned him he was under close arrest. At approximately 2200 hrs. I saw the accused get on to a vehicle to be transported to SAN SPIRITO station. I was in the same vehicle. During the entire trip to the station I did not hear the accused make any slighting remarks to Sgt. Whelan. I have nothing further to add.

[signature] Sgt
908844. Sgt. Donald, W. - R.A.,

Question? Are you sure I was hiding behind a tree?

Answer. Definitely.

4th Witness:- 7882725. Sgt. Douglas, C.N. - 8th Army Rest Camp, having been duly sworn, states:-

I, No. 7882725. Sgt. Douglas, C.N. was on duty at Leese Wing Office, on 17th. Mar. '44. At approximately 2100 hrs. I was assisting Sgt. Richards, and Sgt. Donald on the departure of leave personnel from Leese Wing. I was standing with Sgt. Donald outside the Leese Wing Office when I heard Gnr. Roche using very obscene language to whom I thought at the time was another private. Then I saw that the man whom he was addressing was a Sergeant. I heard the accused say to Sgt. Whelan, "You're only a cock-sucking bastard." Sgt. Whelan looked round and saw Sgt. Richards, Sgt. Donald and myself. He asked us if we heard that remark. I said "Yes." He then placed the accused under open arrest and then he said "No, close arrest." I accompanied Sgt. Donald & Sgt. Richards to the accused and began to escort him into the Wing Office when he broke away from us and disappeared into the crowd who were around the office. Approximately 10 minutes later Sgt. Donald returned to the office with the accused. He was held in the Wing Office until approximately 2200 hrs. when a vehicle arrived to take him to the station. I was on the accused's truck, being one of the escorts, on the journey to the station where he was handed over to the O.C. of the train. Sgt. Richards asked this officer if he was O.C. the train, and the officer replied "Yes." During the trip to the station and in the interval before the departure of the train I did not hear the accused directly pass any remarks to Sgt. Whelan. I have nothing further to add.

J Douglas Sgt

7882725. Sgt. Douglas, C.N.,

Question:- Are you sure it was Sgt. Whelan who put me under close arrest?

Answer:- Yes.

5th Witness:- 14295076. L/Bdr. Morris, H. - 8th Army Rest Camp, having been duly sworn, states:-

I, No. 14295076. L/Bdr. Morris, H. - 8th Army Rest Camp, SAN SPIRITO, was on duty 17th Mar. 1944. At approximately 2115 hrs. I was standing outside Leese Wing Office. I heard Gnr. Roche ask Sgt. Whelan, "Why can't you wait for Sgt. Duncan?" Sgt. Whelan replied, "I am looking after this." The accused said to Sgt. Whelan, "You are always causing trouble in this regiment." The accused used obscene language towards Sgt. Whelan. Sgt. Whelan said, "I've stood enough of all this. I put you under arrest." When he said that the accused disappeared into the crowd. Sgt. Donald returned in approximately 5 minutes with the accused. I was then instructed by Sgt. Richards to get the C.M.P. which I did. I returned at approximately 2135 hrs. with 2 C.M.P. personnel who were then told by the Leese Wing Commander that they were not needed as he wanted the accused returned to his unit that night. The accused was in the Wing Office when I returned with the C.M.P. At approximately 2145hrs. I went to SAN SPIRITO station in a vehicle as escort to the accused. There were slighting remarks passed on Sgt. Whelan, but I cannot identify who said them. I have nothing further to add.

L/Bdr Morris H

L/Bdr Morris H.
L4295076. L/Bdr. Morris, H.

The accused declines to question the witness.

THE ACCUSED was cautioned as follows:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

THE ACCUSED declines to make a statement and reserves his defence.

I certify that the foregoing Summarny of Evidence consisting of five pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c),(d),(e),(f),and (g) have been complied with.

In the Field
26 March 44

A H Braden
(A.H. Braden, Lieut.)
Officer detailed to take the Summary of Evidence.

M.F.M. 6
(A.F. B.122)
40/P & /B136 (2965)

No. G.44221 Name ROCHE, C.E. Sqn., Battery, or Company Corps R.C.A. Date of enlistment 30.5.40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 30.10.40 No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed 30.11.40 . No entries. No cases of drunkenness last instance NIL in accordance with C.A.R.O. 319									
Field	11.6.41	Gnr.		Sec.40 A.A. Neglecting to obey Routine Orders. Obstructing an N.C.O. in execution of his duty	Documentary	168 Hours Detention	12.6.41	Lt.Col.W.E. Huckvale	Fod. 7days pay
Field	3.8.41	Gnr.		Sec.15 A.A. Failure to appear at the place of parade.	Sgt.Wood	7 days C.B.	4.8.41	Maj.Campbell	
Field	10.11.41	Gnr.		Sec.15 A.A. A.W.L. 1 hour 45mins.	Lt.Harper	Admonished	14.11.41	Capt.MacLaren	
Field	13.11.41	Gnr.		Sec.10 A.A. Breaking out of Bks) Sec. 8 A.A. Using threatening language to his superior Sec. 8 A.A. offering violence to his superior	Lieut. Harper	5 days C.B.	14.11.41	Capt. MacLaren	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Gnr		Sec. 15 A.A. Absent without leave	Gdn.Provost	70 days	5.6.42	F.G.C.M.	Forf.70 days pay
				Sec. 40 A.A. Conduct to the Pred. of G.O. & H.D.	Corps	Detention			
Field 11.10.42				Sec.40 A.A. Neglecting to comply with Manning Instr.	Maj.P.J. Keller	4 days forf. of pay	12.10.42	Maj.P.J.Keller	
Field 19 Dec 42	"			Sec.40 A.A. Neglecting to comply with Routine Orders	Gnr.Davis " Vennoman	2 days C.B.	19.12.42	Capt. Wood	
Field 4 Jan 43	"			Sec.15(1) A.A. - A.W.L. 15 mins.	Bdr.Morrison	7 days C.B.	3 Jan43	Lt.Col. W.M.Taylor	
Field 30 .6.43		Gnr.		Sec.15(1) A.A. - A.W.L. 2 hrs. 10 mins.	Documentary Sgt.Burroughs G.A.	7 days C.B.	2.6.43	Maj. G. Wright	
Field 6.6.43		Gnr.		Sec. 11 A.A. Neglecting to obey camp orders, not having his bed and kit properly laid out	BSM Russell Sgt.Burroughs Lt.Cody	10 days pay 10 days F.P.	7.6.43	Lt. Col. F.J. Thorne	
6.6.43		Gnr.		Sec.15 (1) A.A. A.W.L. from defaulters parade.Absent 30 mins.					

M.F.M. 6
(A.F. B.127)
40/P & /B156 (2965)

No. G.44223 Name ROCHE, G.E. Sqn., Battery, or Company | Corps | Date of enlistment | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Temporary					
Field	2.9.43	Gnr.		Sec. 40 - breach of security	Documentary	14 days F.P. 14 days forf of pay	14.9.43	F.J.Thorne Lt.Col.	
Field	10.11.43	Gnr.		Sec. 15(1) A.A.		28 days F.P. 28 days pay		Lt.Col.F.J. Throne	
Field	25.1.44	Gnr.		Sec.15(1) A.A. AWL from 0500 hrs. 25 Jan 44 to 0830 hrs.25 Jan44. absent 3½ hrs.	Lt.Beasley Sgt.Osborne Sgt. Wilson	21 days F.P. 21 days pay	8 Feb 44	Lt.Col F.J. Throne	Forf.21days pay FR&I 149 (2)
Field	28.2.44	Gnr.	Hil	Sec 40 AA.Cond. to the prej. of G.O. & M.D. allowed his boots to become burned, rendering them unserviceable.	Gnr.CRACK,C.	M. Admonished	2.3.44	Major F.J. Keller	Placed under stop.of pay to the amt. of f0-16-11

(CERTIFIED TRUE COPY)

[signature] Capt + Adj't 1 Can LAA Regt

Officer having custody of the Regimental books.

(P.T.O.)

Jud. Ex III Jud.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
0-44211	Gunner	ROCHE, C.E.	1 Cdn. Light Anti-Aircraft Regt

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Sec 15(1) AA	4 times	7 times.
For Sec 40 A.A.	2 times	5 times.
For Sec 10 A.A.	times	1 times.
For Sec 8 A.A.	times	2 times.
For	times	times.

~~[illegible]~~

or

~~[illegible]~~

2. ~~[illegible]~~

Previous convictions† of the accused by a court martial ~~[illegible]~~, are set out in the schedule annexed to this statement.

3. ~~The accused is not under sentence at the present time, or The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for No days in civil custody, and 13 days in military custody; making a total of 13 days, of which No days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 36 yrs

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper is 30 May 1940

7. ~~[illegible]~~

8. ~~[illegible]~~

9. ~~[illegible]~~

10. The accused ~~[illegible]~~ entitled to (*state any military decoration or reward*) Cdn.Voluntary Service Medal & Clasp.

11. ~~[illegible]~~

12. ~~[illegible]~~

(*22847) Wt.31703/1977 10,000 10/42 A.& E.W.Ltd. Gp.698
(22827) Wt.32858/1237 32,000 3/43

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. G-44211 Rank Gunner Name ROCHE, C.E. of 1 Cdn LAA Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or statute of offence disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 42, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
F.G.M.C.	Piel1	Sec 15 A.A. Sec 40 A.A.	70 days Detention.	nil

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30th day of March 1944

Capt

43. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion.
In the rank of ..... years,	.....
In the rank of ..... years	.....
In the rank of ..... years,	.....

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such enquiries as are available and the paragraphs entered accordingly.)

116 I

REGIMENTAL DOCUMENTS

H.Q. FILE No. .....

NAME Gnr ROCHE, C.E. ..... REGIMENTAL No. .....

UNIT OF ENLISTMENT ..... RANK .....

	CONTENTS	NON-EFFECTIVE BY
	COMBINED DECLARATION FORM OR ATTESTATION AND MEDICAL HISTORY (M.F.M.1 & 1A) OR (M.F.M.2 & 2A)	DEATH
	SERVICE AND CASUALTY FORM (M.F.M.4 & 4A) (A.F.B.103)	DATE
	PARTICULARS OF FAMILY (M.F.M.5)	CAUSE
	FIELD CONDUCT SHEET (M.F.M.6) (A.F.B.122)	AUTHORITY
	CERTIFICATE OF SERVICE (M.F.M.8) COPY OF, OR DISCHARGE CERTIFICATE (M.F.M.7) COPY OF	
	FORM OF WILL (M.F.M.10 OR M.F.M.10A)	DISCHARGE
	DENTAL HISTORY SHEET	DATE
	MEDICAL REPORT OR CASE HISTORY SHEET	REASON
	MEDICAL EXAMINATION ON LEAVING THE SERVICE	AUTHORITY
	TRANSFER CLOTHING STATEMENT	
	LAST PAY CERTIFICATE (M.F.D.930A)	
	PROCEEDINGS ON DISCHARGE	DESERTION
	PROCEEDINGS COURT OF ENQUIRY	DATE
	DECLARATIONS COURT OF ENQUIRY	AUTHORITY
	PAY SHEETS	
	CARDS	
	SUNDRY	

M.F.W. 2389
40/P & S/1118

116I

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Third day of June, 1942.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery 2 Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[I am unable to appoint :—

*(1. ~~Three Officers to form the Court.~~)

*(2. ~~A Field Officer as President.~~)

*(3. ~~Three Officers having more than one year's service.~~)

for the following reasons, namely :—]

In my opinion, military exigencies, namely the dispersion of units, and difficulties of communication, and other difficulties, render it inexpedient to observe the provisions of these rules inconsistent with appendix "A" to D.R.C. 772 on the trial of the person named in the annexed schedule.

PROCEEDINGS REVIEWED

[signature] Commanding Officer [illegible]
22 Jun 42

President.

Rank.	Name.	Regiment.
Major	A.P. Dodds	6 Cdn Fd Regt.

Members.

Rank.	Name.	Regiment.
Capt.	A. Landale	4 Cdn Fd Regt.
Capt.	C. Gickas	2 Cdn A Tk Regt.
Lieut. (Waiting Member)	E.M. Ellingson	6 Cdn Fd Regt.

*Signed. [signature] Brigadier

Commanding R.C.A. 2 Cdn Div.

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
G.44211 Gunner ROCHE, C.E. 1 Cdn Lt A A Regt RCA	FIRST CHARGE: A.A. Sec. 8(2) WOAS using threatening language to his superior (see charge sheet att)	Not Guilty	5 June 1942. Guilty. ~~Sentenced to 90 days detention~~ Dilth 2 Pdr.	
	SECOND CHARGE: A.A. Sec. 8(2) WOAS offering violence to his superior officer (see charge sheet att)	Not Guilty	5 June 1942. Not Guilty.	
	THIRD CHARGE: A.A. Sec. 15(1) Absent without leave (see charge sheet att)	Guilty	5 June 1942. Guilty. ~~Sentenced to 168 days detention~~ Dilth 2 Pdr.	
	FOURTH CHARGE: A.A. Sec. 40 Conduct to the prejudice of good order, etc. (see charge sheet att)	Not Guilty	5 June 1942. Not Guilty.	
	FIFTH CHARGE: A.A. Sec. 40 Conduct to the prejudice of good order, etc. (see charge sheet att)	Not Guilty	5 June 1942. Guilty. ~~Sentenced to 90 days detention~~ Dilth 2 Pdr.	
			~~All sentences to Dilth 2 Pdr. from date of sentence~~ 5 June 1942. 10 days detention.	Confirmed BUT remit 30 days detention.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*): No.

(Signed) Brigadier (Signed)
Commanding R.C.A. 2 Cdn Div. Convening Officer (c)
6th Cdn Fd Regt R.C.A. President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the fifth day of June, 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this fifth day of June 1942.

President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 764 M.M.L. 1920.

Signed this fifth day of June 1942.

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison until further orders.~~

Signed this 10th day of June 1942.

Confirming Officer.

Promulgated and extracts taken in the case of G 44211 Gnr. Roche C.E.

(a) (Dated) 11 JUN 42 (Signed) W.W. Gay Pte Lieut. Col. Commanding 1 L.A.A. Regt. R.C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

In the case of G.44211 Gnr. ROCHE, Clarence Ethelbert, 89th Battery, 1 Canadian Lt. A.A. Regiment, R.C.A., Canadian Army Overseas.

The accused, G.44211 Gnr. ROCHE, Clarence Ethelbert, 89th Battery, 1 Cdn Lt A A Regt R.C.A., a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE A.A. Sec. 5(2) W.O.A.S. using threatening language to his superior officer, in that he

at COLCHESTER, Essex, on 18 Apr 42, at approximately 2300 hours in the ballrom of the "Red Lion Hotel", when checked by 2/Lieut. R.J. Davies, R.A.S.C., did say "Come outside and then tell me to move along."

SECOND CHARGE A.A. Sec. 5(2) W.O.A.S. offering violence to his uperior officer, in that he

at COLCHESTER, Essex, on 18 Apr 42, at approximately 2345 hours when checked by Cpl. McHardy, Canadian Provost Corps, in the "Red Lion Hotel", during a brawl attempted to strike the said Corporal.

THIRD CHARGE A.A. Sec.15(1) Absenting himself without leave, in that he

at COLCHESTER, Essex, on 18 Apr 42 absented himself without leave from 2300 hrs 18 Apr 42 until 0015 hrs 19 Apr 42. Absent 1 hour 15 minutes.

FOURTH CHARGE A.A. Sec. 40 Conduct to the prejudice of good order and military discipline, in that he

at COLCHESTER, Essex, on 18 Apr 42, at approximately 2300 hrs, was offensive to a lady in the ballroom of the "Red Lion Hotel".

FIFTH CHARGE A.A. Sec. 40 Conduct to the prejudice of good order and military discipline, in that he

at COLCHESTER, Essex, on 18 Apr 42, did use obscene language in the ballroom of the "Red Lion Hotel".

(R.M. Bishop) Maj
A/Commanding Offic
1 Lt. A.A. Regime

In the Field
6 May 42.

In the Field
day of Jun 42
ed by F.G.C.M.

Brigadier

A.A.

CHARGE SHEET

In the case of G.44211 Gnr. ROCHE, Clarence Ethelbert, 89th Battery, 1 Canadian Lt. A.A. Regiment, R.C.A., Canadian Army Overseas.

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FIFTH CHARGE
A.A. Sec. 40 Conduct to the prejudice of good order and military discipline,

in that he

at COLCHESTER, Essex, on 18 Apr 42, did use obscene language in the ballroom of the "Red Lion Hotel".

(R.M. Bishop) Majr
A/Commanding Officer
1 Lt. A.A. Regiment R.C.A.

In the Field
6 May 42.

In the Field
this day of Jun 42
to be tried by F.G.C.M.

Brigadier
Div.

CHARGE SHEET

In the case of G.44211 Gnr. ROCHE, Cl
Battery, 1 Canadian Lt. A.A. Regiment
Army Overseas.

The accused, G.44211 Gnr. ROCHE, Clarenc
Battery, 1 Cdn Lt A A Regt R.C.A., a soldie
Army Overseas, is charged with:-

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(H.M. Bishop) Majr
A/Commanding Officer
1 Lt. A.A. Regiment R.C.A.

the Field
y 42.

Field
day of Jun 42
ed by F.G.C.M.

Brigadier

Adv.

CHARGE SHEET

In the case of G.44211 Gnr. ROCHE, Clarence Ethelbert, 89th Battery, 1 Canadian Lt. A.A. Regiment, R.C.A., Canadian Army Overseas.

The accused, G.44211 Gnr. ROCHE, Clarence Ethelbert, 89th Battery, 1 Cdn Lt A A Regt R.C.A., a soldier of the Canadian Army Overseas, is charged with:-

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(R.M. Bishop) Maj
A/Commanding Officer
1 Lt. A.A. Regiment R.C.A.

In the Field
6 May 42.

Field
day of Jun 42
ied by F.G.C.M.

Brigadier
Div.

1 LIGHT ANTI-AIRCRAFT REGIMENT R.C.A.

5 Jun 42

This is to certify that I have medically examined G.44211 Gnr. ROCHE, C.E., 89 Battery, 1 Lt. A.A. Regiment, R.C.A., and found him fit to undergo trial by Field General Court Martial.

J. A. Strain Capt.

(J.A. Strain) Capt.
Medical Officer
1 Lt. A.A. Regiment R.C.A.

APPENDIX "A"

RECORD OF PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL

1. Trial of No. G 44211 Rank Gnr. Name ROCHE, Clarence Ethelbert,

Unit 69th Battery, 1 Canadian Lt. A.A. Regiment, R.C.A.

Held at Faxhill Park, Sussex on 5th day of June 1942

2. ACTUAL COURT:

Rank Major Name A.P. Dodds Unit 6th. Cdn. Fd. Regt., R.C.A

" Capt. " A. Lendale " 4th. Cdn. Fd. Regt., R.C.A

" Capt. " C. Giokas " 2nd. Cdn. A Tk Regt., R.C.A

3. PROSECUTOR: Rank Lieut. Name A.S. Dewar Unit 1 Cdn Lt A.A. Regt.

DEF. OFFICER: " Capt. " F.St.J. Madeley " 1 Cdn Lt A.A. Regt.

4. The accused is arraigned and pleads "Not Guilty" to the following charges:, 1st, 2nd, 4th, 5th.

5. The accused is asked the question at the foot of page 2 of A.F.A.3 and his answer "no", is recorded by the President.

6. PROSECUTION EVIDENCE:

THE first witness, 2nd Lieutenant R.J. Davies, 11th Station Transport Coy, R.A.S.C., having been duly sworn and having identified the accused, stated that he was present at the Red Lion Hotel, Colchester, Essex, about 2300 hrs on the night 18th April 1942. There Gnr. Roche, the accused insulted Miss Everitt, a lady he was in conversation with, and used insulting, obscene and threatening language to himself. Examination and cross examination tended to prove 2nd Lieutenant R.J. Davies statement.

THE second witness, Lieutenant V.G. Sinclair, 1st Light A.A. Regiment, R.C.A., having been duly sworn and having identified the accused, stated that he was present at the Red Lion Hotel, Colchester, Essex, on the night of 18th April 1942. His statement tended to confirm the first witness' statement but he could not swear to hearing or seeing any overt acts or gestures towards the first witness or to Miss Everitt. He also stated that the accused was in a fighting mood and difficult to quieten down.

This witness was cross examined.

THE third witness, K 53171 Cpl. McHardy, W.J., No. 6 Coy, Canadian Provost Corps, having been duly sworn and having identified the accused, stated that he had been called, in company with other Provost personnel, to quell a disturbance at the Red Lion Hotel, Colchester, Essex, on the night of 18th April 1942. This witness except in so far as proving a disturbance in the said Red Lion Hotel, could not prove that the accused actually attempted to strike him.

This witness was cross examined.

THE fourth witness, M 16913 L/Cpl. Campbell, G.W., No. 6 Coy, Canadian Provost Corps, having been duly sworn and having identified the accused, stated that in company with other Provost personnel, he was called out to quell a disturbance in the Red Lion Hotel, Colchester, Essex, on the night of 18th April, 1942. The evidence of this witness only proved that there was a disturbance at the said Hotel and that the accused was mixed up in it.

This witness was cross examined.

DEFENCE

FIRST witness for the defence, Miss M. Everitt, 3 Defoe Crescent, Mile End, Colchester, Essex, having been duly sworn and having identified the accused, stated that she was present at the Red Lion Hotel, Colchester, Essex, on the night of 18th April 1942. This witness corroborated 2nd Lieutenant R.J. Davies statement except that she did not hear any obscene language. This witness also stated that she was not insulted nor was the accused offensive to her.

Miss Everitt was cross examined.

SECOND witness for the defence, F 16412 Gnr. Markley, M.L., 1st Light A.A. Regiment, having been duly sworn and having identified the accused, stated that he was present at the Red Lion Hotel, Colchester, Essex, on the night of 18th April 1942. This witness could only prove that there was a disturbance at the said Hotel and that the accused was mixed up in it.

This witness was cross examined.

7. The Court is closed for finding - 1740 hrs.

8. The Court is re-opened - 1800 hrs.

9. The Prosecutor files A.F.B. 296 and Certified Copy of M.F.M. 6.

10. The accused makes the following statement in mitigation of punishment:-

The Defence Officer on behalf of the accused, stated, that the accused was a boxer by profession and his natural inclination in any heated circumstances was to use his fists. Not having used them in this case, he asked the Court to take this into consideration.

11. The accused did not call anyone for character evidence.

THE COURT IS CLOSED FOR CONSIDERATION OF SENTENCE

CERTIFIED THAT THE FOREGOING PAGES
No's. 1 to 2 IS A TRUE RECORD
OF THIS TRIAL

Fifth day of June 1942,

Signed: [signature], President
Major A.L. Dodds,
6th. Cdn. Fd. Regt., R.C.A.

APPENDIX "B"

RECORD OF PROCEEDINGS OF A F.G.C.M.

1. Trial of No. G 44211 Rank Gnr. Name ROCHE, Clarence, Ethelbert
Unit 89th Battery, 1 Canadian Lt. A.A. Regiment, R.C.A.
Held at Padgill Park, Sussex on 5th day of June 1942

2. ACTUAL COURT

PRESIDENT: Rank Major Name A.P. Dodds Unit 6th. Cdn. Fd. Regt.

MEMBERS: " Capt. " A. Landale " 4th. Cdn. Fd. Regt.

" Capt. C. Giokas " 2nd. Cdn. A Tk. Regt.

3. PROSECUTOR: Rank Lieut. Name A.S. Dewar Unit 1 Cdn Lt A.A. Regt.
DEF. OFFICER: " Capt. " F.St.J. Madeley Unit 1 Cdn. Lt. A.A. Regt

4. The accused is arraigned and pleads guilty to the following charges:-
Third Charge

5. Rule of Procedure 35(B) is complied with.

6. The abstract or summary of evidence is read.

7. The Prosecutor files AFB 296 and certified copy of M.F.M. 6.

8. The accused makes the following statement in mitigation of punishment:-
The Defence Officer on behalf of the accused, stated, that the accused was a boxer by profession and his natural inclination in any heated circumstances was to use his fists. Not having used them in this case, he asked the Court to take this into consideration.

9. The accused did not call anyone for character evidence.

10. The accused did not call any witnesses.

CERTIFIED A TRUE RECORD OF THIS
TRIAL, 5th day of June 1942

Signed: A.P. Dodds, President
Major A.P. Dodds,
6th. Cdn. Fd. Regt., R.C.A.

SUMMARY OF EVIDENCE

in the case of

G.44211 Gnr. ROCHE, C.E., 1 Lt. A.A. Regiment, R.C.A. stationed in the Field.

Taken on oath at the direction of the Commanding Officer.

FIRST WITNESS for the Prosecution

2/Lieut. R.J. DAVIES, 11 Station Transport Coy, R.A.S.C., having been duyl sworn, states:-

"I, 2/Lieut. R.J. Davies, 11 Station Transport, R.A.S.C., was in the ballroom of the Red Lion Hotel in conversation with a lady at 2300 hours on Saturday 18 April 42 - a Miss Everett. A Canadian soldier stepped between us and started to fumble with the breasts of the aforementioned lady. I cautioned him by saying "Stop what you are doing and move along". He turned around to me and said "Who the hell do you think you're talking to?" I replied "You". He then said "Well don't fucking well speak to me like that." I again cautioned him by saying "Do you realize you are talking to an officer?" He replied "I don't give a fuck for my own officers, let alone you. Who the hell do you think you are, just because you are dressed up in that bloody uniform. If you think you're big enough to throw me out bloody well try it." I made no comment. He then made the remark "Come outside and then tell me to move along." At the same time his fists were clenched and all these remarks were made in a loud and clear voice. I then left the ballroom. That is the conclusion of my evidence."

The accused declines to cross-examine the witness.

R.J. Davies

2/Lieut. R.J. Davies, R.A.S.C.

SECOND WITNESS for the Prosecution

Miss H. EVERETT, 3 Defoe Crescent, Mile End, Colchester, having been duly sworn, states:-

"I am Miss H. Everett of 3 Defoe Crescent, Mile End, Colchester.
On Saturday 18 April 1942 at the Red Lion Hotel we had just finished dancing, an English officer and myself."

Q.1 Do you remember his name?

A.1 No.

Q.2 Would you know him if you saw him?

A.2 Yes.

"A Canadian soldier put his arm in front of me as if to get by the crowd. The English officer apparently thought he was insulting me and told him he wasn't to do it or he would have him put out. I did not see any more as the English officer left the dance hall."

Q.3 Is the accused the Canadian soldier?

A.3 Yes.

Q.4 Did the accused use any obscene language?

A.4 I did not hear any.

Q.5 Were you present all the time while the English officer and the accused were talking?

A.5 I was standing behind them and I could not hear as there was so much general noise.

The accused declines to cross-examine the witness.

Miss H. Everett
(Miss H. Everett)

THIRD WITNESS for the Prosecution

K.53171 Cpl. McHARDY, W.J., No.6 Coy., Canadian Provost Corps, having been duly sworn, states:-

"I, Cpl. McHardy, W.J., K.53171, No.6 Coy., Canadian Provost Corps, state that at Colchester on the 18 April 42 at about 2330 hours I was on duty at Canadian Provost Corps Headquarters, Colchester. In answer to a phone call received I went to the Red Lion Hotel in company with L/Cpls. Campbell, Amer and Arsenault. We arrived there at about 2345 hours. There was a brawl in the lobby of the hotel. Gnr. Roche was present. I told Gnr. Roche to stay out of the brawl as he was trying to get into it. He adopted a fighting attitude in that he took off his coat and raised his arms to a fighting position. He said, in words to this effect, "Let me at that Corporal" and it was only through the intervention of Lieut. Sinclair and L/Cpl. Campbell that he was prevented from attacking me. Lieut. Sinclair held him by force. Owing to the conduct of the troops that were present and their behaviour I thought it would be better part of discretion to arrest him at a later date."

The accused declines to cross-examine the witness.

W.J. McHardy Cpl.

W.J. McHardy, L/Cpl. K.53171

FOURTH WITNESS for the Prosecution

M.16913 L/Cpl. CAMPBELL, No.6 Coy., Canadian Provost Corps, having been duly sworn, states:-

"I, L/Cpl. Campbell, M.16913, No.6 Coy., Canadian Provost Corps, state that at approximately 2330 hours 18 April 42 our Headquarters at Goojerat Barracks received a phone call that there w as a riot at the Red Lion Hotel. We, Cpl. McHardy, L/Cpl. Amer and L/Cpl. Arsenault, tried to stop the riot in the lobby of the hotel and clear the soldiers out. During the course of our duty I happened to come in front of Gnr. Roche who asked me the question "Who are you?" I replied "A provost." He then made as if to pass me and said to this effect "Let me at that two-striper." A Canadian officer which I later identified as Lieut. Sinclair, stepped in front of Gnr. Roche. I said at the same time words to this effect, "Not to-night, Roche." Gnr. Roche quietened down and stood behind Lieut. Sinclair. We had cleared the soldiers out by that time and started back for barracks."

The accused declines to cross-examine the witness.

L/Cpl. Campbell

L/Cpl. Campbell, M.16913.

FIFTH WITNESS for the Prosecution

Lieut. V.G. SINCLAIR, 1 Lt. A.A. Regiment, R.C.A.
having been duly sworn, states:-

"I am Lieut. V.G. Sinclair, 1 Lt. A.A. Regiment, R.C.A.
At approximately 2330 hours on 18 Apr 42 the man who takes tickets at the dance in the Red Lion Hotel informed me that some of my men were fighting and asked me if there was anything I could do. I went into the lobby and there was a lot of pushing and shoving. Gnr. Roche was there with other members of the Regiment. They were all in a fighting mood and when the Provost R.C.O.s came into the lobby they, the N.C.O.s, attempted to stop the rowdyism.

Roche adopted a threatening attitude and was going to strike somebody. I intervened and succeeded in partially quietening him. Roche just wouldn't be quietened. I would say he had been drinking but I would not say he was drunk. In more than one instance he used the expression "Let me at that guy." I don't know who it was but it was not me. The Provost R.C.O. was standing behind me at that time. Eventually after a lot of shoving and talking Roche quietened down and finally left the hotel. I did not see Roche strike anyone. That was approximately 1215 hours. I know Roche didn't have a pass for that hour."

The witness is cross-examined as follows:-

Q.1 I asked Mr. Sinclair on Monday morning if he had seen and Canadian Provost in the lobby and he said "No."

A.1 While the pushing and shoving was going on the Provost had their hats off and I did not recognize them as being Provosts. When Cpl. McHardy came to see me the next day I recognized him as being one of the men in the fight. There were "Red Caps" there but they were English and were doing nothing.

The accused declines to further cross-examine the witness.

V.G. Sinclair

(V.G. Sinclair, Lieut.)

SIXTH WITNESS for the Prosecution

Lieut. T.E. CLARKE, 1 Lt. A.A. Regiment R.C.A., having been duly sworn, states:-

"I am Lieut. T.E. Clarke, 1 Lt. A.A. Regiment, R.C.A. I was attending a date at the Red Lion Hotel on 18 Apr 42. A scuffle was taking place in the ante room of the dance hall and I went to investigate. I found 3 or 4 gunners holding L/Sgt. Manley in a corner and Gnr. Bryant in another corner. The situation seemed under control so I left. Ten or fifteen minutes later a fresh scuffle developed on the stairs and an officer of the English Army asked me would I try and get them out of the hotel. I got a number of Gunners to leave the building and came into difficulties with one Gunner on the stairway. One, the accused Gnr. VanBuskirk, took this man downstairs. I went back to the dance hall and asked some more Canadian Gunners who were standing around would they please leave. When I came down stairs again Gnr. VanBuskirk was in the lobby of the hotel swinging wildly at everyone in sight but I didn't see him hit anyone. I remember seeing Lieut. Sinclair holding back Roche at some time or other. I cannot remember during which scuffle but it was sometime after I came downstairs."

The accused declines to cross-examine the witness.

T.E. Clarke

(T.E. Clarke, Lieut.)

FIRST WITNESS for the Defence

G.8133 Gnr. HENRY, L.J., 89 Battery, 1 Lt. A.A. Regiment, R.C.A., having been duly sworn, states:-

"Gnr, Reid and I were in town on the Saturday evening 18 April. We met Gnr. Roche about 6 o'clock. We went to a pub - the Little Dan - we stayed drinking till about 8.30 and then went to the "Angel" and kept on drinking till close to 10 o'clock. I could see that Gnr. Roche was pretty drunk at the time so we tried to take him home. He wouldn't listen to us and walked away. We went home to barracks. I've known Gnr. Roche for a year and it's the first time I've seen him in that state."

Q.1 What state were you in?

A.1 I had only been drinking a little.

The accused declines to cross-examine the witness.

L J Henry

(G.8133 Gnr. Henry, L.J.)

SECOND WITNESS for the Defence

F.16412 Gnr. MARKLEY, M.L., 89 Battery, 1 Lt. A.A. Regiment, R.C.A., having been duly sworn, states:-

"I met Gnr. Roche at the dance at the Red Lion on Saturday 18 Apr 42. I met him in the dance hall and he invited me out to the bar to have a drink. About 2245 hours. After that I saw him again, dancing, and later I was where I could hear him when he was annoyed by two or three people and Mr. Sinclair held him. He wanted to be let go but I never heard him use profane language before or after, and I never saw him putting his hands up to any woman or anybody. I will say he was heavily under the influence of liquor but he never appeared to be in a pugilistic mood. I spoke to Gnr. Roche and asked him to come home and he said he was going home but he was not given a chance."

Q.1 Did you see Gnr. Roche fight or hit anybody?
A.1 No, I did not.

Q.2 How did the trouble start with the two or three other people?
A.2 I don't know how it started but I saw Gnr. Roche grabbed by Mr. Sinclair and some others I don't know.

Q.3 Did you see any of the Provost there?
A.3 Yes.

Q.4 Were they mixed up at all with Gnr. Roche?
A.4 No, sir. I never saw them near Gnr. Roche. All this was about eleven-thirty.

Q.5 Did you see Gnr. Roche talking to an English officer?
A.5 No, sir, but there were some officers around him. There was a crowd of them everywhere.

The accused declines to cross-examine the witness.

Gnr Markley M.L.

(F.16412 Gnr. Markley, M.L.)

Rules of Procedure No. 4 (C), (D) and (E) have been complied with.

Taken down by me in the presence of the accused person at Goojerat Barracks, Colchester, Essex, and Paxhill Park, Lindfield, Sussex, this 28th day of April 1942 and this 1st day of May 1942.

L. M. Draper

(L.M. Draper) Capt.
Adjutant
1 Lt. A.A. Regiment R.C.A.

THE ACCUSED, having been duly cautioned (R.F. 4 (E)), states on oath:-

"At 1800 hours that evening, 18 Apr 42, I met two Gunners of the 89th Battery in town and we went into a pub and we had a few drinks, and we left there and went to another public house by the name of "Little Dans" about 2100 hours and thence to the "Angel" and it closed and out in the street we met a bunch of boys and I drifted off to the "Red Lion" and I can remember talking to an English officer sometime during the evening but I cannot remember what was the conversation. After that I can remember coming home with Mr. Clarke and Mr. Sinclair and Bdr. Garvin. I don't remember seeing Cpl. McGardy that night at all. As far as interfering with any woman goes I don't remember [illegible] at all."

The accused declines to make any further statement.

L.E. Roche.

(G.44211 Gnr. Roche, C.E.)

No. G.44211 Name ROCHE, C.E. Sqn., Battery or Company 89 Lt. A. Tps R.C.A. Date of enlistment 30/5/40 O.C. Sheet No. 2

Date of last entry in Company Conduct Sheet 3/10/40 No. and date of last drunk Period not reckoning towards freedom from extra fine Signature O.C. Company, etc Badges Service or Proficiency Pay Character

Place	Date of offence	Rank	Cases of previous misconduct	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Fredericton	3/10/40	Gnr.		A.W.L. 1 dy 2 hrs.	S.M.Johnston	96 hrs Det'n	3/10/40	Major Whittaker	6 days pay
				On 30/11/40 this soldier completed six months service & in accordance with R.O. 71 C.A.S.F.(Overseas) the above entry was transferred from previous sheet which was destroyed.					
Colchester	11/6/41	Gnr.		1.Wilfully obstructing N.C.O.in execution of duty	Documentary	168 hrs detention	12/6/41	Lt.Col. Huckvale	7 dayspay
				2.Neglecting to obey R.O. 2 para.8 sec 11 A.A.					
Watchet	3/8/41	Gnr.		Failing to appear at place of parade	Sgt.Wood	7 days C.B.	4/8/41	Maj.S.J.Campbell	
Stifford	10/11/41	Gnr.		A.W.L. 1 hr. 45 mins.	Lt.HarperD.	Admonished	14/11/41	Capt. MacLarenD.A.M.	
Stifford	13/11/41	Gnr.		Breaking out of barracks whilst under open arrest	Lt.HarperD.	5 dys C.B.	14/11/41	Capt. Mac Laren D.A.	

(OVER)

Place	Date of offence	Rank	Corps of Regiment	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY L.M. Draper (L.M. Draper) Capt. Adjutant 1 Lt. A.A. Regiment R.C.A.					

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
G.44211	Gnr.	Roche, C.E.	1 Lt. A.A. Regt., R.C.A.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	Sec.15(1)	1 times	2	times.
For	Sec.15(2)	1 times	1	times.
For	Sec. 11	1 times	1	times.
For	Sec. 10	2 times	2	times.
For		times		times.

Number of instances of gallantry or distinguished conduct,

or

~~There are no entries in the conduct sheets of the accused~~

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for no days in civil custody, and ~~28~~ 48 days in military custody, making a total of ~~28~~ 48 days, of which no days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 25 years

6. The date of his commission / attestation specified in his record of service / attestation paper is 30 May 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of dated and in his regiment (*or corps or department*) the rank of dated

(*16546) Wt.20246/862 75,000 12/40 A.& E.W.Ltd. Gp.498

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. S.44211 Rank Gnr. Name Roche, C.E. of 1 Lt. A.A. Regiment (or as the case may be) R.C.A.

(INSTRUCTION—A verbatim extract from the regimental books, stating those convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5th day of June 42

A. [illegible] CAPT.
ADJUTANT 1 LT. AA REGIMENT RCA

(Instruction—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.)

IF THE ACCUSED has served as a non-commissioned officer continuously without reduction to the present date,

Date of Promotion.

To the rank of .....

To the rank of .....

To the rank of .....

4Q-95

Gnr. Roche C E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G 44211 Gunner Clarence Ethelbert Roche

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(a)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 8.)

~~At present under sentence for~~ beginning on (date). (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 3 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for six (6) months.

(Sgd) ..... Judge-Advocate, if any. 30 Dec 44 Date awarded. (Sgd) R T Dawson, Capt. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 67. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the findings and sentence set forth in Part I is:

Confirmed

I ~~direct~~ that the ~~accused be not~~ committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 4 JAN 45 (Sgd) [signature] T/COMMANDER Commanding 4 CDN BASE RFT GROUP Confirming Officer. [illegible] COL

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G 44211 Gnr ROCHE, C.E. 2 LAA 4 Bn - 1 CBRG	10 Jan 45	[signature] Adjutant 2 Can Reinforcement Unit

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CFA86 (In lieu of AFA42) 40-P-R-H-(1698 (2004)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt Col L J Flynn Comd 1 CBR dated 28 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G 44211	Gunner	Clarence Ethelbert	Roche	4 Cdn RFT Bn 1 CBRG

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 30 Dec 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2G-53

A1. The President, Members, waiting Member, ~~JA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~an interpreter? Ans~~ ~~The Interpreter is sworn.~~(1) Do you object to Bdr [illegible] as shorthand writer? Ans No Dir The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No Dir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Capt	R T Dawson	4 Cdn RFT Bn
Member	Capt	A MacNeil	4 Cdn RFT Bn
Member	Capt	J R Hanley	4 Cdn RFT Bn
Judge-Advocate			
Prosecutor	Capt	H S Hopper	4 Cdn RFT Bn
Defending Offr	Lieut	C A Richardson	4 Cdn RFT Bn

Questions by President: Is the Prosecutor a lawyer? Ans No D.K. Is the Defending Offr a lawyer? Ans No Dir

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused G 44211 Gnr Roche, C E before arraignment make(s) (no) ~~the~~ plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. MIDT

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 80, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, as the case may~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1] and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) and to call witnesses as to character and make an address in mitigation of punishment.[2]
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[3]

President to accused: Do you wish to make a statement? Ans. No D.Y. [5]
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.[1] The Court decides (~~not~~) to advise accused to change his (~~their~~) plea(s) of Guilty to Not Guilty on ~~3.xx.x~~ charge(s). The accused is (~~not~~) so informed, ~~and he (they) (changes) his (their) plea(s) on (changes)~~. ~~Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.[1]
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....[1]
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is re-opened, and the President announces that the submission is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character, or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. .....
Do you intend to call witnesses on your behalf? Ans. .....
Are they witnesses as to character only? Ans. .....
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fn 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 41, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]
Ans. No D.Y.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy(~~ies~~) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D (~~and~~) Ex E respectively.[3]
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans. No D.Y. [2]
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part 1 of the Schedule, which is dated and signed by him ~~and the JA, if any~~.[2]
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED, NUMBER G44211 GUNNER CLARENCE ETHELBERT ROCHE OF 4 CDN RFT BN, 1 CDN BASE RFT GROUP, A SOLDIER OF THE CANADIAN ARMY OVERSEAS, ALLIED ARMIES IN ITALY, IS CHARGED WITH:

1ST CHARGE
A A Sec 15 (1)

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, in Italy, absented himself without leave from 0900 hrs 11 Dec 44 until 1500 hrs 27 Dec 44 (Total time absent 16 days 7 hrs).

L. J. Flynn

(L J Flynn) Lt-col
Commanding

In the Field
28 Dec 44

4 Cdn Rft Bn - 1 Cdn Base Rft Group - CMF

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

L. J. Flynn

(L J Flynn) Lt-col
Commanding

In the Field
28 Dec 44

4 Cdn Rft Bn - 1 Cdn Base Rft Group - CMF

FIELD GENERAL COURT-MARTIAL

CFA35 (In lieu of AFA33)
401P&S/1697 (2943)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see *MML Chap V paras 20 and 23, RP 87(B).*

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G44211	GUNNER	CLARENCE ETHELBERT	ROCHE	4 Cdn Rft Bn

CONVENING ORDER

1. Whereas complaint has been made to me, the undersigned, that the person(x) named above as the accused, being subject to military law, has(xxxx) committed the offence(x) set forth in the Charge Sheet(x) attached and on (*date*) 26 Dec 44 endorsed by me, (xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; xxxxxxxxxxxxxxxxxxxx

RTS

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) Para 557

DEC 30th 1944

I hereby certify that I have this morning examined No G44211

GNR ROCHE, C.E. on strength 4 Cdn

Rft Bn, 1 C B R Gp, and in my opinion he is FIT/~~UNFIT~~ to undergo

trial by Court Martial

Capt

Medical Officer 4 Cdn Rft Bn

RIS

The accused, G44211 Gnr Roche C E,
having been duly sworn, states:

On 2 Dec 44 I was taken out of the line as a reinforcement to the Artillery. Instead of going to the Artillery they sent me to No.4 Bn. They told me when I came to 4 Bn that I would be on the first draft to go out to the field, but when the draft came out I was not on that draft. Another draft came out to the field and I was not on that. In the meantime a fellow came into the Holding Unit from my regiment, 2 Cdn LAA Regt, and said that there was more reinforcements going out to it at Cattolica so I left here on Monday morning and went out to Cattolica and went to the rear party of the 54th Bty, 2 Cdn LAA Regt, and the Sgt told me to wait around a couple of days as the officers would be down for stores and I might be taken on strength back to the Regt. So I waited for 3 or 4 days and the officers never showed up. After that I started up to the line myself. I got up as far as Ravenna and was turned back because I did not have a pay book so I came back to Cattolica and stayed around there with the rest of the boys for the holiday. After the holiday was over I came back and reported in to "D" Coy of 4 Bn.

PLEA IN MITIGATION

Gnr Roche enlisted in the army on 4 May 40. He was taken on strength in England on 23 Dec 40, and he came to Italy in Sept 44 and went into the line with 2 Cdn LAA Regt, 54 Bty. He was with them from Sept until 2 Dec 44. He was then taken out of the line due to the regt being over strength and was sent back to go out as a reinforcement for field artillery. Somehow or other he got sent to 4 Bn and he was told from 4 Bn he would be going forward as a field artillery reinforcement in a matter of two or three days. While he was here two drafts went out to the field artillery with him being on neither. During the course of that time he heard that 2 Cdn LAA Regt, from which he came, was being reinforced by RCE due to shortage of artillery reinforcements. On hearing this he went up to the reinforcement base at Cattolica, got in touch with a Sgt whom he knew and the Sgt's advice was that he wait there until such time as the O C came back, telling him that there was a good chance of his being taken back on strength. As it happened, this did not work out, and being there at Cattolica and having all his friends there, he decided to stay over the Christmas holidays, knowing full well at the time he was A.W.L. But directly after Christmas he reported back on his own free will to 4 Bn. There is also the fact that the Sgt at Cattolica, knowing that Gnr Roche was A.W.L. should have apprehended him rather than advise him to wait there at his unit. I would like those points to be taken into consideration.

Cdn C RR

Summary of Evidence in the case of G44211 Gunner Roche C E of 4 Cdn Rft Bn, 1 C B R G, who is charged with WOAS Absenting Himself Without Leave (A A Sec 15 (1).

By direction of the Commanding Officer, the evidence is taken upon oath:

1st Witness — D3042 CSM Noseworthy L R.

A written statement of the evidence of this witness purporting tohave been signed by him has been read over to the accused and is attached hereto as Exhibit 'A'.

I certify that owing to the exigencies of the service and the time and expense involved, the attendance of this witness at the taking of this summary cannot readily be procured.

(R R Brown) Capt
Officer Taking Summary

The accused does not demand the presence of this witness for cross-examination.

2nd Witness — A22296 Sgt White J P, of 4 Cdn Rft Bn, 1 C B R G, having been duly sworn, states:

I am A22296 Sgt White J P, Bn Orderly Room Sgt, 4 Cdn Rft Bn. I produce a certificate under A A Sec 163 (1) (j) purporting to relate to the accused and showing that Gunner Roche C E surrendered himself at approx 1500 hrs 27 Dec 44. (Produced, shown to accused, marked Exhibit 'B' and attached hereto).

A22296

The accused declines to cross-examine this witness.

Question to the Accused

Do you wish to make a statement or give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by Accused — I have nothing to say at this time.

I certify that R P 4 (c) (d) (e) (f) and (g) have been complied with.

I certify that this summary was taken down by me in the presence and hearing of the accused.

(R R Brown) Capt
Officer taking Summary

In the Field
28 Dec 44

STATEMENT OF EVIDENCE in the case of G-44211. Gnr. Roche. C.E. RCA"D" OF D COY

I am No. D-3042. SCSM. Noseworthy. L.R.

4 CBR Bn, 1 CBR Gp, C.A., C.M.F.

On the 11th. day of December. 44, the a/m soldier.

was on strength of the said Coy (# D

) and his name and number were on the Coy Nominal rolls.

At about 0800 hrs on the 11/12/ 44, in performance of my duty,

as CSM. , I called the Coy. roll, including the number and

name of the a/m soldier. . He did not answer nor was he

present on parade. I thereupon searched the Coy Area. calling

his name, and inquiring as to his whereabouts, but was unable to locate

him or to obtain any information concerning him. I thereupon reported

him absent without leave from 0800 hrs, 11/12/44. 44.

Date 11/12/44. 44. Signature L. R. Noseworthy

(# or in Gd Room, or as the case was)

Exhibit A
[illegible] Capt.

RTS.

CERTIFICATE UNDER ARMY ACT Section 163 (1) (i)

I LAGIL J Flynn certify that No G44211

Rank GNR Name ROCHE CE of the

2ND A/A REGT Regt surrendered himself

to PR 784 A/CSM Section G.G. of the 4 CDN RFT. RN. DCOY

at COY Orderly Room on the 27-12-44 at approx 1500 hrs

as an absentee without leave ~~/ deserter~~.

L J Flynn to Cpl.

Signature of Provost Marshall Capt.

APM or other officer into whose custody the above-named soldier was taken on arrest.

HE WAS SOBER AND WEARING KINGS UNIFORM

Exhibit B

R.H. Brown Capt

Exhibit "D" (RH)

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
044211	GUNNER	ROCHE C E	A Cdn Rft Bn - 1 C B R G

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—If a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheets mentioned should be produced in court with this statement for reference to the proceedings.

† See sect. 47, A.A., 1930.

* The numbers to be stated should, in each case, be the total number of entries in the conduct sheets, provided where there is more than one entry relating to the same offence in such sheets, and no one recognized as good conduct, only one entry should be counted.

Instructions.—If the charge is for drunkenness the entries for misdemeanors must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A A Sec 8	nil times	2 times.
For A A Sec 10	nil times	1 times.
For A A Sec 15(1)	1 time	7 times.
For A A Sec 40	Nil times	5 times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. ~~The accused has not been previously convicted~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time ~~or the accused at the present time is under sentence~~

~~(specify sentence)~~ from 1500 hrs 27 Dec 44 days.

4. The accused has been in confinement, awaiting trial on the present charges, for 3 days in civil custody, and ~~days~~ days in military custody, making a total of 3 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 36

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 2 May 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*)) N/A

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated and in his regiment (or corps or department) the rank of dated

(71439) W.1.5982/143 125,000 8/41 A.A.E.W. Ltd. Gp.498

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
F.G.C.M.	5.6.42	A A Sec 15 (1) A A Sec 40	70 days Detention	
F.G.C.M.	30.3.44	A A Sec 8 (2)	120 Days Detention	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 20th day of December 1 444

(A E Davidson) Capt & Adjt
4 Cdn Rft Bn- 1 C B R C

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

	Date of Promotion.
In the rank of	
In the rank of	years,
In the rank of	years
	years,

(CONSIDERATION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph be amended accordingly.)

No G44211 Name ROCHE, C.E. Sqn, Battery, or Company Corps R.C.A. Date of enlistment 30.5.40 GC Badges Service or Proficiency Pay E & "E" MFM 6 (AFB 122) 40/P&S/128 (2428)

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No 2 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed 30.11.40. No entries. No cases of drunkeness Last instance NIL in accordance with C.A.R.O.319									
Field	11.6.41	Gnr		Sec.40 A.A. Neglecting to obey Routine Orders. Obstructing an N.C.O. in execution of his duty	Documentary	168 Hours Detention	12.6.41	Lt.col W.E. Huckvale	Forf. 7 days pay
Field	3.8.41	Gnr		Sec 15 A.A. Failure to appear at the place of parade.	Sgt Wood	7 days C.B.	4.8.41	Maj.Campbell	
Field	10.11.41	Gnr		Sec 15 A A AWL 1 hr 45 mins	Lt Harper	Admonished	14.11.41	Capt. MacLaren	
Field	13.11.41	Gnr		Sec 10 AA Breaking out of Bks) Sec 8 AA Using threatening language to his superior) Sec 8 AA Offering violence to his superior)	Lt Harper	5 days C.B.	14.11.41	Capt MacLaren	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Gnr		Sec 15 A.A. Absent without leave Sec 40 AA Conduct to the Pred. of G.O. & M.D.	Cdn Provost Corps	70 days Detention	5.6.42	F.G.C.M.	Forf 70 days pay
Field	11.10.42"			Sec 40 A.A. Neglecting to comply with Manning Instructions	Major P.J. Keller	4 dya forf. of pay	12.10.42	Maj. P.J. Keller	
Field	19 Dec 42 "			Sec 40 A.A. Neglectingto comply with Routine Orders	Gnr Davis " Fenneman	2 days C.B.	19.12.42	Capt Wood	
Field	4 Jan 43 "			Sec 15(1) AA A.W.L. 15 mins	Bdr Morrison	7 days C.B.	3 Jan 43	Lt-col W.H. Taylor	
Field	30.6.43 "			Sec 15(1) AA A.W.L. 2 hrs 10 mins	Documentary Sgt Burroughs	7 days C.B.	2.6.43	Major G. Wright	
Field	6.6.43 "			Sec 11 A.A. Neglecting to obey camp orders, not having his bed and kit properly laid out	BSM Russell Sgt Burroughs Lt. Cody	10 days pay 10 days F.P.	7.6.43	Lt.-col F.J. Thorne	
	6.6.43 "			Sec 15(1) AA A.W.L. from defaulters parade. Absent 30 mins					

No G44211 Name ROCHE C E | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

MFM 6 (AFB 122) 40/PAM/158 (3458)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order placing with total	By whom awarded	Character / Remarks
Field	2.9.43	Gnr		Temporary Sec 40 - breach of security	Documentary	14 days F.P. 14 days forf of pay	14.9.43	F.J. Thorne Lt-col	
Field	10 Nov 43	"		Sec 15(1) AA		28 days F.P.			
Field	25 Jan 44	"		Sec 15(1) AA AWL from 0500 hrs 25 Jan 44 to 0830 hrs 25 Jan 44 Absent 3½ hrs	Lt.Beasley Sgt Osborne Sgt Wilson	28 days F.P. 28 days pay 21 days F.P. 21 days Pay	8 Feb 44	Lt-col F.J. Thorne Lt.Col F.J. Thorne	Forf 21 days pay FR&I 149 (2)
Field	28 Feb 44	"		Sec 40AA Cond. to the prej of G.O.S/M.D. allowed his boots to become burned, rendering them unserviceable.	Gnr.Crack,C.M.	Admonished	2 Mar 44	Major	Placed under stop of pay to amount £0.16.11

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field		Gnr		Sec 8(2) - using insubordinate language to superior officer		120 days detention	30.3.44	F.G.C.M.	
Field	31.8.44	Gnr		A A Sec15(1) AWL from 0800 hrs 31 Aug until 2230 hrs 2 Sep 44 Absent 2 days 14 hrs 30 mins	Sgt Barry J.B.		4 Sep 44	Lt-col L.J. Flynn	Auto forf 3 days pay FR&I 149 (1)

CERTIFIED TRUE COPY OF M.F.M.6 CONTAINED IN THE REGIMENTAL BOOKS HELD IN MY CUSTODY

In the Field
28 Dec 44

(A E Davidson) Capt & Adjt
4 Cdn Rft Bn - 1 C B R G

RECEIPT FOR CHARGE SHEET & SUMMARY OF EVIDENCE

I hereby certify that I have this date 28 Dec 1944 received from 4 Cdn Rft Bn, 1 C B R Gp, 1 copy of Charge Sheet and Summary of Evidence referring to charge (s) of AWL

AA 15 (1)

for which I was remanded for Court Martial.

L E Rodie.
(Sig of Accused)

REQUEST FOR DEFENDING OFFICER

I hereby request that Sgt C A Richardson if available, act in my defence. If this officer is not available I request that the Commanding Officer of 4 Cdn Rft Bn, 1 C B R Gp appoint an officer to act in my behalf.

L E Rodie
(Sig of Accused)

Pursuant to Chap V Sec V Sub Sec 25 of MMD, I hereby certify that I have been duly warned that the Prosecutor is an officer possessing legal qualifications.

L E Rodie
(Sig of Accused)

HY 67
Ste Rose, L. A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B132659 Pte Gordon Albert ROCHE, Can+Ren Scot R

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	guilty	guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to Findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 26 days, of which nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for one year.

(Sgd) W M D Shaw Capt — 11 Feb 45 — (Sgd) [illegible] Lt-Col
Judge-Advocate, if any. — Date awarded. — President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 56. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the findings and sentence. A the Court.

I direct that the accused be not committed to prison or detention barracks until further orders.(1) The
(1. AA 57A. Delete if not used.)

(Sgd) [illegible] Brig.
Date 12 Feb 45 — Commanding 12 Can Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B132659 Pte Gordon Albert ROCHE	13 Feb 45	[illegible] Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4V-67

FIELD GENERAL COURT-MARTIAL

4/388

Convened by Comd Brig J S Cunningham Comd 12 C Inf Bde dated 8 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Rank. (b) Apptmt.	A/rk or A/Apptmt.	Full Christian Names.	Surname.	Initials
B132659	Pte		Gordon Albert	ROCHE	

PROCEEDINGS REVIEWED
Pleads guilty
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 11 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 895, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 13-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 2110 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused:~~ Do you object to ~~as interpreter?~~ Ans ~~The interpreter is sworn.(1)~~ Do you object to ~~as shorthand writer?~~ Ans ~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No sir.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H F Hodson	Argyll & S H (MR)
Member	Capt	L C A Moore	P R Fus
Member	Lt	J R Cambridge	Argyll & S H (MR)
Judge-Advocate	Capt	W M D Shaw	HQ 5 Can Armd Div
Prosecutor	Capt	J A Cunningham	2 C R S R
Defending Offr	Lt	E A Milligan	2 C R S R

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~if~~) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 42; when several accused to be tried separately see RP 71(C), and use separate copies of CF 486 to record proceedings. 2. RP 32, RP 33. If otherwise, delete 2 and make appropriate record per Notes.)

A10. The Court (~~is cautioned~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, use Record Form D on p 3.*

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No Sir.(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 92 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 80(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. MML

Do you intend to call witnesses on your behalf? Ans. .....

Are they witnesses as to character only? Ans. .....

Ans. .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf. AA 86. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(2) (6). RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. Wish to present a written statement (marked AA).

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)

(1. *MFB 355 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes thru defoffr. (Ask Q)(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. See AA 86 and its provisos, as to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182. RP 46-50, 98, 118, 119(A). KR Con 308, 330, 563-566. Oversees RO 309, 2223. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 120. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Con 564. As to assembly and disposal of record after trial see instrs on back of Convening Order. Confirming Offr see KR Con 567. As to release from arrest by* 2. *RP 50. As to release from arrest by*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B-132659 Pte Roche, Gordon Albert, Lanark & Renfrew Scottish Regiment, a soldier of the Canadian Army Overseas placed on Active Service, is charged with:-

FIRST CHARGE — When on Active Service absenting himself without leave,

in that he,

Army Act
Sec. 15(1) — in the Field, did absent himself without leave from 0800 hrs 27 Dec 44 until apprehended by the C.M.P. at Rome at 1130 hrs 17 Jan 45.

Total time absent
21 days, 3 hours, 30 minutes.

(W.H. Buchanan) Lt. Col.
Commanding
Lanark & Renfrew Scottish
Regiment

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(J S H Lind) Brig
Comd 12 Cdn Inf Bde

9 Feb 45

CFA95 (In lieu of AFA9)
40/P&S/1697 (2869)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 132659	Pte		Gordon Albert ROCHE		LAN & REN SCOT R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) 9 Feb 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) H F HOSKIN (Must be named. RP 106.) WESTMR R(M) (Unit.)

MEMBERS.

Capt to be detailed by CO 12 Cdn Indep MG Coy (PL Fus)

Capt or Lt (Rank.) to be detailed by CO WESTMR R(M) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

Lt (Rank.) to be detailed by CO 4 PLDG (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.) W M W SHAW (Must be named, if any. RP 106.) HQ 5 Cdn Armd Div (Unit.)

On Active Service in the Fd

in ITALY (Country.)

(J S H Lind) (Signed personally. RP 105 fn 2.) Brig (Rank.)

Date 9 Feb 45 Commanding 12 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

In my opinion due to military exigencies it is necessary for this court to sit on Sunday and to sit after 1800 hrs

[illegible]
President.

MEDICAL OFFICERS CERTIFICATE
K.R. (CAN) PARA 557

I certify that I have this ~~[illegible]~~ examined No. B13265 9 - Pte. Roache G.A

and in my opinion he is fit to undergo trial by Court Martial.

Date. 11 Feb 45 ~~[illegible]~~ 1500 hrs

[illegible] Capt
Medical Officer
1 Lt. A.A. Regiment RCA

In the Field,
11 Feb. 45.

R.152659 Pte. Roche, G.A.
Statement of Character.

1. The m/n soldier has served in the A/Tk section of which I am N.C.O. almost continuously from July 44 until 27 Dec.44.

2. During this time Pte.Roche showed exemplary behavior, and was at all times a willing and capable soldier.

3. Pte.Roche has served in my section in [illegible] on A/Tk gun number and as a rifleman and he has a good fighting record.

C.39008 Sgt.Toms, E.J.,
Support Coy.,Lan.&Ren.Scot.R.

AA
Wounds

11 Feb. 45.

S.132650 Pte ROCHE,G.A.: F.G.C.M.
Plea in Mitigation.

The accused, Pte Roche, by his plea of guilty, has in effect declared that he submits no justification for the offense which he has committed. But no man can be fairly judged by one act alone, especially where, as in this instance, that action is inconsistent with the man's total record.

The accused is not and never has been a "confirmed trouble-maker", a frequent offender. On the contrary, he has been a first-class soldier, willing and alert, well-liked by his superiors, in and out of action. In evidence of his superiors' estimate of his qualities as a soldier, I submit the statement of Character made by his own section NCO, Sgt. Toms. In addition, it will be seen from Pte.Roche's M.F.M.6 that during his service with the Lan.& Ren.Scot.Regt. since its formation in July 1944, he has had a spotless record.

It is, in fact, difficult to account for this crime by a soldier with so good a record. The events leading up to his absence, however, shed some light on the problem. He went into action with the Regiment early in December, for by no means the first time, and fought for three weeks. When the going became tougher and the unit's strength was depleted, he fought with the forward ~~inf~~ rifle platoons as a rifleman and acquitted himself well, despite a natural unfamiliarity with that type of fighting. Then, just prior to Christmas, the regiment came out of the line for the holiday; all the members of this Court will be familiar with the usual reactions to such a rest - an end of strain and an immediate release of nervous energy; life becomes, for several days, an endless party. Perhaps because it was Christmas, Pte Roche overdid his celebrations and decided he needed a holiday.

While there can be no justification for the actions of the accused, there are undoubtedly

Dwmw S

good grounds for a strong plea for leniency. Pte Roche has an excellent record; he has been a willing and capable soldier, liking his work and doing it well; he has always been, prior to this offense, a credit to his Regiment. And it would appear that he can best make amends by returning to the regiment with a little delay as possible; in that way he can prove that his record prior to this offense was well-reserved, and that the praise of his superiors was fully merited.

F.A. Milligan

(F.A. Milligan) Lieut.,
Lan. & Ren. Scot. R.,
Defending Officer.

D
WMWS

SUMMARY OF EVIDENCE

in the case of

B132659 Pte Roche, G.A. Lanark & Renfrew Scottish Regt.

Taken on Oath at the direction of the Commanding Officer.

FIRST WITNESS for the Prosecution:-

A3792 CSM ROBINSON, R.L. of the Lanark & Renfrew Scottish Regt., having been duly sworn states:

"I am A3792 CSM Robinson, R.L. of the Lanark & Renfrew Scottish Regt.

I was CSM of Support Coy from 26 Dec 44 until 10 Jan 45. At the 0800 Hr roll call on 27 Dec 44 the accused was marked absent. I made a check of my Coy area and could not locate him. He was continuously absent until I left Support Coy to be A/CSM of "B" Coy on the 10 Jan 45."

R.L. Robinson

A3792 A/CSM Robinson RL

The accused declines to cross-examine the witness.

Roche G.A.

B132659 Pte Roche GA

SECOND WITNESS for the Prosecution:

L64686 A/Sgt Hubbard, K.A.P. of the Lanark &Renfrew Regt., having been duly sworn states:

"I am L64686 A/Sgt Hubbard, K.A.P. of the Lanark & Renfrew Scottish Regt., now acting in the capacity of CSM of Support Coy. When I took over from A/CSM Robinson, R.L. on 10 Jan 45 I found Pte Roche was marked absent on the Coy records. I checked and found he was absent and was continuously absent from that date until I was relieved of my duties as A/CSM of Support Coy on the 19 Jan 45."

K.A.P. Hubbard

L64686 A/SGT Hubbard KAP

The accused declines to cross-examine the witness.

Roche GA

B132659 Pte Roche GA

Witness

THIRD WITNESS for the Prosecution.

Lt. P.A. Edmundson Assistant Adjutant of the Lanark & Renfrew Scottish Regt., having been sworn, states:

" I am Lt. P.A. Edmundson Assistant Adjutant of the Lanark & Renfrew Scottish Regt. I present certified true extract from Lanark & Renfrew Scottish Regt. Part II Order No 8, dated 16 Jan 46, showing B 182659 Pte Rooke, G.A. was absent without leave from 0800 hrs 27 Dec 44.

I also present a certificate under Army Act Sec 168 (1) (JJ) purported to be signed by Lt. C.H. Suti of "T" Provost Coy CMP showing that B 182659 Pte Rooke, G.A. was apprehended at Rome at 1150 hrs on the 17 Jan 46.

The accused declines to cross- examine the witness.

P.A. Edmundson
(P.A. Edmundson, M.C.) Lt.

These certificates referred to by the witness, produced read over to the accused, marked "Exhibit A" and "Exhibit"B", signed by me and attached hereto.

A Cunningham
(A. Cunningham) Capt.
Officer taking the
Summary of Evidence

The accused, B 182659 Pte Rooke, G.A. was warned as follows:

" Do you wish to make a statement or give evidence on oath? Youare not obliged to say anything or give evidence unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."

The accused having been duly warned declines to make any statement or give evidence on oath.

Rooke G.A.
B 182659 Pte Rooke, G.A.

"A"
Commus

Certified that Rules of Procedure, 4 (C), (D), (E), & (F), have been complied with.

(Signed) W.A. Cunningham (W.A. Cunningham) Capt.

Taken down by me in the presence and hearing of the accused in the Field this 25th day Jan. 45.

(Signed) W.A. Cunningham (W.A. Cunningham) Capt.

Respectfully submitted this 25th day Jan. 1945

(Signed) W.A. Cunningham (W.A. Cunningham) Capt.

LIST OF WITNESSES FOR THE PROSECUTION:

A-3792 A/CSM Robinson R.L. Lanark & Renfrew Scottish Regiment

L 64686 A/Sgt Hubbard K.A.P. Lanark & Renfrew Scottish Regiment

Lt. P.A. Edmundson Lanark & Renfrew Scottish Regiment

LIST OF WITNESSES FOR THE DEFENCE:

NIL

LIST OF EXHIBITS:

Exhibit "A" Certified true Copy of Lanark & Renfrew Scottish Regiment Part II Order No. 8, dated 16 Jan. 45.

Exhibit "B" Certificate of apprehension under A.A. 163 (1) (JJ)

STATEMENT BY THE ACCUSED:

I wish to have an Officer appointed by the Commanding Officer, to defend me at my forthcoming trial by FGCM.

(Signed) Roche Gd B-132609 Pte Roche, G.A.

STATEMENT BY THE ACCUSED:

I acknowledge herewith receipt of one copy of the charge sheet and one copy of the Summary of Evidence.

(Signed) Roche Gd B-132609 Pte Roche, G.A.

EXTRACT FROM

THE LANARK & RENFREW SCOTTISH REGIMENT

PART II ORDERS

NO. 5

16 Jan 45

6. ABSENT WITHOUT LEAVE

(a) AWL from 0800hrs 27 Dec 44. Still absent 0800hrs 4 Jan 45 (8th day)

H102626	Pte	Armstrong, G.A.
D71786	Pte	Paquette, G.G.
B132659	Pte	Roche, G.A.

"Certified true extract"

P.A. Edmundson Lt.

(P.A. Edmundson) Lt. A/Adjutant
Lanark & Renfrew Scottish

Officer having custody of original

Exhibit A
H Cunningham Capt

CERTIFICATE IN ACCORDANCE WITH Sec.163 (i) (ii) Army Act.

I certify that No. B132659 . . . . . Rank. . Private . . . . . .

Name ROCHE G.A. . . . . of the Lanark & Renfrew Scottish Regt of Canada, Support Coy. Unit

was arrested at. ROME. . . . . (place) at . 1130 . . hrs.

on the . . 17th . day of January . . . . . 1945.

SIGNATURE of P/W., C.M.P., or other Officer into whose custody the above named person was taken on arrest.

C. H. [illegible]

Rank . Lieutenant. . . . . .

Attachment (if any) . . . . . .

XXXXXXXXX 'T' Provost. Company, . CMP.

Date .18th January 1945 . .

Exhibit "B"
J Hunningham Capt

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B132659	Pte	ROCHE, G.A.	Lanark & Renfrew Scottish Regt.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the aggregate of entries in the conduct sheets, precedence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Sec 15(1)	1 times	1 times.
For Sec 40	2 times	2 times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct.~~

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for ... beginning on the ... day of ...~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 25 days in military custody, making a total of 25 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 23 Years 6 Months

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 8 Sep 42

~~7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is ...~~

~~8. The accused is entitled to deferred pay or gratuity in respect of ... service.~~

~~9. The accused is entitled to reckon ... service for the purpose of determining his pension, etc.~~

10. The accused is in possession of, or entitled to, ~~no military decoration or military award (or is in possession of or entitled to state any military decoration or reward)~~ : CVSM & C

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of ...~~

~~12. (In the case of an officer.) The accused holds in the army the rank of ... dated ... and in his regiment (or corps or department) the rank of ... dated ...~~

(*29847) W1.31705/1977 10,000 10/42 A.& E.W.Ltd Gp.698
(B2087) W1.28858/1287 22,000 2.43 " "

C. Wmuos

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B132659 Rank Pte Name ROCHE, G.A. of Lan & Ren Scot Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day of February 1945.

(L.G. McKenzie) Capt & Adjutant
Lanark & Renfrew Scottish

49. The accused has served as a non-commissioned officer continuously without reduction, up to the present date,

Date of Promotion.

In the rank of ..... years,

In the rank of ..... years

In the rank of ..... years,

(Instruction.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs completed accordingly.*)

FIELD CONDUCT SHEET.

Date of Enlistment 8-9-42 | Army Form B122 Sheet No. #

*No. P132659 Name Roche, G.A. | Sq., Batty., or Company | Corps CIC

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | G.C. Badges N/A | Long Service and G.C. Pay 2 | Signature O.C. Company, etc. J.H. McKinnan Lieut

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded and Remarks
Original Sheet destroyed on completion of six months service 8 Mar 43 Date of last entry 25 Feb 43								
				Cases of drunkenness NIL				
"BLOOD DONOR 11 May 43								
Field	28-4-44	Pte		AA 15(1) WOAS AWL FROM 1400 hrs 28 Apr 44 to 0030 hrs 2 May 44. Total Time 3 dys 10 hrs 30 mins.	Documentary	28 days F.P. 2 forf 28 days pay FR&I 149(1)(b)	2 May 44	LtCol CS Hadley
Field	3 May 44	Pte		AA Sec 40 Neglect to Pre to clean his Sten Gun	etc Sgt Howard	3 Days C.B.	3 May 44	Capt JP Secord
Field	11 May 44	Pte		AA Sec 40 Neglect tp prej etc appeared on supper parade improperly dressed	Lt Cooke	3 days C.B.	12 May 44	Capt JP Secord

P.T.O.

*Serial Number in case of enemy prisoner of war

(28493) Wt. 31375—1969 2000M 10/43 D.L. G. 31

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded and Remarks
				"Certified True Copy"				
				(I. C McKenzie) Capt Adjutant Lanark & Renfrew Scottish				
				Officer having custody of the original.				

48 V.

PG ROCHE, R.L.

B-29409 Pte. Roche, R.L.
No. 4 Sub-depot, 1 C.B.O.D.

48 V

Correspondence to be PINNED here.

Army Form A.3.

RECEIVED
28 DEC 1942
No. 1
C.B.O.D.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 23rd day of December, 1942.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CDN ARMY, OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~[I am unable to appoint:—~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely:—]~~

* Omit if not applicable.

Judge-Advocate Capt. G.M. Morrison, H.Q., C.R.U.

Proceedings Reviewed
[signature]
for Reviewing Officer (JAG) C.A.H.O.
22 Jan 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	E.F. McCordick (RCA)	No. 1 Cdn Arty Reinf Unit

Members.

Rank.	Name.	Regiment.
Captain	J. Lochead (R.L.I.)	Attached C.T.S.
Captain	G.H. Williams	Attached No. 1 C.C.R.U.
Lieutenant	Waiting Member J. Padden	1 Bn., R.C.E.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier.

Commanding Cdn Reinforcement Units.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-89409 PTE. ROCKE, Robert, Leo No. 4 B[illegible] Depot, [illegible] C.D., R.C.O.C.	First Charge A.A. sec 15(4)	Guilty	Guilty	Confirmed J.J. McCrudden Major
	Alternative Second Charge A.A. sec 40	Not Guilty	Not Guilty To undergo detention for a period of 90 Days. 24/12/42 J.J. McC.	
	See charge sheet attached.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) D.M. Shulam Brigadier (Signed) J.J. McCrudden Major
Commanding Can Reinf Units. President.
Convening Officer (*e*)
Gunnison Capt J.A.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 24th day of December 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 24th day of December 1942.

J.J. McCrudden Major
President of the Court Martial.
Gunnison Capt J.A.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 24th day of December 1942

D.M. Shulam Brig.
Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) 30 Dec 1942 (Signed) D.M. Shulam Major
A.A.G. M.D.

O.C. No. 4 SUB DEPOT, C.B.O.D., R.C.O.C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

S.C. 47767/1937 10 M. 8/41 K.H./S.S.(3) Gp. 698-2

CHARGE SHEET

J. F. McCordick, Major Pres.

The accused, B-89409 Pte. Roche, R.L., No. 4 Sub Depot, 1 C.B.O.D., R.C.O.C., a soldier of the Canadian Army (Overseas), is charged with:-

First Charge
Sec 18(4)
Army Act

WHEN ON ACTIVE SERVICE, STEALING PUBLIC PROPERTY

in that he

at Bordon, Hants. on 4 Dec 42, stole 2 sets open end wrenches, 1 box wrench, 1 file and handle, 1 engine brush, 1 eight inch screwdriver, 1 tin containing bulbs, 1 coil copper wire, and two extension lights, being public property, from No. 4 Sub-depot, 1 C.B.O.D., R.C.O.C.

Second Charge
Alternative
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

at Worcester, Worcestershire, was improperly in possession of 2 sets open end wrenches, 1 box wrench, 1 file and handle, 1 engine brush, 1 eight inch screwdriver, 1 tine containing 4 bulbs, 2 spark plugs, 1 roll tape, 1 coil copper wire and two extension lights, being public property, from No. 4 Sub-depot, 1 C.B.O.D., R.C.O.C.

C. Raynor Smith

(C. Raynor Smith) Lt-Col.
C.O. No. 4 Sub-depot, 1 C.B.O.D.

Bordon, Hants
21 Dec 42.

To be tried by Field General Court Martial

F. R. Phelan

(F. R. Phelan) Brigadier
Commanding Can Reinforcement Units.
Convening Officer

Farnborough, Hants.
This 23rd day of Dec 42.

MEDICAL OFFICER'S CERTIFICATE

(Para 557 K.R. Can.)

I have this morning examined R-69409 Pte. Roche, R.L. of No. 4 Sub Depot, 1 C.B.O.D. and have found him free from contagious and infectious diseases and fit/~~unfit~~ to stand trial by Court Martial.

acherry Capt RCAMC

(A. Cherry) Capt., R.C.A.M.C.
MEDICAL OFFICER.

Bordon, Hants.,
24 DEC 42.

for OC
per FGCM

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT Bordon Hants (Louisburg West)
ON THE 24 DAY OF Dec. 1942

The accused B-8940.9 Pte Roche R.L. ..... Unit 4 Sub Depot, 1 CBOD

The order convening the Court and charge sheet are laid before the Court who satisfied themselves as provided by Rs.P. 22 & 23.

The accused is brought before the Court
The Medical Certificate is laid before the Court, signed by the President and attached to the proceedings.
The order convening the Court is read by the President and the accused having no objection to the President or any member of the Court, the Court is duly sworn.

The following constitute the Court:

President Maj. E.F. McCordick (RCA) Unit 1 C.A.B.U.

Members Capt. J. Lockhead ..... Unit HL1 attached CTS
Capt. G.H. Williams ..... Unit att. 1 CORU. HD CRU.

Judge Advocate - Capt Ammimison

The officers under instruction are duly sworn.

Prosecutor Lieut D.E. Lewis ..... Unit 4 Sub Depot CBOD

Defending Officer Lieut C.D. Simpson ..... Unit 4 Sub Depot CBOD.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s).
The Summary of Evidence is read, signed by the President and attached to the Proceedings.
The Prosecutor is sworn and produces AFB 296 and MFM 6.
The Court complies with R.P. 46(B)

Pursuant to R.P.37 THE ACCUSED
(a) ~~makes a statement in mitigation of punishment~~
(b) calls witnesses as to character or
(c) calls witnesses in mitigation of punishment
(d) addresses the Court by his Defending Officer
(e) ~~or in person.~~

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE AND ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Capt B.G. Douglas, 4 Sub Depot CBOD having been duly sworn states: The accused has been under my command about one year. No entries on crime sheet in that time. Employed as a driver and checker and recently recommended for a stripe. In my opinion he was a good soldier. The delay in his getting the stripe was on account of war establishment.

The Defending Officer: Accused has been in the unit for about 17 months. I have been with the accused on conveys and always found him reliable and conscientious. He

~~(To be signed by the President and attached to A.F.A.3~~ (over)

is an American citizen. Came to Canada in Sept. 1940 to join up and came overseas the following Spring. In civil life he earned about $150.00 per month. Having received hospitality from a family in Worcester he felt badly about not being able to return it and finally

(over)

committed this deed to help him repay some of the hospitality. The time he has spent in custody should be taken into consideration.

J. J. McCorduck Major
Pres.

SUMMARY OF EVIDENCE

In the case of B-89409 Private Robert Leo HOCHE, taken by direction of Lt.-Col. C. Raynor Smith, Officer Commanding, No. 4 Sub Depot, 1 C.B.O.D., R.C.O.C., Louisburg Barracks West, Bordon, Hants.

1st WITNESS GEORGE JOHN HUMPHRIES states:-

I am Managing Director of T.J. Daniels Ltd., Motor Engineers, The Motor House Garage, Bath Road, Worcester, and I reside at 63, Timberdine Avenue, Worcester.

At about 12:30 p.m. on Saturday, the 5th December, 1942 I was standing on my office steps at the Motor House, when I saw a Canadian soldier talking to my foreman, in the garage.

I saw the soldier had a haversack in his hand.

I went to them, and he said to me, "Are you the boss?" I replied, "Yes. What do you want?"

He replied, "Do you want to buy some tools?" I said, "Whose are they?" He replied, "They're mine." I then said, "Let me have a look at them."

He then accompanied me to the office, where he undid his haversack and laid the tools, produced, out on the office desk, but placed one of the inspection lamps on one side.

I said to him, "What do you want for them? I suppose about £2." He replied, "That will do." He then suggested to me that he would take £2.15.0 including the other inspection lamp, and I agreed to that amount.

I asked the soldier if they were his property, and he stated that they were.

I caused the receipt produced to be typed out; the soldier signed it, and I then handed him £2.15.0.

As he was leaving the office, I said to him, "Where have you come from?" He replied, "I can't tell you that." I said to him, "Where did you get the tools from?" He replied, "I brought them over with me."

The soldier then left the garage, and I became suspicious, so I telephoned the Police Office.

Shortly afterwards the soldier was brought back to the garage by two Police Officers, and he handed to me the £2.15.0 which I had paid him for the articles. I handed the articles enumerated on the attached receipt to P.C. Collins.

(Signed) G.J. HUMPHRIES.

George John Humphries was not called to attend as a witness due to the expense and loss of time involved, and a written statement of his evidence signed by him was read into the proceedings.

The statement was read to the accused and the accused does not demand the attendance of this witness for cross-examination.

D. P. Lewis Lieut

2nd WITNESS J.H. COLLINS, Police Constable 23, states:

Sir,

I respectfully beg to report that o
Saturday, the 5th December, 1942, I was
Police Office, when I received a teleph
Mr. G.J. Humphries, Managing Director of
Bath Road, Worcester, who informed me that he
purchased a quantity of new motor tools from a
soldier, and that the soldier was walking in the dir
of the City.

I immediately went with Detective Inspector Beasley,
To Sidbury, Worcester, where we saw a Canadian soldier.

I stopped him and said, "We are Police Officers, and
I believe you have just sold some new motor tools and two
Inspection Lamps to a man at a garage in Bath Road, in
the city." He replied, "Not me, I have just been in a
public house, trying to buy a bottle of whiskey; do you
know where I can get one from?"

Not being satisfied with his explanation, I asked
him to accompany us to the Motor House garage, upon arr-
ival there he said to me, "I will tell you the truth." I
cautioned him, and he said, "I did not like to tell you
in the street, but I stole them from a tool box at Bordon
Camp, where I am stationed."

I then interviewed Mr. George John Humphreys, who
handed to me two inspection lamps, one brush, two sets of
open ended spanners, one screw driver, one file, one ring
spanner, one roll of insulated tape, one coil of copper
wire, two A.C. spark plugs, one bulb box containing four
bulbs, and three pairs of pliers, all of which were new.

Mr. Humphreys showed me a receipt for £2.15.0 enum-
erating the tools, and which was signed 'R. Roche'.

The £2.15.0 was handed back to Mr. Humphreys, by
Roche.

I took Roche into custody, and made an examination
of his pay book and found his particulars to be as follows.

Private No. B. 89409, Robert Leo Roche, No. 4, Sub
Depot, No. 1 Canadian Base Ordnance Depot, Royal Canadian
Ordnance Corps, Bordon, Hants.

Roche said he would like to make a statement. I
cautioned him. He then made a voluntary statement, which
I wrote down in my pocket book, and which was read over and
signed by him. (See copy attached.) — Exhibit "A".

I communicated with P.C. Stratton of the Hants. Con-
stabulary, Bordon, and later a reply was received from him,
to the effect that Roche's Commanding Officer had been seen,
and requested that Roche be handed over to the Canadian Mil-
itary Police, and that copies of the evidence be forwarded
direct to the Commanding Officer.

In consequence of a telephone message sent to the
Provost Marshal No. 6, Company, London, an escort was sent
and Roche was handed over, together with the stolen property,
to Corporal Weidner of the Canadian Military Police, at 5.30
p.m. on the 6th December, 1942.

2nd WITNESS J.H. COLLINS, Police Constable 23, states:

Sir,

I respectfully beg to report that at 12.45 p.m. on Saturday, the 5th December, 1942, I was on duty at the City Police Office, when I received a telephone message from Mr. G.J. Humphries, Managing Director of The Motor House, Bath Road, Worcester, who informed me that he had just purchased a quantity of new motor tools from a Canadian soldier, and that the soldier was walking in the direction of the City.

I immediately went with Detective Inspector Beasley, To Sidbury, Worcester, where we saw a Canadian soldier.

I stopped him and said, "We are Police Officers, and I believe you have just sold some new motor tools and two Inspection Lamps to a man at a garage in Bath Road, in this City." He replied, "Not me, I have just been in a public house, trying to buy a bottle of whiskey; do you know where I can get one from?"

Not being satisfied with his explanation, I asked him to accompany us to the Motor House garage. Upon arrival there he said to me, "I will tell you the truth." I cautioned him, and he said, "I did not like to tell you in the street, but I stole them from a tool box at Bordon Camp, where I am stationed."

I then interviewed Mr. George John Humphreys, who handed to me two inspection lamps, one brush, two sets of open ended spanners, one screw driver, one file, one ring spanner, one roll of insulated tape, one coil of copper wire, two A.C. spark plugs, one bulb box containing four bulbs, and three pairs of pliers, all of which were new.

Mr. Humphreys showed me a receipt for £2.15.0 enumerating the tools, and which was signed 'R. Roche'.

The £2.15.0 was handed back to Mr. Humphreys, by Roche.

I took Roche into custody, and made an examination of his pay book and found his particulars to be as follows.

Private No. B. 89409, Robert Leo Roche, No. 4, Sub Depot, No. 1 Canadian Base Ordnance Depot, Royal Canadian Ordnance Corps, Bordon, Hants.

Roche said he would like to make a statement. I cautioned him. He then made a voluntary statement, which I wrote down in my pocket book, and which was read over and signed by him. (See copy attached.) -- Exhibit "A".

I communicated with P.C. Stratton of the Hants. Constabulary, Bordon, and later a reply was received from him, to the effect that Roche's Commanding Officer had been seen, and requested that Roche be handed over to the Canadian Military Police, and that copies of the evidence be forwarded direct to the Commanding Officer.

In consequence of a telephone message sent to the Provost Marshal No. 6, Company, London, an escort was sent and Roche was handed over, together with the stolen property, to Corporal Weidner of the Canadian Military Police, at 5.30 p.m. on the 6th December, 1942.

2nd WITNESS (CONT'D)

I respectfully suggest that copies of the evidence, together with the statement made by Roche, be forwarded to the Commanding Officer, as requested.

I am, Sir,
Your obedient Servant,

(Signed) J.E. COLLINS.

Police Constable 23

J.E. Collins, Police Constable 23 was not called to attend as a witness due to the expense and loss of time involved, and a written statement of his evidence signed by him was read into the proceedings.

The statement was read to the accused and the accused does not demand the attendance of this witness for cross-examination.

D. S. Lewis Lieut

3rd WITNESS Capt. W.A. Miles, No. 4 Sub Depot, 1 C.B.O.D., R.C.O.C.

Capt. W.A. Miles, having been duly sworn, states:-

I am Captain W.A. Miles, Officer i/c Kit Stores, No. 4 Sub Depot, 1 C.B.O.D.

We handle tools and equipment of vehicles received in this Unit and for use with Canadian manufactured vehicles.

Q.1. I show you a haversack containing a number of tools. What can you tell me about these tools?
Ans. These tools are exactly the same in appearance as those we have in our Kit Stores for use with vehicles manufactured in Canada.

Tools issued for use with British make vehicles are different from those used on Canadian made vehicles due to the fact that nuts and bolts on British vehicles are of different size from those used on Canadian vehicles. These tools which I have been shown are for use on Canadian manufactured vehicles.

ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS

W. A. Miles Capt
(W.A. Miles) Captain,
Officer i/c Kit Stores No. 4 Sub Depot
1 C.B.O.D. R.C.O.C.

4th WITNESS H-3704 Cpl. Isbister, W.L., No. 4 Sub Depot, 1 C.B.O.D.

H-3704 Cpl. Isbister, W.L., having been duly sworn, states:--

I am H-3704 Cpl. Isbister, W.L., No. 4 Sub Depot, 1 C.B.O.D., R.C.O.C., C.A.(Overseas) and on 7 DEC 42 I received Pte. Roche, R.L., B-89409, into custody with a haversack and tools.

Q.1. I show you a haversack and tools (Exhibit "B"). Can you identify these tools as the ones given to you?
Ans. They look the same as the ones that were given to me.

CROSS-EXAMINATION BY ACCUSED

Q.1. Did you check them over when you received them?
Ans. Not in your presence.

END OF CROSS-EXAMINATION BY ACCUSED

Q.2. Did you accept them in his presence?
Ans. Yes Sir.

Cpl Isbister

(W.L. Isbister H-3704) Cpl.
No. 4 Sub Depot, 1 C.B.O.D.
R.C.O.C. Can. Army (O)

The accused was asked "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused answered, "No."

The accused was asked "Do you wish an Officer to defend you."

The accused answered, "Yes."

R. L. Roche B-89409

CERTIFIED that Rules of Procedure 4 (C), (D), (E) and (G) and (F) 1942 have been complied with.

Taken down by me in the presence and hearing of the Accused, this 10th Day of December, 1942, at Louisburg Barracks West, Bordon, Hants.

(D.E. Lewis) Lieut.,
Officer Taking Summary of Evidence

LIST OF EXHIBITS

EXHIBIT "A" -- Statement by Pte. Roche, R.L., B-89409

EXHIBIT "B" -- ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~

Haversack and tools.

EXHIBIT "C" -- Receipt signed by Pte. Roche, R.L., B-89409

LIST OF WITNESSES

1. George John Humphries, Managing Director T.J. Daniels, Ltd., Motor Engineers, The Motor House Garage, Bath Road, Worcester. Address: 63 Timberdine Avenue, Worcester, Worcestershire.

2. J.E. Collins, Police Constable 23, City Police, Worcester.

3. Captain W.A. Miles, No. 4 Sub Depot, 1 C.B.C.D., R.C.O.C., Canadian Army (Overseas).

4. H-3704 Cpl. Isbister, W.L., No. 4 Sub Depot, 1 C.B.C.D. R.C.O.C., C.A. (Overseas).

Exhibit "B" [illegible]

[redacted] G "A"

I, Private Robert Leo Roche, 27 years, No. B.89409, of No. 4 Sub Depot, No. 1 C.B.O.D., Royal Canadian Ordnance Corps, Bordon Camp, Hants., make this statement voluntary after being cautioned by P.C. Collins, Worcester City Police.

About a week ago, I went to a large tool box which is situated near to the Military Transport Stores at Bordon Camp where I am stationed.

I took from the box 2 inspection lamps, 1 brush, 2 sets of open ended spanners, 1 screw driver, 1 file, 1 ring spanner, 1 coil copper wire, 1 roll of insulating, 2 A.C. Spark plugs, 1 bulb box with four bulbs and 3 pairs pliers.

I took these articles to my locker in the barrack room.

I kept them there until about 1.45p.m. on Friday, the 4th December, 1942, when I was given 48 hours leave. I took the tools with me and came by train to Worcester where I stayed the night with some friends.

At about 12.30p.m. on Saturday, the 5th December, 1942, I went to a garage in Bath Road, Worcester, and sold the articles to a man at the garage for £2.15s.0d.

Later the same morning, I was stopped by two Police Officers in Worcester and questioned about having sold some tools.

I accompanied them to the garage, where I received back the tools and paid the £2.15s.0d. to the man I had received the money from.

This statement has been read over to me, I understand it and it is true.

(Signed) R.L. ROCHE.

R.L. Roche

Exhibit "C" [illegible]

T. J. DANIEL, LTD.

THE MOTOR HOUSE

MAIN FORD DEALERS

TELEPHONE: MALVERN 1080 2 LINES

WORCESTER & MALVERN

TELEPHONE: WORCESTER 3386 2 LINES

DIRECTORS: T. J. DANIEL, P. R. HACKETT, A.C.A., A.S.A.A., G. J. HUMPHREYS

OUR REF.

YOUR REF.

DATE

PLEASE REPLY TO BATH RD., WORCESTER

5th December. 1942.

Received from the Motor House, Bath Road, Worcester. the sum of £2 15s. 0d. for tools as under which are my property entirely.

2 Inspection Lamps.
1 Brush.
2 Sets of Open ended Spanners.
1 Screw Driver.
1 File.
1 Ring Spanner.
Coil Copper wire.
1 Roll of insulating.
2 A.C. Spark Plugs.
1 Bulb box with four bulbs.
3 pairs pliers.

Private Roche.

E Roche

M.F.M. 6
(A.F.B. 122)
175M—7-41 (1219-20)
H.Q. 1772-38-1052

No. B89409 Name ROCHE R.L. Sqn., Battery, or Company } **No. 4 Sub Depot 1 C.B.O.D.** Corps

Date of enlistment } 1 Oct 40 G.C. Badges } N/A Service or Proficiency Pay } N/A

Date of last entry in Company Conduct Sheet } N/A No. and date of last drunk } N/A Period not reckoning towards freedom from extra fine } N/A Sheet No. 1. Signature O.C. Company, etc. } Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of a card or of order dispensing with trial	By whom awarded	Remarks
				No entries on completion of 6 months service 1 Apr 41					
Camp Borden Canada	11th Apr 1941	Pte		A.A. Sec 15(1)AWL from 0600 hrs 11-4-41 till 0600 hrs 14 -4-41 (AWL 3 days)	Cpl Batemen	7 days C.B.	14 Apr 1941	Lieut J.G.Lamb	3 days pay Art 149(1)(a) FR&I

Certified True Copy
W. P. Lacroix Lieut
Adjutant for O.C. No 4 Sub Depot
1 C.B.O.D. R.C.O.C. C.A.(O)
24 Dec 42

J. McCrack Major RCA
President

(P.T.O.)

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-29409	Pte.	ROCHE, R.L.	No.4 Sub Depot, 1 C.B.O.D.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this statement must be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement and referred to in the proceedings.

† See secs. 47, R.R., 1940.

* The accuracy herein stated should correspond with the entry or entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec 15 (1)	NIL times	One times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~XXXXXX XX XXXXXXXXX XXXXXXX XX XXXXXXXXXX XXXXXXX~~

or

~~XXXX XX XX XXXXX XXX XXXXXX XXXXX XX XXXXXXXXXX~~

2. ~~XXXXXXXXXXX XX XXX XXXXXXXXXXXXXXX XX~~

~~XXXXXXXXXXXXXXX XXXXXXXXXXXX XXXXXX XXXXXXXXXXXXXX

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-89409 Rank Private Name Roche, R.L. of 4th Sub Depot, 1 C.B.O.D. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 11th / 24th day of December, 1942.

Adjutant,
No. 4 Sub Depot 1 C.B.O.D.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of ..... years.

In the rank of N/A years

In the rank of ..... years.

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph completed accordingly.)

HH-105.
Plē Roche. R. L.

RECORDED AT CMHQ IN AB 160 4M 105

FIELD GENERAL COURT-MARTIAL

CPA86 (to face CAPAM) 40-P-W-B(Mtl)-44(4000) 4/38B

Convened by Order of Maj Gen G.C.M. Burns Comd 6 Cdn Inf Div dated 15 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or contingent rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
B89409	Pte	ROBERT LEO	ROCHE	21 Cdn General Ordnance Depot

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 19 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 17/46.

A1. The President, Members, waiting Member, ~~JAs if any, and Offrs under instrs, if any,~~ acct. assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 69S, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~[are]~~ acct. amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~[are]~~ acct. brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~[are]~~ acct. fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ acct.

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ acct. as interpreter? Ans ~~Interpreter is sworn.(1) Do you object to~~ acct. as shorthand writer? Ans ~~The shorthand writer is sworn.(1)~~ acct.

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JAs if any, and Offrs under instrs, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A.C. Kavanagh	Canadian Ord Corps
Member	Capt.	H. House	10 C.B.R. Bn
Member	Lieut.	M. Lamarche	10 C.B.R. Bn
Judge-Advocate	—	—	—
Prosecutor	Lieut.	J.E. Pope	11 C.B.R. Bn
Defending Offr	Lieut.	J.H. Weaver	1 CCOD

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See D1 p 3.)

A8. The accused ~~[are]~~ acct. before arraignment make(s) ~~[are]~~ acct. (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and findings are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~[are]~~ acct. arraigned (separately) ~~[jointly]~~ acct. on all charges in the charge sheet.(1) The accused does ~~[do]~~ acct. not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 856 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ acct. considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B C D E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused:

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Not Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) .....(1)
(1. Insert sentence being served, or delete, if not applicable. See RP 41(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 ~~[illegible]~~ days, of which — days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355/or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: Ten days pay forfeiture

(Sgd) ..... 19 Dec 44 (Sgd) A.C. Kavanagh Maj
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further order.~~(1) E.L.B.
(1. AA 57A. Delete if not used.)

(Sgd) E. L. Burns, Maj Gen

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B 89409 Pte Roche, R.L.	21 Dec 44	H. D. Gibson Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED. O.D. 1 CCOD

I certify that there are no illegalities or irregularities to justify withholding confirmation of these proceedings.

D.J.A.G. Sec. G.C.M. 21 A Gp

Office of Director of Civil Law

PROCEEDINGS REVIEWED IN ACCORDANCE WITH QR & O for Active Army 2 H Jan 45 PRESIDING OFFICER, JAG BRANCH, O.M.H.Q.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see* RP 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see* RP 35(A). *As to plea when sentence may be death see* RP 35(D).

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see* RP 37 (A) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see* RP 59, 60(C) ; *powers and duties of JA see* RP 103 ; *duty of Prosecutor see* RP 60(A) (B) ; *duty and privileges of accused and Defending Offr see* RP 60(C), 87(C), 91, 92 ; *swearing and withdrawal of witnesses from Court see* RP 81, 82 ; *questioning of accused see* RP 80, 87(C), 92(B), *and of witnesses see* RP 83-85 ; *calling or re-calling of witnesses by Court, etc, see* RP 75-79, 86, 116 ; *use of Summary of Evidence at Trial see* RP 17(E) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see* RP 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider this statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have not been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (and (his) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the FIRST charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed as to the ~~charge(s), and allowed~~ on the FIRST charge(s), and that, accordingly, ~~the trial will proceed on the further~~ the accused is (~~are~~) found Not Guilty on the ~~other~~ charge(s).(4)
(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. .....
Do you intend to call witnesses on your behalf ?
Ans. .....
Are they witnesses as to character only ? Ans. .....
(1. RP 115. 2. RP 40(A), see 60(C). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf s 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 353 or AFB 296. 2. MEM 6. 3. RP 46, KR Can 358. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) and in mitigation of punishment ?(1) Ans. No (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(2), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 136, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B.89409 Pte Roche R.L., Overseas Detachment 1 Canadian Central Ordnance Depot, a soldier in the Canadian Army Overseas is charged with:-

FIRST CHARGE
A.A. Sec 40

WHEN ON ACTIVE SERVICE
COMMITTING A CIVIL OFFENCE that is to say
ATTEMPTED THEFT
in that he
In the Field (Brussels, Belgium) at about 2300 hours on 3 Nov 44 did attempt to steal Jeep No. 30323795-5, property of United States Army.

SECOND CHARGE
A.A. Sec 19

WHEN ON ACTIVE SERVICE
DRUNKENNESS
in that he
In the Field (Brussels, Belgium) at about 2300 hours on 3 Nov 44 was drunk.

J B. Allan Col
Officer Commanding
Overseas Detachment
1 Can CCD

In the Field
16 Nov 44

Approved KR(Gen) 540

Major
DJA

To be tried by Field General Court Martial.

(E.L.M. Burns) Maj-Gen
OIC
Can Sec GHQ 1 Echn - 21 A Gp

In the Field
Dec 44.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.		Surname.	Unit.
B-89409	Pte		R	L	ROCHE	Overseas Detachment, 1 Cdn Central Ordnance Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 15 Dec 44 endorsed by me, (~~as appropriate~~ I am ready for trial), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the said trial for reference to a superior qualified authy~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~There being unable to appoint (a) three Offrs to form the Court, (b) a 2d Offr as President, for the reasons therefor stated herein.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~Duties appointed Judge Advocate in respect the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	A.C. Kavanagh, MC	OOB of C X-4, 11 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lieut	(to be detailed by OC 10 CBR Bn)	
Capt or Lieut	(to be detailed by OC 10 CBR Bn)	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut	(to be detailed by OC 10 CBR Bn)	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
----	----	----

On Active Service in the Fd

in Belgium (Country.)

Dat 15 Dec 44

(Signed personally. RP 105 fn 2.)
(E.L.M. Burns)

Maj-Gen (Rank.)

Commanding OIC, Cdn Sec GHQ 1 Ech - 21 A Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1597 (6148)

Approved
Maj

19 Dec 44

I hereby certify that I have medically examined B 89409 Pte ROCHE, R L, This date, and found him fit for Court-Martial.

Signature of Medical Offr

Witness for the Prosecution

Pte 3 Class W. J. Zawislak, 245 M.P. Coy "A" A.P.O. 228, U.S.A. Army has been duly sworn states

I was acting on information from civilian police. I came to the Jeep, there was a soldier whom I recognize as the accused. We had one hand on wheel (steering). I asked him what he was doing in the jeep. "I'm getting ready to leave" I grabbed him by the collar and took to N.G.

Q.1 - Was he drunk?

A.1 - He was under the influence of drink because his eyes were glassy and he could not talk properly.

R.P. 83(b) complied with.

Submission of defense for dismissal of 1st Charge

From evidence brought up, it seems that the accused was under the influence of liquor. It seems also that the accused didn't realize the importance, the seriousness of his offence being under the influence of liquor. There is no evidence that the accused attempted to steal the jeep or even intended doing so & I ask the court to dismiss the charge.

Ex "B"

STATEMENT AS TO CHARACTER AND PARTICULARS
OF SERVICE OF ACCUSED.

.....B.89409.Pte. Roche, R.L.. OVERSEAS DETACHMENT, 1 CDN.C.O.D., RCOC.

1. The following is a fair and true summary of the entries in the Regimental conduct sheet of the accused, exclusive of convictions by a court-martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:-

	Within last 12 months.	Since Enlistment
For ...AWL (AA Sec 15(1))...	Three (3) times	Five (5) times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct.

or

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has ~~XXX~~ been previously convicted,

or

previous convictions of the accused by a court-martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time,

or

The accused at the present time is under sentence for .N/A.....
.....N/A.....beginning on the.....N/A.day of .....N/A.....

4. The accused has been in confinement, awaiting trial on the present charges, for ....Nil..... days in civil custody.
and .....21 days..... days in military custody.

Total ...21 days.....days.

of which .....Nil.....days were spent in hospital.

5. The present age of the accused according to his attestation papers is ...30 yrs and 27 days as of 25 Nov 44.

6. The date of his attestation specified in his attestation papers is ...~~XXXXXXX~~..1 Oct 40....

A.C. Fawcett

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .....N/A.....

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs, 1 mos, 25 days years, service. as of 25 Nov 44.

9. The accused is entitled to reckon .....N/A..... years' service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~is entitled to~~ no military decoration or military reward~~or is in possession of or entitled to~~

11. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of promotion.

In the rank of , years,

In the rank of , years,

In the rank of , years,

The above statement, with the schedule of convictions and of ~~no~~ cases in which trial has been dispensed with, in respect, marked ...., signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court-Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name B.89409 Pte. Roche, R.L. of the Overseas Detachment, 1 Cdn. COD. RCOC

NOTE.--A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and Place of Trial, or summary award, or of order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
F.C.G.C.	Border, Thaw, Eng. 24 Dec 48	Army Act, Sec 18(4)	GUILTY - 90 days detn.	

I HEREBY CERTIFY that the foregoing Schedule of convictions and despensations with trial is a true extract from the regimental books in my custody.

Signed this ..... day of ..... W. Rompreston Lt.

CERTIFIED TRUE COPY

3/17 MFM 6 (AFH 122) 40/PAS/156 (5418)

No. B.89409 Name ROCHE, R.L. | Sqn, Battery, or Company | Corps R.C.O.C. | Date of enlistment 1 Oct 40 | QC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc W.J.Davies Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				NO ENTRIES ON COMPLETION OF SIX MONTHS SERVICE 1 Apr 41 K.R.(Can) 1524 & CARO 319					
Camp Borden.	11 Apr 41	Pte.		AA Sec 15(1) AWL ffom 0600 hrs 11 Apr 41 till 0600 hrs 14 Apr 41 Absent 3 days.	Cpl Bateman	7 days C.B.	14 Apr 41	Lieut J.S. Lamb	3 days pay FR&I 149(1)(a)
Field	7 Dec 42	Pte.		AA Sec 18(4) WOAS Guilty (Stealing Public Property)	Documentary	90 days Detn. & 90 days pay FR&I 149(1)(b) remission of 28 days earned. Rules for Military prisons etc.	24 Dec 42	F.G.C.M.	AW Peters Lieut 18 days pay FR&I 149(1)(c)
Field	27 Mar 43	Pte.		AA Sec 15(1) AWL from 2359 hrs 27 Mar 43 till 1950 hrs 30 Mar 43. Absent 2 days 19 hrs 51 mons.	Sgt. Laru Cpl.Fisher.	3 Days pay FR&I 149(2)	31 Mar 43	Lt.Col P.M. Irwin	3 days pay FR&I 149(1)(a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness less	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order quashing same	By whom awarded	Remarks
Field	15 May 43	Pte.		AA Sec 15(1) AWL from 0800 hrs 15 May 43 till 2145 hrs 1 Jun 43. Absent 17 days 13 hrs 45 mins.	Sgt. Grant Sgt. Barnes	18 days pay FR&I 1hg(2)	2 Jun 43	Lt.Col P.W. Irwin	18 days pay FR&I 1hg(1)(a)
Field	4 Jul 44	Pte.		AA Sec 15(1) AWL from 2230 hrs 4 Jul 44 till 1700 hrs 9 Jul 44. Absent 18 hrs 30 mins.	Cpl. Washington Sgt. Smith	7 days pay FR&I 1hg(2)	10 Jul 44	Major AWL Sanders.	1 days pay FR&I 1hg(1)(a)
Field	23 Jul 44	Pte.		AA Sec 15(1) AWL from 2230 hrs 23 Jul 44 till 2030 hrs 25 Jul 44. Absent 1 day 22 hrs	Cpl. Washington CSM Galloway	14 days pay FR&I 1hg(2)	26 Jul 44	Major AWL Sanders.	Forfs 2 days pay FR&I 1hg(1)(a) Total Forfs 16 days pay.
Field	20 Aug 44	Pte.		AA Sec 15(1) AWL from 0630 hrs 20 Aug 44 till 2230 hrs 20 Aug 44. Time absent 16 hours.	Sgt.O'Grady Col.Beardsley	14 days F.P. 14 days pay FR&I 1hg(1)(b)	21 Aug 44	Major AWL Sanders.	Forfs 1 days pay FR&I 1hg(1)(a) Total forf. 15 days pay.

CERTIFIED TRUE COPY
of Document in my possession.
Signed.....
Officer i/c Regt'l Records (W.J.Davies Capt.&Adjt.) 11 Dec 44.

Ex A.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B.89409 Pte Roche R.L. on strength Overseas Detachment, No. 1 Canadian Central Ordnance Depot, a soldier in the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS

No. 33009513 P.f.c. Walter J. Zawislak, 295 M.P. Company, Detachment 'A' A.P.O. 228, United States Army having been duly sworn states,

"I was inducted into the United States Army at Fort Meade, Maryland, April 16, 1942. I have been with my present outfit for the last two years.

While I was on duty at the Information Desk, H.Q. 295 M.P. Coy, Detachment 'A' United States Army, Brussels, Belgium on 5 November 1944, acting on information received I took my flashlight and went out of the Information Office to the street and found a Canadian soldier seated at the wheel of our Jeep, a Military Police vehicle bearing United States Military Police sign and veh number 20383795. He had his left hand on the steering wheel.

I asked him what he was doing in the jeep. He answered, "I am getting ready to leave." I said, "You will not leave in this jeep." I took him by the arm and dragged him out of the seat, and brought him into our Headquarters."

Q.1 Do you now recognize the accused in this room as the Canadian soldier who was in the jeep on the night of 5 November 1944?

A.1 Yes sir.

Q.2 Did you hear the accused trying to start the vehicle?

A.2 No, but as the vehicle was immobilized with the rotor removed, it would not start.

Q.3 Would you say that the accused was drunk and if so, how could you determine this fact?

A.3 I would say he was under the influence of drink because his eyes were glassy and he could not talk properly, and when he tried to walk into our H.Q. I had to help him.

The accused cross-examines the witness,

Q.1 How could you tell in the dark that I was trying to start the vehicle?

A.1 I flashed my light on you and your head was turned to right looking for the starter or some of the switches and your left hand was on the wheel.

Q.2 Did you think I was too drunk to drive the vehicle?

A.2 Yes.

Walter J. Zawislak

(Sgd) P.f.c. Walter J. Zawislak

(PTO)

The accused was cautioned as follows:

Q. Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I do not wish to make any statement.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure (c)(d)(e)(f) have been complied with.

In the Field
(Brussels, Belgium)
14 November 1944

W. H. Preston Lieut.
(W. H. Preston) Lieut.
(Main) HQ OD 1 CCOD

6 Copies

Summary of Evidence

Summary of Evidence in the case of B89409 Pte Roche R.L. on strength Overseas Detachment No. 1 Canadian Central Ordnance Depot, a soldier in the Canadian Army Overseas

The Commanding Officer directs that the evidence be taken on oath.

First Witness

No. 33009513 P.F.C. Walter J. Zawislak 295 M.P. Company, Detachment 'A' A.P.O 228, United States Army having been duly sworn states.

I was inducted into the United States Army at Fort Meade, Maryland April 16 1942. I have been with my present outfit for the last two years.

While I was on duty at the H.Q 295 M.P. Coy. Detachment 'A' United States Army, Brussels Belgium on 3 November 1944, acting on information received I took my flash light and went out of the Information Office to the street and found a Canadian soldier seated at the wheel of our Jeep a military Police vehicle bearing United States Military Police sign and Usn number

20323793. He had his left hand on the steering wheel.

I asked him what he was doing in the jeep. He answered, "That he was getting ready to leave." I said "That he would not leave in this jeep." I took him by the arm and dragged him out of the seat, and brought him into our Head quarters.

Q. 1. Do you now recognize the accused in this room as the Canadian soldier who was in the jeep on the night of 13 November 1944?

A. Yes sir.

Q. 2. Did you hear the accused, trying to start the vehicle?

A. 2. No, but as the vehicle was immobilized with the rotor removed, it would not start.

Q. 3. Would you say that the accused was drunk and if so how could you determine this fact?

A. 3. I would say he was under the influence of drink because his eyes were glassy and he could not talk properly and when he tried to walk into our H.Q. I had to help him.

The accused cross-examines the witness

Q.1. How could you tell in the dark that I was trying to start the vehicle.

A.1. I flashed my light on you and your head was turned to right looking for the starter or some of the switches and your left hand was on the wheel.

Q.2. Did you think I was too drunk to drive the vehicle?

A.2. Yes.

P. Sgt. Walter J. Zaniolak

The accused was cautioned as follows.-

Q. Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I do not wish to make any statement.

The accused does not call any witnesses

I certify that the foregoing Summary of Evidence consisting of ~~five~~ four pages was taken down by me in the presence of the accused and that Rules of Procedure (C)(D)(E)(F)(~~G~~) have been complied with.

In the Field (Brussels Belgium)
14 November 1944

W Ron Preston L-
H.Q. (Main) O.D. 1 CCOD.

5A-63.

Re. Rochefort, A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 55637 PTE ROCHEFORT A.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	R.R. SECTION	NOT GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 42 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for ~~six~~ (6) months

(Sgd) N/A Judge-Advocate, if any. 5 MAR 45 Date awarded. (Sgd) D. Mackenzie President. (RP 45, 50.) Major

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) (1. AA 57A. Delete if not used.)

Date (Sgd) E.A.M. Burns

Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B 55637 PTE ROCHEFORT A.	21 MARCH 45	J. Sutton Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 19 APR 1945 CMHQ

RECORDED AT CMHQ IN AB 169. SE 63

FIELD GENERAL COURT-MARTIAL

CPA98 (To Use) of AFA81 40/P & B/1608 16(44) 4/38B

Convening Officer MAJ-GEN E.A.M. BURNS CDN SEC 1 ECH Comd HQ 1 CDN A GP dated 21 FEB 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B55637	PROCEEDINGS REVIEWED Capt J. Sutton 25 Apr 45	ARMAND	ROCHEFORT	1-3 AIST AIG BRET C.I.C PATIENT AT No 2 CONVALESCENT DEPOT ECHAIE

PROCEEDINGS OF THE CONVENING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the ~~Field~~ (Country) BELGIUM on (date(s)) 5 MAR 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (if) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to N/A as interpreter? Ans N/A

The Interpreter is sworn.(1) Do you object to N/A as shorthand writer? Ans N/A

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	D. MACKENZIE	ESSEX DOT ATT HQ 1 CDN INF BDE
Member	CAPT	E.A. BAULARGEON	1 CDN DISC CENTRE
Member	CAPT	E.B. VAN DINE	1 CDN DISC CENTRE
Judge-Advocate	N/A	N/A	N/A
Prosecutor	LT.	G.E. COLLINS	ATT CANSEC 1 ESSEX 1 A SIG REGT
Defending Offr	CAPT	M. ROUSSEAU	1 CDN CORPS

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B55637 PTE ROCHEFORT A. before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RQ cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2-E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"A" Vol III Page 52

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement?(1) Ans.....(2)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets or Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (NO) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The ~~Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the~~ .....charge(s).(2) The Court is closed, and considers the submission.(3) ~~The Court is re-opened, and the President announces that the submission is disallowed on the~~ .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para. if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. WITNESS ON OATH. Do you intend to call witnesses on your behalf? Ans. NO. Are they witnesses as to character only? Ans. N/A.
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.5*

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the FIRST AND SOLE charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copies~~ copy of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 62 and Ex 63 respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. YES. THROUGH MY DEFENDING OFFICER.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

The Court considers that the accused should be examined by a Psychiatrist.

Thomas Mackenzie
Major

No. 2 Canadian Convalescent Depot
R. C. A. M. C. C.A.(O.)

C H A R G E S H E E T

The accused, B.35637 Private HOCHEREAU Armand, a patient at No.2 Convalescent Depot,R.C.A.M.C., X-8 List Algonquin Regiment, C.I.C., a soldier of the Canadian Army Overseas is charged with:

Sec. 40
Army Act

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD ORDER AND
MILITARY DISCIPLINE

in that he

In the Field, on 22 January 1945, was improperly in possession of public property, i.e. two (2) army issue blankets.

I Sutton

(I.Sutton) Lieut.Colonel,
Officer Commanding,
No.2 Convalescent Depot,
R. C. A. M. C.,C.A.(O.).

In the Field
24 Jan 45.

To be tried by Field General Court Martial

E Lin Burns

(E.L.M. Burns) Major-General
GO i/c
Cdn Sec 1 Ech - HQ 21 A Gp

In the Field
27 Feb 45

CFA80 (In lieu of AFA81)
40/PAM/1697 (2008)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-55637	Pte	Armand	ROCHEFORT	X-3 List Alg Regt CIC patient at No 2 Convalescent Depot RCAMC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 28 Feb 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reasons to be stated hereafter~~.
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~Unless appointed as Judge-Advocate-General, the Offr mentioned hereunder~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D. McKenzie	Essex Scots att 2 CBRG

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	F.A. Baillargeon	1 Cdn Disc Centre.
Capt	E.B. Van Dine	1 Cdn Disc Centre.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in (Country.)

Date 28 Feb 45

(Signed personally. RP 105 fn 2.)

(E.L.M. Burne) Maj-Gen (Rank.)
~~Commanding~~ GO i/c Cdn Sec 1 Ech HQ 21 A Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Approved:

(E.W. Howard) Major
DJA

DM

MEDICAL OFFICERS CERTIFICATE

(KR(Gen) Para 557)
(CURQ CL 173)

I certify that I have this day examined B55637.
(No.)

Pte ROCHEFORT, A - and in my opinion he is
(Rank) (Name)

fit to undergo trial by Court-Martial.

Station Field

Date. 5 Jan 45

[signature] Capt RCAMC
Medical Officer
(unit) HQ 2 CBRG.

1. B 55637, Pte Rochefort A.
Alg. Reg't - att 2 Cdn ~~Gen Hosp~~ Conv. Depot

D-2 Prosecutor's Opening Address

The production of the blankets has been waived by the Defending Offr who has agreed with the prosecution that the 2 blankets referred to in the charge are in fact Public Property. This fact is not in dispute

---

D-3
1st Witness for The Prosecution

G.28072 RQMS Sansom, T.W., No. 2 Cdn Conv. Depot, RCAMC having been duly sworn states,

I recall the a.m. of 22 Jan 45. I was employed as RQMS at 2 Conv. Depot. On that a.m. about 1000 hrs I was walking from my office to Central Hotel down the back street in Knocke-sur-Mer.

I produce sketch of section of town of Knocke-sur-Mer which is Exhibit "A".

My office faces on the Sea and I walked down Rue Leopold II to rear entrance of Central Hotel. My office is in Grand Hotel and my QM stores are next to the office. As I drew near to the rear door of the Central Hotel I saw 2 blankets

lying on the sidewalk. They were ordinary army blankets. As I arrived at the blankets, the accused came out from the hotel. I recognize the accused as the man who came out of the Hotel. The accused picked up a blanket. I inquired what he was doing with the blanket; he told me he had just stepped out and saw the blankets there. We looked up at the windows and talked casually of how they happened to be there. I then told him to stay with the blankets until I came back. I went to Div. Orderly Room in Central Hotel. It is Orderly Rm of 2 Div. of Comm. Depot Org. I called to CSM Peterson who is in the Ord. Rm. I just stepped to the door. He came with me to the rear door and the accused and the blankets were gone. I saw nobody that I noticed particularly - the corridor when I went for CSM Peterson. CSM Cannon came behind us. I noticed him as we got back to rear door of Hotel. I went back to QM office. When CSM Peterson and I went to where the blankets had been there was nothing to be seen. It took me about 2 minutes to get from rear door of hotel to door of Ord Rm and back to rear door again. CSM Peterson came immediately. I didn't see CSM Cannon in the corridor when I went to get CSM Peterson. I beckoned to Peterson and said

come here. I don't know what tone of voice I used.

Cross Examination:

The blankets were 20 ft. away from me when I first noticed them. The accused was not on the sidewalk at that time. He was coming out of the Capital Hotel door when I first saw him. He lived there at that time. I spoke to him as he was picking up a blanket. I asked him what he was doing. He said he had just stepped out and had seen the blankets there. He didn't seem to be nervous. The approx length of the hall inside the Capital Hotel from back door to front door is 75 yds. CSM Peterson's office is off that corridor. It has a door. When I got there the door was partly open I think there was someone else in the office beside CSM Peterson. I said when I arrived at the office: "Pete will you come here a minute please." He came immediately. There were soldiers in the corridor at that time. I don't know how many. I had no difficulty reaching the office. Just before I left to go to CSM Peterson's office I said to the accused "Stay with the blankets until I come back." He said nothing to me at that time. I cannot be sure the accused understood the order I gave him. From my office to

The back door of Central Hotel is approx. 200 yards. From front door of Central Hotel to my Office is about the same distance. I did not see the accused after I left him with the blankets. The accused and I both looked at the windows of the 1st, 2nd & 3rd stories of the Central Hotel. We saw nothing. I did not see the accused run away with blankets that day. He was not in improper possession as far as I know.

Re examination:

C&M S McKinnon is in charge of issuing blankets to in-coming patients. They are issued from Q.M. Stores. Q.M. Stores face on the sea. Blankets are kept in rear of stores entrance on Rue du Congo. The proper place to "turn in" blankets is at the blanket section but he could turn them in through the Q.M. office.

By the Court:

I did not check the accused's kit. It was checked by C.S.M. Cannon. The Central Hotel is used for patients. I do not know which floor the accused was living on. I do not know how long he had been a patient. I did not know him before this occasion. The Depot has been losing quite a few blankets in the last few months. He actually picked up a blanket when I spoke to him. He did not hesitate at all before he picked up the blankets. One blanket was near the bldg and one in the centre of the sidewalk. They were about

3 or 4 feet apart.
RP 83(B) complied with.

2nd Witness for the Prosecution.

CSM Paterson F. J. — G-28089, No 2.

Can Conv. Depot having been duly sworn states.

I am CSM of B Coy - 2 Div at Conv. Depot. On 22 Jan 45 at approx 1030 on checking the Coy lines I met the accused and asked him his name and what he was doing in my coy lines. He didn't give me a very satisfactory answer. I then told him to report to his own coy lines. I completed my tour at approx 1045 hrs I reported to Div Ord Room. It is 2 Div Ord Rm.

I recognize the sketch Exhibit "A". I recognize the Div Ord Room on Exhibit "A". The coy lines are in Central Hotel. The coys belong to 2 Div. Each coy had a different floor. My coy, B Coy, had 1st floor. I did not know what floor the accused should have been on. I had just arrived at Div Ord Rm when RQMS Sansom reported to me that a soldier was at the rear entrance. He also told me there were 2 blankets there and that he instructed the man to wait until he had returned. We immediately proceeded to rear entrance. The soldier and blankets had

disappeared. CSM Cannon came behind me. I saw no one I remember in the corridor. I did not see the accused in the corridor. I saw no one carrying a couple of blankets in the corridor. I then proceeded from the rear entrance through the corridor to the front entrance alone. I walked from the rear entrance to Rue Coil Rue and ran from there to front entrance. I ran because I thought if the man with the blankets went around the hotel from the rear that I could catch him at the front of the hotel. I saw the soldier with blankets under his arm at the front of the hotel. The accused is that soldier. I saw him with blankets under his arm. He was across the street and slightly to the right of the front entrance. I mark the position on "sketch A". He would be on the right side of an imaginary line running through the corridor from front to rear and extended to the block opposite. I shouted to him to come back. He came back. I took him to Rue Coil Rue and placed him under close arrest. I did not ask nor did he say where he was going. Blankets are drawn from Blanket Dept in the rear of QM Stores. There is an entrance to Blanket Stores from Rue du Congo. Blankets are turned in there. I have conducted groups of patients to drawing and turning in blankets.

I take them from Central Hotel to Rue du Congo entrance of Blanket Dept. I have never taken them to front door of QM Office. I have ~~never~~ seen individuals turn in ~~blankets~~ But never blankets. ~~with~~ other equipment in QM Office. When RQMS Sansom called me I was standing in ~~the~~ office. He did not come in the room. I could see out in the corridor. The door was open. I saw no one in the corridor going by as I was talking to Sansom. I didn't notice CSM. Cannon until we arrived at rear entrance. We walked there. We spent about 2 minutes at the rear entrance looking for him. There is a clear ~~entrance~~ view both ways to each corner. The accused's room is not on my coy lines floor.

Cross Examination:

I arrested the accused. At that time I wouldn't say that he was out of breath. I was in Div Ord Rm when Sansom came to me. There is another room on that floor used by CSM. It is CSM's office. It is not possible to go from rear to front of bldg. except than by the corridor. I cannot say how far it is from rear of bldg. via Rue Leopold II and Rue Tabora and Main St to where the accused was when I first saw him. The main routes by army pers from Central to Grand Hotel (HQ Conv Depot) is by the Main Street. It is possible to go from rear of Central

Hotel to QM Stores quite easily. Going to QM Stores from Central Hotel you may take either route. I don't know how many were in the Ord Rm when Sawson called me. I had just arrived. I did not look towards the front door when I came out of the Ord Rm. We walked to rear door. I don't know the approx distance between Ord Rm & rear door. Lights are always on in the corridor from Div Ord Rm back. He was to my right across the street. I don't know how far to the right. When I saw him first in my coy lines he had no blankets. There were no blankets reported missing to me that day. I spoke to the accused when I arrested him. I don't remember if I asked him why he was carrying blankets. I asked him if he were the same man I talked to earlier in the morning in my lines and he replied yes. I did not ask him where he was going with the blankets.

By the Court:

The patients would be on parade at that time in the a.m. They were on parade when I inspected coy lines. I didn't notice any other patients in coy lines when I saw the accused. We have a sanitation squad. We had no line or hut orderly. We have them now. The accused was walking towards the sea when I saw him on Main

Street. He was at the Jct of Main St and Ave de la Reine when I stopped him. There are no billets etc of Conv. depot on Ave de la Reine. The Rue Tabora is just an ordinary street.

RP 83(B) complied with.

3rd Witness for the Prosecution

L-22062 CSM Cannon T., No 2 Coy Conv. Depot having been duly sworn states: I am in charge of Conv. Depot. At approx 1030 hrs on 22 Jan 45 I was in CSM's office in Central Hotel. I recognize the office on Exhibit "A". Previous to that Pte Rochefort, the accused whom I now recognize, was absent off parade. The parade was at 0830 hrs. After the parade was over I went to his quarters which was in Room 108 on 2nd floor at the back of the Central Hotel. The bottom floor is the ground floor. (Witness marks accused's room on Exhibit "A") It is directly over the rear entrance. It faces on Rue Leopold II. He was in bed. I asked him why he was in bed. he replied that he was on excused duty. I informed him that he was not

On excused duty and he was to report to me in the CSM's office. In the meantime I had admin work to do which prevented me from remaining in CSM's Office. I was in the Office when at approx 1030 hrs. I came outside the Office and was there approx 5 minutes. I was speaking to a patient for about 2 or 3 minutes. I was on my own for awhile when RQMS Sawson went to Div Ord Rm on [redacted] for CSM Peterson. They went out to back entrance. I saw RQMS Sawson go to the entrance of the Ord Rm from where I was standing outside the CSM's Office. I went to the rear of the hotel as a result of the conversation I overheard between Sawson and Peterson I did not see the accused. I was immediately behind the RQ and CSM. I did not see the accused on the way. I saw no one with any blankets. When I got to the rear of the hotel the RQ said "There is the place" I left the men with the blankets". We searched around the rear of the Hotel. CSM Peterson left us and went to the front of the Hotel through the corridor. When we found no trace of a soldier with blankets I returned to Div Ord Rm where I

Saw CSM Peterson with the accused and 2 blankets. I recognized the accused as a patient in my coy. After CSM Peterson had placed him under close arrest I proceeded to the accused's quarters. He did not come with me. I went to the accused's bed and found he was 1 blanket short. They were issued with 4 and he had 3. I checked the bed opposite and on the lower bunk were 2 blankets missing. The accused had been in my coy about 4 days. There is no guard in the corridor of the bldg in the day time. I went direct from ~~Div Cmd Rm~~ CSM's Office to back of hotel.

Cross examination:

When I saw the accused in bed that a.m. he was the only one in the room. I think he was asleep. I was in the Cmd Rm, the CO's Office and CSM's Office. I ~~was~~ am almost sure I did not leave the bldg between the time I saw the accused in bed and followed CSM Peterson to the ~~rear~~ of the Hotel. I did not spend part of my time on the 1st floor. I was in the CO's Office ~~about~~ only 3 minutes. I was in Div Cmd Rm maybe 10 or 15 minutes. By approx 1030 I mean it wasn't 1000 or 1100 hrs. It was around 1030 hrs. I have a sense of time. I searched the back of the Hotel not more than 5 minutes. CSM Peterson left the Rm and myself when we started to search. From the rear

to front door via Tabora St is approx 100 or 125 yds. It's 50 to 75 yds through the Hotel. It is not more than 150 yds via Tabora St.

By the Court.

I told the accused to get out of bed and report to me at the office. It was about 0900 hrs.

~~[illegible] blankets~~

RP 83(B) complied with

4th Witness for the Prosecution

H-93444 Pte Cars J A, X-3 List RCMSC, patient in 2 Conv Depot having been duly sworn states:

I was patient in 2 Conv Depot 22 Jan 45. I sleep in Room 108. I recognize the accused. He slept in my room. I was on parade 22 Jan 45. On that a.m. I went on parade at 0835. I had 4 blankets and I know this because I made my bed and we're supposed to have 4. Came back to room at 1130 hrs. I went to my bed. I noticed 2 blankets missing. All beds were made up at 0835 except Pte Rahefort who was still in bed. Everyone makes own bed at all times. There is no room orderly. I was not in my room between parade and 1130. My kit

was on my bed and my big pack was down flat. I reported the missing blankets to CSM Cannon. I did not see the accused after 0825 hrs ~~that~~ until that day. CSM Cannon had 2 blankets in his office which he gave me. They were army blankets.

Cross examination:

There are 6 in the Room 108 altogether. I have no reason to believe the accused took my blankets. I did not know him until I had been to Conv. Depot. On the a.m. of 23 Jan 45 the 4 other soldiers were with me at the Casino doing P.T. They were with me all the morning. I was not called any time since 22 Jan to identify blankets.

By the Court:

I did not recognize the 2 blankets CSM Cannon gave me as 2 I had lost. They were just 2 blankets. The blankets on my bed were folded separately and piled one on top of the other.

RP 83(B) complied with.

1st Witness for the Defence

The accused, B 55631 Pte D Rochefort Alq Regt att. 2 Can Corps Depot having been duly sworn states:

On 22 Jan 45 I had understood from the MO that I was to be excused duty that day. At the a.m. I didn't get up. CSM Cannon woke me. Told me to report to CSM's Office. I went down as soon as I dressed to wait for Sgt Major. I noticed I had no gloves. I started back upstairs to get them. Without thinking, instead of going up to my floor I followed the 1st floor and met CSM Peterson. I walked through to the end and turned around to come back. CSM Peterson asked what I was doing. I told him I had missed my floor. I went up to my floor and came downstairs again. I was walking up & down the corridor on the ground floor waiting for CSM Cannon. He wasn't around. I thought he was outside. I opened the back door to see if he was there. I noticed 2 blankets on the sidewalk. I walked over to them. I saw a Sgt Major. I didn't know at the time who he was.

I examined them to see how many there were. He asked me what I was doing. I answered I had just got there as he did. We both looked at the windows then he talked but I couldn't understand very well. It was something about where they were coming from and then he opened the door and went into the hotel. I waited for awhile. I didn't know what to do. Then picked up the blankets, walked through the corridor up to CSM's office. Nobody was in there. Thought of taking the blankets to QM Stores. Wasn't on side. I wasn't sure where the blanket section was. I knew the general direction but wasn't positive. We had drawn blankets there 2 days before. I was just about to cross the street when the CSM called me back. Then he brought me to the Old Run and put me under close arrest. He asked me if I remembered meeting him awhile before. I said yes. I was alone in the main floor of the hall. There was a soldier walking up and down the hall. There was a soldier in the lounge. The lounge is the 1st door on the right hand side as you come in the rear door. I couldn't say if there was a CO's Parade. I've been

in the Army since Sept 1941. Landed in France 3 July. Was in front line from then to end of Dec. I was log runner in the Reg't. I have not been wounded. I was in ~~Conv. Depot~~ Sec Hosp because I had nervous breakdown. I arrived in Hosp around 22 Dec. I reached Conv. Depot on 15 Jan.

Cross examination:

I waited outside with the blankets about 3 minutes before I decided to take them to QM Stores. On the way through the corridor I stopped in CSM's Office. I did not see RQ in the corridor. I don't know if Dis Ord Rm door was open. I did not see CSM Cannon in front of his office nor in the office. I wasn't too sure where the Blanket Stores are. I went across the street to see if I get some information where the stores were. I drew blankets from a kind of garage. I went across the street to get a good look at the area. I went down to the right because there was traffic. I wanted to go toward the sea. I don't think I was far down the street to the right. I wouldn't be so crazy to walk in the street with blankets and soldiers around. I did not

see any Sgts Major in the corridor. I never have passed them without seeing them. I did not go around the block via Rue Tabora. I'm positive I didn't. I'm positive I went through the corridor. I've never noticed that my room is directly above the door at the rear of the hotel.

By the Court:

I landed with the Algonquins. I was with them up to the time I went to Hyps. I was a runner for a Rifle Coy. The M.O. told me I didn't have to go on duty that a.m. He told me the a.m. before on Sick Parade. The M.O. doesn't give any slips to excuse duty. I was 4 or 5 ft. from R.Q.M.S. when we were talking. It is a windy town and I only got a wool blanket here and there. I had 4 when I left the a.m. I had only 3 at 1500 hrs. We eat in Central Hotel.

RP 53(B) complied with

Re Rochefort. 5 May 45
FGCM

Prosecution - Summing up:

Samson accused standing by two blankets at rear of hotel, then walks into corridor and asks for Peterson at Div orderly room.

Peterson says that he immediately accompanied Samson to rear of hotel.

Cannon at this time was outside of his office, in corridor and overheard request for Peterson.

As a result all three CSM's proceed to rear of hotel where accused has left with blankets also missing.

All three CSM's fail to see accused go through corridor with blankets under his arm.

Peterson walks halfway and runs halfway back through corridor and arrives at front door. He sees accused across street at a point to the right of an imaginary centre line as you look out of the front door. He then calls accused back and places him under arrest for being in possession of the two blankets.

Prosecution has produced 3 witnesses who all claim to have been in corridor at approximately time accused states he passed through. This applies particularly to evidence of CSM Cannon who was standing outside of his office door when Samson called for Peterson. It is up to the Court to decide whether from this evidence, accused is correct in his statement that he did pass through. If he did it is the prosecution's submission that a man

about to proceed left to Grand Hotel, would not go to his right. accused was across street to the right as you looks from front hotel door. accused says that he was across there so that he might get a better view of Grand Hotel in order to recall portion of that building which contained blanket stores. In this point the prosecution suggests that accused would get a much poorer view of Grand Hotel by going down the street to his right. Each step to the right would decrease the angle of vision which ~~[illegible]~~ would be the opposite of what the accused really wanted. The prosecution suggests to the court that the evidence shows that the accused could not have gone through the corridor in question. The accused denies, in his cross examination, that he took any other route. It is thus unnecessary to query the correctness or plausibility of another explanation on the part of the accused. The prosecution has produced evidence to the effect that these 3 CSM's were in a position to see the accused go thru the corridor and in fact never saw him. It is the prosecution's contention therefore that the accused did not adopt this route and was not disposing of the blankets in a manner which could be expected of an ordinary, reasonable soldier acting in the same circumstances. It is further contended that the accused's method of disposing of these blankets was in fact an improper handling of the army property.

G.E. Levellin Lt
Prosecutor.

Closing Address

By the Defending Offr

re: B-55637 Pte Rochefort Armand. -

May he pleased the Court,

The Defense submit that the evidence given by the accused and all the witnesses corroborates and that there is not proof enough in that evidence to find the accused guilty.

The first witness states in his testimony that he does not think that the accused was ever in improper possession of Army blankets this testimony is corroborated by Pte Carr who says "I have no reason to think that the accused took my blankets. - Further more Carr was never asked to identify the blankets that were on the sidewalk. -

C.S.M. Peterson was called by Sauroom to go to the back door and checked about two blankets and the accused neither one nor the other and Peterson get in again and run to the front door to have a look, he saw the accused on the sidewalk across the street proceeding foward to the sea front. - He was not out of breath. he said so he did do not surely had time to walk all around the block and be found in front of the Central Hotel. -

The third witness for the prosecution gave the reason why the accused was on the main floor around 10.30 hrs that morning. - He gave himself a specific order to the accused to be get out of bed and come down on the main floor and report to him. - Is there anything wrong from the part of the accused to be on the spot and have a look around for C.S.M. Cannon. - This C.S.M. Cannon woke the accused and told him to report on the main floor.

C.S.M. Cannon does not know exactly at what particular time he was at the door of his office. - In cross examination this morning he said that he was there between 10 and 11 hrs, but he cannot swear that he was particula specifically there at 10.30 hrs. He might have been there at 10.25 hrs, or 10.45 hrs he is not sure. -

I am inclue to say that the accused is a victime of circumstances, because he was ordered to report there, on the main floor, his duty was on the main floor. he was ordered to take care of the blankets and he did. I cannot imagine why after having ordered to take care of those two blankets he is now put under arrest because he is in possession of the same. -

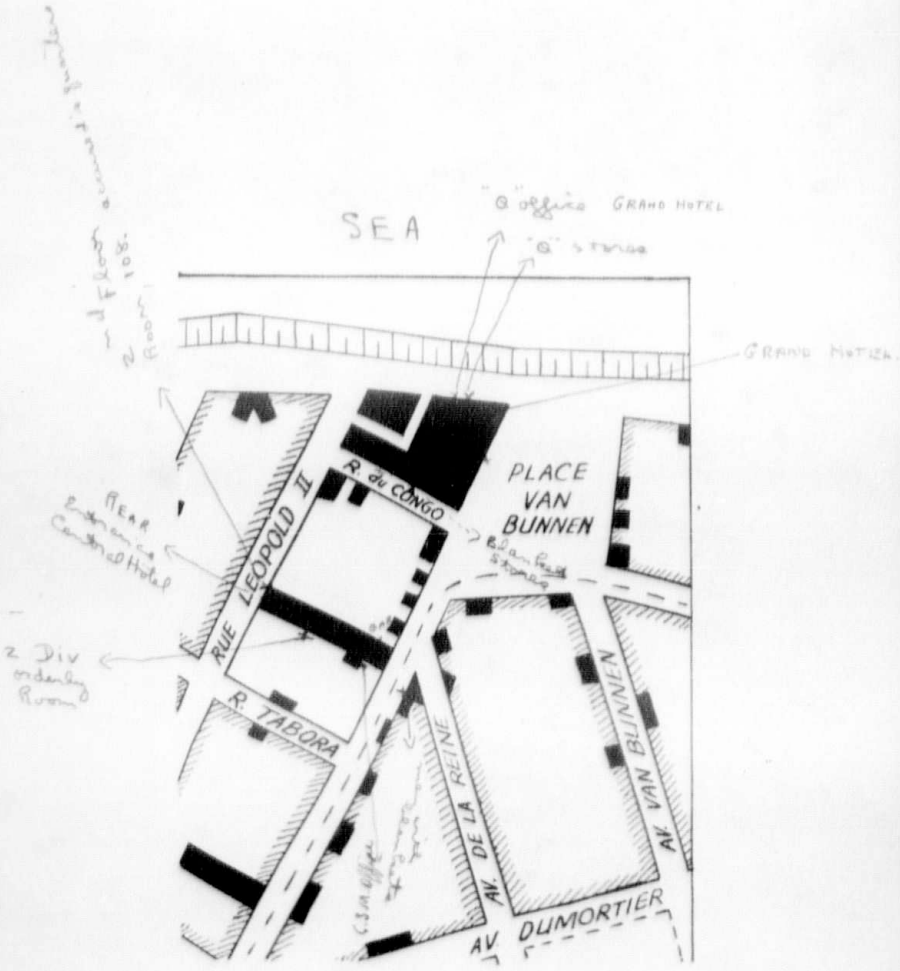
Maurice Rousseau Capt

E-3. In Mitigation:

I just want to place the accused on the mercy of the Court.

Honorable Muchenger
Mayor

Ex A.
Com


SEA
"Q" office GRAND HOTEL
"Q" stores
GRAND HOTEL
PLACE VAN BUNNEN
R. du CONGO
RUE LEOPOLD II
R. TABORA
AV. DE LA REINE
AV. VAN BUNNEN
AV. DUMORTIER
REAR Entrance Central Hotel
2 Div orderly Room
2nd Floor accused's quarters
Room 108.

COPY

No. B56737 Name ROCHEFORT Armand | Sqn, Battery, or Company | Corps CIC | Date of enlistment 30-9-41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 60/PAM/150 (5480)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				NIL ENTRIES					
				EXTRACTED FROM MFM 4					

Certified to be a true extract from the regimental books and documents in my custody.

A.N. Peatman Capt.

(A.N. Peatman) Capt, Adjt.
No. 2 Convalescent Depot, RCAMC

(PTO)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B.[illegible]	Private	McDOUGOT Armand	2-3 Lst, Algonquin Regiment, C.I.C. (Patient in No. 2 Con Con Depot)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For [illegible] times.

For [illegible] times.

For [illegible] times.

For [illegible] times.

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for [illegible] beginning on the [illegible] day of [illegible]

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 42 days in military custody, *i.e.*, Nil days in open arrest, 42 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 26 years

6. The date of his attestation / ~~calling up for military service~~ is 20 Sep 41.

7. The service which the accused is allowed to reckon is 3 years, 0 months, 29 days

‡State the military decorations (if any) held by accused.

8. The accused is in possession of‡ [illegible]

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of N/A	
In the war substantive rank of N/A	
In the acting rank of N/A	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21124) W1.8670/668 100,000 4/42 A.&E.W.Ltd. Gp.698
(33459) W1.29228/1875 80,000 9/42 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 29th day of January 1945.

A. N. Pearman. Capt.

(A.N.Pearman) Capt. Adjt.
No. 1 Convalescent Depot, Rhodes.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No. B.55637 Private ROCHEFORT Armand, a patient at No.2 Convalescent Depot, R.C.A.M.C., X-3 List Algonquin Regiment, C.I.C., a soldier of the Canadian Army Overseas, is charged with Conduct to the Prejudice of Good Order and Military Discipline in that he was in improper possession of public property, i.e. two (2) army issue blankets. (A.A.Sec.40)

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness: G.28072 R.Q.M.S.Sansom, T.W., of No.2 Cdn Convalescent Depot, R.C.A.M.C., sworn states:-

I am R.Q.M.S. of No.2 Cdn Convalescent Depot, R.C.A.M.C. I was walking along the street between 1030 hours and 1100 hours, Monday, 22 Jan 45. As I approached the rear of the Central Hotel, one of the unit billets, I noticed two army blankets lying on the sidewalk. At the same time, the accused, whom I recognise, came out the door of the Central Hotel. As I reached him he was in the act of picking up one blanket. I asked him what he was doing with the blankets [illegible]. He said that he had just stepped out and seen the blankets as I had done myself. We spoke together casually, wondering where the blankets had come from. I then asked him to remain with the blankets until I came back. I went directly to the Divisional Orderly Room and asked C.S.M. Peterson to step outside with me. When we arrived outside where the accused and the blankets had been, the accused and the blankets had gone.

Cross-examined by accused:-

Q. Are you sure you told me to remain there, as I have no recollection of your doing so?

A. I definitely remember saying for you to remain where you were.

The accused declined to further cross-examine the witness. JS

T.W. Sansom.

Second Witness: G.28089 C.S.M. Peterson, F.J., of No.2 Cdn Convalescent Depot, R.C.A.M.C., sworn, states:-

I am a C.S.M. with No.2 Cdn Convalescent Depot. Private Rochefort is in my Division. At about 1030 hours, I was making a tour of my Company lines. I noticed the accused and questioned him as to what Company he belonged and what he was doing in my lines. He did not give me a very satisfactory answer. I then told him to return to his own lines. On finishing my tour of duty, I returned to the Divisional Orderly Room, at approximately 1045 hours. It was then that R.Q.M.S.Sansom brought to my attention that there was a soldier at the rear entrance of the Central Hotel with two army blankets. I asked him if the soldier was still there. He said that he had told the soldier to stay with the blankets until he returned. When we arrived at the rear entrance, both the blankets and the soldier had gone. I immediately proceeded from the rear entrance to the front entrance where I saw the same soldier whom I had been talking to earlier in the morning in my Company lines. He was across the street from his billets proceeding away from the same with the blankets. I shouted to him to come back and immediately placed him under close arrest. I took him to the Divisional Orderly Room and reported to the acting R.S.M. and then turned the soldier over to Sergeant Walker of the Unit R.P. JS

Second Witness (Cont'd)

Cross-examined by accused:-

Q. On what floor did you see me earlier in the morning?
A. The First Floor.

Q. Did the R.S.M.S. report to the Orderly Room or to the C.S.M's office?
A. To the Divisional Orderly Room.

The accused declined to further cross-examine the witness.

R. Peterson

Third Witness: L.22062 C.S.M. Cannon, T. of No.2 Cdn Convalescent Depot, N.C.A.M.C.

I am a C.S.M. with No.2 Division of No.2 Cdn Convalescent Depot, Private Rochefort is in my division. At approximately 1045 hours on the 28 January 1940 I was in the hall of the ground floor of the Central Hotel when R.S.M.S.Sanson came in to report that there was a soldier at the back entrance of the hotel with two army blankets. R.S.M.S. Sanson and myself in company with C.S.M. Peterson proceeded to the back entrance of the Hotel to see the soldier with the blankets. When we arrived there, the soldier was gone. Also the blankets. R.S.M. Sanson and myself searched the back area whilst C.S.M. Peterson went through the hall to the front of the hotel. The R.S.M.S. and myself not finding anything went back into the hotel where we saw C.S.M. Peterson with Private Rochefort and the two blankets in the Divisional Orderly Room. The R.S.M.S. recognised Private Rochefort as the soldier he had told to stay with the blankets. I recognised Private Rochefort as a soldier of my Company.

The accused at this point was asked if he wished to cross-examine the witness.

The accused declined to cross-examine the witness.

J. Cannon

Fourth Witness: H.93444 Private Carr, J.A. of X-8 List N.C.A.M.C., a patient at No. 2 Cdn Convalescent Depot, N.C.A.M.C., sworn, states:-

I am a convalescent with No.2 Division of No.2 Cdn Convalescent Depot, I sleep in the room 106 at the Central Hotel. When I went on parade at 0845 hours on the 28 January 1940, there were four blankets on my bed. On returning from parade at 1130 hours, there were only two. I reported this to C.S.M. Cannon, my Company commander.

Cross-examined by accused:

Q. Have you any reason to believe that I took your blankets?
A. No. It could have been anyone.

Q. Was there any mark on your blankets that you could recognize them by?
A. No, there was no mark.

The accused declined to further cross-examine the witness.

J A Carr

The accused was cautioned as follows:

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.
A. I want to make a statement.

Q. On oath or not on oath?
A. On oath.

The accused having been duly sworn, states:-

At about 1030 hours on the 22 January 1945, I was downstairs waiting for C.S.M.Cannon. He had told me a few minutes before to wait for him there. I was walking up and down the corridor. I opened the back door and saw something lying on the ground and walked over to where it was. Then I saw a C.S.M. coming up the street. I have since learned that it was R.Q.M.S.Cannom. He asked me who owned the blankets. We both looked at the windows of the building. Then, without saying anything, he opened the door and walked into the Central Hotel. I stood there and did not know what to do. I waited there for some time and no one came back. I picked up the blankets and walked through the corridor to the front of the hotel. Before getting to the front of the hotel I looked into the C.O.M's office and no one was there. I stayed at the front door and saw no members of the staff there. I then decided to take the blankets to Quartermasters stores. I had gone a short distance from the door when the other Sjt.Major called me back. I came back and gave him the blankets.

The accused does not call any witnesses. A Rockfort

I certify that the foregoing Summary of Evidence, consisting of three pages, was taken down by me in the presence of the accused and the R.P.(C),(D),(E),(F) have been complied with.

(J.L.Swift) Lieutenant,
No.8Convalescent Depot,
R. C. A. M. C.,C.A.(C.)

In the Field
23 Jan 45

(A)

LIST OF EXHIBITS

Exhibit "A" : Two (2) Army issue blankets.

LIST OF WITNESSES

Prosecution: N I L

Defence:

✓ First Witness: G.28072 RSMS. SANSOM, T.W. No.2 Cdn Conv Depot,RCAMC.

✓ Second Witness:G.28089 CSM. PETERSON,F.J. No.2 Cdn Conv Depot,RCAMC.

✓ Third Witness: L.22062 CSM. CANNON, T. No.2 Cdn Conv Depot,RCAMC.

✓ Fourth Witness:H.93444 Pte. CARR, J.A.
X-3 List R.C.A.S.C., Patient in No.2 Cdn Conv Depot,RCAMC.

BL-10b

Pte. Rocheleau, C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 62037 Pte CLAUDE ROCHELEAU

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Charge	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 72 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO UNDERGO DETENTION FOR ONE (1) YEAR.

(Sgd) ..... Judge-Advocate, if any. 22 May 45 Date awarded. (Sgd) R.R. Fultz Maj President.

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the findings and sentence set forth in Part I is:

I confirm the finding of the court but remit six (6) months detention of the sentence and I confirm the sentence as so remitted.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) R.B. Smith (J B P Smith) Brigadier

Date 28 May 45 Commanding 1 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D-62037 Pte Rochelea u C	31 May 45	(Cdr Vermette) Capt & Adj Fus MR

CR serial No 91 of 1 Jun 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5L-108

RECEIVED 16 JUN 1945 Adjutant General C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by BRIGADIER IDB SMITH Comd 1 CDN INF BDE dated 21 MAY 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prov R; (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D 62037	Pte	CLAUDE	ROCHELEAU	FUS MR

PROCEEDINGS REVIEWED D.J.A. 20 May 45 REVIEWING OFFICER, NO. 2 BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 22 MAY 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 32/140

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 123.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (A) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	RR FULTZ	~~FUS~~ R.H.S.H. of Can
Member	CAPT	LE TAPLIN	L/Edmonton Regt
Member	A/CAPT	CB STEWART	1 CDN FD REGT (SP) RCA
~~Judge-Advocate~~			
Prosecutor	CAPT	GJ OUIMET	FUS M R.
Defending Offr	LIEUT	JEAN LEDUC	FUS M R

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NIL.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused D 62037 PTE CLAUDE ROCHELEAU before arraignment make(s) (no) ~~a~~ plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~enquired and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form Dode

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. N/O (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is (~~disallowed~~) allowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. N/O Do you intend to call witnesses on your behalf? Ans. Yes. Are they witnesses as to character only? Ans. N/O

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A65. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. N/O

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)

(1. MFB 355 or AFB 260. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 86 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes.(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to press on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, D 62037 Private Claude Rocheleau, Les Fusiliers Mont Royal, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
AA SEC 9(2)

WHEN ON ACTIVE SERVICE
DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

In that he,

In the Field at about 153 0 hrs on the 11th March 1945, when ordered by Lt Col JA Dextraze to return to his company duties, refused to do so, and did not do so.

In the Field

This 27th day of March 1945

(JA Dextraze DSO) Lt Col
Officer Commanding
Les Fusiliers Mont Royal

To be tried by Field General Court Martial.

In the Field
21 May 45

(J D B Smith) Brig
Comd 1 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-62037	Pte	Claude	ROCHELEAU	Les Fusiliers Mont Royal

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (date) 21 May 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	R R FULTZ	A & SH of C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	L E TAPLIN	L Edmn R
A/Capt	C B STEWART	8 Cdn Fd Regt (SP) RCA

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	L G LINDLAND	L Edmn R

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

Dat 21 May 45

(J D B Smith) (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding 1 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

K.R. (Can) Para 857

I certify that I have this morning examined No D62037 Pte

Rocheleau C. of 1st Pus M R and is my opinion he is fit/~~unfit~~ to

undergo ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ trial by FGCM

Station In the Field

Date 22 May 45

Capt. RCAMC
Medical Officer

R.R.S.

Record Form D'3 Page I R.R.T.

1st Witness Prosc. having been duly sworn [illegible]

Lt Col James A Dextraze OC FMR R.R.T. on the 11 March 45

at about 1530 hrs. I gave the order

to Pte Rochleau to report back to

his Coy for duty. I told him

"got to your Coy now" He refused

to do so. I gave him until 1800 hrs

the same date to change his decision.

On 1800 hrs my adjt parades

Pte Rochleau again to me. I repeated

the same order to Pte Rochleau

he refused saying "I will not go

back to a Rifle Coy" or words

to that effect. Pte Roch had all

facilities to report to his coy

as it was not more than 200x

from my Tac HQ.

X Exam - Did the accused ask to be paraded before ~~(you)~~ R.R.V. there was a charge laid

Ans He may have.

~~Pte Rochelau~~ R.R.V.

Quest Did he ask for a transfer.

Ans 2 Yes but I could not give him a transfer as I had ordered him to his Coy.

Quest Did he ask to be paraded for a transfer on return from hospital

Ans 3 - yes.

Quest Did he have any other job but driving a carrier while with the Regiment?

Ans 4 I don't know but he should be a trained soldier at all times.

Re Exam - None.

Court - There was no vacancy in Carrier at that time.

RP 83 (B) Complied with

Record Form 'D'3 Page III R.R.P.

2nd Witness Prosecution duly sworn states, I am Capt D H R.R.P. Vermette Adjt FMR

On the 11 March 45 at about 1530 hrs I paraded Pte Rochelau to the CO. The CO told him to report to "B" R.R.P. Coy. He refused saying he did not want to go to a Rifle Coy. The CO ordered him to report right away and told him where the Coy was.

At 1800 hrs the same day Pte Rochelau came back to me and said he did not report to the OC "B" R.R.P. Coy for duty and did not want to. He was

put on charge and paraded back to the C.O.

X Exam. Ques: Do you remember having paraded Pte Pocheleau before those two times.

Ans: Yes

Ques: You were 2 1/c "B" Coy at the time

Ans: Yes

Ques: Did he ask for a transfer ~~He came to our~~ R.R.T.

Ans: Yes, he was paraded to the C.O. and turned down R.R.T.

Ques: How did you know he didn't report to "B" Coy when ordered.

Record Form D'3 Page 7 R.R.T.

Ans. I ~~[illegible]~~ R.R.T. phoned the Coy Comd.

Ques. 5 who was Coy Comd.

Ans. 5 Major Lamothe

Re-Exam. None.

Court Ques. 1 Did the accused report to "B" Coy for duty R.R.T.

Ans. 1 No he said he did not want to.

He went to "B" R.R.T. Coy for supper but did not report to the Coy Comd for duty.

Court Ques. 2 Did Pte Roch have supper at the kitchen of the Coy. Ans. 2 He told me that.

Ques. 3 Was there any spec place in the order for him to report to R.R.T.

Ans. 3 Yes, the Coy Comd — The kitchens were some distance from the Coy.

RP 83 (B) completed with.

Record form D.5. Page VI. L.K.J.

Defence 1st Witness Duly sworn states, I am

Major La Mothe G.R. Ques: what was your

appointment in Feb Ans: I was carrier

Pl comd.

Ques: Do you remember if there was

any vacancies in that Pl for

a DM

Ans: I believe there was but I couldn't

say what dates

Ques: Could we prove that by a nominal

roll Ans: It would be very difficult

on the 5 March I took over "B" Coy.

Ques: On the 11 March 45. between 1530

hrs and 1800 hrs do you remember

having seen Pte Rochelsan, Ans: I don't know

the exact time but I saw him

Record Form D6 Page VIII RR.T.

Accused was in 1/2 coy time talking with some men. Later I asked the CSM & 2 1/c of my coy if the accused had reported for duty - they said 'no' he did not report to me either and I did not see him again that Day.

Ques 5 The first time you saw him was about 1530 hrs Ans Yes Ques 6 Do you remember the exact ~~to~~ words of the CO to the accused.

Ans 6 I am giving you an order to report to B Coy and the accused said first RR.T I think I am willing RR.T to go to the carrier Pl but not Infantry. The CO replied, it is the Infantry that you will go.

and I will give you two hrs to make up your mind. The accused said he did not need any time. The CO said you will take those 2 hrs as I am obliged to give it to you and report back at 1800 hrs.

Quest Do you remember any special order given to you and him by the CO.

Ans: No.
x Exam None
Court None

Rule 83 (B) complied with

[illegible]

Prosecution Closing Address Record Vernon Dly Page X R.R.8

Army act Sec 1 — 3 notes to look for

Note I None compliance with the order must be proved

II It must be a lawful command

III Given by a superior officer.

All these ingredients have been complied with.

When a man is told to report to a Coy it means to report for duty

R.R.8

R.R.8.

Record Term D 6. Page XI L.R.T.

Defending Officer submitted that Orb Nominal Roll of Carrier Pl. be brought before Court. R.R.T. Denied

Defense Closing address —
I would like to put before the Court 1st that Major La Mothe said that there were vacancies in the Pl. for a certain time which is usually normal in action for the Pl.
Secondly. Pte Rochleau has been in the line of his Coy during the 2 hrs the Col gave him. Major La Mothe saw him there at supper time. When Rochleau was paraded to the CO he was told by him, you will go as a Rfn in 'B' Coy. and furthermore on the next attack you will report to me and I will give you a certain place to go and stay there for a certain time. After this time you will report back to your Coy Comd. and he will give you your orders

R.R.T.

Record Number E3

Monday21st. May 1945

Mrs. the President

Gentlemen of the court.

You have to day in front of you an old soldier. Soldier Hecheleau is in the army since the 23rd of April 1940. He has served five years simple time service ever seas. He has been in Iceland with the Fus Mit and he also took part of the raid at Dieppe in 1942 and he spend the seventh first months of action with us without a reproach.

He crossed with us the 6th of June 1944

Since the establishement of a carrier platoon, in an infantry regiment, pte. Hecheleau is a carriers' driver. He never had done anything else, but driving a carrier.

After a 28 hrs. pass granted to him in decembet,(not for his misconduct I am sure) pte. Hecheleau had to be evacuated to the hospital. When he came back few days after his coy. Comd. told him: "You are not to drive the coy. carrier any more, you will report to pl.no.10 section one." Then pte. Hecheleau asked the permission to have an interview with the C.O. This permission was granted to him. Then he explained to the colonel his case, he told him: " I never have done any infantry in my life and I never had any training for this purpose, so I would like you to transfer me in my old platoon, platoon no. 4 in the sup. coy. What it proves that pte. Hecheleau had the good will of serving again in the best of his capacities. But the only answer he has was, " I AM THE BOSS HERE AND YOU WILL DO WHAT I WILL PLACE YOU "

Discouraged by this answer pte. Hecheleau didn't know what to do. As of course, pte. Hecheleau, didn't want to be killed crassly, and may be have some of his camarades killed for him because he didn't know his job.

When he was paraded en charge in front of the C.O. he put the same request, then the C.O. gave him 0 hrs. to change his mind. When he was paraded again 0 hrs. later he told the C.O. I AM READY TO SERVE IN THE CARRIER PLT AND DO MY BEST. EVEN I ALWAYS DONE out I feel incapable to served like a rifle man due to the fact that I don't know anything about it. What it proves that pte. Hecheleau didn't refuse to served his centry with the best of his capacities, but only feel merely incapable to serve as a rifleman.

Record Number 2. L.L.T.

So gentlemen of the court, before you pronounce your verdict, I would like you to consider the following facts.

1) The long service of this soldier.
2) The good conduct of this soldier in his five years of service.
3) That Recheleau have never done anything else but" DRIVING A CANNON
4) The way he was treated for an old soldier of the regiment.
5) The good will he proved till the last moment to served his country with the best of his capacities.
6) Is a little fact who seems funny to me, "WHY WAS HE KEPT THREE MOONTHS IN DETENTION BEFORE HE HAD HIS COURT MARTIAL?"

I thank you gentlemen, this is all I have to say.

Jean Leduc Lieut.

Jean Leduc Lieut.
Fus. M. R.

L.L.T.

In lieu of AFW 236

262031	Pte	Rocheleau C.	Fus M R
Number	Rank	Name	Regiment (or as the case may

1. The following is a fair and true summary of the entries in the [illegible] or summary conduct sheets of the accused, exclusive of convictions by a C Martial or a civil court of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with:

	Within last 12 months		Before enlistment
AA Sec 15(1)	1	times	2 times
AA Sec 40		times	1 times
AA Sec 11		times	1 times
		times	times
		times	times

Exhibit A
R.R.J.

[illegible]

[illegible]

2. The accused has not been previously convicted.

[illegible]

3. The accused is not under sentence at the present time, [illegible]

4. The accused has been in custody since the trial on the present charge for nil days in civil custody, and 72 R.R.J. 18 days in military custody making a total of ~~[illegible]~~ 72 R.R.J. days of which nil days were spent in hospital.

5. The present age of the accused according to his [illegible] is 24

6. The date of his [illegible] specified in his [illegible] attestation paper is 23 Apr 40

7. The service which the accused is allowed to remain towards discharged or transfer to the reserve is duration

8. The accused is entitled to deferment on the ground of gravity in respect of Nil

9. The accused is entitled to credit n-a towards for the purpose of determining his pension, etc.

10. The accused is in possession of [illegible]

CVSM - 39-43 Star

[illegible]

[illegible]

D62031 Pte Rochdeau P. Regiment (or as may be the case)

Description of charge by which tried or stated in reference to the charge or the charge or the charge (in trial)	Charge upon which convicted or in respect of which tried and dispensed with	Sentence of the Court or authority disposing of the charge or order of the dispensing authority
	N I L	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial in a true extract from the regimental books in my custody.

Signed this 22nd day of April 45 MAY 45

Geo Baker Capt.

A/Cpl
Cpl

1 sep 43
1 dec 43

M.F.M. 6
(A.F. B.122)
40/P & /8136 (2965)

No. D62037 Name ROCHELEAU C Sqn., Battery, or Company Corps CIC Date of enlistment 23 Apr 40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk nil Period not reckoning towards freedom from extra fine Sheet No. 1 Signature of Company, etc. Roger Lacombe Capt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed after six months service CARO 393 RL Capt					
				Original lost 10 Feb 43. Copy from Records Office 12 May 43					
UK	19-9-42	L/Cpl		AA SEC 15(1) AWL from 1500 hrs 19 Sep 42 to 2300 hrs 19 Sep 42 Absent 8 hrs)	Documentary	reprimanded	21 Sep 42	Lt Col Taschereau	1 day pay FR&I 149(1)(a)
UK	23-12-42	Pte		AA Sec 40	Documentary	3 days pay FR&I 149(2)	23 Dec 42	Lt COL JA Gauvreau	
UK	2 8Ap 43	Pte		AA SEC 11	Documentary	7 days pay FR&I 149(2)	28 Apr 43	Lt Col JG Gauvreau	
Field	2 Oct 44	Pte		AA 15(1) AWL from 1500 hrs 2 Oct 44 to 2000hrs 5 Oct 44 (Absent 3 days 5 hrs)	Documentary	14 days pay FR&I 149(2)	8 Oct 44	Lt Col JMP Sauve	4 days pay FR&I 149(1)(a)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4-11-44	Pte		AA 15(1)(AWL from 2330 hrs 4 Nov 44 to 1300 hrs 5 Nov 44 Absent 13 hrs 30 mins)	Documentary	admonished	6 Nov 44	JGP Sauve Lt Col	1 day pay FRAI 149(1)(a)

Certified true copy of original in my custody

G Balcer Capt
A/Adjt Fus MR

SUMMARY OF EVIDENCE

In the case of D62037 Pte ROCHELEAU C, Les Fusiliers Mont Royal, a soldier of the Can Army Overseas.

The accused is informed of his rights

The Commanding Officer directs and the accused demands that the evidence be taken on oath.

FIRST WITNESS for the prosecution: Lt Col J A Dextraze DSO, officer Commanding Les Fus M R, having been duly sworn, makes the following statement:

" At about 1530 hrs on the 11th March 45, I ordered Pte Rocheleau to return to his duties at his Company, saying "Go to your Coy now". He refused to do so. I gave him untill 1800 hrs on the same date to change his decision. When paraded before me by Capt D H Vermette at about 1800 hrs I repeated again "Report to your Coy immediately" He refused, saying "I will NOT go back to a Rifle coy" or words to that effect, being well aware that the rifle coys were not more than 200 yds from my HQ, and he did not go back.

The accused declines to cross-examine.

(JA Dextraze DSO) Lt Col
OC Fus M R

SECOND WITNESS for the prosecution: Capt D H Vermette, Adjt, Les Fus M R, having been duly sworn, makes the following statement:

"At about 1530 hrs on the 11th March 45, I sent for D 62037 Pte Rocheleau C and I told him that he was no more under close arrest. I then paraded the said soldier to Lt Col JA Dextraze DSO and I was present when the CO ordered him to return to his duties at his company. He refused to do so. The CO gave him until 1800hrs on same date to change his decision. When I paraded him again before the CO at about 1800 hrs the CO told him ~~to~~ "Go to your coy now", he refused saying "I will NOT go back to a rifle Coy" or words to that effect, and he did not go to his coy.

The accused declines to cross-examine

(D H Vermette) Capt
Adjt Fus M R

The accused, having been duly cautioned in accordance with RP 4(e) says : "

" I have nothing to say."

C Rocheleau Pte

Certified that RP 4 C D E & F have been complied with.

(S Roy) Capt
Offr detailed to take the Summary

In the Field
This 27th day of March 1945

L.R.D.

LIST OF WITNESSES

In the case of D62037 Pte Rocheleau C, Les Fusiliers Mont Royal, a soldier of the Canadian Army Overseas.

PROSECUTION

Lt Col J A Dextrase DSO	OC	Les Fusiliers Mont Royal
Capt D H Vernette	Adjt	Les Fusiliers Mont Royal

DEFENCE

N I L

LIST OF EXHIBITS

N I L

STATEMENT BY ACCUSED

I, D62037 Pte RocheleauC, Les Fus M R certify that I have been given free-of-charge copy of documents, proceedings, etc, relating to my trial by Field General Court Martial.

I request the services of an off to defend me at my trial by Field General Court Martial.

I desire the services of..LIEUT. JEAN DESPATIE..... if he is available.

C Rocheleau.

C Rocheleau Pte

SF-107.

Mt. Rockville, Md.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-139607 Pte Joseph Maurice Albert ROUCHETTE Fus MR 1 Cdn Dis Centr

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding (See note below.)	(Space for use as required for further charges, accused charged jointly; special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for NA (1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.) beginning on (date) NA (1)

Time in confinement awaiting present trial—a total of 8 days, of which No days were spent in hospital.(1) (1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for one (1) year.

(Sgd) "J M Bowman" Major
Judge-Advocate, if any. President. (RP 45, 50.)

23 Mar 45
Date awarded.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RR 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

I direct that the accused be not committed to prison or detention barracks until further orders.(1) (1. AA 57A. Delete if not used.)

Date 24 Mar 45 (Sgd) "G S N Gostling" (G S N Gostling) Brigadier
Commanding 2 Cdn Base Rft Gp
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

D-139607 Pte Rochette, J M A 27 Mar 45 "A O Hood" Lt Col
Comdg 1 Cdn Disciplinary Centre

CR A70
1 of 2
8/87 Mar 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

SF-107

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier GSN Gostling, ED Comd 2 CBRG

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) per. rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surna.	Dr. Corps.
D-139607	Pte	Joseph Maurice Albert	ROUCHETTE	2

CERTIFIED TRUE COPY
H. B. Bale Lt
Can. Sec. 1 Cdn Inf Bde 28 Mar 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(1)) 23 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevent fms ROs. For guidance on procedure when a variation in this form arises, see form for CCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF A95, for oaths and instrs on how to record addresses, evidence, etc, which omits are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto (2) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 4. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial. The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1) (2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to NA as interpreter? Ans NA
The Interpreter is sworn.(1) Do you object to NA as shorthand writer? Ans NA
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (1) (1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J M BOWMAN 48th Highrs att 1 Cdn Disciplinary Centre
Member	Capt	G B CARTMEL RCA att 1 Cdn Dis Centre
Member	Lt	E F McMANUS RCE 9 CBR Bn
Judge-Advocate	Capt	N D BOWLER CIC att 1 Cdn Dis Centre
Prosecutor	Capt	F C KARN CIC att 1 Cdn Dis Centre
Defending Offr		

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 24, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused D-139607 Fte Joseph Maurice Albert ROUCHETTE before arraignment makes(s) (no) (1) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (1) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B and E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vol 5 P. 102

SF-107

FIELD GENERAL COURT-MARTIAL

CF AFB 4 (To face of AFAB) 40-0-0 W 4-1-0 (40,000) 4/38B

Convened by Order of Brigadier GSN Gostling, SD Comd 2 CBRG dated 23 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-139607	Pte	Joseph Maurice Albert	ROUCHETTE	FUS MR att 1 Cdn Disciplinary Centre

CERTIFIED TRUE COPY

R.S.B. Boake Lt-Col
Asst Judge Advocate General

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date)(1) 23 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 28/40

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereto. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to NA as interpreter? Ans NA
The Interpreter is sworn.(1) Do you object to NA as shorthand writer? Ans NA
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J M BOWMAN	48th Highrs att 1 Cdn Disciplinary Centre
Member	Capt	G B CARTMEL	RCA att 1 Cdn Dis Centre
Member	Lt	E F McMANUS	RCE 9 CBR Bn
~~Judge-Advocate~~			
Prosecutor	Capt	N D BOWLER	CIC att 1 Cdn Dis Centre
Defending Offr	Capt	F C KARN	CIC att 1 Cdn Dis Centre

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (3)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused D-139607 Pte Joseph Maurice Albert ROUCHETTE before arraignment makes(s) (no) (1) plea(s).

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsF cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (2) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B and E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-139607 Pte Joseph Maurice Albert ROUCHETTE Fus MR 1 Cdn Dis Centr

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for NA beginning on (date) NA (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which No days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for one (1) year.

(Sgd) Judge-Advocate, if any. 23 Mar 45 Date awarded. (Sgd) "J M Bowman" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

I ~~direct that the accused be not committed to prison or detention barracks until further orders~~.(1)
(1. AA 57A. Delete if not used.)

Date 24 Mar 45 (Sgd) "G S N Gostling" (G S N Gostling) Brigadier
Commanding 2 Cdn Base Rft Gp
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D-139607 Pte Rochette, J M A	27 Mar 45	"A O Hood" Lt Col Comdg 1 Cdn Disciplinary Centre

CR 478
7 - 2
d/27 Mar 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*b*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 85, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(B).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(7) (a), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy of Conduct Sheet(s) or Statement of Conduct(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "D" and Ex "E" respectively.(3)
(*1. AFB 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 45. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 909, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

(CMHQ CL 173)

D-139607
(No.) xxxxx

Pte Rochette G.M.A.
(Rank) (Name)

Station 1 Cdn Disciplinary Centre "A M Davis" Capt (Sgd)

Date 23 Mar 45 1 Cdn Disciplinary Centre

JMB

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MNL Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-139607	Pte	Joseph Maurice Albert	ROCHETTE	Fus MR att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 23 MAR 45 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint~~ (a) ~~three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J M BOWMAN	48th Highrs att 1 Cdn Disciplinary Centre

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	G B CARTMEL	RCA att 1 Cdn Disciplinary Centre
Lt	to be detailed by OC 9 CBR Bn	9 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 23 Mar 45

"G S N Gostling" (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(G S N Gostling)

Commanding 3 Cdn Base Rft GP Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA66 (To Sec of AFA3) 40/P & S/1807 (4051)

(See overleaf for oaths and notes for use on trial.)

JMB

C H A R G E S H E E T

The accused, D-139607 Pte Joseph Maurice Albert ROCHETTE, Les Fusilliers Mont-Royal, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 1400 hrs 20 Jan 45 until apprehended at BRUSSELS, Belgium at 1300 hrs 14 Mar 45.

(Total Absence:- 52 days 23 hrs)

In the Field
21 Mar 45

"A O Hood"
(A O Hood) Lt Col
Commanding
1 Cdn Disc Centre

To be tried by Field General Court Martial.

In the Field
23 Mar 45

"G S N Gostling"
(G S N Gostling) Brig
Comd
2 Cdn Base Rft Gp

JMB

JMB

23 Mar 45

Plea of Mitigation for the Defence

D-139607 Pte Joseph Maurice Albert ROCHETTE

The accused is 24 years of age, single
He enlisted 25 Feb 43 arrived in U K
3 Sep 43.
He came to France with his unit
6 July 44, was wounded on 21 July 44
and sent back to hospital in England
for two months. He then returned to
his unit and served with them to
18 Jan 45. He had fought continuously
with his unit and was given a 48 hr
pass from Holland to go to Brussels.
Pte Rochette had asked for a pass five times
before but had been refused while many
in his unit with a musch less period
of service had been granted passes.
He had also requested to transfer to Sp Coy
in his unit but had been reused.
For these reasons Pte Rochette was not
satisfied and decided to take a few extra
days leave additional to his 48 hr pass.
He did not intend to stay away as long
as he did but was afraid to give himself
up because he did not know what would happen
This soldier has a clear crime sheet
and has served well in the line.
He wishes to return to his unit as quickly as possible
I ask the Court to show as much
leniency towards this man who has
committed his first offense.

" F C Karn" Capt
Defending Officer

JMB

(1) Ex "A"

Summary of Evidence in the case of D-139607 Pte Joseph Maurice Albert ROCHETTE, Les Fus Mont-Royal, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 9 dated 10 Feb 45.

Exhibit "B" - Certificate of apprehension dated 15 Mar 45.

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of EVidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

"Maurice Rousseau" Capt
(Maurice Rousseau) Capt
Officer detailed to take the Summary of Evidence.

Dated in the Field
21 Mar 45

JMB

PART II ORDER EXTRACT FORM Ex "B" "M Rousseau" Capt

RS/20/ FMR/1(A.5c)

19 MAR 1945

TO: OC
1 Cdn Disciplinary Centre
Cdn Army Overseas

EXTRACTS FROM: UNIT LES FUSILIERS MONT-ROYAL

Part II Order No 9 dated 10 FEB 45

7 ABSENT WITHOUT LEAVE
(k) AWL from 1400 hrs 20 JAN 45 Still absent 1400 hrs 28 JAN 45 (8th day)
D139607 Pte ROCHETTE J M A

Certified to be a true extract from the regimental books and documents in my custody

"J R Fenelon" Capt
Officer 1C Records 'C'
Cdn Lee GHQ S Rch Sl A Gp

The following documents are attached. Please ask receipt on all duplicate required. Please forward same.

JMB

Originating clerks initial JRRB

Officer in Charge
Canadian Section GHQ 2nd Echelon

EX "C" " M Rousseau" Capt

CERTIFICATE IN ACCORDANCE WITH P.O. 8797 of 10 Apr 42

I CERTIFY THAT No D-139607 Rank Pte Name ROCHETTE I M

Unit F.M.R. 2 Cdn Div

at 1300 (hour) on 14 Mar 45 (date) and that at the time of his arrest he was wearing (military uniform) or xxxxxxxxxxxxxxxx

Brussels (place)

signature of provost-marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on arrest.

"J Tweddle"
(J Tweddle) A/Capt
Officer Commanding
2 Cdn L of C Provost Coy

Field
15 Mar 45

JMB

EX "D"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
D-139607	Pte	ROCHETTE JMA	Fus Mont/Royal

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts or gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For No MFM 6 available JMB times.

For times.

For times.

For times.

Date of first entry in Field Conduct Sheet

Date of last entry in Field Conduct Sheet

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for NO beginning on the ——— day of ———

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for days in civil custody; and for JMB ~~6~~ 8 days in military custody, *i.e.*, Nil days in open arrest, JMB ~~6~~ 8 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 24 years and seven months

6. The date of his attestation is 25 Feb ~~1945~~ 1943 JMB

7. The service which the accused is allowed to reckon is

8. The accused is in possession of CVSM with Clasp

State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of

In the war substantive rank of

In the acting rank of

JMB

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(28594) Wt.42129/4599 42,000 11/44 A.& E.W.Ltd. Gp.593 Forms/P.2 6/Wars/4

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		No MFM 6 available JMB		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 23 day of Mar 45

"R Paul" Capt
1 Cdn Dis ciplinary Centre

MFM 6
(AFB 122)
40/P&S/126 (3438)

No D139607 Name ROUCHETTE JMA | Sqn, Battery, or Company | Corps CIC | Ex "E" | Date of enlistment 25 Feb 43 | OC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 31 May 43 | No and date of last drunk Nil | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc "N Loranger Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Previous Sheet destroued after 6 Mos Servide in accordance to RO 319 and 2084 - NL Major

Certified to be a true extract from the Regt'l books and documents in my cistody - RSC Williams Lt 19 Mar 45
Officer i/c Records X Cdn Sec 2 Ech HQ 21 A Gp

Certified a true copy of MFM 6 in my possession
JMB "R Paull" Capt

(PTO)

RECORDED AT CMHQ IN AB 160, 5F-107.

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Brigadier G S N Gostling, ED Comd 2 CBRG dated 23 Mar 45

ACCUSED.

(Re joinder to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-139607	Pte	Joseph Maurice Albert	ROCHETTE	Fus M R 1 Cdn Disciplinary Centre

PROCEEDINGS REVIEWED
6 May 45
Wm Shaw Capt.
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 23 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RoPs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(1)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to N.A. as interpreter? Ans N.A.

The Interpreter is sworn.(1) Do you object to N.A. as shorthand writer? Ans N.A.

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J M BOWMAN	48th Highrs att 1 Cdn Disciplinary Centre
Member	Capt	E B Cartmel. R.C.A. att 1 Cdn Dis Centre	
Member	Lt.	E F McManus. R.C.E. 2 CBR Bn	
Judge-Advocate			
Prosecutor	Capt.	N.D. Bowler. C.I.C. att 1 Cdn Dis Centre	
Defending Offr	Capt	F.C. Hare. C.I.C. att 1 Cdn Dis Centre	

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See DI p 3.)

A8. The accused D-139607 Pte Joseph Maurice Albert ROCHETTE before arraignment make(s) (no) (a) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form Band E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Hist P 102

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-139607 Pte Joseph Maurice Albert ROCHETTE Fus M R 1 Cdn Disciplinary Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA sec. 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N.A. beginning on (date) N.A.(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for one (1) year.

23 Mar 45 (Sgd) W M Shaw Capt. (Sgd) W M Bowler Major.
Date awarded. President. (RP 45, 50.)
(Sgd) Judge-Advocate, if any.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sentence back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) (G S N Gostling) Brigadier,
Date 27 Mar 45 Commanding 2 Cdn Base Rft Gp
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D139607 Pte Rochette, J.M.A.	27 Mar 45	C Ford, Lt-Col. Comdg, 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CR 47B
27 Mar 45

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO.(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither.? Ans..... Do you intend to call witnesses on your behalf? Ans..... Are they witnesses as to character only? Ans.....
(1. RP 115. 2. RP 40(A), see 80(2). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the Finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(2) (a). RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), ~~and certified true copy/extract of Conduct Sheet(s)~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)
(1. MFB 355 or AFB 296. 2. MSM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. My defending officer will read it on my behalf.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-52, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 52. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, D-139607 Pte Joseph Maurice Albert ROCHETTE, Les Fusiliers Mont-Royal, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 1400 hrs 20 Jan 45 until apprehended at BRUSSELS, Belgium at 1300 hrs 14 Mar 45.
(Total Absence:- 52 days 23 hrs)

In the Field
21 Mar 45

(A C Wood) Lt Col
Commanding
1 Cdn Disc Centre

To be tried by Field General Court-Martial

In the Field
23 Mar 45

(G S T Gostling) Brig
Comd
2 Cdn Base Rft Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 67(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-139607	Pte		Joseph Maurice Albert	ROCHETTE	Fus M R att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 23 Mar 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	J M BOWMAN	48th Highrs att 1 Cdn Disciplinary Centre	

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	G B CARTMEL	RCA att 1 Cdn Disciplinary Centre	
Lt	to be detailed by OC 9 CBR Bn		9 CBR Bn

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Dat 23 Mar 45

(Signed personally. RP 105 fn 2.)
(G S N Goetling)
Brigadier (Rank.)
Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 86 (In lieu of AFA 3) 40/P & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

(KR(Can) Para 55)
(CMHQ OL 173)

I certify that I have this day examined D/39607
(No.)
Pte Roberts G M A and in my opinion he is
(Rank) (Name)
fit to undergo trial by Court-Martial.

Station 1 Cdn Disciplinary Centre

Date 23 Mar 45

(Sgd) [illegible] Capt
(Medical Officer)
1 Cdn Disciplinary Centre

Unit

23 Mar 45

Plea of Mitigation for the Defense

D-139607 Pte Joseph Maurice Albert ROCHETTE

The accused is 24 years of age, single
He enlisted 25 Feb 43 arrived in UK
3 Sep 43.

He came to France with his unit
6 July 44, was wounded on 21 July 44
and sent back to hospital in England
for two months. He then returned to
his unit and served with them to
18 Jan 45. He had fought continuously
with his unit and was given a 48 hr
pass from Holland to go to Brussels.
Pte Rochette had asked for a pass five times
before but had been refused while many
of his unit with a much less period
of service had been granted passes.
He had also requested to transfer to Sp Coy
in his unit but had been refused.
For these reasons Pte Rochette was not
satisfied and decided to take a few extra
days leave additional to his 48 hr pass.
He did not intend to stay away as long
as he did but was afraid to give himself
up because he did not know what would happen.
This soldier has a clear crime sheet
and has served well in the line
He wishes to return to his unit as quickly as possible.
I ask the Court to show as much
leniency towards this man who has
committed his first offense.

J.H.B.

[illegible] Capt
Defending Officer

(1) Ex 'A'

Summary of Evidence in the case of D-139607 Pte Joseph Maurice Albert ROCHETTE, Les Fus Mont-Royal, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 9 dated 10 Feb 45.

Exhibit "B" - Certificate of apprehension dated 15 Mar 45.

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that KR & O (C) (D) (E) (F) and (G) have been complied with.

Maurice Rousseau Capt
(Maurice Rousseau) Capt

Officer detailed to take Summary of Evidence.

Dated in the Field
21 Mar 45

JAB

Ex 'B'

~~Exhibit 'H'~~

Mr Rousseau Capt

PART II ORDER EXTRACT FORM

99/20/ FMR/1(A.5c)

TO: OC
1 Cdn Disciplinary Centre
Cdn Army Overseas

19 MAR 1945

EXTRACTS FROM: UNIT LES FUSILIERS MONT-ROYAL

Part II Order No. 9 dated 10 FEB 45

7 ABSENT WITHOUT LEAVE

(k) AWL from 1400 hrs 20 JAN 45 Still absent 1400 hrs 28 JAN 45(8th day)
D139607 Pte ROCHETTE J M A

Certified to be a true extract from the regimental books and documents in my custody.

Officer IC Records
Cdn. Sec. 2 Ech. HQ. 21 A Gp.

The following documents are { attached. Please acknowledge receipt on attached duplicate.
required. Please forward same.

JRRB

Originating Clerk's Initials JRRB

for

Officer in Charge
Canadian Section, GHQ, 2nd Echelon

10 ECH—6
40(EA)/1276(6704)

I CERTIFY THAT No. D-139507, Rank Pte. Name ROCHETTE, T.M.

Unit R.C.A.S.C. 2 Can Div. was arrested at Bruxelles (Place)

at 1300 (hour) on 11 MARCH (Date) and that at the time of his arrest

he was wearing (military uniform) or (XXXXXXXXXXXXXXXX.

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding officer of the portion of His Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on arrest.

M. Rancourt Capt.

Ex C.

(J. Tweddle) A/Capt
Officer Commanding
2 Can L of C Provost Coy

Field
19 Mar 45

Ex. D.

ARMY FORM B.206 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-159607	Pte.	ROCHETTE JMA	Fus Mont-Royal

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For No Mfr b available ..... times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for No

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for .....

days in civil custody; and for 1 MD 8 days in military custody, *i.e.*, N.S. days in open arrest, 1 MD 8 days in close arrest; of which N.S. days were spent in hospital.

5. The present age of the accused is 24 years and seven months

6. The date of his attestation ~~calling up for military service~~ is 25 Feb 1943 1943 JMB

7. The service which the accused is allowed to reckon is .....

†State the military decorations (if any) held by accused.

8. The accused is in possession of† G.V.S.M. with G Clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

JMB

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27833) Wt.24309/3404 24,000 7/44 A.& E.W.Ltd. Gp.698 Forms/B.206(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		No MFM 6 available		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 23 day of Nov 45

Capt RAMC

No 11139607 Name ROCHETTE JMA Sqn, Battery, or Company

Corps CIC EX. E Date of enlistment 25 Feb 42 GC Badges

Service or Proficiency Pay

MFM 6 (AFB 122) 40/P&S/130 (3438)

Date of last entry in Company Conduct Sheet 31 May 42 No and date of last drunk Nil

Period not reckoning towards freedom from extra fine n/a Sheet No 1

Signature OC Company, etc N Loranger Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous Sheet destroyed after 6 Mos Service in accordance to RO. 319 and 2084 - NL MAJOR					
				Certified to be a true extract from the Regt'l books and documents in my Custody - RSC Williams Lt 19 Mar 45 Officer i/c Records X Cdn Sec 2 Ech H.Q 21 A Gp					
				Certified a true copy of M.F.M. 6 in my possession					

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks

KK-2 (Case #2)

GNR ROCHFORT C.N.

KK-6

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this Twelfth day of July, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery, 5 Canadian Armoured Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[xxxx

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
P-7425 Gnr. Cyril Napean ROCHFORT 88 Lt AA Bty 5 Cdn Lt AA Regt	First Charge A.A. Sec (7)1 WHEN ON ACTIVE SERVICE STRIKING HIS SUPERIOR OFFICER, BEING IN THE EXECUTION OF HIS OFFICE	Not Guilty	Guilty.	Confirmed
	Second Charge A.A. Sec 40 WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER & MILITARY DISCIPLINE	Not Guilty	Not Guilty	Noted
	Third Charge A.A. Sec(11)1 WHEN ON ACTIVE SERVICE NEGLECT TO OBEY REGIMENTAL STANDING ORDERS.	Not Guilty	Not Guilty	Noted
			To undergo 60 days Detention. W.H. Mackay Major 15 July 1943	Confirmed

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby; or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) R.O.G. Morton (R.O.G. Morton) Brig
Commanding CRA 5 Cdn Armd Div

(Signed) W.H. Mackay Major
President

Convening Officer (c) Guillermin Capt. Judge Advocate

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings

I certify that the above Court assembled on the 15 day of July 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court * Judge Advocate
2. The witnesses * Shorthand writer
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 15 day of July 1943.

Guillermin Capt. Judge Advocate

W.H. Mackay Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 768 M.M.L. 1939.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 20 day of July 1943.

R.O.G. Morton Brig
Confirming Officer
CRA 5 Cdn Armd Div

Promulgated and extracts taken in the case of P7425 Gnr Rochfort, Cyril Napean

(a) (Dated) 21 Jul 43 (Signed) J. Higgs Lt-Col 5 Cdn Lt AA Regt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(44720) Wt. 40114—983 400 pads 1/43 E. & O. E. G. 840

WFB 3

CHARGE SHEET

The accused No. P-7425 Gnr. Rochfort, Cyril Napean, 56 Cdn Lt AA Bty., 5 Cdn Lt AA Regt RCA., a soldier of the Canadian Army Overseas is charged with, while on active service:-

FIRST CHARGE
A.A.Sec(6)1

STRIKING HIS SUPERIOR OFFICER, BEING IN THE EXECUTION OF HIS OFFICE,

in that he on 30 Jun 43 at approximately 2315 hrs. at IVORY PLACE, BRIGHTON, SUSSEX, struck B-10069 L/Cpl. Bruce, E.G., No. 6 Provost Coy., whilst performing his duty as amember of the Brighton Town Patrol.

SECOND CHARGE
A.A. Sec 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he on 30 Jun 43 at approximately 2315 hrs. at IVORY PLACE, BRIGHTON, SUSSEX, created a disturbance.

THIRD CHARGE
A.A. Sec(11)2

NEGLECT TO OBEY REGIMENTAL STANDING ORDERS,

in that he, in the field, on 30 Jun 43 proceeded to BRIGHTON, SUSSEX, without a pass contrary to Regimental Standing Orders, as republished in Regimental Daily Part I Order No.110 dated 15 May 43. Cost of apprehension £-/6/4.

(S.L. [illegible]) Lt-col.,
Commanding Officer,
5 Cdn Lt AA Regt RCA.

In the Field
10 Jul 43.

To be tried by Field General Court-Martial.

In the Field
12 Jul 43

R.O.G. Morton
(R.O.G. Morton) Brig
CRA 5 Cdn Armd Div

MEDICAL OFFICER'S REPORT

I certify that No. P-7425 Gnr Rochfort, Cyril Napean of 88/5 Lt AA Regt RCA in a good state of health, and fit to undergo Trial by Court martial.

, Capt., RCAMC
Medical Officer
5 Cdn Lt AA Regt RCA.

Station In the Field.

Date 15 Jul 43.

M. F. B. 246

Record of Proceedings of a Field General Court Martial.

Held in the Field in England on 15th July, 1943, to try

F7425 Gnr Cyril Napean ROCHFORT, 5th Lt AA Bty, 5 Cdn Lt AA Regt, RCA, 5 Cdn Armd Div.

PRESIDENT

Major W.R. Bradley — 5 Cdn LAA Regt RCA

MEMBERS

Captain R. Philpott — 17 Cdn Fd Regt RCA
Lieut. E.A. Hierlihy — 5 Cdn LAA Regt RCA

JUDGE ADVOCATE

Captain G.M. Morrison — ADJA 5 Cdn Armd Div

OFFICER UNDER INSTRUCTION

Lieut. H.H. Hilliard — 5 Cdn Army Fd Regt RCA

PROSECUTING OFFICER

Lieut. J.W. Wallace — 5 Cdn LAA Regt RCA

DEFENDING OFFICER

Lieut. C.A. Eaves — 5 Cdn LAA Regt RCA

The President produces the Convening Order, Charge Sheet and Summary of Evidence.

The President, in closed court, reads the Convening Order and the Charge Sheet to the Members, and the Court satisfy themselves that it is properly convened and constituted, that the accused is amenable to Military Law, and that each charge discloses an offence.

The accused is brought before the Court and at 1500 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under R.R. (Can) 587, that the accused has this day been examined and is fit to undergo trial by Court Martial. The certificate is signed by the President and attached to the proceedings.

President to accused

Q. 1 Do you object to A57355 Cpl B.W. Henheffer, CMSC, HQ 5 Cdn Armd Div acting as shorthand writer?
A. 1 No, sir.

The shorthand writer is duly sworn.

The Convening Order is read in the hearing of the accused.

The names of the President and Members of the Court are read to the accused and they severally answer to their names.

President to accused

Q. 2 Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A. 2 No, sir.

The President, Members, Judge Advocate and Officer under Instruction are duly sworn.

The Charge Sheet is signed by the President.

The Prosecuting Officer informs the Court that the accused has not elected trial by Court Martial.

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty. He pleads as follows:

First Charge - Not Guilty

Second Charge - Not Guilty

Third Charge - Not Guilty

President to accused

Q. 3 Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A. 3 No, sir.

P R O S E C U T I O N

The Prosecutor declines to make an Opening Address.

1st Witness, B10069 L/Cpl R.G. Bruce, No 8 Coy Can Provost Corps, having been duly sworn is examined by the Prosecutor:

Q. 4 Were you on duty in Brighton on 30 June, 1943?
A. 4 Yes, sir.

Q. 5 At what time did you go on duty?
A. 5 At 8 in the morning.

Q. 6 And what time did your tour of duty finish?
A. 6 At 8 o'clock the following morning.

Q. 7 Did you see the accused on the street while you were patrolling?
A. 7 We were called to a disturbance at Ivory Place and there were two soldiers there. One was the accused.

Q. 8 Will you tell what happened from the time you saw the accused on the street?
A. 8 We saw the accused in company with Gnr Whelan on the street. We stopped our truck and we heard these two soldiers banging on a door and hollering. We went over to check them and we asked the accused to do up his tunic and to stop making so much noise. I was struck in the face by the accused. He then tried to run away but fell. I got hold of him and with the help of L/Cpl Robins, he was put in the truck. He was taken back to our HQ under close arrest.

Q. 9 Did the accused say anything to you before he hit you?
A. 9 No, sir.

Cross Examination by the Defending Officer:

Q. 10 You say that you were called to a disturbance?
A. 10 Yes, sir.

Q. 11 And you say that when you arrived on the scene they were hollering and banging on the door?
A. 11 They were.

Q. 12 Was there a crowd around?
A. 12 No, sir.

Q. 13 Do you think it is causing a disturbance by knocking on a door or by hollering?
A. 13 Yes, sir.

Q. 14 You say the accused tried to run and fell. Did he trip up?

A. 14 Apparently he lost his balance.

Q. 15 Did he fall over anything?
A. 15 No, sir, he apparently slipped on the nails in his boots.

Q. 16 Do you consider he was drunk?
A. 16 No, sir.

Q. 17 Had he been drinking?
A. 17 Yes, he had.

Q. 18 How can you say he was not drunk?
A. 18 I asked him some questions and he could answer them quite alright.

Q. 19 Was Snr Whelan there at the time?
A. 19 Yes, sir.

Q. 20 Was Snr Whelan drunk?
A. 20 Yes, sir.

Re-examination.

By the Judge Accused

Q. 21 In what manner did the accused strike you?
A. 21 With his fist.

Q. 22 Was his fist clenched?
A. 22 Yes, sir.

Q. 23 Where did he strike you?
A. 23 In the mouth.

Q. 24 Did he cause any injury?
A. 24 My lip was cut and swollen. I reported this to the CH when I got in.

Q. 25 At what time did this occur?
A. 25 About 2315 hours.

Q. 26 Was it dark?
A. 26 Yes, sir, it was quite dark.

Q. 27 How were you dressed?
A. 27 Just as I am now with web belt and ;atol.

Q. 28 Were you wearing an arm band?
A. 28 Yes, sir.

Q. 29 What was on the arm band?
A. 29 The letters "MP".

Q. 30 Were you wearing your stripe?
A. 30 Yes, sir.

Q. 31 What were they doing when you first saw them?
A. 31 When we came up to the truck they were hollering and banging on a door.

Q. 32 You had some conversation with the accused?
A. 32 Yes, sir.

Q. 33 Did he talk sensibly?
A. 33 Yes, sir, when we got to the back of the truck, he said he could climb over the tail board himself.

Q. 34 You say he had been drinking?
A. 34 Yes, sir.

Q. 35 How can you tell that?
A. 35 By the smell of liquor on his breath.

Q. 35 You say that Gnr Whelan was drunk?
A. 36 Yes, sir.

Q. 37 And what did you first say to the accused?
A. 37 To stop his hollering and to button up his tunic. I asked him to button up his tunic and he struck me.

By the Court

Q. 38 Did you identify yourself to the accused as a military policeman?
A. 38 Yes, sir, he would not listen to the CMP and asked for a Cdn MP. I told him that I was one.

Q. 39 Were the CMP or red caps dealing with them?
A. 39 We were patrolling with the red caps. The accused did not want to have anything to do with the red caps and I went up to him. The red caps wanted to avoid trouble and asked me to deal with him.

In the opinion of the Court and the Judge advocate it is not necessary to comply with [illegible].

[illegible] drawn.

2nd Witness, L2558 L/Cpl J.O. Rutherford, No 9 Coy Cdn Provost Corps, having been duly sworn is examined by the Prosecutor:

Q. 40 Were you on duty with L/Cpl Bruce on 30 June?
A. 40 Yes, sir.

Q. 41 How did you come across the accused?
A. 41 We were on duty at the station when the call came in that some soldiers were causing a disturbance.

Q. 42 Will you tell what happened?
A. 42 We were called to Ivory Place, Brighton, in answer to this call. On arriving there we say only the accused and Gnr Whelan and they were wrapping on a door, kicking and hollering, looking for a number 17. Both had their tunics loose, caps off when L/Cpl Bruce checked the accused up for his dress. One remarked that they were alright. When L/Cpl Bruce told him to do up his tunic, the accused struck him. From then on I took care of Gnr Whelan and L/Cpl Bruce took care of the accused.

Q. 43 Did the call regarding the disturbance come from the house on which they were banging on the door?
A. 43 I do not know, sir.

Q. 44 When you saw Gnr Whelan and the accused were they causing a disturbance?
A. 44 They were raising a hell of a racket, knocking on the door which I would call a disturbance.

Cross Examination by the Defending Officer

Q. 45 You did not know where this call came from?
A. 45 No, sir, it came in asking if a provost could be taken to Ivory Place.

Q. 46 You assumed that there would be a disturbance?
A. 46 Yes, sir.

Q. 47 If the word "disturbance" had not been used over the telephone, you might not have termed it as such?
A. 47 Yes, sir, I think it was a disturbance.

Q. 48 What were these two men doing?
A. 48 They were banging on this door and looking for a number 17.

Q. 49 You say that Gnr Whelan was drunk?
A. 49 Yes, sir.

Q. 50 What about the condition of the accused?
A. 50 I would say he had been drinking but he was not drunk.

Q. 51 Was there anyone else on the street besides the accused and Gnr Whelan?
A. 51 Not that I saw.

Q. 52 You did not see anybody?
A. 52 No, sir.

Q. 53 When L/Cpl Bruce went up to the accused, did he say anything to him first? Did he speak to the accused?
A. 53 He told him to do up his dress.

Q. 54 He did not use any physical violence on him?
A. 54 No, sir.

Q. 55 And then what happened?
A. 55 The accused struck L/Cpl Bruce and tried to run away. He fell and then L/Cpl Bruce took charge [illegible] and I looked after Gnr Whelan.

Q. 56 When the accused was taken to the truck, did he say anything?
A. 56 Not that I know of. He was cursing the limey red caps.

Q. 57 Was he helped in the truck?
A. 57 Yes, sir, he was.

Q. 58 Did he hold any conversation with L/Cpl Bruce?
A. 58 No, sir.

Q. 59 Did you see the accused at all after this?
A. 59 I saw him for a few seconds the following morning. I asked him where he was stationed for he had told me the evening before that he was stationed in Sterling Scotland. I had some business at the station when I saw him and asked him. He mentioned a place near Haywards Heath. I think he said it was Wych Cross.

No re-examination.

By the Judge Advocate

Q. 60 Had you been drinking that night?
A. 60 Sir, I have not had a drink since four years ago last December 16.

Q. 61 And what about L/Cpl Bruce?
A. 61 He had not been drinking that night.

By the Court

Q. 62 At what time did you come on duty that day?
A. 62 At 6 o'clock in the evening.

Q. 63 And during the ensuing five hours where were you?
A. 63 First I was at the railway station and then in the CRP station as st ndby.

Q. 64 Why do you think the accused was cursing the red caps?
A. 64 It seems a natural thing for the Canadian boys to have a dislike for the English red caps.

Q. 65 There were red caps with you?
A. 65 Yes, sir, in the truck.

Q. 66 And who went up to the door first?
A. 66 L/Cpl Bruce and myself.

Q. 67 Did the red caps leave the truck?
A. 67 They were around but they did not help to take the boys in.

Q. 68 Was the accused in such a condition that he could not get in the truck?
A. 68 He could have got in but did not want to.

Q. 69 Could Gnr Whelan have got in the truck unassisted?
A. 69 He was more or less in stupid condition.

Q. 70 Did the accused offer any resistance to being placed in the truck?
A. 70 Yes, sir, he did.

Q. 71 What did he do?
A. 71 He held himself back and had to be forced to go in.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 93(2).

The witness withdraws.

The Prosecution is closed.

The accused is informed that he may, if he wishes give evidence but if he does so he will be liable to cross examination or that he may, if he wishes, make an unsworn statement upon which he cannot be cross examined.

President to accused

Q. 72 Do you apply to give evidence yourself as a witness?
A. 72 Yes, sir.

Q. 73 Do you intend to call any other witness in your defence?
A. 73 Yes, sir.

Q. 74 Is he a witness as to character only?
A. 74 No, sir.

D E F E N C E

The Defending Officer declines to make an Opening Address.

1st Witness, P7425 Gnr C.M. Rochfort, 88 Lt AA Bty, 5 Cdn LAA Regt, RCA having been duly sworn is examined by the Defending Officer:

Q. 75 Will you give an account of what happened that night?
A. 75 On the night of 30 June, Gnr Whelan and myself were in Brighton and visited several pubs and drank heavily. The next thing I remembered was waking up in a cell the next morning and asking the guard why I was in there and said that my arm, jaw and ear were very sore.

Cross Examination by the Prosecutor

Q. 76 You remember nothing whatsoever of what happened that night?
A. 76 I remember starting out but I do not remember the last pub we were in.

Q. 77 Do you remember a crowd in the street?
A. 77 No, sir.

No re-examination.

By the Judge Advocate

Q. 78 You have no recollection of what took place from what time?
A. 78 From the time we visited the last pub.

Q. 79 What time would that be?
A. 79 I imagine around 10.30.

Q. 80 When did you next have any recollection of what happened?
A. 80 The next morning at about 7 o'clock.

Q. 81 And you have no recollection of what took place between these times?
A. 81 No, sir.

Q. 82 What had you been drinking?
A. 82 Whiskey and light ale.

Q. 83 How many whiskeys did you have up until the time you lost your memory?
A. 83 I do not know but it cost me £1-10-0.

Q. 84 Were you buying for Gnr Whelan?
A. 84 We were buying turn about.

Q. 85 Do you drink very much?
A. 85 Yes, sir.

Q. 86 Does liquor always affect you that way?
A. 86 Yes, sir, if I get too much.

Q. 87 That is you are still on your feet but do not remember what takes place?
A. 87 I am on my feet and that is about all.

Q. 88 Do you stagger?
A. 88 No, sir.

Q. 89 Do you talk sensibly?
A. 89 I do not know about that sir.

By the Court

Q. 90 Approximately what time did you and Gnr Whelan leave camp?
A. 90 About 5.45.

Q. 91 And what time did you arrive in Brighton?
A. 91 Around 7 o'clock.

Q. 92 How long have you been in England?
A. 92 I came overseas in August 1940.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

The witness withdraws.

2nd Witness, D11320 Gnr W. Whelan, 88 LAA Bty, 5 Cdn LAA Regt RCA, having been duly sworn is examined by the Defending Officer:

Q. 93 Were you with the accused in Brighton when he was arrested?
A. 93 Yes, sir.

Q. 94 Do you remember anything about the incidents which took place when he was placed under arrest?
A. 94 No, sir.

Q. 95 You remember nothing about it at all?
A. 95 I remember going to a few pubs with him.

Q. 96 What were you drinking?
A. 96 Whiskey and light ale.

Q. 97 You visited several places?
A. 97 Yes, sir.

Q. 96 You eventually lost control of the situation?
A. 96 Yes, sir.

Q. 99 The next morning it anybody speak to you?
A. 99 Yes, sir, the provost who me up.

Q. 100 What did he say to you?
A. 100 To get up and have breakfast.

Q. 101 You were charged, were you not?
A. 101 Yes, sir, he told me I was just charged with being drunk.

Q. 102 Were you convicted by your sty coad for drunkenness on the 3 July?
A. 102 Yes, sir.

Cross Examination by the Prosecutor

Q. 103 Were there any people on the street when the provost picked you up?
A. 103 No, sir, I couldn't say.

Q. 104 Do you remember whether the provost said anything to you before you were arrested?
A. 104 No, sir, I just remember being in the station down there.

Q. 105 Did the provost tell you the next day what had occurred?
A. 105 He told me that they had found me and picked me up.

No re-examination

By the Judge Advocate

Q. 106 At what time did you become so drunk that you failed to recall what happened?
A. 106 I couldn't say for certain, around 10.

Q. 107 When did you next come to your senses?
A. 107 I came to my senses in the CMP depot in Brighton.

By the Court

Q. 108 On the Summary of Evidence, did you make this statement "As we were walking down the street I remember seeing a bit of a crowd and then remember the provost twisting my arm behind my back"?
A. 108 Yes, sir, I remember seeing a crowd but how they got there I do not know.

Q. 109 And the provost?
A. 109 They came up and started twisting my arm.

Q. 110 And the accused?
A. 110 I did not see him.

Q. 111 Were you not together?
A. 111 Yes, we were, but I lost track of him.

Q. 112 Did you knock on any door?
A. 112 I do not remember.

Q. 113 Did you see the accused knock on any door?
A. 113 No, sir.

Q. 114 The statement you made in the Summary of Evidence about walking down the street and seeing a bit of a crowd and then remember the provost twisting your arm, would you swear to that statement?
A. 114 Yes, sir, I feel that this happened. I remembered that the next morning. I just remember certain spots of all that happened that night.

Q. 115 How much money did you spend?
A. 115 £2-10-0.

Q. 116 How much did the accused spend?
A. 116 I do not know.

Q. 117 What time did you leave camp?
A. 117 About 5.30 in the evening.

Q. 118 What time did you arrive in Brighton?
A. 118 We must have got there about 8 or 8.30.

Q. 119 Was the accused able to get in the truck by himself?
A. 119 I couldn't say, sir.

Q. 120 Were you able to get in?
A. 120 I couldn't say, I don't remember.

Q. 121 Do you drink very much?
A. 121 Yes, sir, quite a bit.

Q. 122 Do you remember how much you spent on liquor?
A. 122 All but about two shillings went for a meal.

Q. 123 How much did the accused spend on liquor?
A. 123 I couldn't say, sir, I do not know how much he had.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

The witness withdraws.

3rd Witness, A27109 L/Cpl K.E. Robins, No 6 Cdn Provost Coy, having been duly sworn is examined by the Defending Officer:

Q. 124 Did you witness what occurred on the night of 30 June when you were off duty in Brighton?
A. 124 Yes, sir.

Q. 125 Were you with L/Cpls Bruce and Rutherford when the accused was arrested?
A. 125 Yes, sir.

Q. 126 Where were you when the call came through to the station?
A. 126 At CMP HQ in Brighton.

Q. 127 Did L/Cpl Bruce speak to the accused before placing him under arrest?
A. 127 Yes, he did.

Q. 128 What did he say?
A. 128 He told him to button his tunic and to straighten up.

Q. 129 What do you mean "straighten up"?
A. 129 They were more or less hanging on to one another. They were acting in a drunken manner.

Q. 130 What happened then?
A. 130 There was a few words between them and the accused hit L/Cpl Bruce.

Q. 131 When did L/Cpl Bruce use force?
A. 131 After the accused hit him.

Q. 132 After the removal of the accused, where did you next see him?
A. 132 In the civil police station at about 0000 hours, the following morning.

Q. 133 Did the accused speak to you about the previous evening?
A. 133 Yes, he asked whether I had seen anything which happened the night before.

Q. 134 Had you asked him anything before that?
A. 134 I asked him how he felt?

Q. 135 What did he reply?
A. 135 He said he did not feel so good.

Q. 136 Did he say anything about remembering what had happened?
A. 136 He said he did not remember anything what happened.

Q. 137 And what did you say?
A. 137 I told him that he was a fighting fool.

Q. 138 In what condition was the accused when he was arrested?
A. 138 He was drunk.

Q. 139 What about Cpl Whelan?
A. 139 He was about the same.

Cross Examination by the Prosecutor:

Q. 140 Did you accompany the accused, on the way up in the train, the precaut who pulled him up the night before?
A. 140 Yes, sir, I did.

Q. 141 Do you remember if you said anything about the condition they were in the night before?
A. 141 No, sir.

Q. 142 What was the condition of L/Cpls Bruce and Rutherford when the accused was arrested?
A. 142 Their condition was good.

Q. 143 Would you say they had been drinking?
A. 143 No, sir.

Q. 144 When you went along with L/Cpls Bruce and Rutherford what would you say the accused was doing?
A. 144 The two of them were going up the street looking for a number 17 with a lighted match over their head.

Q. 145 Were they on the street or the doorstep?
A. 145 They were both on the side walk in front of the house.

Q. 146 Did you see them knock on any doors?
A. 146 No, sir.

Re-examination by the Defending Officer

Q. 147 Did you climb out of the truck at the same time as L/Cpls Bruce and Rutherford?
A. 147 Yes, sir.

Q. 148 And you watched the proceedings?
A. 148 I watched them until the fight started and then helped to bring the accused back to the truck.

Q. 149 Why did you help to bring him back to the truck?
A. 149 I saw him strike L/Cpl Bruce.

Q. 150 You say they were standing on the side walk when you first saw them. What were they doing?
A. 150 Just talking among themselves, fairly loud.

Q. 151 When you returned to the truck, did you help the accused in the truck?
A. 151 I was there but he complained about twisting his arm and they let him get in the truck himself.

By the Judge Advocate

Q. 152 Did you arrive on the scene with L/Cpls Bruce and Rutherford?
A. 152 Yes, sir.

Q. 153 At the same time?
A. 153 Yes, sir.

Q. 154 In the same truck?
A. 154 Yes, sir.

Q. 155 You say the accused was not pounding on Bruce when you arrived there?
A. 155 I did not see it, sir.

Q. 156 Could he have been doing it without you seeing it?
A. 156 I was the last one to get out of the truck and I did not see the accused until I got out of the truck. By that time the other were over there already. They were then on the side walk.

Q. 157 You say that L/Cpls Bruce and Rutherford had not been drinking?
A. 157 No, sir, they had not. L/Cpl Rutherford was on stand-to duty and could not go out.

By the Court

Q. 158 Was the accused drunk at the time?
A. 158 I could not say he was drunk, just under the influence of alcohol.

Q. 159 How could you tell?
A. 159 You could smell it and by the way he acted.

Q. 160 Were you on duty?
A. 160 No, sir.

Q. 161 Had you been drinking yourself that evening?
A. 161 No, sir.

Q. 162 Was there a crowd gathered around?
A. 162 I saw only two civilians.

Q. 163 How many provost?
A. 163 4 CMP, 2 from the 8 Coy and myself.

Q. 164 You say they were hugging on to each other. Is it possible that they could have been supporting one another?
A. 164 I couldn't say.

Q. 165 They were on the public side walk when you saw them?
A. 165 Yes, sir.

Q. 166 That was before anyone had left the truck?
A. 166 No, I was the last to get out and when I did get out, the others were over there already.

Q. 167 When you saw them they were on the side walk?
A. 167 Yes, sir.

Q. 168 What type of truck did the provost have that night?
A. 168 A 15-cwt.

Q. 169 Closed or open?
A. 169 It had a tarpaulin on it.

Q. 170 Did you see the accused strike L/Cpl Bruce?
A. 170 Yes, sir.

Q. 171 How did he strike him?
A. 171 It seems he struck him with his fist first and then with fist and feet.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(3).

The witness withdraws.

The Defence is closed.

The closing address of the Defending Officer is recorded on a separate sheet, marked "C" and attached hereto.

The closing address of the Prosecutor is recorded on a separate sheet, marked "B" and attached hereto.

The closing address of the Judge Advocate is recorded on a separate sheet, marked "D" and attached hereto.

The Court is closed to consider the findings.

The findings of the Court are recorded on page 2 of AFB 5.

The Court being re-opened, the accused is again brought before it.

The findings of "Not Guilty," are announced and the President states: "The finding of the Court on the first charge is subject to confirmation, will be promulgated later."

Statement of Character and Service and Field Conduct Sheet, signed in the manner required by A.A. 183(iii) and purporting to refer to the accused by his number, rank, name and Corps, are produced to the Court, read, signed by the President and attached to the proceedings.

President to accused

Q. 172 Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment?

A. 172 No, sir.

The President announces:

"The Court is closed for consideration of the sentence. The sentence to be awarded by the Court, being subject to confirmation, will not be announced but will be promulgated later and the proceedings in Open Court are accordingly terminated."

The Court is closed to consider the sentence.

The sentence is recorded, dated and signed by the President on page 2 of A.F.B. 5.

CERTIFIED A TRUE RECORD OF THE TRIAL, this 10th day of July, 1943.

G. Williamson Captain
Judge Advocate

"X" Gmm.

ADDRESS BY THE DEFENDING OFFICER

With regard to the first charge--striking a superior officer, who was in the execution of his duty--the accused has sworn that he was unaware of doing this. The evidence we have heard from L/Cpls Bruce and Rutherford was somewhat conflicting in that L/Cpl Bruce maintained that the accused spoke in a sensible manner whereas L/Cpl Rutherford says the accused had to be helped in the truck. L/Cpl Robins says the accused got in the truck himself. It is quite conflicting and does not show much judgment on the part of the two NCOs as to what condition this man was in.

To my mind this charge is a serious one and if this man was drunk, that charge is considerably less serious than if he were dead sober. The evidence certainly bears out that this man was in an intoxicated condition. This hanging [illegible] another might also bear out the fact that the accused was suffering from the effects of alcohol. This [illegible] charged Dnr Whelan with drunkenness, as was brought out in the evidence, and he was convicted. I feel that under the circumstances, this charge of striking a superior officer, is absolutely bound up with the charge laid against Dnr Whelan. From the evidence they were drinking together, their stories did not jive on the amount of money spent but I cannot understand why one charge was laid against a man and an altogether different one against the other man. The defence does not make out that the accused did not strike his superior officer and I think their condition should be taken into consideration.

About creating a disturbance, there is a lot of conflicting evidence. L/Cpl Bruce tells us that the English police accosted the accused first. L/Cpl Rutherford's evidence does not bear that out and the evidence of L/Cpl Robins was to the effect that the CMP did not have any contact with the accused. If the CMP went up to the accused in the first place, there was likely to be trouble as the average Canadian soldier is antagonistic towards them.

The story as to what they were doing is likewise quite conflicting. L/Cpl Bruce says they were hammering on the door, L/Cpl Rutherford says they were just knocking on the door, while L/Cpl Robins says they were on the side walk. If they had been hammering or banging on the door, I cannot see how anyone could not have heard them doing so. This is very confusing for none of the witnesses concur.

The last point I should like to bring up with regard to the first charge is that some say he spoke sensibly. L/Cpl Bruce says the accused spoke sensibly and when asked to get in the truck got in himself. L/Cpl Robins says he helped him in the truck and I would again point out that their stories do not jive.

In summing up I believe that the first charge should have been reduced as I feel that it was just a case of drunkenness and a drunken brawl for they obviously had been drinking too much and that was what led to trouble.

ADDRESS BY THE JUDGE ADVOCATE

The first charge is under Sec 8(1) of the Army Act which I would like to read to you (reads), in this case striking a superior officer in the execution of his office. I need hardly point out to you that any NCO is a superior officer of a private soldier.

Now then the accused's main defence to that charge is, as I understand, the defence of drunkenness. There is no serious attempt made from the evidence and from the Defending Officer's remarks to show that the accused did not strike L/Cpl Bruce. I might say that the best thing I could do is to read to you the remarks contained in MML regarding this defence. First of all I would like to read para 48 on page 25 (reads). In addition to this I want to read to you para 9 on page 106 (reads). That part I have read to you gives the law on the defence of drunkenness and the Court will have to determine whether the evidence of drunkenness is sufficient to show that the accused was unable to form the intent to strike the provost. Was he, by reason of the amount of liquor he had drunk, unable to form the intent essential to constitute the crime as charged? In coming to your conclusion you will consider the evidence. I should advise the Court to consider the defence of drunkenness with great care for it would be a very handy thing if an accused, in any case, could simply say he was so drunk he had no recollection of what happened. They must regard that defence with a great deal of care, otherwise there might be a great many cases where guilty men might go free when they should have been convicted.

With regard to the second charge, you will, of course, merely consider the charge on the evidence you have heard today. I think there was some mention that a disturbance had taken place in the neighbourhood where the accused was found. Whether or not there was a disturbance or whether the accused was involved in it, is up to you gentlemen to decide. You will consider the evidence merely from the time the provost arrived at the scene. The point is whether the accused was then creating a disturbance. The defence on this charge is that what he was doing did not amount to creating a disturbance but you will judge from the evidence whether or not the accused was creating a disturbance on that occasion. I take it also that if the Court finds there was a disturbance, the defence raises the issue of drunkenness in this charge as well. Assuming that you find the accused was creating a disturbance, you will have to consider the drunkenness defence.

With regard to the third charge, there is no evidence before the Court which would warrant a conviction and I advise you to enter a finding of Not Guilty.

It only remains to add that the accused is innocent unless you consider that the prosecution has proved him guilty beyond a reasonable doubt.

EXHIBIT "A"

43

DAILY PART 1 ORDERS
by
Lieutenant-Colonel S.L. Higgs,
Commanding Officer 5 Cdn Lt AA Regt RCA.

15 May 43

Part 1 Order No.110

Last Part 1 Order issued No.109 dated 14 May 43.

1. DUTIES - 16 May 43 (Sunday)

Field Officer	Major J.E. Builder	47 Bty
Duty Officer	Capt. R.Z. Chown	41 Bty
Duty Sergeant	A/Sgt. McLaren, J.	41 Bty

Part 1 Order No. 109 para 2 amended to read, Field Officer Major J.E. Builde
Part 1 Order No. 109 para 2 amended to read, Duty Sergeant A/Sgt McLaren, J.

2. DUTIES - 1[illegible] May 43 (Monday)

Field Officer	Captain E.S. Fairman	47 Bty
Duty Officer	Lieut. H.S. Bexsmith	47 Bty
Duty Sergeant	Sgt. Crate, F.S.	47 Bty

3. BLACKOUT

Blackout will be from 2221 hrs 15 May 43 until 0531 hrs 16 May 43.

4. PARA DES

Reveille	0700 hrs	Supper	1630 hrs
Breakfast	0800 hrs	Roll Call	2230 hrs
Dinner	1200 hrs	Lights Out	2300 hrs

5. PLANE OF THE DAY

The Plane of the Day will be the "Ju 290".

6. CHURCH PARADES - Sunday 16 May 43. (Prot.)

0800 hrs there will be Holy Communion in the Chapel beside the Legion Hut.
1000 hrs there will be Church Parade - Thanksgiving Service. The 88 Bty will parade. Voluntary attendance of other personnel of the Regt are cordially invited.

CHURCH PARADE - Sunday 16 May 43 (R.C.)

1015 hrs there will be HOLY MASS at Ashdown Park Convent. Transportation will leave R.H.Q. at 1000 hrs.

7. CHOIR PRACTICE

There will be a Choir Practice in the "Recreation Hut" at 0930 hrs Sunday 16 May 43. Will all members of the Choir kindly attend.

8. LEAVE - STANDING ORDERS

Attention of all ranks is drawn to the new Standing Orders regarding Leave. These Standing Orders will be found in Regt'l H.Q. and all Bty Orderly Rooms.

9. ADDRESSING MAIL TO CANADA

All letters or parcels mailed to Canada will have the senders return address on the reverse side of the envelope as follows:

No. ..... Rank..... Name and initials .....

Bty ..... Regt ..... Cdn Army Overseas.

10. LATE PASSES

1. Passes will be required by O.Rs. when proceeding to any Area beyond a radius of five (5) miles (except HAYWARDS HEATH) as outlined below.

2. All other ranks below that of Sergeant will be in possession of a pass (AFB 295) when away from quarters after 2230 hrs.

3. Any man not properly dressed will not be allowed to proceed. Dress: F.S. Cap, Battle Dress, Leather Boots or Shoes and web belt. Buttons will be clean, clothes neatly pressed and boots shined.

EAST GRINSTEAD	8357
FOREST ROW	8654
HARTFIELD	9154
WITHYHAM	9354
CROWBOROUGH	9550
HARESFIELD	9043
CHAILEY	8440
HAYWARDS HEATH	7744
HORSTED KEYNES	8247
WEST HOATHLY	8052

11. OUT OF BOUNDS - During Training Hours.

The following places are 'Out of Bounds' to all ranks: The Roebuck Hotel, Wych Cross and ALL hotels in Nutley. Any personnel found disobeying this Order will be severely dealt with.

12. FOURTH VICTORY LOAN

The Victory Bond Sales to date are as follows:

	HHQ		41 Bty		47 Bty		88 Bty	
	No.	Amt.	No.	Amt	No.	Amt	No.	Amt
Offrs	5	600	6	900	4	1700	4	350
ORs	3	150	14	1250	15	950	15	1100
		750		2150		2650		1450

Making a Grand Total of $7000. TO DAY IS THE LAST DAY.

13. PUNISHMENTS

F.6057 Gnr. MUISE, A.J. on the 14 May 43, was found in a Public House during the hours of Duty. He was sentenced under Sec 40 AA and forfeits 14 days pay FR&I 149 (2).

(P.L. Armitage) Lieut.,
Adjutant,
5 Gdn Lt AA Regt RGA.

SUMMARY OF EVIDENCE IN THE CASE OF

P-7425, Gnr. ROCHFORT, Cyril Napean

88 Cdn Lt AA Bty.,

5 Cdn Lt AA Regt RCA.,

The accused demands that all evidence be taken under oath:-

First Witness: D-11320 Gnr. WHELAN, W. 88 Cdn Lt AA Bty
having been duly sworn states:-

At 1730 hrs. 30 June 43 Gnr. Rochfort and myself proceeded to Brighton via Haywards Heath. On arriving at Brighton we visited various "pubs" and drank heavily. Gnr. Rochfort and I both had the same amount to drink. I do not remember the name of the last place we ere at. We started to walk from the "Pub" toward the station. As we were walking down the street I remember seeing a bit of a crowd and then remember the Provost twisting my arm behind my back.

I was brought to Gnr Rochfort next morning, handcuffed to him and proceeded to London. On the way the Provost said he had been drinking the night before, that they had come out of a "Pub" and picked us up. We spent the night in London and were returned to camp the next morning.

Officer taking summary

Q.1: Do you know where Gnr Rochfort was at 2315 hrs. 30 June 43?
A.1: Gnr Rochfort was with me in Brighton, I do not know which part.

Q.2: Were you on a street or in a building?
A.2: On the street.

Q.3: Was the crowd of people there before you arrived or did they gather around you?
A.3: I don't know I only remember seeing them there.

Q.4: Did you hear Gnr Rochfort making any noise?
A.4: No.

Q.5: Did any Provost speak to you before being arrested?
A.5: No.

Q.6: Were you with Gnr Rochfort until the time of arrest?
A.6: Yes.

Q.7: Were you drunk?
A.7: Yes

31

Q.8: Was Gnr Rochfort drunk?
A.8: Yes.

Q.9: Did you see Gnr Rochfort resist arrest?
A.9: No.

Q.10: Were the Provost in a sober condition when you were arrested?
A.10: I do not know.

Q.11: Did the Provost say anything to you the next day about their condition at the time of arrest?
A.11: While going to London under escort one of the Provost said they were half drunk the night before as they had come out of the "Pub" to pick us up.

The accused declines to cross examine the witness.

Second Witness: B-10069 L/Cpl. Bruce, E.G. No.8 Coy Cdn Provost having been duly sworn states:-

About 2315 hrs. 30 June 43 I was on duty at Ivory Place, Brighton in company with L/Cpl Rutherford when we saw two soldiers approaching us. We crossed the street and found neither soldier had his tunic done up or cap on. I asked Gnr Rochfort to button up his tunic and put on his hat. He then struck me in the face and started to run down the road. I overtook him and placed him under close arrest.

Officer taking summary

Q.12: Was Gnr Rochfort drunk?
A.12: He had been drinking but was not drunk.

Q.13: Did Gnr Rochfort say anything before he hit you?
A.13: No.

Q.14: Had either you or L/Cpl Rutherford been drinking during the night?
A.14: No.

Q.15: Did you discuss ~~the next~~ with the two prisoners the next day what had gone on the night before?
A.15: I did not see Gnr Rochfort, or Gnr Whelan the next day.

Q.16: Did you get a call to Ivory Place?
A.16: Yes.

Questions by the Accused:

Q.17: Where did you first meet Gnr Whelan and me?
A.17: On the side walk in Ivory Place.

Q.18: Did you hit me at all?
A.18: No.

Q.19: How did you catch me?
A.19: You fell.

Q.20: How was I taken back to Castle Square?
A.20: 15-cwt.

Q.21: Was Gnr. Whelan in the truck?
A.21: Yes.

Q.22: Was I awake in the truck or asleep?
A.22: Awake.

Third Witness: L-2566 L/Cpl Rutherford, G.O., No. 8 Coy Cdn Provost, having been duly sworn states:-

We were called up to Ivory Place, Brighton to investigate soldiers causing disturbance we came across Gnr Rochfort and Gnr Whelan. They had hats off, jackets undone, shirts loose. L/Cpl Bruce ordered them to do their clothes up. They first of all refused to do them up, and L/Cpl Bruce said we would take them in under arrest. Gnr Rochfort hit L/Cpl Bruce and started to run down the street. L/Cpl Bruce caught him and placed him in the truck, and took him to CMP HQ and on to Preston Barracks.

Officer taking summary

Q.23: Did the accused say anything to L/Cpl Bruce when ordered to dress properly?
A.23: Gnr Rochford said what is the matter with my dress the way Iam.

Q.24: Did you see either of the accused the next day?
A.24: Yes.

Q.25: Did you travel in the train with him to London?
A.25: No.

Q.26: What did you say to Gnr. Rochfort when you saw him the morning after?
A.26: I asked him if he could tell me where he was stationed.

Q.27: Did you hit Gnr Rochfort that night?
A.27: No.

Q.28: Did you see a crowd around the accused?
A.28: No.

Questions by the Accused

35

Q.29: How many Provost were there?
A.29: Just the two of us on duty.

Q.30: How did the L/Cpl catch me?
A.30: I was watching Gnr. Whelan and couldn't see.

Q.31: Was I drunk?
A.31: No.

The accused having been duly warned declines to make any statement or to give evidence under oath.

Rules of Procedure 4(c), (d), and (e) have been duly complied with.

Taken down before me this third day of Jul, 1943 in the presence of the accused.

(J.W. Wallace) Lieut.,
5 Cdn Lt AA Regt RCA.

M.F.M. 6
(A.F.B. 122)
175M—7-41 (1212-20)
H.Q. 1772-33-1053

No. P-7425 Name ROCHFORT, C.N. Sqn., Battery, or Company 5 Lt AA Regt Corps RCA

Date of enlistment 1 Sep 39 G.C. Badges

Service or Proficiency Pay

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No. 1

Signature O.C. Company, etc.

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	1-3-40	Gnr		Completed 6 months Service - First sheet destroyed - No regt'l entries					
Stanley Pk	2-3-40	Gnr		AWL 2200 hrs 2-3-40 to 2215 hrs 3-3-40 Sec 15 AA	BSM	4 days pay FR&I 149(2)	5-3-40	O.C.	2 days pay FR&I 149(1)(a)
Lethbridge	16/4/40	Gnr		AWL 1100 hrs 16-4-40 to 2130 hrs 18-4-40 Sec 15 AA	A/Sgt Anderson	168 hrs Detention	19-4-40	Maj Prevus	3 days pay FR&I 149(1)(a)
Lille	10/3/41	Gnr		Neglect to obey Part I Orders Sec 11 AA	Sgt Swain	5 days C.B.	13-3-41	Maj Bright	
"	17/4/41	Gnr		Failing to appear at place of parade Sec 15(2) AA	TSM Harlow	2 days C.B.	24-4-41	Maj Bright	
"	18-6-41	Gnr		AWL from 1340 hrs 18-6-41 to 1200 hrs 19-6-41	TSM Harlow	14 days C.B.	20-6-41	R.D.Brightly	1 days pay

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
[illegible]ille	19-6-41	Gnr	1	Drunkenness Sec 19 AA	BSM Price	admonished	20-6-41	R.D.Brightly	
Seaford	31-1-43	~~Bdr~~		~~AWL from 0800 hrs 2-6-42 to 1700 hrs~~					
		Gnr		Wilful damage to WD M/C Sec 24(4)	Sgt Wood	admonished	3-2-42	C.O.	to pay price oftire
Denne Park	2-6-42	Bdr		AWL from 0800 hrs 2-6-42 to 1700 hrs 8-6-42 (absent 6 days 9 hrs) AA 15(1)	Sgt Headly TSM Harlow	7 days pay	23-6-42	G.E.Beament Lt-col	7 days pay FR&I 149(1)(A)
"	16-7-42	Gnr		AWL from 2300 16/7/42 to 1200 hrs.17/7/42 (absent 13 hrs)	BSM Price	27 days F.P.	7-8-42	C.O.	49 days pay FR&I
Field	9-12-42	Gnr		Sec 40 AA WOAS conduct to the prejudice etc, in that his kit was in an untidy condition and he did not clean up the floor at the head of his bed.	CSM Neal	3 days C.B.	10-12-42	CC Wood Lt	
Field	14-9-42	Gnr		AA 15(1) AWL from 1830 hrs 14 Sep 42 to 1800 hrs 16 Sep 42 (absent 1 day 23 hrs & 30 mins. Missing a duty FGCM		60 days det.	5 Oct 42	Court Mart.	60 days pay

M.F.M. 6

No. P-7425 Name ROCHFORT, C.N. Sqn., Battery, or Company 5 Lt AA Regt Corps RCA Date of enlistment 1 Sep 39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk 19-6-41 Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18-6-43	Gnr		AWL from 2359 hrs 18 Jun 43 to 2300 hrs 19 Jun 43 (absent 23 hrs & 1 min) Sec 15(1) AA	BSM Pushie L-Bdr Pearson	14 days pay FR&I 149(2)	22 Jun 43	G.C.Howitt Maj	1 days pay FR&I 149(1)(a)

Certified True copy

(F.L. Armitage) Capt.,
Adj., 5 Cdn Lt AA Regt RCA.

M.F.B. 355
2TM—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
P-7425	Gunner	ROCHFORT, Cyril Napean	5 Can Lt AA Regt RCA.

1. The following is a fair and true summary of the entries in the Regimental Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.W.L.	two	times	AWL	six times
For Sec 40	once	times	Sec 11 AA	once times
For		times	Sec 19 AA	once times
For		times	Sec 24 AA	once times

For

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2.

or,

Previous convictions of the accused by a court-martial of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

4. The accused has been in confinement awaiting trial on the present charges, 10 days in military custody, making a total of 10 days in custody, of which none days were spent in hospital. in unit custody 5 days.

5. The present age of the accused according to his attestation paper is 29 yrs & 3 mons.

6. The date of his attestation specified in his attestation paper is 1 Sep 1939

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is entitled to no military decoration, military reward (

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit N/A dated ....., and in his regiment (or corps), the rank of N/A dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A Date of promotion.

In the rank of N/A years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial xxxxxxxxx of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number P-7425 Rank Gnr Name ROCHFORT, Cyril Napean of 88/5 Cdn Lt AA Regt RCA xxx Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
FGCM	Field 5 Oct 42	Sec 15(1) AA AWL	60 days Det	none

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody. S. L. Higgs Lt-Col

Signed this 15 day of Jan 43.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

CANADA

Department of National Defence

IN REPLY PLEASE QUOTE
No. 39

194

IN THE FIELD

I, No. P-7425 Gnr. Rochfort, Cyril Napean, desire to have an officer represent me at my trial by Field General Court Martial to be chosen at the discretion of the Convening Officer.

C. Rochfort
P-7425 Gnr Rochfort C.N.

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

107 P

Gen. ROCHFORT, C.N.

O. H. M. S.

M. F. B. 270
1000M-12-40 (8668-39-70)
H.Q. 1772-39-67

107 P

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this First day of October, 1942.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery 2 Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[I am unable to appoint:—

*(1. ~~[illegible]~~)

*(2. ~~[illegible]~~

*(3. ~~[illegible]~~ service.)

for the following reasons, namely:—]

In my opinion, military exigencies, namely the dispersion of units, and difficulties of communication, and other difficulties, render it inexpedient to observe the provisions of those rules inconsistent with Appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

PROCEEDINGS REVIEWED.

[signature] Commanding officer (1 A Q) C M H Q
To Oct 42

President.

Rank.	Name.	Regiment.
Major	J.F. Morlock	5 Cdn Fd Regt, R.C.A.

Members.

Rank.	Name.	Regiment.
Capt.	D.M. Cornett	6 Cdn Fd Regt, R.C.A.
A Lieutenant	LT. W. L. LAWSON To be detailed by	4 Cdn Fd Regt, R.C.A.
A Lieutenant (Waiting Member)	To be detailed by	4 Cdn Fd Regt, R.C.A.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier.

Commanding C.R.A. 2 Cdn Div.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
P.7425 Gnr. ROCHFORT, C.N. 6 Cdn Fd Regt, RCA.	FIRST CHARGE A.A. Sec 15(1) When on Active Service, absenting himself without leave, in that he at the Cut, Nr Petworth Sussex. Absented himself from 1830 hrs 14 Sep 42 to 1800 hrs 16 Sep 42 (Absent 47 hrs 30 mins)	guilty	guilty	Confirmed P.C. Dees Brigadier C.R.A., 2 CDN. DIV.
	SECOND CHARGE A.A. Sec 15(1) When on Active Service, Absenting himself without leave, in that he, at the Cut, Nr Petworth, Sussex, on 14 Sep 42 at 1600 hrs, having been warned for duty as Exchange Operator by Battery Part 1 Order dated 13-9-42, was absent, thereby causing someone else to discharge his duty	guilty	guilty 60 DAYS DETENTION 5 OCT 42 J.M. Morlock	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) P.C. Dees Brigadier. (Signed) J.M. Morlock Major RCA
C.R.A. ~~2 Cdn~~ Div.
Commanding Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 5th day of October 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 5th day of October 1942.

J.M. Morlock Major RCA
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~*President of the Court Martial.*~~

* See footnote (b) on page 762 M.M.L. 1929.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 6th day of Oct 1942

P.C. Dees Brigadier
C.R.A., 2 CDN. DIV.
Confirming Officer.

Promulgated and extracts taken in the case of P7425 Gnr. Rochfort C.N.

(a) (Dated) 8 OCT '42 (Signed) [illegible] for C.O. 6 Can. Fd. Reg. RCA

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

This is to certify that P.7425 Gnr. Rochfort, C.N. is medically fit and able to undergo trial by court martial.

5 Oct 42

(J.E. Burch) Capt R.C.A.M.C.
M.O. 6 Cdn Fd Regt., R.C.A.

Trial of R 74425 Gnr Rockport, C.H., 6 Cdn Fd Regt RCA
held in the field 5 Oct 42

President: Major J. F. Morlock, 5 Cdn Fd Regt RCA

Members:- Capt. D. M. Cornett, 6 Cdn Fd Regt RCA
Lieut. W. L. Lawson, 4 Cdn Fd Regt. RCA.

Prosecutor:- Lieut. C. R. Campbell, 6 Cdn Fd Regt RCA

Defending Officer:- Lieut A. E. Haffner, 6 Cdn Fd Regt RCA

accused does not object to President or members

Court sworn

accused arraigned & pleads "guilty" to 1st Charge
"guilty" to 2nd "

RP 35 (B) complied with.

Abstract is read

accused says- he was fed up & had personal troubles
so he went absent

accused does not wish to give or call character
evidence

Prosecutor; duly sworn. submits AFB 24 & NFM 6
relating to accused & says per extracts from Regtl
books as compared by him.

No cross-exam.

Defending Officer in mitigation:- Three men were
absent at same time & other two summarily dealt
with - Is good signaller - has personal troubles
he won't discuss - 2m custody 16 days - 10 yrs
in army — personal troubles

Certified a true record
of this trial 5 Oct 42

[signature illegible] Major RCA
President.

ABSTRACT OF EVIDENCE in the case of P.7425 Gnr. ROCHFORT, C.N., 13 Cdn Fd Bty, R.C.A., 6 Cdn Fd Regt, R.C.A., a soldier of the Canadian Army Overseas.

First Witness
H12052 B.S.M. Davidson, G.H., 13 Cdn Fd Bty, 6 Cdn Fd Regt., R.C.A. states:

Gnr. Rochfort was detailed in Bty Orders for duty on the Bty Exchange on 14 Sep 42. He did not report for duty at his appointed time 1600 hrs.

Later, approximately 1830 hrs, I saw him and asked him where he had been. He said he had been absent so I told him to report to L11054 Sgt. Stewart, W.J. (Signal N.C.O.) for duty.

Later I saw Sgt. Stewart and enquired as to Gnr. Rochfort and was informed that Gnr. Rochfort had reported and then disappeared. I never saw him again until after 1800 hrs 16 Sep 42 when he reported back to the Bty on his own accord.

(H12052 BSM Davidson, G.H.)

Second Witness
L11054 Sgt. Stewart, W.J., 13 Cdn Fd Bty, 6 Cdn Fd Regt., R.C.A. states:

Gnr. Rochfort was detailed in Bty Orders for duty on the Bty Exchange. As Signal Sergeant I detailed him to go on duty at 1600 hrs 14 Sep 42. He did not report at that time so I had to detail another Operator to take his place.

Later, at about 1830 hrs, I saw Gnr. Rochfort in the Bty Orderly Room and asked him where he had been and if he knew he had been detailed for duty, to which he replied "yes, and I have already seen the B.S.M.".

Any further questioning was useless as he would not give any intelligent reply.

(L11054 Sgt. Stewart, W.J.)

Third Witness
H12047 Sgt. Ryan, A.E., 13 Cdn Fd Bty, 6 Cdn Fd Regt., R.C.A. states:

I was Orderly Sergeant on 16 Sep 42. Gnr. Rochfort reported to me at 1800 hrs 16 Sep 42. I placed him under open arrest and told him to remain in his lines.

(H12047 Sgt. Ryan, A.E.)

Taken down by me, In the Field, on the 19th day of September, 1942.

(L.F.W. Moore) Lieut.
6 Cdn Fd Regt., R.C.A.

LIST OF WITNESSES in the case of P.7425 Gunner ROCHFORT, C.N., 6 Cdn Field Regiment, R.C.A., a soldier of the Canadian Army, Overseas.

H.12052 BSM. DAVIDSON, G.H. - 13 Field Battery, 6 Cdn Field Regiment, R.C.A. Cdn Army, Overseas.

L.11054 Sjt. STEWART, W.J. - 13 Field Battery, 6 Cdn Field Regiment, R.C.A. Cdn Army, Overseas.

H.12047 Sjt. RYAN, A.E. - 13 Field Battery, 6 Cdn Field Regiment, R.C.A. Cdn Army, Overseas.

M.F.B. 355
40/P. & S. 675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
P.7425	Gunner	ROCHFORT, C.N. - 6 Cdn Fd Regt., R.C.A.	

1. The following is a fair and true summary of the entries in the Regimental ~~and Squadron or Battery Service and General~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act ~~Air Force Act~~ and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For A.W.L. -	Two	times	Five	times
For Sec.11 A.A. -		times	One	times
For Sec.15(2)		times	One	times
For Sec.24(4)	One	times	One	
For Drunkenness	One			

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act Air Force Act and dispensations with trial under A.A. 73 A.F.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for~~ ..... ~~beginning on the~~ ..... ~~day of~~ .....

4. The accused has been in confinement awaiting trial on the present charges, for No days in civil custody, and six days in military custody, making a total of six days in custody, of which No days were spent in hospital.

5. The present age of the accused according to his record of service is 29 years ~~attestation paper is~~

6. ~~The date of his commission specified in his record of service is~~ ~~attestation paper~~

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The accused is entitled to reckon~~ ..... ~~service for the purpose of determining his pension, etc~~

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~(or is in possession of or entitled to)~~. State any ~~air force~~ military decoration or reward.

10. ~~(If the accused is a warrant officer) The accused before he was made a warrant officer last held the regimental rank of~~ .....

gmm

11. (In the case of an officer) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

dated , and in his regiment (or corps) the rank of

dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:

Date of promotion.

As the rank of years.

As the rank of years.

As the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number R7425 Rank Gunner

Name ROCHFORT, C.N. of 6 Cdn Field Regt., R.C.A. Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 25th day of September, 1942.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

No. P7425 Name Rockfort C.M. | Sqn., Battery, or Company 91 Sig. Corps | Date of enlistment 1-9-39 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. J.M. Ross Capt.

M.F.M. 6 (A.F.B. 122) 30-41. 4,000,000 (1700) H.Q. 177-45-39

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (cases sing with trial)	By whom awarded	Remarks
	1/3/40	Pte		Completed 6 months Service - Fresh sheet destroyed - B.S.M.		Recommended as Pte	5/3/40	O.C.	J.A.R.
Stanley Park	2/3/40	✓		AWL 2200 hrs. 2/3/40 to 2215 hrs. 8/3/40 Sec 15 AA	A/Sgt Cochrane	168 hrs detention	19/4/40	Maj Brown	
Lethbridge	6/4/40	✓		AWL 1100 hrs. 16/4/40 to 2130 hrs. 18/4/40 Sec 15 AA	Sgt Brown	5 days C.B.	18/7/41	Maj Bright	
Lille	10/3/41	✓		Neglect to obey Std Order Sec 11 AA	T/BSM Harlow	2 days R.B.	24/4/41	Maj Bright	
Lille	11/4/41	✓		Failure to appear on parade Sec 15 para (2) AA					
				AWL 1340 hrs. 15/6/41 to 2200 hrs. 19/6/41	T/BSM Harlow	14 days C.B.	20/6/41	N.D. B wife	
				Drunkenness - Sec. 19 AA	B/SM Price	Admonished	20/6/41	C.O.	
Lille	18/6/41	✓	1		Sgt Wood R.P.	Admonished	3/7/41	C.O.	
Lille	9/6/41	✓	1	AA Sec 24(4) Wilful damage to W.D. mattresses	Sgt Hawley R.P.	Forfeit 7 days pay			
Crayford Kent	31/3/42		1	AWL from 0800 hrs. 8/6/42 to 1700 hrs. 8/6/42	T/BSM Harlow	R.A. 9. 1942 (1) (K)	28/7/42	D.F.P. Forfeit 30	
Dartford Kent	2-6-42	Pte		(Struck 6 days 9 yrs) Sec. 15 (1) AA.	B/SM Price	42 days. F.P.	7/9/42	H.Q. D.F.P.	
				AWL from 1200 hrs. 16/7/42 to 1200 hrs. 17/7/42					
Dartford Kent	16-7-42	✓		(Struck 18 hrs.) Sec 15 AA					

CERTIFIED TRUE and CORRECT COPY J.M. Ross Capt

For O.C. 6th Fd. Regt. R.C.A. C.A.

Case

REVIEW SHEET

F.G.C.M. - Trial: P-7425 Gnr C.M. ROCHFORT, 6 Cdn Fd Regt, R.C.A.

Date of trial: 5 OCT 42

President of Court: Major J.F. Morlock, 5 Cdn Fd Regt, RCA.

1. For the information of the officers asked to sign below, the following irregularities are noted:-

(a) Convening order is not signed by the president of the court. (See M.M.L. p.742).

(b) Medical certificate is not in the "approved" form. Specimen certificate is attached hereto.

(c) President's certificate on page 3 of A.F.A.3 indicates that officers under instruction were sworn. The names of these officers are not set out in the transcript of the proceedings.

(d) A charge should be included rather than enclose the charge on the AFAs

2. May these remarks and the authorities quoted be read by the following officers, signed and returned to this Headquarters, please.

O. C. 6 Cdn Fd Regt, RCA.	
Adjutant 6 Cdn Fd Regt, R.C.A.	
President of the Court	
A.D.J.A. 2 Cdn Div	
Staff Officer for Convening Officer	
Staff Officer for Confirming Officer	

DISTRIBUTION:

(A.W. Embury) Major,
D.J.A., 1 Cdn Corps.

A.D.J.A. 2 Cdn Div.
File

395 B. Pte. Rochon. L.

395 B

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Sixteenth day of JULY, 19 41

Whereas it appears to me, the undersigned, an officer in Command of the 5th Canadian Infantery Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[~~I am unable to appoint:~~

*(1. ~~Three Officers to form the Court.~~)

*(~~2. A Field Officer as President.~~)

~~for the following reasons, namely:~~]

In my opinion, military exigencies, namely the dispersion of units, and difficulties of communication, and other difficulties, render it inexpedient to observe the provisions of those rules inconsistent with appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

President.

Rank.	Name.	Regiment.
Major	J.M. Taylor	Calg Highrs.

Members.

Rank.	Name.	Regiment.
Capt.	W.A. Wood	R.H.C.
Capt.	J. Lupien	R. de Mais
Lieut.	A.J. Ellis	R. de Mais.

*Signed G. Whitehead Brig.

Commanding 5th Cdn Inf. Brigade.

Convening Officer.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit not applicable.

Proceedings checked and found in order 15 Aug 41 J.A. Bullock Jag Cts Comp.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

Waiting member

[illegible] signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-56464 Pte Lucien Rochon, R. de Mais a soldier of the Canadian army (overseas)	First Charge. A.A. Sec 6 (1) b When on active service, Leaving his guard without orders from his superior officer (see charge sheet)	not guilty	Guilty of the charge as laid with exception that 1800 hrs. should read 2130 hrs.	
	Second Charge A.A. Sec 8 (2) When on Active Service using threatening language to his superior officer. (see charge Sheet)	not guilty	Guilty of the charge as laid with the exception that for "threatening language" substitute "insubordinate language".	
	Third Charge A.A. Sec 9 (2) When on Active Service bisobeying a lawful command given by his superior officer. (see Charge sheet)	not guilty	Guilty.	
	To undergo detention for a period of five months			Confirmed C.W.O.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— no.

(Signed) G R Whitehead Brig
Commanding 5th Cdn Inf. Brigade

(Signed) J. M. Taylor major
Convening Officer (e) Calg. Hughes.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 19th day of July 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. ~~The officers under instruction~~) the shorthand writer J.M.

were duly sworn.

* Omit if not applicable.

Signed this 19th day of July 1941.

J. M. Taylor major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 28 day of July 1941

Victor W. Odlum
Confirming Officer. Major General
Commanding 2 Cdn. Div

Promulgated and extracts taken in the case of D-56464 Pte Lucien Rochon

(a) (Dated) 4 Aug 41 (Signed) L M Rheaume Lt. a/adjt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(B4) Wt. 38092/1316 70m 1-41 W. & Co., Ltd. Gp. 745-2

MEDICAL OFFICER'S REPORT

I certify that No. D-56444, Pte. Rochon, L.
H. de Mais, C.A.(O.)
of B 39 is in a good state of health,
and fit to undergo Trial by Court martial.

A J Brunet capt
Medical Officer

Station PEVENSEY, Sussex, England

Date 19 July, 1941.

M.F.P. 246.
20m-7-18.(M)
H.Q.1772-39-480.

-CHARGE SHEET-

The accused No. D-56464, Private Lucien Ruchon, Cie. B, Le Regiment de Maisonneuve, Canadian Army Overseas, is charged with:

First Charge:

A A Sec. 6 (2)(f)

When On Active Service; Leaving his guard without orders from his superior officer.

In that he, at Aldershot, Hants, England, on 31 May, 1941, when he was on guard duty in the Guard-Room, left the Guard-Room without permission at 1800 hours (and came back at 2210 hours the same day.)

2nd. Charge:

A.A Sec. 8 (2)

When On Active Service, using threatening language to his superior officer.

In that he, at Aldershot, Hants, England, on 31 May, 1941, after having been ordered to report back to his guard duty by his a-C.S.M. Ladouceur, J. said to him "Ne me parle pas si rough," and added after having been told that he would be paraded: "Un de ces bons jours, on ira au front et là, je t'arrangerai." or words to that effect. [illegible]

3rd. Charge:

A A Sec 9 (2)

When On Active Service, disobeying a lawful command given by his superior officer.

In that he, at Aldershot, Hants, England, on 27 May, 1941, after having thrown away his shovel, and being ordered by Caporal Chaloux, B, who was at the time in charge of the working party, to pick it up ~~refused to~~ did not do so within a proper time. [illegible]

Signed by me, at Aldershot, Hants, Engalnd, this 27th day of June 1941.

[illegible]

(Paul Brosseau, Lieut.-Colonel,)
O.C. Le Regiment de Maisonneuve, C.A.(O.)

To be tried by Field General Court Marshal.

[illegible] (Brig.
Commanding 5 Cdn Inf Bde.

J Moyto major
Pres.

-A-

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD AT PEVENSEY, SUSSEX ON THE 19TH DAY OF JULY, 1941, BY ORDER OF BRIGADIER G.V. WHITEHEAD, V.D., COMMANDING 5TH CDN INF BDE, DATED THE 17TH DAY OF JULY, 1941.

PRESIDENT:	Major J.M. Taylor,	Calg. Highlanders
MEMBERS :	Capt. W.A. Wood,	R.H.C.
	Capt. J. Lupien,	R. de Mais.,
WAITING MEMBER :	Lieut. A.J. Ellis,	R. de Mais.

Trial of: D.56464, Pte. Lucien ROCHON, "B" Coy, Le Regiment de Maisonneuve, Canadian Army (Overseas), England.

The order convening the Court, the Charge-Sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor: Lieut. E.H. LaPierre.

Defending Officer: Lieut. G. Bielor.

At 0930 hours, the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and Members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q:- Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

A:- No.

-B-

The President, Members, Interpreter and Short-hand writer are duly sworn.

The Medical Officer's Report (M.F.B.246) is submitted to the Court by the Prosecutor.

CHARGE-SHEET

The charge-sheet is signed by the President, marked B-2 and annexed to the proceedings.
The accused is arrainged upon each charge in the above-mentioned charge-sheet.

Q:- Are you guilty or not guilty of the (first) charge against you, which you have heard read?

A:- Not guilty.

Q:- Are you guilty or not guilty of the (second) charge against you, which you have heard read?

A:- Not guilty.

Q:- Are you guilty or not guilty of the (third) charge against you, which you have heard read?

A:- Not guilty.

J.M.T.

PROCEEDINGS ON PLEA OF NOT GUILTY.

Q:- Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not sufficient opportunity for preparing your defence?

A:- No.

The prosecutor proceeds to call witnesses:

First Witness: (D.56101, A/Sgt.-Major, Jean Ladouceur) being duly sworn, is examined by the Prosecutor.

Q:- Do you speak and understand English?

A:- Yes, Sir.

Q:- Will you kindly state your number, rank and name?

A:- D.56101, A/Sgt-Major Jean Ladouceur, of "B" Coy.

Q:- Were you Coy Sgt-Major on the 31st May?

A:- I was Acting/Coy Sgt-Major.

Q:- Do you recognize the accused as being a member of your Coy?

A:- Yes, Sir.

Q:- Do you know his name?

A:- Yes, Sir, Lucien Rochon.

Q:- On 31 May, 41, did the accused, Pte. Rochon, form part of the guard that you, as Acting/C.S.M. drew up for guard duties that day?

A:- Yes, Sir.

Q:- Did you personally ascertain that he was present when you mounted the guard for the inspection?

A:- Yes, Sir.

Q:- When did you next see the accused, Pte. Rochon, on the same day?

A:- I saw him around 2200 hrs the same night.

Q:- Where did you see him?

A:- Near the Coy. Hut.

Q:- Did you question him?

A:- Yes, I asked him where he was and what was he doing around there.

Q:- What did he answer you?

A:- He told me he was coming back from town.

Q:- Then what did you tell him?

A:- I told him to get his equipment, which was in the hut, (he was in walking-out dress) and to report back to the guard-room. I also told him that he was going to be paraded the next day.

-C-
(cont'd)

Q:- Then what happened:

A:- He started an argument with me.

Q:- What do you mean by argument?

A:- He said: "Don't speak so rough, we'll go to the front and I'll fix you."

Q:- Then what did you do?

A:- I saw two guards who were coming down to the hut to get their shaving kit, so I told them to escort the man to the guard-room because he was under close arrest.

Q:- Have you personally every reason to believe that the men of "B" Coy. were aware that you were Acting/Sgt.-Major?

A:- Yes Sir, I had been Acting/C.S.M. since three weeks and occupied his room.

The Witness is cross-examined by the Defending Officer:

Q:- Sgt-Major was it or was it not a general practice in Aldershot when the men were on guard duty that they would stay in the guard room or near the guard room just before the time they took their turn of guard and very often left the guard room and were going around the camp while they were awaiting their turn?

A:- I was guard commander before and the guard who was not on duty would have to get permission to go out from the guard room from the Guard Commander or the 2 i/c of the guard.

Q:- Would you say that this permission was granted to them? Then it was alright?

A:- It was alright, we would give them 5 minutes to go to their hut.

Q:- When you found Pte. Rochon, that night, around 2200 hrs, did you ask him if he had permission to be out of the guard room?

A:- No, Sir, I asked him where he was coming from and what was he doing around the hut.

Q:- What brought the remark "Don't talk to me so rough"?

A:- I couldn't say.

The Witness is questioned by the Court:

Q:- Did you have orders that you read to the guards mounted?

A:- Yes, Sir.

Q:- What were they?

A:- In one paragraph of the order is marked that guards are on duty for 24 hours and must not leave the guard-room without permission and those orders are in the guard room in charge of the commander of the guards.

Q:- Did you usually read those orders to the guards at night?

A:- No, Sir, the guards usually would come in the guard room to read them.

I ml.

(cont'd)

Second Witness:(D.56407, Cpl. Chaloux B.) being duly sworn, is examined by the Prosecutor.

Q:- Will you tell the Court your Number, Rank and Name?

A:- I am D.56407, Cpl. Chaloux B.

Q:- Were you guard commander on 31 May, 41?

A:- Yes, Sir.

Q:- On or about 1800 hrs, did you make a Roll Call of the Guard?

A:- Yes, Sir.

Q:- Of all the guard?

A:- Yes, Sir.

Q:- Where were you when you made this roll call?

A:- In the Guard-Room.

Q:- Was there somebody missing at the Roll Call?

A:- Yes, Sir.

Q:- Who was missing?

A:- Pte. Rochon.

Q:- The same Pte. Rochon who is presently before this Court?

A:- Yes, Sir.

Q:- When did you ask him next?

A:- When they brought him back under escort.

Q:- Around about what time?

A:- About 2210 hours.

Q:- When the accused was brought back in the guard-room under escort, what did you do?

A:- I put him in the detention room.

Q:- Between 1800 and 2200 hrs, did the accused have any guard duty to do?

A:- No, Sir.

Q:- Did you give Pte. Rochon permission to go out from the Guard-Room?

A:- Yes, Sir.

Q:- Around about what time?

A:- Around 1630 hrs.

Q:- For a reason that you judged sufficient?

A:- Yes, Sir.

Q:- For about how much time?

A:- For about 20 minutes.

Q:- So you say that he should at 1800 hrs have been back in the guard-room?

A:- Yes, Sir.

Q:- To your knowledge, was it the first time that Pte. Rochon was part of the guard?

A:- No, Sir.

The witness is cross-examined by the defending officer:

Q:- Corporal, you gave permission to this man to go out at 1630 hrs?

A:- Yes, Sir.

Q:- About the guard, for how much time were they free between their turn of duty?

A:- During the day time, they have six hours off and during the night, four hours off.

Q:- When does night start as far as guard duty is concerned?

A:- At 2200 hrs.

Q:- Would you have any orders to read to the guard?

A:- Yes, Sir.

Q:- Had these orders been read to the guard on that day?

A:- Yes, Sir.

Q:- Who read these orders?

A:- I did, myself.

Q:- Have you got a copy of these orders?

A:- I do not have them with me but there was a copy in the Guard Room.

Q:- During the six hours when they were free between their turn of duty, would all the men of your guard stay in the Guard Room except for an occasional five minutes?

A:- Yes, Sir.

The witness is questioned by the Court:

Q:- You say that guards had 6 hours off between shifts up until 2200 hrs.

A:- Yes, Sir, up to 2200 hrs.

Q:- Does a man's turn of duty last two hours?

A:- Yes, Sir.

(cont'd)

SECOND CHARGE

First Witness: D.56101, A/Sgt-Major Jean Ladouceur, is questionned by the Prosecuting Officer:-

Q:- I would ask you to go back, Sgt-Major, to the statements you made to the Court a short while ago, to the evening of the 31st of May, that you were just in front of the building known as Block "G", which was occupied by "B" Coy and that the accused, Pte. Ryshon, appeared before you and underwent your questionning. In your first deposition, you stated that the accused began to argue with you and to use what you considered menacing language. Would you please give the Court some details and if possible the exact words used by the accused to you, his superior officer, on that occasion?

A:- The first thing he told me was "ne parle pas si trough", un jour on ira en front et la, je t'arrangerai".

Q:- Could you give the equivalent explanation in English?

A:- He'd talk to me so much, one of these days we will go to the front and there I will fix you".

Q:- Do you say, Sgt-Major, and believe that the accused used these words to you in a jocular way, just joking, laughing, or would you say that he said it in a resentful or menacing way?

A:- These words were said to me in a menacing way.

Q:- Was there anything in your question or in the way you put it that would justify the use of such menacing terms by the accused?

A:- No, Sir.

Q:- Did you at the time, as this soldier's superior officer, consider his words and actions sufficiently serious to call for your placing him under close-arrest?

A:- Yes, Sir.

Q:- As far as you know, was there anyone present who may have spoken to or acted towards the accused in such a way as to make him angry?

A:- No, Sir.

The Witness is cross-examined by the Defending Officer.

Q:- Sgt-Major, were you badly frightened when this kid said he was going to get after you at the front line?

A:- No, Sir, because I think that I am quite taller than him.

The Court questions the witness:

Q:- Were you friendly with the accused before ?

A:- I never had anything with him before.

Q:- When you first saw the accused outside his Coy hut, did you ask him what he was doing there?

A:- Yes, Sir.

-6-
(cont'd)

SECOND CHARGE
First Witness

The witness is re-cross-examined by the Defending Officer.

Q:- Sgt-Major, if, tomorrow, you had to go in action with Rochon is it your impression that he would try to fix you up?

A:- I would not be so sure.

Q:- Would you go out on patrol with him?

A:- It all depends, take all arms off him and I will be glad.

Second Witness: (D.56533, Cpl. Desjardins), being duly sworn, is examined by the Prosecutor.

Q:- Will you kindly give your name, rank and number to the Court?

A:- D.56533, Cpl. Desjardins of "C" Coy.

Q:- Cpl. Desjardins you have been called in as witness in a charge against the accused, I ask you to put any nervousness you may feel, you are sure to help in the administration of justice and try to recall as accurately as possible the events of the evening of the 31st of May, 41. - Do you recognize the accused?

A:- Yes, Sir.

Q:- Can you recall certain events of the 31st of May, of this year in which the accused was implicated and to which, you, yourself, were implicated?

A:- On the 31st of May, at R.C.S., I was speaking to A/Sgt-Major Laduceur, when the accused, Rochon, came along. A/Sgt-Major Laduceur told him to report for duty. The accused answered him not to speak so roughly.

Q:- Could you give the words in French?

A:- "Un jour, on ira au front et je t'arrangerai."

Q:- What did the acting/Sgt-Major do when the accused had used these words to him?

A:- I left when he said these words.

Q:- Where in the lines, did this event take place?

A:- In "B" Company lines.

Q:- Before the accused, Rochon, appeared on the scene, that is strolled into the lines, had you been chatting for some time with Sgt-Major Laduceur?

A:- Yes, Sir.

Q:- Was there anything said or done to Rochon, the accused, to your knowledge in your presence, which would explain his brusk way to say unsubordinate answer to his superior officer?

A:- No, Sir.

J.A.D.

(cont'd)

SECOND CHARGE
Second Witness: is cross-examined by the Defending Officer.

Q:- Corporal, why would Rochon say to Sgt. Ladouceur; "Don't speak so rough to me"?

A:- As far as I see, I don't see any reason at all because he gave plain orders to report to his guard duty.

Q:- When he told Sgt Ladouceur that he was going to settle it with him on the front line, did you fear for the life of Sgt Ladouceur?

A:- No, Sir.

The Witness is questioned by the Court.

Q:- Was there any evidence as to the accused having been drinking at that time?

A:- No, Sir.

Third Witness: (D.56249, L/C. P.E. Turgeon) being duly sworn, is examined by the Prosecutor:

Q:- Give the Court your number, rank and name?

A:- D.56249, L/Cpl. P.E. Turgeon.

Q:- You have been called before this Court, L/Cpl. Turgeon, to help in the administration of justice and I am asking you to remember back towards the night of the 31st of May when the accused was involved. On that evening, can you tell us where you were and what you heard and saw?

A:- On the night of the 31st of May, I was in the office of the C.S.M., I was C.O.C. for the week and Sgt/Major Ladouceur was at the door that can be seen from the window of the office, and there, there was an argument between Pte. Rochon and C.S.M. Ladouceur. Then I went out of the office to go to the guard room and it is there that I stopped and heard what was said.

Q:- Please tell the Court the words actually used by the accused?

A:- "Oui, monsieur, si tu n'avais pas tes trois barres, je t'arrangerais", upon which Sgt. Ladouceur gave him the order to go and put on his equipment and report to the guard-room.

Q:- Will you specify at what time Sgt Ladouceur gave him the order to go up and put on his equipment? Was it before or after having been told "if you didn't have your three stripes I would fix you"?

A:- It was after having been told by C.S.M. Ladouceur to go up to put on his equipment and then report to the guard for duty, after which the accused said the above-mentioned words. Then I went to the guard room, came back and was in the C.S.M.'s office and he was making out a crime sheet of Rochon's offence; then Rochon came down stairs, he had his equipment on his back he was probably going to the Guard Room, but as he passed in front of the office then he asked Sgt Ladouceur what he was putting down on the Crime Sheet. It was then that Sgt. Ladouceur told him to wait until the next day and he would have the report - and Pte. Rochon refused to go away saying that he wanted to see what was the report on the Crime Sheet and when the C.S.M. saw that Rochon did not go, there being two guards right by, close by, he told them to take Rochon to the Guard Room. There was slight difficulty, not enough to matter and one of the guards, of which he remembered the name, "Vincent", said to Rochon "Don't be foolish, come along", upon which they all went away.

SECOND CHARGE
Third Witness:
Prosecution

Q:- Did the two guards understand that Sgt-Major Ladouceur was putting Rochon under close-arrest and that they then had to take him to the detention room?

A:- Yes, Sir.

The Witness is cross-examined by the Defending Officer.

Q:- Corporal, these two men coming from the Guard-Room, how is it that they were close by, near the Sgt-Major?

A:- It often happens that the men go from the Guard Room to the huts when on guard duty, it is possible that they were going to the canteen.

Q:- Is it an accepted practice when they are not on duty, that they are allowed to go out of the guard room to the huts?

A:- Yes, when they get permission.

Q:- Was it the first time that you heard a soldier say to another "I'll break your jaw" or profer menaces?

A:- I often heard that said between soldiers but from a soldier to a Serjeant, it is less common.

Q:- When this man said those words to Serjeant Ladouceur, were you frightened for him?

A:- No, Sir.

The Witness is questioned by the Court?

Q:- You said that before you came out of the room there was a discussion between the Serjeant and the Private, you don't remember the words of this discussion?

A:- I don't remember exactly how it started and I did not hear the words but this is how it started: As far as I could see, he looked as if he were under the influence of liquor because I went out with him to Brighton and I knew that only one or two and he was affected. He is not used to drinking at all. But I remember very well that Sgt. Ladouceur told him to go up stairs to put on his equipment and report for duty.

THIRD CHARGE

First Witness: (D.56407, Cpl. Chaloux B.)

Cpl. Chaloux you understand that you are still under oath and I will now read to you another charge which is brought against the accused, so that you can remember the facts.

Q:- Cpl. Chaloux you were, yourself, in charge of a group of soldiers, amongst which, the accused, Pte. Rochon L. was on the 27th of May, 41?

A:- Yes, Sir.

Q:- Will you tell the Court briefly what happened?

A:- We were digging trenches and the work was not very agreeable and I noticed that Pte. Rochon was arguing with another soldier, I don't know about what but I saw him throw his shovel away to about a distance of 12 feet and I then asked him to go and get his shovel and he refused. I repeated this order twice again.

J.M.L.

THIRD CHARGE
First Witness:
Prosecution

A:/cont'd)
He refused again so I then paraded him to my Coy Commander two days afterwards.

Q:- Did the group of soldiers of which Pte. Rochon was part know that you were in charge?

A:- Yes, Sir.

Q:- Do you believe that Pte. Rochon had any reason to act as he did act?

A:- No, Sir.

The Witness is cross-examined by the Defending Officer

Q:- On the 27th day of May, you say that Pte. Rochon disobeyed and he was paraded to his Coy Commander on the 25th?

A:- Yes, Sir.

Q:- How is it that on the 31st, he was still on guard duty?

A:- I don't know, Sir, it is the Coy Commander who decided whether to put him at large or not.

Q:- He was awaiting a Court Martial and he was on guard?

A:- Yes, Sir, this particular matter was only put in front of the Company Commander without other charges.

Q:- It was the third charge and he had presently two against him and you then put another one on him just like that?

A:- No, Sir, my charge was there before, on the defaulters parade.

Q:- Did you say that he was paraded on the 25th?

A:- On, or about the 25th.

Q:- On the day that you were digging trenches, did you start digging them in the morning?

A:- Yes, Sir.

Q:- Was it raining that morning?

A:- Yes, Sir.

Q:- Where did you have lunch?

A:- We lunched at the Barracks in Aldershot.

Q:- Did you notice if Pte. Rochon changed from his clothings of that morning?

A:- No, Sir, I did not notice.

Q:- In the afternoon when he threw his shovel, did you notice if another soldier disturbed him at his work?

A:- No, Sir.

Q:- Did you not say that he had an argument with another soldier?

A:- Yes, Sir, when I turned around he threw his shovel away.

J.M.

THIRD CHARGE
First Witness:
Prosecution

Cross-examination by Defending Officer (cont'd)

Q:- Did it just occur a little while after they had started to work?

A:- Yes, Sir.

Q:- Had all the men started to work at that moment?

A:- Yes, Sir.

Q:- You are sure of that?

A:- Yes, Sir.

Q:- Did the word to stop work because of rain arrive very long after?

A:- About 10 minutes afterwards.

Q:- Who gave that order?

A:- It was Lieut. deMartigny, who acted as Coy Commander.

Q:- Did he tell you why he gave that order?

A:- No, Sir.

The witness is questionned by the Court.

Q:- After being asked to pick up the shovel, did he finally pick it up?

A:- No, Sir.

Q:- Did anybody else pick up the shovel?

A:- Yes, Sir.

Q:- Was it one of his friends?

A:- Yes, Sir, a man of the Platoon.

Second Witness: (D.56541, Cpl. Corbeil M.,) being duly sworn, is examined by the Prosecutor:

Q:- Will you tell the Court your number, name and rank?

A:- I am D.56541, Corporal Corbeil M.

Q:- Will you please relate briefly to the Court the facts known to you bringing on this charge against the accused here present?

A:- We were digging trenches on the 27th of May, it was in the afternoon, I don't remember the time exactly, Pte. Rochon after having started to work stopped took his shovel and threw it away at 10 or 12 feet distance, then Corporal Chaloux asked him to pick it up two or three times I think and Rochon refused. I was there when it happened but after that I went to my work which was a little further on.

J.M.C.

THIRD CHARGE
Second Witness
Prosecution

Q:- To your knowledge did the accused have reason to act as he did act?

A:- I don't know, Sir.

Q:- Was Cpl. Chaloux in charge of the group of which Rochon was a member?

A:- Yes, Sir.

Q:- Do you know who finally picked up the shovel?

A:- I don't know.

Q:- Did the accused, to your knowledge, actually say "I will not pick it up" or did he simply by his actions refuse to pick it up or did he also state "I won't pick it up"?

A:- He said "I won't pick it up".

Q:- And to your knowledge, he did not pick it up?

A:- Yes, Sir.

The Witness is cross-examined by the Defending Officer:

Q:- Do you know why he threw away his shovel, when he did throw it?

A:- No, Sir.

THE PROSECUTION IS CLOSED.

-D-
DEFENCE

Do you apply to give evidence yourself as a witness? -- Yes, Sir.

Do you intend to call any other witness in your defence?-- Yes, Sir.

Is he a witness as to character only? -- No, as to facts.

The accused, D.56464, Pte. Rochon L., is duly sworn, and questioned by the defending officer.

Q:- What is your name?

A:- Lucien Rochon.

Q:- Your number?

A:- D.56464.

Q:- On the 31st of May, where have you gone?

A:- I had gone to the Salvation Army Hut.

Q:- Where was the Salvation Army Hut?

A:- It was just at the end of the R.H.L.I. Regt'l lines.

Q:- At what distance is it from the Guard Room?

A:- At about 150 yards from the Guard Room.

Q:- When you said to Sgt.-Major Ladocceur what you are accused of saying, to him, did you have the intention of killing him?

A:- No, Sir.

DEFENCE
Accused questioned by the Defending Officer - (cont'd).

Q:- If today or tomorrow you were alone in the woods with Sgt. Ladouceur would you try to kill him?

A:- No, Sir.

Q:- On the 27th of May, why did you throw away your shovel?

A:- We were working on the trenches and we had worked all morning, around about 1130 hrs, the major gave Lieut. deMartigny the order to bring back the company who was already wet through and about 1430 hrs, we went back to dig trenches. The work was not very agreeable to do, the trenches were full of water.

Q:- How were you dressed?

A:- I had my new suit on, I had it two days before and my Major had had [illegible] keep myself neat, I was started to work and there was a soldier who was working a little further away and he suddenly started to throw water on my suit so I took the shovel and threw it away. I looked all around and as we had just arrived, I found just a few others who had started to work.

Q:- Did you when working in your hole, take any special precautions?

A:- I was standing astray the trench so that I would not put my feet in the mud. The hole I was working at was deeper and the soldier who was working beside me took his pick and dug into the ground and the water splashed all over me. I then threw my shovel. After having thrown it, I got out of the hole and stood alongside the trench. The Corporal gave the order to pick up my shovel and I refused. 10 minutes later, Paul Emile Provencher, runner for "B" Company came to transmit the order to Lieut. de Martigny to bring the men back to the Barracks.

Q:- Why?

A:- The Major was giving the order to the Lieut. [illegible] to bring back the men back to the Company.

Q:- When you started to work after lunch, did everybody work?

A:- No Sir, only two or three.

The Witness is cross-examined by the Prosecution:

Q:- How many men were there in the group which was [illegible] with you under the orders of Corporal Chaloux?

A:- There were only twenty because there were a good many on fatigue.

Q:- And you knew that Corporal Chaloux was in charge of your group?

A:- Yes, Sir.

The Witness is questioned by the Court.

Q:- Just before you told what you are accused of saying to the Sgt.-Major "Don't be so rough" what was it he said to you?

A:- I was coming back from the Salvation Army Hut, and Sgt. Ladouceur asked me where I was coming from. He offered to take off his tunic and I answered back to him that it was not him I was afraid of but his three stripes.

J. M. L.

The Witness is questioned by the Court - (cont'd)

Q:- It is at that time that you told him "Don't be so rough"?

A:- He had told me to go and get dressed before then. He told me to go and get dressed and told me in a tone of voice as if he were sore and it was then that I ~~spoke~~ told him not to speak so rough.

Q:- You were at the Salvation Army Hut before that?

A:- No, I went there to meet my cousin, turned about and came back.

Q:- Had you gone somewhere before that to be absent from 1800 to 2200 hrs?

A:- A cook came to the guard room and asked L/Cpl. Merch to send three of the men who were undergoing Field Punishment to the kitchen, it was then 1755 hours, I went to the kitchen with them stayed there until 1845 hours and I came back with the ~~[illegible]~~ men under field punishment, whom I had under guard, then I took them back to the detention room and one of the men, who I was bringing back asked me if I was in a hurry and I told him no, that I was not going back on guard duty until midnight.

Q:- Did you go down town in Aldershot?

A:- No, I only went to the Salvation Army Hut.

Q:- Did you drink any beer?

A:- No, Sir.

Q:- You just said that you had not gone to the Hut?

A:- I went to the Salvation Army Hut and met my cousin. He offered me a glass of beer, I refused, saying that I was on guard and that I would rather not drink. Then I came back towards the hut and it was then that I met Serjeant Ladouseur.

Q:- You said that they did not sell ~~xxxx~~ any liquor at the Salvation Army Hut?

A:- I said that I did not drink but they sold liquor at the Salvation Army Hut.

Q:- Were you given any orders by the Guard Command when you first went on guard?

A:- No, Sir.

Q:- Did you know there were permanent orders, Standing Orders, for the Guard and were you familiar with them?

A:- I knew there were orders and I read them but not very attentively.

Q:- You were with the fatigue men who were in detention?

A:- Yes Sir.

J. M.

DEFENCE

The witness is questioned by the Court - (cont'd).

Q:- After that instead of going back at the Guard Room, you went off?

A:- I took the man back to the Detention room and one asked me to go to the canteen and I asked permission to the guard to go for this man and he gave me permission to do so.

Q:- At what time did the Cpl. of the Guard give you permission to leave?

A:- At about 1550 hours.

Q:- You left the guard room the first place with three men who were doing detention ?

A:- Yes, Sir.

Q:- At what time?

A:- From 1755 to 1845 hrs, I went to the kitchen.

Q:- You then brought them back and put them in the detention room?

A:- Yes, Sir, then I brought them back put them in the detention room beside the guard room then one asked me if I was in a hurry. I told him I was not taking guard duty until midnight. He/ then asked me if he could come down to the canteen?

Q:- You went then with this prisoner to the canteen, at what time?

A:- I went down to the canteen at 1850 hours and I had on my equipment on me.

Q:- How long were you in the canteen and where did you go when you left it?

A:- I stayed in the canteen until 2130 hours, I then brought the man back to the Guard Room, I went out again to my unit, took off my equipment and then I went down to the Salvation Army Hut with the intention of meeting a girl.

Q:- It was coming back from the Salvation Army hut that you met the Serjeant-Major?

A:- Yes, Sir, around 2150 hours.

Q:- Did you get permission from the Serjeant of the guard to leave the Guard Room with the man undergoing field punishment?

A:- Not from the serjeant of the guard directly, from Pte I i/c.

Q:- When you took this man from the canteen and brought him back, did you obtain permission to leave again?

A:- No, Sir, there was nobody in the guard room and I went out.

Q:- So you spent from 1900 to 2130 hours in the canteen with the Field Punishment?

A:- Yes, Sir.

Q:- What did you drink while there?

A:- I did not drink anything.

J.M.L.

The Witness is questioned by the Court - (cont'd)

Q:- What did the Field Punishment drink?

A:- I don't know he was three tables away from me talking to his friends.

Q:- At the Salvation Army Hut what is it you drank?

A:- Nothing Sir. When I said what I said to Serjeant Ladouceur I was angry and I said it on the spur of the moment.

Q:- Did you actually say to the Serjeant-Major "Ne me parle pas si Rough".

A:- Yes, Sir.

Q:- Did you actually say to the Serjeant-Major: "Un de ces jours nous irons au front et la je t'arrangerais"?

A:- Yes, Sir.

First witness for the Defence:(D.24177, Pte. G. Rochon) being duly sworn, is examined by the Defending Officer.

Q:- What is your name, number, and rank?

A:- I am D.24177, Pte. George Rochon.

Q:- Your Unit?

A:- R.M.R

Q:- Do you know the accused?

A:- He is my brother.

Q:- How old is your brother?

A:- He is 17 years old.

Second Witness for the Defence (D.57211, Pte. Ensley) being duly sworn is examined by the Defending Officer.

Q:- What is your name, Number, Rank?

A:- D.57211, Pte. Ensley.

Q:- Your Unit?

A:- Le Regiment de Maisonneuve, C.A.,(O).

Q:- On May 31st, I understand you were under guard Field Punishment and were present when the accused asked for a certain permission from the O/C of the Guard?

A:- Yes, Sir.

Q:- What permission was that?

A:- I asked permission to leave the Guard Room with my escort, I had already asked , to go out with me. The O/C said it was alright.

Q:- When permission was asked do you know of any time limit?

A:- No, Sir.

Q:-

(Page 417-)

DEFENCE

The witness is questioned by the Prosecuting Officer

Q:- When the 2 i/c of the Guard gave permission to your escort, Pte. Rochon and yourself to leave the premises he did not specify the time for how long?

A:- Yes, Sir.

Q:- When you asked permission did you xxxxxxxx yourself specify the time?

A:- No, Sir.

Q:- Did you specify where you wished to go?

A:- No, Sir.

Q:- How long were you away from the guard room?

A:- To 2130 hours.

Q:- Did Pte Rochon escort you back to the Guard Room?

A:- Yes, Sir.

Q:- Was the Commander of the Guard or the 2 i/c of the Guard present when you returned to the guard room?

A:- I did not notice.

Q:- Did you know that Pte. Rochon had left after he had escorted you back to the guard room?

A:- No, Sir, I did not know, I was undergoing Field Punishment and did not know what went on after that.

Q:- Was there anyone at all when you returned under escort with the guard?

A:- I did not notice.

Q:- You can state that there were some one there?

A:- Yes, Sir.

Q:- Members of the Guard;

A:- Yes, Sir.

The Court questions the Witness;

Q:- Did you see the guard ask permission when returned to the guard room?

A:- Yes, Sir.

Q:- Did you tell Pte. Rochon where you wanted to go?

A:- It was understood that we were allowed to go to the xxxxx xxxxx Canteen.

Q:- It was understood that you could go to the Canteen?

A:- It was.

Q:- Did Private Rochon have anything to drink at the Canteen that night?

A:- I did not see him.

Q:- Were you with him in the canteen?

J. Mc.

(cont'd)

The Court Questions the Witness:

(cont'd)

A:- Yes, Sir.

Q:- Did he have anything to drink?

A:- Yes, Sir.

Q:- You were with him all the time?

A:- Yes, Sir.

Q:- When you asked permission to go out with Pte. Boehon at the canteen, what time was it?

A:- It was a little after 6 o'clock.

Q:- You stayed there until 2130 hours?

A:- Yes, Sir.

The Prosecuting Officer re-cross-examines the Witness

Q:- On the 21st of May, was that a Pay Day?

A:- Yes, Sir.

Q:- Do your knowledge had the members of the Guard been told that day?

A:- It was pay day for the whole Regiment.

The Third Witness: (D.56007, Pte. A. Bouliraud) being duly sworn, is examined by the Defending Officer.

Q:- What is your name?

A:- Alain Bouliraud,

Q:- Your No.?

A:- D.56007.

Q:- Your Unit?

A:- Le Regiment de Maisonneuve, C.A.(O).

Q:- What is your particular Section in the Regiment?

A:- Regimental Police.

Q:- As such, do you stand a certain number of [illegible] hours in the Guard Room?

A:- Yes, Sir, Mon me were in Garrison, [illegible] 0700 to 1700 hrs.

Q:- Were you [illegible] in the General Prisoner's [illegible] room

A:- No, Sir, we were [illegible] that we [illegible] posts were allowed to be out.

The Witness is cross-examined by the Prosecuting Officer.

Q:- You have just stated in your last answer that [illegible] tolerated to permit a certain number of [illegible] their post or [illegible] to leave the Guard room, [illegible] was not of a General nature.

Third Witness
Cross-examined by the Prosecuting Officer.
(cont'd)

A:- Some of the guard commanders allowed 3 of them to go out at a time; some did not mind if they went out with his permission.

Q:- Do you recall if the guard commander of the guard of the day mounted at 1600 hrs, 31 may, had men who wished to leave and did they have a special permission?

A:- I do not remember.

Q:- Do you recall being yourself present at 1600 hrs, which the guard commander of the day made a roll call of his members of the guard, other than of those who were on their pickets?

A:- No, Sir.

Q:- It is customary to detail a member of the guard, [illegible] the for his turn of duty to account [illegible] undergoing field punishment?

Q:- The 31st of May, being pay day, do you recall if the Regiment was paid that day?

A:- I could not say so.

Q:- Were you paid that day?

A:- I don't remember.

The Witness is questioned by the Court.

Q:- Do you remember seeing in the guard room Standing Orders of the Guard?

A:- Yes, Sir.

Q:- Do youread those orders?

A:- Yes, Sir, but the guard commander did not always read them.

Q:- Do you know if those standing orders said anything about whether or not members of the guard could leave the guard room or not?

A:- Yes, Sir, they said on the orders that men could not leave the guard room within the 24 hours without permission of the guard commander.

4th Witness: (D.57498, Pte. Roland Larouche) being duly sworn is questioned by the Defending Officer.

Q:- What is your name?

A:- Roland Larouche.

Q:- Your Number?

A:- D.57498.

Q:- Your Battalion?

A:- Le Regiment de Maisonneuve (C.A.(C).

Q:- Do you know the accused?

A:- Yes, Sir.

4th Witness

Examined by Defending Officer

(contd)

Q:- On May 27th do you remember digging trenches with the accused?

A:- Yes, I remember.

Q:- Do you remember the time the accused threw away his shovel?

A:- Yes, I remember.

Q:- Do you remember the circumstances that brought him to do that?

A:- I was not there at the beginning when it happened. As happened he received the order from Cpl. Chaloux to do his work. He shovelled about 4 or 5 shovels full and I can't remember whether it was in the morning or in the afternoon, he then threw his shovel away.

Q:- What did you do when he threw his shovel?

A:- I had orders to pick it up myself.

Q:- Did a long time elapse between the time he threw it away and the time you picked it up?

A:- I can't remember, it did not seem like a long time, when I got the order from Cpl. Chaloux. I then picked it up and as I said I did not see the beginning of it.

Q:- Were there many soldiers working at that time?

A:- The whole Company.

The 4th witness is cross-examined by the Prosecutor.

Q:- Have you heard Cpl. Chaloux repeat the orders twice and pick it up the shovel which he had thrown?

A:- No, I did not understand the order that Cpl. Chaloux gave him, I was about ten yards.- There was a pile of soil in the trenches and we shovelled 3 or 4 shovels full that afternoon.

Q:- Do you recall at what time the Coy resumed work after lunch?

A:- At about 3 o'clock (1500 hrs).

Q:- Can you remember about how long you worked under these difficult conditions before the order came to cancel the work?

A:- We were there about one hour as I said before, a runner was sent by Major Archambault and the Coy was taken back. We did absolutely nothing.

J. M. P.

ADDRESS BY THE DEFENDING OFFICER

Gentlemen,

First of all I wish to thank the Prosecutor. He has gone to the trouble of getting witnesses for me yesterday, he went out of town to get Rochon's brother to come here.
We are dealing with a very young boy of 17 and it is quite possible that some of the strictest provisions of Military Law were not meant for a boy of that age.
The first charge is that of leaving his guard without permission. I think that I have proved that there was a certain amount of slackness in the supervision of the guard room. Rochon probably took advantage of that slackness. Although he had hadpermission twice to leave, the third time technically he had not permission to leave the guard room. But that permission was not always asked for and so I would think that it is possible to bring a man to Court Martial for this charge.

Now the 2nd charge; I will insist on the fact that the second charge is a direct result of the first one. We willhave to go into the legal aspect of the question. Rochon is accused of using threatening language. I have copied out of the M.M.L. two pragraphs - Page 58, chap 5, para. 5 and page 59 should be carefully considered.
We french people are great talkers, we talk a great deal but we do extremely little. I am sure that it happens twenty times a day one our Bn. that a man says to another man: "I am going to crack your nut" or something of that effect. We do talk alot but we don't mean it. This kid found that it was unjust to jump on him so hard for having gone next door in the Salvation Army Hut near the R.H.L.I. lines and in a moment of anger he said to his serjeant something which he should not have said. I am quite convinced that the serjeant-major was not frightened by this remark.
I think that the whole thing is absurd.
It really doesn't make sense, Rochon never intended to do a thing like that. Pte. Vincent summoned up the whole situation when he told Rochon not to make a fool of himself. Rochon was behaving like a fool and like a big kid.

Now we come to the third charge, that of disobeying an order. Maybe he failed to obey but he did not disobey. The circumstances were explained by the witnesses.
Rochon went digging, he had gone on the morning in his fatigue suit but was so wet that he came back and changed into his new suit.
He went back home for lunch then went back in the afternoon. He changed into his new suit. After that he was careful with this suit, he wanted to spare that new suit. His next door neighbour carelessly splashed him so in disgust, he threw his shovel away. The others were not working and he was one of the men working. They only shoveled a few shovels full. The day was so bad and rainy that orders came from the H.Q. of the Company that they were to stop digging.
There is no need for me togo more deeply into that case as I said when I started, the age of the man should be a very important declaration. I don't feel that he should be sent to hard labour or prison.

ADDRESS BY THE PROSECUTING OFFICER

May it please the Court, as I said at the beginning of this trial the Prosecutor is an officer charged with helping the Court in the administration of justice. His duty is to establish by means of reliable witnesses that the accused has doneor omitted what he was charged with. It is the duty of the prosecutor to assist the accused, in this sense, that the prosecutor should try to make the issue as clear cut as possible. I submit to the court that the corpus, the general body of evidence presented by the prosecution is sufficient to establish that the accused was charged under proper sections of the Army Act and that these reppective charges have been proven to be imputable to the accused and that therefore there remains to the court only the easier part of its task, namely, considering the findings.
The age of the accused the prosecutor will admit; in fact the prosecution would have admitted as ture his own statement of his age; but where I believe the Court will differ in considering the age of the accused is in this: that youth is precisely the best time in which to help in the formation of a strong and reliable character by salutary discipline.
If we permit our judgments on actions of a younger person to be warped by a bit of sentimentality we are not being kind, we are not being fair, to that young person, for it is precisely control, and if need be, sanction of a just discipline that youth requires.
The defence has admitted what I may call the material guilt of the accused; and by "material" I mean the bare fact that the accused, in the first place, was absent without permission from the Guard Room, for a comparatively short time from 2130 to 2210 hours.
The Defence has also admitted the physical fact that the accused did use language which is insulting to hissuperior officer, his Acting Coy Serjeant-Major, who considered it sufficiently menacing to justify his placing the accused under close-arrest.
The Defence made merry of the supposed fear that Serjeant-Major may have felt by the threats of the accused but may I point out that it is not the important element involved; it is the uttering of threatening language quite irrespective how it affects the superiorofficer to whom, it is addressed. If we dismissed every case in which the accused is charged with using threatening language on mere ground that the superior officer so threatened is not frightened thereby, I am afraid that it would lead toaserious slackening of discipline. The superior officer in this case was but fulfilling a duty in charging this man with use of threatening language, moreover witnesses have definitely established that the accused made useof this threatening language immediately to his superior officer without any previous provocation.
Coming back for a moment to the first charge, with permission of the Court, I would refer to the testimony of one of the Regt'l police that there were some guard commanders who insisted that a specific permission be asked each time a member of the guard wished to leave the guard room and that other guard commanders were less conscientious. We have the present case, the testimony of the guard commander himself, that he demanded that permission be obtained each time; that he took an occasional roll call of names of members of the guard who were supposed to be in the guard room, so that implication of considerable slackness in the guard room may have been true on certain occasions, but from the testimony of the guard commander of 31 May there was no slackness during his tour of duty.
To corroborate this, the accused himself stated that he had obtained permission on the first two occasions that he left the guard room; he asked permission on the first time to leave with the kitchen fatigues and the second time to go with a man undergoing field punishment; this shows that he knew that a permission was necessary and that he could not leave the guard room whenever he so felt inclined.
To the third charge, I agree with the defence, as to the disagreeable circumstances of the work. Several witnesses recalled that picture of a rainy day, of a hard morning's work and of the very difficult circumstances that afternoon.
What I would point out with permissionof the Court is that there was practically a whole coy engaged in the same disagreeable work and I beg to recall that this was first pointed out, by witnesses for the prosecution.
The accused gave evidence of a considerable hard headedness to say the least he was the onlyman of the Coy who could so little tolerate with inclement weather, a circumstance over which we have no control, that he had to hurl his shovel away. This hurling away his shovel a considerable distance, I do not claim to be a very serious offence, but I do point out that refusal an order repeated three times to pick up the shovel is obviously refusin

F.M.P.

ADDRESS BY THE PROSECUTING OFFICER
(cont'd)

to obey an order, easily understood and easily obeyed.

I wish to end my address by the same note used by the counsel for the Defence, namely ~~that~~ the ~~xxxxxxx~~ admitted youth of the accused. But to that note I would suggest another tone. This Court would not be doing an act of kindness to the accused in condoning the offences which have been proved against him on account of his immaturity. But rather let the Court weigh well the truism that youth is the proper period of life for wholesome discipline and whereas the prosecution will gladly learn that this Court has mitigated what would be a just sentence on account of the youthfulness of the accused, the accused himself after being adequately punished for the charges proved against him will doubtlessly some time in the future look back upon his treatment by this Court as having contributed its salutary share to the formation of a strong and reliable character.

I thank you,

(E.H. LaPierre), Lieutenant,
Prosecuting Officer.

FINDING

The Court is closed for the consideration of the finding.
The Court find that the accused

PROCEEDINGS ON CONVICTION BEFORE SENTENCE

The Court being re-opened, the accused is again brought before it.

Lieut. E.H. LaPierre is duly sworn.

Q:- Have you any evidence to produce as to the character and particulars of service of the accused?

A:- Yes, Sir.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked, signed by the President, and annexed to the proceedings, as P-1 and Certified True Copy of Company Conduct Sheet as P-2.

Q:- Is the accused the person named in the statement which you have just read?

A:- Yes, Sir.

Q:- Have you compared the contents of the above statement with the regimental books?

A:- Yes, Sir.

Q:- Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

A:- Yes, Sir.

The accused is questioned by the Court.

Q:- Do you wish to address the Court?

A:- No, Sir.

The Court is closed for the consideration of the sentence.

J.M.L.

ENQUETE PRELIMINAIRE.

Dans la cause de:

No. D-56464, Soldat Lucien Rochon, Cie. B, Le Régiment de Maisonneuve, Canadian Army Overseas:

PROSECUTION.

First Charge:

1er témoin: No. D-56101, Sergeant Jean Ladouceur, Cie. B, Le Régiment de Maisonneuve, C.A.(O.), ayant été dûment assermenté, dépose et dit:

Le 31 mai, 1941, à Aldershot, Hants, Angleterre, en tant qu'acting C.S.M. de la Cie. B, j'ai détaillé le Soldat Rochon L. No. D-56464, pour le devoir de garde qui devait commencer à 1600 heures ce jour-là.

Vers 1530 heures, j'ai personnellement constaté, lorsque la garde s'est montée, que le Soldat Rochon était à son poste.

Ce devoir de garde durait de 1600 heures le 31 mai, 1941, à 1600 heures le 1er juin, 1941, sans arrêt.

Lorsque les soldats sont sur ce devoir, ils n'ont aucunement le droit de s'absenter soit de leur poste de garde ou de la salle de garde sans une permission de commandant de garde:- C'est un devoir continus de 24 heures.

Entre 2200 et 2230 heures le 31 mai, 1941, j'ai vu le Soldat Rochon en face de sa hutte, la hutte "G", Cie. B,; il était habillé en "walking out", accompagné de son cousin le Soldat Provost.

Je lui ai demandé d'où il venait et comment il se faisait qu'il n'était pas à son devoir de garde; il m'a répondu qu'il venait de la ville.

Je lui ai donné ordre d'aller mettre son accoutrement et de retourner à son devoir de garde en lui disant que je le paraderais le lendemain matin. Il s'est alors mis à me menacer: J'ai fait venir deux escortes, et je l'ai envoyé dans le clink après l'avoir mis "close-arrest."

Sgt Ladouceur J.

L'accusé ne désire pas interroger le témoin contradictoirement.

J. M. Foyle
Major
Pres.

Je soussigné désire être defendu par le Lieut. C. Bieler,

Le Régiment de Maisonneuve, C.E.(O.).

Signature, L Rochon

First Charge:

2ième témoin:

Moi, le soussigné, D-56407, Cpl. Chaloux, B. de la Cie. B, Le Régiment de Maisonneuve, C. A.(O.), ayant été dument assermenté dépose et dis:

Le 31 mai, 1941, j'agissais comme Sgt. de Garde dont faisait partie D-56464, le Soldat Rochon, L. Vers les 1800 heures j'ai fait un appel de ma garde - c'est-à-dire de ceux qui devaient être à ce moment dans la salle de garde. J'ai constaté que D-56464, le Sdt. Rochon, L. ici présent manquait à l'appel et qu'il n'était pas à la salle de garde. Vers 2210 heures D-56464, le Sdt. Rochon, L. est rentré dans la salle de garde sous escorte; l'escorte m'a fait rapport qu'il était aux arrêts de rigueur et le l'ai fait renfermé dans la salle de détention.

Cpl. Chaloux B.

L'accusé ne désire pas interroger le témoin contradictoirement.

J. Moyles maj. 9
Prés.

-SECOND CHARGE-

1er témoin:

No. D-56101, Sergeant Jean Ladouceur, Cie. B, Le Régiment de Maisonneuve, C.A.(O.), ayant été dûment assermenté, dépose et dit:

Je connais bien l'accusé ici présent, comme faisant partie de la Cie. B, dont je suis un des sergeants et j'agis comme sergeant-major depuis le 1er mai, 1941.

Le 31 mai, 1941, à Aldershot, Barrosa Barracks, j'étais à parler en face de ma hutte, No. "G", avec le sergeant Desjardins qui était B.O.S. ce jour-là, et le soldat P. E. Turgeon, qui était C.O.C. lorsque le Soldat Rochon s'amena à nous accompagné de son cousin, le Soldat René Provost, de Witley; il était environ 2200 ou 2230 heures.

Le Soldat Rochon faisait partie de la garde, ce jour-là. Le voyant à la hutte, je lui ai demandé ce qu'il faisait là; il m'a répondu: "Je viens de la ville." Je lui ai alors dit: Rends-toi à la salle de garde, et tu seras paradé pour celà" - Il riposta: "Ne me parle pas si rough et un de ces bons jours, on ira au front et là, je t'arrangerai."

Il partit alors pour aller dans sa hutte; je l'ai rappelé, mais il refusa de venir à moi:- j'ai alors vu deux gardes qui descendaient de la hutte; je leur ai donné ordre d'escorter Rochon, car je le mettais sous close-arrest.

Sgt. Ladouceur J.

L'accusé ne désire pas interroger le témoin contradictoirement.

2ième témoin:

No. D-56533, Sergeant Jacques Desjardins, Cie. C, Le Régiment de Maisonneuve, C.A.(O.), ayant été dûment assermenté, dépose et dit:

Le 31 mai, 1941, à Aldershot, Barrosa Barracks, j'agissais comme B.O.S. J'étais à parler avec le Sergeant Ladouceur en face de la hutte "G", Cie. B,-, il était environs 2200 heures.

L'accusé Rochon est arrivé à cette hutte avec un autre soldat,- Le Sergeant Ladouceur lui à alors demandé ce qu'il faisait là, comment il se faisait qu'il n'était pas à son poste

J. Moyth
Moj
Pres.

à la salle de garde. L'accusé a alors repondu: "Ne me parle pas si rough, et un de ces jours, on ira au front et là, je t'arrangerai."

Je suis alors parti pour aller à mon devoir.

Je reconnais l'accusé ici présent comme étant le même soldat qui le 31 mai, 1941, au soir, a prononcé les paroles plus haut mentionnées, à l'égard du sergeant Ladouceur:-

J Weyardeur Sgt.

L'accusé ne désire pas interroger le témoin contradictoirement.

Sième témoin:

Je, le soussigné, ayant été dûment assermenté dépose et dis:

Je suis D-56849, le L-Cpl. Turgeon, P. E., de la Cie. B, Le Régiment de Maisonneuve, C.A. (O.). Le 31 mai, 1941, j'agissais comme caporal de la semaine (C.O.C.). Entre 2200 heures et 2230 heures je me trouvais tout près de la caserne "G" qui est habitée par la Cie. B; j'étais dehors et je parlais avec D-56101, le Sgt. Ladouceur, Jean qui était dans sa chambre à l'étage inférieur; la fenêtre de cette pièce était ouverte, ce qui nous permettait de causer l'un à l'intérieur et l'autre à l'extérieur. D-56464, le Sdt. Rochon, L, habillé en tenue de promenade ("walking out") et accompagné d'un autre soldat vint à la caserne

Le Sgt. Ladouceur sortit de la caserne et donna ordre au Sdt. Rochon de monter à sa chambrée et de mettre son équippement puisqu'il faisait partie de la garde. Le Sdt. Rochon répondit, "Je me fiche de toi, et si ce n'était pas de ten trois barres, je t'arrangerais." Alors il est monté à l'étage supérieur et moi je suis parti pour me rendre à la salle de garde. Quelque temps après je suis retourné au même endroit. Je remarquai que le Sgt. étant rentré à sa chambre préparait une formule d'accusation (Crime Sheet); le Sdt. Rochon descendit d'en haut, sortit de la caserne et vint se placer près de moi à la fenêtre ouverte du Sgt. Ladouceur. Le Sdt. Rochon demanda avec insistance de voir la formule d'accusation (Crime Sheet) que prépara le Sgt. Ladouceur. Celui-ci lui dit de se rendre à la salle de garde, mais le Sdt Rochon répondit, "Je ne partirai pas avant d'avoir vu le Crime Sheet". Alors le Sgt. Ladouceur appela deux hommes qui étaient dans la caserne. Un de ceux-ci était Sdt. No. D-57372, Vincent, A.. Le Sgt. Ladouceur leur ordonna de

J. M. Lagh
Maj
Prés

- conduire le Sdt. Rochon à la salle de détention. Le Sdt. Rochon a resisté un peu; mais le Sdt. Vincent lui dit, "Viens t'en, Rochon; ne fais pas le fou." Et alors le Sdt. Rochon est parti sans plus de resistance avec les deux escortes.

L. C. Paul Emile Turgeon

L'accusé ne désire pas interroger le témoin contradictoirement.

J. Meyer Lang'or
Pres.

-THIRD CHARGE-

1er témoin:

Moi, le soussigné, D-56407, le Cpl. Chaloux, B. de la Cie. B, du Régiment de Maisonneuve, C.A. (O.), ayant été dûment assermenté dépose et dis:-

Le 27 mai, 1941, dans l'aprèsmidi la Cie. B, creusait des tranchées. Moi j'étais en charge du peloton dont fait partie D-56464, le Sdt. Rochon, L. ici présent. L'ouvrage n'était pas agréable à faire puisqu'il-y-avait beaucoup de boue. Le Sdt. Rochon argumentait avec un autre soldat; je ne sais pas à quel propos. Je le vis lancer sa pelle à peu près douze pieds. Je lui donnai ordre de la ramasser; il m'a refusé; j'ai répeté l'ordre encore deux fois mais il persistait à refuser. Un couple de jours plus tard je l'ai fait paradé devant le commandant de la Cie.

Cpl. Chaloux B.

L'accusé ne désire pas interroger le témoin contradictoirement.

2ième témoin:

Etant dûment assermenté je dépose et dis:

Je suis D-56531, Cpl. Corbeil, M., de la Cie. B, Le Regiment de Maisonneuve, C.A.(O.). Le 27 mai 1941, dans l'aprèsmidi la compagnie travaillait à creuser des tranchées. Le Soldat D-56464, Rochon, L. ici présent était présent ce jour là avec la compagnie et travaillait sous les ordres de D-56407, Cpl. Chaloux, B. Je passais l'endroit où il creusait et je le vit lancer sa pelle à une distance d'à peu près douze pieds. Je vis et entendis le Cpl. Chaloux donner ordre au Sdt. Rochon de ramasser sa pelle, et je vis et entendis le Sdt. Rochon refuser d'obéir cet ordre.

Cpl. Corbeil M.

L'accusé ne désire pas interroger le témoin contradictoirement.

J. Mayor major
Pres.

QUESTION A L'ACCUSE.

Désirez-vous faire une déclaration ou rendre témoignage sous serment. Vous n'êtes pas obligé de dire quoi que ce soit ou rendre témoignage, mais cependant tout ce que vous direz ou le témoignage que vous rendrez sera pris par écrit et pourra servir de preuve.

REPONSE DE L'ACCUSE.

Je n'ai rien à dire.

Signature, L Rochon

Rules of Procedure 4 (C.D.E.) have been complied with-

This summary of Evidence was taken by me, in the presence of the accused, at Aldershot, Hants, England, this 26th day of June 1941.

E H La Pierre Lieut.

(E. H. La Pierre,) Lieut.
Le Regt. de Mais, C.A.(O.)

J M Coyle major
Pres.

"COPIE CERTIFIEE"

No. D-56464 Name ROCHON L. Sqn., Battery, or Company "B" Corps R.L.M. C.A.S.F. Date of enlistment 14/9/39 G.C. Badges Service or Proficiency Pay D 56464

M.F.M. 6
A.F.B. 122
500M—8-39 (1703)
H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet new No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
MONTREAL	18-2-40	Pte		A.W.L. 18-2-40 to 26-2-40 A.A. 15 (1) 8 days		14 days C.B.	27/2/40	Jr. Monette Capt	Forfeit 8 days pay KRVI 149 (1)(A)
MONTREAL	5-5-40	"		A.W.L. 2245hrs - 5/5/40 - 2245hrs - 12/5/40 A.A. 15 (1) 8 days	Cpl. GARNEAU	10 days C.B.	14/5/40	L. LALONDE CAPT.	Forfeit 8 days pay KRVI 149 (1) (A)
VALCARTIER	July 6	"		NEGLECTING TO OBEY CAMP ORDERS A.A. 11	Sgt. LAULON	5 days C.B.	July 6th	Jr. Cochemboult Major	
VALCARTIER	Aug 18	"		A.W.L. 1800hrs - 18-8-40 to 2200hrs - 18-8-40 A.A. SEC. 15 (1) 1400hrs.	Cpl. Vaillancourt	Admonished	Aug 19th	M. Aurassa Lt. Col.	Forfeit 1 day pay KRVI 149 (1)(A)
ALDERSHOT	Oct 17	"		A.A. 40 - W.O.A.S. NEGLECT TO THE PREJUDICE OF good ORDER and MILITARY					

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
ALDERSHOT	Oct 17	Pte		DISCIPLINE IN THAT HE WAS LATE ON BREAKFAST PARADE	Cpl CHALOUX	3 days C.B.	Oct 19th 40	[illegible]	
ALDERSHOT	22-5-41	"		A.A. 40 - W.O.A.S. - ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, IN THAT HE, AT ALDERSHOT, MAY 22nd, AFTER HAVING RECEIVED AN ORDER TO MAKE A RIGHT PRESS, HE WAS INSUBORDINATE SAYING TO Cpl. CORBEIL - M.	Cpl CORBEIL				
				"TU AIMES ÇA ENTER APRES MOI."	Pte MAINVILLE	7 days C.B.	23/5/41	[illegible]	

certified true copy Alexander Dugan Capt Adjt

Exhibit P2 [illegible] Major

LE REGIMENT DE MAISONNEUVE C.A.M.

Exhibit P1

M.F.B. 355
H.Q. 1772-39-620
10M-8-40 (M19)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D56464	Pa	Lucien Rochon	R. de Mais. 8A(0)

1. The following is a fair and true summary of the entries in the ~~Service and General Conduct sheets~~ ~~Regimental and Squadron, Battery~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

Within last 12 months		Since enlistment	
For A.A. 11 neglect to obey camp order	1 times	A.A. 11 neglect to obey camp order	1 times
For A.A. 15(1) AWL	1 times	A.A. 15(1) AWL	3 times
For A.A. 40 neglect to the prejudice	1 times	A.A. 40 neglect to the prejudice	1 times
For A.A. 40 Act to the prejudice	1 times	A.A. 40 Act to the prejudice	1 times

~~Number of instances of gallantry or distinguished conduct~~

~~or,~~

There are no entries in the conduct sheets of the accused.

~~NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~

2. The accused has not been previously convicted

~~or,~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or,~~

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and ~~26~~ 49 days in military custody, making a total of ~~26~~ 49 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his record of service is ~~attestation paper is~~ 19 yrs 5 months

6. ~~The date of his commission specified in his record of service is~~ The date of his attestation specified in his record of service is ~~attestation~~ ~~attestation paper~~ 14/9/39

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~(or is in possession of or entitled to). State any air force decoration or reward.~~

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of .....~~

11. (~~In the case of an officer.~~) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number [illegible] Rank [illegible]

Name Lucien Rochon of Le Regiment de Maisonneuve C.A.(O) Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		Nil		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26th day of June 1941 Alexander Bayer Capitaine

LE REGIMENT DE MAISONNEUVE, C.A.(O)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked.....signed by the president, and annexed to the proceedings.

SD-126.

Pl. Rochon, P. A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-38021 Pte Percy Albert ROCHON 1 CCOD, RCOC att 1 Cdn Disciplinary Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 67 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Sixty days detention

(Sgd) ..... Judge-Advocate, if any.

27 Feb 45 Date awarded.

(Sgd) J. Fraser Lt-Col President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirm the finding but I mitigate the sentence to read "to undergo forty (40) days detention" & I confirm the sentence as so mitigated

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) Unintelligible (G S N Gostling) Brig

Date 28 FEB 45 Commanding 2 CDN BASE RFT GP Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

C38021 Pte Rochon, PA 11 MAR 45 ..... Lt-Col.

Comdg, 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CR 327 Page 1-1 14 March 45

RECORDED AT CMHQ IN AB 160. 5D-126

CFA88 (To be used for AFAR) 40/P & D/1608 (R144) 4/38B

FIELD GENERAL COURT-MARTIAL

RECEIVED 19 APR 1945 JAG BRANCH C.M.H.Q.

Convening Officer Brigadier G.S.N. Gostling, ED Comd 2 CBRG dated 26 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C-38021	Pte	Percy Albert	ROCHON	1 CCOD, RCOC att 1 Cdn Disciplinary Centre

PROCEEDINGS REVIEWED Captured Capt 21 Apr 45 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 27 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnm ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for duties and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 101, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(1), accused is (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1620 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (has) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.G. Fraser	R&E 13 CBRD
Member	Capt	P.G. Robichaud	R&E 13 " "
Member	Lieut	J.A. Gaulin	R&E 10 " "
Judge-Advocate			
Prosecutor	Lieut	W.J. Page	10 " "
Defending Offr	Lieut	J.W.S. Hubert	R&E 10 " " (2)

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused C-38021 Pte Percy Albert ROCHON before arraignment make(s) (no) (a) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG. Vol 4 P 57.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence, (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)*

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 105; duty of Prosecutor see RP 60(A) (H); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), to call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans ..... (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans .....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), ~~and certified true copy (copies) of Conduct Sheets~~ (2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex ..... respectively.(3)
(1. AFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans ..... (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, C-38021 Pte Percy Albert WOOD, 1 CCDD WOOD, attached to 1 Can Disciplinary Centre, a soldier of the Canadian Army Overseas is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE
DESERTING HIMSELF WITHOUT LEAVE
in that he
In the Field, in FRANCE absented himself without leave from 0700 hrs 3 Dec 44 until apprehended at VERSAILLES, France at 2130 hrs 23 Dec 44.
(Absent 20 days 14 hrs 30 minutes)

(A C Wood) Lt-Col
OC 1 Can Disciplinary Centre

In the Field
24 Feb 45

To be tried by Field General Court-Martial

(G E M Gostling) Brigadier
Comd
2 Can Base Rft Gp

In the Field
26 Feb 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-38021	Pte		Percy Albert	ROCHON	1 CCOD, RCOC att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (date) 26 Feb 45 endorsed by me~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) — J C Lovat Fraser (Must be named. RP 106.) — RCE — 13 CBR Bn. (Unit.)

MEMBERS.

Captain — to be detailed by OC 13 CBR Bn — 13 CBR Bn

Lieutenant (Rank.) — to be detailed by OC 10 CBR Bn (Named or detailed. RP 106.) — 10 CBR Bn (Unit.)

WAITING MEMBER.

(Rank.) — (Named or detailed, if any. RP 106.) — (Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.) — (Must be named, if any. RP 106.) — (Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

[signature] (Signed personally. RP 105 fn 2.) — Brigadier (Rank.)

(G.S.N. Gostling)

Commanding 2 Cdn Base Rft Gp Convening Officer.

Date 26 Feb 45

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (6143)

MEDICAL OFFICERS CERTIFICATE

(KR(Gen) Para 557)
(CRHQ GL 173)

I certify that I have this day examined C 38021
(No.)
Pt. Rochow. R.A. and in my opinion he is
(Rank) (Name)

fit to undergo trial by Court-Martial.

Station 1 C. Disc C.

Date. ~~1 Cdn Disc Cr~~
27 FEB 45

H. Moore. Capt. (Sgd)
Medical Officer
(unit) 1 Cdn. Disc. Centre

(1) EXHIBIT C

Summary of Evidence in the case of G-38021 Pte Percy Albert [illegible], 1 CCOD-PCOC, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave.

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - True Copy of Pt II Order No 25 dated 9 Dec 44.

Exhibit "B" - Certificate of apprehension dated 29 Dec 44.

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP4(C) (D) (E) (F) and (G) have been complied with.

J. F. Rutherford

(J F Rutherford) Capt
R C Signals
Officer detailed to take Summary of Evidence.

Dated in the Field
24 Feb 45

Section 2nd Echelon

12431/1

RCOC Adm Unit	
O/C	
2 i/c	
ADJT.	
Q.M.	
PMR	
M.O.	

OVERSEAS DETACHMENT 1 CDN C O D RCOC No 25

Last Order No 24 8 DEC 44 — Part II Orders issued by CDN SECTION GHQ 2nd ECHELON 21 ARMY GROUP 9 DEC 44

Exhibit A

F. Rochford Capt

"A" OFFICERS

1 ABSENT WITHOUT LEAVE

(a) AMENDMENT: Part II Order No 8 para 2(a&b) of 30 OCT 44 insofar as it refers to the u/m is cancelled
Lt J R WOODS (X-4(b)List)

"B" OTHER RANKS

2 STRENGTH INCREASE

(a) TOS from X-3 List RCOC wef date shown

049326	Pte	COUTURE	A J			29 NOV 44
A87157	Pte	GILDERS	A T			23 NOV 44
A99410	Pte	GODMAN	K G	Storeman 'C'		16 NOV 44
B67139	Pte	HOOVER	A F			15 NOV 44
D57012	Pte	JODOIN	A			5 DEC 44
C71260	Pte	KANE	F			28 NOV 44
B44871	Pte	NICHOLS	J J			3 DEC 44
D18039	Pte	RILEY	G			2 DEC 44
B9301	Pte	TATUM	H O	Dvr Mech 'C'		4 DEC 44

(b) TOS from X-3 List RCEME wef date shown

H9490	Gdn	KINGSLAND	C J	Dvr Mech 'C'	16 NOV 44
H37247	Gdn(A/Cpl)	THALLMANN	E A	Carpenter 'B'	2 DEC 44

3 ATTACHMENTS

(a) Ceases att from X-4(b) List RCA wef 3 DEC 44

C9843	Gnr	SKIRROW	J W

(b) Ceases att from X-4(b) List RCASC wef 3 DEC 44

B63869	Pte	McWHIRTER	J

(c) Ceases att to Cdn Sec GHQ 2 ECH 21 ARMY Grp wef 6 DEC 44

M42078	A/Sjt	IRWIN	J R
C38673	Pte	SHERIDAN	J A

4 ABSENT WITHOUT LEAVE

(a) AWL from 0700 hrs 3 DEC 44 Still absent 0700 hrs 4 DEC 44 (1st day)

C38021	Pte	ROCHON	P A

(b) AWL from 1300 hrs 27 NOV 44 Still absent 1300 hrs 28 NOV 44 (1st day)

B58042	Pte	EVANS	C E

(c) AWL from 1330 hrs 3 DEC 44 Still absent 1330 hrs 4 DEC 44 (1st day)

B2563	Pte	OAKSHEY	L B	
D16724	Pte	GREENE	G	
D16467	Pte	SMELTZER	D V	(X-4(b) List)
F66019	Pte	LYNCH	G A	(X-4(b) List)
B148252	Pte	McLELLAN	E J M	(X-4(b) List)
C2025	Pte	McMANARA	W C	

4 ABSENT WITHOUT LEAVE (cont'd)

(a) AWL from 0900 hrs 3 DEC 44 Still absent 0900 hrs 4 DEC 44 (1st day)

B74701	Pte	GOULD	G C
B74695	Pte	HANNON	H
F52600	Pte	WEBB	R

5 PUNISHMENTS

(a) On 3 DEC 44 awarded a forf of 28 days pay for an off under AA40
Forfs 28 days pay FR&I 149 (2)
D136824 Pte HAMILTON F E

(b) On 3 DEC 44 awarded a forf of 14 days pay for an off under AA11
Forfs 14 days pay FR&I 149 (2)
D136092 Pte MaDONALD J C

(c) On 4 DEC 44 awarded a forf of 7 days pay for an off under AA40
Forfs 7 days pay FR&I 149 (2)
F2416 Pte BLANDIN A L

(d) On 5 DEC 44 awarded a forf of 3 days pay for an off under AA40
Forfs 3 days pay FR&I 149 (2)
D122609 Pte CLARK A J

(e) On 5 DEC 44 placed under stop of pay in the amount of £2-6-0 for an off under AA40 Stop of pay £2-6-0 FR&I 156(2)Cost of dem to WD ve
C91265 L Cpl ROCK P W J

(f) On 5 DEC 44 awarded a forf of 3 days pay for an off under AA40
Forfs 3 days pay FR&I 149(2)
B111235 Pte LAWTON B

(g) On 5 DEC 44 awarded a forf of 10 days pay for an off under AA40
Forfs 10 days pay FR&I 149(2)
F56395 Pte MARENICK P

(h) On 5 DEC 44 awarded a forf of 28 days pay for an off under AA40
Forfs 28 days pay FR&I 149(2)
K80768 Gnr KERR C (X-4(b) List)

(i) On 5 DEC 44 awarded a forf of 10 days pay and placed under stop of pay in the amount of £4-0-0 for an off under AA40 Forfs 10 days pay FR&I 149(2) Stop of pay in the amount of £4-0-0 FR&I 156(2) Total forf 10 days pay and stop of pay £4-0-0 Cost of dem to WD veh
A104129 Pte JOHNSTON A A

6 STRENGTH DECREASE

(a) SOC to X-3 List RCOC wef date shown

F85512	Pte	COUGH	H F	Dvr Mech 'C'	4	DEC 44
E14704	Pte	HACHE	C G		7	DEC 44
D57012	Pte	JODOIN	A		5	DEC 44
L93539	Pte	KERR	J M		2	DEC 44
B3661	Pte	LADKIN	W L		7	DEC 44
B136744	Pte	LEBLANC	J M		6	NOV 44
R94471	Pte	NICHOLS	J G		1	DEC 44
C8521	Pte	McMILLAN	R S		10	NOV 44
K58961	Pte	REID	A B		3	DEC 44
D16039	Pte	RILEY	G		25	NOV 44
D166022	Pte	RUBILOVICH	A M	Clerk 'C'	28	NOV 44
C15847	Pte	SEGUIN	A J		25	NOV 44

6 STRENGTH DECREASE (cont'd)

(b) SOS to X-3 List RCEME wef 3 DEC 44
K23737 Cfn ATKINS R A Dvr Mech 'C'

/KW

(G R S FOSTER) LIEUTENANT
for Officer IC
CANADIAN SECTION G.H.Q. 2nd ECHELON 21 ARMY GROUP

Exhibit B. CP

J. F. Rutherford Capt

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT SECTION 163 (i) (ii).

I certify that No. C. 38021 Rank. STE. Name. ROCHON of I.C.C. OVERSEAS DET. (Unit) was arrested at VERSAILLES (place) at 2130 hrs on 23 Dec 1944 (date). He was dressed in uniform ~~plain clothes~~.

Date. 29 Dec 1944

Signature of ~~Provost Marshall~~ APM or other officer into whose custody the above-mentioned person was taken on arrest.

[signature]
Lt.
(Rank.)
(Unit or Appointment.)
O.C. [illegible] Provost Det.
SHAEF.

EXHIBIT D CK

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C28021	Pte	RACHEN, P.A.	RCEC

MFM 6 Not available

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL - AA Sec 15 (1) 2 times.

For _____ _____ times.

For _____ _____ times.

For _____ _____ times.

For _____

Date of first entry in Field Conduct Sheet _____

Date of last entry in Field Conduct Sheet _____

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for _____

beginning on the _____ day of _____

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for N/C days in civil custody; and for 65 67 days in military custody, *i.e.*, _____ days in open arrest, 65 67 days in close arrest; of which N/C days were spent in hospital.

5. The present age of the accused is 31 yrs 8 mos.

6. The date of his ~~calling up for military service~~ attestation is 16 Apr 41

7. The service which the accused is allowed to reckon is _____

8. The accused is in possession of† CVSM & CLASP.

†State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of _____	_____
In the war substantive rank of _____	_____
In the acting rank of _____	_____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27853) W1 24939-3404 24,000 7/44 A.A.E.W.Ltd. Gp.698 Form/B.296(War)3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 25th day of Feb 1945

Admin. Offr.
1 Cdn Disciplinary Centre

(A)

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

True Copy of Pt II Order No 25 dated 5 Dec 44 "A"

Certificate of apprehension dated 09 Dec 44 "B"

I, C38031 Pte MCCHUM P A, hereby certify that I have received one (1) copy of Charge Sheet and one (1) copy of Summary of Evidence free of charge on 28 February 1945.

C-38031 Pte MCCHUM P A

5J-54
Pte Rock A.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G52460 Pte Arnold James ROCK, Nth Shore Regt, att 1 Cdn Disciplinary Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15 (1)	Guilty	Guilty	The court finds the accused
2nd	AA 12(1)(a)	Not Guilty		NOT GUILTY of desertion, but GUILTY
3rd				of AWL from 1300 hrs 14 Nov 44 until
4th				apprehended at 0045 hrs 10 Apr 45.
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ (1) GBC

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which ~~nil~~ days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for a period of two years, and to be discharged with ignominy from His Majesty's Service -

(Sgd) ..... Judge-Advocate, if any. 25 Apr 45 Date awarded. (Sgd) "Georges B H Cox" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) "J Runcie" (J Runcie) Lt Col

Date 29 Apr 45 A/ Commanding 2 CDN BASE RPT GP

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
G52460 Pte ARNOLD JAMES ROCK	3 May 45	"J Medhurst" Lt Col Comdg, 1 Cdn Disciplinary Centre

CR # 193 d/2 May 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5J-54

CPA66 (To Issue of AFA81) 30/P & S/1898 (40/01) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier GGN Gostling ED Comd 2 CBBG dated 24 Apr 45.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G-52460	Pte	Arnold James	ROCK	Nth Shore Regt att 1 Cdn Disciplinary Centre

D. J. A., Cdn Sec 1 Tac HQ 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 25 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instn,~~ if any, assemble, and the Court is closed. GBC

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see fmn for GCM (RP 39, 359. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 105-110, 112-122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3) GBC

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1040 hours trial commences. GBC

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CA(2).~~ GBC

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~ ~~The Interpreter is sworn (1). (To you object to ..... as shorthand writer? Ans .....~~ ~~The shorthand writer is sworn (1).~~ GBC

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 31, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instn, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc: GBC

President	Major	GBH	Cox	CAC att 1 Cdn Disc Centre
Member	Major	AE	Lefroy	Seaforth Highrs att 1 Cdn Dis Centre
Member	Lt	AJ	Thompson	CIC 2 C B R Bn
Judge-Advocate				
Prosecutor	Lt	Y	Pope	QO R 31 CBR Bn
Defending Offr	Captain	F	Matte	CIC 10 C B R Bn

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (b) and fn 2 were not followed. See D1 p 3.)

A8. The accused G.52460 Pte Rock A J before arraignment make(s) (no) ~~(an)~~ plea (1) GBC

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or to one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(1) The President records the pleas in Part I of the Schedule. GBC

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C GBC

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

21 May 45

2 CBABn Vol 1 p.115

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (D) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO.(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex C initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO.(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (~~not~~) (no) opening address.(1) SEE
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1) and recorded Exhibits "A" & "B" attached
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2). The Court is closed, and considers the submission (3). The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~ SEE
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 80(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. accused give evidence on oath you intend to call witnesses on your behalf ? Ans. NO. Are they witnesses as to character only ? Ans. N/A.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(a).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s) ~~if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the second charge(s) being subject to confirmation, will be promulgated later.(1) ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is (is/are) also cancelled.~~
(1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s).(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(1) (g) (h), and (ii) they purport to refer to (#) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3) SEE
(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. yes pleas in mitigation attached exhibit "C" (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the Court is dissolved~~. SEE
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 230, 563-566, Overseas AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

052460

xxxxx

Pte ROCK A.J.

"L E Boshow" Capt

Field
1 Cdn Disciplinary Centre
25 Apr 45

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 80(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 88(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (b).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V pores 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, Pte Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G52460	Pte	Arnold James	ROCK	8th Shore Regt att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 24 Apr 45 endorsed by me, for by an offr of my staff for me," To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.) (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto. (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder. (RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) GSH CCK (Must be named. RP 106.) CAC att 1 Cdn Disciplinary Centre (Unit.)

MEMBERS.

Major (Rank.) AE Lefroy (Named or detailed. RP 106.) Seaforth of C, att 1 Cdn Disciplinary Centre (Unit.)

Lieut (Rank.) AC Thompson (Named or detailed. RP 106.) CIC 2 CBR Bn (Unit.)

WAITING MEMBER.

(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE ADVOCATE.

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Dat 24 APR 45

"G S N Gostlin" (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(GSN Gostling)
Commanding 2 CDN ARMD RCT GP
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 98 (In lieu of AFA 3 40/P & S/1007 (6142))

3BC

CHARGE SHEET

The accused, C-92460 Pte Arnold James BUCK, North Shore Regt, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

In the Field, absented himself without leave from 0900 hrs 11 Nov 44 until apprehended at 0945 hrs 14 Nov 44.

(Total absence: 3 days 45 minutes)

SECOND CHARGE
Sec 12 (1) (a)
Army Act

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE

In that he

In the Field, absented himself without leave from 1300 hrs 14 Nov 44 until apprehended at 0045 hrs 20 Apr 45.

(Total absence: 146 days 12 hrs 45 minutes)

Remanded for Summary of Evidence

In the Field
20 Apr 45

(J F Redhurst) Lt col
Commanding
1 Cdn Disciplinary Centre

Remanded for Field General Court-Martial

In the Field
20 Apr 45

(J F Redhurst) Lt col
Commanding
1 Cdn Disciplinary Centre

To be tried by Field General Court-Martial

In the Field
24 Apr 45

"J S M Hostling"
(J S M Hostling) Brig
Comd
2 Cdn Base Sub Gp

Case of G52460 Pte Rock A J

Nth Shore Regt

Prosecution makes no opening address.

Prosecution:-

1st Witness Major N.C.Dawson sworn states:-

My work at 1 Cdn Disciplinary Centre is to prepare documents and gather evidence for preparation of Court Martials. I identify the accused as Pte Rock. I had dealings with the accused in that he came to the office and made a voluntary statement. The accused was cautioned in the usual way i.e. I made my identity known to him and warned him that he need not say anything but that anything he did say would be taken down in writing and may be used in evidence. To show the accused understood he signed the warning. I recognize the statement shown to me as the one voluntarily given to me and witnessed by myself. Submitted to the court, signed and attached as exhibit "A".

Cross-Ex

He came to the office, purely voluntarily requesting to make a statement and no promises, pressure or any argument was used.

RP 83 (b) complied with.

Certificate of apprehension dated 10 Apr 45 signed and attached as Exhibit "B".

Prosecution closes

Defence makes no submission.

Defence:- The accused elects to give evidence on oath. The accused sworn states:

From the time I went AWL out of each week the re was 6 days in which I visited at Leopold Barracks in Ghent for a period of form 1 to 4 hours each day. I can get several N.C.O.s who were stationed there at the time to verify this fact, that they saw me there daily. This fact along with the fact I remained in Ghent for a prox 5 months, where I was in daily contact with Provosts, should establish the fact that I had no intention of deserting. Also the fact I signed a voluntary statement concerning my pay book knowing it could be used against me. Instead of bothering to tamper with my paybook, I could have put on civilian clothes and remained at home indefinitely. I was staying with civilians in Ghent. There were several places where I could have procured civilian clothes.

Cross Ex: I used my paybook to get by the Provosts as they checked to see when I was last paid. I tried to avoid the Provost because K knew I would be punished quite heavily for a little time as a long one and just put off that time as long as possible. Having a good time while I could. I did no work while away and required very little money to get by on as the civilian gave me bed and lodgings. I planned to return to the unit with two of my chums.

Court: I used to go to Leopold Barracks to see friends, visit the canteen and get cigarettes. My unit was at rest just outside Ghent when I went away. I just wanted a holiday and so I went AWL. I had leave on 6th July 44. Came to Eng 21 July 44. Came to France in Aug 44. I saw about 3 months action. I had a girl friend where I stayed. I used to go to cinimas, visit with the boys, go out with my girl friend, swimming bowling alleys etc. I was slightly wounded twice, I definitely intended to return to my unit. I did expect to be up on a charge of desertion, when arrested. I definitely was determined to get

away, but later when I heard the penalty I planned to return to avoid a D.D. After I had been away for a short time I thought I would be tried for desertion so thought it might as well be for a long time as a short one.

R.P. 83 (b) complied with. "GBC"

Court closes to consider the finding - Finding of NOT Guilty of Desertion but Guilty of AWL. Defence calls no character Witness.

Prosecution submits MFM 6 & AF 296.

Plea of mitigation.

EXHIBIT "J" "BC"

1 Cdn Disciplinary Centre

Place : Field

S T A T E M E N T

Subject : AWL

Reg No: G-52460 Rank Pte Name ROCK, Arnold James
Unit North Shore Regt

STATES: I have been cautioned that I am not obliged to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence. I fully understand the meaning of this warning and to show that I do so, I sign my name herewith.

Signature "A J ROCK"

Begins:

I am G-52460 Pte Arnold James Rock, 24 years of age. I joined the Cdn Army 9 Jan 42. I arrived in the UK 27 Jul 44. I came to Normandy France the middle of Aug 1944 as an Inf Reinforcement, and joined my unit the North Shore Regt on or about 17 Aug 44 in the line.

I was continuously with my unit from on or about 17 Aug 44 until at 0900 hrs 11 Nov 44 I went AWL. I was apprehended at 0845 hrs 14 Nov 44. I again went AWL at approx 1300 hrs the same day, that is 14 Nov 44 and have remained AWL until apprehended by the CPC at 0845 hrs 10 Apr 45.

I was placed under close arrest and escorted to the Guardroom of 4 Bn 3 CBRG, then under escort brought to L C.D.C. on 12 Apr 45, where I have been held ever since.

Since I went AWL in Nov 44 I have made entries in my paybook and signed a fictitious name as paymaster for the sole purpose of avoiding being apprehended by the CPC. I have never drawn any pay under these signatures. The last pay I drew from the Cdn Army was on or about Nov 4, 44.

I have read over this statement and it has been read to me. It is the truth. I have had the opportunity to add, change or delete anything I wish.

Statement taken down in writing and witnessed by B-1672 Lam K WYLIE, Pte HQ 2 CBRG

Witness: "NOEL C DAWSON" MAJOR

~~Certified true copy of Exhibit "BC"~~

"Exhibit "P" 090

Plea of Mitigation

G52460 Pte Rock A J

The accused is 25 years old. Married with 2 children. He joined the Army in Jan 42. Later came overseas in Jul 44. Finally joining the North Shore Regt in France middle of Aug 44. He fought arround three months with them. Got wounded twice. Slightly but made him nervous just the same. Then his unit moved to a rest area around Ghent. He met very nice piople there. He felt that he needed a real rest away from army life. He spent many days arcund Leopold Barracks and was to report when apprehended. Previous conduct is very good as can be ascertained by his AFW 6 I respectfully ask the Court to consider these facts in deciding the sentence.

Belgium
25 Apr 45

"F Matte"

Defe[illegible]

CERTIFICATE UNDER ARMY ACT SECTION 163 (i) (ii)

Certified that No. G-52460 Rank Pte Name Rook AJ

of the 22Coy 4 Bn 3 CBRG Regt was apprehended by No M-60043

Rank L/Cpl Name RADSTAAK J of the 2 Cdn L of C pro Coy

Ghent Detach at Ghent Belgium at 0045 hrs on the 10 day of Apr 45

as an absentee without leave.

He was wearing military uniform at the time of his arrest.

Place Ghent Belgium
Date 10 April 45

"JA THOMSON" Lieut
A/DAPM JA Thomson
H.Q. 2 CBRG
Canadian Pro Corps

Certified true copy of Exhibit "B" ABC

M. Rousseau Capt

Summary of Evidence in the case of G-52460 Pte ROCK AJ North Shore Regt, attached to 1 Cdn Disciplinary Centre, a Soldier of the Canadian Army Overseas.

Charges - (1) Absence without leave
(2) Deserting His Majesty's Service

By direction of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of extract from Part 11 Order No. 88 dated 7 Dec 44

Exhibit "C" - Certificate of apprehension dated 10 Apr 45

FIRST WITNESS

Major N C DAWSON Rocky Mountain Rangers att 1 Cdn Disciplinary Centre, sworn states:

On the 19th day of Apr 45, I interviewed the accused, G-52460 Pte Arnold James ROCK, North Shore Regt, att 1 Cdn Disciplinary Centre, whom I now recognize. After making known my identity, I cautioned him as follows: "You are not obliged to say anything unless you wish to do so but anything you do say will be taken down in writing and may be given in evidence." The accused understood the caution and signed his name to the statement which was read over to him. It is attached to these proceedings as Exhibit "B".

The accused declines to cross-examine this witness.

(N C Dawson) Major

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say

The accused does not call any witness

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C)(D)(E)(F) and (G) have been complied with.

(Maurice Rousseau) Capt
Officer detailed to take Summary of Evidence

Dated in the Field
20 Apr 45

PART II ORDER EXTRACT FORM

90/20/Nth Shore)1 (A5e)

To: A-6, D & P
2nd Echelon

14 Apr 45

EXTRACTS FROM: UNIT NORTH SHORE (NB) REGT
PART II ORDER NO 88 dated 7 Dec 44

ABSENT WITHOUT LEAVE

(a) AWL from 0900 hrs 11 Nov 44 app from AWL 0945 hrs 14 Nov 44

G-52460 Pte MOCK A J

Certified to be a true extract from the regimental books and documents in my custody.

"ECHELON" Capt
officer in Records "G"
Gdn Sec 2 Ech HQ 21 A Gp

Certified true copy of Exhibit "A"

M. Rousseau Capt

Ex D 2 EBC.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
G-52460	Pte	ROCK AJ	NORTH SHORE REGT

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For NIL entries on MFM 6 _____ times.

For _____ times.

For _____ times.

For _____ times.

Date of first entry in Field Conduct Sheet NIL

Date of last entry in Field Conduct Sheet NIL

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for NIL beginning on the N/A day of N/A

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for No days in civil custody; and for 10 days in military custody, *i.e.*, No days in open arrest, 10 days in close arrest; of which No days were spent in hospital.

5. The present age of the accused is 24 years 5 months old

6. The date of his attestation ~~calling up for military service~~ is 9 Jan 42

7. The service which the accused is allowed to reckon is _____

8. The accused is in possession of‡ CVSM & CLASP

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	//////
In the war substantive rank of	/////
In the acting rank of	/////

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27835) Wt.24939/3404 24,000 7/44 A.& E.W.Ltd. Gp.698 Forms/B.296(War)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		Nil entries on MFM 6		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ..... day of .....

Major RA

852460 Name ROCK AJ | Sqn, Battery, or Company | Corps CIC | Date of enlistment 9 Jan 42 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/126 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				NIL					

Duplicate created from MFM 4 14 Apr 45 Record of conduct in Canada prior to TOS Cdn Army Overseas
21 Jul 44 not available "FENELON" Capt Officer ic Records "C" Cdn Sec 2 Ech HQ 21 A Gp

Certified true copy of MFM 6 in my possession

M Norbert
1 Cdn Disciplinary Centre

(PTO)

334 - Pte. ROCK. C.A. A/9602

10 - R - 64

No.1 M.T.V.R.D./R.C.A.S.C.

ENTERED IN RECORDS OF C.M.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.



PROCEEDINGS.

A.

On Active Service, this Eleventh

of December, 19 40

Whereas it appears to me, the undersigned, an officer in Command of Canadian Base Units, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~and~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

PROCEEDINGS CHECKED AND FOUND TO BE IN ORDER.

(A. W. EMBURY) MAJOR, J.A.G.3., C.M.H.Q.

ENTERED IN RECORDS OF C.M. 334

President.

Rank.	Name.	Regiment.
Lieut-Col.	Louis Keene	Lorne Scots

Members.

Rank.	Name.	Regiment.
Captain	A.L. Golnick	No.3 Cdn Inf Hldg Unit.
Lieutenant	D.S. Mitchell	No.3 Cdn Inf Hldg Unit.
Lieutenant	D.S. Balsillie	No.3 Cdn Inf Hldg Unit.

*Signed [signature] Brigadier,

Commanding Canadian Base Units.

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A-9602 Pte. Rock, C.A. No.1, M.T.V.R.D. R.C.A.S.C.	Charge No. 1. A.A. Sec. 9 (2). as per charge sheet	NOT GUILTY	NOT GUILTY	I confirm the finding of the Court on the 1st & 2nd Charges but do not confirm the finding on the 3rd Charge
	Charge No. 2. A.A. Sec. 8 (2). as per charge sheet.	GUILTY	GUILTY	
	Charge No. 3. A.A. Sec. 10 (3) as per charge sheet.	NOT GUILTY	GUILTY	I confirm the sentence but remit 30 days ~~of the~~ P
			TO UNDERGO DETENTION FOR A PERIOD OF SIXTY (60) DAYS.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (*to be recorded on separate sheet if necessary*) :— NO.

(Signed) L. F. Page. Brigadier, (Signed) Louis Reene Hoor

Commanding Canadian Base Units. *Convening Officer (e)* *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 18th day of December, 1940, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~ Court Stenographer
*(4. ~~The officers under instruction~~

* Omit if not applicable

were duly sworn.

Signed this 18th day of December 1940.

Louis Reene Hoor

President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ P.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 3rd day of January 1941.

L. F. Page. Brigadier

Confirming Officer.

Promulgated and extracts taken in the case of A-9602 Pte. Rock, C. A., No. 1 M.T.V.R.D. R.C.A.S.C.

(a) (Dated) 8th January 1941. (Signed) for C.O. No.1 M.T.V.R.D., R.C.A.S.C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] Wt. [illegible] P. St. G. [illegible]

CHARGE SHEET

The accused, A-9602, Pte. Rock, Clarence Albert, No. 1 M.T.V.R.D., R.C.A.S.C., a soldier of the Canadian Active Service Force, is charged with, while on active service,

FIRST CHARGE
A.A.
Sec 9 (2)

Disobeying a lawful command given by his superior officer,

in that he,

at Bordon, on the 9th day of November, 1940, did not dismount from his vehicle when ordered by Sgt. McDonald, N.C.O. i/c Convoy, and later by Sgt. Steele, Orderly Sergeant, to dismount.

SECOND CHARGE
A.A.
Sec 8 (2).

While on active service,

Using insubordinate language to his superior officer,

in that he,

on the 9th day of November, 1940, [illegible] finally descended from the said vehicle, sa[illegible] Sgt. McDonald, "You are a cocksucker, nothing but a [illegible]ck. You know what you are to me, nothing but a punk. If I had two hands I'd sock you in the jaw."

THIRD CHARGE
A.A.
Sec 10 (2)

While on active service,

Resisting an escort whose duty it was to apprehend him,

in that he,

at Bordon, on the 9th day of November, 1940, when ordered into close arrest by Sgt. Steele removed his greatcoat and resisted the escort who were ordered to remove him to the Guard Room.

November, 1940,
Bordon, Hants.

J. C. Barrett Lt.Col.
OC. 1 M.T.V.R.D., R.C.A.S.C.
C.A.S.F.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

11.12.40

L. F. Page
(L.F.Page,) Brigadier,
Commanding, Canadian Base Units.

Louis Reeve
Lt Col
President

No. 1 M.T.V.R.D., R.C.A.S.C., C.A.S.F.

SUMMARY OF EVIDENCE

(1st Charge)

CHARGE against A-9602 Pte Rock, C. A., No.1 M.T.V.R.D., R.C.A.S.C., C.A.S.F., Louisburg Barracks, Bordon, Hants.

"A SOLDIER OF THE C.A.S.F. While on Active Service, disobeying a lawful command given by his superior officer, in that he when ordered by Sgt. McDonald, N.C.O. i/c Convoy and later by Sgt. Steele, Orderly Sergeant, to dismount from his vehicle, refused to dismount." A. A. Sec. 9 (2)

The Accused pleads "NOT GUILTY".

The Accused states that he desires to have an Officer assigned to represent him at the trial.

1st WITNESS: D-91995 Sgt. McDonald, J. A., No.1 M.T.V.R.D., RCASC, CASF.

On the night of Saturday, 9th November, 1940, I was informed that Pte. Rock had returned with a vehicle and in attempting to put it into the Park, the vehicle's left wheels went into a ditch which had been opened that day. Pte. Rock seemed to be making no headway so I ordered him down to his quarters. He refused to get down from the vehicle. I sent for the Orderly Sergeant, Sgt. Steele and ordered him to place Pte. Rock under arrest. Sgt. Steele also ordered Pte. Rock down. He finally did descend from the vehicle.

Que. 1 You say this took place in the Vehicle Park?

Ans. In the entrance to the Vehicle Park.

Que. 2 You have reference to the Vehicle Park of No.1 M.T.V.R.D.?

Ans. Yes, sir, the storage park of this Unit.

Que. 3 Located to the North of the Spider Hutments in Louisburg Barracks, West?

Ans. Yes, sir.

Que. 4 Was the ditch, to your knowledge, there prior to the accident?

Ans. No, sir.

Que. 5 Were there any lights on it?

Ans. No, sir.

Que. 6 When you ordered the Accused to dismount, did he have any remarks to make at that time?

Ans. Yes, sir.

2.

Que. 7 What were the remarks?

Ans. He said that he was perfectly capable of taking the truck out himself; that he was in charge of the truck, and refused to dismount until he had got it out.

Que. 8 Then you called the Orderly Sergeant?

Ans. Yes, sir.

Que. 9 Who was the Orderly Sergeant?

Ans. Sgt. Steele.

Que.10 Did Sgt. Steele give any orders?

Ans. He also ordered the Accused out of the truck.

Que.11 What was the Accused's response to Sgt. Steele?

Ans. I don't believe I heard it all.

Que.12 You heard the order given by Sgt. Steele?

Ans. Yes, sir.

Que.13 How long elapsed between the order being given and his alighting from the truck?

Ans. I don't quite know.

Que.14 You don't know of your own knowledge?

Ans. No, sir.

Que.15 How long a time elapsed from the time you gave the order until Sgt. Steele arrived and gave him the second order to dismount.

Ans. From three to five minutes.

Que.16 When Sgt. Steele arrived you explained the situation to him and he gave the order?

Ans. Yes, sir.

Que.17 Then you went on about the investigation of the truck?

Ans. Yes, sir.

Que.18 You don't actually know the time he alighted from the truck?

Ans. I did see him alight from the truck. It was a matter of from six to seven minutes after he had been given the order.

Que.19 Was he warned?

Ans. I ordered him to get down from the truck, and then that he would be placed under arrest.

10

Que.20 How many times did you give the order?

Ans. Twice.

Que.21 Was he warned on the first or second time?

Ans. On the second.

Que.22 On Sgt.Steele's arrival, did you ask him to place this man under open or closed arrest?

Ans. Open arrest.

Que.23 Did you hear exactly what Sgt.Steele's order was?

Ans. No.

John G. McDonald D.7.9.45

(The Accused declines to cross-examine)

2nd WITNESS H-3777 Sgt. Steele, D. E., No.1 M.T.V.R.D., RCASC, CASF.

Que. 1 You were Orderly Sergeant on the date in question?

Ans. Yes, sir.

Que. 2 What was your tour of duty?

Ans. From Monday, 4th November, at 0600 hours to 0600 hours, Monday, 11th November.

"It was approximately 2200 hours, 9th November, 1940, when I heard the sound of a vehicle which might have been in trouble, so I came out of the Sergeant's Mess located in the Spider Hutments, West Louisburg Barracks, being the Hutments occupied by this Unit, and proceeded to the West end of Barrack Room No. 7, where I found a truck with Pte. Rock in the driver's seat. He was in a rut and Sgt. McDonald asked him to get out of the truck. He definitely refused to do so. Sgt. McDonald turned to me and said, "I want that man out of that truck." So I came across to the truck and I said, "Rock, get out of the truck and let someone else drive it and get out of this hole. He definitely refused to do so. I came to him a second time and said, "Rock, this is not a request, this is an order." I had to do the same thing again and he eventually got out of the truck."

Que. 3 On your arrival at the scene, did you or Sgt. McDonald give any order?

Ans. I heard him tell Pte. Rock to get out of the truck.

Que. 4 Was there any reply?

Ans. He said, "I am in charge of this truck and I refuse to get out."

Que. 5 Was it after that, that Sgt. McDonald asked you to take action?

Ans. Yes, immediately.

Que. 6 You first requested him?

Ans. Yes, sir. I said, "Come on, Rock, get out of the truck."

Que. 7 Did you have any reply, in words?

Ans. In words. He said, "I will not get out of it."

Que. 8 What was the next thing you said?

Ans. I said, "This is not a request, this is an order."

Que. 9 Was there any verbal reply?

Ans. An absolute dead refusal, verbally. I repeated it the second time.

Que.10 Approximately what time elapsed from the time Sgt. McDonald gave the order, until he dismounted?

Ans. Roughly speaking, I would say about three minutes from the time Sgt. McDonald gave the order, until he dismounted.

Que. 11 Did you at that time advise him he was under arrest?

Ans. Yes, sir. I told him he was under open arrest before he dismounted.

Que. 12 Was there any reply?

Ans. He said, "That's all right."

Que. 13 And then he dismounted?

Ans. Yes, sir.

D E Steele H3777

.....

(Accused declines to cross-examine)

The requirements and rules of procedure, Para. 4, Sub-Sections C, D. and E, have been complied with.

The Accused was asked as follows: "Do you wish to give any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence." The accused declined to give evidence.

Louis Keene
Hon. President

.....Lieut.,
Adj.,No.1 M.T.V.R.D.,R.C.A.S.C.,C.A.S.F.,
(Officer Taking Evidence)

No. 1, M.T.V.R.D., R.C.A.S.C., C.A.S.F.

S U M M A R Y O F E V I D E N C E

(2nd Charge)

CHARGE against A-9602 Pte. Rock, C. A., No.1 M.T.V.R.D., R.C.A.S.C.,C.A.S.F., Louisburg Barracks, Bordon, Hants.

"A SOLDIER OF THE C.A.S.F. When on Active Service, using insubordinate language to his superior officer, in that he when he finally descended from said vehicle, said to Sgt. McDonald, "You are a cocksucker, nothing but a prick. You know what you are to me, nothing but a punk. If I had two hands I'd sock you in the jaw." A.A.Sec.8 (2)

The Accused pleads "NOT GUILTY"

The Accused states that he desires to have an Officer assigned to represent him at the trial.

1st WITNESS D-91995 Sgt.McDonald,J.A.,No. ,V.R.D.,R.C.A.S.C.,CASF.

"The Accused dismounted from the truck, came very close up to me and said the words, "You are a cocksucker, nothing but a prick. You know what you are to me, nothing but a punk. If I had two hands I'd sock you in the jaw."

Que. 1 Did he say anything else?

Ans. No, sir.

Que. 2 Was there any reply by you?

Ans. No, sir.

Que. 3 Who was present at that time?

Ans. Pte. Dillon. Sgt. Steele came at the time of the latter part. I don't know whether he heard it all.

John A. McDonald D 91995

(The Accused declines to cross-examine)

2nd WITNESS H-3777 Sgt. Steele,D.E., No.1 M.T.V.R.D.,R.C.A.S.C.,CASF.

"When Pte. Rock dismounted, he first of all took off his overcoat and threw it on the ground. Then he approached Sgt. McDonald and I don't know whether it was the first or second expression that was "You are a cocksucker, nothing but a prick." Then Pte. Rock came up close to Sgt. McDonald and right in front of him and said, "If I had my two hands I would sock you on the jaw."

Que. 1 Then what happened?

Ans. I placed him under close arrest. I told him he was under close arrest and called a man who was going by, Pte. Dillon. I ran into Barrack Room No.6 and told Pte.Wren to come out.

2K.

Ans. 1 (Cont'd) Then I told the men to take Pte. Rock to the guard room.

Witness Sgt. Steele asked permission to amend statement given in respect of the charge of using threatening language, as set forth in Charge No. 2, and the Accused registered no objection to him doing so.

AMENDMENT: "It was after I had ordered Pte. Rock under close arrest that he took his greatcoat off and threw it on the ground and resisted the idea of being placed under close arrest."

D.E. Steele #3777

(The Accused declined to cross-examine)

The requirements and rules of procedure, Para. 4, Sub-Sections C, D, and E, have been complied with.

The accused was asked as follows, "Do you wish to give any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence."

The accused declined to give evidence.

Lieut.,
Adj., No.1 M.T.V.R.D., R.C.A.S.C., C.A.S.F.
(Officer Taking Evidence)

President

No. 1, M.T.V.R.D., R.C.A.S.C., C.A.S.F.

SUMMARY OF EVIDENCE

(3rd Charge)

CHARGE against A-9602 Pte.Rock,C.A., No.1 M.T.V.R.D., R.C.A.S.C., C.A.S.F., Louisburg Barracks,Bordon,Hants.

~~"A SOLDIER OF THE C.A.S.F. While on Active Service, offering violence to his superior officer, in that he when ordered into close arrest by Sgt. Steele, Orderly Sergeant, removed his greatcoat and resisted the escort who were ordered to remove him to the Guard Room" A. A. Sec. 8 (2).~~

The Accused pleads "NOT GUILTY".

The Accused states that he desires to have an Officer assigned to represent him at the trial.

1st WITNESS H-3777 Sgt.Steele, D.E., No.1 M.T.V.R.D., R.C.A.S.C., C.A.S.F., Louisburg Barracks, Bordon, Hants.

Que. 1 At the time Pte. Rock used this language towards Sgt. McDonald, had he at that time been placed under close arrest?

Ans. No, sir. Under open arrest.

Que. 2 After using this language towards Sgt. McDonald, you ordered him placed under close arrest?

Ans. Yes, sir.

Que. 3 Then you called Pte. Dillon and went into Barrack Room No. 6 to get Pte. Wren as the second escort?

Ans. Yes, sir.

Que. 4 On the arrival of Pte. Wren, what efforts were made to conduct Pte. Rock to the Guard Room?

Ans. I fell one man in on each side of Pte. Rock and told Pte. Rock he was under close arrest, and to come with me to the Guard Room.

Que. 5 What was the result?

Ans. The result was that Pte. Rock put up quite a tussle for a minute or two, after removing his greatcoat.

Que. 6 When you told him he was under close arrest, he took off his greatcoat?

Ans. I called Pte. Dillon and Pte. Rock had his greatcoat on. Pte. Dillon came and I advised him he was under close arrest. Then I left and got Pte. Wren. When I returned his coat was still on. Then I ordered Pte. Wren also to mount guard and ordered him to the detention room. I then againadvised Pte. Rock he was under close arrest, and

Ans.6 Cont'd to come to the Guard Room.

Que. 7 Did Pte. Rock go?

Ans. He said, "I will not go," and took his greatcoat off and threw it on the ground.

Que. 8 Did he go quietly after that?

Ans. No, there was quite a little mix-up for a minute.

Que. 9 In what manner did he resist arrest?

Ans. I told Pte Dillon and Pte.Wren to take him to the guard room, and that if it was necessary and they had to use force, it was O.K. They each took hold of one of Pte. Rock's arms and even at that he still resisted, until Pte. Wren made the remark, "Come on, Rock, go quietly you are only making it tougher for yourself."

Que.10 Some force was brought to bear in order to take Pte.Rock to the guard detention room?

Ans. Yes, sir.

Que.11 Once they got Pte. Rock started toward the detention room was there any further resistance?

Ans. No, sir. I think that once Pte. Rock realized that he was under close arrest definitely, we had no trouble. There was no resistance when he got into the guard room

Que.12 I went in and asked to see the Orderly Officer.

D E Steele H3777
.....

(The Accused declines to cross-question)

2nd WITNESS H-3702 Pte Wren, M., No.1 M.T.V.R.D., R.C.A.S.C., C.A.S.F., Louisburg Barracks, Bordon, Hants.

"We were called out by Sgt. Steele who was Orderly Sergeant at the time. I went out by the truck where Pte. Rock was standing and was told to take him to the guard room. The only argument he put up was that he wanted to be placed under open arrest, not close arrest. We took him to the guard room and turned him over to Sgt. Sloan, sergeant of the guard at that time.

Que. 1 At approximately what time were you called to act as guard?

Ans. It was later than 2230 hours, the lights were out.

Que. 2 When you went out, what did you find?

Ans. I found Pte. Rock alongside the truck, with Sgt. McDonald, Sgt. Steele,, and Pte. Dillon. He had his coat off. I don't know where it was.

LK

Que. 3 What happened during the course of the argument as to whether he should be placed under open or close arrest?

Ans. He tried to push us away. He said he did not have to be dragged.

Que. 4 Did you have hold of him?

Ans. No, sir. He said he would go up himself. He knew he was under close arrest and he argued the point and we then took him by the arms to get him started. After we took hold of his arms there was no resistance.

H.3702 Sgt. M. Wren

(The accused declines to cross-examine)

3rd WITNESS D-91999 Pte. Dillon, W. J., No.1 M.T.V.R.D., R.C.A.S.C., C.A.S.F., Louisburg Barracks, Bordon, Hants.

"I don't know much about the case. I went with Sgt. McDonald up to the far bush with the sandwiches for the men at approximately 2130 hours. Then I came back with Sgt. McDonald in the van. I put the van away and we both went into the kitchen. We were talking to Cpl. Stewart when I heard a truck pull in. The truck stopped and there was some talking which I could not hear distinctly. I was still in the kitchen. Sgt. McDonald left the kitchen before I did. I stood there for a few minutes after hearing the truck pull in. I could not understand the talking from the inside, and I went outside to see what was going on and Sgt. Steele ordered me to act as an escort for Pte. Rock. His order was for me and Pte. Wren to take him up to the Guard House. Pte. Rock did not want to be put under close arrest. He wanted to be put under open arrest. So I went over to Pte. Rock with Pte. Wren, to bring him to the guard house. As I went to take his arm he pulled from me and his arm slipped out of his overcoat. I then gripped his arm, holding on to the coat with one hand. I then let the coat go as Sgt. Steele took the coat. I placed an arm lock on Pte Rock and Pte. Wren took his other arm and we marched him off. After I had the arm lock Pte. Rock made no resistance and came to the guard house. We escorted him to the guard house and I saw him locked in his cell?

Que. 1 You mentioned that you took hold of his arm. Which arm?

Ans. The right arm.

Que. 2 What part of the arm?

Ans. The wrist.

Que. 3 Why did you grab him at all?

Ans. He did not want to go the guard house under close arrest, he wanted to be under open arrest.

Que. 4 Why did his coat come off?

Ans. His coat came off because I did not get a firm grip on his wrist. As he was withdrawing his arm from my grip his arm came out of the sleeve.

Que. 5 How did his other sleeve come off?

Ans. We took the coat from him, then Sgt. Steele took hold of the coat.

Que. 6 Where did he put the coat?

Ans. I couldn't say, it was kind of dark.

Que. 7 Did Pte. Wren take the other arm at the same time?

Ans. Pte.Wren moved to the other side of Pte. Rock, and I can't say whether he grabbed his arm at the same time or not.

Que. 8 Did Pte. Rock himself take his coat off and throw it on the ground?

Ans. No, sir, he did not.

Que. 9 In order to conduct him to the guard room, you were forced to take the arm lock?

Ans. Yes, sir.

Que.10 Did he continue to resist?

Ans. There was no resistance after the arm lock. He said he would go quietly.

Que.11 Did you here any conversation betwwen Pte. Rock and Sgt. McDonald?

Ans. No, sir, I heard nothing.

Que.13 Have you any knowledge of what went on prior to the order given by Sgt.Steele to be an escort?

Ans. No, sir.

J. W. Dillon. D.9.1919...

(Accused declines to cross-examine)

The requirements and rules of procedure, Para.4, Sub-Sections C, D, and E, have been complied with. The Accused was asked as follows, "Do you wish to give any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence." The Accused declined to give evidence.

Louis Pagene
Sgt.

.....Lieut.,
Adj.,No.1 M.T.V.R.D.,R.C.A.S.C.,CASF.
(Officer Taking Evidence)

No. 1 M.T.V.R.D., R.C.A.S.C., C.A.S.F.

LIST OF WITNESSES FOR THE PROSECUTION

1st Charge:
D-91995 Sgt. McDonald, J. A.
H-3777 Sgt. Steele, D. E.

2nd Charge:
D-91995 Sgt. McDonald, J. A.
H-3777 Sgt. Steele, D. E.

3rd Charge:
H-3777 Sgt. Steele, D. E.
D-91999 Pte. Dillon, J. W.
H-3702 Pte. Wren, M.

MEDICAL OFFICER'S CERTIFICATE

I certify that No. A-9602 Pte. Rock, C. A. Rect.
No.1 M.T.V.H.D., R.C.A.S.C., C.A.S.F.
is fit/~~unfit~~ to undergo trial by Court-Martial.

Signature of Medical Officer [illegible] Capt.,
R.C.A.M.C., C.A.S.F.

Army Form B 116

No. 1. M.T.V.R.D., R.C.A.S.C., C.A.S.F. ..... Regiment

Station, Bordon, Hants ..... Date, 19th November 1940.

Application for a ..... Field General ..... Court-Martial.

Sir,

I have the honor to submit .. 3 ... charges ..... against No. ...

. A-9602 Pte. Rock, C. A. .....

of the .... Unit ..... under my command, and request you will obtain

the sanction of the Senior Officer ..... that a Field-Gen'l Court-

G.H.Q.

Martial may be assembled for his trial at Bordon, Hants .....

The Case was investigated by (a). Lieut. S. A. German, Adjutant,

..... No. 1 M.T.V.R.D., R.C.A.S.C., C.A.S.F. .....

A Court of Inquiry was held on (b) ..... (date)

at ..... (Station).

President	}	Ranks, Names and Corps.
Members {	}	
{	}	

(c) The accused is now at Unit Detention Barracks. His General Character is ....fair..... I enclose the following documents (d):—

1. ...Three..... Charge Sheet S ..... (in duplicate) (e)

2. Summary of Evidence, original (f) and duplicate ~~copy~~ original ~~copies~~. (In respect of each charge)

3. ~~Original Exhibits (g)~~

4. List of witnesses for the prosecution and defence (with their present stations or addresses) (g)

5. ~~List of Exhibits (h)~~

6. ~~Correspondence (g)~~

7. Statement as to character (A.F.B.296) and regimental and company, etc., conduct sheets of accused (g)

8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial. (h). (R.P.,[illegible](3))

I have the honour to be,
Sir,
Your obedient Servant,

Signature of Commanding Officer ..... Lt.-Col.,
O.C., No. 1 M.T.V.R.D., R.C.A.S.C., C.A.S.F.

To .... Officer Commanding, ...
... Canadian Base Units .....

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this _____ day of _____

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

A-9602 Pte. Rock, C. A. of the No.1 M.T.V.R.D., R.C.A.S.C., CASF.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets, are to be produced in Court with this statement but are not to be annexed to the proceedings.

†See Para. 651, K.R., 1920.

*The numbers herein stated should correspond with the number of *Entries* in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For Disobeying an Order	(1)	times	(1)	times.
For		times		times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct,

N I L

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

W1. 43848/664 36,000 2/40 W. S. Ltd. 51—6004

Louis Reeve
Lt. Col.
President.

3. The accused is not under sentence at the present time,

or,

~~the accused at the present time is under sentence for~~

~~beginning on the~~ ~~day of~~

4. The accused has been in confinement, awaiting trial on the present charges

for N I L days in Civil Custody,

and 10 days in Military Custody.

Total 10 days.

Of which N I L days were spent in hospital.

5. The present age of the accused according to his ~~xxxxxxxxxxx~~ attestation paper is 40

6. The date of his ~~xxxxxxxxx~~ attestation specified in his ~~xxxxxxxxxxx~~ attestation paper is 13-3-40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of N I L years' service.

9. The accused is entitled to reckon years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to

"General Service" and "Victory" Decorations of the Great War

]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of , years,

In the rank of , years,

In the rank of , years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(*Continued overleaf.*)

No. A9602 Name ROCK, C. A. Sqn., Battery, or Company } M.T.V.R.D., R.C.A.S.C. C.A.S.F. Corps

Date of last entry in Company Conduct Sheet } No. and date of last drunk } Period not reckoning towards freedom from extra fine } Date of enlistment } 13.3.40 G.C. Badges } Service or Proficiency Pay } M.F.M. 6 (A.F.B. 122) 30M—11-38 (9360) H.Q. 1772-43-18

Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Louisburg Barracks Bordon	29.7.40	Pte		Disobeying in such a manner as to show a wilful defiance of authority a lawful command given personally by his superior officer in the execution of his office, no drat he, when on parade at 1000 hrs 29.7.40, when ordered to double up by C.S.M. Rowton, did not do so, but continued to proceed as before receiving the order. A.A. Sec. 9 (1)	C.S.M. Rowton	7 days C.B. + Extra Fatigues	30.7.40	LT. S. A. GERMAN A/O.C.	[signature]

[signature] President

(P.T.O.)

No. 1, M.T.V.R.D., R.C.A.S.C., C.A.S.F.

Louisburg Barracks,
Bordon, Hants.
19th November, 1940.

Officer Commanding,
No. 1, M.T.V.R.D.,
R.C.A.S.C., C.A.S.F.

Sir,

Relative to my trial by Field General Court Martial on the three charges preferred against me, be advised that I desire to have a defending officer assigned to conduct my defence.

May I reserve the right to name an officer whom I should like to act on my behalf, at a later date.

#9602 Pte. C. A. Rock

MEDICAL OFFICER'S CERTIFICATE

I certify that No. A-9602 Pte. Rock, C. A. .....Regt.
No.1 M.T.V.R.D., R.C.A.S.C. C.A.E.F.
is fit/~~unfit~~ to undergo trial by Court-Martial.

Signature of Medical Officer: C. G. [illegible] ....Capt.,
R.C.A.M.C., C.A.E.F.

Army Form B 116

No.1, M.T.V.R.D., R.C.A.S.C., C.A.S.F. ..... Regiment

Station, Bordon, Hants ..... Date. 19th November 1940.

Application for a ..... Field General ..... Court-Martial.

Sir,

I have the honor to submit... 3 ... charges ..... against No...

A-9602 Pte. Rock, C. A. .....

of the.... Unit ..... under my command, and request you will obtain

the sanction of.. the Senior Officer ..... that a.. Field-Gen'l Court-

Martial may be assembled for his trial at. C.M.H.Q. Bordon, Hants .....

The Case was investigated by(a). Lieut. S. A. German, Adjutant,

No.1 M.T.V.R.D., R.C.A.S.C., C.A.S.F. .....

A Court of Inquiry was held on (b)..... (date)

at..... (Station).

President..... } Ranks,
Members{..... } Names
{..... } and
{..... } Corps.

The accused is now at.... Unit Detention Barracks ... His General Character is

(c) ..... fair ..... I enclose the following documents (d):--

1. ... Three .... Charge Sheet..... (in duplicate)(e)

2. Summary of Evidence, original (f) and duplicate original ... copy, copies. (In respect of each charge)

3. ~~Original Exhibits (g)~~

4. List of witnesses for the prosecution and defence (with their present stations or addresses) (g)

5. ~~List of Exhibits (h)~~

6. ~~Correspondence (g)~~

7. Statement as to character (A.F.B.296) and regimental and company, etc., conduct sheets of accused (g)

8 Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial. (h).

(R.P.14(B))

I have the honour to be,
Sir,
Your obedient Servant,

Signature of Commanding Officer. [signature] Lt.-Col.,
O.C., No.1 M.T.V.R.D., R.C.A.S.C., C.A.S.F.

To.... Officer Commanding, ..
Canadian Base Units
.....

No. 1 M.T.V.R.D., R.C.A.S.C., C.A.S.F.

LIST OF WITNESSES FOR THE PROSECUTION

1st Charge:	D-91995 Sgt. McDonald, J. A. H-3777 Sgt. Steele, D. E.
2nd Charge:	D-91995 Sgt. McDonald, J. A. H-3777 Sgt. Steele, D. E.
3rd Charge:	H-3777 Sgt. Steele, D. E. D-91999 Pte. Dillon, J. W. H-3702 Pte. Wren, M.

III-128

A/S/SGT. ROCKBURNE C

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C94282 Gnr S/Sgt Lionel ROCKBURNE, 4 Cdn A/Tk Regt

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	not guilty	guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

WMS [illegible] ~~and undue sentence be~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of nil days, of which —— days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be reduced to the ranks and to undergo detention for 30 days

(Sgd) WMS Shaw Capt — Judge-Advocate, if any. 19 Mar 44 — Date awarded. (Sgd) [illegible] Major — President. (RP 45, 52.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence but remit 30 days detention from the sentence.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) HBS

(1. AA 57A. Delete if not used.)

Date 25 Mar 44 (Sgd) H.B. Sterling Brig

Commanding ~~RCA~~, 5 Cdn Armd Div. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C94282 Gnr S/Sgt ROCKBURNE, L.	27 Mar 44	[illegible] Major RCA.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 I-E-128

FIELD GENERAL COURT-MARTIAL

Convened by Order of HB Sterling, Brig Comd RCA, 5 Cdn Armd Div dated 16 Mar 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C94282	(a) S/Sgt (b) ~~FINDINGS~~ CONFIRMED 29 Mar 44	Lionel	ROCKBURNE	4 Cdn A Tk Regt RCA

16 Gunners W/C

REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 19 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OF JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate succeeding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses. Procedure, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, [illegible] 92, 94, 103, 176, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP [illegible] 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused (each) is to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. Preamble to accused: Do you object to be interpreted by [illegible]? Ans.~~

~~The Interpreter is sworn.(1) Do you object to the shorthand writer [illegible]? Ans.~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

WMS

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	T.H.White	Perth R.
Member	Capt	T.B.Harrison	5 Cdn LAA Regt
Member	Capt	J.S.Napier	" " "
Judge-Advocate	Capt	W.M.W.Shaw	HQ 5 Cdn Armd Div
Prosecutor	Capt	T.D.Strut	4 A/T Regt
~~Defending Offr~~	~~A35205~~	~~Sgt~~ F.H. Mackatchey	4 A/T "

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) (a) plea WMS

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RuP cited. Insert in AB rank and name of the accused making the plea.)

WMS A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is ~~closed~~ cleared) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML, p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 50, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(D); and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ..... initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No, Sir .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not disclose a prima facie case against the accused on the charge(s).~~ (2) ~~The Court considers the submission.~~ (3) ~~The Court is re-opened, and the President announces that the submission is allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~ (4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Give evidence. ~~Do you intend to call witnesses on your behalf?~~ Ans ..... ~~Are they witnesses as to character only?~~ Ans .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the the ..... charge(s), being subject to confirmation, will be promulgated later.(1) ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith.~~ ~~The proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed (2). ~~The President states that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed by him and the JA, if any.(3)

(1. *AA 54(2) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character 1(1) Ans No, Sir.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 1(1) Ans No

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 7/

(1. *When several accused tried separately see RP 51(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, C94282 Armr S/Sgt Rockburne, L., 4 Cdn A Tk Regt RCA, a soldier of the Canadian Army serving in the Central Mediterranean Forces, is charged with:

FIRST CHARGE
Sec 40
Army Act

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field on or about 17 Feb 44 when carrying out safety precautions on Thompson Sub Maching Gun failed to point weapon away from persons present.

(W.D. KING) Lt-col.,
Comd 4 Cdn A Tk Regt RCA

In the Field
10 Mar 44

To be tried by Field General Court-Martial.

(H.A. Sparling) Brig
CRA 5 Cdn Armd Div

In the Field
16 Mar 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.94282	S/Sgt		L	ROCKBURNE	4 Cdn A Tk Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 16 Mar 44 endorsed by me, ~~[illegible]~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~[illegible]~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~[illegible]~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	T.H. White	Perth Regt
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt.	T.B. Harrison	5 Cdn LAA Regt
Capt.	J.S. Napier	5 Cdn LAA Regt
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Lieut	to be detailed by	4 Cdn A Tk Regt
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

Capt.	W.M.W. Shaw	HQ 5 Cdn Armd Div
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (Country.) — [signature] (Signed personally. RP 105 fn 2) — Brigadier (Rank.)

Date 16 Mar 44 — Commanding RCA, 5 Cdn Armd Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

[signature]

MEDICAL CERTIFICATE

I certify that I have this morning examined C94283 Armr S/Sgt Rockburne , L. 4 Cdn A Tk Regt RCA and in my opinion he is fit/~~unfit~~ to undergo trial by court martial.

In the Field

19 Mar 44.

Ralph L. Bird

(R.L.BIRD) Captain RCAMC
MO 4 Cdn A Tk Regt RCA

WMWS

1st Wit Pros^n] C 9554 Gnr Kehoe, A.H. A/T Regt
duly sworn states:-

On morning 17 Feb 2 cleaned my Sommy-gun & ~~stood~~ pulled it thru & stood it in corner, made sure bolt forward & replaced mag. Did not see again until between 1700 & 1900 hrs. 2 did not examine TSMG when 2 saw it later.

Cross-exam. Know nothing about gun after accid. Cleaned gun at 0900 & stood in corner. ~~Replac~~ Cleaned gun, put bolt forward, did not cock it — cleaned gun, don't know if cleaned face of bolt, put it together, pointed it to ceiling & pulled trigger - stood it in corner & replaced mag -

Don't know if touched later.

Previous to 17 had not fired since left Eng. Have not put shell in barrel & taken it out.

Had cleaned gun couple of days before.

Capt Oddridge & acsd borrowed gun few days after accid about 1900 hrs - previous to this occasion had cleaned day or two days previous. Stand gd about every 3rd day. Cleaned it, stood ~~gd~~ & had not cleaned it since. Sometimes do clean face & under extractor of bolt. Have not fired since left Eng so can't say how working - Have not taken extractor off - always take apart when cleaning.

Re-exam - nil

Court - In morning 2 pointed to ceiling - mag not on - pulled trigger & controlled forward motion. Usually hit mag slap on bottom to put on.

RP 83(B) complied with

ON ACTIVE SERVICE

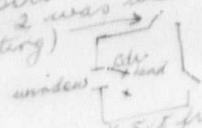
CANADIAN LEGION

WAR SERVICES

194

2.

2nd Wit Pros^n] Rt WH Salter, 4 A/T Regt RCA
duly sworn, states:-
On 2 don't remember date approx
1435 his 2 was with S/Sgt Rockburne,
aimt S/Sgt when he was conducting
weapons exam. The day was nasty & 2
exam in quarters - were in a room,
2 turned to leave, heard a shot & a
cry. 2 turned round & saw S/Sgt R
with TS in hands pointing to floor
& Bdr Teer lying on floor. S/Sgt & 2
gave aid & took Bdr to hancrane.
2 returned to scene of accid, took
names of witnesses & reported to
B.C. -
2 turned after shot, a matter of seconds
because didn't think 2 could be a shot
- about 3 secs.
S/Sgt Rockburne is the acsd.
Room about little more than half this
size - two doors & one window (here &
here & here) - 2 was walking out this
door (indicating)



Acsd standing about 5 ft from window facing
window (at x). Bdr Teer lying on floor
on back, feet to window - about 4 ft from
acsd.
6 men lived in room - Bdr Teer had been
shot at base of left shoulder blade - it
looked like a bullet wound.
Think it about first or second week - 17 may
be correct.

PLEASE USE BOTH SIDES

WTAWS

Acsd holding TSMG pointing down at about 45° ∠ from floor when 2 saw him. Just before 2 left had noticed Bdr squatting & standing bending over alternately - last saw him he was bent over but not sure if standing bent over or stooping bent over.

Exam TSMG that evening after seeing BC. Could not say definitely whether it had been fired or not.

Cross-exam:- 17 Feb is correct. On that day requested acsd to exam weapons - then at E trp. Had exam at least 24 in different bldgs before this. E3 gun crew, the last gun crew to be inspected. Had examined more than 20 weapons in my trp. Accid approx 1435 hrs

Men in 3 rms in bldg - this the middle room. Had exam arms in just rm.

Procedure - as a rule, sometimes he picked up, sometimes the gnr & once 2 handed him. One just before [illegible] him in other cases he removed loaded mags from gun, inspected chamber, firing mech & then bore. He examined chamber immed after removal of ~~charmag~~ mag by pulling bolt back & then ease it frwd. Then generally removed bolt & firing mech. First thing letting bolt go frwd is testing spring & partially - inspecting chamber. Last thing to look thru bore. Previously when exam when firing mech the gun pointed to floor & also to floor when exam chamber - To check bore put bolt to window.

Have never seen him point guns at anybody. In my opinion based on my observations he has always observed safety precautions. So careful man with fire arms.

2 handed gun just previous - 2 couldn't hear what he did. Couldn't say how long

ON ACTIVE SERVICE

CANADIAN LEGION

WAR SERVICES

4

194

after 2 handed gun the shot fired about 1 min - was almost out of room. Did not turn too quickly because at first didn't take it for a shot. Acsd holding gun to floor at 45° angle - to be hit from that position man would have to be at his feet.

All in room for exam - were bldg stove & retd to this after exam. Were making stove out of tin - most of work on floor & sometimes standing.

After acsd 2 retd to billets & examined it later on - it was brought to me at my quarters. Can't tell if gun fired. 2 tested bolt action only - it was OK. Did not test further.

Approx 5 men in room - 4 or 5 - were moving from rm to inner rm. 3 men working on stove, Bdr Teer, Ford or Davidson & Lawrence, sometimes one & sometimes two there. Couldn't say if in movement they went close to acsd.

He did not exam all guns in same spot - just prior to acsd don't know how far they were away. About 4' from acsd to Bdr Teer after shot - Bdr Teer approx 5'7". Teer lying on his back. Teer might have been standing where his feet were but can't say.

Little more than 4 maybe 6 ft from Bdr's feet to acsd. Acsd facing between window & Bdr when I saw him.

~~DO~~ There is an order that men will not remove bolt & spring of TSMG when cleaning.

PLEASE USE BOTH SIDES

WMW05

5

It is quite a chore to clean face of bolt & is difficult to clean extractor. Cannot say as to condition of gun - lot seem to have dirt around firing pin & some have dirt & rust around extractors.

If shell remains in after safety precautions carried out the extractors did not work, that is my opinion.

With him when examining weapons.

Re-exam:- (Witness demonstrates again position of acsd & Bdr Teer, & position TSMG)

Court:- Did not notice if gun held by acsd appeared to have been fired - don't think anyone else in room holding guns when I looked back in but didn't notice particularly. Couldn't say whether shot appeared to come from inside or outside.

Teer had only one wound - it did not come out.

Did not notice if smell of gunpowder.

In complying with 83(B) witness states that for person to be hit would not have to be at feet because may have been ricco

3rd Wit Pros] G23799 Gnr Davidson, BR, 4 AIT

Regt duly sworn, states:-

I was sitting beside Bdr Teer - he was at my right shoulder with back toward me. I heard shot then felt Bdr fall against my rt shoulder. I looked up & S/Sgt R holding TSMG at 45° - pointing to ceiling - then heard Bdr scream. We took clothes off Bdr, put on stretcher, gave first aid & took him to hospital.

About 1h, not sure - about 3 pm.

Bdr was sitting on bed roll with back to me - bed roll on floor. I was sitting on a can

ON ACTIVE SERVICE

CANADIAN LEGION

WAR SERVICES

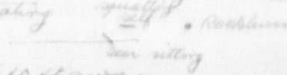
6 194

looked at Sgt R first because I heard the shot fired.

Before shot couldn't say how far Bdr from Sgt - I was working on tin can & didn't notice until after shot.

Cross-exam. Am memb of E3 - on Bdr Tell's Gun crew - he was No 1. Remember afternoon quite clearly. Remember giving 2 previous statements - Remember signing court of enquiry also summary of evidence - matter was fresh in my mind.

~~I was~~ Demonstrating



Rockburne 8 to 10 ft away.

Can't remember noise just previous to shot or TS being cleared.

Heard shot, felt him fall against my right shoulder, I looked at S/Sgt, saw him holding TS 45° towards ceiling. Don't know if both hands on gun, in one or two hands, or whether finger on trigger. Don't know what he did with TS MG. He was standing still when I saw him. Then Bdr screamed & I looked at him. Holding the gun at this angle (demonstrating) - Not more than 4 or 5 secs after shot - I looked up immediately -

Mr Salter & Staff R carried him over - after Bdr against my shoulder Mr Salter & Staff S carried him over.

Not sure if he was leaning on my shoulder when Mr Salter & Pgt R came over - Can't tell you, I don't know.

He fell back on bed roll against my

PLEASE USE BOTH SIDES

shoulder. 2 more or less held him.
He was still against my shoulder when they came over – He was laying on bed roll against my shoulder – he was laying flat. Feet spread out & his shoulder against my shoulder. He fell right back. Can't say if still had T G in hands when S/Sgt came over.
That is way I saw it. He was leaning against my shoulder. Think still there when Mr Salter came over but not certain – I don't know. They carried him out to middle of floor.
Self, Cdr Teer & don't remember who else working on stove – Lawrence in the room. I was sitting down working with hammer & chisel – Bds helping with stove. Don't remember if talking.
Knew S/Sgt & Mr Salter inspecting rifles. Previous to shot did not notice what they did – I have rifle – did not watch him exam TSMG's or my rifle.
Just previous to shot don't remember what Mr S was doing – Did not see where he came from after shot.
Looked at Sgt first after shot – am sure that pointing towards ceiling. Don't know where pointed previously. Saw TSMG after he fired it but didn't see it after that. Didn't see who picked it up – I did not. I lived in room – a brick floor.
Re-exam: – nil
Court: – Looked at S/Sgt R because shot seemed to come from that direction. This is (pointing to acsd) S/Sgt Rockburne. Bed roll was rolled up – were 2 rolls in one – would raise him that high (indicating approx 1 ft from floor)

RP 83(B) complied with

ON ACTIVE SERVICE

CANADIAN LEGION

WAR SERVICES 8. 194

4th Wit Pros.] M101301 Gnr Lawrence, HW, 4 A/T
Regt RCA duly sworn states:-
At Stinaza in ES gun crew quarters
17 Feb about 1500 hrs - I was just
leaving rm when I heard a shot
I turned around, heard Bdr Seer cry out
I went over S/Sgt R & Mr S lifted him
up & started to apply fd dressing -
I helped get blankets & put Bdr on
stretcher. He was carried up & taken to
hospital.
I was leaving rm just thru the door.
Looked straight at Bdr first. He was
partly laying on Davidsons shoulder
& remainder on floor, laying over a
blanket roll.
First noticed S/Sgt R when he was
bending over & cutting Bdr's jacket.
Noticed S/Sgt R just picking up a
Sommy as I went by him out of the
room.
Did not notice the Sommy particularly -
no idea whose it was
Cross-exam. I had taken my gun into
tie exam & was taking it back - Did
not watch him exam any Sommies -
On my rifle just held it up, took out
bolt & looked thru it - Took ordinary
care.
Don't know where Mr Salter was.
First noticed him when he helped
with Seer.
Saw him pick up gun but don't
remember hearing it cleared.
S/Sgt about 10' from Bdr at the time;
S/Sgt facing window & Bdr slightly to right

PLEASE USE BOTH SIDES

WMWS

9

of window - Did not notice his position. Brick floor, few places chipped, not too rough.

Re-exam. nil

Court. ~~nil~~ Shot sounded like from the room but couldn't swear it came from there. S/Sgt R is the acsd.

RP 83(B) complied with

5th Wit Pros^n } B 38404 Gnr Ford, CC, 4 A/T Regt duly sworn, states:-

In E3 quarters in Stenoza on 17 Feb about 1500 hrs - 2 was helping to fix a stove. 2 was standing to left of Bdr Teer. Staff R was inspecting small arms. 2 heard cocking lever or spring being tested & 2 heard a shot & saw Bdr Teer fall to the floor. Mr Salter & Staff R immed. looked for wound which was found in left shoulder back. They took him to hospital.

Gnr Davidson was sitting down by Bdr Teer.

Demonstrating { - ~~Lawrence~~ Davidson S/Sgt.
window - Bdr me

2 had piece of tin in my hand when shot fired - 2 was watching stove. When heard shot 2 turned around and S/Sgt R had just dropped gun - gun was level, held in both hands - like this (demonstrating). Then looked at Bdr Teer.

2 moved T5 out of the way. - There was no snag on it.

S/Sgt R facing towards us - towards the light. We were standing here, here & here (indicating).

ON ACTIVE SERVICE

CANADIAN LEGION

WAR SERVICES 10

194

Cross-exam. Fast thing after shot 2 turned to see where it came from — saw him about 1 sec before he dropped it. 2 picked up gun after helping to get Bdr's clothes off.

Previous to shot 2 heard spring being tested. Couldn't say how long after, the shot — right after — matter of seconds. Then turned & saw St. R. Think Bdr was standing up — am sure Davidson sitting down.

Was no blanket roll on floor — closest blanket roll was against wall.

Bdr was standing when hit — he fell towards Davidson — he crumpled, did not fall stiffly. Was not looking at Jeer when he was hit. He was standing last time 2 saw him. Would be possible for him to squat before the shot. Can say he was standing when hit by bullet. He did not fall right away. Was not looking at him when hit.

Did hear Bdr cry out — was moaning about his leg. Don't remember when first cry came. When saw Bdr was lying against Gnr Davidson.

Mr Salter came over right after shot — he came from middle of doorway — Don't know where he was when shot fired. Mr Salter came to Bdr immed. after shot was fired. He was there with Staff R.

Staff R dropped Tommy & went to Bdr. Suppose it was half minute later that 2 picked up gun — it was same gun as S/sgt dropped.

PLEASE USE BOTH SIDES

WMWS

11.

No mag on Tommy. - ~~Don't~~ Can't say if Tommy in S/Sgt's hands had a mag on. I watched him exam my Tommy - was no mag on mine - he picked up my gun - he tested spring first - can't say if pulled fullest extent or not. He did not cock + pull the trigger on mine. Mr Salter present + beside S/Sgt when my gun examined. Didn't notice if Mr S left the room. Couldn't say if men in other room. Know 4 men in our room - Davidson, Bdr, staff + myself.

Not always remove bolt when clean Tommy - clean twice a week. Take bolt out once a week. Clean end of striker when don't remove bolt. Have never noticed Kehoe cleaning Tommy. I do not leave mag on Tommy. Don't know where Kehoe kept his gun. Easy for anyone to pick one up. Many people go in + out.

Re-exam. - nil

Court. S/Sgt Rockburne is a csd.

RP 83(B) complied with

6th Wit Prosn] Capt C B Doddridge, 4 A/T Regt duly sworn, states. -

Was detailed to take summary - after evidence for prosecution I cautioned him by reading warning in RP 4(E). He intimated that he knew had been warned, thought for a while then expressed desire to make a statement on oath. I administered oath in same form as for other witnesses. Then gave evidence on oath. He signed in my presence (Statement read, marked exhibit "A" + attd to proceedings)

ON ACTIVE SERVICE

CANADIAN LEGION

WAR SERVICES 12.

194

Cross-exam. Examined Nehoe's TSMG about 1 wk after accident. 2 cocked twice - on first cocking 2 did not pull far enough to extract cartridge but on second cocking it extracted it alright. Extractor very dirty, had dig flakes under extractor.

Re-exam. nil

Court - Did not inspect room or floor.

RP83(B) complied with

Pros^n closed.

1st Wit Def] The accused duly sworn states:

Am Arms S/Sgt in 4 A/T Regt. Have 4 yrs experience as an armourer. Never had an accid. of similar nature. Remember 17 Feb. In afternoon was in E Trp inspecting small arms. 2 carried out same procedure 2 always have.

Went to BHQ in morning, & E Trp in afternoon. Accompanied by Mr Salter & he took me around. Finally in E3 quarters. 2 took gun, pulled back cocking handle twice with rt hand & on second cocking pulled trigger with left hand the gun fired & flew up in air. 2 dropped it & went over to Bdr. 2 had removed mag first.

PLEASE USE BOTH SIDES

 WMWS

Clear gun by cocking twice which should extract anything in breech - It is sufficient to clean gun.

Could have been faulty extraction, dirty chamber, weak spring or dirty bolt head, defective round. Shell would remain in chamber. Have never had happen before with a faulty extractor. Point possibility if B not used much & 2 know their guns not used.

Testing for spring, striker protusion & extractors & cleanliness. Test is a drill carried out in all arms.

Gun was pointing towards floor as 2 demonstrated. Did not pay any attn to Bdr Tear. 2 thought it must have been a ricco - from angle & distance - 2 was about center of rm. Recall only 2 positions that is the 45° angle & straight up in air when 2 dropped it. Examined gun after & it did same thing as stated by Capt Doddridge -

Satisfied 2 took all safety precautions

cross-exam. Don't normally inspect in a room - In 11 CIB used to have all small arms in a room & examine in there. Have inspected SA before in small room, with stone floor & 6 people in it.

Facing windows to get natural light. 2 did notice position of 3 men around stove. Moved away from them so they wouldn't be

ON ACTIVE SERVICE

CANADIAN LEGION

WAR SERVICES 14

194

right in front. Bdr Teer slightly to my right

Re-exam:- Examined arms ~~because~~ in rooms in Italy because so short of space.

Court:- no special drill as far as I know for checking TSMG.

RP83(B) complied with

Defence closed.

Pros ~~[illegible]~~ in closing:- Reads charge - Review of fact - Acsd holding TSMG - know position of various people - evidence as to angle at which gun held not clear - Acsd says gun not pointing directly at Teer - Precautions should be such that weapon entirely clear of personnel. Room was unusual & conditions unusual - normal outdoor precautions not sufficient here as shewn by fact that man wounded. Acsd used same procedure as always - with floor of type chance of ricco very great & course impossible to predict - Thus altho no direct evidence to show that bullet direct or ricco but evident that sufficient precaution not taken. Was a window & if TSMG pointed in that direction unlikely to cause accid - shooting occurred because proper thought not given to conditions under which exam taking place.

PLEASE USE BOTH SIDES

WMWS

15.

Defence in closing :- Boils down to one simple question ie whether sufficient care taken under the circs. 2 or 3 men in room. snowing outside. Acsd sent to inspect arms - inspected BHQ in morning + in afternoon at E Trp. submit that if there was negligence the responsibility for men being there not on acsds shoulders. Evidence clear that comm. offr present with him + immed. under control of offr. If offr sees fit to exam arms there it is his responsibility. Men had been in line - many things on active service have to be done - In Aldershot no one would be allowed in room but not the room here, cramped quarters + no place else to go - they were trying to make selves comfortable + knew arms being examined - they should have left on been put out by offr.

Charge is not general - alleges pointing of gun at persons - no evidence to that effect. No direct evidence that pointing gun any direction. Know how inspections carried out. Mr S says acsd took all precautions.

Gun was cleared + have evidence to this effect corroborating accsds own evidence

Prosn failed to prove anything in that regard. Acsd has right to benefit of doubt. No evidence of neglect other than men being in room + responsibility for that not acsds. No question of wilfulness or malice aforethought. Acsd took degree of care has been accustomed to take for 4 years. Taking surrounding circs into consideration acsd not guilty.

ON ACTIVE SERVICE

CANADIAN LEGION

WAR SERVICES 16 194

Judge advocate :- Burden on Pros^{n} ; fact finding functions of court + judicial capacity; credibility of witnesses; corroboration required ; doctrine of "reasonable doubt" ; definition of "neglect"

Defence:-
Conduct sheet clear of serious offences — 4 yrs service without crime speaks for itself. Ask court to take record + circumstances surrounding this affair into consideration.

W.M.W. Shaw Capt

PLEASE USE BOTH SIDES

In my opinion due to the exigencies of the service it is necessary for the court to sit on Sunday.

Major
President, FGCM.

LIST OF WITNESSES FOR THE PROSECUTION AND DEFENCE
OF J94282 Armr S/Sgt ROCKBURNE, L., 4 Cdn A Tk Regt RCA.

PROSECUTION

C9554 Gnr Xenoe, A.	4 Cdn A Tk Regt RCA In the Field
Lieut W.H.Salter	4 Cdn A Tk Regt RCA In the Field
G23799 Gnr Davidson, R.R.	4 Cdn A Tk Regt RCA In the Field
M101301 Gnr Lawrence, H.N.	4 Cdn A Tk Regt RCA In the Field
B38404 [redacted] C.	4 Cdn A Tk Regt RCA In the Field
Major G. Blackburn	13 Cdn Fd Dress Stn RCAMC In the Field

DEFENCE

Nil

In the Field
4 Mar 44

(R.S.WALLACE) Captain,
Adjt 4 Cdn A Tk Regt RCA.

I desire the Convening Officer to detail an Officer to represent me at my forthcoming trial by Field General Court Martial.

I desire the services of Lieut E.A. Flewwelling if he is available.

I also desire A35208 Sgt MacLatchy, F.H. to sit as Soldier's Friend.

S/Sgt. Rochbourne, Sr.
(Signature of accused)

Summary of Evidence in the case of C-94282, S/Sgt Rockburn, L. R.C.C.C. att 4 Cdn A Tk Regt RCA, charged with an offence contrary to Army Act Section 40, while on Active Service neglect to the prejudice of good order and military discipline, in that he on 17 Feb 44 neglected to take proper precautions when testing small arms.

The Commanding Officer directs that the evidence be taken on oath.

.....

FIRST WITNESS

C-9554, Gnr Kehoe, A., 49 Bty, 4 A Tk Regt RCA, having been duly sworn, states:-

"I, C-9554, Gnr Kehoe, A., was the person to whom T.S.M.G. S62174 was on charge. On the morning of the 17th Feb, 44, at approximately 0900 hrs, I pulled through and cleaned my T.S.M.G. and afterwards saw that it was unloaded and replaced the loaded magazine on the T.S.M.G. I then stood it in the corner of the room."

Q. "Did you notice anyone else touch your T.S.M.G. that day?"

A. "No."

Q. "When did you next see your T.S.M.G?"

A. "When Gnr Vezina came to get it for Mr. Salter's inspection at approximately 1700 hrs, 17 Feb 44."

Question by the Accused

Q. "Did you notice whether the bolt was forward or cocked when you put it away in the corner?"

A. "The bolt was forward. The reason I know this is that after cleaning, I pulled the trigger and fired into the ceiling."

Kehoe. A.
(C-9554 Gnr Kehoe, A.)

SECOND WITNESS

Lt. W.H. Salter, 49 Bty, 4 A Tk Regt RCA, having been duly sworn states:-

"On 17 Feb 44, at approximately 1435 hrs, I was inspecting E Troop small arms with S/Sgt Rockburn in one of our billets. I turned to go from one room into another and as I did so, I heard a shot and a yell from the room behind me. I turned around and saw S/Sgt Rockburn with a Tommy gun pointing to the floor. Bdr Teer was lying on the floor in front of him. I went to Bdr Teer and with S/Sgt Rockburn gave him first aid, and then I took him to 13 F.D.S. I then returned to the room, took the names of the three witnesses and reported to my Battery Commander."

Q. "Had you seen the T.S.M.G. which S/Sgt Rockburn had immediately before the accident?"

A. "I handed him a T.S.M.G., but I don't know whether that was the one or not."

Q. "Did the T.S.M.G you handed S/Sgt Rockburn have a magazine on it?"

A. "Yes, I think it did."

Q. "Did you hear any noise caused by bolt action before the shot?"

A. "I did not notice any at that time. I heard quite a lot as several small arms had been examined."

Q. "Did you see Bdr Teer's wound?"

A. "Yes."

Q. "Where was it situated?"

A. "Below the left shoulder blade on the back."

Q. "At what angle was the T.S.M.G. pointing when you saw it in S/Sgt Rockburn's hands after the shot?"

A. "At about 20 degrees from a vertical line towards the floor."

Q. "Did you notice the position of the bolt on the T.S.M.G. when you handed it to S/Sgt Rockburn?"

A. "No.

Q. "Did you examine the T.S.M.G., which S/Sgt Rockburn had, after the shot was fired?"

A. "I examined it that evening."

Q. "Had it been fired?"

A. "I could not say definitely at that time."

Question by the Accused

Q. "Did you see me remove the T.S.M.G. magazine?"

A. "Not on this particular occasion, but in all previous instances, I had seen you perform the usual safety precautions."

Wm. H. Salter
(W.H. Salter) Lieut. RCA

THIRD WITNESS

G-23799 Gnr Davidson, B.R., 49 Bty, 4 A Tk Regt RCA, having been duly sworn, states:-

"I, G-23799 Gnr Davidson, B.R., was present in the room when Bdr Teer, D.T. was wounded on 17 Feb 44. At approximately 1500 hrs, I was sitting beside Bdr Teer, on his left. I heard a shot, and felt Bdr Teer fall against my right shoulder. I looked up and saw S/Sgt Rockburn holding a T.S.M.G. at about a forty-five degree angle towards the ceiling. Then I heard Bdr Teer cry out. S/Sgt Rockburn and Mr. Salter then gave him first aid. They then put him on the stretcher and four of us put him in the truck to go to the hospital."

Q. "Where was S/Sgt Rockburn standing when you saw him with the T.S.M.G. in his hands?"

A. "About ten feet away to my left."

Q. "Did the T.S.M.G. have a magazine on when you saw it?"

A. "I did not notice that."

The accused declines to cross-examine this witness.

Davidson B.R.
(G-23799 Gnr Davidson, B.R.)

FOURTH WITNESS

M-101301 Gnr Lawrence, H.W., 49 Bty, 4 A Tk Regt RCA, having been duly sworn, states:-

"I, M-101301 Gnr Lawrence, H.W. was walking out of the room where Bdr Teer, D.T. was wounded on the 17th Feb, 44, at approximately 1500 hrs, the time of the accident. I heard a shot, and turned around. Then I heard Bdr Teer cry out, and saw him lying against Gnr Davidson, partly on the floor. Some of us lifted him and laid him on blankets which we put on the floor. Mr. Salter and S/Sgt Rockburn then cut off his jacket, found the wound and bandaged it with a shell dressing. Then Bdr Teer was placed on a stretcher and taken away."

Q. "Did you notice S/Sgt Rockburn immediately after hearing the shot?"

A. "No."

The accused declines to cross-examine this witness.

Lawrence H.W.
(M-101301 Gnr Lawrence, H.W.)

FIFTH WITNESS

B-36404, Gnr Ford, C.C., 49 Bty, 4 A Tk Regt RCA, having been duly sworn, states:-

"I was present in the room in which Bdr Teer, D.T. was wounded on 17th Feb, at approximately 1500 hrs. I was standing near Bdr Teer with my back to S/Sgt Rockburn, and heard a small arms bolt spring being tested. Then I heard a shot, and I saw Bdr Teer fall to the floor. S/Sgt Rockburn and Mr. Salter immediately looked for the wound which was found in his left shoulder. They applied first aid, put him on a stretcher and took him to the hospital."

Q. "How far were you standing from S/Sgt Rockburn at the time of the shot?"

A. "About five feet."

Q. "Did you see a T.S.M.G. in S/Sgt Rockburn's hands?"

A. "I saw S/Sgt Rockburn drop one after the shot."

Q. "Did you examine the T.S.M.G. after the shot?"

A. "No."

The Accused declines to cross-examine this witness.

G.G. Ford

(B-36404 Gnr Ford, C.C.)

SIXTH WITNESS

Major G. Blackburn, M.O. 13 F.D.S. having been duly sworn, states:-

"Bdr Teer died as a result of a wound from a .45 bullet which passed across both sides of the chest and injured the spinal cord in transit. There is no evidence that a ricochet occurred."

Q. "Have you the bullet?"

A. "No, I don't know where it is now."

The Accused declines to cross-examine this witness.

G.Blackburn

(G. Blackburn) Major
M.O. 13 F.D.S.

CAUTION TO THE ACCUSED

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

THE ACCUSED GIVES EVIDENCE UNDER OATH

The Accused, C-94262 S/Sgt Rockburn, L. R.C.O.C. att 4 A Tk Regt RCA, having been duly sworn, states:-

"I, S/Sgt Rockburn, was examining E Troop small arms on the afternoon of 17th Feb, at 1500 hrs. Owing to the conditions of the weather, the examination was carried out indoors. I had inspected a number of small arms that afternoon, and about 1500 hrs was inspecting those of E.3 gun crew. A T.S.M.G. was handed to me by Mr. Salter, with the magazine on, and I removed the magazine. Holding the gun at an angle of approximately 45 degrees towards the floor, I cocked it twice and on the second cocking the gun fired. Bdr Teer, who was half crouched and half sitting about six or seven feet diagonally to my left, suddenly cried out. I dropped the T.S.M.G. as soon as the shot was fired and went to Bdr Teer, who complained of loss of feeling in his legs. With Mr. Salter's help I removed his trousers and not finding anything there, removed his jacket. There we found that he had been wounded in the left shoulder. Mr. Salter and I applied first aid and then placed Bdr Teer on a stretcher, and Mr. Salter took him to the hospital."

Exh "A"

[redacted]

(C_[redacted] S/Sgt Rockburn, L.)

Certified that R.P. 4 (C) (D) (E) have been complied with.

Taken down by me In the Field this twenty-eighth day of February, nineteen hundred and fourty four.

C.B. Doddridge Capt
(C.B. Doddridge) Captain RCA

No. C94282 Name ROCKBURNE, Lionel | Sqn., Battery, or Company HQ | Sp Gp | Corps RCOC | Date of enlistment 2-6-41 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.H. 1221) 40/P & S/136,2637)

Date of last entry in Company Conduct Sheet Nil | No. and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. John S Hayes | Character GC Support(M)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witness	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				Previous sheet destroyed 2 Nov 41					
				Verified to date 5 Aug 42	R.C.Farrell, Major				
Field	1Aug43	Armr S/Sgt		AA HQ-Conduct to prejudice etc imppoperly dressed - reading book in convoy	Lt-col T M Medland	Reprimand	5Aug43	Lt-col T M Medland	

Certified true copy from Records held by this Unit

(R.S.WALLACE) Captain,
Adjt 4 Cdn A Tk Regt RCA.

(P.T.O.)

Substitute for WFB 355

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

C94282 Armr S/Sgt Rockburne, L. 4 Cdn A Tk Regt RCA

Age - 34½ Married No of Dependents - two

Date of attestation - 2 May 41

Number of days in Close Arrest awaiting trial - None

Civil - None Military - None Hospital - None Total - N/A

Dates of appointments, promotions etc (if any) -

Sgt - 28 Jan 42
Armr. S/Sgt - 7 Oct 42

Decorations - Cdn Vol Serv Medal and Clasp

In the Field
4 Mar 44.

(R.B. WALLACE) Captain,
4 Cdn A Tk Regt RCA.

"B"

5 V-33

Lgmn. Rockwell, D. M.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K35459 Sgmn Don Marcus ROCKWELL

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15 (1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence~~ for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To forfeit all Ordinary Pay for a period of sixty (60) days.

(Sgd) ..... Judge-Advocate, if any. 5 NOV 45 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed

~~I direct that the accused be~~ not committed to prison or ~~detention barracks~~ until further orders.(1) (1. AA 57A. Delete if not used.)

(Sgd) [signature]

Date 6 Nov 45 Commanding E Sp & RO, Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
K35459 Sgmn Rockwell, D.M.	9 Nov 45	H.B. Fawcett Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT [illegible] IN AB 150 5 v 33

FIELD GENERAL COURT-MARTIAL

CPA96 (To lieu of AFA81) 40/P & R/1698 (6/44) 4/388

Convened by Order of Gp Capt T.J. Rutherford CBE RD Comd "E" Gp CRU dated 3 Nov 45

14 Nov 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K35459	Sgmn	Don Marcus	ROCKWELL	4 Can Repat Dep

PROCEEDINGS REVIEWED 19 Nov 1945 [signature] REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 5 Nov 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ..... as interpreter? Ans ~~No~~

~~The Interpreter is sworn.~~(1) Do you object to M.P/S/S. ARC RIMMER A.R. as shorthand writer? Ans No obj. The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No obj.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any,~~ and Offrs under instr, ~~if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L. REDMAN V.D.	HQ CRU
Member	MAJOR	F.M. DANIEL	9 C.R.E.P. DEP
Member	LIEUT.	J.S. CHISHOLM	9 C.R.E.P. DEP
~~Judge-Advocate~~			
Prosecutor	LIEUT.	J.N. PENDER-MOSS	9 C.R.E.P. DEP
Defending Offr	CAPT.	M.L. MACLEA	9 C.R.E.P. DEP

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly as to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 117. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, ele, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, use Record Form D on p 3.*

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii)*, Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO - SIR .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes/change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. 17, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

File here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without taking the oath, in which case you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42.* (2)(a).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6). RP 45, 120(A).* 2. *~~A 54(3). RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO - SIR .
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. 18 and Ex. 19 respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. NO - SIR .
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6). RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and ~~the JA, if any~~.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisn, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118. (1)(A)(i), KR Con 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to assembly and disposal of record after trial see instrs on back of Convening Order.) As to releases from arrest by Confirming Offr see KR Con 567.*

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused K.55459 Signalman Don Marcus ROCKWELL, on the strength of "A" Wing, No 4 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

at No 4 Cdn Repat Depot, absented himself without leave from 0930 hrs 19 Aug 45 until he gave himself up to the provost at 1550 hrs 30 Oct 45.
(Absent: 72 days, 6 hrs, 20 mins)

In the field

(R.E.A. Morton) Colonel
Commanding
No 4 Cdn Repat Depot

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
5 Nov 45

(W J RUTHERFORD) Brig
Comd
HQ "E" Gp CRU

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
K35459	Sgmn		Don Marcus	ROCKWELL	4 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (date) 3 Nov 45 endorsed by me, [redacted] "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial; [redacted]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt Col	D L Redman VD		H Q CRU

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Maj	To be detailed by OC 9 Cdn Repat Dep		9 Cdn Repat Dep
Lt	To be detailed by OC 9 Cdn Repat Dep		9 Cdn Repat Dep

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 3 Nov 45

(Signed personally. RP 105 (2).) Brig (Rank.)

(T J RUTHERFORD)

Commanding H Q "E" Gp CRU

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (PAM 1 (In lieu of AFA5) 40-P & S-1697 (4691).)

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
KR(Can) para 557.

I certify that I have this morning examined:-

Regt'l No. K30439 Rank Somn. Name Rockwell D.M.

of A Wing No 4 CRD. (unit) and in my opinion he is

Fit to undergo trial by Court Martial.

~~Unfit~~

IUP #(cross out one N/A and initial)

Station: Field

Date (of Court Martial) Nov. 5 - 40

Sgd. [illegible] (Rank)
Unit
Medical Officer, RCAMC.

TRIAL OF

K.35459 Gunn BROCKWELL IM ------ 4 CDN REPAT DEPOT

PLEA OF MITIGATION

BY

_ DEF OFFR _ _ _

The accused has pled guilty for being AWL for a very considerable period of time. As is shown on his RFP 6 it is only his second offence in a period of over six years. The accused has been overseas for a period of 4 years 11 months. Went to Italy with the First Div Sigs for one year and 4 months then went to France with the First Division, served through Holland, Belgium and into Germany and was then returned to England due to his high point score to go home in June of this year. When he arrived in this country one of the reasons for sending him here was that he had already made application for compassionate return to Canada but decided to drop it and go home on his points. The reason for his application was that during his service overseas, his only son who was eleven died, and very shortly afterwards his wife was shot in a hunting accident and was in hospital for a considerable length of time and was expected to die and has since partially recovered. When the accused arrived in this country he was on draft and was due to leave almost immediately. An error was made in his district depot form with the result that he was taken off draft and posted to transient strength. On first arriving at this country he had just completed a period of RLA leave and was given a period of 9 days leave. On being posted to Transit strength he was in the same boat as a lot more people who were posted to transit strength, nobody knew what to do with him and he proceeded on a succession of leaves between five and six leaves, all this time he was exceedingly worried about his family circumstances. He had himself paraded to the CO and got the usual story that there were no ships and that when there were ships he would be sent home.. Finally on the last leave he was on he did stay away two or three days, then he decided that since he had been away two or three days he might just as well stay away a few more days which is in many cases of AWL the reason for a lengthy AWL, the man goes absent, he may be absent only a day, he thinks to himself well I have had it, so what will I do now, so he stays away a few more days. The longer he stays away the more temptation he has to stay away and this is exactly what happened to the accused. He realized the longer he stayed away the more difficulties he would get into and being extremely worried and dissatisfied with the delay in sending him home he stayed away and before he knew it he had been away 21 days and having been in the Army a long time he knew that he was a deserter and knew what the judgement would be and by this time he didn't know what to do and intended to stay away until he got nerve enough to go back to the unit. The causes of it all are as I said, firstly the fact that he never got home, secondly that his nerves were shot, partly by the strain of long service, partly by the strain of anxiety for his family circumstances, he couldn't get home and there was nothing he could do about it and finally he is in the position he finds himself now. The accused is a man of 40 years of age, he has been a long time in the army. He is a man with a good record. His civil occupation is a telegraph operator a job which is a fairly responsible one. He is not the type of man who is going to desert the army, he is very obviously a respectable soldier, one AWL and that a matter of hours and this is a pretty fair record. I do not feel in this case the Court would be justified in proceeding to the extremes which the length of AWL would indicate because normally a long line of AWL's is behind it or else a precedent history of minor trouble. Here you have a man who up to the beginning of this happening has been a responsible citizen, a good soldier, a man who has finally cracked under the succession of strains and who got himself into a very serious situation. This is one of the cases which I think the court would be justified to deal with extreme leniency. They are not dealing with a man given to breaking Army rules or a hardened criminal.

C-3

SUMMARY OF EVIDENCE

Summary of Evidence in the case of K.35459 Sgmn Rockwell, D.M., on the strength of "A" Wing, No 4 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that all evidence be taken on oath.

First Witness for the Prosecution

A/Capt H.A. Fowler, on the strength of "A" Wing, No 4 Canadian Repatriation Depot, an officer of the Canadian Army Overseas, having been duly sworn, states:-

I hereby present as documentary evidence a certified true extract from No 4 Cdn Repat Depot Regt'l part II daily order No 67 dated 25 Oct 45 showing that K.35459 Sgmn Rockwell, D.M. illegally absented himself without leave at 0930 hrs 19 Aug 45.

The accused declines to cross-examine the witness.

H.A. Fowler 1/6 a/f 8.
(H.A. Fowler) A/Capt

The above mentioned document has been shown to the accused, marked by me as Exhibit "A" and attached to the Summary of Evidence.

J. Pinder-Moss
(J. Pinder-Moss) Lieut
Officer detailed to take
The Summary of Evidence

Second Witness for the Prosecution

G.25889 L/Cpl Ellis, W.G., on the strength of "A" Wing, No 4 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, having been duly sworn, states:-

I was on duty at the Unit Guard Room at 1550 hrs 30 Oct 45 when K.35459 Sgmn Rockwell, D.M., whom I now recognize, reported to the guard room. I knew that he had been absent without leave for some time so I placed him under close arrest.

The accused declines to cross-examine the witness.

W G Ellis
G.25889 L/Cpl Ellis, W.G.

The accused was cautioned as follows:-

Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence on oath.

The accused does not wish to call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

In the Field
2 Nov 45

(J. Finder-Moss) Lieut
Officer detailed to take
The Summary of Evidence

C + A

Exhibit "J"
J.P.M

NO. 4 CANADIAN REPATRIATION DEPOT, C.A.C.

Part II Orders

BY

Last Order No. 66 dated 22 Oct 45 — Colonel R E A MORTON, D.S.O. Officer Commanding — This Order No. 67 dated 23 Oct 45

"B"

28. STRENGTH DECREASE — TRANSIT SECTION

(c) SOS Transit Strength as a des wef 11 Oct 45 having been decl illegally absent from 0930 hrs 19 Aug 45 by a Ct Inq held 11 Oct 45. Def in kit in the value of $32.16.

K 35459 Sgmn ROCKWELL. D M

(Signed) A. Edmondson, Capt
for (R E A MORTON) Colonel,
Officer Commanding,
4 Cdn Repat Depot, CAC.

Extract from No 4 Cdn Repat Depot Regt'l Part II daily order No 67 d/23 Oct 45 and certified to be a true extract from the original document.

(A. Edmondson) Capt
Records Officer
4 Cdn Repat Depot

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K.35459	Sgmn	Rockwell, D.M.	4 Cdn Repat Depot

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL A.A. Sec 15(1) 1 times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 19 Jul 44

Date of last entry in Field Conduct Sheet 19 Jul 44

HBY 2. [redacted]

*Strike out if not applicable.

HBY *3. [redacted]

4. The accused has been awaiting trial on the present charges for No days in civil custody; and for 3-6 days in military custody, *i.e.*, No days in open arrest, 3-6 days in close arrest; of which No days were spent in hospital.

5. The present age of the accused is 40

HBY 6. The date of his attestation [redacted] is 19 Sep 39

7. The service which the accused is allowed to reckon is 6 yrs 1 month

†State the military decorations (if any) held by accused.

8. The accused is in possession of† CVSM & Clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of .....

EXB In the war substantive rank of .....

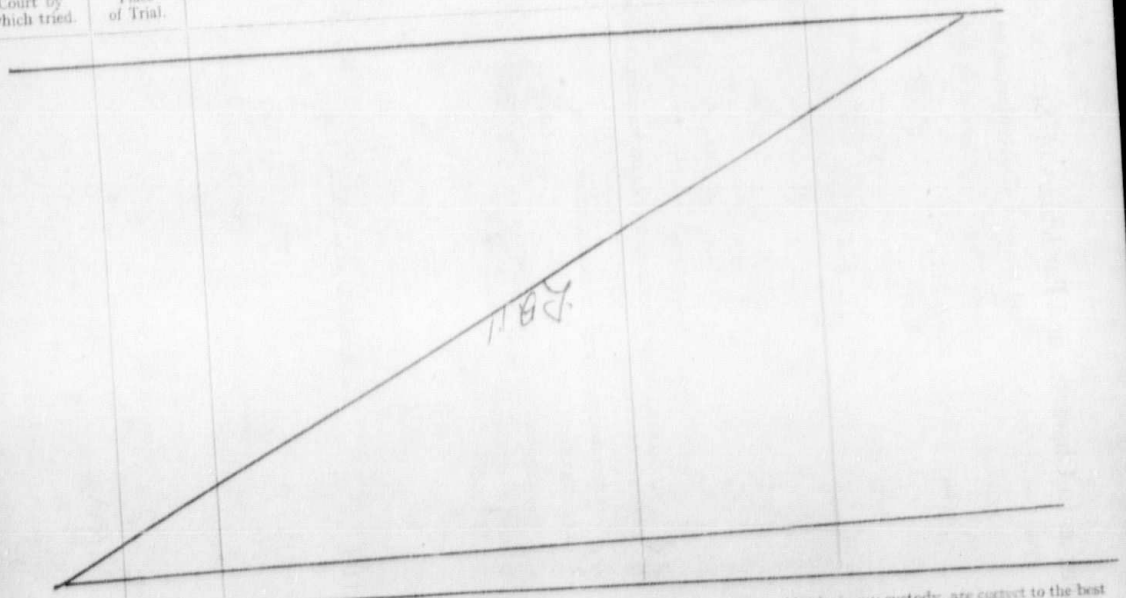
In the acting rank of .....

MW INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(90384) Wt.42128/4399 45,000 12/44 A.S.E.W.Ltd. Gp.698 Forms/T.2 S/Wards

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.



I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 2nd 5th day of November

H. G. Saunders Capt.

Adjutant

No. K35459 Name ROCKWELL, D.M. Sqn, Battery, or Company | Corps RCCS | Date of enlistment 19 Sep 39 | GC Badges | Service or Proficiency Pay N/A | 3/17 MFM 6 (AFB 122) 40/P&S/136 (5413)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19 Jul 44	L/Cpl		AA Sec 15(1) AWL from 0500 hrs 19 Jul 44 until 1600 hrs 20 Jul 44. (Absent: 35 hrs)	C.3001 Sgt Little,WJ	Reverted to permanent grade of Sgmn	26 Jul 44	A.G. MacDonald Major	

CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT HELD IN MY POSSESSION.

H.A. Lawler Capt

Adjutant
"A" Wing 4 Cdn Repat Depot

EXC

(PTO)

LIST OF WITNESSES IN THE CASE OF

K.35459 Sgmn Rockwell, D.M.

FOR THE PROSECUTION

1. A/Capt H.A. Fowler - No 4 Cdn Repat Depot
2. C.23889 L/Cpl Ellis, W.G. - No 4 Cdn Repat Depot

FOR THE DEFENCE

N I L

LIST OF EXHIBITS IN THE CASE OF

K.25429 Sgmn Rockwell, D.M.

FOR THE PROSECUTION

Exhibit "A" - Certified true extract from No 4 Cdn Repat Depot Regt'l part II daily order No 67 dated 23 Oct 45.

FOR THE DEFENCE

N I L

I, K.35459 Sgmn Rockwell, D.M. request that an Offr be assigned to act as defending Offr for my forthcoming trial by F.G.C.M.

Dm Rockwell

K.35459 Sgmn Rockwell, D.M.

OB 21

Cpl Rockwell J. F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M25851 Cpl. Rockwell, J.F. 2 Cdn Prov. Coy.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Withdrawn	NS Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 463 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~Nil~~ ~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting~~ present trial—a total of 4 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be reduced to the Ranks and to undergo detention for six months.

(Sgd) Ernest K. McDonald 11 JAN 45
Judge-Advocate, if any. Date awarded.

(Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Offr as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the sentence of the court be commuted to "reduction to the ranks and to undergo detention for three months"

I direct that the accused be not committed to prison or detention barracks until further orders.(1) [illegible]

(1. AA 57A. Delete if not used.)

(Sgd) [signature]

Date Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
M25851 Cpl. ROCKWELL, J.F.	17 JAN 45	[signature] A/C 2 Con Prov Coy

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 19 MAR 1945 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160, 5/5, 21

FIELD GENERAL COURT-MARTIAL

4/38B

(Convening) Officer of Brig. F.D. Lacs Comd RCH 2 Cdn Div dated 9 JAN 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M25851	Cpl.	James Franklin	Rockwell	2 Cdn Pro Coy.

PROCEEDINGS REVIEWED

[illegible] 23 Mar 45

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Held in the Fd in (country) Holland on (date(s)) 11 JAN 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 101/106

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereby incorporated by reference. For provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 8. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1005 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~as interpreter?~~ Ans ~~.....~~

~~The Interpreter is sworn.(1)~~ Do you object to D 36570 S/Sgt. Mole R.V. as shorthand writer? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R.C. Thomson	2 AIR Regt RCA
Member	Capt.	S.H. Herman	Klu Sqn attd 5 C.I.R.
Member	Lt.	K.K. Knox	Tp Scot (RHC)
Judge-Advocate	Capt.	E.K. McDonald	HQ 2 Cdn Inf Div
Prosecutor	Lieut.	L.W. Page	2 Cdn Prov Coy
Defending Offr	Capt.	S.T. Macdonald	HQ 2 Cdn Inf Div

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv. Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (b) and fn 2 were not followed. See D1 p 3.)

A8. The accused M25851 Cpl. Rockwell, J.F. before arraignment make(s) (no) (a) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part 1 of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B/E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Vol III Fol 120

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative, (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No Sir (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~Nil~~ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1) ~~N/A~~
(1. *Under B5 such parts only of the Summary of Evidence read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a seperate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 51 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both(2) in which case you will be subject to cross-examination.(3) You may, however, make a statement without being sworn and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 60(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Sir
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3)
(1. *MFB 335 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans By my Defending Offr (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 332, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET:

CHARGE AGAINST:

M25851 Corporal ROCKWELL, James Franklin
of No. 2 Cdn Provost Company, 2 Cdn Inf Div,
a soldier of the Cdn Army Overseas:

is charged with

FIRST CHARGE
SECTION 24(1)
ARMY ACT

WHEN ON ACTIVE SERVICE, MAKING AWAY WITH BY
GIVING PUBLIC PROPERTY ENTRUSTED TO HIS CARE
FOR MILITARY PURPOSES

In that he

In the Field, on 29 Dec 44, when entrusted with a ration of coal, public property, for his Section made away with the said ration of coal by giving it as a civilian, one Wilhelmina Johanna Mulders-Durksen, of 362 St. Jacobslaan, Nijmegen, Holland.

ALTERNATIVE
CHARGE
SECTION 40
ARMY ACT

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND
MILITARY DISCIPLINE

In that he

In the Field, on 29 Dec 44 when entrusted with the delivery of a ration of coal to "F" Section of 2 Cdn Provost Coy, failed to deliver said ration of coal to "F" Section, 2 Cdn Provost Coy.

BWEL/grl

(B. W. E. LEE) A/Capt.,
Commanding Officer,
No. 2 Cdn Provost Coy, 2 Cdn Inf Div.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
9 Jan 45

(F. D. LACE) Brigadier
RCA 2 Cdn Inf Div

CHARGE SHEET:

CHARGE AGAINST: M25851 Corporal ROCKWELL, James Franklin of No. 2 Cdn Provost Company, 2 Cdn Inf Div, a soldier of the Cdn Army Overseas:

is charged with

FIRST CHARGE
SECTION 24(1)
ARMY ACT

WHEN ON ACTIVE SERVICE, MAKING AWAY WITH BY GIVING PUBLIC PROPERTY ENTRUSTED TO HIS CARE FOR MILITARY PURPOSES

In that he

In the Field, on 29 Dec 44, when entrusted with a ration of coal, public property, for his Section made away with the said ration of coal by giving it so a civilian, one Wilhelmina Johanna Mulders-Derksen, of 362 St. Jacobslaan, Nijmegen, Holland.

ALTERNATIVE
CHARGE
SECTION 40
ARMY ACT

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

In the Field, on 29 Dec 44 when entrusted with the delivery of a ration of coal to "F" Section of 2 Cdn Provost Coy, failed to deliver said ration of coal to "F" Section, 2 Cdn Provost Coy.

(B. W. E. LEE) A/Capt.,
Commanding Officer,
No. 2 Cdn Provost Coy, 2 Cdn Inf Div.

BWEL/gf1

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
9 Jan 45

Brigadier
(F. D. LACE) Comd
RCA 2 Cdn Inf Div

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 107(6).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
M-25851	Cpl		James Franklin	ROCKWELL	2 Cdn Pro Coy, Cdn Pro C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 9 Jan 45 endorsed by me, (or by an offr of my staff by my direction), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not expedient to delay the trial for the purpose of any supervening authority)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I nominate as [appointed] [detailed] to be [President] [Members] [Waiting Member] of the said Court the Offrs mentioned hereunder. [and attached hereto].
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	B C THOMSON	2 Cdn A.Tk Regt, RCA	

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	G H HERVEY	"K" Sec Sigs, att 5 Cdn Inf Bde	
Lieut	K K KNOX	Tor Scot (MG)	

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	R DURAND	4 CDN INF BDE COY, RCASC	

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	E K McDOUGALL	HQ 2 Cdn Inf Div	

On Active Service in the Fd

in HOLLAND (Country.) (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 9 JAN 45 Commanding (F.D.LACE) RCA, 2 Cdn InfDiv
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAPS (Its Ileu of AFA3) 40/P & S/1697 (4631) (*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICER'S CERTIFICATE:

CERTIFIED that M25851 Cpl. ROCKWELL, James Franklin of No. 2 Cdn Provost Coy, 2 Cdn Inf Div has been personally examined by me this date and he is fit to undergo trial by Field General Court Martial.

Field
11 Jan 45

M.O.
HQ, 2 Cdn Inf Div

The Defending Officer makes the following Plea in Mitigation.

The plea of the defence is that the accused be given the lightest possible sentence for the following reasons:

(a) The charge to to which he has pleaded guilty is one which is normally laid against an individual who has deliberately made away with public property that he might pawn it for his own private gain. Such is not the case here. All the evidence indicates that the motive of the accused was an entirely unselfish one in that he wished to assist, in a small way, in a time of need a Dutch family which had shown kindness to him during the six weeks he was billetted with them.

(b) Secondly, although his thinking on the matter was admittedly muddled and his actions improper, the defence contends that he did not consciously commit the offence to which he has now pleaded guilty. The house to which he took the coal was one in which he had lived for six weeks. The two upstairs rooms were occupied by soldiers, of whom he had been one, until a day or so previous. These two rooms had no stove but were indirectly heated by the stove downstairs and the one pound of coal per day which is authorized for heating a soldier's billets had always been turned over by the men to the family downstairs to supplement its own suppy of fuel. On the 28th of Dec the accused visited his former billet, found the place cold, found that no military coal had been delivered for several days, yielded to a natural impulse on the following day by delivering the section's coal to a place where military coal had a legal right to be, though not this particular 20 pounds, and hoped in some way to make adjustments the next day. The defence contends, in other words, that the accusedmade a mistake in judgement, by trying to do a good thing in the wrong way, but that he did not consciously commit the offence of which he is technically guilty.

(c) In support of the argument advanced above, the defence wishes to draw attention to the accused's record. During his entire period of service he has had a clear record except for an offence about a year ago for which he was reduced in rank from Sergeant to soldier. During the last year, he has won back by efficient service, the rank of Cpl, and is now the Senior Cpl in his unit. At the time of the incident for which he is now charged he stood to gain much by continued good conduct, and it is not reasonable to suppose that, placed as he was, he would deliberately and consciously have jeopardized his position.

SUMMARY OF EVIDENCE

A

In the case of

M25851 Cpl. ROCKWELL, J. F., No. 2 Cdn Provost Coy, 2 Cdn Inf Div, a soldier of the Cdn Army Overseas.

THE ACCUSED is informed of his rights.

THE COMMANDING OFFICER directs that the evidence be taken on Oath.

FIRST WITNESS: L22194 Sjt. MANVEILLER, A., 2 Cdn Provost Coy, 2 Cdn Inf Div, duly sworn, states,

"While at MOOK on the 29 Dec 44 at approx 1400 hrs Cpl ROCKWELL was detailed to draw rations from Coy Hq. Before proceeding to Coy Hq I told Cpl ROCKWELL to draw our ration of coal from the CQMS.

At approx 1630 hrs Cpl ROCKWELL returned to MOOK with the rations. I asked him whether he had drawn any coal and he replied that the quartermaster had not given him any.

On 30 Dec 44 I proceeded to Coy Hq at 1400 hrs and contacted the quartermaster and asked him why he had not given Cpl ROCKWELL a ration of coal. The quartermaster informed me that he had given Cpl ROCKWELL the coal, the amount of which he described as approximately half a sack. I then proceeded to the RSM's office and reported the matter to the RSM.

After reporting, I proceeded to house No. 362 St Jacobslaan, Nijmegen, where Cpl ROCKWELL had stayed previous to moving to MOOK. There were two women and a man there, all civilians, of whom one woman could speak English. I asked her whether anyone had brought any coal to that house that day. She told me that no-one had brought any coal. I then left, picked up my rations for the day and proceeded back to MOOK.

At 1715 hours I summoned Cpl ROCKWELL and asked him what he had done with the coal which he had drawn from the QM the previous day. Cpl. ROCKWELL stated that he had drawn approx 20 lbs of coal and had given it to the people where he used to stay, at 362 St. Jacobslaan, Nijmegen. I then placed Cpl. ROCKWELL under Close Arrest and brought him back to Coy Hq and turned him over to the RSM.

The RSM and myself then proceeded to No. 362 St Jacobslaan, Nijmegen, and I again asked the people whether anyone had brought any coal the previous day. The two ladies then said that ROCKWELL had brought some coal, and showed us some coal which they said "Rockie" had brought. I took a sample of the coal.

CROSS-EXAMINED by The Accused:

Q.1 Whom did you talk to when you went to the house the first time?
A.1 The lady with the black hair.

Q.2 Was there anybody else present at the time?
A.2 Yes, there was. Another lady with blonde hair, a male civilian and L/Cpl DOOL.

Q.3 Did you not speak to them at any time?
A.3 I did speak to them. I could not make out what the civilian man or the blonde haired woman was talking about, so the lady with the black hair did most of the talking.

Q.4 Was the conversation in English or German?
A.4 In English.

Q.5 On the second visit whom did you talk to?
A.5 I first talked to the lady in black hair, in English. After she informed me that Rockie had brought the coal, I spoke to the civilian male in German.

L22194 Sjt Manveiller A.

(Page 2 Follows)

EXHIBIT "A": One piece of coal together with a piece of sacking is admitted here as evidence.

SECOND WITNESS: Wilhelmina Johanna MULDERS, 362 St Jacobslaan, Nijmegen.

Statement taken with the aid of Interpreter Edmond Albert Charles Van ALLEYNNES:

Having been duly sworn, states:

"Rockie brought some coal in a sack, I do not know exactly how much, just enough for two days. I was crying when Rockie came into my home and he asked me what was the matter. I told him I was cold and my two babies were cold as we had no coal. Rockie said "I will bring you some coal from Germany."

That day he was on duty from 1800 hrs to 0600 hrs and the next day he brought the coal. He gave me the coal and said the coal came from Germany.

I used some of my coal to heat the soldiers' room and also to do some of their washing as they had no coal."

THE ACCUSED declines to cross-examine the witness.

Wantlleyn Interpreter. W J Derksen Mulders
E.A.C. Van ALLEYNNES. W. J. MULDERS (DERKSEN)

THIRD WITNESS: Mattheus DERKSEN, 362 St Jacobslaan, Nijmegen, having been duly sworn states:

(Statement taken with the aid of Interpreter Edmond Albert Charles Van ALLEYNNES):

"We were totally without coal, and in the morning my wife tried to fire up the stove but could not do it. I went out with a saw to haul up a tree but could not do. I hauled up a tree and brought it to my parents and cut it up in small pieces and brought a small sack full of it home. When I came home in the evening I found that some coal had been brought during the day. My wife told me that they had brought some coal today so I replied that it was very good, now we can build up the fire. I did not know who brought the coal but later my wife told me that it was Rockie. I did not seem him myself. The man Rockie was billetted in my house six or seven weeks."

CROSS-EXAMINED by The Accused:

Q.1 Did you at any time talk to the Sjt when he came to the house?
A.1 He only came very rarely to ask for Rockie. When he asked for Rockie I called him, that was all.

Q.2 Did you talk to the Sjt the night he came to look for the coal?
A.2 When the Sjt came I asked the Sjt if he brought the coal as every man who is billetted in the house is allowed 1 lb of coal per day. I also talked to a little man, a soldier who talks Dutch. The Sjt said he did not know exactly, but he would check and find out if the soldiers had to bring this coal.

Q.3 What time was the Sjt there?
A.3 It was dark, possibly 6 o'clock, or half past seven, I cannot say exactly.

Wantlleyn Interpreter: M Derksen
E.A.C. Van ALLEYNNES. M. DERKSEN

(Page 3 Follows)

THE THIRD WITNESS Identifies "Exhibit "A" is the coal taken by the Sjt from his house.

L.M. Paige Lieut.,
OFFICER I/C ENQUIRY.

FOURTH WITNESS: H17066 Cpl S. FERGUSON, W.E., 2 Cdn Provost Coy, 2 Cdn Inf Div, duly sworn, states:

"On 29 Dec 44 Cpl ROCKWELL came into the stores for coal. Not having much on hand I gave him what I could spare, approx 15-20 pounds. It was not weighed out. I helped him put it into sack or box, I am not sure which, but believe it to be a sack.

The next day Sjt. MANVEILER came into my stores and asked me if I had issued any coal to any personnel of his section and I told him who had received the coal. I stated that Cpl ROCKWELL was in and had received a little coal and could receive the balance today.

CROSS-EXAMINED by the Accused:

Q.1 Was Sjt. MANVEILER in to see you in the morning or afternoon?
A.1 I could not say for sure whether it was in the morning or afternoon.

S. Ferguson
H17066 Cpl S. FERGUSON, W.E.

FIFTH WITNESS: K24055 A/RSM. OAKES, J.W., 2 Cdn Provost Coy, 2 Cdn Inf Div, having been duly sworn states:

"On 30 Dec 44 at approx 1700 hrs Sjt MANVEILER reported to me that there had been some coal, mislaid or misplaced for his Section. He suggested that it might be down at the house of DENISSEN, M, of 362 St. Jacobslaan, Nijmegen. We both proceeded down there and Sjt MANVEILER questioned the occupants in connection with the coal. One of the girls stated that "ROCKIE" had brought some coal the day before and they took us out to the coal bin and the lad there showed us some coal and said that that was the coal. Later the same girl stated that that was the coal the "ROCKIE" had brought. Sjt. MANVEILER then seized an exhibit of the coal. I identify the coal marked "Exhibit 'A'" as the coal that Sjt MANVEILER seized.

THE ACCUSED DECLINES to cross-examine the witness.

J.W. Oakes
K24055 A/RSM Oakes, J.W.

SIXTH WITNESS: Lieut. C. C. ANDERSON, 2 Cdn Provost Coy, 2 Cdn Inf Div, having been duly sworn, states:

"I certify that 362 St. Jacobslaan, Nijmegen, the billet of Cpl ROCKWELL was not paid for as a heated billet, and no allotment of coal was made to the civilians living in it."

CERTIFIED TRUE COPY

L.M. Paige Capt
CAPT.
O.C. 2 PROVOST COY.

Lieut. C. A. ANDERSON.

THE ACCUSED declines to cross-examine witness.

(Page 4 Follows)

THE ACCUSED, having been duly warned in accordance with R.P. 4(e), and having been asked whether he wishes to make a statement, says:

"No, Sir."

J. F. Rockwell
M25851 Cpl ROCKWELL, J.F.

CERTIFIED that R.P. 4 has been complied with, and that the foregoing Summary Of Evidence consisting of 4 pages was taken by me in the presence of the accused, this 1st day of January, 1945"

L. H. Paige
Lieut. L. H. PAIGE,
Officer Detailed to take
Summary of Evidence.

Signed,
In the Field
This 2nd Day of January, 1945.

ADDITIONAL SUMMARY OF EVIDENCE:

In the Case of: M25851 Cpl. ROCKWELL, James Franklin, of 2 Cdn Provost Coy, 2 Cdn Inf Div, a soldier of the Cdn Army Overseas.

THE ACCUSED is informed of his rights.

THE COMMANDING OFFICER directs that the evidence be taken on Oath.

FIRST WITNESS: L22194 Sjt. MANVEILER, A.
2 Cdn Provost Coy, 2 Cdn Inf Div, duly sworn, states:

"While at MOOK on 29 Dec 44 at approx 1400 hrs Cpl ROCKWELL was detailed to draw rations for the Section. Before he proceeded for the rations I told him to draw a ration of coal from the Quartermaster for the Section. At approx 1630 hrs Cpl ROCKWELL returned with the rations and I asked him whether he had brought any coal. He replied that the Quartermaster had not given him any. On 30 Dec 44 at approx 1400 hrs I proceeded to Coy HQ to draw rations. I visited the QM and asked him why he had not given Cpl ROCKWELL a ration of coal for the Section. The Quartermaster replied that he had given Cpl ROCKWELL the coal, the amount of which he described as approx half a sack full.

I then reported the whole matter to the RSM and I proceeded to house 362 St. Jacobslaan, Nijmegen. There were 3 civilians present also L/Cpl DOOL. There were two women and one man. The dark haired woman spoke English and I asked whether anyone had brought any coal to that house that day or the previous one. She told me that no one had brought any coal. I then left picked up my rations for the day and proceeded back to MOOK. At 1715 hrs I summoned Cpl ROCKWELL and asked him what he had done with the coal which he had drawn from the QM on the previous day. Cpl. ROCKWELL stated that he had drawn approx 20 lbs of coal and had given it to the people where he used to stay, at 362 St. Jacobslaan, Nijmegen. I then placed Cpl ROCKWELL under Close Arrest and brought him back to Coy HQ and turned him over to the RSM.

The RSM and myself then proceeded to No. 362 St Jacobslaan, Nijmegen and I again asked the people whether anyone had brought any coal the previous day. The two ladies then said that ROCKWELL had brought some coal and showed us some coal which they said "ROCKIE" had brought. I took a sample of the coal."

CROSS-EXAMINED by The Accused:

Q.1 Whom did you talk to when you went to the house first?
A.1 The lady with the black hair.

Q.2 Was there anybody else present at the time.
A.2 Yes there was. Another lady with blonde hair, a male civilian and L/Cpl DOOL.

Q.3 Did you not speak to them at any time?
A.3 I did speak to them, I could not make out what the civilian man or the blonde haired woman was talking about, so the lady with the black hair did most of the talking.

Q.4 Was the conversation in English or German.
A.4 In English.

Q.5 On the second visit whom did you talk to?
A.5 I first talked to the lady with black hair, in English. After she informed me that "Rockie" had brought some coal, I spoke to the male civilian in German.

Q.6 Was there anybody accompanied me to Coy HQ on 29 Dec 44?
A.6 I think there was but I am not positive. I think that L/Cpl ROBERTS was with you.

L22194 Sjt MANVEILER, A.

(Page 2 Follows)

SECOND WITNESS: M17066 CQMS. FERGUSON, H.E.
2 Cdn Provost Coy, duly sworn, states:

"On 29 Dec 44 Cpl ROCKWELL came in from the section at MOOK to the QM stores to draw their portion of coal for heating purposes for the section personnel for one day. Being short of coal I could not give him the full allotment for the Section so I gave him approx between 20-30 lbs. I do not recall whether it was a box or sack that Cpl ROCKWELL took the coal in but I believe it was a sack. I helped Cpl ROCKWELL put the coal into the retainer and he continued on his way with the coal.

The following day Sjt MANVEILER came into the Stores and asked if I had issued coal to any personnel of his section. I said I had issued coal to Cpl ROCKWELL. I told him thay I had not issued the full ration of coal, but if he was short could have more.

Previous to this, Cpl ROCKWELL has on several occasions drawn coal from me for his section.

CROSS-EXAMINED by The Accused:

Q.1 Was Sjt MANVEILER in to see you in the morning or afternoon?
A.1 I could not say for sure whether it was in the morning or afternoon.

Q.2 Was there anyone else besides myself who drew coal for the Section?
A.2 Yes.

Q.3 What was the allotment of coal per day per man?
A.3 Up until 1 Dec 44 it was one pound per day and after that it was two pounds per man per day when it was available.

H.E. Ferguson
M17066 CQMS. FERGUSON, H.E.

THE ACCUSED having been duly warned in accordance with RP4(e), and having been asked whether he wishes to make a statement, says:

"No, Sir."

J F Rockwell
M25851 Cpl Rockwell J F

CERTIFIED that R.P. 4 has been complied with, and that the foregoing Summary of Evidence consisting of 2 pages was taken by me in the presence of the Accused, this 6th Day of January 1945.

L W Paige Lt.
(L. W. PAIGE) Lieut., 2 Cdn Provost Coy
Officer detailed to take the Summary of Evidence.

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M25851	Corporal	ROCKWELL, James Franklin	2 Cdn Provost Coy

1. The following is a fair and true summary of the entries in the ~~regimental conduct sheet~~ or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not united to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	Nil times	Nil times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, Nil

or

~~There are no entries in the conduct sheets of the accused.~~

2. ~~These sheets do not bear previously convictions or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* ~~The accused is in the present case in order consequent~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 4 + 7 days (from knowledge) days in military custody, making a total of 11 days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 29 years

6. The date of his ~~enlistment~~ attestation specified in his ~~attestation paper~~ record of service is 11 Dec 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs

8. The accused is entitled to deferred pay or gratuity in respect of N.A. service.

9. The accused is entitled to reckon 4 yrs service for the purpose of determining his pension, etc.

10. ~~The accused is in possession of or is entitled to the military decoration or military reward~~ (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). Cdn Volunteer Service Medal with Clasp.

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N.A.

12. (*In the case of an officer.*) The accused holds in the army the rank of N.A. dated

and in his regiment (*or* corps *or* department) the rank of dated

(71-0-10) W.C.30/245/1602 75,000 12/40 A.A.R.W.Ltd. Gp.698

8

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. M28851 Rank Cpl Name ROCKWELL, James F of 2 Cdn Pro Coy Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of Court which convicted or status of officer imposing or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	Field, 21 Feb 44	Condcut to the Prejudice of Good Order and Military Discipline. AA Sec 40.	Reverted to Private (from Sjt)	Nil

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~3rd~~ 11 day of January 1945

(B. W. [illegible]. LEE) A/Capt., C.O.
2 Cdn Provost Coy

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of N.A. years, ____

In the rank of ____ years, ____

In the rank of ____ years, ____

(INSTRUCTION.—If any entries in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph retained amended accordingly.)

No. M25851 Name Rockwell J.F. Sqn, Battery or Company — Corps Cdn Provost — Date of enlistment 11 Dec 40 — Badges — Service or Proficiency Pay

Company Conduct Sheet Date of last entry in — No and date of last drink — Period not reckoning towards freedom from extra fine — Sheet No — Signature OC Company, etc

MFM 6 (AFB 122) 40/PAM5/130 (3438)

Character H.C. Forbes (Capt)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (corresponding with trial)	By whom awarded	Remarks
Field		Sjt		WOAS A.A. 40 tried by FGCM for an offence under AA 40	Documentary	Reverted to Private	21 Feb 44	FGCM	H.C.F.

CERTIFIED TRUE COPY

from regimental records in my custody

[signature]
CAPT.
O.C. 1 PROVOST COY.
1 CDN INF. DIV.

PTO

STATEMENT OF ACCUSED RE DEFENDING OFFICER:

I wish an Officer assigned to my defence at my Court Martial, and if possible I wish Capt. H. B. Mole, RCEME of HQ 2 Cdn Corps to act as Defending Officer.

Signed,
In the Field,
3 Jan 45

J. Rockwell
M25851 Cpl ROCKWELL, J.F.

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the finding of the court but remit three months detention.

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (I. AA 57A. Delete if not used.)

(Sgd) [illegible] Brigadier
C.R.A., 2 CDN. DIV.

Date 15 JAN 45 Commanding Confirming Officer.

DDD-116

SGT. ROCKWELL. J.F.

DDD-116

FIELD GENERAL COURT-MARTIAL

CFA86 (To Item of AFA31) 40, 9 A) R (1608) (2664)

Convened by Order of Brig C.P. Fenwick DOWS, First Comd Cdn Army dated 19 Feb 44

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M-25851 Sgt Rockwell, J F, No 11 Pro Coy, Cdn Pro C

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		Guilty	Guilty	
2nd		Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be reduced to the ranks

(Sgd) W. C. Such Lieut. 21 Feb 44 (Sgd) John Catto Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 63. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 22 Feb 44 (Sgd) C. P. FENWICK, Brigadier, Commanding D.D.M.S. First Cdn Army. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
J.F. Rockwell.	26 Feb 44	CAPT

O.C. NO 11 CDN PRO COY

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

No illegalities or irregularities such as would warrant withholding confirmation

DATE 21 Feb 44 — Major, CDN ARMY

PROCEEDINGS REVIEWED — Capt — 12 Mar 44 — REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
M-25851	Sgt	James Frankling	ROCKWELL	No 11 Pro Coy, CDN PRO C

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 21 Feb 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (3) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1025 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to as interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 108, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	John Catto	HQ First Cdn Army
Member	Capt.	R.A. Wagner	First Cdn Army Sigs
Member	Lieut.	G.R. Castles	First Cdn Army Sigs
Judge-Advocate	Lieut.	W.C. Such	JAG, First Cdn Army
Prosecutor	Lieut	B.W.E. Lee	No 11 Cdn Pro Coy
Defending Offr	Lieut	W. Dale	No 1 C.A.C.R.U.

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~re-closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B 2E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his ~~their~~ plea(s) of Guilty to Not Guilty on ~~the~~ ~~four~~ ~~or~~ charge(s). The accused is ~~(are)~~ so informed, ~~and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ✗ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex D , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para. If submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 715.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Do you intend to call witnesses on your behalf ?
Ans Are they witnesses as to character only ? Ans
(*1. RP 185. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fnn 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf RP 85. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes - 372745 RSM. Rae J.M. No.11 Cdn Prov Coy.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(*1. AFB 355 or AFB 295. 2. AFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes - my many Commanding officers (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED, NO. M.25851 SERGEANT James Franklin ROCKWELL, NO. 11 CANADIAN PROVOST COMPANY, CANADIAN PROVOST CORPS, A SOLDIER OF THE CANADIAN ARMY OVERSEAS, PLACED ON ACTIVE SERVICE, IS CHARGED WITH:-

FIRST CHARGE SEC. 40 A.A. WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he, in the field

on 12 Feb 44 was improperly in possession of a wristlet watch, the property of No. L.13182 Sergeant E.O. Hanna, No. 11 Canadian Provost Company, Canadian Army Overseas, a person subject to Military Law.

SECOND CHARGE SEC. 40 A.A. AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he, in the field

on 12 Feb 44 was in possession of an M.B.M. 1, Part I, purporting ~~it~~ to be genuine, well knowing it to be false.

Approved for trial
under FR(Can) 540
and Overseas RO 2223.

Legal Officer
for DJAG

In the Field
15 Feb 44.

M. E. Byers Captain
(M.E. Byers)
Officer Commanding
No. 11 Canadian Provost Company
Canadian Provost Corps.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
19 Feb 44

(C. P. FENWICK) Brigadier
DDMS
First Cdn Army

FIELD GENERAL COURT-MARTIAL

CFA35 (In lieu of AFA2)
40/FAS/1697 (2665)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
M-25851	Sgt		James Franklin	ROCKWELL	No 11 Pro Coy, Cdn Pro C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 19 Feb 44 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	J. M. CATTO,		HQ First Cdn Army

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	R. A. WAGNER,		First Cdn Army Signals
Lieutenant	G. B. CASTLES,		First Cdn Army Signals

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lieutenant	W. W. M. SMITH,		First Cdn Army Signals

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Lieutenant	W. G. INCH,		HQ First Cdn Army

On Active Service in the Fd

in England *(Country.)*

Chas F Fenwick Brig Brigadier
(Signed personally. RP 105 fn 2.) *(Rank.)*

(C. P. FENWICK)

Date 19 Feb 44

Commanding DDMS, First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Exhibit A

MEDICAL INSPECTION

1. I certify that I have Medical Examined M25851 Sgt Rockwell, J.F., No.11 Provost Company, and he is Medical fit to undergo Field General Court Martial.

21 Feb 1944

M.O.
6 CCS., R.C.A.M.C.

B-72745 R.S.M. Rae, J.M. No 11 Can Rec Coy.

Duly sworn states.

Recognize accused. Have known him approx one year. He has been in same Coy as I. During time I have known him I have been his R.S.M. He has been an excellent soldier both as a Cpl & Sgt. He has carried out his duties in an efficient and soldierly manner.

No Cross examination

R.P. 83(6) complied with.

Defending officer.

I would bring to court's attention the accused's excellent record in over 3 yrs in army. He has risen to rank of Sgt (confirmed) Has never been up on any charge in that time.

Having taken the watch he was actuated by fear that he would be charged with theft but it will be seen he never attempted to dispose of it. It was an impulsive act on his part.

Exhibit B

SUMMARY OF EVIDENCE IN THE CASE OF

NO. M.25851 SERGEANT J.F. ROCKWELL

NO. 11 CANADIAN PROVOST COMPANY - CANADIAN PROVOST CORPS

The Commanding Officer directs that the evidence be taken on oath.

First Witness:

L.13182 Sergeant E.C. Hanna, No. 11 Canadian Provost Company, Canadian Provost Corps having been duly sworn states:-

On approximately the 20th. of Dec 43, I was showing my wrist-watch which was a "Monroe" 17-jewel gold wrist-watch to Sergeant Bayles of this Company in our Sergeants' Mess. The watch, having a broken crystal, was wrapped in an official envelope. When leaving the Mess, I did not wish to take it with me and left it wrapped in the official envelope on a shelf next to the fire-place. Forgetting it for that day, and remembering it on the morning of Dec 21, 1943, I found it to be missing.

At noon-hour of the same day, I asked every Sergeant of the Mess if they had seen it. None admitted having seen it, and on instructions from R.S.M. Rae of this Company, I had a notification of the loss of my watch placed in Part I Orders.

The accused declines to cross-examine the witness.

E.C. Hanna, Sergeant.

Second Witness:

S.72745 Regimental Sergeant Major J.M. Rae, No. 11 Canadian Provost Company, Canadian Provost Corps, having been duly sworn states:-

At approximately 1300 hours, on Saturday, 12 Feb 1944, I was instructed by the Duty Officer to place the entire camp on "C.B." until a kit inspection had been held. At approximately 1400 hours, I ordered all Sergeants to their rooms to lay out their kits for inspection. At approximately fifteen minutes later, I proceeded to a room, occupied by four Sergeants, accompanied by Lieutenant Dale and Lieutenant Stephen of this Company.

A search of kit was made by the two Officers, and a few moments later Mr. Stephen inquired if I could provide my room, as he wished to interrogate Sergeant Rockwell. He also requested my presence as witness. During the course of the afternoon, Mr. Stephen questioned the a/m Sergeant and at approximately 1630 hours, Sergeant Rockwell admitted having in his possession a watch, the property of Sergeant Hanna. Mr. Stephen requested Sergeant Rockwell to produce the watch. The three of us, Sergeant Rockwell, Mr. Stephen and myself then proceeded to Sergeant Rockwell's room, where he, (Sergeant Rockwell) produced it from a shelf directly above his bed.

- P.T.O. -

Lieutenant Stephen then ordered Sergeant Rockwell to accompany him downstairs to the O.C's office, with a view of obtaining a statement from the Sergeant.

During the course of the kit inspection, I noticed two Part I Pay Books among the Sergeant's effects. I presented these two pay books to Mr. Stephen, who examined them again, asking Sergeant Rockwell various questions as to why he had these two pay books in his possession. Sergeant Rockwell stated, that he had always had them and had filled out the various entries in one of them in a moment of idleness, at night whilst he was Orderly Sergeant. Mr. Stephen then took possession of them.

I have no further knowledge of the case.

Cross-examined by the accused.

Q. Where was one of the Part I Pay Books found?

A. They were found, Sergeant, on the table in your room.

Q. What personal effects did I have laying on the floor, and from where did I get these?

A. I am unable to state what personal effects were on the floor as I did not examine them.

Q. Where did you find the illegal Part I Pay Book?

A. I answered your question before, Sergeant. I found the two Pay Books on the table in your room.

Q. When in your room, did I state that I had made this Part I Pay Book when I was Orderly Sergeant?

A. You stated that during the course of the afternoon.

J.M. Rae, R.S.M.

Third Witness:

Lieutenant N.J.L. Stephen, No. 11 Canadian Provost Company, Canadian Provost Corps having been duly sworn states:-

At approximately 1300 hours on the 12 Feb 1944, acting on instructions from the O.C., I proceeded to make a physical check of the property of the Sergeants occupying the room in which Sergeant Rockwell is a member, in an endeavour to locate a watch which was suspected of being there. I was accompanied by Lieutenant Dale of the Canadian Armoured Corps, who is attached to this Company, and R.S.M. Rae of No. 11 Provost Company.

All the Sergeants in the room laid out their kits. Mr. Dale and the R.S.M. watching two of the Sergeants and I watching Sergeant Rockwell. Sergeant Rockwell was very slow and I had reason to believe that he knew something of the whereabouts of the missing watch.

In company with R.S.M. Rae, I then took Sergeant Rockwell into the R.S.M.'s room, where I proceeded to question him. After a considerable number of questions had been asked, to

- P.T.O. -

Which Sergeant Rockwell answered he knew nothing, he finally admitted having taken the watch and hiding it in his room. I then asked Sergeant Rockwell to come with me to get the watch.

We proceeded to his room where Sergeant Rockwell stood up on his bed and procured the watch from a crack between a shelf and the wall. I took possession of the watch and we proceeded to the O.C's office, where I cautioned Sergeant Rockwell and obtained a voluntary signed statement from him.

At the time of the kit inspection, Sergeant Rockwell had in his possession two M.B.M's, part I's. This was drawn to my attention in the R.S.M's room by R.S.M. Rae, who brought the Pay Books in. I questioned Sergeant Rockwell concerning the additional M.B.M. Part I which had all his particulars entered in it with the exception of his wife and children's names.

Sergeant Rockwell stated that he had obtained this Pay Book from the Orderly Room of No. 11 Provost Company one night when he was Orderly Corporal.

Cross-examined by the accused.

Q. How many Sergeants were in the room?

A. Four.

Q. During the kit inspection did you not notice a Part I Pay Book and where was it laying?

A. I noticed a Part I Pay Book laying on the table.

N.J.L. Stephen, Lieutenant.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused elected to give evidence as follows:-

First Witness For Defence:

The accused, M.28851, Sergeant J.F. Rockwell, No. 11 Canadian Provost Company, Canadian Provost Corps, having been duly sworn states:-

Approximately a month ago, Dec. 20th., 1943, I was roaming around the Sergeants' Mess, when I noticed a wrist-watch laying on the shelf where we kept the books and newspapers. I recognized the watch as that of Sgt. Hanna's, who was also a member of the Sergeants' Mess. I examined the watch, put it in my pocket and went up to my room, where I put the watch in a little tin box which I keep in my kit bag. At supper time, that same night, there was a general discussion at the table concerning the whereabouts of the missing watch.

- P.T.O. -

I did not take part in the conversations. It was my intention of returning the watch to Sergeant Hanna. About two weeks later, I removed the watch from the tin box and placed it in a small space between my shelf and the wall, situated about six feet above my bed. I left it there until a few days ago, when I took it down, intending to return it to the proper owner. I neglected to do that, so I put it in my great-coat pocket until the 11th. of Feb 44 when I put it back between the shelf and the wall, as Sergeant Hanna had left barracks for the week-end.

When I heard that there was going to be a kit inspection for a missing watch, I wished that Sergeant Hanna was here so that I could have returned it to him before the inspection took place. I did not know that I was suspected of having taken the watch. That is why I did not say anything while the inspection was going on.

J. F. Rockwell

J.F. Rockwell, Sergeant.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of four pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with.

C. B. Newman

C.B. Newman, Lieutenant,
No. 11 Canadian Provost Company,
Canadian Provost Corps.

Field
15 Feb 44.

No M25851 Name ROCKWELL, J.F. Sqn. Battery or Company Corps CDN PROVOST CORPS Date of enlistment 11-12-40 OC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/P&S/138 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				- NO ENTRIES -					

Exhibit "D"

CERTIFIED TRUE COPY:
21 Sept. 44

(O.B. Newman) Lieut.
No. 11 Cdn Provost Company,
Canadian Provost Corps.

(PTO)

Exhibit "C"

M.F.B. 335
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M.25851	SERGEANT	James Franklin ROCKWELL	No. 11 CANADIAN PROVOST COMPANY.

1. The following is a fair and true summary of the entries in the ~~Regimental Conduct Sheets~~ ~~Company~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	NIL	times	NIL	times
For		times		times
For		times		times
For		times		times

~~[illegible]~~ NIL

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~[illegible]~~

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for N/A beginning on the N/A day of N/A

4. The accused has been in confinement awaiting trial on the present charges, for nil ~~[illegible]~~ and 5 days in military custody, making a total of 5 days in custody, of which N/A days were spent in hospital.

5. The present age of the accused according to his record of service is 29 years.

6. The date of his attestation specified in his record of service is 11 Dec 40

7. ~~[illegible]~~

8. ~~[illegible]~~

9. The accused is in possession of ~~[illegible]~~ military reward (or is in possession of or entitled to). State any military reward. Canadian Voluntary Service Medal.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the Air Force regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit N/A dated N/A, and in his regiment (or corps), the rank of N/A dated N/A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

31 JUL 43 Date of promotion.

In the rank of SERGEANT years. 7 Months.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number N/A Rank N/A Name N/A of N/A Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		N/A		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 16th day of February 44

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

McBeyer Capt
O.C. 4011 Provost Coy.

192 A. A/C. G. M.S. Rockwell, R.L. 10/R./207
H. N. S. R.

Correspondence to be PINNED here.

3rd Inf Bde
GARF
MAR 4 AM
ORDERLY ROOM

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 20th day of February, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 3rd Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~ } G.B.P.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*~~I am unable to appoint~~ —

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

*~~(3. Three Officers having more than one year's service.)~~ } G.B.P.

~~for the following reasons, namely :—~~

President.

Rank.	Name.	Regiment.
Major	E. M. Styles	L. & Y. R.

Members.

Rank.	Name.	Regiment.
Captain	E. A. A. Doiron	R. 22e R.
Lieut	J. F. Turney	Sig. Sec.
Captain	H. T. Ewatt	"B" Coy. 5 Fd. Amb.

Waiting members.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed G.B. Price Brigadier,
Commanding 3rd Infantry Brigade.
Commanding Convening Officer. C.A.S.F.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F. 39793 - A/CQMS Rockwell, R.L. W.N.S.R.	See Charge Sheet attached 1st charge - Sec 40 A.A. 2nd " - Sec 40 A.A.	GUILTY NOT GUILTY	GUILTY SEE NOTE ATT. TO PROCEEDINGS MARKED APPX 2. NOT GUILTY. To be placed under stoppages of Pay to make good the amount of £21-17-0 still outstanding	Confirmed [signature] Brig Cdg 3 C.I.B

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" NO.

Answer (to be recorded on separate sheet if necessary):—

(Signed) [signature] Brigadier Cdg (Signed) E M Styles Major C.Y.R.

Commanding Officer (e) Brigadier, President.

Commanding 3rd Infantry Brigade.

C.A.S.F.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 25th day of Feb 41, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 25th day of Feb 1941

E M Styles Major.

President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 702 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

Signed this 1st day of March 1941

[signature] Brigadier

Commanding 3rd Infantry Brigade.

Confirming Officer.

C.A.S.F.

Promulgated and extracts taken in the case of F 39793 A/CQMS ROCKWELL R.L.

(a) (Dated) 3 March 41 (Signed) [signature] Adjt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

C H A R G E S H E E T

The accused, Regimental Number F39793 A/CQMS Rockwell, R. L., a soldier of the West Nova Scotia Regiment, Canadian Army, is charged with,

FIRST CHARGE
SEC. 40
ARMY ACT.

When On Active Service, Neglect to the prejudice of good order and Military Discipline,

in that he,

did, at Guillemont Barracks, during the month of April, 1940, so negligently perform his duties as N.C.O. in charge of Sergeants' Mess, Guillemont Barracks, as to be unable to account for £28/7/0 of the monies entrusted to him during said month of April, 1940.

SECOND CHARGE
SEC. 40
ARMY ACT.

When On Active Service, Neglect to the prejudice of good order and Military Discipline,

in that he,

did, at Guillemont Barracks, on or about 31 May 40, while employed as clerk in "D" Company, West Nova Scotia Regiment, so negligently perform his duties as to be unable to account for £5/14/6, of monies entrusted to his care.

A. A. Ernst major

A. A. Ernst, Major
A/Officer Commanding
West Nova Scotia Regiment

19 Feb 41

C. B. Price

A

25th February 1

F39793 A/CQMS Rockwell,H.L., West NSR

Maj.Harris,K.P. West NSR

Lieut. Parent, S.G. H 22e R

Nil

No

first x

xxxxxxxxxxxxx

PROCEEDINGS OF A FIELD GENERAL
COURT MARTIAL HELD IN THE FIELD
ON THE 25th DAY OF February 1941

Trial of No.W39793 A/CSMS Rockwell, R.L., West NSR

Prosecutor. Maj. Harris, A.F. West NSR

Defending Officer. Lieut. Parent, S.C. R 22e R

Officers under Instruction. Nil

President. Maj. E.M.Styles, Carlt.& York R

Members. Capt. E.A.A.Doiron, R 22e R
Lieut. J.G.Turney, 1 Div Sigs

Wainting Member. Capt. H.T.Ewart, "B" coy, 5 Fd Amb

---

1. The order convening the court ~~is~~ was read in the presence of the accused.

2. The accused ~~is~~ was asked the following question:-

Do you object to be tried by the President or any Members of the Court, whose names you have heard read ower,

Answer - No

3. The President and Members were then duly sworn.

4. The first charge was read to the accused.

5. The accused pleads guilty.

6. The accused was warned that if he pleads guilty, he is guilty and the court must find him guilty. (R.P. 35 B.)

7. The second charge was read to the accused.

8. The accused pleads not guilty.

9. The accused was then asked the question on Page 2 of A.F.A. 3, and his answer (No) recorded thereon.

10. The prosecution did not choose to make an opening address.

PROSECUTION
First Witness. #43556 Pte.Davis,C.L.,West NSR, having been duly sworn,states:
On April 1,1940 I was Pl Sgt, 17 Pl "D" Coy,West NSR.

Q. Do you know the accused and is he in this room?

A. Yes. I know the accused.(Points him out to the court)

Q. In your duties as Pl Sgt did you have anything to do with the monies?

A. On or about the end of April we were collecting money for Bn pictures and I collected from men, money for pictures and barrack damages and turned it over to my PSM, Sgt.-Maj.Nauss E.E.(Now CSM). After turning money over to him he counted it, sorted barrack damage money from theBn picture money, found it correct from the list of names which I had at the time, placed the money in separate envelopes and took charge of the money.

Q. Did you receive a receipt for this money?

A. No.

Q. How much money was involved?

A. £5/14/6.

Q. Do you know whether pictures were received?

A. Not to my knowledge.

The defence did not wish to cross-examine the witness.

Second Witness. #43555 C.S.M.Nauss, E.E., of Bn.H.Q., West NSR. (Being in hospital is unable to be present to give evidence).

Third Witness. #39656 S/Sgt. Morash, W.L., of H.Q.Coy.,West NSR, having been duly sworn,states:
On or about April 1,1940, I was employed in Bn Orderly Room of West NSR. My duties were making up syllabus charts and other clerical work for the C.O. and Adjutant. I also kept accounts for P.R.I.

Q. Did your duties invlve collecting money?

A. I had no power to collect money but had to keep records of same which would be handed over to me from time to time by P.R.I.

Q. Do you remember receiving money from Sgt.-Maj. Nauss?

A. No.

Q. Did you receive money from A/CSMS Rockwell?

A. No.

Q. From any other member of the regiment?

A. Yes. I was delegated by the Adjutant to take orders and collect money for regimental pictures for any member of West NSR who wanted same.

Q. What sort of records did you keep in connection with money for pictures?

A. When money was turned over to me by anyone wanting pictures, I put it in an envelope and made a record of same on outside envelope and paper which was put in envelope.

Q. Did you keep the same records for barrack damage?

A. No. Barrack damages were collected by P.R.I. and only turned over to me for record purposes, and to make up deposit slips.

Q. To the best of your knowledge you received no money for 17 Pl "D" Coy for photos?

A. That is correct.

Defence cross-examines the witness.

Q. At this time were you handling money for P.R.I.also?

A. That is correct, but only as passed over to me for deposit by P.R.I.

Q. You kept a record of that?

A. Yes.

Q. Was there any amount credited to D Coy for barrack damages?

A. Over a period of time, yes, but I do not remember if there was any collected for D Coy on or about the first of April, 1940. I have records to show that.

Fourth Witness. Capt. R.H.Clennett, West NSR, having been duly sworn, states:
On my arrival in England and joining the West NSR here, I was appointed to regimental audit board. I have remained on that board since that date.

Q. Do you remember anything in connection with the collection of money for regimental pictures on or about that date?

A. Yes. I believe before I came across pictures had been taken of the regimentand while I was first here certain monies were collected for purpose of paying for individual pictures. These monies did not pass through the regimental accounts. They were collected and turned in to the Sm orderly room. When the regiment prepared to leave for France, which was approximately the first of June, 1940, this money was forwarded to Panora Ltd. and it was arranged that the pictures would be sent in one parcel to Captain Stedman at the Holdance with the list submitted.

Q. How were barrack damages collected and handled?

A. It was the custom in the regiment to collect from each man at the last pay day of the month, a sum of six pence per month in order to pay for minor repairs such as broken windows, and so reduce the barrack damages when the unit left the billetts. This money was collected and turned into Hq Orderly Room. Prior to my arrival no records of regimental accounts were maintained, but collections for the month ending 30th April 1940, and subsequent collections were turned in to either Maj Ernst, P.R.I., or S/Sgt. Morash.

These collections were to the best of my knowledge, all recorded in regimental books which were set up at that time. Collections were received from all companies for the month ending 30th April 1940, but according to records no collections were received for month ending 30th May 1940, except of "B" Coy.

Q. There was no chance of this picture money being allocated to another account?

A. No. The picture money could not have been placed in another account.

Defence cross-examines the witness.

Q. Have you the records with you?

A. I have the ledger and cash-receipts and payments.

Q. Could I see these books?

The books were produced.

Q. Page C1, 25 Apr 40, D Coy, Credited with £2/16/0 Can you explain that?

A. Yes. That money was collected for barrack damages and was credited to the company for that purpose, Page 3 of ledger.

Q. Has that sum been deducted from the amount mentioned in the charge against A/CQMS Rockwell?

A. No. This sum of money was collected for the month of April and refers to a different transaction.

Witness questioned by accused.

Q. On 25th of April,1940, entry in receipts for £2/16/0 for barrack damages. According to records and my memory,barrack damages were only collected from "D" Coy on one occasion.

A. Barrack damages should have been collected from all companies for month ending 30th of May, 1940, With the exception of "B" Coy, whose payments were later refunded, no monies were received, according to the records, from any company. Therefore,according to the records since I arrived, "D" Coy only turned over barrack damages for the month of April.

Q. Could you locate the person to whom £2/16/0 was paid on the 25th. of April, 1940?

A. No. I can only say it would either be Maj.Ernst or S/Sgt. Morash.

Q. Is there a copy of receipt for this money?

A. I don't believe there is.

Court adjourned until 1400 hours.
Court sits again at 1400 hours.

Defence produced signed statement by Maj.F.B.Courtney, West NSR.
Statement read to the Court.
(Statement marked Appx 1, and attached to the proceedings)

DEFENCE

On the strength of Maj.Courtney's statement,that he received and turned over this money,there is no case against A/CQMS

Rockwell on the second charge.

After deliberations the Accused was brought before the Court and informed that he was found not guilty of the Second Charge.

Closing address of the Defence re first charge:

The error was discovered by the second audit board approximately 18 months after the books had been audited and found to balance except for approximately £4. That error escaped the notice of the officers sitting on the board and they are gentlemen who are supposed to have higher education, wider knowledge and experience, whereas the accused is an N.C.O., probably more liable to make mistakes.

Sgt.Rockwell recognized he was at fault and has already started to pay, to make good the amount. The amount of £28/7/0, which he is willing to pay and has started to pay already, is in itself a severe punishment for his mistake.

In view of these two facts lenience is begged for.

Reply by Prosecution:

It is true the system for calculating was complicated.

In the course of almost one year it is not considered that £6/10 is sufficient indication of intention to repay £28/7/0

President:

Who was to collect £2 per month from A/CQMS Rockwell?

A. So far as I know I.R.I. Sgt's Mess.

President:

Did A/CQMS Rockwell know to whom he was to pay the £2 per month?

A. I do not know. There has been no change in personnel in charge of funds.

Q. Does the accused wish to call evidence as to character?

A. No.

Prosecutor being duly sworn, presents MFM 6 for A/CQMS Rockwell.

Q. Do you wish to address the Court?

A. No.

Q. Do you wish to call other witnesses?

A. No.

President declares Court closed.

E.M.Styles

E.M.Styles,Major
President.

Appx.1

24 FEB 1941.

I the undersigned make the following statement on behalf of Sgt Rockwell.
In the early part of April 1940, I took command of "D" Coy. During that month certain sums of money were collected by the platoon commanders and turned over to Sergt Rockwell who was acting as Coy clerk. This money was turned over to me and I in turn handed it over to the Bn and obtained a receipt for the same, from Major Ernst. I firmly believe that there were two seperate lots of money handed over at the same time, but I can not swear to this, nor to what the amounts were. The receipt for this money was unfortunately destroyed along with other papers at the time when the unit was preparing to go to France.
I am prepared to swear however that there was only one time that money was collected, from the time I took command of the Coy, while the Regt was quartered at Guillemount Barracks, and that money was turned over to Major Ernst by me personally and a receipt obtained for the same.

I am willing to make the above statement under oath.

F.B.COURTNEY, Major.

Appx. 2

The reason why the Court has not dealt more severely with the accused, is:

First. It has not been proven to the satisfaction of of the Court, that the neglect was wilful.

Second. That as the records in the case are not available, the Court cannot establish wherein lies the actual fault. However, as the Accused has accepted responsibility for the £28/7/0 and has already paid £6/10/0 the Court is of the opinion that the balance of £21/17/0 still outstanding be made good by the accused.

The Court respectfully submits that this matter could have been settled by a Court of Inquiry and therefore no Court Martial was necessary.

E.M.Styles,Major
President.

No

No

Nil

Maj. Harris, E.P. West NSR

No

(See proceedings)

Date of enlistment } 26-10-39 Sheet No. 1

No. F 39793 Name ROCKWELL, R.L. Squ., Batty., or Company } "D" Corps WEST NSR.

Signature O.C. Company, etc. } F.B. COURTNEY MAJOR

Date of last entry in Company Conduct Sheet } No. and date of last drunk } G.C. Badges } Long Service and G.C. Pay }

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order disposing with trial	By whom awarded	Remarks

Cert. fied to be a true copy:
[illegible] Lieut
Adjutant

Army Form B.122

F-39793 A/C[illegible] Rockwell, R.L.

West N S R

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED

(a) The accused has been in confinement awaiting trial on the present charges for ..... days in Civil Custody and ...N.O.... days in military custody [illegible] a total of ..N.O.. days of which ..nil.... days were spent in hospital.

(b) The present age of the accused according to his ~~attestation paper~~ Pay Book is ..32....

(c) The date of his attestation specified in his ~~attestation paper~~ Pay book is .26-10-39.

(d) The accused is in possession of, or entitled to no military decoration or military reward, (or is in possession of or entitled to

nil

I hereby certify that the foregoing particulars are true extracts from the ~~[illegible]~~ Pay Books of A/M soldier

J. Millard Lt & Adjt
West N S R

JJ 42

L/CPL ROCRAY H

JJ-42

Correspondence to be PINNED here.

SC
5 A-3

Army Form A.3.

R. O.
Bk CANADIAN
18 APR 1943
INFANTRY
BRIGADE

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service this SIXTH day of APRIL, 1943,

Whereas it appears to me, the undersigned, an officer in Command of 6 Can Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

Temp/ A Arnoldi Comp

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

~~*I am unable to appoint:—~~

~~*(1) Three Officers to form the Court.~~

~~*(2) Field Officer as President.~~

~~*(3) Three Officers having more than one year's service.)~~

~~*Reasons, namely:—~~

RECEIVED
20 APR 1943
Legal Branch
Cdn. Corps.

85

President.

Rank.	Name.	Regiment.
Major	A.Arnoldi	Fus M R

Members.

Rank.	Name.	Regiment.
Capt	W.E.Osler	Cameron of C
Lieut	C.D.Grayson	S Sask R
Waiting Member Lieut	J.A.Lefebvre	Fus M R

*Signed [signature] Col

Temp/ Commanding (J.G. Gauvreau), Lt/Col
6 Cdn InfBde
Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-62358 A/L/Cpl HENRI ROCRAY Fus M R	First Charge A.A. Sec 15 (1) See Charge Sheet Attached	Not Guilty The accused changes his plea (RP 38) to one of Guilty	Guilty To undergo detention for 60 days & to be put under stoppage of pay of £1-2-4 to make good cost of return 9 April 43 A Arnold Maj	Confirmed Guy Gauvreau Lt Temp Comd 6 C.I.B. 12 Apr 43 Confirmed Gainsborough
D-61949 Fus WILLIE TREMBLAY Fus M R	First Charge A.A. Sec 15 (1)	Guilty	Guilty To undergo detention for ~~150~~ 150 days. 9 April 43 A Arnold Maj	21 May 43

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) Guy Gauvreau Lt Col (Signed) A Arnold Maj
(J.G. Gauvreau), Lt-Col
Temp/ Command XX 6 Cdn Inf Bde
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 9th day of April 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
~~*(3) The interpreter)~~ a.
~~*(4) The officers under instruction)~~
were duly sworn.

* Omit if not applicable.

Signed this 9th day of April 1943

A Arnold Maj
President of the Court Martial.

C. Certificate in case of death sentences. a

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ [illegible]

Signed this 12th day of April 1943

Gainsborough Guy Gauvreau Lt Col
Confirming Officer. Temp Comd 6 C.I.B.
20 May 43 6 Cdn Inf Bde 12 Apr 43

Promulgated and extracts taken in the case of D 62358 Pte (a/L/cpl) Rocray H
(a) (Dated) 13 Apr. 43 (Signed) R Paquette Lieut & adjt.

Promulgated and extracts taken in the case of D 62358 Pte H Rocray Fus M.R.
(Dated) 24 Apr. 43 (Signed) R Paquette Lt & adjt Fus M.R.

Promulgated and extracts taken in the case of D62358 Pte H. Rocray Fus M.R.
(Dated) 20 July 43 (Signed) A D Extraze Lieut

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(12759) Wt. 40225—[illegible] 1/40 P.St. G. [illegible]

B²

(J.G.Gauvreau)Lt-col
COMMANDING
Les Fusiliers Mont-Royal
Canadian Army Overseas.

In the Field
this 7th day of April 1943

To be tried by Field General Court Martial

(J.G.Gauvreau), Lt-Col.
Temp/Comd 6 Cdn Inf Bde

B²

Advocate Maj.

MEDICAL INSPECTION

FUSILIERS MONT ROYAL, C.A.(O)

I hereby certify that I have examined Regt'l No. D 62358 Rank. L/Cpl

Name Rocray, H. this morning and That I found him MENTALLY

and PHYSICALLY FIT to undergo trial by F.G.C.M.

Place In the Field.

Date 9 Apr. 43

HT.

Jean Or Paul Victor Capt RCAM

Medical Officer

[illegible]

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Mch Field on the 9th day of April 1943 by order of Lieut Col J. G. Yaurneau

Temp/ Commanding 6 Can Inf Bde

dated the 8th day of April 1943

President.

Major A Arnolds Fus M. R.

Members.

Capt W. T. Osler Cams of C.

Lieut C. D. Grayson S. Sask R

, Judge Advocate.

Trial of* D62358 A/L/Cpl Henri Roeray Fus M R

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~

, ~~waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt J. Langlois Fus M. R.

~~Counsel~~‡ or defending officer† Lieut Y. Beaulne Fus M R

At 1030 o'clock the Trial commences.

The order convening the Court is read, and is marked , signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. Wt.W16839/78. 25,000 sets. 6/40. K. & H., Ltd. G687/11. Forms A 9/55.

B

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~ a

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 35 (B) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*
The accused then changed his plea to one of ~~not~~ Guilty (R.P. 38) which is duly recorded

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

The accused having pleaded Guilty to the ~~_____~~ charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No Sir

Question. Do you intend to call any other witness in your defence?

Answer. yes Sir

Question. Is he a witness as to character only? *Answer.* yes sir

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence? No, Sir.

Answer. The accused in his defence says† N/A

~~[hands in a written address which is read, marked signed by the President and attached to the proceedings.]~~

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

D 2

~~See statement all marked D 2~~

a

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused D62359 A/L/Cpl Rocroy H Cas In R is found guilty of absence without leave

†The summary ~~(or abstract)~~ of evidence is read, marked Exhibit "A" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Yes

Answer. ~~The accused in mitigation of punishment says:—~~

[or hands in a written statement, which is read, marked CC', signed by the President, and attached to the proceedings.] (incl statement by Officer defending ~~marked D2~~

Instruction. † If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give ~~evidence yourself or~~ to call any witnesses as to character ?

Question to the accused.

Yes

Answer.

Evidence as to character

Incl. Statement marked DD

CC1 CC1 ~~DD~~ a.

I make the following statement in mitigation of punishment :

The accused has been serving in Les Fusiliers Mont-Royal since 1937. He was a serjeant when the war broke out but resigned his stripes on 1 Jul 41 in order to come overseas. His conduct as a private soldier and as a N C O has always been exemplary, as a perusal of his army record will show.

When his battalion went into action, he was struck off the list of those slated to cross the Channel, as he was then under treatment, but pleaded with his C O who finally accepted him. He fought bravely for nine hours on the shores of Dieppe.

He has retained his American citizenship, and would have liked to be transfered to the United States Navy, having had a few months training with the Sea Cadets. But this was consistently refused him. He is now employed as a storeman. In December he was promised a promotion as C Q M S but after having passed his test successfully, he saw another serjeant get the job in his place.

The foregoing facts might explain, even if they do not justify, his absence without leave.

I respectfully urge the Court to be lenient towards the accused.

Lieut. J. Beaulne
Offr. Defending

CC1

Arnaldi Coy.

DD ~~DA~~ ~~Cat~~ A

D62050 Sgt P. Dabue M.M. being duly sworn states:

"I have known L/Cpl Racray ever since I have been in this Unit in May 1940. He was an N.C.O. under me and he has always been a good soldier. I had the intention to ask my officer to make him a crew commander in the Mortar Pl in which as was a Sgt. He went to the Dieppe raid but he was not in my detachment then. When Racray's brother left he asked me to look after him. I noticed that the departure of his brother changed him a lot. I know that he asked for a transfer in the U.S. Navy.

A A [illegible] major

DD

E

~~Finding.~~

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding. AA May

~~The Court find that the accused~~

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before Sentence.*

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it. Capt J. Langlois is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes - AFB 296 + MFM 6

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked 1 & 2, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* No, the Adjt has.
The Adjt, Capt C. Langlois is then brought in & sworn in. Answer Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused. No

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No Sir

The Court is closed for the consideration of the sentence.

28rd.

RECORD of the Declaration of a Court of Inquiry assembled at : In the Field, on the 28rd Day of March 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No: D-62358 A/L/Cpl Rocray, Henri.

D

DECLARATION..

The Court declare that No: D-62358 A/L/Cpl Rocray.H. illegaly absented himself without leave, At: 1700 Hrs on the 6nd, day of March 1943, and that on the 28rd March 43, he was deficient, and that he is still deficient of the following articles....

C E Morris Maj.

ARTICLES.	VALUE.			LESS 20%		
1. Badge Cap.	0.	2.	0.			
1. B.D. Blouse Serge.	1.	7.	8.			
1. B.D. Trouses Serge.	1.	7.	11.			
1. Boots Ankle. (Pair)	1.	1.	6.			
1. Braces. (Pair)		1.	6½.			
1. Brasses Cleaning.			2.			
1. Brush Shaving.		1.	4.			
1. Cap Field Service.		3.	8.			
1. Comb.			2.			
1. Gloves woolen khaki.(Pair)		2.	7½.			
1. Hold all.			9.			
1. Jacket sweater.		9.	6.			
1. Razor.		1.	10½.			
1. Bag Ration.			1½.			
1. Respirator Haversack.		6.	6.			
1. Face Piece.		10.				
2. Ointment (Boxes).		1.	7.			
1. Anti-Dim.			5.			
6. Eyeshields...		2.	4.			
TOTAL..				1.	10.	4¼.
	6.	1.	5.	4.	11.	01½.

C E Morris Maj. ----------President.

Signed at: In the Field.

Eng Lenque Lieut ----------Member..

[illegible] Lieut

This: 28rd Day of March 1943.

----------Signature of Commanding Officer.----------

LT-Col J.E. Tanvreau.

Certified true copy

[illegible]

Capt & Adjt.

Off'' CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr.43

I CERTIFY that No. D-62358 . Rank L/Cpl. . Name . Rocray, W. . . . . .

Unit Support Coy. Fus. Mont Royal. was arrested at . Brighton, . . (place)
2nd. Div.

at . 1700 . . (hour) on . 1-Apr-43 . . (date) and that at the time of his arrest he was wearing (Military Uniform) or (xxxxxxxxxxxxxxxxxxxx) Signature of Provost-Marshall, Assistant Provost-Marshall or other officer of the Canadian Officer of the portion of his Majesty's Force or the Officer, warrant-officer, or non-commissioned officer in charge of the Detachment of the Canadian Provost Corps, Canadian Army into whose custody the above-named person was taken in arrest. (Strike out part inapplicable).

. . . . . Capt.
(Pers) D. A. P. M.,

Expense Voucher Re—:

Ref: K.R. & O. (Can) 539

Reg. No. H 62358 Rank L/C Name Rocray, H Unit F.M.R.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ Unit ~~From~~: London from Brighton

Date	Particulars	Amount £	s	d
30 Apr. 43	Escorts return fare from LONDON To Brighton		7	11
	Prisoners single fare to LONDON From Brighton		4	0
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		11	11

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/F & S/482

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. 21/62358 Rank L/C Name Rocray, H Unit FMR

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
3 Apr. 43	Escorts return fare from LONDON To Billingshurst		6	11
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Billingshurst		3	6
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		10	5

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/P & S/483

[signature] Maj.

Exhibit A

SUMMARY OF EVIDENCE

In the case of DOROSE A/L/Cpl Henri Rocray, Les Fusiliers Mont-Royal, an R.C.O. of the Canadian Army Overseas.

The accused is informed of his rights.
The accused demands and the C.O. directs that the evidence will not be taken on oath.

FIRST WITNESS FOR THE PROSECUTION: Capt J.J.J.A. Langlois, Les Fusiliers Mont-Royal, prosecuting officer, makes the following statement:

"I present :

Certificate of apprehension in accordance with A.A. 16(1) (jj), dated 1 Apr 43.

Certificate of expenses in accordance with K.R. [illegible] (Can) [illegible], dated 2 Apr 43 . (Brighton-London)

Certificate of expenses in accordance with K.R.& O(Can) [illegible], dated 2 Apr 43 (London-Billingshurst)

Certified true copy of a Court of Inquiry, dated 27 Mar 43.

All of which relate to the accused, whom I recognize".

J. Langlois capt.

The accused declines to cross-examine

SECOND WITNESS FOR THE PROSECUTION: D[illegible] Fus Michaud C., Les Fusiliers Mont-Royal, having been duly warned, makes the following statement:

"At about 1900 hrs on the 6th of March 1943, during SPARTAN exercise, I was with L/Cpl Rocray at 1st Can Corps H.Q., waiting to be dispatched to our Field Unit. At the time and date mentioned above, we both left the camp and went A.W.L."

Fus. C. Michaud

The accused declines to cross-examine

The accused having been duly cautioned in accordance with R.P. 4(e), says :

"I have nothing to say" Sgt. H. Rocray.

Certified that R.P.4(e) have been complied with.

In the Field
7 Apr 43

[illegible]

[illegible] Capt & Adjt
Les FUSILIERS MONT-ROYAL
Canadian Army Overseas.

LIST OF WITNESSES

In the case of D62395 A/L/Cpl Henri Rooray, Les Fusiliers Mont-Royal, an N.C.O. of the Canadian Army Overseas.

PROSECUTION

Capt J.J.J.A. Langlois, Les Fus M.R., prosecuting Officer.
D62[illegible] Fus Michaud C., Les Fus M.R.

DEFENCE

NIL

LIST OF EXHIBITS

Exh A. Certificate of expression in accordance with A.A. 108(1)(jj), dated 1 Apr 43.
Exh B. Certificate of expenses(Brighton/London), d/3 Apr 43.
Exh C. Certificate of expenses(Dunton-Billinghurst) dated 5 Apr 43.
Exh D. Certified true copy of Court of Inquiry, d/27 Mar 43.

STATEMENT BY ACCUSED

I, D62395 A/L/Cpl. Rooray H., Les Fusiliers Mont-Royal, an N.C.O. of the Canadian Army Overseas, desire to have an officer to represent me at my trial by Field General Court Martial.

I desire the services of Lieut. K. Brouhre, Les Fus M.R.

This is to certify that I have been given free of charge copy of the proceedings, documents, etc, relating to my trial by Field General Court Martial.

Lcpl. H. Rooray.....

In the Field
This 7th day of April 1943

A. Arnold Maj.

No. D62358 Name BOCRAY H. Sqn., Battery, or Company Corps Fus M.R. Date of enlistment 4-7-40 G.C. Badges Service or Proficiency Pay M.F.M.S. (A.F.B. 122) 500M—S.24 (1)(3) H.Q. 1272 (1)(3)

Date of last entry in Company Conduct Sheet 13-1-4 No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Witley	28 Apr 41	Pte		Conduct to the Prejudice, etc used abusive language towards L/Cpl Cirotenko at Reveille and at Reveille roll call.	Cpl Leclorc L/Cpl Cirotenko.	7 days C.B.	28 Apr 41	Capt. H.N.Langlois	
In the Field	14 Sep 42	Pte	-	W.O.A.S. Neglect to obey an order given by a superior officer in that he on the 14-9-42 by about 0900 hrs he neglect to "Double March" when told so.	P48675 CSM Basiouk D61030 Sgt Mercier E4690 A/Sgt Landriault	P. 14 days C.B.	16 Sep 42	Capt R.H.Lajoie	H.Q. Coy.
In the Field	7 Jul 42	Pte		A.A. Sec 15 (1) W.O.A.S. .A.W.L. from 0800 hrs 7 Jul 42 till 1800 hrs 13 Jul 42 Total 5 days 5 hours.	CSM McLean N.	7 days C.B. 3 days pay	10 Jul 42	Capt Jones F.	Forf 6 dd pay FRAI 149(11.43)

Price	Date of offence	Rank	Number of [illegible]	Offence	Name of Proprietor	Punishment awarded	Date of award or of order, [illegible]	By whom awarded	Remarks

Certified true copy.

[signature] Capt. & Adjt.

(Substitute for A.F.B. 296)
or M.F.B. 355

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. D62358 Name A/L/CPL ROCRAY H Unit LES FUS MR

Age 21 Married or Single SINGLE NO. Of Dependents 1 (FATHER)

Date of Attestation 1 July 1940

No. Of Days spent in close Arrest (To date of Trial)

Civil nil Military 7 Hospital nil Total 7

Dates of Promotions, Appointments and Confirmation of Rank, If any

Aug 1940 - A/Sgt in Canada

A/L/CPL 16 Oct 1942

A CERTIFIED TRUE COPY OF M.F.M.6 MUST ACCOMPANY THIS FORM

(Officer i/c Records)

[signature] Unit

Capt & Adjt.

7 Apr 43

Dated at Richfield

This 9 day of April 1943

(To be dated and signed as for date of trial)

J. Fanglers Capt [signature] Maj.

141 E. Gm. Rodd. L.

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here.

The accused elected trial by Court Martial

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this Fifth day of January, 19 42.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery 2 Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[I am unable to appoint :—

*(1. [illegible]

*(2. [illegible]

*(3. [illegible]

for the following reasons, namely :—]

In my opinion, military exigencies, namely the dispersion of units, and difficulties of communication, and other difficulties, render it inexpedient to observe the provisions of those rules inconsistent with appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

President.

Rank.	Name.	Regiment.
Major	W.E. Fleury	4 Cdn Fd Regt.

Members.

Rank.	Name.	Regiment.
Capt.	R.E. Lucy	6 Cdn Fd Regt.
Capt.	J.V. Rose	2 Cdn A Tk Regt.
Lieut. (Waiting Member)	J. Kinnon	4 Cdn Fd Regt.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed R A Bruce Brigadier,

Commanding R.C.A. 2 Cdn Div.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D.6176 Gunner Rodd, L. 5 Cdn Fd Regt.	FIRST CHARGE: A.A. Sec. 8(2) Using insubordinate language to his superior officer, (see charge sheet att.)			Charge Withdrawn (vide page 11) RAB.
	SECOND CHARGE: A.A. Sec. 8(2) Using insubordinate language to his superior officer, (see charge sheet att.)	not guilty	guilty.	
	THIRD CHARGE: A.A. Sec. 40 Conduct to the prejudice of good order and military discipline, (see charge sheet att.) marked '4'.	not guilty	not guilty. R.P. 45(1) and (R.P. 111(5)) are complied with. 10 Days Detention plus 7 days forfeiture of pay.	Confirmed RAB.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—No

(Signed) R.A.B. Fraser Brigadier (Signed) William S. Stewart Major
Commanding R.C.A. 2 Cdn Div. Convening Officer (e) President

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the ninth day of January '42, and duly tried the person named in the Schedule, and that the plea, finding, and sentence in the case of ~~each~~ such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

R.P. 110(1) complied with.

Signed this ninth day of January 1942

William S. Stewart Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (c) on page 762 M.M.L. 1940.

~~I~~ certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*(I ~~direct that the soldier named in the margin be not committed to prison until further orders~~.)

Signed this twelfth day of January 1942

R.A.B. Fraser Brigadier
C.R.A., 2 CDN. DIV.
Confirming Officer.

Promulgated and extracts taken in the case of D.6176 Gnr Rodd L.

(a) (Dated) Jan 12 1942 (Signed) [illegible] Capt
5 Fd. Regt. R.C.A.C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(43758) Wt. 46113—951 400 3/40 J.P. & Son

CHARGE SHEET

The accused, D-6176, Gunner LLOYD HHA RCDD, 5th Field Battery, 5th Field Regiment, R.C.A., is charged with:

FIRST CHARGE
(A.A. Sec 8 (2)

While on active service, using insubordinate language to his superior officer,

in that he,

at approximately 1700 hrs, ~~xx~~ 4th December 1941, at Milton Place, Sussex, when checked by Lieut E.B.PRY, then 5th Field Battery 5th Field Regiment, said to him, "I don't give a fuck if I am late," or words to that effect.

SECOND CHARGE
(A.A. Sec 8 (2)

W.C.A.S., using insubordinate language to his superior officer,

in that he,

at approximately 0300 hrs, 6th December 1941, at Milton Place, Sussex, said to Capt. H.A. Farthing, 5th Field Battery, 5th Field Regiment, "Well, now that you have me under arrest, go ahead and push it, since I want to get out of the Regiment anyway. I do not care about your opinion of me or my work, and I want to leave this Regiment," or words to that effect.

THIRD CHARGE
(A.A. Sec 40)

W.C.A.S., conduct to the prejudice of good order and military discipline,

in that he,

at approximately 0330 hrs, 6th December 1941, at Milton Place, Sussex, while on duty as an "Ack" in the Command Post of "B" Troop, 5th Field Battery, 5th Field Regiment, was unable to supply correction of the moment information, due to the fact that he had previously destroyed this information.

In The Field
To be tried by F.G.C.M.

5th day of January, 1942

Brigadier,
C.R.A. 2 Cdn Div.

Lt. Col.
Comdg. 5 Fd. Regt. R.C.A.

b For the Defence Capt. D.W.M. Cooper.
5 Fd Regt.

ABSTRACT OF EVIDENCE

IN THE CASE OF

D-6176, Gnr. RODD, L., 5th Fd Battery, 5th Fd Regt., R.C.A.

Lieut T.H. Montgomery, 5th Fd Regt R.C.A. is directed by the C.O. 5 5th Fd Regt., R.C.A., to take an abstract of evidence in the above case according to the provisions of D.R.O. No. 776, App. "A".

FIRST WITNESS

Capt. E.B. Fry, 13th Fd Regt, R.C.A., stated:

On 4th Dec/41 I was O.P. officer for the 5th Fd Bty., R.C.A. I warned the Ack, who was Gnr Rodd, L., and the driver who were members of the O.P. party, to pick me up at the officers' quarters at Milton Place at 1630 hrs. The truck with the abovementioned personnel was about one half hour late in reporting. I reprimanded the Ack and driver for being late. The Ack, Gnr Rodd, turned away, at the same time murmuring something. I asked him what he had said and he replied, "I don't give a fuck if I am late", or words to that effect.

Second Witness

Capt. H.A. Farthing, 5th Fd Bty, 5th Fd Regt., R.C.A., stated:

I was orderly officer of "B" Troop, 5th Fd Bty, from 1800 hrs 5th Dec. to 1800 hrs 6th Dec/41. I made my rounds at approximately 0230 hrs accompanied by the orderly sergeant, Sergeant Newsome. On examining the gun pits I found that No. 2 gun was improperly laid on its S.O.S. line. I told Sgt Newsome to ask the Troop Command Post, over the Tannoy system, if a change in line had been ordered. Gnr Rodd, the Ack on duty, answered, and either could not or would not supply any information but kept telling Sgt Newsome to refer to the information in the gun pit. I went to the Tannoy system and explained to Gnr Rodd that what we required was the correction of the moment from his latest meteor telegram. He replied that he could not supply this information since he had destroyed all his records. For not carrying out his duties in a proper manner I placed him under open arrest over the Tannoy system.

I then carried out the balance of my rounds and at about 0300 hrs entered the Troop Command Post. When I asked Gnr Rodd why he had destroyed the correction of the moment information, he replied in an insolent manner that he had done this to make his work easier in figuring out the correction of the moment from the next meteor telegram. I remarked that this was quite contrary to the usual procedure and Gnr Rodd made this statement;"Well, now that you have me under arrest, go ahead and push it, since I want to get out of this Regiment anyway," or words to that effect. I stated that the proper way in which he had carried out his duties that night and from his general attitude my opinion of his work had suffered. He then said, "I don not care about your opinion of me or my work, and I want to leave this Regiment," or words to that effect.

THIRD WITNESS

D-6033, Sgt Newsome, A., 5th Fd Bty., 5th Fd Regt., R.C.A., stated:

I was orderly sergeant of "B" Troop, 5th Fd Bty, from 1900 hrs Dec. 5 to 1900 hrs Dec 6/41. I accompanied the orderly officer on his rounds at about 0830 hrs. We found a gun improperly laid in one of the gun pits. Capt Parthing, the orderly officer, instructed me to find out from the troop command post, by the tannoy system which operates both ways between the gunpits and the command post, if a change of line had been ordered from the S.O.S. line on which the gun would normally be laid. Gnr Rodd, the A/C on duty in the command post, whose duty it was to have all information, including the correction of the moment, available at all times during his tour of duty answered. He told me at least three times to get the information necessary from the records in the gun pit. Capt Parthing then spoke to him and told him that what we wanted was the correction of the moment worked out from the latest meteor telegram. Rodd replied that he could not supply this since he had destroyed all his records. Capt Parthing then put him under open arrest over the Tannoy system.

After we had made the rest of the rounds we entered the troop command post at about 0300 hrs. Capt Parthing asked Gnr Roddwhy he had destroyed the information we needed. He replied that he had done so to make his work easier when the next meteor came in. When Capt Parthing reprimanded him for doing this, Rodd said,"Well, now that you have me under arrest, go ahead and push it, as I want to get out of this regiment anyway." After some further talk, Capt Parthing told Rodd that his opinion of Rodd's work had suffered, and Rodd replied,"Ido not care what you think about me or my work,and I want to leave this regiment."

The above abstract of evidence was taken by me, in the field, on December 31st, 1941.

T.H. Montgomery Lieut R.C.A.
(T.H. Montgomery), Lieut., R.C.A.

RECORD OF PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL

1. Trail of No. D-6176 Rank Gnr. Name Lloyd RODD

Unit 5 Cdn Field Regiment, R.C.A.

Held at No., 5 Cdn Field Regiment, RCA on 9th day of Jan. 1942

2. ACTUAL COURT

Rank Major Name W.R.Drury Unit 4 Cdn Fd Regt. RCA.

" Capt. " J.V. Rose " 2 Cdn A/TK Regt., RCA

" Capt. " R.M. Lucy " 6 Cdn FA. Regt. RCA

3. PROSECUTOR Rank Lieut. Name T.R.Montgomery Unit 5 Cdn Fd Regt RCA

Def. Officer " Capt " D.W.W. Cooper " 5 Cdn Fd Regt RCA

The Prosecutor informs the Court that the Accused has elected to be tried by this Court, instead of being dealt with summarily by his Commanding Officer

The Prosecutor informs the Court that the first charge is withdrawn, and that Capt. R.B. Dry, 13 Cdn Field Regt., RCA will not appear as witness.

The Accused is arraigned and pleads "Not Guilty" to all the charges.

PROSECUTION

First Witness for Prosecution — Capt. H.A. HARTHING, 5 Cdn Fd. Regt., having being duly sworn, states: " At WILTON PLACE, on 6 Dec. at about 0230 hrs I made my rounds as Orderly Officer accompanied by the Orderly Sergeant, Sgt. NEWSOME. Number 2 gun was 10 minutes off line as shown on the record in the pit so I ordered Sgt. NEWSOME to phone the Command Post to find why the gun was not laid on the line shown on the record. He had difficulty in getting information from the Ack, Gnr. RODD, so I went to the Fanney myself and explained that I wanted the correction of the moment data. He said he did not have it as he had destroyed it. I told RODD he was under open arrest and proceeded on my round. When Sgt. NEWSOME and I reached the C.P. at about 0300 hrs I asked Gnr. RODD why he destroyed the information and he replied that it was to make it easier for him to work out the next meteor. I told RODD I was disappointed in him and that my opinion of his work had suffered. He replied " I am not interested in your opinion of me or my work". I realized RODD had been on duty for 48 hours or more and so told him I considered he was tired and that was the reason for his attitude. He replied " That makes no difference, and now that you have me under arrest go ahead and push it as I want to get out of the Regiment."

One of the three troop acks is in hospital at the moment. The guns are in fixed position and necessitate one ack being at the C.P. to work out meteors every four hours. The O.P. is also manned and when it happened that two officers from "B" troop were detailed on successive nights it meant that one ack would be at the C.P., the other at the O.P. On these occasions one or other acks is on duty for at least 48 hrs. This would not be continuous though, as the C.P. ack could sleep between meteors, and the O.P. ack could sleep when not on duty. Meteors come in every 4 hours and it would take Gnr. RODD from 20 to 30 minutes to work one out. The O.P. ack could sleep for the balance of the morning when he came off duty at 0830 hrs. The acks arranged their own relefs during the daytime: quite often the O.P. ack would have special permission granted him to go to Eastbourne, etc., in the afternoon.

In the morning at about 0900 hrs. I called RODD into the office and again told him that I considered it was because he

had been on continuous duty that had caused his insubordinate attitude. He repeated that made no difference and added that he was sick and tired of seeing some of the others in the troop trying to curry favour with me and that he did not intend to do it. Further, he added he was not looking for favours from me and that he understood that if he went to Court Martial he might get more than 28 days detention which would automatically strike him off strength of the regiment. I asked him to tell me as one man to another, just why he wanted to leave. After he had told me I suggested he was going the wrong way about it and should apply for a transfer. He stated that his application would be in in a few days. I told him it was to go in thatday and he replied it would go in when he felt like putting it in."

Cross-examined by Def. Officer

Q. You stated that your opinion of Gnr. ROUD had differed. What was your previous opinion?
A. I considered him a good soldier.
Q. When ROUD said he was not interested in your opinion what was his attitude?
A. He was insubordinate and he did not stand up when I was talking to him and was generally lacking in respect.
Q. How did the corrections get to the guns?
A. The ack worked them out and recorded them on boards which he then took to the gun pits.
Q. What written orders define the Ack's duties?
A. There have been only verbal orders. The ack does all meteors and any work pertinent to the guns and answers the tannoy.
Q. When you had the accused in, in the morning, during the latter part you asked him to tell you as man to man why he wanted to leave the regiment. Before the conversation began or during it was there anything in your manner or in what you said that would lead him to beleive that it was a confidential talk?
A. Instead of having him stand I told him to sit down.
Q. If there are no clear cut orders, is it not possible that they may not realize they may sleep between meteors?
A. There are no instructions that they may not sleep in the C.P.

Questioned by the Court

Q. When you examined the board in the pit was there anything to lead you to believe it was itself incorrect?
A. It did not have the time of the meteor omit.
Q. Was the gun actually off line in accordance with the correct meteor?
A. It was.
Q. You stated that at 0030 hrs the C.P. crew may sleep. What is the duty of the C.P. ack?
A. He remains on duty at the C.P.
Q. What time does the C.P. ack go on duty?
A. The acks usually arrange that among themselves.
Q. When you returned to the C.P. and the accused's attitude struck you as generally lacking in respect, did you check him up?
A. No.

Second Witness for the Prosecution — D-0033 Sgt. A. NEWCOMB, 6 Cdn Fd Regt, having being duly sworn states: "At WILSON BLOCK, on 6 Dec at about 0030 hrs I made the round of the troop as Orderly Sgt. with Capt. PARTHING. No. 2 gun was 10 minutes off line and Capt. PARTHING told me to phone the C.P. I didn't seem to be able to get anything out of ROUD so Capt. PARTHING came to the tannoy:

Q. Did you see the accused that night?
A. Yes about 0300 hrs, with Capt. PARTHING. There was quite a bit said and I can't remember everything. Capt. PARTHING seemed to give his opinion of ROUD and ROUD said he didn't care what his opinion of him was. He also stated he wished to get out of the regiment.
Q. What was Gnr. ROUD's attitude during the interview?
A. Kind of insolent.

Cross-examined by Def. Officer

Q. How did you know the gun was 10 minutes off line?
A. It was wrong by the board in the pit.
Q. As a No. 1 would you check the gun with the board on "stand to"?
A. Yes Sir.
Q. Would you check it with the C.P. or assume the board was correct?
A. I would take it as correct.
Q. If you were asleep at the C.P. would you hear the buzz of the tannoy?
A. No sir.
Q. When you spoke to the accused through the tannoy, what was his reply?
A. He said the correction was on the board.
Q. Did he say why he couldn't give you the correction?
A. He said he had rubbed it out.
Q. Tell the Court what ROLD did when Capt. FARTHING entered the C.P.?
A. He stood up.

Re-examined by the Prosecutor

Q. Are you sure the noise of a tannoy system would not waken a person under any circumstances?
A. Positively sir.
Q. Are you positive Gnr. ROLD stood when Capt. FARTHING entered the C.P?
A. Pretty positive.

Questions by the Court

Q. You stated that when Capt. FARTHING came into the C.P. Gnr. ROLD stood up. What did he do during the remainder of the conversation?
A. Gnr. ROLD was behind the desk and I beleive he sat down though I wouldn't swear to it.
Q. What exactly, during the conversation, would make you beleive Gnr. ROLD was insolent?
A. There was fire in his eyes.

The Prosecution is closed

DEFENCE

Evidence of Accused First Witness of Defence

The Accused states that he will give evidence as a witness on oath.
The Accused takes his stand at the place where other witnesses give their evidence.

The Accused D-6178 Gnr. L. ROLD, 6 Cdn Fd Regt RCA., having being duly sworn, examined by the Defending Officer states: "I was called upon to supply information regarding the exact switch for No. 2 gun. Sgt. WESCOMB asked what the switch and range correction was. I replied that it was on the board. Capt. FARTHING took his place at the tannoy about that time and stated that what he wanted was for me to read out the correction again. I did not have the graph then because when I returned from the previous round of the guns I sat down near the fire for about an hour and a half and then returned to my table and began to rub the figures off the old board. When I finished I found I had rubbed out the graph too. I told Capt. FARTHING I could not give the information at the time but in a few minutes as soon as I could retrace the graph from the correction of the moment form which was not destroyed. He did not seem to want to wait that long and placed me under open arrest until he came to the C.P.
Q. You heard Sgt. WESCOMB's evidence. Do you think the buzz of the tannoy would be heard by someone asleep in the C.P.?
A. No sir.
Q. What do you consider your duties in the time after the boards are taken to the guns, until the next meteor?
A. To receive all intelligence messages from the C.P. and

see that these went to the proper places. Also to watch the Gunry and keep in touch with the guns.

Q. What occurred when Capt. PARTRING came to the C.P.?
A. Capt. PARTRING came to the table where I was sitting and demanded to know what was going on. At the time I had started rise with the intention of standing at attention, but due to the limited space I was unable to, and so sat to attention in the chair. I replied I did not understand his question of what was going on, and then explained how the graph had got rubbed out. For some reason Capt. PARTRING became almost furious, his actions were to pick up a couple of boards, and, slamming them violently on the table he told me his opinion of me was falling. By then I was becoming a little red under the collar and said I didn't give a darn what his opinion of me was. Beyond that I don't remember enough to speak of.
Q. What were you doing when Capt. PARTRING arrived?
A. Starting the next meteor.
Q. When do meteors come in?
A. Approximately one hour before every even four hours.
Q. What did you do besides work out the meteor and draw the graph,
and how long did it take you?
A. Clean off the old boards and graph, record the new switches and ranges and take them out to the guns. It took about an hour and a quarter.
Q. You stated when you went to stand you were unable to, owing to cramped space, so sat to attention. Who taught you to do this?
A. Major Keefler
Q. Did you consider you had been wrongfully placed under arrest?
A. I considered I was put under arrest for a sarcastic tone of voice.
Q. Capt. PARTRING started to question you and then picked up two boards and plunked them on the table. Were the words which are the substance of this charge before or after that?
A. All that came after that.
Q. When you said you were a bit red under the collar, did you mean "very angry"?
A. No sir.
Q. When Capt. PARTRING called you in later in the morning was there anything that led you to believe it was confidential from start to finish?
A. Yes, his actions and words led me to believe that.
Q. Are you normally an C.P. or C.P. sck?
A. C.P.sck.
Q. Whom have you usually worked for?
A. Capt. PARTRING.

Cross-examined by Prosecutor

Q. How many range s and switches had to be worked out?
A. Sixty degrees right and left and from 10,000' to 4,900'.
Q. Wouldn't the signaller in the C.P. take intelligence reports?
A. Not in "A" troop.
Q. You said you were becoming angry when you made your statement to Capt. PARTRING. Do you consider yourself justified in using such words to your troop commander, by reason of the fact he had just made a gesture of annoyance?
A. I did not say it was a gesture of annoyance.
Q. Did you think you were saying the right thing in what you said?
A. Ninety percent of it, yes.
Q. How long have you worked for Capt. PARTRING?
A. About six months.
Q. Then you were well acquainted with him?
A. No sir, but I could tell almost exactly what his next reaction would be.
Q. Why then did you make the statement you did, knowing his reaction to it?
A. That was only to express my opinion.

Questioned by the Court

Q. What is the average number of intelligence reports in a night?
A. It varies from nil to twelve: usually about three.
Q. How many meteors are worked out daily.
A. Six sir.

The Accused withdraws from the place from which he has given his evidence.

Prosecutor's Final Address

All that has to be proved is that the Accused used insubordinate language as stated. In this connection, may I call attention to M.M.L. page 58 Para 71, and also page 77 para 85. The Accused was calm at the time and meant exactly what he said, and repeated it later in the morning; there was no question therefore of momentary irritation. Whether there was any provocation is up to the Court to decide.

Defending Officer's Closing Address

The prosecution has been very fair and it is only for the court to interpret the evidence as submitted. The fact that six hours had elapsed between the original statement of the Accused and its repetition does not necessarily show that the Accused 'cooled off' as he had remained on duty during that time with nothing to distract him. I suggest also that the action of rubbing out the graph was not incorrect at 0230 hrs with a new meter due at 0300 hrs.

The Court is closed to consider the Finding

Finding: The Court find the Accused D-6176 Gnr. Lloyd RCHD, 5 Cdn Fd Regt, RCA., is NOT GUILTY of the ~~second~~ charge.

After Finding: The Court being re-opened, the Accused is again brought before it, and the Finding on the ~~second~~ charge is read in Open Court. R.P. 45 (c) and R.P. 117 (b) have been complied with.

Evidence as to Character

The Prosecutor files a certified copy of AFM 6 of the Accused which is approved and initialed by the Defending Officer. The document is read, marked "H" signed by the President and attached.

First Witness as to Character: D6006 BQMS. MURPHY, W.A., 5 Cdn Fd Regt., RCA., sworn, states: "I have known the Accused since Dec. 1939 when I was a Sergeant in C Troop 77 Battery. I knew him for twelve to fifteen months. I never gave him an order he didn't obey and so far as I have known him he has always been a good soldier and never answered back.

The Prosecutor declines to cross-examine this witness.

The Defending Officer, with concurrence of the Prosecutor, files a letter to Gnr. RCHD from Major KNEPLER. This is marked "J", signed by the President and attached.

Statement by Defending Officer in mitigation of sentence:

"As brought out in the evidence, the Accused had one fixed idea in his head; that is, to get out of the regiment. He is young, and perhaps a bit irresponsible and has unfortunately taken the wrong way of going about it."

The Court is closed to consider the Sentence

Sentence

Certified a true record of this Trial
Signed at Hq., 5 Cdn Fd Regt., this ninth day of January, 1942

William R. Henry Major
President R.C.C.M.

COPY OF MFM 6 D6176 Gnr Reid.L. 5(Westmount)Fd Bty.RCA. Date of enlistment 8 Dec-39

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	NAMES OF WITNESSES	PUNISHMENT AWARDED	DATE OF AWARD OR OF ORDER DISPENSING WITH TRIAL	BY WHOM AWARDED	REMARKS
Petawawa, Ontario.	25 Jun-41	Gnr		AWL from 2200 hrs 25 Jun 40 till 0530 hrs 27 Jun-40 AA 15(1)	Sjt Wright	7 days CB forfeits 2 days pay.	2 July-41.	OC 5 Bty.	
Highcroft Sussex	24 July-41	Gnr		Conduct to the prejudice, etc. not having his kit laid out properly AA Sec-40.	Lt.J.M.Standish Bdr Bayles.J. L/Bdr Bates.L	3 days CB	24 July-41.	2 I/C.	
Burdon Hall	2 Sept-41	Gnr		Absenting himself without leave from tattoo roll call 0359 hrs 2 Sept to 0020 hrs 3 Sept-41. (Absent 21 mins) AA 15(1)	Lt.S.H.V.Mayler Sjt Newsome. T/BSM Merrilees.	3 days CB	3 Sept-41.	Lt.D.Dehany. 5 Bty.RCA.	

OK DMO. Offending Officer

CERTIFIED THAT THE ABOVE IS A TRUE COPY.

(F.T.McIntosh)Major.RCA.
OC 5(Westmount)Fd Bty.

17 England 1942 'J'

W E Hew Esq
Capt

Dear Rodd,

Am very sorry to hear that you are in trouble. I trust it isn't as serious as you make out.

I find it hard to believe that you would be in subordinate. It is the last thing I would have thought of you. But to give you a letter that will be of much use to you is almost impossible. If I were not on my way home to Canada, I'd suggest you subpoena me. If you can use this, do so. In case - good luck.

Very Sincerely

A. Mac D. Keegle

Major R.C.A.

25 ~~29~~ W.F. Hewey 'K' No 1.

STATEMENT OF CHARACTER AND
PARTICULARS OF SERVICE
OF ACCUSED.

No. D6176

Rank - Gunner

Name - RODD; Lloyd

Unit - 5 Cdn Fd Regt.R.C.A.

Age - 23

M.or S. - Single.

No.of Dependents. NIL

Date of enlistment. - 18 Dec 39

No of days in close arrest - Nil.

(R. W. Corstine), Captain,
Adjutant, 5 Cdn Fd Regt.,R.C.A.

DMC. Defending Officer

British Courts — 19

~~L. C. M. — R — 58~~

Lieut Rodgers C.J.

~~Pte. Stewart, L. G.~~

B2,
J. M. Smith
Brig.

CHARGE SHEET

No. CDN/99 Lieut C.J. Rodgers, 7th Bn The Duke of Wellington's Regiment, an officer of the Regular Forces is charged with

First Charge

When on active service, Conduct to the prejudice of good order and military discipline

SEC 40

in that he

A.A.

in the field on 13th February 1945 improperly drew his revolver and pointed it at No. H-16726 Cpl G.R. Johnson, 7 Provost Company Detachment, Canadian Provost Corps, who was checking the log book of a Jeep in which he (the accused) was a passenger, saying at the same time to the said No. H-16726 Cpl G.R. Johnson "Give me that book" or words to that effect.

Second Charge

When on active service Drunkeness

SEC 19

in that he

A.A.

in the field on 13th February 1945 was drunk

C.A. Hamilton
Lt col
Comd 7 D.W.R.

To be tried by General Court Martial.

E R Wood
maj DAAG
for General Commanding
First Canadian Arm

Field
2 April 1945

CONFIDENTIAL. 21 A.Gp/15409/94/JAG.

18 May, 1945.

Judge Advocate General,
6, Spring Gardens,
Cockspur Street,
S.W.1.

No.GDN/99 Lieut G.J. ROBBINS,
7th R.N.F.

Proceedings GCM held for the trial of the above-named officer are forwarded herewith.

There is no record on the proceedings to show what seniority the accused had as a Lieutenant. I am informed, however, that normally he would be commissioned in that rank. On this assumption, I have no comments.

H Gordon Lennox

Brigadier,
D.J.A.G.,
21 Army Group.

Rear Headquarters,
21 Army Group,
B.L.A.

HG-B/FL.

TO "A" Branch DIV.
First Cdn Army

NOT TO BE DETACHED

Nothing to add to my advice on confirmation.

Lt.Col.
ADJAG.
First Canadian Army.

REMARKS:

No action

H L Craig Capt
PCA
~~DAAG.~~

7 May 45

ACTION ON REVIEW BY ~~DIV.~~ Army

No action

D.J.A.G's OFFICE
15409/94
9 MAY 1945
21 ARMY GROUP

7 May 45

D L Barham Lt Col AAG
by Direction of Gen Cdn Army

Lt.Col.,
A.D.J.A.G.(BR).,
First Canadian Army.

To: D.J.A.G.

For Review.

8.5.45. It will be observed that this is a Canloan officer, so I am forwarding proceedings to you which I assume to be correct.

A (P.S) To see.
There is nothing recorded to indicate what seniority the accused had as a Lieutenant. I am informed that normally he would be commissioned in that rank. On this assumption I have no comments. H L Barnett
Army DJAG.

13 May 45.

REVIEWED at HQ 21 Army Group this 16 day of May 1945

Commander-in-Chief
21 Army Group

'A' BRANCH
14 MAY 1945
H.Q. 21 ARMY GROUP

NOT TO BE DETACHED

QFP/1084/10m

Army Form A3687

Forwarded under Minute No.

Dated

A.D.J.A.G's. Case No. R.(O) 8 A2/42

D.J.A.G's. Case No.

Whether elected Trial NO

Regt.	No.	Rank and Name	Description of Court-Martial	Date and Place of Trial
7 DWR	Cdn/99	Lieut. C.J. RODGERS	GCM	12 Apr 1945

CHARGES

1. Sec. 40. Conduct - Improperly drew his revolver and pointed it at No. H-16727 Cpl. G.R. Johnson, 7 Provost Coy Detachment, Canadian Provost Corps, who was checking the log book in the accused's jeep, saying at the same time "Give me that book" or words to that effect.

2. Sec. 19. Drunkenness 13 Feb 45.

President and Members of Court	Pleaded	Finding
Brig J.M. Smith, 74 AA Bde Major W.J. Bailie RCASC Major L. Benjamin RA Capt. C.H. Searle, 1. Leicesters Lieut. T.R. Davis, 2 Glosters JUDGE ADVOCATE Major J.F. Compton Miller TD RAC	1.G. subsequently changed to N.G. 2.G. subsequently changed to N.G.	1. G. 2. N.G.

FORMER CONVICTIONS

Date and Place of Trial	Offence	Punishment Awarded
	NOT KNOWN	

Character	Decorations, Honours and Awards	Age	Service
		NOT KNOWN	

SENTENCE AND MINUTE OF CONFIRMATION

To take rank and precedence in his Corps and in the Army as if his appointment as lieutenant bore date 1st day of Aug 44 and to be severely reprimanded.

Confirmed by GOC in C First Cdn Army on 21 Apr 45

Transmitted for Promulgation	When and where Promulgated 28 April 45	Court dissolved 12 Apr 1945

Date of Receipt	To whom sent	Date sent	Purport
from "A" Branch First Cdn Army 1 May 45	"A" Branch First Cdn Army	4.5.45.	Review
		14-8-	To See.

Certified correct
R Mulcaspe

TO "A" Branch DIV.
First Cdn Army

NOT TO BE DETACHED.

Nothing to add to my advice on confirmation.

Lt. Col.
ADJAG.
First Canadian Army.

REMARKS.

No action

7 May 45

ACTION ON REVIEW BY ~~DIV.~~ Army

~~DAAG.~~

No action.

7 May 45.

D.J.A.G's OFFICE
10409/94
9 MAY 1945
21 ARMY GROUP

To: D.J.A.G.

For Review.

8.5.45. It will be observed that this is a Canloan officer, so I am forwarding proceedings to you which I assume to be correct.

Lt. Col.
A.D.J.A.G.(BR).,
First Canadian Army.

A (P.S) To see.

There is nothing recorded to indicate what seniority the accused had as a Lieutenant. I am informed that normally he would be commissioned in that rank. On this assumption I have no comments.

13 May 45.

DJAG.

REVIEWED at HQ 21 Army Group th
16 day of May 1945

Commander-in-Chief
21 Army Group

'A' BRANCH
14 MAY 1945
H.Q. 21 ARMY GROUP

NOT TO BE DETACHED

CFP/1084/10m

NOTE for FILE

It should be noted that Lt CJ RODGERS, CDN/99
is serving with 7 DWR (49 WR Inf Div) as a CANLOAN officer.

AQ/~~Offrs/A~~ 2[illegible] (Offrs)

25 Apr 45

49 (WR) Inf Div

GCM
Lt CJ RODGERS Cdn/99 - 7 DWR

1. Herewith Adm HQ First Cdn Army letter 120/GCM OFFRS/1 (A Pers) of 25 Apr 45 for your attention please.

EC/K

SEEN	
AQ	
A	
Q	
CC	

H. Q. 49 DIV.

26 APR 1945

No. 1002

[illegible]
for Brigadier
DA & QMG 1 Cdn Corps

DRLS
Time of Signature 1710 hrs

CONFIDENTIAL

AGO/JAGK-CPTRD/1 (A Pard)

Adm Hq First Cdn Army
23 Apr 45

1944
14
Offer A

Rear 1 Cdn Corps

GCM
Lt CJ HUGGINS 2Cdn/35 - 7 FUR

1. GCM proceedings relating to the a/m offr are enclosed herewith, sentence having been confirmed by the GOC in C. The sentence will be promulgated, and the decease by patrol taken, promulgated, and the decease by patrol taken, promulgated, and the decease by patrol taken,

J.A.G's Branch (Br),
Rear Headquarters,
First Canadian Army.

CA/JAG/(Br) A2/42

15th April 1945

AAG (Pers),
Rear Headquarters,
First Canadian Army.

NOT TO BE DETACHED

Lieut. C.J. RODGERS, 7 DWR.

Ref the attached proceedings of GCM.

This Officer was found guilty of a charge under Sec. 40 of the Army Act of improperly drawing his revolver and pointing it at a corporal of the Canadian Provost Corps. He was found not guilty on a second charge under Sec. 19 of the Army Act of drunkenness. He was sentenced to be severely reprimanded and to forfeit a year's seniority. This sentence is one which it is within the power of the GOC-in-C First Canadian Army to confirm under para 6(a) Sec.XIII of 21 Army Group Standing Orders (AG's Branch).

The accused initially pleaded guilty to both charges, but upon hearing the plea in mitigation by his defending officer, the court, in my opinion quite properly, altered his plea to one of not guilty on both charges and proceeded to try the case. As a result the accused was acquitted on the 2nd charge and found guilty on the 1st charge.

In my opinion the proceedings are legally in order and may properly be confirmed.

Attention is drawn to para 20(b)(iii)(C) of Sec. X(A) of 21 Army Group Standing Orders (AG's Branch).

Lt.Col.
A.D.J.A.G.(Br),
First Canadian Army.

CG/WAJ

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and ~~District~~ Court~~s~~-Martial.

Proceedings of a GENERAL Court-Martial held at in the Field on the 12th day of APRIL 1945 by order of GENERAL H.D.G CREERAR CB DSO LIEUTENANT-GENERAL C. FOULKES CBE DSO Commanding FIRST CANADIAN ARMY ~~1 CANADIAN CORPS~~ dated the 11th day of APRIL 1945.

President.

BRIGADIER J.M. SMITH OBE, MC, ADC

Members.

MAJOR W.J. BRAITE R C A S C

MAJOR L BENJAMIN R A

~~MAJOR A.N. STOCK~~

CAPTAIN C.H. SEARLE ~~1 LEICESTERS~~ 1 LEICESTERS

LIEUTENANT T.R. DAVIS ~~2 SUSSEX~~ 2 SUSSEX

MAJOR ~~DF~~ COMPTON MILLER T.D. RA

BARRISTER-AT-LAW DEPUTY JUDGE ADVOCATE ~~GENERAL~~, Judge Advocate.

Trial of* 111 CDN/ 44

LIEUTENANT C.J. ROGERS 7 DWR

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

The Court satisfy themselves that MAJ. A.N. STOCK is not available to serve owing to ~~(a) absence on duty beyond~~ CAPT. C.H. SEARLE 1 LEICESTERS, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† CAPT. D.P. FOLLIS 1 LEICESTERS ~~DAA~~ ~~QMG~~

~~Counsel, or~~ Defending officer† LIEUTENANT J.M. JOHNS 1 LEICESTERS

At 11 25 o'clock the Trial commences.

The order convening the Court is read, and is marked G (Johnston) signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

30812. W.t.W21732/977. 20,000 sets. 8/45. K. & B., Ltd. G42/111.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (3), the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Answer.

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again:]

The accused is found guilty of

†The summary (or abstract) of evidence is read, marked H, signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The Defence Officer makes a plea in mitigation of punishment which is recorded in the short hand transcript.

The accused in mitigation of punishment says:—

[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character ?

Question to the accused.

Answer.

No.

~~*Evidence as to character.*~~

On receiving the Defendant's plea in mitigation the Court decided that it is inconsistent with a plea of guilty, and direct that plea of not guilty should be entered in respect of both charges and the accused is tried.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No.

The prosecutor makes no opening address ~~(hands in a written address which is read, marked , signed by the President, and attached to the proceedings)~~.

The prosecutor proceeds to call witnesses. who are duly

First witness for prosecution. } sworn and whose evidence is recorded in the shorthand transcript.

~~, being duly sworn,~~ is examined by the prosecutor.

There being a shorthand writer present in the person of the Court and the judge advocate it is not necessary to comply with RP 85 F.

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No

Question. Do you intend to call any other witness in your defence?

Answer. No

Question. Is he a witness as to character only? *Answer.*

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked
signed by the President and attached to the proceedings.]

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

E

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

Finding.*

The Court is closed for the consideration of the finding.

The Court find that the accused No CDN/99

LIEUTENANT C. J. RODGERS 7 AN. The Duke of Wellington's Regt.

is not guilty of the Second Charge but

is guilty of the First Charge.

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before Sentence.*

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

CAPT. W. L. DENTON on his former oath, informs the Court of the Transcript's service. [recorded in the short hand Transcript] is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

(Instructions.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Cross-examined ~~by the~~ on behalf of accused.

[recorded in the short hand Transcript]

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused No. CDN/99 LIEUTENANT C.J. RODGERS 7.D.W.R.

Sentence

[FORFEITURE OF SENIORITY AND SEVERE REPRIMAND.]

To take rank and precedence in his Corps and in the Army as of his appointment as Lieutenant bore date the 1st day of August 1944 and to be severely reprimanded

SIGNED IN THE FIELD THIS TWELFTH DAY OF APRIL 1945

Compton [signature] Maj

JUDGE ADVOCATE

[signature] Brig

PRESIDENT

CONFIRMED

[signature]

21 Apr 45

(H D G Crerar) General
GOC in C First Cdn Army

Promulgated and Extracts taken in the case of Lieut C.J. Rodgers (CDN/99) this 28th day of April 1945

R. Farrar
Capt
7 D.W.R.

Army Form A 47

COURTS-MARTIAL

Form of Order for the assembly of a General or District Court Martial.

ROUTINE ORDERS By General H.D.G. Crerar, C.B., D.S.O.
Commanding the First Canadian Army
(Place and Date) in the Field on 11th April 1945.

The detail of officers as mentioned below will assemble at Bemmel
on the 12th day of April 1945 for the purpose of trying by
a General court-martial the accused person named in the
margin [redacted]*

PRESIDENT.

Brigadier J.M. Smith, Comd 74 A.A. Bde. is appointed president.†

MEMBERS.

Major W.J. Bailie. R.C.A.S.C.
Major L. Benjamin, R.A.
Major I.H. Stock. 1 Leicesters.
Lieutenant T.R. Davis. 2 Glosters.

NOTE.—The president must be named. The numbers and the waiting members may be mentioned by name, or the number and ranks and the corps to which they belong may alone be named.

No. Cdn/99
Lieutenant
C.J. RODGERS.
7th Bn. D.W.R.

WAITING MEMBERS.

Captain C.H. Searle. 1 Leicesters.
Lieutenant J.C. Fox. 7 D.W.R.

JUDGE-ADVOCATE.

Major J.F. Compton Miller - Barrister-at-Law, Deputy Judge Advocate Staff [redacted] has been appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to H.Q. First Canadian Army.

Signed this Eleventh day of April 1945

R.K. Hodges maj D.A.A.G.
for General, Commanding, First Cdn Army

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* *Any opinion of the convening officer with respect to the composition of the Court (see Army Act, s. 48 (10) and Rules of Procedure 20 and 21) should be added here; thus, where a Court-Martial is ordered to assemble composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry, the following should be added:—*

"In the opinion of the convening officer, other officers are not, having due regard to the public service, available," (or *as the case may be*).

† *Add here, in the case of either a General or District Court-Martial where a captain is appointed president and the officer convening the court is not under the rank of field officer,* "In the opinion of the convening officer a field officer is not, having due regard to the public service, available." *Where it is necessary for an officer under the rank of captain to be appointed president of a District Court-Martial, add,* "In the opinion of the convening officer a field officer or captain is not, having due regard to the public service, available." (*See Army Act, s.* 48 (9).)

‡ *The "seal," in the case of Royal Artillery, is a Brigade, where such organisation exists.*

S.A.B. 30-T2229 L.B.Ld. 4700 4/44

List of Witnesses.

TRIAL OF Lieutenant C.J. Rodgers, 7th Bn. D.W.R.

	Lieutenant J.R . Cannon.	7th D.W.R.
3909997	Serjeant I. King.	7th D.W.R.
H16726	Corporal G.R. Johnson.	7 Canadian Provost Company
L57677	L/Corporal J.G. Wallis.	7 Canadian Provost Company
	Lieutenant W.R. Neff.	7 Canadian Provost Company

Army Form A 47

COURTS-MARTIAL

Form of Order for the assembly of a General or District Court Martial.

ROUTINE Orders By General H.D.G. Crerar, C.B., D.S.O.,
Commanding the First Canadian Army
(Place and Date) in the Field on 11th April 1945.

The detail of officers as mentioned below will assemble at Bemmel
on the 12th day of April 1945 for the purpose of trying by
a General court-martial the accused person named in the
margin [and such other persons as have been detailed for the purpose].*

PRESIDENT.

Brigadier J.M. Smith, Comd 74 A.A. Bde. is appointed president †

MEMBERS.

Major W.J. Baillie, R.C.A.S.C.
Major L. Benjamin, R.A.
Major I.H. Stock. 1 Leicesters.
Lieutenant T.R. Davis. 2 Glosters.

Note.—The president must be named. The members and the waiting members may be mentioned by name, or the number and rank and the unit to which they belong may alone be named.

No. Cdn/99
Lieutenant
C.J. RODGERS.
7th Bn. D.W.R.

WAITING MEMBERS.

Captain C.H. Searle. 1 Leicesters.
Lieutenant J.C. Fox. 7 D.W.R.

JUDGE-ADVOCATE.

Major J.F. Compton Miller - Barrister-at-Law, Deputy Judge Advocate Staff [illegible] has been appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to H.Q. First Canadian Army.

Signed this Eleventh day of April 1945

for General, Commanding, First Cdn Army
D.A.A.G.

---

* Any opinion of the convening officer with respect to the composition of the Court (see Army Act, s. 48 (10) and Rules of Procedure 20 and 21) should be added here; thus, where a Court-Martial is ordered to assemble, composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry, the following should be added:—

"In the opinion of the convening officer, other officers are not, having due regard to the public service, available," (or as the case may be).

† Add here, in the case of either a General or District Court-Martial where a captain is appointed president and the officer convening the court is not under the rank of field officer, "In the opinion of the convening officer a field officer is not, having due regard to the public service, available." Where it is necessary for an officer under the rank of captain to be appointed president of a District Court-Martial, add, "In the opinion of the convening officer a field officer or captain is not, having due regard to the public service, available." (See Army Act, s. 48 (9).)

‡ The "unit," in the case of Royal Artillery, is a Brigade, where such organization exists.

N.A.B. WATERLOW L.B.I.d. 4700 4/44

H

Summary of Evidence in the case of No 1CDN/99 Lieut C. J. Rodgers 7th Bn The Duke of Wellington's Regt.

The Court offr directs that the evidence be taken on oath

1st Witness for the Prosecution — No 157323 Lt J.R. Cannon having been duly sworn states:

I am a platoon comd in B Coy 7 D.W.R. The accused whom I recognise as Lieut C.J. Rodgers is also a platoon comd in the same coy.

On 13 Feb 45, with our coy comds permission, we proceeded to Twinkhout on recreation in the coy jeep.

At 1515 hrs we went to a Café where we had a few drinks of Cheery Brandy. At 1715 hrs Lieut Rodgers went off on his own and did not return until 2300 hrs.

The accused appeared to have been drinking, but he did not show the usual signs of drunkeness as he could walk and talk quite normally. He did, however, behave in a strange manner and was argumentative. He did not appear to know what he was doing, as when I told him to get into the jeep as we were going back to Camp, he did not seem to realise that he had come from a ~~the~~ camp or billet.

After some diffinulty I got him into the jeep and we were just about to move off when, two military policemen came up to the vehicle and demanded to see our identity documents

5th witness for Lieut W.R. Neff.
Prosecution.

Statements by the third, fourth & fifth witnesses are attached
Certified under R.P. 4(4) that the attendance of these witnesses cannot be readily procured and that they are not required by the accused for cross-examination

W.L. Denton Capt.

The accused having been duly cautioned under R.P. 4 (E) elects to give evidence on oath.

CDN/99 Lieut C.J. Rogers having been duly sworn states:
I am of the opinion that I was served with "doctored" liquor, as when I wakened up next morning I had a distinct taste of paraffin in my mouth.
I have never been affected by drink in this way before.

C.J. Rodgers.

Certified that R.P 4(c) (d) (e) (f) & (g) have been complied with.

W.L. Denton Capt.

Dated 22 March 45.

Duke of Wellingtons' Regt. On 13 Feb 45
I was sitting in the back of a jeep in
Twumbout with Lieut Cannon. We had
been visiting Twumbout on recreation
and were just about to leave to return
to Camp. The accused was sitting in
front of the jeep when an M.P. came
up and demanded our identity
documents. He then asked for the authority
for the journey, whereupon Lieut Rodgers
drew his pistol and pointed it at the M.P.
saying "This is my authority."
The C.M.P. grasped the revolver and knocked
it down. As he did so, it went off and
I saw that Lieut Rodgers had been hit
in the right leg.
Lieut Rodgers had certainly been drinking
but I do not consider that he was
drunk, as he could walk and talk
without difficulty. He had, however,
reached the argumentative stage.
From my previous knowledge of
Lieut Rodgers, I do not think he
knew what he was doing, as if
he had known, he would not have
drawn his pistol.

3rd Witness for H-16726 Cpl Johnson G.R.
Prosecution.

4th Witness for L-57877 Walles J.G.
Prosecution

The documents were produced together with A.F.B.142 of the Vehicle. While the C.M.P. were examining these documents, one of them asked us for our authority for the journey, whereupon Lieut Rodgers, who was sitting in front of the vehicle, drew his pistol and demanded the documents back, pointing his pistol at the C.M.P and saying "This is my authority."

As the accused said these words, the C.M.P. was in the act of leaning over him to pass the documents back to the driver, and on seeing the pistol he knocked it down. A round was discharged hitting Lieut Rodgers in the right leg (thigh). The C.M.P. pulled the accused out of the jeep and as he was being pulled out, the accused said "They've got me, Jack," referring to the pistol shot. He seemed to be under the impression that somebody had ~~dele~~ shot him and did not seem to realise that the shot had come from his own pistol.

He was then taken to hospital and I returned to camp.

From Lieut Rodgers condition I consider that he had been drinking "doctored" liquor, because he did not behave in the normal manner of a man who is drunk.

[signature]

2nd Witness for Prosecution. No 3909997 Sgt. I. King having been duly sworn states:

I am Intelligence Sergeant of 7Bn The

To. No CDN/99 Lieut C.J Rodgers.

Take notice that the Prosecution intends to call the following additional evidence under R.P. 76:

No H 16726 Cpl G.R.Johnson who will state:-

1. "While on patrol in the town of Turnhout at approx. 2330 hrs in company with L/Cpls Aynsley, Wallis and Rich, I noticed a 5 cwt vehicle standing in front of the Magic Dance Hall. I stopped to check this vehicle and I spoke to a soldier in the front seat of the vehicle, whom I checked for his identity and his identification card (M.F.M 182) showed him to be Sgt J.C.RODGERS, but he stated he was a Lieutenant.

Not being satisfied with his identification, and owing to the fact that he was a Canadian in vehicle with British markings, I requested that he produce the log Book (A.B.412) for the vehicle. He asked the driver for the Log Book which was produced and handed to me, and while I was checking it, Lieut Rodgers said "Give me that book", and when I looked I saw he was pointing a revolver at me. I handed him the Log Book and at the same time I grasped the barrel of the revolver, and pushed it down, and the revolver went off. I held on to the revolver and pulled it away from him. He said something about being shot in the leg, and I immediately detailed L/Cpl Aynsley to transport this officer to 9 F.D.S and I brought the driver in company of an officer and a Sergeant, who were passengers in the 5 cwt, to our Detachment HQ where their identity and authorisation were checked. Their particulars are as follows:-

Lieut J.R.CANNON.
Reg. No. 3909997 Sgt I King.
Reg. No. 5729486 Pte S.E.Lawes
all of "B" Coy 7 Duke of Wellington's Regt, 49 Division, 1st Cdn Army.

~~According to Lieut J.R Cannon, Lieut Rodgers belongs to 7 Duke of Wellington also.~~

~~On L/Cpl Aynsley's return from 9 FDS he informed me that Lieut Rodgers was shot in the leg, and had been admitted to 10 Cdn General Hospital.~~

2. The revolver, No. 585361, Smith & Wesson .038 Calibre, was brought to this Detachment HQ and unloaded in the presence of Lieut Cannon, and Sgt Parrott R.D, and it showed five loaded rounds and one empty cartridge. This revolver and ammunition is being held as evidence."

Capt.
Adjt. 7 DWR.

STATEMENT OF LIEUT R.H. HOFF IN THE CASE OF LIEUT J.B. RODGERS

I, Lieut R.H. Hoff an officer of No. 7 Cdn Provost Company, Canadian Provost Corps having been duly warned state as follows:-

With ref to Lieut J.B. Rodgers, No. 7 Duke Of Wellington Reg't, 49 Div, attached to First Canadian Army, I remember taking a statement at No. 10 Canadian General Hospital, Turnhout, Belgium on 1 Mar 45. Before taking this statement, Lieut Rodgers was warned as follows:- " You understand that you do not have to make any statement, any statement that you do make will be taken down and may be used as evidence". After Lieut Rodgers was duly warned, a statement was then taken from him and forwarded on 5 Mar 45 to O.C. "B" Coy, 7 Duke Of Wellington Reg't, 49 Div, attached First Canadian Army through regular mail channels. attached marked A

FIELD
20 Mar 45

R.H. Hoff
.....Lieut
(R.H. Hoff)

2. Attached hereto is the letter mentioned in para 1 of this report which was addressed to Capt R.E. Putnam, CAPC, HQ 1 Cdn L of C Terminal, B.L.A., dated 13 Mar 45, for your information and file.

E.P. Putnam
.....Capt
(E.P. Putnam) Commanding,
No. 7 Provost Company,
First Canadian Army Troops.

DPM
Adm HQ
First Cdn Army

1. Further to the above the following Exhibits in this case are still being held at this Company HQ pending instructions as to their disposal:-

1 Smith and Wesson .038 Calibre Revolver No. [illegible]361
6 rounds of .038 ammunition
1 .038 empty cartridge case.

2. May the O.C. "B" Coy, 7 Duke of Wellington Reg't, 49 Div, attached to First Cdn Army, be instructed to take same over so that this file may be concluded here.

20 Mar 45

E.P. Putnam
.....Capt
(E.P. Putnam) Commanding,
No. 7 Provost Company,
First Canadian Army Troops.

NO. 7 PROVOST COMPANY
FIRST CANADIAN ARMY TROOPS

20 Mar 45

DPM
Adm HQ
First Cdn Army

ACCIDENTAL SHOOTING - 13 FEB 45
LIEUT J.G. RODGERS "B" COY 7 DUKE OF WELLINGTON REG'T 49 DIV
ATTACHED TO FIRST CDN ARMY.

1. Further to the above file and confidental letter in this connection received from the Officer Commanding 7 Duke of Wellington Reg't under date of 13 Mar 45, acting on verbal instructions received from the APM First Canadian Army the following further statements were obtained and are embodied herewith.

STATEMENT OF EVIDENCE IN THE CASE OF LIEUT J.G. RODGERS

I, Reg't No. H-16726 Cpl Johnson G.R. a member of "PP" Section, No. 7 Cdn Provost Company, Canadian Provost Corps after having been duly warned state as follows:-

I distinctly remember the night in question which was 13 Feb 45. This was the date on which I had occasion to disarm Lieut Rodgers J.G. of "B" Coy 7 Duke of Wellington Reg't. At the time of this incident I would say that Lieut Rodgers was not drunk but had been drinking. My reasons for making this statement is that I smelt spirits on his breath. During the time in which I was questioning this officer I was standing approx 2 feet from him. He answered all my questions in an intelligent manner but at times he appeared to ramble and continually mentioned the fact that he had just returned from the front. He also mentioned several times that he had permission of his C.O. to proceed to Turnhout for the night and was on a night out. When I asked him to produce his identification, he produced his identity card NEW 182 without hesitation and explained to me that although his identity card showed him to be a Sgt he was actually a Lieut.

.....Cpl
(H-16726 Johnson G.R.)

FIELD
20 Mar 45

I, Reg't No. L-57877 L/Cpl Wallis J.G. a member of "PP" Section, No. 7 Cdn Provost Company, Canadian Provost Corps having been duly warned state as follows:-

I remember the night of 13 Feb 45. I was on duty at the time in company with Cpl Johnson, L/Cpls Rich and Aynsley of this Company in Turnhout Belgium. I would not say that Lieut Rodgers was drunk but that he had been drinking. My reason for saying this is the way he was talking. He continually mentioned the fact that he had the night off on permission of his C.O. to have a good time. He repeated this several times. From his general remarks and actions it was obvious to me that he had been drinking.

.....L/Cpl
(L-57877 Wallis J. G.)

FIELD
20 Mar 45

(Continued overleaf)

COPY

(a)

CDN PROVOST CORPS
7 PROVOST COMPANY
TURNHOUT DETACHMENT

13 Feb 45.

TO: N.C.O. i/c
Turnhout Detachment,
7 Cdn Provost Company
Cdn Provost Corps.

RE: ACCIDENTAL SHOOTING
Lieut. J.C. RODGERS,
"B" Coy 7 Duke of Wellington Reg't
49 Division 1st Cdn Army

1. While on patrol in the town of Turnhout at approx. 2330 hrs in company with L/Cpls Aynsley, Wallis and Risch, I noticed a 5 cwt vehicle standing in front of the Magic Dance Hall. I stopped to check this vehicle and I spoke to a soldier in the front seat of the vehicle, whom I checked for his identity and his identification card (N.F.M.182) showed him to be Sgt. J.C. RODGERS, but he stated he was a Lieutenant. Not being satisfied with his identification and owing to the fact that he was a Canadian in vehicle with British markings, I requested that he produce the Log Book (A.B.412) for the vehicle. He asked the driver for the Log Book which was produced and handed to me and while I was checking it, Lieut. Rodgers said "Give me that book" and when I looked I saw he was pointing a revolver at me. I handed him the Log Book and at the same time I grasped the barrel of the revolver and pushed it down and the revolver went off. I held on to therevolver and pulled it away from him. He said something about being shot in the leg and I immediately detailed L/Cpl Aynsley to transport this officer to 9 F.D.S. and I brought the driver in company of an officer and a Sgt., who were passengers in the 5 cwt, to our detachment H.Q.where their identity and authorization were checked. Their particulars are as follows:

Lieut. J.R. CANNON
Reg. No. 3909997 Sgt. I. KING
Reg. No. 5729486 Pte. S.E. LAWES
all of "B" Coy., 7 Duke of Wellington Reg't., 49 Division, 1st Cdn Army.

According to Lieut. J.R. Cannon, Lieut. Rodgers belongs to 7 Duke of Wellington also.

On L/Cpl Aynsley's return from 9 F.D.S. he informed me that Lieut. Rodgers was shot in the leg and had been admitted to 10 Cdn Gen Hospital.

2. The revolver, No. 585361, Smith & Wesson, .038 calibre, was brought to this detachment H.Q. and unloaded in the presence of Lieut. Cannon and Sgt. Parrett, N.D. and it showed 5 loaded rounds and 1 empty cartridge. This revolver and ammunition is being held as evidence.

J.H. Johnson ..... Cpl.
(R.16726 G.H. Johnson)
7 Provost Coy Det., C. Pro. C.
Turnhout Detachment.

TO: D.A.P.M.,
1 L. of C. Terminal.

Sir:-
1. The above report is forwarded for your information, please.

H.D. Parrett ..... Sgt.
(G.18421 H.D. Parrett)
7 Provost Coy Det., C. Pro.
i/c Turnhout Detachment.

13 Feb 45.

PROCEEDINGS

of a

GENERAL COURT MARTIAL

held

IN THE FIELD

on

THURSDAY, 12th APRIL, 1945

upon the trial of

No Cdn/99 Lt C J RODGERS, 7 Bn Duke of Wellingtons Regt

by Order of General H.D.G. Crerar, C.B., D.S.O., General Officer Commanding First Canadian Army, dated 11th day of April 1945.

PRESIDENT

Brigadier J.M.Smith	Comd 74 A.A. Bde

MEMBERS

Major W.B. Bailie	R.C.A.S.C.
Major L. Benjamin	R.A.
Major I.H. Stock	1 Leicesters
Lieutenant T.R.Davis	2 Glosters

WAITING MEMBERS

Capt C.H.Searle	1 Leicesters
Lt J.C.Fox	7 D.W.R.

JUDGE ADVOCATE

Major J.F.Compton Miller Barrister-at-Law	Deputy Judge Advocate Staff

PROSECUTOR

Capt D.P.Jones	Manchesters J.A.G's. Staff

DEFENDING OFFICER

Lt J.M.Johns[redacted] Solicitor	1 Leicesters

The accused is brought before the Court.

JA Q Are you No. Cdn/99 Lieutenant C. J. Rodgers, 7 Bn Duke of Wellingtons Regt? A. Yes, Sir.

The Judge Advocate reads the Convening Order.

The Convening Order is produced and marked EXHIBIT "G"

JA The Court is satisfied that Major I.H.Stock is not available to serve owing to the exigencies of the service and Capt C.H.Searle, waiting member, will take his place.

COURT Q Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? A No, Sir.

The President, members and Judge Advocate are duly sworn.

JA Q Do you object to H-9925 Staff Sergeant D.G.Levenick acting as shorthand writer at your trial? A No, Sir.

H-9925 Staff Sergeant D.G.Levenick, CMSC, is duly sworn as shorthand writer.

JA Q The Charge Sheet contains 2 charges. The first one is laid under Section 40 of the Army Act charging ""hen on active service, conduct to the prejudice of good order and military discipline in that he in the field on 13th February 1945 improperly drew his revolver and pointed it at No. H-16726 Cpl G.R.Johnson, 7 Provost Company Detachment, Canadian Provost Corps, who was checking the log book of a jeep in which he (the accused) was a passenger, saying at the same time to the said No. H-16726 Cpl G.R.Johnson "Give me that book" or words to that effect." Are you guilty or not guilty of the first charge? A Guilty, Sir.

Q The second charge is laid under section 19 of the Army Act and is in these terms, "When on active service Drunkenness in that he in the field on 13th February 1945 was drunk". Are you guilty or not guilty? A Guilty, Sir.

JA That Charge Sheet is signed by Lt Colonel Hamilton, Commanding 7 Duke of Wellingtons Regt and countersigned by Major Hooper DAAG for General Commanding First Canadian Army.

JA Now before a court can properly record a plea of "Guilty" to a charge the court must be satisfied that an accused personally knows and appreciates two things; first, that the accused appreciates the nature of the offence to which he pleads guilty and also that the accused appreciates the difference in procedure between a plea of "guilty" and one of "not guilty". Suppose a plea of guilty is accepted; it would mean that thereafter the accused would be unable to deny the commission of that offence. ~~All that the court will be concerned with in the case of a plea of guilty is to appreciate the nature of the offence.~~ As only the president will have read the summary the members will have the summary read to them ~~and will~~ appreciate the offence, ~~and~~ will be concerned only in passing a just sentence.

With regard to these charges, the first charge is one of conduct to the prejudice of good order and military discipline. That is purely a military offence and the court is advised that they have to be satisfied that the particulars disclose some act which is contrary to both good order and military discipline. If it is contrary to military discipline automatically it must be an act contrary to military good order. You are familiar with the particulars of this charge and

I would be prepared to advise the court that an officer in that situation who would so present a revolver might well be considered to have committed an offence to the prejudice of good order and military discipline. It may be that the court would like to consider whether it does amount to, on the face of it, an offence against good order and military discipline.

In regard to drunkenness, a test of drunkenness, the test of drunkenness I should say, is the same as applied in civilian life. It is what the ordinary man in the street would consider to be drunkenness.

JA Q Do you appreciate the difference in procedure and what is involved in both of these charges? A Yes, Sir, I do.

JA Would the court like to consider in ~~under~~ all the circumstances whether they are prepared to accept plea of guilty on the first charge. I need not bother about drunkenness. Would the court like to close to consider it?

COURT Are the members prepared to accept them? A Yes.

JA The court can particularly assess this kind of ~~trial~~ case out of their military knowledge. I think it would be quite proper to record the pleas of guilty.

Mr. Johns, have you any statement to make with reference to the charges? A I shall have a statement in mitigation.

JA You have no statement to make in reference to the charges? A No, Sir.

The Prosecutor reads the Summary of Evidence.

JA That will be marked "H".

Summary of Evidence ~~produced and~~ marked EXHIBIT "H".

JA Do you wish to make any statement or not or call witnesses? A No, Sir, there are no witnesses to call but I wish to make a statement on behalf of the accused officer.

Do you wish to call the officer in support of the statement? A No, I shall not call the officer.

Defending Officer in Mitigation.

May it please the Court: The accused has plead guilty to two charges and the facts have been read out by the prosecutor relating to the two charges. It would be foolish of me to attempt to decry the severity of the first charge, in particular the drawing of a pistol on a military policeman in the execution of duty. An equal amount of severity must be attached to the second charge. How under those circumstances could an officer of His Majesty's Service come to such a place, to commit these crimes and it is for me to put what facts I can before the court in behalf of the accused for their consideration regarding the penalty the court has in mind.

The accused officer has had five and one-half years service, of which the last two years have been commissioned service. He is, of course, a volunteer. He joined his present battalion in April of last year and proceeded to France with them for the invasion. He was wounded on about 18th of June as a result

of a German anti-personnel mine and rejoined the battalion in Holland in November of last year. From that time until the time that he was arrested as a result of this unfortunate incident he acted as platoon commander of a rifle platoon in that battalion.

The circumstances on this particularly unfortunate day were these. Two officers obtained permission from their Company Commander to go to Turnhout, the battalion having moved out of the line the day before to rest. Permission was granted and they went to Turnhout. There the accused officer, instead of remaining in company of his friend, went by himself to various cafes. He can remember very little of what took place but he does know the next morning in waking up in the hospital that he had a peculiar taste in his mouth. It is possible and he is firmly convinced that he was given at some cafe in this town drinks which were not good alcohol, some form of wood alcohol or poison.

JA You mean that it was alcohol being sold at cafes to all comers but of an inferior quality? A Detrimental quality, Sir.

But it was the ordinary drink being sold to persons frequenting that particular cafe? A Probably, Sir. As a result of that dope the accused officer had temporary amnesia, perhaps that word covers the condition.

JA You must be very careful what language you use if you wish to persist in this plea of guilty.

DEF Should I put it like this, Sir, that the accused has only the haziest recollection of the events of that evening.

JA But he did go to cafes and drank liquor in all of them?

DEF Yes, Sir, drank alcohol at a certain cafe but he cannot remember what cafe the liquor he had got of this kind. It would appear there was a cafe selling to all certain doctored alcohol. That is a thing I cannot prove. The accused cannot give me the names of any of the cafes. It is, however, within the knowledge of the court that there is a great amount of selling of this doctored alcohol taking place on the continent. The accused officer is certainly not the first example of it.

Be that as it may he reached a certain condition and then finds himself in this jeep. A policeman quite properly comes along checking up his identity. Some motive prompts the accused to point his pistol. This officer has hitherto enjoyed a character which his Commanding Officer describes as "very good". By what agency does he suddenly fall from that position to the one in which he finds himself now? What influence was there at work that suddenly made this officer, who up to this time was a good capable officer, a practically irresponsible person, threatening possibly the lives of himself and several other people? Is this the act of a man who deliberately intended to fight a military policeman with his firearm or is it more or less the result of a drunken condition, a drunken condition brought about not so much from intemperance or intemperate habits as from other causes? The charge is serious and I would ask the court to consider if a man of his character, his previous character and reputation, if it would be normal or within reasonable possibilities that such an officer would dive off the deep end. If you think that this incident was the result of doctored alcohol

it can lie within your duty to say he was more a fool than a knave and in consequence limit the amount of punishment you will give him.

There is another aspect I wish to draw attention to. It is the question of the firearm. There is nothing in the charge that the officer intended to use that pistol.

JA You mean to discharge it?

DEF To discharge it, to use that pistol in its normal way. The military policeman probably actuated the mechanism of the pistol in grabbing it. He was perfectly within his duty and the defence makes no allegation that he was not. It was quite proper that he remove the pistol from the accused. Yes, anyone who produces a pistol must be willing to bear the consequences. I wish, however, to mention that the accused is the only person who suffered and that no-one else was injured or effected by the discharge of the pistol.

There are certain courses open to the court. Two of these can mean the end of this young officers career. He is now 24 years of age. Two courses lie open to this court which can possibly destroy his career, his career in civilian life after his army career is finished. Other courses lie open to the court which will not have such a drastic effect. This is only one incident, an unfortunate one and it is impossible for me to say it is not a serious one, but are you going to effect that drastic determination of his career as a result of one lapse. The power which lies in your hands is very great. So also are your duties. You have here an officer who volunteered to come overseas from Canada, who has not been back for 5 years, attached to the British Army, who has been wounded in action, goes into action again, comes out and goes off to a Belgian town and through no fault of his own drinks doctored liquor, becomes drunk--here you have the whole unfortunate story. At one fell swoop as it were he jeopardized his present career and perhaps his whole career after the war. It is impossible that he should go unpunished; justice demands that some punishment be accorded to him. I have drawn attention to the fact that he has suffered physically and that he was the only one who did. He has not only suffered physically but has had this hanging over his head. Twenty-four years of age and one lapse. Is the court going to terminate his career or are they going to give him a second chance? It is a heavy responsibility for me to put this officer's case in the best light. His own life has no doubt been in peril and there is a certain strain. All front line troops would have gone back for recreation as he did. Many front line troops go back to Turnhout and get doctored liquor and many others get into this condition. I again ask, is he a fool or a knave. If you think the former justice may be satisfied by something else than dismissal from the Service. I would ask the court to consider this in the fullest light and to say that notwithstanding this proven foolishness the country still has need of men like this and still can use them.

JA I am a little bit uneasy about your plea in mitigation; whatever course this case takes it is bound to be of assistance to the accused. I would refer you first of all to paragraph 9 of page 106 of MML which says

> "Temporary intoxication (from liquor or drugs)---as distinct from mental disease, which alcoholism, &c., may bring on--- is not (if voluntary) in itself an excuse for crime; but evidence of drunkenness whichrendered the accused incapable of forming the specific intent essential to constitute the

the crime must be taken into consideration together with the other facts proved in order to determine whether or not he had that intent."

Are you admitting that the accused consciously pointed his revolver at Cpl Johnson of the Provost Company. You see it is not clear from the language, from your language, in the Plea in Mitigation whether you are admitting that. It is true that in the evidence he answered questions quite rationally but you refer to "doctored" liquor and that the accused did not remember actually what he did do. If you had a state of insensibility then he would not be guilty of the first charge, would he, or in a state of madness?

DEF I appreciate it is a proper question but the light I consider this point is this. This is a charge where intent is not necessary and there is no question of intent in the mind of the accused.

JA But there must have been a consciousness of the pointing of the pistol; the accused must not have been an automaton.

DEF I appreciate that. I cannot tell the court that. In view of the evidence before the court of the military police that he could answer question. It is not for me to say that he did not know. I cannot say that but I can say that as a result of this liquor he did things which he would not otherwise have done in his normal habits and that this condition was brought about not by intemperance but otherwise.

JA Let us concentrate on the first charge. You do not say that he was an automaton but that he did point the pistol in a sense conscious but in a condition when his senses were dulled by his being drunk? Is that what you are saying in regard to the first charge.

DEF Exactly, Sir, in a certain sense his irresponsibility had been induced as a result of some liquor which did not leave him in an unconscious state.

JA Now then, go to the second charge. You have admitted a charge of drunkenness but you have repeatedly used the words "doctored liquor". Suppose this were a case in which a man was drinking ordinarily in a cafe and suddenly was affected by some deleterious matter in the drink put there after the person drinking had been served by the cafe people and the accused was then rendered mad or abnormal by reason of this agent alone, and then he went out of the cafe and behaved like this, then it would seem to be a clear defence to both charges. Suppose there might be a clear defence to the two charges. Your position is that he went into a cafe in Turnhout and he drank there quite freely and voluntarily the liquor supplied by the cafes, which was liquor of poor quality, that it was not the sort of liquor that you would expect to be in a Mess but the sort of liquor there is always the danger of buying in a low cafe in a foreign town, but doctored only in that sense. Is that the position?

DEF Yes, Sir. I cannot make out that the effect of the liquor was to render him unconscious.

JA I quite understand that. What I am trying to elucidate is that the accused voluntarily consumed this liquor in the sense he was prepared to buy what this particular cafe provided as liquor.

DEF Voluntarily, Sir, in the sense that he went into the cafe of his own accord and was brought the normal liquor in the res-

pective cafes. He bought it considering it to be reasonably harmless alcohol but found out later it was not. Again I cannot say the alcohol had a completely blackout effect on him.

JA I am speaking only on the point of "doctored". If you say this man was a normal person with normal capacities and actions and he drinks doctored liquor which renders him irresponsible because of it we ought to try this accused on the second charge.

DEF Again the accused said in his answers before Lt Neff that he did not remember the cafes he went to and if the charges were altered, I should say the pleas, I would have to produce all evidence of those cafes and offer something more substantive.

JA You can always call the accused. He is entitled to ~~being~~ be believed as any other witness.

DEF I should have to prove this question of "doctored" liquor. I appreciate it and I know what I say when I tell the court that, and the accused knows it.

JA The court is with you in the sense that it was the lowest grade liquor and as long as you are admitting that liquor in those cafes would be the same as you or I might be faced with if we were to go to these cafes then in that sense the plea is not inconsistent with a plea of guilty.

DEF Yes, and the effect on the accused was greater than it was normally, bearing in mind his normal standard and temperment.

JA That is a matter of mitigation. A man is bound to keep within his capacity.

DEF Within the reasonable condition that the alcohol served to him is that with which he has some experience. If I drank whiskey and someone told me afterwards it had been methylated spirits I would be terribly annoyed.

JA Might I ask the prosecutor if he has any observation on this plea?

PROS I was a little disturbed on the question of whether or not the Defending Officer had made it clear that it was voluntary or otherwise, which is the point you have taken up. As I understand it the defence are saying that the accused went into cafes and drank and then became drunk after having consumed quantities of liquor. It may be that the liquor was of lower grade that he was used to or it may be that it was of a different type. As I understand it the defence are putting forward that he went on consuming liquor and he would have been able to stop at any stage but nevertheless he went on having another drink and eventually it made him drunk.

DEF No-one present at the cafes is available and it is difficult to say what took place but it is within the bounds of possibility that he went on drinking without clear knowledge of what he was doing and went further than he should have of this particular alcohol. I cannot say what I don't think anyone else can say. We can only take his condition in the jeep and that was a certain limited ability, to produce his identity card to the military police and so on. These things were carried out normally. Obviously something got ahold of him. He became peculiar. Part of that is the

pulling or the pistol which was done consciously but not with malice than possibly would appear at first sight. To the question of malicious intent behind it that if there was malice it was most limited.

If the matter is stripped down to the accused taking doctored liquor and being rendered abnormal, so abnormal-he cannot have mens rea for the first charge then he should be acquitted of both charges.

JA On the same grounds.

DEF But you are not putting that forward as a defence. You are not saying that doctored liquor rendered him unconscious.

JA I cannot, Sir. The evidence reads, the evidence indicates certain movements, actions of a certain kind which do not support that.

DEF We are left with this point whether he voluntarily consumed what you call "doctored" liquor. One fact in the case is that he went to these cafes where there was low grade liquor which would be served to you or to me or anyone who went there and he quite freely consumed that liquor risking its characteristics

JA Are you admitting that?

DEF In this sense, admitting that he must be held responsible for entering the cafe which sold that liquor. Each one of us could go into a cafe and have a similar experience. If, as he is now accused of, this officer had drawn a pistol on a military policeman obviously the penalty accorded to him would be most severe. If he were unconscious or what we sometimes say "blotto" it is very doubtful if he would have had the physical condition required to draw the pistol. In between these two positions is the accused officer on that night at the time he returned to the jeep and by the time the military policeman came along he was in a certain condition; he was presumably getting better as time went on, returning to his normal completely sober condition. In between these two stages the officer finds himself and it is in that light I ask the court to judge him.

JA I will ask the court to close to consider this before we go any further with this case.

The court closes to consider.

The Court re-opens.

COURT The court have decided that the case should be tried on both charges.

JA Q I have one formal question. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A No, Sir.

JA Have you anything to say or wish to make an opening address, Captain Jones?

PROS In view of the circumstances and the fact that the Summary has been read I do not propose to open.

DEF I take it that the status at present is that the accused has pleaded "Not Guilty"?

JA Yes, the court direct that pleas of "not guilty" shall be entered. That is the position.

H.16728 Corporal Johnson, G.R. 'P' Section, 7 Canadian Provost Company, Canadian Provost Corps, having been duly sworn is examined by Captain D.P. Jones:

Q. Is your No. H. 16726? A. No. sir H. 16728.

Q. And you are Corporal G.R. Johnson? A. Yes sir.

Q. Is your unit No. 7 Canadian Provost Company? A. Yes sir.

Q. Canadian Provost Corps? Do you remember the 13th February? A. Yes.

Q. This year. Were you on patrol in Turnhout? A. Yes sir.

Q. In the late evening did you notice a vehicle in Turnhout? A. Yes sir

Q. What type of vehicle? A. 5 cwt - a Jeep.

Q. Where was that? A. Standing in front of the Magic Dance Hall.

Q. When you saw this vehicle what did you do? A. Told the driver to stop and I went over to check it.

Q. When you went over, who did you notice in the vehicle? A. I noticed four soldiers in the vehicle.

Q. Two in the front and two in the back? A. Yes sir.

Q. Who did you speak to? A. The one next to the driver.

Q. What did you say to him? A. I questioned him as to their authority to be in Turnhout and I requested his identity.

Q. What kind of identity did he produce? A. M.B.M. 182.

Q. What did that show? A. It showed him to be a Serjeant.

Q. Did he say anything about that? A. He said he was a Lieutenant.

Q. Do you recognise that individual here? A. Yes sir.

Q. Is that the accused? A. Yes sir.

Q. When he told you he was a Lieutenant what did you do? A. I asked for the Log Book of the vehicle.

Q. Did he produce it? A. Yes, he asked the driver for it.

Q. Did he give it to you? A. Yes.

Q. What happened then? A. I was checking the Log book and while I was checking the Log Book there was some argument among the passengers and also Lieut. Rodgers said 'Give me that book' and he pointed a revolver at me.

Q. Did you give him the book? A. I did so. I went to hand him the book and grabbed the revolver and showed it down.

Q. What occurred? A. The revolver went off and a round hit him in the leg.

Q. Did he say anything at this time? A. Not at the moment. After he left the Jeep he said he had been hit in the leg.

Q. Did you arrange for him to be taken away? A. Yes, I detailed my driver to take him to 9 F.D.S.

Q. While you were speaking to Lieut. Rodgers, what was his manner like? A. He was in a way sarcastic when I was speaking to him.

Q. Did he say anything particularly sarcastic? A. He told me he had just come down from the front and he wanted to enjoy himself.

Q. Anything else? A. He told me he got permission from his Commanding Officer to come down there.

Q. What was his speech like? A. His speech was quite clear sir.

Q. When you were asking him questions, how did he behave? In what sort of way did he answer? A. He answered them all quite sensibly sir.

Q. Did he seem to be sticking to the point of the questions or not? A. Yes sir.

Q. Did you notice anything in particular about his condition? A. I could smell alcoholic beverage on him.

Q. Did you form any opinion as to his condition as to that respect? A. The opinion I formed was that he had been drinking.

Q. No more than that? A. No sir.

Cross-examined by Lieut. J.M. Johns:

Q. I have a question relating to the condition of the accused at the time you spoke to him in the Jeep. Could he stand up when he got out of the Jeep? A. No sir. He said he was hit in the leg.

Q. Was his speech slurred? A. No, it was not slurred and I understood everything he said to me.

Q. When he pulled this pistol on you did you get the impression that he was likely to use it? A. Well, yes, it was pointed straight at me.

Q. I agree. To have a pistol pointed at you is not a wholesome situation. Was his manner otherwise threatening? A. Yes, he said 'Give me that book', and he really meant me to give it to him.

Q. How did you know he had been drinking? A. I could smell it a little bit.

Q. But you were unable to say when he was outside of the Jeep whether he could not stand up because of drink or because of the injury to his leg? A. Yes.

Q. And you would say that it was due to the injury in the leg? A. Yes sir, he said he was hit in the leg.

Q. And can you give more evidence of his ability to stand up straight? A. No sir.

Q. When you got him out of the Jeep? A. He was hit in the leg at that time.

The prosecutor declines to re-examine.

Q. By the court: Was he able to hop about on one leg and move about? A. Yes.

Q. By the J.A: You were saying in your opinion the accused was not drunk? A. Yes sir.

J.A. There being a shorthand writer, it is the opinion of the court and the Judge Advocate that there is no need to read over the evidence. You know Mr. Johns, of course, that the shorthand note is available to all at any time.

Mr. Johns: Yes sir.

(The witness withdraws)

Captain Jones: I tender Lance corporal Wallis for cross-examination. He is the witness who was present with Corporal Johnson.

L.57877 Lance corporal Wallis, J.G., 7 Canadian Provost Company, Canadian Provost Corps having been duly sworn is examined by Captain D.P. Jones:

Q. Is your Regimental Number L. 57877? A. Correct sir.

Q. And you are Lance corporal J.G. Wallis? A. Yes sir.

Q. And your unit is 7 Canadian Provost Company? A. Yes sir.

Cross-examined by Lieut. Johns

Q. You were at the Jeep on the evening of this incident? A. Yes sir.

Q. You were standing next to the last witness? A. Yes sir.

Q. Corporal Johnson? A. Yes sir.

Q. Did you observe Lieutenant Rodgers condition very closely? A. I noticed quite a bit sir.

Q. Did you notice whether he had been drinking? A. I noticed he was under the influence of liquor.

Q. How did you notice that? A. From the statement he made sir.

Q. What statement? A. About having permission from his officer Commanding to be there.

Q. By the J.A. From the manner he said it? A. Yes.

Q. By Lieut Johns. In what way did you think he was drunk, or had been drinking? A. From his speech sir.

Q. Why? A. It was quite thick.

Q. Slurred? A. Yes, slurred.

Q. Did you see him pull this pistol? A. Not exactly pull it, just saw it.

Q. See him with it out? A. Yes sir.

Q. What would you say of his attitude when he was pointing it at Corporal Johnson? A. That is hard to say. I just saw it pointed there. What his intentions were it is hard to say.

The prosecutor declines to re-examine.

Q. By the J.A. Would you say that he was drunk: Was he drunk or not? A. No sir, I would not say he was drunk.

In the opinion of the court and the Judge Advocate it is not necessary to comply with Rule of Procedure 83(B).

(The witness withdraws)

Lieutenant J.R. Cannon, 'D' Company, 7th Bn. The Duke of Wellington's Regiment, having been duly sworn is examined by Captain D.P. Jones:

Q. You are Lieutenant J.R. Cannon? A. Yes.

Q. And your unit is 'B' Company, 7th Bn. The Duke of Wellington's Regiment? A. Yes.

Q. Do you know Lieutenant Rodgers? A. Yes.

Q. Do you recognise him here? A. Yes.

Q. I believe you are both Platoon Commanders in 'B' Company? A. Yes.

Q. Do you remember the 13th February this year? A. Yes.

Q. Do you remember going to Turnhout on that day? A. Yes.

Q. Who did you go with? A. Mr. Rodgers, Serjeant King and a driver in a Jeep.

Q. You all went in the Jeep? A. Yes.

Q. What time did you get to Turnhout approximately? Was it morning or afternoon? A. Afternoon.

Q. What time? A. Between one and two. I am not certain of the time.

Q. Early in the afternoon: where did you go? A. We went to do the business we had at the Officer's Shop and outside of Turnhout to the Field Cashiers to draw money.

Q. Did you go back to Turnhout? A. Yes.

Q. Did you and the accused go anywhere together? A. Yes.

Q. Where did you go? A. To the Officer's Club and then we went and had a drink at a cafe.

Q. By the J.A. Did you have a drink at the Officer's Club? A. Yes, One I think - a whisky. Q. A double whisky? A. No single whisky.

Q. By Capt Jones. Then you went to a cafe? A. Yes sir.

Q. Do you remember what was drank by the accused at the cafe? A. I remember, but you mean what was he drinking?

Q. What and how many? A. We drank Cherry Brandy. I should think we had four or five Cherry Brandies each there.

Q. Then after that did you continue together? A. No, Mr. Rodgers left me. I think it would be between five and six. More near five, I should think.

Q. About five o'clock the accused left you? A. Yes.

Q. Did he say where he was going? A. No.

Q. When did you see him again? A. At about eleven o'clock.

Q. You did not see him between five and eleven? A. No.

Q. When you saw him at eleven o'clock did he tell you where he had been? A. No.

Q. Could you describe what his manner was like when you saw him again? A. When I saw him at eleven o'clock at first I thought he was pretty drunk.

Q. Why did you think that? A. Because of his argumentative mood. I varied my opinion a little later on.

Q. Well at first, what was his speech like? A. His speech was fairly clear.

Q. Fairly clear? A. Yes.

Q. Was he talking sensibly or not? A. No, he was not talking very sensibly.

Q. Was he talkative or taciturn? A. Fairly talkative.

Q. Was he talking about anything in particular? A. I cannot remember what we were talking about. I was trying to get him into the Jeep.

Q. What was his walking like? A. His walking. He could walk fairly straight. Not as a drunk man would walk.

Q. Fairly straight. You mean he walked in a normal sober way, or not? A. Not quite in a normal way. He just rolled a little but certainly did not stagger.

Q. Could he walk alright by himself? A. Yes.

Q. You began to say you were getting him back to the Jeep. What did you say to him then? Do you remember? A. I do not remember what I actually said to him.

Q. What was the general tenor? A. I used the normal manner to get an argumentative man into a Jeep who did not want to do so.

Q. You mean he did not want to get into the Jeep? A. No, he did not.

Q. But did you manage to persuade him then? A. Yes.

Q. Did you tell him where you were going? A. I did'nt tell him at that time. I assumed he knew we were going home. Later on he did'nt seem to know where he was going.

Q. How much later? A. About a quarter of an hour or so.

Q. Was he in the Jeep then? A. In a quarter of an hour: He just got into the Jeep and I assumed he knew we were going home back to our unit.

Q. Yes? A. Then a little later I told him he was going home and he did'nt seem to realise where home was.

Q. Do you remember what he said? A. I do not remember his exact words, but he didn't seem to know where he belonged.

Q. Where was the Jeep at the time? A. Outside the Cafe Magic.

Q. Who else was in the Jeep? A. Serjeant King and Driver Lawes.

Q. Where were you sitting? A. The driver, Private Lawes, was in the driver's seat. Mr. Rodgers was beside the driver in front and Serjeant King and I in the back. I was sitting behind Mr. Rodgers.

Q. Did you start off in the Jeep? A. We were just about to start off when the military policemen came along.

Q. Was did the military policemen say? A. First he wanted to know what we were doing and it seems there was a curfew on and we were late. He wanted to know why we were there and we told him. Then he wanted our identifications.

Q. Did you show them? A. I showed him my identity card and he asked for the 412.

Q. Did the accused show his anything? A. I cannot remember.

Q. Then what did the military policeman ask for? A. The A.B. 412 of the Jeep.

Q. Who did he ask for that? A. He asked the driver: he addressed the question to the driver and the driver had it.

Q. Did the driver produce it then? A. Yes.

Q. Did he hand it over to him? A. Yes.

Q. Did the military policeman examine it? A. Yes.

Q. What happened at that stage? A. Well, he was examining the book and while doing so he asked for my authority for being in Turnhout so far away from my unit. I told him that I had no written authority

but I had permission from the Adjutant and the Company Commander and at the same time Mr. Rodgers pulled out his pistol and said that was his authority.

Q. Wait a minute. Mr. Rodgers drew his pistol. What exactly did he say at that time? A. 'This is my authority'.

Q. Were those the first words he used? A. Those were the only words I heard him say.

Q. What did the military policeman do? A. The military policeman looked and saw the pistol and at the same time handed the log book back to the driver, reaching over Mr. Rodgers. When he had reached and handed it over Mr. Rodgers, he dropped the book and at the same time he brought his hand down and knocked the pistol down downwards and it went off.

Q. Was the accused injured? A. Yes.

Q. What happened after that? Did you get out? A. The military policeman, I think it was a corporal, at the same time as the pistol went off pulled Mr. Rodgers out of the Jeep on to the pavement.

Q. Did the accused say anything? A. Yes, something that they had got me.

Q. Give his exact words. A. Yes - 'They have got me Jack', or 'They have hit me Jack'. I think it was 'They have got me Jack'. I am almost sure it was.

Q. Did he say anything besides that? Did he say what he was referring to? A. No.

Q. Then after that was the accused taken away to the F.D.S? A. Yes.

Q. Did you and Serjeant King and the driver go to the Provost Headquarters? A. Yes.

Cross-examined by Lieut. Johns.

Q. Those words Mr. Cannon 'They have got me Jack', I know everything was happening in a hurry, but what did you think the accused was referring to? A. I thought he was referring to the C.M.P's. He thought they had shot him. I don't think at the time he realised his own pistol had gone off.

Q. Now you say you thought that he was drunk at the start when you met him at the Jeep, but later you revised your opinion? A. Yes.

Q. What length of time would that be? A. When I first saw him I thought he was drunk and when I had been arguing with him trying to get him into the Jeep and walking around the Jeep, I did not think he was drunk, that he was drunk on normal stuff because I have been with Mr. Rodgers quite a little, especially at the Christmas Season and I Have never seen normal liquor do the same as whatever he had been drinking there.

Q. In other words he was a man who could hold his liquor? A. Definitely

Q. Do you think he was peculiar at the time? A. I would, because his head seemed to be so very incapable, yet he could talk normally and walk straight.

Q. That condition did not change the whole time up to the shooting incident? A. No sir.

Q. He didn't cool down. A. No.

Q. And you gather he did not know it was his pistol that fired the shot? A. That was what I gathered at the time.

Q. When the pistol was drawn did you see it drawn? A. No sir.

Q. You just saw it pointed? A. Yes.

Q. What were your own reactions at that? A. For a moment I was astounded and things happened so quickly that before I could do anything it had gone off.

Q. Would it be possible for you to say whether in your own judgement the accused was deliberately trying to impress the Corporal with the revolver? A. I don't think I can answer that one very well. I don't know.

Q. Were you afraid? A. No.

Q. Why not? A. Because I saw it and I was going to tell him not to be such a bloody fool and then it was knocked down and went off.

Q. You were not unduly alarmed then. Would it be correct to say that? A. I was not alarmed in the sense that he was producing the pistol but I thought the circumstances might be a little awkward. That was the only sense.

Q. Did you think there would be a shooting fracas? A. No, not for a moment. I did'nt think he was going to shoot with it.

Q. In other words you thought he was going to be a bloody fool? A. Yes that was it.

The Prosecutor declines to re-examine.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with Rule of Procedure 83(B).

(The witness withdraws)

Capt. Jones. I present Serjeant King as my next witness for cross-examination.

Lieut. Johns. Serjeant King: I don't require him.

Lieutenant W.R. Neff, 7 Canadian Provost Company, Canadian Provost Corps. is duly sworn:

Capt. Jones I tender this witness for cross-examination.

Cross-examined by Lieut. J.M. Johns:

Q. Mr. Neff, I believe you visited the accused in the hospital? A. That is right.

Q. I believe you cautioned him? A. Yes.

Q. Having cautioned him, did he say this:

'At approximately 1830 hours I left Lieut. Cannon. After visiting one or two cafes I don't remember anything until I awoke in hospital on the morning of 14 February 1945' ?

A. That is correct.

Q. Did he make any other reference as to the drink he had consumed that evening? A. No sir. Not that I recall.

Q. He did not refer to doctored drink? A. Yes, I believe there was.

Q. What did he say? A. He said 'I don't remember anything at all'. That he might have had doctored liquor.

Q. By the J.A. Did you administer the usual caution? A. Yes.

Q. Before you had this conversation with him? A. Yes sir.

Q. By Lieut. Johns He referred to this doctored liquor: he referred to a taste in his mouth? A. It was in the conversation.

Q. That was before you administered the caution or after? A. It was after the caution.

Q. The caution preceded everything. Do you know Turnhout? A. We have had several cases of that. We have confiscated liquor, taken it to the civilian authorities and we have had charges laid against civilians, usually proprietors of cafes selling liqour to soldiers.

Q. What type is it? A. A very cheap Cognac. I believe there was wood alcohol put in or something.

Q. What is the effect of it? A. Amazing at times. A man hitherto mild in temperament under the influence of this liqour often becomes obnoxious and seems to lose his ability to control himself in any manner.

Q. Would it be true to say a man who is normal and can hold a reasonable amount of liquor of a good type (when I say good liquor, I mean clean) would find himself a different personality. A. Yes. Often he is totally different.

Q. In Turnhout you say there have been several cases? A. Yes, I know of at least three to my own knowledge. There are others I have heard.

Q. There is a tendency on the part of the person to become violent? A. Yes, some become very voilent. Others just pass out altogether.

Q. Hit the pavement? A. After a surprisingly few drinks.

Q. How many drinks will get you in this condition? A. I don't know. I have heard them say two or three drinks but I cannot say.

Q. It is no test. No normal test for a man's capacity? A. No.

The Prosecutor declines to re-examine.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with Rule of Procedure 83(B).

(The witness withdraws)

Captain W.L. Denton, 7th Battalion, The Duke of Wellington's Regiment, having been duly sworn is examined by Captain D.P. Jones:

Q. Are you Captain W.L. Denton? A. Yes sir.

Q. Attached to 7th Battalion, The Duke of Wellington's Regiment? A. Yes.

Q. Did you take the summary of evidence in this case? A. Yes.

Q. On the 22nd March 1945? A. Yes.

Q. When the witnesses for the prosecution had given their evidence did you address certain words to the accused? A. Yes.

Q. Can you remember what those words were? A. I told the accused that he had no need to make a statement unless he wished to do so, but any statement he did make I would take down in writing and it could be given in evidence afterwards.

Q. After administering the caution what did he do? A. He made a statement on oath.

Q. Is that the original signed by him? (Prosecutor hands document to witness) A. Yes.

Statement is read by the Prosecutor:

I am of the opinion that I was served with 'doctored' liquor, as when I wakened up next morning I had a distinct taste of paraffin in my mouth. I have never been affected by drink in this way before.

(Statement of accused produced and marked 'Exhibit I')

The defending officer declines to crossexamine.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with Rule of Procedure 85(B).

(The witness withdraws)

Prosecutor That is the case for the prosecution.

J.A. The case for the prosecution is closed. You can now make your defence. There are three courses which you may take: you may give sworn evidence: you may make a statement, or say nothing. If you give sworn evidence, you will be sworn like any other witness and you will be cross-examined and questioned by the court. That is the effect of giving sworn evidence. If you make a statement no-one can put any questions to you. In addition you can call witnesses to fact or character. In making up your mind the court is likely to attach greater weight to sworn evidence than a statement made not on oath as you can then be cross-examined. Would you like to confer with your defending officer before I put the questions?

Accused. No sir.

Q. Do you apply to give sworn evidence. A. No sir.

Q. Do you wish to call any witnesses. A. No sir.

Prosecutor's closing address.

May it please the court. I would like to make a few observations. I do not think it is necessary for me to say a great deal. The position is that the accused is charged with two charges, one, the essence is that he is guilty of condust to the prejudice of good order and military discipline in pointing a pistol at Corporal Johnson of the Canadian Provost Corps, saying at the same time 'Give me that book'. The other charge is being drunk at the same time.

The evidence which has been called for the prosecution is essentially that Corporal Johnson and Lieutenant Cannon, both of whom were present during the whole of the relevant time and saw and heard whathappened. The question of pointing a pistol has been fully substantiated by the evidence I submit. Corporal Johnson gave you a clear account which was substantially corroborated by Mr. Cannon. On those points there was little cross-examination and I suggest that the evidence is quite sufficient to satisfy you beyond reasonable doubt that the accused did point his pistol and did what he is specifically charged to have done. If you are so satisfied, then I would say that such conduct was prejudicial to good order and military discipline. It is clearly conduct which is of a kind which is quite inconsistent with proper behaviour by an officer, as between an officer, and indeed any other person, and an N.C.O. of the military police.

With regard to the second charge of drunkenness, you have the evidence of Mr. Cannon that when the accused arrived back at eleven o'clock he came to the conclusion that he was drunk. He changed his opinion a little while afterwards. You may think that was based some on the former knowledge of the officer rather than on his behaviour at that time, and Mr. Cannon told you in evidence that the accused's behaviour was strange; that he was argumentative; that he did not know where he was going or where he had come from. All these things are matters of behaviour which should be taken into account in assessing whether the accused was drunk. There is no satisfactory definition of drunkenness. It has been said that it is a condition which can be recognised by the ordinary sensible, reasonable man on the street. Corporal Johnson told you the accused had been drinking, but was not drunk. Lance corporal Wallis gave a rather stronger account and stated that he did not think the accused was drunk. It is a matter for the court, taking into account the descriptions of the conduct and behaviour

of the accused, to say if he was under the influence of alcoholic liquor or whatever he had been drinking in the ordinary sense of the word. In addition, the defending officer brought out the fact that the accused on being cautioned said that he had visited one or two cafes and he remembered nothing until he awoke the next morning. You may consider that that statement is not inconsistent with the accused being drunk that evening. Again on the summary the accused said he had doctored liquor and when he woke up next morning he had a taste of paraffin in his mouth.

It is my submission that those are matters you should consider in deciding whether the accused was drunk at the time in question and I submit there was evidence on which you can so find. Whichever conclusion you may come to with regard to the second charge may in turn affect your view on the first, but I do say there has been abundant evidence for you to be satisfied on the first charge, and there is some evidence on the second charge. It is for the prosecution to satisfy you beyond reasonable doubt and not for the accused to prove his innocence. In this case I put it that the onus on the prosecution has been discharged by the evidence which has been produced.

Defending Officer's closing address.

I have nothing much over and above what I have previously said before adjournment, except that I would refer the court's attention to the evidence of Lieut. Cannon, an officer who had known the accused for some considerable time, who said, when he was asked whether the accused was drunk or not, that there was a considerable amount of doubt in his mind. He had known the accused for some time and he was not an officer of drunken habits and that there were some peculiarities about his condition. The question of drunkenness is surrounded with a certain amount of doubt. There was doubt on the part of more than one witness, whether they felt it due to a misguided sense of loyalty, I do not know. This officer has himself stated on oath before the Adjutant at the taking of the summary that he had been given doctored liquor. He told the same story after having been cautioned by the A.P.M., Lieutenant Neff. You have heard the A.P.M. describe the effect of this doctored liquor and that there is more than one cafe in this town that have had proceedings taken against them for the sale of such liquor. If it is possible, and I think there is a possibility that doctored liquor was administered to this officer, I may say that while it does not prescribe conviction on the charge of drunkenness, it goes a long way to mitigate not only that charge but also the charge which sprang out of it - the most serious charge of conduct to the prejudice of good order and military discipline in that he drew his revolver.

If you find that he had doctored liquor and, having had doctored liquor, he had reached a state where he did not know that he drew his pistol, you will see that this means to a certain extent that the accused has been a victim of most unfortunate circumstances and it would be wrong that he should suffer the full penalty for such an offence.

Judge Advocate sums up.

It is now my duty to sum up the case.

In this, as in all criminal cases, there is a heavy burden on the prosecution. The prosecution has to satisfy the court beyond all reasonable doubt that the accused has been proved guilty on the evidence of the charges laid against him before you can convict. By a reasonable doubt is meant that doubt that would prompt you to action or refrain from action in dealing with some matter of importance in your private affairs. This court is not going to find this officer guilty of either offence unless the evidence compels them to do so. The defending officer does not appear to be asking for an acquittal on the first charge but it is my duty and the court's duty to sift this matter to the bottom and to look at aspects which may not have been raised by either the defence or the prosecution.

It may appear that if this accused consumed unwittingly some very deleterious substance and that induced in him a state of active derangement of his faculties so that he did not really know what he

was doing, then there would be, I would advise you, a complete defence to both of these charges. Now it is a matter entirely for you, and this case will really be decided by common sense and military knowledge, did anything the accused consumed amount to more than cheap grade liquor? If it was something different from that, something in the nature of a bad oyster, if I may use that expression, then it is a defence here. Suppose you believe the accused unwittingly got this, or if you are in reasonable doubt, if he may have taken on board this peculiar deleterious substance - I mean peculiar in a sense quite different from low grade liquor - if you think that was so, or are in reasonable doubt, it would be your duty and your power to acquit the accused on both charges.

Coming in detail to these charges, the first is laid under Section 40 of the Army Act:

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the field on 13 February 1945 improperly drew his revolver and pointed it at No. H-16726 Corporal G.R. Johnson, 7 Provost Company Detachment, Canadian Provost Corps, who was checking the Log Book of a Jeep in which he (the accused) was a passenger, saying at the same time to the said No. H-16726 Corporal G.R. Johnson, 'Give me that book' or words to that effect.

The court has heard me advise the accused about the nature of a Section 40 Charge with a special reference to the particulars in this case, and the court, out of their military knowledge, might reasonably come to the conclusion I have mentioned, that is, that pointing the revolver at the Provost Company Corporal was an act prejudicial to good order and military discipline.

You will see that certain language in the particulars has been borne out by Corporal Johnson today. The words 'Give me that book'. Lieutenant Cannon gives a somewhat different version of the words. You may not think that that is of such importance to deal with that fact by special finding if you come to a finding adverse to the accused.

These charges will be considered separately, but supposing you thought the accused was drunk or under the influence of drink, that would not be a defence to the first charge, but of course it would have great effect in mitigation of the charge. If a person is drunk it does not automatically absolve him from responsibility. I only ask you to consider that aspect of the matter if you are completely satisfied on the first point that we discussed at the outset.

The second charge is laid under Section 19 of the Army Act:

WHEN ON ACTIVE SERVICE DRUNKENNESS,

in that he,

in the field on 13 February 1945 was drunk.

A good definition of drunkeness has not really been defined. The test is what the ordinary man in the street would consider drunk. You have had the evidence of several witnesses here and none of them has said that in his opinion the accused was drunk. You are not bound by their opinions if there are other factors in the case that the evidence shows that, in spite of what these witnesses say, the accused was drunk. The first witness, Corporal Johnson, said that he could smell alcohol and that the accused had been drinking, but no more. The second witness, Lance corporal Wallis, also a police witness, said that he noticed the accused was under the influence of liquor from the way he made his statement about his Commanding Officer giving him permission to be in Turnhout. He also said that the accused's speech was thick and slurred, but he did not consider that the accused was drunk. If you are going to come to the conclusion that the accused was drunk, you would have to do so upon what these first two witnesses, Corporal Johnson and Lance corporal Wallis, say they observed about the accused's condition, because Lieutenant Cannon only says the accused was not drunk, although his first impression was that he thought the accused was 'pretty' drunk. Lieutenant

Cannon has said the accused was not drunk because he exhibited such very peculiar symptoms. He has been in the company of the accused and they have both been taking drink and Lieutenant Cannon says the accused did not present his normal symptoms on taking drink. He also has said the accused was a sober person.

That is what you have to consider.

The fact of pointing a revolver at the Provost Company Corporal is not contested. It is really the accused's responsibility for that act that is in question. The accused has made two statements. One of them to Lieutenant Neff and the other at the taking of the summary. In both of these statements the accused has stated that he does not remember what happened, but when he woke up next morning he had a distinct taste of paraffin, and the accused's opinion was that the liquor had been doctored. There is no reason to doubt the accused's honest impression that the liquor was doctored, nor the honest impression of Mr. Cannon that the liquor was doctored, but it just rests on impressions. I can only advise you that you put the test to this point of doctored or un-doctored liquor in the terms I suggested to you. Was it then just ordinary low grade liquor purchaseable in all cafes, or was it low grade liquor which had been specially doctored and specially inferior and deleterious in the sense that the Police Lieutenant told us had given trouble in several cases in Turnhout at just about that time.

I think I can assist the court no further.

The Court closes to consider its findings.

The Court re-opens.

COURT: The court's finding is Not Guilty of the second charge. As regards the first charge, the court has no announcement to make.

Captain W.L. Denton is recalled:

Q. By the J.A. You are sworn, are you not?

A. Yes sir.

Prosecutor: There is no 296 sir.

Q. to witness: You know Lieutenant Rodgers? Can you give any particulars as to his service?

A. The accused was attested on 1st June 1940. His date of commission was 17th July 1943. He was formerly of the Hastings and Prince Edward Regiment from 1st June 1940 to February 1943. He took his O.T.C. at Brockville, Ontario for four months and was an instructor there for eleven months until March 1944 at the same institution. He was posted to 7th Battalion, The Duke of Wellington's Regiment on 16 April 1944. He is in possession of the C.V.S.M. and Clasp. There is no record of any former convictions.

Cross-examined by Lieut. Johns.

Q. What is the general character of the accused in the Battalion?

A. His general character is very good. We have had no trouble of any kind.

Q. By the Court. You are Adjutant of the Battalion?

A. Yes sir.

Q. You have been Adjutant while the accused was there?

A. Yes.

Q. How long have you been Adjutant while the accused was in the Regiment?

A. All the time sir.

Q. The accused was TOS England when?

A. He joined us in England.

Q. To the accused. You came overseas with Hastings and Prince Edward Regiment?

A. accused I was TOS England 3 March 1941 I think sir.

Q. To Capt. Denton. How long was the accused incapacitated as a result of this affair?

A. A fortnight.

Q. He has been on duty since then?

A. He has been in open arrest since that time.

Q. And has he been incapacitated since that time?

A. Just while in hospital.

In the opinion of the court and the Judge Advocate it is not necessary to comply with Rule of Procedure 83(B).

(The witness withdraws)

J.A. Lieut. Johns, do you wish to address the Court? Do you wish to add anything to what you have said?

Lieut. Johns. No sir, I don't think there is anything.

The Court closes to consider sentence.

RRR-131

ARM/SGT- RODGER J.

E.K.H.

CHARGE SHEET

The accused, No. K.90030 Arm/Sgt. JOHN RODGER, R.C.E.M.E., Reinforcement Section, C.F.C., attached to No. 10 Company, C.F.C., a soldier of the Canadian Army Overseas, is charged with:-

When on Active Service:

DRUNKENNESS XXXXXXXXXXX

1st Charge Sec. 19 Army Act. — in that he, at approximately 0030 hours, 7 May 1944, was drunk in Inverness.

When on Active Service:

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

2nd Charge Sec. 40 Army Act. — in that he, at Inverness on Sunday, 7th day of May 1944, at approximately 0100 hours, after having been involved in an accident which caused injuries to K.41333 PTE. BUTLER, C.E., a member of No. 10 Company, 6th. Forestry Corps, neglected to conduct himself in a manner fitting a N.C.O. and left the injured soldier without seeing that he received the care and attention which his injuries required.

When on Active Service:

ABSENTING HIMSELF WITHOUT LEAVE

3rd Charge Sec. 15(1) Army Act. — in that he, at Dochfour, Inverness-shire, Scotland, on 6 May 1944 absented himself without leave from 1530 hours 6 May 44 to 0100 hours 7 May 1944 (time absent 9 hours and 30 mins.)

In the Field
19 May 1944 — Remanded to C.C. No. 5 District, C.F.C.

K.W. Carlisle
(K.W. Carlisle) Major
C.C. No. 10 Coy. C.F.C.

In the Field
19 May 1944 — Remanded for Summary of Evidence

N.C. Ferguson
(N.C. Ferguson) Lt-Col.
C.C. No. 5 Dist. C.F.C.

In the Field
1 June 1944 — Remanded to Higher Authority

N.C. Ferguson
(N.C. Ferguson) Lt-Col.
C.C. No. 5 Dist. C.F.C.

In the Field
10 June 1944 — To be tried by Field General Court Martial.

C.E.F. Jones
(C.E.F. Jones) Colonel
Commander, C.F.C.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAM/1697 (2003)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(E).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K.90030	Armourer Sergeant	John	RODGER	R.C.E.M.E. Reinf.Sec.CFC att.10 Coy.CFC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[X] named above as the accused, being subject to military law, has [XXXX] committed the offence(s) set forth in the Charge Sheet[X] attached and on (date) 10 Jun.44 endorsed by me, ([XXXXXXXXXXXXXXXXXX]. " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; [XXXXXXXXXXXXXXXXX

15 June 1944.

This is to certify that I have this day medically examined K-90030 Arm/Sgt. Rodger, J., R.C.E.M.E., Reinforcement Section, C.F.C., attached to No. 10 Coy., C.F.C., and find him fit to undergo trial by Field General Court Martial.

[signature] Capt.
R.C.A.M.C.

FIELD GENERAL COURT MARTIAL

HELD AT

1000 HOURS ON 15 JUNE 1944

AT

NO 10 COMPANY CANADIAN FORESTRY CORPS CAMP

IN THE CASE OF

K-90030 Arm/Sgt. RODGER, J.,

RCEME., Reinforcement Section, C. F. C.

Prosecuting Officer - Capt. R.M. Calder

Defending Officer - Capt. F.S. Perry

E.R.R.

In the opinion of the Court it is not necessary to ~~apply~~ comply with R.P. 83 B during this trial.

First Witness for the prosecution. Having been duly sworn States:

I am Surgeon Lieutenant M. KIRWAN, R.N.V.R., Bught Park Camp, Inverness.

Q. Did you have occasion to treat a Canadian soldier early in the morning on Sunday, 7 May 44? Tell the court how you came to treat him, and what condition he was in at that time.
A. I believe the man came in walking, and he was brought up to my Sick Bay, and I was called to see him. He had an extensive injury to the left side of the face, and some minor cuts. He explained to me he had been knocked down by a car outside the gate, and that he knew one of the people in the car. He had cutson his face, and minor lacerations on his hands.

Q. You say that he had cuts on his face and minor lacerations on his hands. What was there about him to indicate that he was hurt? Were the cuts very visible?
A. Yes sir, especially the ones on the face. He was covered with blood. His face was covered with blood, and the blood was on his tunic.

Q. Did this man appear to be under the influence of liquor?
A. No sir.

Q. What did you do then?
A. I gave him the usual first aid treatment, and then I got him in a car and sent him to the hospital.

NO CROSS-EXAMINATION BY DEFENCE

Second Witness for the Prosecution. Having been duly sworn states:

I am 2815735 Pte. FORSYTHE, R., of the Seaforth Highlanders.

Q. Do you recognize the accused before the court?
A. Yes sir.

Q. Were you with the Accused during the night of 6-7 May 44?
A. Yes sir.

Q. Tell the court where and how you came to meet him, and under what circumstances, and any incidents that happened between that time and the time you finally left him.
A. On the night of 6-7 May, I was in company with Sgt Hodger and another fellow in the Transit Camp Mess. We had been drinking together off and on that night, and it was after 12 o'clock that the accused told me he had missed the liberty truck. As I had a car at my disposal, I said "Jump in the car and I will drive you home. It will only take about 20 minutes and I will drive you there". They did so. We were driving along the road, near Clachnaharry Bridge, when I heard a clatter on the rear mud guard. I realized that somebody had run into me. I stopped the car and got out and then I saw a Canadian soldier picking himself up, and he had a bicycle. I tried to assist him, but he would not allow me. He was bleeding profusely from the side of the face and eye. I offered to tie his head up. He was dabbing his face with a kharki handkerchief, and I had a white one, so I offered to let him use my white one. He would not let me near him. I then told him to jump in the car, and I would take him to his camp, which I understood to be a camp on the road before you reached this one, so he could get assistance, and then we walked up the road to the car. I told him to get in, and some words arose. I do not know what was said. Then he said "I will not go with you people, you are all drunk".

As I was on a scheme, and didn't have any spare time, I did all I could to assist him. I then drove off, and left the two Sgts. off at the bottom of the road coming up to this camp.

Q. In what condition was Sgt Rodger when you left Inverness?
A. We had been drinking, but in my opinion he was not drunk.

Q. Where was Sgt. Rodger sitting in the car?
A. To the best of my knowledge he was in the back seat, but that I could not swear to, because I never paid any attention.

Q. How was he conducting himself?
A. There was no talking, he was just sitting there. I was simply driving and watching the road.

Q. You made a statement that the injured man was bleeding from the eye. Is that correct?
A. Yes sir. He was bleeding from the eye.

Q. Do you know why he would not let you give him any assistance?
A. I thought he was perhaps afraid that I might hurt him. He just would not let me do anything for him.

Q. Did this injured man appear to be drunk?
A. I thought he was, or that he had been drinking at least, otherwise he would not have run into me.

Q. And is it not so that because he refused assistance and because you were in a hurry to get back to the scheme, that you just left him by the road?
A. Yes sir.

Q. Did Sgt Rodger say anything to the injured man?
A. Yes. We all spoke to try and find out where he belonged to.

Q. Was Sgt Rodger in a position to see the injured man?
A. Hardly. He was sitting on the near side of the car, and we were on the off side. I doubt if he could see from the window, as the light was really wrong.

Cross examined by defending Officer

Q. You say that you were in Inverness with Sgt Rodger and you were doing some drinking. How much drinking did you actually do with Sgt Rodger?
A. We probably had about two or three. I was not in the mess the whole evening.

Q. But there was certainly evidence that he had been drinking?
A. Yes sir.

Q. Is it reasonable to suppose that he would have enough drink to make him sleepy after he had got into the car?
A. It is quite reasonable to suppose that.

Q. The position is that in the Transit Camp Mess you offered Sgt. Rodger a ride in your car. Is that correct?
A. Yes sir.

Q. Then his status in your car was that of a passenger?
A. Yes sir.

Q. The responsibility of the car was assumed by you as driver?
A. It was entirely in my hands.

Q. Up to the time the car proceeded to the scene of the accident, was there any conversation whatever?
A. No sir. None whatever.

Q. Sgt. Rodger never said a word?
A. No sir.

RECORDED AT CMHQ IN AG 160 RRR-131

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3)
42-D.R.S.-1068 (2004)

Convened by Order of Col. C.E.F. Jones Comd C.F.C. dated 10 Jun 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K. 90030	Armourer Sergeant	John	RODGER	R.C.E.M.E. Rein. Sec. C.F.C. Att. 10 Coy CFC

RECEIVED 24 JUN 1944 JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED

J.C. Campbell Major

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Scotland on (*date(s)*) 15 Jun 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~who, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be dealt by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Have you objection to~~ [illegible] as interpreter ~~& ans~~ ~~The Interpreter is sworn.(1)~~ Do you object to K-99125 Cpl. Willie, as shorthand writer ? Ans No The shorthand writer is sworn.(1) J.R.

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.R. ALLEN M.C.	No 20 Coy CFC
Member	Captain	A.L. TAYLOR	Mil.Trng.Sec.,HQ.CFC
Member	Captain	M.A. ADAMSON	No 19 Coy CFC
Judge-Advocate			
Prosecutor	Captain	R.M. CALDER	No 5 Dist HQ.,CFC
Defending Offr	Captain	F.S. PERRY	No 18 Coy CFC

Questions by President: Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused K-90030 Arm/Sgt John RODGER before arraignment make(s) (no) (~~a~~) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C.D.&.B.E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(B).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part 1 of the Schedule is amended accordingly.~~ E.R.P.

(1. *Court may be closed to consider the statement.* Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part 1 of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex G, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him ~~(them)~~ again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Q. I suggest that Sgt. Rodger was asleep. Would that be reasonable under the circumstances? Is that what you thought his position was?
A. Yes sir.

Q. Is it your opinion then that Sgt Rodger was asleep?
A. It is my honest opinion that he was asleep.

Q. At the scene of the accident, did Sgt Rodger get out of the car?
A. No sir.

Q. When the accident occurred, you described the sound as a clatter, which caused you to stop. Was there a jar?
A. No sir. I could just feel the glance of the fellow striking the rear mud guard.

Q. The impact of the car striking the bicycle was slight, if anything?
A. Yes sir.

Q. Is it possible that the people in the back of the car would not detect it at all?
A. Yes sir.

Q. You told the court something about Butler's reluctance to come with you. Do you suppose that perhaps he knew he was right next door to this Naval First Aid Station and that he probably preferred to go there? Did that thought occur to you at all?
A. I did not know there was such a place.

Q. You say it was a dark night, and you couldn't see without your headlights. Was it raining, or was there a scotch mist?
A. It was a dark and heavy evening.

Q. As far as you remember you were the only man who had any contact with Butler?
A. Yes sir. As far as I can remember.

Q. You were the driver and took control of the situation, and you sized it up. Actually Sgt Rodger was, if at all, nothing more than a by-stander as a passenger in your car?
A. That is right, sir.

Q. After the accident occured, was there any conversation at all up to No 10 Coy CPC?
A. No so far as I can remember. I simply jumped in the car and said that I had to get going, and drove to the end of the road.

Q. Then you didn't say anything to Sgt Rodger about any accident that may have occured?
A. No sir.

Q. You say he didn't get out of the car, and that it was a dark night. Is it not possible that Sgt Rodger might not have known that there was an accident?
A. Yes sir. It is quite possible.

Q. Did you tell the court that you had heard some conversation between Sgt Rodger and Pte Butler, because if you said that, I would like to point out that we have a summary of evidence in which you say they didn't speak at all. Are you sure who really said anything to who?
A. I am not sure. The point is I could not swear to anything in that respect. You must remember that it was a week after this thing happened that this was brought up.

Q. Did you hear Sgt Rodger say to Pte Butler "If you don't like what we are doing for you you can get out?".
A. Definitely not sir.

Q. Do you remember any conversation of a definite nature between Sgt Rodger and Pte Butler?
A. None whatever, sir.

Re-examined by the Prosecution

Q. To clarify my two points brought out in the position in the car, I would like to ask this. The witness made the statement in his first evidence that he was not aware of Sgt Rodger's position in the car. Is that correct?
A. I said I would not swear to it where they were sitting, but on second thought I am sure he was in the rear.

Q. Some conversation had taken place between the injured person and the others in the car. Did you hear any talking going on between the injured and the passengers in your car?
A. As far as I can remember, I got in myself, and I thought I heard some words.

Q. When you left the injured person, did you have to leave him to open the door or your car?
A. No. I was on the driving side, on the right hand side. I was stopped on the left hand side of the road. We walked up from the accident.

Q. Which side of the car was the injured man, after the car had stopped?
A. He was on the right side of the car.

Q. And did you expect him to get in the back? Was the door open for him?
A. No sir. I told him to jump in, and I got in, and expected him to get in behind me.

Q. Then if both doors were closed, could any conversation have taken place?
A. The windows were down, sir.

Cross examined by the Court

Q. Were you a Sgt. at that time?
A. I was a Sgt., acting Sgt. Major, at the time of the accident. I am now a private.

Third witness for the Prosecution. Having been duly sworn states:

I am K-41333 Pte BUTLER, G.H., No 10 Coy CPC.

Q. Do you recognize the accused before the court?
A. I never recognized this man in the car, the night of the accident.

Q. But do you recognize that Sgt. sitting at that table?
A. I recognize him now.

Q. When did you first know him?
A. I have seen him in camp before the accident?

Q. Do you recognize the accused, then?
A. Yes sir.

Q. On the night of 6-7 May 44, you had an accident, and sustained a slight injury thereby. Tell the court the circumstances leading up to it.
A. I left Inverness around 1 o'clock Sunday morning on my bicycle.

Q. Had you been drinking during the evening?
A. No sir.

Q. Then what happened?
A. I was just coming through Inverness coming back to camp, and just as I got out of town a truck passed me with some soldiers in the back of it, and just after this truck passed me I looked back and saw this car approaching me, after the truck with the soldiers in it had passed me. I naturally got in close to the wall. The very next thing I knew after that was this car hitting as it came past me. It caught me and threw me into the car for about half a minute, then it threw me out, and I smacked right into the wall. My face was bleeding pretty bad, and my eye was closed. As I got up from the bicycle I saw the car had stopped some distance along the road, So I started to go towards it. Then a soldier got out of the car and came towards me. When I got up to him he said "Where were you going? I never saw you". I said "Well, you came in too close and threw me into the wall. It looks as if I am cut pretty bad". So he looked at me and said "it is not very bad. It is a little cut under your eye". I thought my eye had been knocked out. By that time I had reached the car. I said "You had better take me to a hospital, because I am covered with blood". He said that he had just came from that way, and that he was going to Dockfur. I said "You can't leave me here, I am bleeding. You have got to do something for me. You should call the police". As I said that I opened the door at the back of the car and then I noticed the Sgt. in front was from No 10 Coy C[illegible]C. He was in the front seat. When I said "You had better call the police" this Sgt. in front of the car said "Wait a minute. We had better get organized here". I got in the car and sat in the back seat. There was a soldier sitting there in the back seat, but I nver recognized him. He turned and said "What are you kicking about? If you don't like it get the hell out". Then I said "It doesn't look as if you want to do anything for me". I then got out of the car. The driver was then in the seat behind the steering wheel, and as I stepped out of the car he threw in the clutch and just disappeared down the road. He left me standing on the road, so I walked back to the Naval Camp and the guard came and took me into the Sick Bay. They got the doctor and they fixed me up and then sent me to the hospital.

Q. Was it the driver of the car that came back and spoke to you?
A. Yes sir.

Q. Did he appear to be sober?
A. No he did not.

Q. Did he offer to do anything for you?
A. No he did not. He just said that it wasn't a very bad cut.

Q. Did you tell him what camp you came from?
A. No sir.

Q. You say you stepped into the car. In what condition would you say the man in the seat beside you was?
A. As soon as he spoke and the way he spoke I could tell that he had been drinking.

Q. Did you recognize him?
A. No sir.

Q. Did you see him?
A. Yes sir. I did.

Q. Did you see his face and features?
A. No sir. He was sitting in the corner opposite me with his coat collar turned up. My eye was bleeding pretty bad, and I could not see very much of anything.

Cross examined by the defending Officer

Q. You say that you got into the back seat of the car and there was a man in the back seat who was slouched in one corner with his coat collar turned up. I put it to you that that attitude you have just described to the court is exactly the position for a man that has been asleep, or has just been aroused from his sleep, and is not aware of what has happened? In this case does that seem reasonable to you?
A. Yes sir.

Q. Do you think that this probably was his position in the car?
A. I would not like to say that.

Q. You went directly back to this Sick Bay, didn't you?
A. Yes sir.

Q. Was it very far?
A. It just took me about three or four minutes.

Q. Did you know it was there?
A. Yes sir. I knew there was a camp there, so I naturally expected them to have a sick bay there too.

Q. It has occurred to me that perhaps you knew that sick bay was there and you most certainly preferred to go there?
A. No I did not. I preferred to be taken straight to a hospital because I was bleeding pretty bad.

Q. As I understand it, you told this court that this Sgt. from No 10 Coy CPC had said "Let's get organized here". You have previously stated that someone replied "Let's get organized here", by which I infer that you are not at all sure?
A. I am positive sir. I have no doubt whatever.

Q. Did somebody say to you "If you don't like it you can go?"
A. Somebody said that. I don't know who said it. All that I know is that it was the man in the back seat.

Q. Are you sure that he said that?
A. I am positive.

Q. What was Forsythe doing all this time?
A. He had got back in the car by then. He didn't say anything after that. I will admit that after the man in the back seat said something the other men said some words, but I didn't quite catch them. It just seemed to me that they just wanted to get rid of me and pretty quick at that.

Q. Do you recognize the accused as the one who was in the back seat of the car?
A. No sir.

Q. You could not have been very close to him then, were you?
A. I was sitting next to him. He was sitting in the corner. One of my eyes was closed. I did see him, but I didn't know who it was. I did not recognize him.

Q. Did he recognize you?
A. No sir.

Q. Did he know how you got there?
A. No sir. He didn't know how I got there.

Q. You couldn't recognize him, so he couldn't recognize you, is that correct?
A. Yes sir.

E.R.H.

Q. He didn't even know how you got there?
A. I don't suppose he knew how I got there.

Q. These words that you say he spoke could have been used in a case where you were probably getting a lift in the car. Is that not possible?
A. There must have been something wrong with him if he couldn't see what was wrong with me.

Q. These words that were said in this particular instance could have been used by this man, if he said them at all, in such a situation where there was a little confusion. You got into the car and he didn't see you. Could they not have been used in such a situation as this?
A. No sir.

Q. It was so dark the conditions were such that this man could not distinguish you by your features, in the same way that you could not distinguish his, but yet you tell this court that these words could not have been applied in this case?
A. These words only applied to what they meant.

Q. You take one inference, but another person could take another inference? Is that correct?
A. He told me to get out of the car.

Cross examined by the Court

Q. These remarks of yours in regard to your condition after you came up to the car. Where were these remarks made that you had been hurt?
A. I was a little ways from the car, and as I walked back to the car, this man said "Oh, you are a Canadian, I have two of your boys here in the car".

Q. Were you actually in the car?
A. Yes sir.

Q. Did you make any remark in the car in regard to your condition?
A. I said "I am bleeding pretty bad, and it looks as if you have knocked my eye out. I am covered with blood".

Q. What type of car was it?
A. It was a four seater car.

Re-examined by the defending Officer

Q. You said something about being covered in blood. Now you have just told the Court that you were in the car when you made this statement. At the beginning of the trial you said that you said it out on the road.
A. I said it both times, repeating it in the car.

Q. Why did you just think of this all of a sudden? Why didn't you give this in your statement? Are you telling the truth?
A. Certainly I am telling the truth. I know everything that happened.

Q. Who did you say that to, that you are covered in blood?
A. To the men in the car, but not to any particular person.

Q. We now have two statements by you about being covered in blood. You said that you said it to Forsythe outside, and so now you said it again?
A. Yes sir.

Fourth witness for the Prosecution. Having been duly sworn states:

I am L-9006 Arm/Sgt LOCKHART, H.A., RCEME., attached to No 10 Coy CPC as in W.E.

Q. Do you recognize the accused before the court?
A. Yes sir.

Q. Were you in his company on the night of 6-7 May 44?
A. Yes sir.

Q. Did you return to camp with him on that night?
A. Yes sir.

Q. Tell the court how you came to be with him, and how you got back to camp.
A. Sgt. Rodger had been attached to No 10 Coy CPC a short time prior to the dates in question, and on the Saturday, the 6th of May, we decided we would go into Inverness for the afternoon or evening. We left this camp at approximately 1530 hours and got into Inverness and then we went to a cafe for lunch. During the evening we had been drinking in the Transit Camp Mess in Inverness and were offered a ride home by a C.S.M., so we left the Transit Camp in his car and the next thing I remember is arriving at this camp at the bottom of the hill.

Q. In what condition were you when you left Inverness?
A. I was pretty tight.

Q. Are you in a position to state Sgt Rodger's condition?
A. No sir.

Q. Do you know with any certainty what position that you and Sgt Rodger occuped in the car?
A. I was in the front seat and I am quite sure that Sgt. Rodger was in the back seat.

Q. Have you any recollection of any stop being made on the road back to camp, or any accident on the road back to camp?
A. No sir.

Cross examined by defending Officer

Q. Do you recall the afternoon of Saturday, 6 May? Were you in your Sgts. Mess at that time?
A. We were in there with CSM McLeod, and we all had a few drinks together.

Q. Was there any conversation in this mess at the time in regard to your going to Inverness?
A. Nothing, except possibly the fact arose that we were going.

Q. Then the CSM knew you were going?
A. Yes sir.

Q. Was there any talk of a pass at all?
A. No sir. It was the common practise for a Sgt. going into Inverness without a pass, in this Company.

Q. You remember drinking pretty heavily in the afternoon and you remember being in the Transit Camp Mess. Did Forsythe voluntarily give you a ride in his car?
A. Yes sir. He offered to take us up to camp.

Q. Then yours and Sgt Rodger's position was that of a passenger in his car?
A. Yes sir.

Q. Can you remember an accident that occured?
A. No sir.

Q. Can you remember any conversation that took place about the time the accident occured?
A. No sir.

Q. I suggest to you that you and Sgt Rodger must have been asleep. Is that possible?
A. It is quite possible.. We had been drinking quite heavily. I do not recollect stopping at all.

Q. Do you remember anything at all about this man Butler?
A. No sir. I know Butler, and if I had seen him I would have spoken to him.

Q. As far as you know, did CSM Forsythe, now Pte Forsythe, say anything to you about an accident?
A. No sir.

Q. Does Sgt Rodger live in the mess with you?
A. He has just been attached for a short time. He lives in the mess for the present time.

Q. Have you noticed anything wrong with Sgt Rodger's eyes?
A. I have seen that there is something wrong with them. He squints. When we play cards he holds them right up close in his hands and squints his eyes.

Q. Do you know whether he went to see a specialist about his eyes?
A. I believe he did.

Fifth Witness for the Prosecution. Duly sworn and states:

I am Lieut C.E. LEATHERBY, Adjutant, No 10 Coy CPC.

Q. Do you recognize this document? If so read it to the court.
A. It is a certified true copy of para 3 of No 10 Coy, CPC's standing orders, dated 23 March 43. Camp Bounds - All areas outside a four mile radius of the camp are out of bounds, also all places so marked. Certified true copy.

IDENTIFIED AND SUBMITTED AS EXHIBIT 2

Cross examined by defending Officer

Q. Is there anything in your standing orders in regard to the position of Sgts. and their passes?
A. No sir.

Sixth witness for the prosecution. Having been duly sworn states:

I am K-77215 A/CSM McLEOD, W.H., No 10 Coy CPC

Q. Do you recognise the accused before the court?
A. Yes sir.

Q. Was he attached to this company on Saturday, 6 May 44?
A. Yes sir.

Q. Was he issued with a pass to leave this camp and go to Inverness on that day?
A. No sir, he was not.

Cross examined by defending Officer

Q. Is it not the common practise in this Company that Sgts. do not usually have to have a pass to go to Inverness?
A. Some of them do not ask for a pass, but they have been told that it is their own responsibility if they are caught without a pass. I have told them all that at different times.

Q. Is this the first case upon which you have brought a Sgt. before the C.O. for being in Inverness without a pass?
A. Yes sir.

Q. Is it a rule that is very frequently adhered to?
A. There are a lot that have done it before. It is therefore company practise that they don't have a pass to go to Inverness. Most of them do ask for a pass to go to Inverness, though.

Cross examined by the Court

Q. How long have you been CSM of this Company?
A. A year ago April.

Q. During that time have you had, to your knowledge, any charges from the Canadian Provost Corps of Sgts being in Inverness without a pass?
A. I do not recall any in my time.

Re-examined by defending Officer

Q. In Inverness, the Provost Corps very seldom check Sgts. for passes, is that right?
A. That is quite right, sir.

Case for Prosecution is closed

COURT ADJOURNED AT 1145 HOURS - - COURT OPENED AT 1300 HOURS

First Witness for the Defence (Accused) K-90030 Arm/Sgt **Rodger, J. Having been duly sworn states:**

I am K-90030 Arm/Sgt RODGER, J., R.C.E.M.E., Reinforcement Section CPC.

Q. Do you recall the 6 May 44? Tell the court what happened on that day. Were you in the Sgts Mess in the afternoon of Saturday, 6 May 44?
A. Yes sir.

Q. In company with whom?
A. Sgt Lockhart and CSM McLeod.

Q. Was it known to CSM McLeod that you were going to Inverness?
A. Yes sir. He knew because I told him. He raised no question of my going.

Q. Did you have anything to drink in the mess?
A. We had one or two bottles of beer. It was a mixture of strong ales and ordinary beer.

Q. Do you recall being in the Transit Camp Mess in Inverness on that day?
A. Yes sir.

Q. Do you recall meeting a CSM, who is now Pte Forsythe?
A. I do not recall individuals. The place was full of people when I went there.

Q. Did you have anything to drink there?
A. Yes sir.

Q. Do you recall getting into a car?
A. Yes sir.

Q. Tell the court what happened after you got into this car.
A. I got into the rear of the car in the yard at the back of the Transit Camp of the Sgts Mess. After driving and talking I fell asleep in the back of the car. I do not recollect the journey itself, but the next morning I had an idea that the car had stopped, and that someone had wanted to be taken to hospital, and that we wanted to take him to Dochfur.

E.R.H.

I do not know who it was and I did not definitely know whether it was something that had actually happened or whether it was something I had imagined or dreamt. It was not until the following Wednesday that Major Carlisle called me in his office and wanted to know if I had been in the car with Sgt. Lockhart. It was then that I realized probably what had been going through my mind. Something had actually occurred, and it was not something that I had imagined. From then on I have been worrying and trying to understand things better, but I cannot get anything more out of it, that just sticks in my mind. I do not know if anything else happened then or not. I know the rest of the ride was done while I was asleep and I do not remember anything.

Q. Do you think you must have been asleep before the car stopped?
A. I was asleep before the car started. I do not remember the car leaving the yard, it was so dark.

Q. What kind of a car was it?
A. It was a small dark coloured sedan.

Q. Will you tell the court something about the condition of your eyes?
A. They are very weak, and I have to wear glasses to read. In fact, I have to wear glasses for most of my work.

Q. Do you have trouble focusing especially after drinking?
A. I have had difficulties in that line. I asked to be sent to a specialist, because my glasses didn't seem to be any good.

Second witness for the defence. Having been duly sworn states:

I am K-79869 Sgt. PARSONS, W.L., Transport Sgt., No 10 Coy CPC

Q. How long have you been in No 10 Coy CPC?
A. I came here to No 10 Coy on 6 May 1945.

Q. Are you in a habit of going into Inverness quite frequently?
A. Yes sir.

Q. Can you tell the court what the practise is in this company in regard to Sgts having passes to go to Inverness?
A. It is not necessary for a Sgt to put in for a pass, and it is only on one or two occasions that I ever did put in for a pass myself. On numerous occasions I have been in town and talked to the Provost when I have never had a pass.

Q. Can you tell the court then that it is the usual practise for you Sgts to go to Inverness without a pass?
A. Yes sir. That is quite right.

Cross examined by prosecution

Q. Are you speaking for all Sgts?
A. I am speaking for the majority of Sgts.

Q. Are you acquainted with the camp standing orders?
A. Fairly well, sir.

Q. Are you acquainted with that part of the camp standing orders that was submitted as an exhibit to this court? That all areas over four miles radius are out of bounds?
A. I have heard something to that effect, Sir, but I didn't think that it was necessary, because most of the Sgts don't bother putting in for a pass.

Q. Are you aware, then, of this camp standing order that areas over four miles are out of bounds?
A. No sir.

Re-examined by defending Officer

Q. Is that standing order ever drawn to the attention of the Sgts?
A. No sir.

Q. And yet it is known by the company that Sgts go into Inverness without a pass in spite of this order?
A. I am sure it must be known.

TRIAL THEN PROCEEDED AS SHOWN IN RECORD FORM B

Character witness for the Accused. Having been duly sworn states:

I am Major John R. HANBURY, Officer Commanding, No 10 Company, Canadian Forestry Corps.

Q. Do you recognize the accused?
A. Yes. Sgt. Rodger.

Q. How long have you known him?
A. I have known him since September 1940, when he was first attached to No 1s Coy CFC, at the inception of the company in Canada, until the present time.

Q. Knowing him that length of time, is his character such that you would consider him to be an inhuman or unkind man, in regard to his relation with soldiers?
A. Definitely not.

Q. Have you any specific instances of consideration that he has shown for the men?
A. Yes. In the past three years there have been several. Sgt Rodger's position in the company was such that he had a great deal of free time on his hands. His duties were not so great that he was kept busy the whole day. He occupied his spare time by doing a great deal of studying himself in mathematics, and he was always willing and often did help a great many men who also wished to further their knowledge in mathematics, in his own time. He was always willing to help and coach any man in weapons or arms, while he was not required to do it, and he always volunteered for instructional work on military training. He carried out his duties as an Armourer Sgt in a fashion which was completely exemplary. He is a very skilled armourer. I have never found an occasion for anybody to complain about his work, and I have never definitely heard a complaint on his treatment of men. I have always classed him as one of the keener and better N.C.Os.

Closing address by defending Officer

I would like to deal with the second charge, and with charge three. The prosecution has put forward as an exhibit a copy of the camp standing orders, but I am bound to say, that he has failed to prove one thing - that Inverness is out of bounds. We do not know that. As far as this order is concerned, it has not applied in this case at all. In the second place, it has been testified that the custom in this camp, and we know that it is the custom in most of our camps, is that Sgts going to nearby cities do not require to have a pass. It has been shown in this case that Sgts do not take a pass for Inverness and do not expect to be charged with absence without leave when they are in Inverness without a pass. I do not see how, if that is the practise, this man can be found guilty of absence without leave. The second charge amounts to neglect to aid a soldier, and if I may, I would like to read from MML, page 112, para 31.

It says "A person is not ordinarly considered to cause injury to another by the mere omission to do an act; thus, if a man sees another drowning and is able to save him by holding out his hand, but omits to do so, even in the hope that the other may be drowned, still he is not criminally responsible". Also may I read from MML, chapter 7, para 9, page 106 which says "Temporary intoxication (from liquor or drugs) - as distinct from mental diseases, which alcoholism,etc., may bring on - is not (if voluntary) in itself any excuse for crime; but evidence of drunkenness which rendered the accused incapable of forming the specific intent essential to constitute the crime must be taken into consideration together with the other facts proved in order to determine whether or not he had that intent". I say it must be shown that his man intended to leave Butler where he was. I submit that it has not been shown that Sgt Rodger was the man who was responsible for Butler being left on the road. I submit that there is a great deal more evidence that the driver of the car, Forsythe, the man who is responsible for the car, the man who had the most to do with him, he was the man who is responsible and not Sgt Rodger. On the basis of Forsythe's evidence, we have these facts. It was a dark night, there was no pronounced impact when the car struck the bicycle, and there was no conversation before the accident occurred or after, in regard to the accident, and lastly, in the opinion of Forsythe, Sgt. Rodger was asleep. I am referring also to the evidence brought forward about Sgt Rodger's seeing ability, which appears to be very poor, and remind the court that it was a very dark night. I would also like to refer to Butler himself, who could not recognise Rodger at all. Therefore, how on earth could Rodger recognize Butler, or recognize that he was an injured man? I have very little to say about Butler, except that his evidence is perogatory to that of Forsythe's. Butler said that he got in the back of the car, and the man in the back said "What the hell are you kicking about?". I maintain, that Sgt Rodger, sitting in the back of the car, being awakened after having been drinking a long time, and having been asleep, could have made that remark about any disturbance that may have occured to rouse him from his sleep, and I will close with this remark, that there is a very very reasonable doubt, and if a reasonable doubt exists, the man must be aquitted, and I say that there is a reasonable doubt that Sgt Rodger knew that this man was hurt and needed assistance.

Closing address by the prosecuting Officer

The accused appears on three charges. To the first he has pleaded guilty. I would like to refer to the evidence on the second charge. We had a statement made by Surgeon Lieut. Kirwan, who treated the injured man shortly after the accident, and according to his testimony there was no doubt whatever that Pte Butler was injured, and so visibly injured that his face was smeared with blood, blood on his tunic, and his hands cut. There has been some confliction in the evidence, but none of it takes away the fact that Sgt Rodger was there at the time. In fact, he admitted this himself in his own statement. The point of the charge is simply that being there he should have done something. The Court, I know, is aware of the various sections of the Army Act, referring to crimes committed whilst being drunk. Although drunkenness may justify a court-martial, chapter 3 section 48 states that drunkenness is no excuse for crime. Surely under the circumstances which have been brought out, there is probably a great deal to be grateful for that the evidence has not been more serious.

THE COURT IS CLOSED TO CONSIDER THE FINDINGS

THE COURT IS OPENED

Captain R.M. Calder, Adjutant, No 5 Dist HQ., CPC, duly sworn states:

I am Captain Robert M. Calder, Adjutant, No 5 Dist. HQ., CPC. I submit A.F.B. 296 and M.F.M.6, duly certified as correct by O. i/c Records, No 10 Coy CPC.

Court to Defending Officer: Have you anything further to say with regard to the accused?

Defending Officer: Merely to say that his conduct sheet is clean. This is his first charge in over three years in the service.

WITNESS NOT CROSS-EXAMINED BY DEFENCE

ABOVE EXHIBITS MARKED H. & I. AND ATTACHED TO PROCEEDINGS

THE COURT IS CLOSED TO CONSIDER THE SENTENCE.

Exhibit 4 - 2

E.K.H.

CERTIFIED TRUE COPY of Para. 3 of No. 10 Company Canadian Forestry Corps, Standing Order dated 22 March 1943.

CAMP BOUNDS

"3. All areas outside a four mile radius of Camp are "OUT OF BOUNDS". Also all places so marked."

CERTIFIED TRUE COPY:

C.E. Letherby - Lt.& Adjt.
(C.E. Letherby)
No. 10 Company,
Canadian Forestry Corps,
Canadian Army Overseas.

15 Jun 44.

LIST OF WITNESSES

In the case of K.90030 Arm/Sgt. JOHN RODGER :

.....

L-9006	Arm/Sgt. Lockhart, H.A., R.C.E.M.E.	att: No. 10 Coy.
2819735	Sgt. Forsyth, R., Seaforths	Pinehill Camp Elgin
K.41333	Pte. Butler, G.H.	No. 10 Coy.
	Dr. D. Reside	Raigmore Hospital
C.70229	Pte. Lee, A.W.	No. 10 Coy.
C.70276	Pte. Bellefeuille, J.L.A.	No. 10 Coy.
	Surgeon-Lieut. Kirsen, R.N.V.R.	Bught Park Camp Inverness.
K.77213	A/C.S.M. McLeod, W.H.	No. 10 Coy.

Exhibit 'J'

Date of enlistment 24 June 1940 Sheet No.

No. K90030 Name RODGER, J. Sq., Batty., or Company Corps R.C.E.M.E.

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil G.C. Badges Long Service and G.C. Pay Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				////////// N I L //////////					

CERTIFIED TRUE COPY: C. E. Letherby - Lt.& Adjt.
(C.E. Letherby)
O i/c Records 10 Company,
Canadian Forestry Corps, C.A.(O)

Army Form B.122

[P.T.O.

Exhibit 'H' EKA

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K-90030	Arm/Sgt.	RODGER, John	R.C.E.M.E. (Att. to No. 10 Company, C.F.C.)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For "NIL" ..... times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet N/A/

Date of last entry in Field Conduct Sheet N/A

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N.A. beginning on the N.A. day of .....

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 28 days in military custody, *i.e.*, 27 days in open arrest, 1 days in close arrest; of which ..... days were spent in hospital.

5. The present age of the accused is 46-1/12 years

6. The date of his attestation ~~calling up for military service~~ is 24 Jun 40

7. The service which the accused is allowed to reckon is 3 yrs 11 months 21 days

‡State the military decorations (if any) held by accused.

8. The accused is in possession of‡ Canadian Volunteer Service Medal and Clasp.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of Arm/Sgt.	3 Apr 42
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) Wt 8670/668 100,000 4/42 A.B.H.W.Ltd. Gp.698 Forms/B.296(War)1.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 15th day of June 44

C. E. Letherby Lt. & Adjt.
C.E. Letherby No. 10 Company,
O/C Records Canadian Forestry Corps, C.A. (O.)

E.R.11
Exhibit 'G'

SUMMARY OF EVIDENCE

IN THE CASE OF

K-90030 Sgt. RODGER, John, R.C.~~O.C.~~, E.M.E.
attached ~~as in W.E.~~ to No. 10 Company,
Canadian Forestry Corps.

E.R.H.

1st Witness

L.9006 Arm/Sgt. Leckhart, H.A., R.C.O.C., attached to No. 10 Company, Cdn. Forestry Corps, having been duly sworn, states:

About 2200 hours on Saturday 6th May 1944, I remember going into the Sergeant's Mess at the Transit Camp, Inverness, for a drink, round about 2300 hours, I remember seeing Sergeant Rodger, of my unit in there, and we both had drinks together. I distinctly remember drinking with two Sergeant Majors there. I should say that I spent about £3 on drinks with these Sergeant Majors.

Sergeant Rodger and I stayed in the Mess till about 0030 hours, 7th May 1944, when we left with one of the Sergeant Majors. I know we were pretty drunk at the time. The Sergeant Major volunteered to take us to our camp and clearly remember getting into a car outside the Mess and drive off. I was sitting in the front with the Sergeant Major and Sergeant Rodger was sitting in the back of the car. I remember that I took notice that the front seat of the car was very low as I could hardly see in front of me through the window.

The next thing I can remember was getting out of the car at the end of the road leading to our camp and Rodger and I going to the kitchen for something to eat.

Q. Have you any recollection at all of the car stopping before it reached camp?

A. No Sir.

Q. You deny having any knowledge of seeing or speaking to an injured man while on the way home?

A. Yes Sir.

Q. Did you go to the kitchen for a hot drink before turning in?

A. I am sure I did but I am not sure if Sgt. Rodger did.

Q. What kitchen did you go to?

A. I tried the Sgts. Mess first but it was closed and I went to the Mens Kitchen.

Q. Do you remember who was on duty in the Men's kitchen or who was there when you were there?

A. I think McCaig, Methie and Lee were there.

H. Leckhart
L.9006 Arm/Sgt. Leckhart, H.A.

E.F.H.

2nd Witness

2815735 Sgt. Forsyth, R., Seaforths, having been duly sworn, states:

On the night in question I met Sgt. Lockhart and Sgt. Rodger, in the Sgts. Mess of the Transit Camp in Inverness, somewhere about midnight. Sgt. Lockhart told me that they had missed their truck back to camp. We were having a few drinks together. I was on duty that night in connection with the exercise "CRAB" and had a car at my disposal. I undertook to take them back to their camp. In my opinion when we left the Transit Camp the two Sergeants with me were fit for duty. They were not drunk. On the way there an accident occurred. I stopped the car and got out to see what had happened. There I found a Canadian soldier picking himself off the road. He was bleeding profusely from the eye. I offered to tie his head up and he would not let me. I said "Jump in the car and I will take you to your billet.", which was at some other camp. I jumped in the drivers seat, thinking he was getting in the back. The fellow was outside and said "I will not go with you. You are all drunk." being on this exercise I could not waste any time and I did all I could and offered to do anything, but he would not accept any assistance, so I drove off. I delivered the two Sergeants to the bottom of the road at their camp and then returned to Inverness.

Q. What happened that you stopped the car?

A. I felt something hit the back of the car.

Q. How were the two Sergeants with you conducting themselves in the car?

A. They were just sitting down. One was in the front and one in the rear.

Q. Were they talking?

A. No, Sir.

Q. Were they asleep?

A. I was driving and could not say.

Q. Do you know which of the Sergeants was beside you and which was in the back seat?

A. I never paid much attention. I could not say.

Q. You said you offered to help the injured man and he would not let you. Do you know why?

A. I do not know why he would not let me go near him. It may have been fear of pain on his part but I could not say. I did think he was drunk.

Q. Appreciating the fact that you were anxious to return to duty, was it in your opinion that the wounded man did not required immediate attention and was able to take care of himself?

A. Yes. It is my opinion and that is why I left.

Q. Did you see the injured man's bicycle?

A. Yes Sir.

Q. Was it carrying a tail light?

A. It had a head light, but I did not see any tail light. The lights were not burning.

Q. Do you recall any conversation that took place between the injured man and the Sergeants in the car?

A. As far as I am concerned they may not have spoken at all.

The accused declines to question the witness.

R. Forsyth Sgt.
2815735, Sgt. Forsyth, R.

3rd Witness

K.41333 Pte. Butler, G.H., No. 10 Coy., C.F.C. (now R.S.,C.F.C. 'Y 3 List')
having been duly sworn, states:-

I went to Inverness from No. 10 Coy. camp by bicycle leaving camp at about 1830 hours Saturday 6 May 44. I spent the evening in Inverness. I left Inverness on bicycle to return to camp at about 0100 hrs. Sunday 7 May 44.

Just before reaching the Naval Camp I turned and saw a car coming towards me in the same direction in which I was travelling. I got in close to the stone wall on the left side of the road and as the car passed me the side of the car caught me and threw me into the stone wall. I was dased momentarily and felt blood streaming down my face. I looked up and saw that the car was stopping just ahead of me. The car stopped beyond the Naval Gate. The driver left the car and walked back towards me. He asked me "Where did you come from? Where were you ? " I said " I was cycling along here close to the wall and you side swiped me." By that time I had reached the car. The driver said "Oh you are a Canadian, I have two of your boys in the car." I said "You had better take me to the hospital. It looks as if my eye is badly hurt" or words to that effect. The driver said "We xxxxxx have just come from that way and are going to Dochfour" I said "You can't leave me here bleeding like this. You've got to do something. You had better call the police. " Someone replied "Wait a minute. Let's get organised here" and with that I opened the car, got in the back seat and sat down and then I asked "Well what are you going to do about it?" Then the man in the back seat whom I did not recognize, he had his coat collar turned up and his face away from me said "What the hell are you kicking about. We are doing all we can for you." I said "It don't look as if you are going to do much, it looks as if you want to get rid of me." Then one of them said, I don't know which one, "If you don't like what we are doing, then get out. " They all three said something to the same effect. I stepped out of the car and as I took my foot from the running board to the ground, the driver released the clutch and drove off in the darkness leaving me in the roadway. I went back to the Navy Gate and to the sentry on duty then I was taken to the sick bay and later removed to Raigmore Hospital.

Q. Did you have lights burning both front and back on your bicycle?
A. There was a light on the front and a red reflector on the back.

Q. Had you been drinking in Inverness that night?
A. No Sir.

Q. When the driver of the car came towards you, did he appear to be sober?
A. No, I could tell he had been drinking from the way he spoke and from his actions.

Q. Did he offer to tie up your head for you?
A. No. He said when he came towards me "Oh it's only a little cut under the eye."

Q. Did you tell him what camp you belonged to?
A. I don't know whether I did or not.

Q. Did he ask where you were going or offer to take you you anywhere?
A. He asked nothing and offered nothing but said he was going to Dochfour and suggested xxxxxx in a sort of way that he would take me there.

Q. Did you recognize either of the two Canadians in the car?
A. Yes, I recognized Sgt. Lockhart in the front seat beside the driver.

Q. Do you recognize Sgt. Rodger as having been in the car at that time?
A. No, sir.

Q. In what condition did you consider the man in the back seat of the car to be in?
A. I considered that he had been drinking.

The accused does not elect to question the witness.

G Butler - Pte.
K-41333 Pte. G.H.Butler)

4th Witness Dr. D. Rendle, Raigmore Hospital, Inverness, having been duly sworn, states:

At about 0145 hrs. 7 May 44, K.42333 Pte. Butler, G.W. of No. 10 Company, C.F.C., was admitted to Raigmore Hospital and I attended to him.

He was not drunk at that time nor was there any evidence of his having been drinking.

The accused declines to cross examine the witness.

...D. M. Rendle. M.B. Ch.B
D. Rendle

5th WITNESS: C-70229 Pte. LEE, A.W. of No. 10 Company, Canadian Forestry Corps, having been duly sworn states:-

" I am a night man on the tractors and I was in the Kitchen on the night of 6 May 44 and after midnight, that is early on 7May 44 Sgt. Lockhart and Sgt. Rodger both came in and got a cup of tea and an egg sandwich.

Q. You are sure both Sergeants came to the kitchen?
A. Yes, sir, they were both there.

Q. What condition were they in?
A. They came in and wanted something to eat. I did not pay much attention to them but they were not noisy nor were they staggering about.

Q. How long did they stay in the kitchen?
A. About half an hour I think.

Q. Did they leave together?
A. Yes they did.

Q. Was anyone else in the kitchen at the time?
A. Yes, a Pte. Bellefeuille.

The accused declines to cross examine the witness.

A.W. Lee
.....
A.W. Lee C70229 Private

6th WITNESS: C-70276 Pte. BELLEFEUILLE, A. of No. 10 Company, Canadian Forestry Corps, having been duly sworn states:

I was night watchman at the Mill on the night of 6/7 May 44. I was in the kitchen shortly after midnight and Sgt. Lockhart and Sgt. Rodger came in. Sgt. Lockhart asked if there was anything to eat and I gave them a cup of tea and an egg sandwich. They were quiet and sat down and ate what was there. They did not appear to be drunk. They did not stay long but when finished went right out of the kitchen.

Q. You definitely identify both the sergeants as being in the kitchen?
A. I do, sir.

The accused declines to cross examine the witness.

A. Bellefeuille
.....
A. Bellefeuille Pte. C-70276

The accused having been duly cautioned in accordance with R.P. 4(e), elects to make the following statement:-

We left camp on the Company truck which left at 1530 hours on 6 May 44. We got off the truck at the stopping place which is the Post Office and Sgt. Lockhart and I went to Stewart's Restaurant where we met an American, a Sgt. We had something to eat there and then we, Sgt. Lockhart, the American Sgt. and myself proceeded to the Sergeant's Mess in Inverness, off Rose Street, close to the lorry park. We had a few drinks there. We left there shortly after five o'clock and went to a Public House called the 'Phoenix Bar' and we had one drink there, then the American Sergeant and I took Sgt. Lockhart to the R.C.A.F. Hostel, opposite the Empire Theatre, on Academy Street, where Sgt. Lockhart went to bed. I left him there and when I came back down the American Sgt. had gone. I went back to the R.C.A.F.Hostel at about 2130 hours and found that Sgt. Lockhart had left. I came across him at the same Messxxxxxxxxxx that we had encntered earlier in the day, that is the Sergeant's Mess off Rose Street, at about shortly after 2200 hours. He and the American Sergeant were both there, so I joined them. We drank there and remained there until we left to come home. I think someone offered to take us home in a car. We left from the yard in the car. The person that drove the car is unknown to me. Sergeant Lockhart was sitting in the front and I was sitting in the back of the car and the next thing I knew the car was stopped on the highway and there was a man at the door wanting to be taken to hospital. He was standing there, but I do not know if there was blood on his face or not, I could not see. My impression was that we wanted to take him to camp and thxt have him fixed up, but apparently that did not satisfy him and he walked off. This is as much as I remember about the accident, then I think we drove off. We got out of the car at the bottom of the hill and walked up and I went to my hut.

K.93303 Sgt. Rodger, J.

L.K.H.

7th WITNESS: Surgeon Lieutenant M. KIRWAN, R.N.V.R. of Bught Park Camp, Inverness, having been duly sworn states:

At about 0100 hrs on 7 May 44 a Canadian soldier from the Canadian Forestry Corps came to this Camp for treatment.

He had a large laceration of left side of face which was bleeding profusely. His whole face was covered with blood and also the front of his tunic. He also had some minor lacerations of his hands both of which were blood stained.

There was no evidence that this man was under the influence of alcohol.

He stated he had been knocked down by a car outside the Camp gate while cycling home.

First aid was rendered to his wounds and he was taken from here by car for admission to Raigmore Hospital.

The accused declines to cross examine the witness.

- Surg/Lieut.

(M. Kirwan)
R.N.V.R.

M. Kirwan

K-77213 A/CSM. McLeod, W.H., having been duly sworn states:-

" K-90030 Arm/Sgt. Rodger, J., attached to No. 10 Company, Canadian Forestry Corps for all purposes was not issued with a pass for the night of 6/7 May 44.

W.H. McLeod - A/CSM

(W.H. McLeod)

CERTIFIED TRUE COPY of Para. 3 of No. 10 Company
Canadian Forestry Corps, Standing Order dated
22 March 1943.

CAMP BOUNDS

"3. All areas outside a four mile radius of Camp are "OUT OF BOUNDS". Also all places so marked."

CERTIFIED TRUE COPY: C. E. Letherby - Lt.& Adjt.
(C.E. Letherby)
No. 10 Company,
Ca nadian Forestry Corps,
Canadian Army Overseas.

1 Jun 44.

Certified that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

Taken down by me in the presence and hearing of the accused.

(H.M. Calder) Captain
No. 5 District, C.F.C.

LIST OF EXHIBITS

In the case of [illegible] Arm/Sgt. JOHN [illegible] :

N I L

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO SIR (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is reopened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)(4)~~ E.N.F.

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans YES

Ans YES Do you intend to call witnesses on your behalf? Are they witnesses as to character only? Ans Both. As to Character and facts.

(1. RP ~~155~~ 173 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the 1st, 2nd, & 3rd charge(s), being subject to confirmation, will be promulgated later.(1) E.N.F.

~~(Or) The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)~~

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans Yes.

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex H and Ex I respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)(2)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) N/

(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 554. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K-90030 Arm/Sgt John RODGER, R.C.E.M.E.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Not Guilty	Guilty	
3rd	Not Guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for [illegible] beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 1 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO BE SEVERELY REPRIMANDED.

(Sgd) [illegible] 15 Jun 44 (Sgd) E.R. Hall-m. Maj.

Judge-Advocate, if any. Date awarded. President (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I do not confirm the finding on the 2nd and 3rd charges. I confirm the finding on the first charge and the sentence.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 10 July 44. (Sgd) [illegible] a/Colonel

Commanding Canadian Forestry Corps

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
K90030 Arm/Sgt John Rodger	July 12th 44	[illegible] G.S. Bethune, Capt. O/c RECORDS. No 10 Coy C.F.C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

No illegalities or irregularities such as would warrant withholding confirmation. Finds charge and 1 & 3 guilty. Sentence duly awarded by Court. Proceedings in order. 20 Jun 44

A.J.A.G. (R.C. Mordell) Lt-Col.

FF-118

CPL RODGER R.G.

39

FF-118

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this FOURTH day of JUNE, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 6 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences ~~should~~ be tried by an ordinary General Court Martial;

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

~~And whereas it is not practicable that the accused xxxx

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the 5th day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 5th day of June 1943.

WMW Shaw Capt
Judge Advocate

[illegible]
President of the Court Martial

C.
Certificate in case of death sentences.

~~I certify that the terms of M.C.I. 570 of 1918 have been complied with.~~

~~Signed this~~ ~~day of~~ ~~19~~

~~President of the Court Martial.~~

* See footnote (b) on page 762 M.M.L. 1929.

D.
Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

Signed this sixth day of June 1943.

[illegible]
~~Confirming Officer~~ Brig.
6 Cdn. Inf. Bde.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Promulgated and extracts taken in the case of

(a) (Dated) 7 June '43 (Signed) [illegible] Capt & Adj.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(11759) Wt. 49115—29) 100 lb. A/40 P. St. G. 3a)

Evidence and Charge Sheets (if necessary) to be PINNED here.

B.

Certificate of President as to proceedings.

I certify that the above Court assembled on the 5th day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(~~3. The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 5th day of June 1943.

W M W Shaw Capt Judge Advocate

[signature]
President of the Court Martial.

C.

Certificate in case of death sentences.

~~I certify that the terms of A.C.I. 570 of 1918 have been complied with.~~

* See footnote (b) on page 762 M.M.L. 1929.

~~Signed this~~ ~~day of~~ ~~19~~

~~President of the Court Martial.~~

D.

Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison until further orders.~~)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this sixth day of June 1943.

[signature]
~~Confirming Officer~~ Brig.
6 Cdn. Inf. Bde.

Promulgated and extracts taken in the case of

(a) (Dated) 7 June '43 (Signed) [signature] Capt & Adj.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(41799) Wt. 40115—493 100 m. 1/40 P. St. G. 620

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
H-19347 CORPORAL ROBERT GREGORY RODGER Camerons of C	First Charge A.A.Sec 15 See charge sheet attached.	guilty	guilty To be reduced to the ranks 5 June 43	Confirmed Garrison 6 Cdn. Inf. Bde 6 June 43.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) (G.R. McCarter) Brigadier (Signed)
Commanding 6 Cdn Inf Bde *President.*
Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

C H A R G E S H E E T

The accused, H-19347 Cpl. Robert, Gregory RODGER, 1st Bn. Queen's Own Cameron Highlanders of Canada Regiment, Canadian Army Overseas, is charged with:-

First Charge Whilst on Active Service, Absence Without Leave,
A.A. Sec. 15

in that he,

In the Field, absented himself from his Unit from 0200 hrs 31 May 43 until placed under close arrest at 2000 hrs 3 Jun 43.

To be tried by Field General Court Martial

e tried by F.G.C.M,

A.L. Law. Lt.-Col.
(A.L. LAW)
Comd. Camerons of Canada

Field (G.A. McCarter) Brigadier,
Commander 6 Cdn Inf Bde.

5 June 1943

this morning

H19347 Cpl. Rodger R J

A

He is fit for court martial

H Marsh Capt

[illegible]

Trial of 1419347 Cpl Robert Gregory Rodger, Cams of C held in the field 5 June 43.

President:- Major N H Ross, Cams of C
Members:- Capt W. S. Edmondson, SSR.
Lieut H. E. Stacey, Cams of C.

Judge Advocate:- Capt W M W Shaw, ADJA, 2 Cdn Div.

Prosecutor - Lieut A. C. Kavanaugh. Cams of C.

Def. offr:- Lieut J J D Gagnon. Cams of C.

Offrs under instruction:- Capt R. S. Snider
Lt G. P. Kidd
Maj. R. M. Campbell } Cams of C
Lieut R. Deschambault Fus M.R.

Court satisfy themselves as to RP 22 + 23.
Court opened
Convening order is read & marked "X".
Accused is asked if he objects to being tried by President or members & answers "No Sir"
Court, judge advocate & officers under instruction are duly sworn
Medical certificate is presented.
Accused is arraigned & pleads "Guilty" to the charge.
RP 35 (B) complied with
Summary of evidence is read & marked "G"
Accused in mitigation says "on Sun 30 June 2 went into London & intended catching 9.18 train. 2 met some friends & we went drinking. 2 can't remember anything that happened after that until 2 woke up on the morning of 3 June. That is all 2 have to say sir"

Accused wishes to call character evidence.

1st Wit Character } Lieut R. F. Steinhoff, Cams of C, duly sworn, states:-
Known accused for 10 mos - last 6 mos as NCO - as such he has been able to take responsibility, has shown industry & has respect of men in his platoon. I am accd's platoon comdr.
General reputation as to character & honesty is very good. He has comd of MC ~~[illegible]~~ section & he has taken over comd of this when absence of sec. comdr necessitates.

2nd Wit Character } Capt E. P. Thompson, Cams of C, duly sworn, states:-
First knew accd 8 yrs ago - then in the Cam cadets - spent quite a bit of time with him. Since joining active army he has served under my cond on numerous occasions - always been trustworthy soldier & civilian & above all has been eager in the work he has done. Good soldier & honest.

Prosecutor, duly sworn presents ~~AF~~ MFM6 & MFB355 (Exh H + 2) states they relate to the accused & are certified by the adjutant. No cross-exam.

Def. offr in mitigation:- Submits a junior NCO pleading guilty to AWL which unfortunately is a crime frequently committed in Eng. Accd is young, 22, who re-attested in Cdn Army in Sep 39, had previously done 1½ yrs NPAM plus 7 years with the cadets & who has now an appln in for Cdn Eff medal. Definitely type required in Cdn Army. Is married, has 1 son 2 yrs old today - gave himself up. Two character witnesses & 20 could have been called. Has been proven by these witnesses as being honest & trustworthy - He is comdg a section of carrier platoon which is being done in satisfactory manner. At time of re-attestion he was only 18 yrs & was serving his time as an appentice for Pharmacy. Beg court to deal leniently [illegible] to consider sentence.

[illegible]

"G"

SUMMARY OF EVIDENCE

In the case of H-19347 Cpl. Robert, Gregory, RODGER of the Queen's Own Cameron Highlanders of Canada, a soldier in the Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs that the evidence be taken under oath.

FIRST WITNESS H-20216 Sjt. Walker, H.W., Camerons of Canada, Cdn. Army (O.S.), having been duly sworn states:-

I am H-20216 Sjt. Walker, H.W., Camerons of Canada Cdn. Army (O.S.). At 0200 hrs 31 May 43 Cpl. Rodger, R.G. whom I recognize as the accused did fail to answer his name on a roll call for the Siberia Ranges. An attempt was made to locate the accused in the camp area but he could not be found.

The accused declines to question the witness.

SECOND WITNESS H-20227 Cpl. A.J. Campbell, Camerons of Canada, Cdn. Army (O.S.), having been duly sworn states:-

I am H-20227 Cpl. A.J. Campbell, Camerons of Canada, Cdn. Army (O.S.). On 3 Jun 43 I was Company Orderly Cpl. The accused whom I recognize reported to me at 2000 hrs sober and properly dress.

The accused declined to question the witness.

I certify that R.P. 4(e) was read and explained to the accused, who declined to make a statement at this time.

Capt.
(J.E.E. McManus)

No. H-19347 Name Rodger, R.C. Sqn., Battery, or Company Sp Corps Camerons of C Date of enlistment 7/9/39 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 171) 40/P & S/136 (2637)

Date of last entry in Company Conduct Sheet 5 Mar 42 No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 3 Signature O.C. Company, etc. R.M. Campbell, Major Character Good

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Last sheet destroyed in accordance with C.A.R.O. No. 319 on completion of 2 years service 7/9/41									
In the Field	5/3/42	Pte		W.O.A.S. absent without leave from 0600 hrs 4 Mar 42 to 1200 hrs 4 Mar 42 (Absent 6 hrs) A.A. Sec. 15	H-19512 Sjt. Kelly, A.B.	7 days C.B.	5/3/42	Capt. G.F. Davidson	Forf 1 days pay

CERTIFYIED TRUE COPY

A.J. Ayden Capt.
(A.J. Ayden)
Adjt. Camerons of Canada

(P.T.O.)

M.F.B. 350
40/P & S/975

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H-19347	Corporal	Rodger, R.C.	Camerons of Canada

1. The following is a fair and true summary of the entries in the ~~Conduct sheets~~ Service and General Regimental and Squadron Battery or Company conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Army Act~~ Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	A.W.L. One times	A.W.L. One times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

XX

~~There are no entries in the conduct sheets of the accused.~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

XX

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~ Air Force Act A.F.A. 73

3. The accused is not under sentence at the present time.

XX

~~The accused at the present time is under sentence for~~ beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and / days in military custody, making a total of / days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 22 years ~~statutory paper~~

6. The date of his commission specified in his record of service is 7 Sep 39 ~~attestation~~ ~~statutory paper~~

7. The service which the accused is allowed to reckon towards discharge is 3yrs 8 mons 8 days 3 yrs 8 Mons 8 days

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is ~~in possession of or~~ entitled to ~~air force~~ military decoration, ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward. Cdn Efficiency Medal

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N.A.

"2"

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit, and in his regiment (or corps), the rank of

N.A. dated

dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

8 Oct 42 Date of promotion.

In the rank of Corporal 8 years, months

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank Army

Name of Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	N.A.			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this [illegible] FIFTH day of June 1943 Capt & Adjt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

I hereby acknowledge receipt of a copy of the Summary of Evidence and Charge Sheet.

J. E. Rodger Cpl
(H19347 Cpl. Rodger, R.A.O.C.)

I request that an officer be appointed to represent me at my trial.

J. E. Rodger Cpl
(H19347 Cpl. Rodger, R.A.O.C.)

4K47.
Cpl (1/Sgt). Rodgers. L.M.

4/K-47

CPA86 (To issue of AFA51 40/P & B/1608 (46/51)

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Brig J P Bingham Comd 6 Armd Bde dated 7 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G/58322	Cpl L/Sgt	Leonard Malcolm	ROLLINGS	att "G" Sqn 25 Cdn Armd Del Regt

Certified True Copy
J.A. Hanrahan Maj
D/A Cdn Inf Bde

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Belgium on (*date(s)*) 17 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order; CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~ N.C.F.

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Frans Volcke of Belgium No as interpreter ? Ans No

The Interpreter is sworn.(1) Do you object to G/58322 Sgt Rotherham J as shorthand writer ? Ans No
The shorthand writer is sworn.(1) HQ 2Cdn Corps

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	W J Hoogk	10 Bn R CHVR
Member	A/Major	J M Bowie	10 Cdn Armd Regt (PGR)
Member	Capt	J R Rae	(10 Cdn Armd Regt (att HQ 2 Cdn Armd Bde
Judge-Advocate	Major	N C Fraser	HQ 2Cdn Corps
Prosecutor	Lieut	J M Macdonald	HQ 2Cdn Corps
Defending Offr	Major	J de N Marler	7 Cdn Med Regt, RCA

Questions by President: Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused G/58322 L/Sgt J M Rodgers before arraignment makes(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*B*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35(B) 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused -- C/66382 Cpl (L/Sgt) Leonard Malcolm ROLOWES, X-4 List att "C" Sqn 25 Cdn Armd Del Regt, a soldier of the Cdn Army Overseas -- is charged with:

First Charge
Army Act
Sec 41

WHEN ON ACTIVE SERVICE IN A PLACE NOT WITHIN HIS MAJESTY'S DOMINIONS COMMITTING A CIVIL OFFENCE THAT IS TO SAY RAPE

in that he

in the field in St Nicholas in Belgium on or about 5 Oct 44 had carnal knowledge of Van Haute Caroline de Backer without her consent.

In the field
15 Nov 44

(Sgd) D C Raven, a/Major
Officer Commanding
"C" Sqn 25 Cdn Armd Del Regt

To be tried by Field General Court Martial.

In the field
15 Nov 44

(Sgd) J P Bingham, Brig
Comd 2Cdn Armd Bde

Approved on behalf of the JAG Cdn Army Overseas pursuant to K R (Can) 540 and Overseas R O 4756.

(Sgd) C H Jermyn, Capt
ADJA 2 Cdn Corps

I certify that I have this morning examined C/58322 L/Sgt Rodgers, L M, and find him fit to undergo trial by court martial.

17 Nov 44

(Sgd) G R M Sutcliffe, Lieut
Medical Officer

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C/56322	Cpl	(L/Sgt)	Leonard Malcolm RODGERS		
			X-4 List att "C" Sqn 25 Cdn Armd Del Regt		

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 15 Nov 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Must be named. RP 106.	Unit.
Lt-Col	W J Moogk	10 Bn 2 CBRG

MEMBERS.

Rank.	Named or detailed. RP 106.	Unit.
Major	F Deacon	Sigs 2 Cdn Armd Bde
a/Major	J M Bowie	10 Cdn Armd Regt (PGH)

WAITING MEMBER.

Rank.	Named or detailed, if any. RP 106.	Unit.
Capt	J R Rae	10 Cdn Armd Regt att HQ 2 Cdn Armd Bde

JUDGE-ADVOCATE.

Rank.	Must be named, if any. RP 106.	Unit.
Major	M C Fraser	HQ 2Cdn Corps

On Active Service in the Fd

in Holland (Country.) (Sgd) J F Bingham, Brig (Signed personally. RP 105 fn 2.) (Rank.)

Date 15 Nov 44 Commanding 2 Cdn Armd Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA95 (In lieu of AFA3) 40/P & S/1697 (4931)

A 2

The court satisfy themselves that Major F Deacon, RCCS, Sigs 2 Cdn Armd Bde, is not available to serve owing to having been seriously injured in a veh accident while on the way to this court.

(Sgd) W J Mocgk, Lt-Col

CERTIFIED TRUE COPY

(N.C.Fraser) Major

TRANSCRIPT OF EVIDENCE IN THE CASE OF C.58322 CPL (L/SGT) ROGERS, L.M., X-4 LIST ATT C SQN 25 CDN ARMD DEL REGT HELD AT ST. NICHOLAS BELGIUM 17 NOV 44

A.7 (1) - Officer Under Instruction - Lt. J. Eager, 25 Cdn Armd Del Regt

D. 3 The Evidence for the Prosecution is taken

1st Witness for the Prosecution, Mme Van Haute Caroline de Backer, 49 Hemelaerstraat, St. Nicholas, Belgium, having been duly sworn in Flemish is examined by the Prosecutor through the interpreter.

Q. 1 - What is your correct name?
A. 1 - Van Haute Caroline married to Omer de Backer
Q. 2 - Where do you live?
A. 2 - 47 Hemelaerstraat
Q. 3 - Do you recall some time in the afternoon of 3 Oct 44?
A. 3 - Yes, the afternoon of Oct 3rd
Q. 4 - How do you remember that day?
A. 4 - Do I have to tell it?
Q. 5 - Yes
A. 5 - Shall I give all details?

Judge-Advocate - I would suggest that she tell us in full detail and in the order in which the events occurred

Q. 6 - Tell us the whole story as it happened
A. 6 - A soldier entered my house while I was busy cleaning about a quarter to two and he asked me something
Q. 7 - Do you know that soldier?
A. 7 - No
Q. 8 - Could you recognize him?
A. 8 - Yes
Q. 9 - Is he here?
A. 9 - Yes
Q.10 - Will you point to him?
A.10 - The gentleman in the middle of the three (the accused).
Q.11 - Will you go on from there?
A.11 - He asked me something but I didn't understand him. Then he came in and closed the door. Then he pushed me in the room next to the entrance. Then he showed me by signs to undress. As I was unwilling he showed signs to beat me. Then he started pulling my dress. He pushed me onto the ground. Being frightened I didn't resist any further. While he was engaged in taking off his shoes I ran away from him
Q.12 - Did the soldier do anything to you?
A.12 - Can the question be put a little more clearly?
Q.13 - When he pushed you to the ground what did he do then?
A.13 - He violated me
Q.14 - What do you mean by that?
A.14 - He tried to do a sexual act
Q.15 - You must be more clear. What do you mean by that?

Defending Officer - Just a minute. It seems to me, sirs, that the witness is at this stage being quite clear. She is not saying what my friend expected her to say but what she is saying is that the accused tried to commit a sexual act. I am sure that the court knows what a sexual act is and there is no evidence required on that

Prosecutor - I don't quite agree with my learned friend. I don't think you can have military knowledge of what is a sexual act

Judge-Advocate - I think it is clear as far as it goes but if the court is going to be able to function properly in a case of this character the witness will have to translate what she says into physical terms, to say what actual physical acts were done by the accused and it is for the court then to decide whether there was a sexual act or not. (To interpreter) Would you explain to the witness that it is necessary that she tell the court exactly what was done by the accused and by her and if she has to use

unpleasant words we want to use plain language in physical terms. If she tellsexactly what was done, what movements were made, if there was any physical contact and if there was not and if so to what extent and if there was any physical contact between them the extent of that contact and its exact character

This is translated to the witness by the interpreter

A.15 - There has been a penetration but no coition
Q.16 - What do you mean that he pulled at your dress?
A.16 - He pulled it out
Q.17 - Did he pull it out?
A.17 - Yes, he pulled it off partially and I undressed further being frightened
Q.18 - Was anybody else in the house at the time?
A.18 - Two children sleeping upstairs
Q.19 - Your children?
A.19 - Yes
Q.20 - Did you consent to these actions?

Defending Officer - That is not a proper question
Judge-Advocate - No, that is something the court will have to decide

Q.21 - Madame, what do you mean by "He showed signs to beat me"?
A.21 - He lifted up his hands and showed he would beat me
Q.22 - How did he show he would beat you? Show us how
A.22 - He took me by the throat as well
Q.23 - How did he take you by the throat - with what hand?
A.23 - He took me with the left hand by the throat and showed me he would beat me with his right hand
Q.24 - Were you scared?
A.24 - Yes, I was scared to death
Q.25 - Madame, what do you mean when you say "He tried to do a sexual act"?
A.25 - At first I didn't want to lie still because he wanted to penetrate and in the end out of fright I kept still and the penetration took place
Q.26 - What do you mean by "penetration"?
A.26 - At the beginning there was a contact
Q.27 - A contact between what?
A.27 - A contact of both sexes
Q.28 - Now, madame, will you tell us what you mean by this soldier trying to do a sexual act?
A.28 - I intended saying that he first tried to violate me and later did
Q.29 - How did he try to violate you?
A.29 - He first put my legs at a certain distance and took my arms and then a penetration took place
Q.30 - A penetration of what?
A.30 - A penetration of his masculine sex into my sex
Q.31 - How long did he stay with you?
A.31 - Do you mean how long did he stay in the house?
Q.32 - Yes?
A.32 - About half an hour's time I think before he left
Q.33 - Did you leave before him?
A.33 - Yes
Q.34 - Tell us how you left?
A.34 - While he was untying his shoes I ran away
Q.35 - Where did you run to?
A.35 - I left by the front door and entered into the house of a neighbour
Q.36 - Who was the neighbour?
A.36 - The name is Maria van Landeghem

CROSS-EXAMINATION BY DEFENDING OFFICER

Q.37 - Mme de Backer, I understand that you are the wife of Sir de Backer?
A.37 - Yes
Q.38 - Is he alive?

A.38 - Yes, sir
Q.39 - How long have you been married to him?
A.39 - Five years
Q.40 - How many children have you?
A.40 - Two
Q.41 - On the afternoon of 3 Oct you have stated that you were in the hall of your house cleaning?
A.41 - Yes
Q.42 - Was the street door open or closed?
A.42 - Open
Q.43 - Was there any special reason for it being open?
A.43 - Yes, because I was cleaning the hall towards the front door
Q.44 - Now, Mme de Backer, do you remember an earlier occasion on which you were questioned about this case?
A.44 - Yes
Q.45 - On the 17th of October?
A.45 - I have been questioned previously but I don't remember whether that was the 17th
Q.46 - The occasion to which I refer was when the Summary of Evidence was taken by a military officer?
A.46 - Yes
Q.47 - Do you remember saying that "A drunken Canadian soldier entered my house and without speaking a word he pushed me in the corridor"?
A.47 - I always declared that he asked me something and that I didn't understand him
Q.48 - That is not what you said before?
A.48 - I declared the same thing
Q.49 - Do you understand any English?
A.49 - No, sir
Q.50 - None at all?
A.50 - Just a very little
Q.51 - You said that when the soldier arrived in your house he said something to you and then what happened?
A.51 - I showed by signs I didn't understand him
Q.52 - What kind of signs?
A.52 - I shrugged my shoulders. I may have said "Please" or a couple of words
Q.53 - Did anything occur then?
A.53 - He asked me something else which I didn't understand. He entered and shut the front door. I cried for help but no one heard it
Q.54 - The first time that the soldier spoke to you where was he?
A.54 - He had one foot in the entrance when he first spoke to me
Q.55 - In the hallway?
A.55 - Yes, his first foot in the hall
Q.56 - Was he sober or drunk?
A.56 - He was very drunk
Q.57 - How do you know?
A.57 - He smelt of drink
Q.58 - Well, as I understand the story now the soldier came and put one foot inside the house and said something to you in English. Is that correct?
A.58 - That is correct
Q.59 - "I shrugged my shoulders to show that I didn't understand". Is that correct?
A.59 - I shrugged my shoulders that I didn't understand and asked him "Please?"
Q.60 - Were you scared?
A.60 - Not at first because I thought he was asking for his way or asking something which I didn't understand. At first I was not scared
Q.61 - I understand, Mme de Backer, that the soldier pushed you into a room off the hall?
A.61 - Yes
Q.62 - You have also stated that he made signs to you to undress. What were those signs?
A.62 - Made this sign (waving both hands palm upwards)
Q.63 - Is that a sign to undress?

A.63 - He first pulled my dress
Q.64 - Did you comply with that request?
A.64 - No
Q.65 - Had the accused touched you in any way at that moment?
A.65 - Not at that moment
Q.66 - When you refused to comply with his gestures by taking your clothes off did he attempt to take any of your clothes off?
A.66 - Yes, he pulled at my dress
Q.67 - He pulled at your dress?
A.67 - Yes
Q.68 - Did he take off your dress?
A.68 - He didn't pull it off completely but I was so frightened that I finished myself taking it off
Q.69 - Did he tear your dress?
A.69 - He didn't tear my dress
Q.70 - I understand, Mme de Backer, that you were later found in an overcoat and nothing else?
A.70 - Yes, that is quite true
Q.71 - How did you come to be in that condition?
A.71 - After taking off my dress he threatened me to undress further and he took me by my throat again so I undressed further
Q.72 - These menacing gestures you refer to, what were they?
A.72 - Trying to take me by the throat
Q.73 - Well, how do you associate the action as of somebody who wanted to take you by the throat with someone who wanted to take your clothes off? What convinced you that he wanted you to take your clothes off?
A.73 - He showed by signs and further he had opened his trousers showing part of his physical anatomy
Q.74 - Did you attempt to get away at that stage?
A.74 - I couldn't try even because he was in front of the door
Q.75 - Were you standing up all this time?
A.75 - While I was undressing, yes
Q.76 - I want to make it quite clear. It was you that undressed and not he that undressed you?
A.76 - It is quite clear that I undressed. He did not undress me first
Q.77 - Well, now, Mme de Backer, the situation is that you and the accused are in this room and you have no clothes on. Did he throw you on the floor?
A.77 - He pushed me to the floor
Q.78 - Had you struggled with him at all up to that moment?
A.78 - I didn't dare any more at the time because being with child of seven months -
Q.79 - I asked had you struggled with him up to that time?
A.79 - Yes, I resisted up to then but once I was undressed I didn't dare to resist any more
Q.80 - What were you resisting?
A.80 - I couldn't do much to resist. I couldn't beat him
Q.81 - You are not understanding the question. I will give this very slowly. You have told us that the accused pushed you on the floor and that you had no clothes on at that moment?
A.81 - Yes, that is correct
Q.82 - Up to that time had you offered any resistance to the accused?
A.82 - Yes, but I didn't resist which way?
Q.83 - The question is very simple. Had you offered any resistance to the accused?
A.83 - Naturally, but I don't know how to say it. I told him I was expecting a baby and I told him I didn't want to come to him but of course I don't expect he understood it
Q.84 - You have not yet answered my question. What I mean by resisting is physical resistance. Did you offer any physical resistance?
A.84 - No, I didn't fight with him
Q.85 - Well, now, going back to the moment when the accused is stated to have pushed you on the floor, what happened next?
A.85 - He separated my legs and a penetration took place?
Q.86 - How did he separate your legs?
A.86 - With his hands
Q.87 - With his hands?

A.87 - Yes
Q.88 - Are you a woman of average strength, Mme de Backer?
A.88 - I think so
Q.89 - I suggest that it would be very difficult for anyone to open an average woman's legs with his hands. What do you think if you were trying to resist?
A.89 - Maybe. At that moment I did not think of resisting
Q.90 - Well, when he had your legs separated with his hands, as you say, did you leave your legs in that position or did you attempt to close them?
A.90 - He let himself down with his legs between mine so that I could not put them together any more
Q.91 - Did you try?
A.91 - I don't think so
Q.92 - Now you say, Madame, that at this stage there was a penetration?
A.92 - Yes
Q.93 - Are you perfectly certain?
A.93 - As far as I can remember, yes. As far as I know, yes
Q.94 - Is there any possibility whatever that you might be mistaken?
A.94 - That is a possibility

RE-EXAMINATION BY PROSECUTOR

Q.95 - Mme de Backer, you said "Maybe I could resist but I didn't think of resisting". Why didn't you think of resisting?

Judge-Advocate - I don't think you should go into reasons, Mr. Macdonald She has given her answer.
Defending Officer - I feel that the prosecution cannot seek to vary the evidence of his own witness in any way
Judge-Advocate - Also he is going into a question of her mental state
Defending Officer - I am in the hands of the court, I am afraid. I am not expert enough on that matter

QUESTIONS BY JUDGE-ADVOCATE

Q.96 - Mme de Backer, in your evidence you said that the accused pushed you down to the floor and afterwards separated your legs with his hands?
A.96 - Yes
Q.97 - Now, would you tell the court what he did next?
A.97 - He was on his knees when he separated my legs and then he was lying down on me
Q.98 - And where were your arms?
A.98 - Alongside of myself
Q.99 - After your legs were separated in what relation were they to the floor? Were they straight out or were the knees up?
A.99 - I think they were stretched out flat on the ground
Q.100- Where were the arms and hands of the accused?
A.100- I think he took me by my shoulders but I am not sure. I don't remember so well
Q.101- And for about how long were you on the floor with the accused on top of you?
A.101- Certainly not long - a matter of seconds, maybe a minute
Q.102- and you said the accused was on his knees. Then he did or did not come forward on top of you?
A.102- He was on his knees between my legs and then was lying down on top of me
Q.103- And at this time what, if any, clothes did you have on Mme de Backer?
A.103- At the moment I was wearing no clothing
Q.104- What clothes did the accused have on?
A.104- He didn't wear a blouse
Q.105- Was he wearing trousers?
A.105- Yes, he was wearing his trousers but no blouse
Q.106- Were his male parts inside or outside his trousers?
A.106- Outside his trousers
Q.107- Did or did not any part of his male organ enter your female organ?

Defending Officer - I object to this question very strenuously. The

question has already been gone into at length and the witness has said yes there was been a penetration and in answer to a question asked by me she said that it was a possibility that she was mistaken. I object very strenuously to the court going into this question. My submission, sir, is that the court's powers to question are to clarify doubtful matters and possibly to fill in gaps in the evidence but it is not any part of the court's duties to ask any question that may have as its result the contradiction of other statements.

Judge-Advocate - Well, I suggest, Major de Marler, on the answers as they stand now it is very doubtful what the witness intended by her answer and it is very questionable precisely what she means when she speaks of "penetration". It is rather unfortunate, I think, that the term was used at all

Defending Officer - She said it, sir. She was asked "What do you mean by penetration" and she gave the answer "His male sex was in my female sex". Anyone would know what was meant but I think the President said the court was satisfied as to what she meant

Court - That was followed by your question which left the issue pretty much in doubt

Defending Officer - I do not attempt to explain her answers; I merely draw them to your attention. My recollection of the record is that she said there was an entry of the male sex into the female sex and at a later time she said she might possibly be mistaken

Judge-Advocate - Well, my own view, Major de Marler, is that taking the evidence that has been given in that connection it is still not too clear what the evidence of the witness is, what she intends and I feel it is a question which is entitled to be put on behalf of the court and if the court wishes me to put it

Court - We do

Defending Officer - Well, my objection, I hope, is recorded and I take it is overruled. Is that correct?

Judge-Advocate - It is correct, yes

Defending Officer - And it is overruled?

Judge-Advocate - Correct

Stenographer reads back Q.107

A.107 - Yes
Q.108 - At what stage was that?
A.108 - While he was lying on me
Q.109 - To what extent did his male organ enter your female organ?
A.109 - Only to a certain extent
Q.110 - Can you indicate the approximate extent?
A.110 - I couldn't say to which extent. Maybe a centimetre
Q.111 - Then what happened?
A.111 - He stood up again, took off his shoes and asked for a bed
Q.112 - How long was that period, from the time you say his male organ entered your female organ until he stood up again?
A.112 - Maybe one second
Q.113 - And you say he asked for a bed. Was that in words or gestures or both?
A.113 - He said "un lit"
Q.114 - What did you do or say then?
A.114 - I said "No" and then I ran away
Q.115 - And where was he while you were running away?
A.115 - He was sitting on the carpet taking off his shoes
Q.116 - Did he make any effort to stop you?
A.116 - He was shouting. He did nothing else. He shouted

DEFENDING OFFICER THROUGH THE COURT

Q.117 - Are you sure that what entered your female organ might not have been the accused's hand?
A.117 - In a state of over-excitement it is not an impossibility

QUESTIONS BY JUDGE-ADVOCATE

Q.118 - Mme de Backer, as I remember your evidence you told the court

that you left while the accused was taking off his shoes?
A.118 - I then left the house
Q.119 - And what were you wearing at that time when you left the house?
A.119 - He only had his blouse taken off
Q.120 - I'm sorry. You misunderstood the question. What were you wearing when you left the house?
A.120 - I took an overcoat of my husband's and put it on and then left the house
Q.121 - Where did you go?
A.121 - I went into a neighbour's house where the woman at the time was standing on the doorstep
Q.122 - And who was this neighbour woman?
A.122 - A lady called Maria van Landejhaem
Q.123 - And did you see the accused any further on that afternoon?
A.123 - Yes, when he left the house
Q.124 - Your house?
A.124 - Yes, when he left my house
Q.125 - Where were you then?
A.125 - A policeman came to fetch me when I was next door in order that I might come and see
Q.126 - Did you go back to your own house with the policeman?
A.126 - I went back to my house by myself
Q.127 - And how long was it between the time you left your own house until the policeman came to get you? How long were you away from your own house?
A.127 - I think between fifteen and twenty minutes approximately
Q.128 - Who was at your house when you returned?
A.128 - I don't think there was anyone in my place when I came back
Q.129 - Did you see the accused again that afternoon?
A.129 - I didn't see him except when heleft the house as I have said
Q.130 - When he left the house were you back at your own houseor at your neighbour's house?
A.130 - I was standing at the door of my own house
Q.131 - Well, who was in or around the house at that time that you saw? If you saw the accused was there anyone with him?
A.131 - Apparently an English policeman who took him away
Q.132 - Was there anyone else there at that time?
A.132 - Around the door there were plenty of people but no one inside

IN THE OPINION OF THE COURT AND THE JUDGE-ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

2nd Witness for the Prosecution, Maria van Landejhaem, Hemelaerstraat 45, St. Nicholas, Belgium, having been duly sworn in Flemish, is examined by the Prosecutor through the interpreter.

Q.133 - Would you give your name and address please?
A.133 - Maria van Landejhaem
Q.134 - The name of your husband?
A.134 - Karel van Stienkiste
Q.135 - Where do you live?
A.135 - Hemelaerstraat 45
Q.136 - Do you know Van Haute Caroline de Backer?
A.136 - Yes, that is Mme de Backer
Q.137 - Where do you live in relation to Mme de Backer?
A.137 - Just neighbours - we didn't mix at all
Q.138 - Do you remember the afternoon of 3 Oct?
A.138 - Yes, that is the date when it happened
Q.139 - What do you mean by "It happened"?
A.139 - Some time - it mayhhave been two minutes before or two minutes after 2 o'clock on that day a soldier asked me while I was on my way home where he could obtain some food. I took the soldier into my house in order to prepare some food for him. The soldier came into the house and I asked him to sit down so that I could prepare some food for him. While we were preparing the food he left again. We were surprised at his way of doing this

and I told my husband - -

Judge-Advocate - Not what she told her husband

A.139 (con) - Just to finish this sentence, I thought it was funny for him to leave while we were preparing it

Judge-Advocate - Not what you thought

Q.140 - Did you see him leave the house?
A.140 - I went to the door and some people called to me saying "He entered Mme de Backer's" - -

Judge-Advocate - Mme you cannot tell what someone told you or what you thought

A.140(con) - I went to the door to see Mme de Backer because some people had told me something and a passing policeman was called by me to help me as the door was not open

Q.141 - Did you see the soldier after he left the house?
A.141 - I saw the soldier when he was brought out of the house next door
Q.142 - Whose house was that?
A.142 - Mme de Backer's house
Q.143 - Was Mme de Backer in the house?
A.143 - At that time Mme de Backer was at my house without any clothes on

Q.144 - Did you see Mme de Backer at your house?
A.144 - I took Mme de Backer into my house while she was crying and in a state of nervousness

Q.145 - Did Mme De Backer say anything to you?

Defending Officer - I object to this evidence

A.145 - She was crying for her children

Prosecutor - I submit, sir, that even though it would be hearsay evidence there is a special rule in the case of rape and in Phipson at p.480 you will find it stated: "On charges of rape and similar offences against females, the fact that the prosecutrix made a complaint shortly after the outrage, together with the particulars of the complaint, are admissible to confirm her testimony and disprove consent"

Judge-Advocate - What are the grounds of your objection Major de Marler?
Defending Officer - The usual one, sir, that this appears to be evidence of a conversation between the witness and a third party at which the accused was not present

Judge-Advocate - What have you to say as to the rules applicable in the case of rape? The rule appears to be set out at p.86 in MML at para 53

Defending Officer - That is all very well, but how do you know that in answer to this question the witness will restrict her remarks to that subject? She might say anything

Judge-Advocate - Well, you can never be sure of the answer. All you can do is put the question. I think the time is fixed by previous evidence as somewhere around the time that this is alleged to have occurred and the rule seems to be quite clear in MML at p.86 para 53 that in evidence of an immediate complaint in cases of rape the terms of the complaint may be given so far as they relate to the charge. Now, when we are dealing with the question of the objection, I would like to direct the attention of the court to that paragraph: "---This is admissible, not as being evidence of the facts complained of, but for the purpose of showing that the conduct of the person against whom the offence was committed was consistent with the story told by her in the witness box", so it is admitted but for a very limited purpose. You will find the same rule in Archbold, 31 ed at p.1023 in almost the same wording with cases and authorities quoted to support it and there is this further matter added in Archbold's which is the law that "Such complaint cannot be re-

garded as corroboration of the story of the prosecutrix and it is a misdirection to refer to it as such". So that might be kept in mind if subsequently the question of whether or not there is corroboration in the legal sense arises. Evidence of any complaint cannot be used as corroboration

At request of the court stenographer reads back Q.145

A.145 (con) - Mme de Backer said that she did not dare to cry because the soldier was taking her by the throat and struck here on the head and - -

Defending Officer - You see, this does not help the point
Judge-Advocate - Not very much - no

Q.146 - Did she say anything else?
A.146 - No, she did not say anything further
Q.147 - You say "that soldier". Do you know who the soldier was?
A.147 - Yes, that is the soldier (points to accused)
Q.148 - There are three of them there?
A.148 - The middle one
Q.149 - Is that the soldier that was at your house?
A.149 - That is the soldier that went into the house
Q.150 - Into whose house?
A.150 - He came to my house and also to Mme de Backer's
Q.151 - But you didn't see him going into Mme de Backer's house

Judge-Advocate - That is leading. Wait a moment. I think that point is sufficiently clear now but in any event you cannot ask the question that way

CROSS-EXAMINATION BY DEFENDING OFFICER

Defending Officer - Before I do commence any cross-examination the point that I made before about that question as to what Mme de Backer had said to the witness becomes very much more pointed. Exactly what I feared might happen did happen. She has interjected now hearsay evidence of complaints by Mme de Backer along a completely different direction
Court - Well, the court cannot consider that as evidence, can it? That is the point the Judge-Advocate made
Judge-Advocate - It can be used for a limited purpose
Defending Officer - But only for the purpose you mentioned
Judge-Advocate - Yes, for the purpose mentioned in the rule it can be admitted and brought before the court for that purpose - that is evidence of immediate complaint.

THE DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

IN THE OPINION OF THE COURT AND THE JUDGE-ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH R.P.83(B)

THE WITNESS WITHDRAWS

3rd Witness for the Prosecution, Dr. Helebaut, G., Station Street 37, St. Nicholas, Belgium, having been duly sworn in Flemish, is examined by the Prosecutor through the interpreter.

Q.152 - Would you give your name, please?
A.152 - Dr. Helebaut
Q.153 - And your address?
A.153 - Statiestraat 37, St. Nicholas
Q.154 - Do you know Mme de Backer?
A.154 - Yes
Q.155 - Are you her doctor?
A.155 - Yes
Q.156 - You have attended her before?
A.156 - Yes

Q.157 - Have you been called to attend her recently?
A.157 - Not of late
Q.158 - When was the last time?
A.158 - At the time when she was attacked by a soldier was the last time I was called
Q.159 - Can you tell us around the date roughly?
A.159 - About a month ago
Q.160 - Were you called in?
A.160 - Yes
Q.161 - Did you examine her?
A.161 - Yes
Q.162 - Can you tell the court the results of your examination?
A.162 - Yes, I see scratches on the right side I think of the neck and scratches on the belly - light scratches. On the right side of the throat I think there were three or four scratches. I examined her further but I could not say anything further
Q.163 - Now, this was about a month ago?
A.163 - Yes
Q.164 - Were the scratches recent?
A.164 - Yes
Q.165 - Can you get that time a little better? About a month ago would be sometime in October?
A.165 - I could find the exact date in my appointment-book
Q.166 - Had you attended Mme de Backer before this?
A.166 - Yes, her first confinement and at the second confinement and this is the third baby that she is awaiting
Q.167 - And how long has she been pregnant?
A.167 - Eight months now
Q.168 - As a medical man could you tell what caused the scratches?

Judge-Advocate - Just a moment. I think that is going pretty far Mr. Macdonald. He could give his opinion as to how they had been caused but that is as far as you should go
Prosecutor - He could give an expert opinion; he has been treating this woman
Defending Officer - But aren't you getting a little out of the scope of this man's ability?
Prosecutor - Well, the point is there are differences between scratches. He could tell that she did not fall on a rusty nail or get stabbed with a bayonet. He could give his opinion

Q.169 - Can you give your opinion as to what caused these scratches? What was the cause of them?
A.169 - I think nails because there are three or four scratches one next to the other - three or four
Q.170 - That is by nails?
A.170 - Yes, but it was not scratches from a long distance. It was only scratches from one centimetre. They were not scratches from anything but from nails
Q.171 - What do you mean by "nails", doctor?
A.171 - Fingernails
Q.172 - And on the belly?
A.172 - On the belly also I think there was only one scratch. Maybe it is not intentional

CROSS-EXAMINATION BY DEFENDING OFFICER

Q.173 - Dr. Halsbaut, these scratches about which you have been speaking and which you say could have been caused by fingernails - could they have been caused otherwise? Could they not have been caused otherwise?
A.173 - I don't think so, sir, because these scratches were at the normal finger distance on the throat
Q.174 - Did anyone suggest to you that they had been caused by fingernails?
A.174 - I made a thorough examination but I didn't ask any reason for the original of the scratches - just to confirm my examination
Q.175 - In other words, you were told by Mme de Backer that these scratches were caused by fingernails. Is that correct?
A.175 - Yes, I asked her if he had taken her by the throat which she confirmed

Defending Officer - That is very objectionable evidence
Judge-Advocate - Yes, but you asked for it and you got it and I don't see how the court can help you

Q.176 - You say you made a complete physical examination of Mme de Backer?
A.176 - Yes
Q.177 - Was there any evidence that would suggest to you that she had been violated?
A.177 - Not for the fact that she had been violated but for the fact that she had been attacked

QUESTIONS BY JUDGE-ADVOCATE

Q.178 - Doctor, are you able to tell us now when that examination of Mme de Backer that you have referred to took place?
A.178 - Between 7 and 7.30
Q.179 - On what day?
A.179 - A Tuesday
Q.180 - On what day of the month?
A.180 - I have written it in my book it was a Tuesday but I don't know if it was the 3rd, If Tuesday is the 3rd, then it is very right
Q.181 - Well, doctor, would you then look up the records that you made at the time of your visit and having refreshed your memory you will be recalled later
A.181 - Yes

IN THE OPINION OF THE COURT AND THE JUDGE-ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

4th Witness for the Prosecution, Policy Agent Noppe, Arthur, Dalstraat 130, St Nicholas, Belgium, having been duly sworn in Flemish is examined by the Prosecutor through the interpreter.

Q.182 - Your name and occupation?
A.182 - Noppe, Arthur, Policy Agent
Q.183 - Address?
A.183 - Dalstraat 130, St. Nicholas
Q.184 - Did you go to a dwelling on Hemelaerstraat on the 3 Oct?
A.184 - Yes I did
Q.184 - Where did you go? To what house in this straat did you go?
A.184 - I went to three houses, 43, 45 and 47
Q.185 - Who lives in 43?
A.185 - A lady called van Landeghaem
Q.186 - And in 45?
A.186 - Mme de Backer
Q.187 - What was the nature of your call at the home of de Backer - 45?

Judge-Advocate - Now, just a moment, Mr. Macdonald

Q.188 - What time did you go to the dwelling of de Backer?
A.188 - Approximately at 1.35 p.m.
Q.189 - What did you do when you got there?
A.189 - I don't understand how the question is intended "when I arrived there". I was not called there. I was passing and was called in
Q.190 - What did you do when you went to the de Backer house?
A.190 - The door was locked so I rung the bell
Q.191 - What then?
A.191 - I rung several times but the door was not opened. As I have no right to arrest military persons I went to the sergeant - "Bill" of the 15 Field Security Section and asked him - -

Judge-Advocate - Not what you asked him to do

Q.192 - What did you do then?

A.192 - I asked the sergeant to come with me

Judge-Advocate - You cannot tell what you told someone else when the accused was not present

Q.193 - What did you do then?
A.193 - We went back to Hemelaerstraat 45
Q.195 - What then? Go on
A.195 - Then we noticed that Mme de Backer went into the house of No. 43. We went to house 45. The door was locked. We rung the bell and the door was not opened. We went into house 47, the backside of the house, went over the wall and found the accused in a state of drunkenness in the house
Q.196 - Who is the accused?
A.196 - That is the person I found in the house
Q.197 - Point him out?
A.197 - The middle one of the three persons (the accused)
Q.198 - What did you do then?
A.198 - The accused wanted to prevent us from opening the front door. He wanted to find a way to get away by the back of the house. Next he invited me to drink from a bottle which contained - I don't know which drink but certainly spirits. I opened the bottle and I called his attention to the fact that on one of the furniture pieces standing behind the table there were glasses which he should take so that we could drink. While he was drinking I took the opportunity to open the front door
Q.199 - What happened when you opened the door?
A.199 - When the front door was opened the sergeant that came with me from the Field Security Section came into the house. The sergeant told me to bring Mme de Backer in the presence of the accused which I did. I went over to No. 43 and took Mme de Backer to No. 45. In my absence - -

Defending Officer - No, wait

Q.200 - You went over to bring back Mme de Backer. Did you bring her back?
A.200 - Yes, sir
Q.201 - Who was there then?
A.201 - The accused, the sergeant that came with me and two military police
Q.202 - And was Mme de Backer there?
A.202 - Mme de Backer was with me, not in the house but at the door
Q.203 - She didn't go in?
A.203 - She went in later
Q.204 - Did Mme de Backer say anything?
A.204 - At the moment when the accused was brought into the hall Mme de Backer declared him "That is the man who violated me"
Q.205 - Who did she mean by "That is the man"?

Defending Officer - Wait a moment. That is objectionable

Q.206 - Did Mme de Backer give any indication as to who she meant when she said that?
A.206 - As far as she could use her hands because she wore the overcoat of her husband she indicated that the accused was the man who had violated her and that there was no one in the house when I entered

CROSS-EXAMINATION BY THE DEFENDING OFFICER

Q.207 - You say when you got to the house of de Backer and you went in the back door you found the accused inside in a drunken condition. Is that correct?
A.207 - It is correct
Q.208 - Was he able to stand up?
A.208 - I found him standing. He was able to walk
Q.209 - You say he hindered you from getting out the front door. What do you mean by that?

A.209 - We went together to the front door. I tried to open it and he pulled my arm and said "Don't do that"
Q.210 - And did he shake the finger like that at you?
A.210 - Yes
Q.211 - Did he say anything to you?
A.211 - He wanted to go back with me through the back door and over the wall to the next house which he tried. When I was preparing to help him to cross over the wall he did not want me to because he didn't want to be touched
Q.212 - Do I understand that the accused offered you a drink from this bottle which he had?
A.212 - Yes
Q.213 - Did you take one?
A.213 - No
Q.214 - What was his mood - was he savageor friendly?
A.214 - Prudent - careful
Q.215 - I don't quite understand what you mean by that?
A.215 - He was not using force. He was not rude but the fact that he went with me to prevent me opening the door showed that he intended to be prudent, careful
Q.216 - The fact that somebody offers you a drink is normally a friendly act, isn't it?
A.216 - Or a convention
Q.217 - Exactly. In other words there was nothing savage about the man at the time
A.217 - I never declared that
Q.218 - Is that so or is it not so?
A.218 - It is so. I never declared that
Q.219 - What you mean is that he was not savage?
A.219 - At that moment, no sir

IN THE OPINION OF THE COURT AND THE JUDGE-ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P. 83(B)

THE WITNESS WITHDRAWS

3rd Witness for the Prosecution, Dr. Helebaut, C., Station Straat 37, St. Nicholas, Belgium, being recalled and advised that he still under oath is examined by the Court through the interpreter.

Q.220 - Doctor, now that you have had an opportunity to refresh your memory from your books, are you aole to tell the court the date on which the examination of Mme de Backer took place?
A.220 - Tuesday, 3 Oct
Q.221 - At what hour?
A.221 - 7.15
Q.222 - And that is the examination you referred to in your evidence before today?
A.222 - Yes, sir

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

IN THE OPINION OF THE COURT AND THE JUDGE-ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

5th Witness for the Prosecution, K.52613 Sgt. Hamlyn, W.W.L., 15 Cdn FS Sec, having been duly sworn is examined by the Prosecutor.

Q.223 - Will you give your number, name and unit, please?
A.223 - K.52613 Sgt Hamlyn, W.W.L.
Q.224 - Your unit?
A.1224- 15 Cdn Fd Sec Section
Q.225 - Are you stationed here in St. Nicholas?
A.225 - Not at present but I was up to Nov. 7th
Q.226 - Do you know St. Nicholas well?
A.226 - Yes, sir
Q.227 - Do you know Haemlaerstraat?

A.227 - If you mean Hae[illegible]
Q.228 - Were you ever call[illegible]straat, I do, sir
A.228 - Yes, sir, on the 3rd [illegible] to that street?
informed that there was [illegible]tober at approximately 1330 hrs I was
Judge-Advocate - Not what you were [illegible]thing doing down there
[illegible]rmed

A.228 (con) - It was reported to me

Judge-Advocate - Not what was reported to you. Presumably you did something. You received a report and then t[illegible] what you did

A.228 (con) - After receiving a report I went down to [illegible]5 Hamelaerstraat and found the doors both front and back closed. I went into the next house which is 43 and tried to get in through an upper-storey window. I could not do that either. While in 43 I saw the woman de Backer with a coat slung over her back. She was crying and in a very nervous condition. Seeing as I couldn't get in through the front or back I sent a civilian down to call the Provost because there were no other military around at all. Just before they arrived the policy agent Noppe Arthur was able to get in by the rear door and came out together with Sgt. Rogers by the front door. Then we entered the house together again and upon entering the sitting room we found all the woman's clothes spread all over the sofa and the floor. We told him he was under arrest - -
Q.229 - Told who?
A.229 - Sgt Rogers that he was under arrest and afterwards while we were looking around to see what else had happened in the house we saw three children in the house upstairs. He tried to escape -
Q.230 - Who tried to escape?
A.230 - Sgt. Rogers tried to escape
Q.231 - Why was he under arrest?

Judge-Advocate - Now, now
Prosecutor - Well, he says he put him under arrest
Judge-Advocate - His reason might be anything. They might be hearsay of the worst order

Q.232 - Was Sgt. Rogers with you? Was he on the patrol? When did you first see him?
A.232 - I first saw him when he opened the door of the house - 45
Q.233 - Was he with you?
A.233 - No, sir
Q.234 - Was he on the inside?
A.234 - He was on the inside, sir
Q.235 - When did you put him under arrest?
A.235 - Just before we put him under arrest we brought the woman in from house 43 and asked her - -
Q.236 - Was Sgt Rogers there when the woman came in?
A.236 - Yes, sir and the Policy Agent Noppe Arthur asked her if that was the man
Q.237 - Who do you mean by that?
A.237 - If Sgt. Rogers was the man
Q.238 - How did he phrase this question - "Is that the man?"
A.238 - Well, I don't know the exact words he used

Defending Officer - I don't think it is competent of this witness to state how he phrased the question

Q.239 - Now, do you know Sgt. Rogers?
A.239 - Not personally but after that date I have known him
Q.240 - Would you recognize him?
A.240 - Yes, sir
Q.241 - Is he here
A.241 - Yes, sir
Q.242 - Would you point him out to the court?
A.242 - Sitting next to the Major of the 7 RCA who is defending him, sir

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

QUESTIONS BY JUDGE-ADVOCATE

Q.243 - Sergeant, you said that you first saw Sgt. Rogers when he opened the door. Is that right?
A.243 - Yes, sir
Q.244 - Is that the door at No. 45?
A.244 - Yes, sir
Q.245 - Now which door was it?
A.245 - The front door, the main door of the house
Q.246 - Who was with you at that time?
A.246 - At that time there were three civilians, one from 43 and two from 47
Q.247 - And other than the children that you have mentioned as being upstairs and Rogers was there anyone else in 45 at that time?
A.247 - There was the policeman who had gained entrance by the rear door sir
Q.248 - He was in there before you went in the front door?
A.248 - Yes, sir

IN THE OPINION OF THE COURT AND THE JUDGE-ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

6th Witness for the Prosecution, P.22265 Pte Cessford, D., 13th Cdn Pro Coy, having been duly sworn is examined by the Prosecutor.

Q.249 - Would you give your name, number and rank and unit to the court please?
A.249 - P.22265 Pte Cessford, D., 13 Cdn Pro Coy
Q.250 - Do you know St. Nicholas?
A.250 - Not very well, sir. This is the second time I have been here
Q.251 - When was the first time?
A.251 - The first time was the 3rd of October 1944, sir
Q.252 - On 3 Oct this year?
A.252 - Yes, sir
Q.253 - Will you tell the court what happened on that day about 1415 hrs without giving anything about what you heard? You made a patrol Tell what you yourself saw
A.253 - Well, at approximately 1400 hrs 3 Oct 44 on patrol in St. Nicholas as a consequence of some information I received, I proceeded to 45 Hamelaarstraat. Upon arrival there I found Sgt. Hamlyn of the Field Security and the accused in the hallway of said premises
Q.254 - What do you mean by the accused?
A.254 - The accused Sgt. Rogers
Q.255 - Can you identify Sgt. Rogers?
A.255 - Yes, sir
Q.256 - Is he here today?
A.256 - Yes, sir
Q.257 - Where?
A.257 - The sergeant with no hat - the second on my right
Q.258 - You saw the accused - -?
A.258 - In the hallway of 45 Hamelaarstraat
Q.259 - What else did you do?
A.259 - While gathering information Sgt. Rogers made a break for the kitchen of the premises. I went after him and placed him under close arrest. I moved him to the police station cells
Q.260 - Did you see anything else while you were there?
A.260 - Well, while wrestling with Sgt. Rogers there was considerable damage done in the kitchen
Q.261 - Can you tell us anything about the place when you arrived?
A.261 - What I saw was upon being told to look
Q.262 - You didn't see it yourself?
A.262 - Not until I was told
Q.263 - Well, tell us what you saw
A.263 - I saw a pile of ladies attire in the front room, the first room
Q.264 - Where in relation to the front door is that room?
A.264 - It is the first door on the left as you enter

CROSS-EXAMINATION BY DEFENDING OFFICER

Q.265 - Did you say, Pte Cassford, that at a given moment the accused tried to get away?
A.265 - Well he made a quick departure from my presence. At that time, sir, he was not placed under arrest so far as I know
Q.266 - You are the second person who has come before the court today and stated he had placed the accused under arrest. However, you did say he made a sudden departure from your presence did he?
A.266 - Yes, sir
Q.267 - Was he running or walking away or what?
A.267 - Running
Q.268 - Was he sober?
A.268 - No, sir
Q.269 - Did you have any difficulty persuading him to return?
A.269 - Not a great deal, sir

QUESTIONS BY JUDGE-ADVOCATE

Q.270 - Cassford, you mentioned something about this pile of clothes in the front room. What pile of clothes did you see?
A.270 - Well, I didn't have a very good look at them. At the time I was looking or about to look at them that was when Sgt. Rogers made the bolt for the kitchen. I might explain, sir, that we were standing at the door to this front room, the three of us
Q.271 - You saw a pile of clothes but did you examine them at all?
A.271 - No I did not, sir
Q.272 - You just saw them and then your attention was drawn elsewhere?
A.272 - That's right, sir

IN THE OPINION OF THE COURT AND THE JUDGE-ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

THE PROSECUTION DOES NOT WISH TO CALL ANY FURTHER WITNESSES

THE PROSECUTION IS CLOSED

D.6 - Defence

1st Character Witness, Capt. S.F.B.Taylor, 27 Cdn Armd Regt having been duly sworn is examined by the Defending Officer

Q.273 - Will you give the court your full name and initials, Capt. Taylor
A.273 - I am Lt (A/Capt) S.F.B. Taylor
Q.284 - And your unit?
A.284 - 27 Cdn Armd Regt
Q.285 - What is your appointment with the 27 Cdn Armd Regt?
A.285 - I am acting 2 i/c of "C" Sqn of that Regiment
Q.286 - Were you at one time with the Governor General's Footguards?
A.286 - I was
Q.287 - When was that?
A.287 - I joined the GGFG in Ottawa in Nov 39 and served with them until May of this year
Q.288 - May 1944?
A.288 - That is correct
Q.289 - From Nov 39 to May 44 did you have occasion to have known or command or in the unit with you the accused C.58322 L/Sgt Rogers L.M.R
A.289 - Yes, I first met Sgt. Rogers in Ottawa in Jun 40 when he entered a class that I was conducting in drill (I was then a drill sergeant). I knew him until the time I proceeded overseas, that is to England in May 42. When I rejoined the GGFG upon their arrival in England - -
Q.290 - You left the unit did you?
A.290 - I came overseas with the advance party in May of that year

Q.291 - And the unit followed in Oct 42?
A.291 - Yes, sir, and I rejoined them and was given a troop in No. 2 Squadron. Sgt. Rogers (then Cpl Rogers) was a crew commander in my troop
Q.292 - A troop commander?
A.292 - A crew commander in my troop and he served in that capacity until I was moved from 2 Sqn in Feb of the next year
Q.293 - 1943?
A.293 - 1943
Q.294 - Was he a crew commander from Oct 42 until Feb 43?
A.294 - Yes, he was
Q.295 - Was he efficient?
A.295 - I always found Sgt. Rogers very efficient. He always worked very well for me and he was well thought-of by other men as well
Q.296 - By whom?
A.296 - By his Sqn Comd and I spoke to the adjutant many times of him and he was well thought-ofby the adjutant at that time as well. I recommended him to become a sergeant when the present sergeant had gone to Canada as an instructor and he was in time promoted to that rank
Q.297 - He was in time promoted to that rank?
A.297 - Yes
Q.298 - In what regard was he held by the men of the squadron?
A.298 - The men all thought very well of him. He got along with them very well. He was able to get the work from them and at the same time maintain his rank
Q.299 - What would you say yourself as to the character of the L/Sgt in question from your own knowledge of him?
A.299 - Sgt. Rogers has always been very upright and could be always trusted to do whatever he was assigned to do in a military line
Q.300 - Is that all? Was I interrupting you or not?
A.300 - I was just trying to think of what I could add to that
Q.301 - As a lance-sergeant what were his duties? You say you recommended him to be a lance-sergeant and in due course of time that appointment came through?
A.301 - I recommended him to become a sergeant and then I left but my intention was to have him as a troop sergeant
Q.302 - Troop Sergeant, I suppose, is in the nature of a local sergeant-major if I may use the expression?
A.302 - He is 2 i/c of the troop, senior NCO in the troop
Q.303 - Do you know for a fact that he got that appointment and those duties?
A.303 - Yes

PROSECUTOR DECLINES TO CROSS-EXAMINE THIS WITNESS

QUESTIONS BY COURT

Q.304 - You have given us a picture of Sgt. Roger's military qualities but undoubtedly in your period of knowledge of him you have gained some information or some knowledge as to his general standard of social behaviour?
A.304 - Well, I have never been out on any party as you might call it with Sgt. Rogers, sir. We have had some get-togethers though of a troop nature where we sort of ran a little do and he acted in every way a gentleman as far as I could see of him and in speaking with others I have never heard anything against him when he was out. I don't think there is anything I can add

IN THE OPINION OF THE COURT AND THE JUDGE-ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

2nd Character Witness, Lieut. G. R. Kenney, 6 Cdn Armd Regt (1CH) having been duly sworn is examined by the Defending Officer.

Q.305 - Will you give your name, initials and unit to the court please?
A.305 - Lieut Gordon Royal Kenney, 6 Cdn Armd Regt (1 CH)
Q.306 - Have you been in that regiment since its arrival in France?

A.306 - I joined the unit on Jul 6 and have been with them up until two weeks ago when I went to Bde HQ
Q.307 - What was your appointment while serving with the 1st Hussars?
A.307 - Troop leader, sir
Q.308 - Did you at any time while acting as troop leader have under your command C.58322 L/Sgt Rogers, L.M.?
A.308 - Yes, sir
Q.309 - What were his duties?
A.309 - He was a crew commander in my troop in C Sqn
Q.310 - How long did he serve with you?
A.310 - From the time I took over the troop on Jul 6 until Jul 25 when his tank was knocked out in action and he went to hospital
Q.311 - Why did he go to hospital?
A.311 - Shrapnel
Q.312 - He was wounded in other words?
A.312 - Yes
Q.313 - Was the regiment in action during that period from 6 to 25 Jul?
A.313 - Yes, it was
Q.314 - Was Sgt Rogers in action with the Sqn?
A.314 - Yes, he was, sir
Q.315 - Will you tell the court how he performed his duties, and how he behaved during that particular time? I don't mean entries in his conduct sheet etc. I want the record as a member of your Sqn
A.315 - He carried out his duties very well as a crew commander and in action he was very good. The men in the troop respected him and got along very well with him and I never had any trouble whatever with him at any time. If I gave him a job to do it was carried out
Q.316 - How do you mean he got along well with the men?
A.316 - The men respected him, respected his rank, the job he was doing
Q.317 - Was he a popularity-seeker with the men?
A.317 - No, he was not
Q.318 - From your own observations of him during that very short time what would you say as to his character, Mr. Kenney?
A.318 - Very good, sir
Q.319 - In what way? Can you be more explicit than that?
A.319 - Very good as a fighting man and as a straight man. He carried himself very well, was very clean and clean-living from what I knew of him and the length of time I had him

PROSECUTOR DECLINES TO CROSS-EXAMINE THIS WITNESS

IN THE OPINION OF THE COURT AND THE JUDGE-ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

THE PROSECUTOR MAKES THE FOLLOWING CLOSING ADDRESS:

May it please the court. At this time I am not going to take up any more of the court's valuable time with a rehash of the facts (certainly in the last two days we have had an adequate presentation of them) nor even more so am I going to attempt to talk law as that is the province of the Judge-Advocate.

The accused, Sgt. Rogers, is charged with the very serious offence of rape and I submit the prosecution has, in the past two days, brought forward witnesses to show that the accused did in fact rape Van Haute Caroline de Backer, the complainant. If I may crave the indulgence of the court I would like only to touch on what I consider the facts and the salient facts in this case.

I think that it is uncontradicted that Sgt. Rogers, the accused, did go to the home of Mme de Backer about 1340 hrs on the 3 Oct 44 and that he was in an intoxicated condition. The door of the house was open and Mme de Backer was cleaning up. I also think it is uncontradicted that Sgt. Rogers made improper advances to Mme de Backer which Mme de Backer, to use the old expression, spurned. She herself, you have heard her say, was scared and

terrified. She was "scared to death" I think were the words, by these advances and under this state of fear he induced her to undress. When she was undressed Mme de Backer was pushed to the floor by the accused. You then have her evidence that her legs were spread apart and that Sgt. Rogers got between them, that he had his own male private parts out and that he joined his male part to hers.

Now I will, at this moment, admit the fact that the defence has brought out that Mme de Backer cannot swear whether there was actual penetration as the law knows penetration but, at the same time, I will say that that is the main element of the offence and it certainly is for you gentlemen to decide.

Now, the other witness, Mme Landejhaem, I called only to show the consistency of Mme de Backer's statement. I only called her in accordance with the special rule in the case of rape to show that according to the old Law Books Mme de Backer did make hue and cry at the earliest opportunity. The family doctor also was called to show that Mme de Backer's statement was consistent and that she was assaulted.

Now, gentlemen, as I said at the outset I am not going to attempt to rehash the whole case for you but it is my very strong submission that the prosecution has brought forward enough evidence to show that the accused improperly attacked Mme de Backer and that if there was no rape, then there was very certainly a very indecent assault upon her and certainly strong evidence of an attempt itself. As I said before the question of penetration is for you to decide and it is for you to decide whether or not there was rape.

THE DEFENDING OFFICER MAKES THE FOLLOWING CLOSING ADDRESS:

May it please the court. My friend's opening remarks were that he would not rehash what he termed glowingly to be an adequate presentation of his case. I confess that while that is gilding the lily somewhat gentlemen, I think in his own summary he has probably given a more adequate presentation to them than any of the witnesses have been able to do for a variety of reasons. I agree with my friend completely when he says it is up to the court to decide whether or not there was in this case penetration but the Judge-Advocate will tell the court shortly that the elementsrequired to constitute the offence of rape are (a) carnal knowledge (b) the fact that the woman must be not the accused's wife and (c) that she must not have consented. In the absence of evidence on any one of these elements the charge must fail. That is the first proposition. The second proposition is that in the English system of law every person is presumed to be innocent until it is shown beyond any reasonable doubt that he is guilty.

Now, let me rehash the evidence for you on the subject of penetration. We had two statements, one first of all by the complainant in answer to a question put to her by the prosecutor in which she said yes there had been penetration. In cross-examination she said to me that there was a possibility that she had been mistaken. You will remember that over my objection the court then re-opened that inquiry and put the question straight to her again "Had there been penetration of her female organ by the accused's male organ?" and I think she again said "Yes". In answer to a further question suggested by myself and put by the court "Was it not possible that what had penetrated her was not the accused's organ but his hand" the answer came out "Yes".

Now, in those circumstances, Mr. President and gentlemen of the court, I suggest very strongly that you cannot accept the prosecutor's contention that he has established the fact of penetration. There remains at the very worst, at the very worst, a

reasonable doubt that penetration did occur and in view of the law as I have quoted it to you and as the Judge-Advocate will confirm you are bound to interpret any reasonable doubt in favour of the accused

All the factors seem to me to point that way. The evidence is not clear owing in part to the difficulties of interpretation and partly due to the super-excitation of the complainant but the following seemed to me to come out quite clearly and that is that the space of time in which this penetration could have occurred was a matter of seconds. I submit that in view of that fact coupled with the doubt in the complainant's own mind, I suggest that you can't come to a conclusion that there was penetration.

If the court agree with me on that proposition, then they are bound to dismiss this charge against the accused and come to some lesser offence of which they may find him guilty.

The prosecution has, in an old-fashioned way described the by-play that was going on between the complainant and the accused and he dignifies it with the expression "the spurning of his improper advances". I would say from the evidence we have here today that that is all it was. It is not only an old-fashioned description but it is an accurate one. There seems to have been little outward show of active resistance and in answer to a question which I directed to the complainant she replied that at the point when she had been pushed onto the floor - up to that point she told me that she had not resisted it. She went on to say from that point on the accused was lying on top of her and offered that fact as an excuse for the absence of future resistance.

Now, we get through to the state then that there were these no doubt very improper advances which however, were not physical and not actively resisted by this woman. I want to make that point quite clear because it will have a bearing on what I have to say in a moment.

Now, the second offence of which the accused may be found guilty is the crime of attempting to commit rape. The attempt to commit rape. I suggest to the court in order to be guilty of an attempt to commit rape you have to actually attempt the crime itself. The imperfect commission of any other offence cannot be assumed an attempt to commit rape.

Now as in all crimes and in all attempts to commit crimes there must be in the mind of the accused the desire to commit that crime and in the case of an attempt the desire to commit rape. Now, is it too much to suggest - is it too much to think that in the absence of any overt resistance by this woman and I suggest that it was established that there was not very much and to use a colloquial expression "she raped very easily if she raped at all" may I suggest that there was not in the accused's mind the idea that he would have to overcome resistance. Now, if there was not that resistance - if there was not what the lawyers call "mens rea" which means a guilty intent then again I suggest to the court that it cannot find evidence of an attempt to commit rape. No doubt there was an attempt to commit something else and almost a very successful one but the attempt, I suggest, was not an attempt to rape.

Now, neither this court nor any other court can, on an attempt to commit crime (a) or as I say an imperfect commission of crime (a) find a man guilty of an attempt to commit crime (b). It seems to me in order to reach any conclusion as to the guilty intent of the accused you must imagine the position he was in. Heaven knows why he went into this particular house but he did. He suggested to this girl that she take her clothes off by pul-

ling her dress and she takes them off. She can't understand English; he can't understand Dutch. There may have been a conversation between them. She may have said "Get out of here" or whatever it was. He couldn't understand. Again there is no overt show of any resistance. Now the evidence of the complainant is that with his hands he parted her legs. Again no show of resistance. Again, therefore, no intent on his part to overcome resistance because resistance had not yet occurred.

Now, in those circumstances, gentlemen, I would find it exceedingly difficult to justify any conclusion that the court may reach that there was either (a) rape which I submit we have thoroughly disposed of or (b) the attempt to commit the same crime. It was undoubtedly an attempt to have connection with this woman. It is not so clear that in the mind of the accused the thing was an illegal connection. All the witnesses who spoke of the fact at all all confirm that the accused was drunk. I don't put that forward for any excuse for the commission of any offence that he may have committed but I do mention it as tending to support the suggestion that his reasoning powers, the powers of inference from the acts that he saw may have been somewhat distorted and befuddled. If, therefore, you imagine the case of a befuddled man seeking to have connection with a woman, a woman who cannot understand a word he says but who complies with all the signs he makes, who lets her legs be separated, then I suggest that it is not too clear that there is guilty intent on the part of the accused.

The second alternative - the third offence of which the accused might be found guilty is, I believe, the crime of indecent assault. I am not, unfortunately, prepared to talk technically about the crime of indecent assault but the remarks I have just completed about the attempt to rape apply with equal force. I think that the Judge-Advocate should advise the court that before a man can be found guilty of any offence he must have a guilty intent.

Judge-Advocate - There must be some mens rea. There will be an instruction on it

To avoid, therefore, boring you by repitition I will only say again what I have just said, namely, that the circumstances might have been such to eliminate any guilty intent on his part.

The character evidence which I adduced before the court is in the accused's favour. It shows him to be a good fighting man and to all observers a good soldier. As I sit down I wish to remind the court again of the elementary principle that the prosecution must prove its case and that any reasonable doubt must be interpreted in favour of the accused.

Before closing I should like to warn the President of the court and also perhaps the Judge-Advocate against any reliance whatever being placed upon the Summary of Evidence which I consider a grossly distorted document. The President has it before him and has had instructions to read it I know. I know the President will agree with me that it does not condemn put the thing very accurately and has a very great many irrelevancies.

I ask, gentlemen, for the dismissal of this charge against the accused and that he be found not guilty of the second alternative and the third alternative charges upon which the court might, within their powers, find him guilty

THE JUDGE-ADVOCATE MAKES THE FOLLOWING SUMMING UP:

May it please the court. It is now my duty as Judge-Advocate to sum up and in doing so may it be understood that questions of fact including all questions as to the credibility of witnesses

and the weight to be attached to the evidence of any particular witness are entirely for the court. The function of the Judge-Advocate is to explain the law; that of the court to apply that law to such facts as it finds have been proved in evidence.

The accused is charged with one offence, namely, rape. It is the duty of the court to make a finding of guilty or not guilty of that charge. On a charge of rape, however, if the court comes to the conclusion that the accused is not guilty of rape but is guilty of attempted rape it may so find. The court also have the legal power, if the evidence so warrants, to find the accused not guilty of rape but guilty of carnal or attempted carnal knowledge of a girl under 16, an imbecile or an idiot, or of indecent assault or of incest. While I mention these possible findings of guilty of charges other than the one on the charge sheet for the sake of completeness, having regard to the evidence I intend to confine my discussion to the charge of rape as laid and also to pointing out to the court the difference betwean what facts are necessary to establish rape and what is necessary to constitute the offence of an attempt to rape.

You will find rape defined and discussed at MML p.113 Ch VII. The pertinent part of that paragraph reads as follows:-

> "Rape is the act of a man having carnal knowledge without her consent of a female who is not his wife. Penetration is considered toconstitute carnal knowledge. It must therefore be proved that there was actual penetration of the female organ by some part of the male organ. The slightest penetration will be sufficient. It is not necessary to prove that there was such penetration as would be sufficient to rupture the hymen. Whether there was an emission of semen or not is immaterial. It is not an excuse that the woman was a common prostitute or the concubine of the ravisher if the offence was committed by force or against her will, though proof of such facts is admissible and is of course important in considering whether or not she is likely to have consented. Consent, to be an excuse, must be actual consent, and not mere submission, and it must be voluntary, and not extorted by force or duress or fear of immediate bodily harm. Thus if an idiot submits to a man having connection with her without actually permitting it, this is no consent; but if she actually permits the act, though from mere sexual instinct, and without really understanding its nature, this is a sufficient consent, and therefore the man is not guilty of rape. A man who induces a woman to permit him to have connection with her by personating her husband is guilty of rape".

A standard work on criminal law, Archbold's Criminal Pleadings, Evidence and Practice at page 1018 defines rape as follows:

> "Rape is the unlawful carnal knowledge of a woman without her consent by force, fear or fraud".

It will be seen from the above definitions and the notes to MML which have just been read that the two principal questions which the court have to decide are, first,

> "Did the accused in fact have carnal knowledge of the complainant in the sense that there was actual penetration of the female organ by some part of his male organ?"

If the answer to that question is "No" or remains in doubt the accused must be acquitted unless the court comes to the conclusion that it should make one of the alternative findings man-

tioned above.

If the court comes to the conclusion that the accused did have such carnal knowledge it must then go on to decide whether or not that carnal knowledge was with the consent of the female complainant or whether it was obtained by force, fear or fraud. Before it may properly convict the court must also be satisfied that the female complainant is not the wife of the accused but that does not seem to be in dispute.

Turning now, for a moment, to the offence of attempting to commit rape, you will find attempts dealt with at MML p.108 para 22 which reads as follows:

"An attempt to commit or to procure the commission of an offence is in itself an offence and renders a person criminally responsible even though the attempt is unsuccessful".

"A mere intention to commit an offenceunaccompanied by acts will not amount to an actual 'attempt' nor will acts themselves if they are merely preparatory to the commission of the offence. For instance, if a man goes to Birmingham to buy dies to make bad money, the mere going there is not an attempt to make bade money. Some act must be done which is more than an intention or preparation, and which is a real step towards the commission of the act; thus, if the man had not only gone to Birmingham, but had actually bought the dies, he would have been guilty of an attempt to make bad money".

"It is no defence to a charge of attempting to commit a crime that it was legally or physically impossible for the offender to have committed the full offence".

"Where a person is charged with committing a felony or misdemeanour but the evidence shows merely an attempt to commit that offence, a jury may convict him of the attempt to commit the offence charged. A court-martial has the same power as a jury in this respect".

In the present case having regard to the evidence I would suggest that if you have occasion to consider the offence of attempting to commit rape that the simplest way to explain it is this: that, if you conclude that the prosecution has proved the full case of rape in all other respects applying the law and the definitions as I have explained it to you and the further law applicable which I will explain but that the one of carnal knowledge in the sense of actual penetration has not been proved, then a finding of not guilty of the offence itself but guilty of the attempt would be appropriate.

The further observations I am going to make on the law are equally applicable to the offence of attempting except insofar as they concern that one question of penetration.

Although in strict law a court may convict in such a case as the present one, on the uncorroborated testimony of a female complainant, it is my duty to warn you that it would be most dangerous to do so. The corroboration which should be required in such cases is independent evidence which confirms in some material particular not only that the crime has been committed but also that the accused committed it.

In the present case, in my opinion the evidence of the doctor as to scratches and the evidence of Hamlyn as to the state of dress and condition of the complainant and what he saw in the house of the complainant if fully investigated by the court would be regarded as corroboration in law. In that connection I

don't intend to suggest to the court whether or not it should accept them but that it would constitute, if believed what the law requires in that respect.

As to identity, the evidence of Maria van Landeghaem as to the identification of the accused as the person who was at her house and who she subsequently saw leaving the house of the complainant and the evidence of the Belgian Policy Agent Noppe, Arthur stand in the same position. In this connection I also wish to direct you most particularly that the evidence that was admitted of a complaint made by the complainant shortly after the offence is alleged to have occurred is not regarded in law as corroboration. As I believe I explained to you at the time that evidence is only admissible for the purpose of showing that the conduct of the person against whom the offence was committed was consistent with the story told by her in the witness box. It is not to be looked upon as evidence of the facts stated and is not in law corroboration.

It is a principle of law that the intent and the act must both concur to constitute a crime. Therefore, subject to certain exceptions with which you are not at present concerned, before a court may properly convict it must be satisfied not only that the accused did the acts complained of but that he did so with some mens rea, that is, some guilty mind or some wrongful intent. However, such intent is seldom capable of positive proof and in most cases can only be inferred from overt acts. As a general rule a person is presumed in law to have intended the natural and probable consequences of his act. That principle and the bearing on it of evidence tending to show either drunkenness or insanity as a defence is discussed at HHL p.105 Ch. V11, para 6 and the following paragraphs. As it may be some help to you I will read paras 6 to 9 inclusive:

"6. The general rule is that a person is responsible for the natural consequences of his acts. But there are cases in which it would be obviously unfair to make a person criminally responsible for doing a particular act, though in ordinary circumstances such an act would be anboffence."

"7. A child is considered to be incapable of committing an offence before the age of eight years, and any act of a child between the ages of eight and 14 can only be held to be an offence if it can be shown affirmatively that the child had sufficient capacity to know the nature and consequences of his act and to appreciate that he was doing wrong."

"8. A person cannot be convicted on a criminal charge in respect of an act done or omission made by him if it is proved that at the time when he did the act or made the omission he was labouring under such defect of reason through disease of the mind as made him incapable of knowing the nature and quality of the act he was doing or, if he did know it, that such an act was wrong. Thus, if a man kills another under the insane delusion that he is breaking a jar he will not be criminally responsible".

"Every person is, however, presumed to be sane and to be responsible for his acts until the contrary is proved and it must, therefore, be clearlyestablished by the defence that the accused is brought within the terms of the exceptionsas above laid down before he can have the benefit of it. Unless a person is brought strictly within the terms of the exception, it is no excuse whatever to show that his mind is affected by disease. For instance, the fact that a person is under the delusion that his nose is made of glass will not in any way excuse him if he commits an offence, unless he can prove that the delusion had a connection with the offence."

"It is immaterial whether the unsoundness of mind is permanent or only temporary, whether it is due to natural imbecility or produced by disease, or whether the disease itself is due to the sufferer's own dissipation as, for instance, in the case of delirium tremens".

"9. Temporary intoxication (from liquor or drugs) - as distinct from mental disease which alcoholism etc may bring on - is not (if voluntary) in itself any excuse for crime; but evidence of drunkenness which rendered the accused incapable of forming the specific intent essential to constitute the crime must be taken into consideration together with the other facts proved in order to determine whether or not he had that intent".

"Evidence of drunkenness falling short of a proved incapacity in the accused to form the essential intent and establishing merely that his mind was affected by drink so that he more readily gave way to some violent passion does not rebut the ordinary presumption that a man intends the natural consequences of his acts".

I don't intend to review the evidence in any detail. That has already been very capably done by both the prosecutor and the Defending Officer and in any case that is the province of the court. There are, however, two or three observations of a very general character that I would like to make with respect to the evidence and hope it may be of some assistance to the court.

As the court will understand from the definitions of rape which have been read, consent is one of the essential ingredients. That is a matter which the court must decide from all the evidence before it. In his address to the court the Defending Officer very properly stressed the resistance or rather the lack of resistance put up by the complainant. Evidence of that character has a very vital bearing on that question of consent but I would like to remind the court that on that question of resistance that such evidence is offered for its bearing on consent and the court must also take into consideration the other acts that took place at the same time and also the physical condition of this woman and her capacity to resist particularly having regard to the evidence of pregnancy which is before the court. It is entirely a matter for the court but I mention that because the amount of resistance that might reasonably be expected to negative consent in a person in feeble health or in a woman who is pregnant might reasonably be considered by a court to be radically different than what might be expected from a woman in good health and not in that condition.

The other matter on which I feel there should be some comment is that of penetration. The only evidence before the court on that question is the evidence of the complainant herself. Penetration is an absolutely essential element of the full offence of rape and the burden of establishing that beyond any reasonable doubt rests on the prosecution. The complainant in her evidence as was pointed out by the Defending Officer I think on two occasions gave evidence that she was not sure or something to that effect and while there has been some evidence of penetration and while it is a question the court must decide I would like to point out to the court that I think on that evidence it might be exceedingly dangerous to regard it as proved.

Now, I would like to return for a moment to some principles of law which are applicable to all cases if this character. The burden of proof in all such cases rests throughout on the prosecution. The most fundamental principle of British criminal law is that a person is presumed to be innocent until he is proved to be guilty. Therefore, the onus of proving his guilt rests throughout on the prosecution. If after hearing all the evidence you find yourselves in doubt on the charge or on any essen-

tial ingredient thereof the accused must be acquitted on that charge. The prosecution must satisfy the court beyond any reasonable doubt before the accused can be found guilty and unless the court is so satisfied it must acquit.

"Reasonable doubt" has been variously defined. One judge has said: -

> "To warrant an acquittal the doubt must not be light nor capricious, such as timidity or passion prompts, and weakness and corruption readily adopts; it must be such a doubt as upon a calm view of the whole evidence a rational understanding will suggest to an honest heart, the conscientious hesitation of minds that are not influenced by party, preoccupied by prejudice nor subdued by fear".

Mr. President, are there any further matters on which you wish me to advise the court?

President - No, I think not

Mr. Prosecuting Officer, are there any further matters on which you wish me to advise the court?

Prosecutor - No, I think everything is very clear

Mr. Defending Officer, are there any further matters on which you wish me to advise the court?

Defending Officer - No, sir

E. 3 - Statement in Mitigation of Punishment.

Accused - Yes, sir. I would ask for leniency and the clemency of the court. I have a clean record up until now in the Army and I am a married man with two children and I would point out too that when I was wounded in France and returned to England I did not have to come back over here. I was made Acting Sergeant and Instructor and could have remained there but I volunteered to come back over again. I would also like to say that when I do get off this I would like to get into the service again.

Defending Officer - May I be permitted to add two observations, there. There is one point I would really like to draw to the court's attention. That is that the accused has been awaiting trial in close custody for 45 days now which appears in the record before the President, which I respectfully submit should be taken into account in determining the quantity of punishment, if any. Another small point, sirs, is the fact that the accused is only twenty-four years old and thebfact that I mentioned before I think that he had been drinking rather excessively which I agree is not an excuse but might be taken into account.

Certified to be a true transcript of
the shorthand notes taken by me at the
F.G.C.M. described on p.

(F.J.Nethercut)S/Sgt
Court Reporter
HQ 2 Cdn Corps

19 Nov 44

M.F.M. 6
A.F.B. 122
40/F & S/136

No. C/58322 Name Rodgers, L M Sqn., Battery, or Company Corps Date of enlistment 2/7/40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Nil					

Certified to be a true extract from the regtl books and documents in my custody.

(Sgd) B T Saunders, Capt
Officer i/c Records "X"
Cdn Sec GHQ 2 Ech 21 Army Gp

(P.T.O.)

C-58322 RODGERS
No Name Leonard Malcom

Sqn, Battery or Company X-4 11st CAC Corps

Date of enlistment 2 Jul 4[illegible] OC Badges

Service or Proficiency Pay

Character

Sheet No 1

Date of last entry in Company Conduct Sheet

No and date of last drunk

Period not reckoning towards freedom from extra fine

Signature OC Company, etc

Place	Date of Offence	Rank	Dates of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				CERTIFIED A TRUE COPY FROM THE REGIMENTAL BOOKS IN CUSTODY					
				.....Major (F.O. Lewis) OC, C B qn 25 Cdn Armd Del Regt.					

(PTO)

Statement as to Character and Particulars of Service of Accused.

ARMY FORM B.296.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
G/50320	L/Sgt	Rodgers, I. M.	K-4 Ltst att 2/C San 25 Cdn Armd Del Regt

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 627, K.R., 1940.

‡ The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

* Within last 12 months. * Since Enlistment.

For	Nil times	times
For	times	times
For	times	times
For	times	times
For	times	times
~~Number of instances of gallantry or distinguished conduct.~~	times	times

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 75 of the Army Act, are set out in the schedule annexed to this statement.~~

3. ~~The accused is not under sentence at the present time, or The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 26 days in military custody, making a total of 26 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 24 years

6. The date of his commission / attestation specified in his record of service / attestation paper is 2 Jul 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 3 mo

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 3 mo 25 days service.

9. The accused is entitled to reckon 4 yrs 2 mo 26 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, ~~no military decoration or military award (or is in possession of or entitled to (state any military decoration or award)~~ Cdn Volunteer Service Medal

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer had held the regimental rank~~ of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated and in his regiment (*or corps or* department) the rank of , dated

W.O. 3/3/1939 30M. 5/40. P. Lnd. T51-3.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused. X-4 List att "C" Sqn

No. C/58322 Rank L/Sgt Name Rodgers, L M of 25 Cdn Armd Del Regt Regiment (or as the case may be).

(INSTRUCTION—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28th day of October 1944

(Sgd) F O Lewis, Major
Officer Commanding
"C" Sqn 25 Cdn Armd Del Regt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion

In the rank of Cpl 2½ years 15 Jun 42

In the rank of L/Sgt 1½ years 1 Apr 43

In the rank of years

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

SUMMARY OF EVIDENCE

Summary of evidence in the case of C/88322 L/Sgt Rodgers, L H, X-4 List att "O" Sqn 25 Cdn Armd Del Regt, Cdn Army Overseas, charged with:

1 Sec 41 Rape
2 Sec 41 Wounding with intent to do grievous bodily harm

By direction of the Commanding Officer the evidence is taken on oath.

First Witness Van Haute Caroline de Backer, wife of Sir de Backer, having been duly sworn states:

I am Van Haute Caroline de Backer, wife of Sir de Backer. On 3 Oct 44 about 1540 hrs I was in the corridor of my house while the street door (front door) was open. A drunken Cdn soldier entered my house and without speaking a word he pushed me in the corridor and closed the door, whereupon I called for aid. Thereon he takes me by the throat and with the other hand he strokes me on the head. He spoke to me in the English language, which I did not understand. He pushed me in the forepart and showed me by signs to put off my clothes. I refused and thereupon he began to pull off, to snatch, all my clothes from my body until I was whole naked. Because I resisted he continually strokes me. He threw me on the ground, mastered me with his arms and abused me. It was impossible for me to resist furthermore because I am already in a state of pregnancy during seven months. Thereafter the soldier rose up and took two bottles of drink out of his pocket, put them upon the table while he was holding me by the arm. Then he would put off his shoes and at that occasion I could take advantage to take the overcoat of my husband and to escape out of doors. Penetration actually occurred but no act of sexual intercourse was consummated.

The accused declined to cross-examine this witness.

(Sgd) Van Haute Caroline de Backer

Second Witness Dr G Hellebaut of St Nicholas having been duly sworn states:

I am Dr G Hellebaut of St Nicholas. I examined Van Haute Caroline de Backer, wife of Sir de Backer, on 3 Oct 44 at 1930 hrs. A light scratch was on the right side of the throat. Light scratches also were on the abdomen. These scratches would be of no consequence but because this woman is seven months pregnant I cannot say what the after-effects will be, but it is possible the birth may be premature. Also I cannot state at the present time the possibilities of venereal diseases.

These wounds prove that the woman struggled with someone but do not prove as to whether there was any penetration.

The accused declined to cross-examine this witness.

(Sgd) G Hellebaut

Third Witness Maria Van Landeghem, 45 Hemelserstraat, St Nicholas, having been duly sworn states:

I am Maria Van Landeghem, 45 Hemelserstraat, St Nicholas. On 3 Oct 44 at 1345 hrs I saw a Cdn soldier who was drunk enter the house of Sir de Backer, 47 Hemelserstraat, St Nicholas. Knowing that Lady de Backer was alone in her home and knowing also that the woman was in a state of pregnancy and that the soldier had entered with bad intentions I called the police.

The accused declined to cross-examine this witness.

(Sgd) Maria Van Landeghem

Fourth Witness K/52613 Sgt Hamlyn, W W L, 15 Cdn Pd Secy Sec, Cdn Army Overseas, having been duly sworn states:

I am K/52613 Sgt Hamlyn, W W L, 15 Cdn Pd Secy Sec, Cdn Army Overseas. Whilst visiting the city hall at St Nicholas, Belgium, at 1345 hrs 3 Oct 44, a policeman (Noppe Arthur, No 46) came to me and said that a soldier, Cdn or Polish, had entered a house on Hemelserstraat and was acting like a beast toward a woman who was in the family way. I went with him to the address and found the door locked on the inside whilst the woman, Maria Van Landeghem, was in the house next door, No 45, clothed only in an overcoat. She said that the soldier had entered her house and after tearing off all her clothes had attacked her. I tried to get into the house by the back door after climbing over a concrete wall, only to find that the back door was locked. I then sent a civilian for assistance, which came in the form of two members of the Cdn Provost Corps and five civil police. Just as they came in the soldier, who turned out to be C/58322 Sgt Rodgers, L W, First Hussars, 2 Cdn Armd Bde, opened the door and started to come out. We went in and put him under arrest, finding all the woman's clothes thrown on a couch in the living room. Whilst we were looking to see if the Sgt had done any other damage in the house, he attempted to escape and was recaptured after a struggle, during which the property mentioned in the police report was broken.

The accused declined to cross-examine this witness.

(Sgd) W W L Hamlyn, Sgt

Fifth Witness Police Agent Noppe Arthur, St Nicholas Police Force, having been duly sworn states:

I am police agent Noppe Arthur of the St Nicholas Police Force. On 3 Oct 44 at 1345 hrs I have been informed by Maria Van Landeghem, dwelling at 45 Hemelserstraat, St Nicholas, that a Cdn soldier who was drunk had entered the house of Sir de Backer, 47 Hemelserstraat. Van Landeghem, Maria, knowing that Lady de Backer was alone in her home and knowing also that the woman was in a state of pregnancy and that the soldier had entered with bad intentions, the woman Maria Van Landeghem called for my aid. At my several rings at the house of de Backer, there was nobody who opened so that at my turn I called for the aid of the Pd Secy. In the company of one of the men of this service I returned to the house of de Backer. At our arrival the woman, de Backer, was already in the house of Van Landeghem, Maria, and we found her with only an overcoat on from her husband, which she had put on her shoulders, and further she was naked. The soldier was still in the house of de Backer and had closed the door

on the inside. At our several rings he refused to open. Through the house, No 40, I entered by the back into the house of de Backer. I found the soldier in a complete state of drunkenness and the soldier hindered me to open the door (the street door). I succeeded thereafter to open the street door and then the member of the Pd Secy entered accompanied by two other members of the M P. I was begged by the member of the Pd Secy to bring the woman, de Backer, into his presence. At my absence the soldier tried to escape but was retained fighting, with the consequence that the following pieces were broken -- one service, one picture holder, one mantel looking glass.

The clothes of the woman, de Backer, were torn, also a table carpet. I did not know at the moment what had happened but I heard the woman, de Backer, say to the Cdn soldiers in the Flemish language: "It is that soldier who has abused me (qui m'a viole)," while she showed the soldier to us whom I had found in her house.

Cross-examined by the accused:

Q How long does it take to walk from the Police Station to Hemelserstraat?

A Five min each way.

(Sgd) Noppe Arthur

Sixth Witness P/22265 L/Cpl Cessford, D, 13Cdn Pro Coy, having been duly sworn states:

I am P/22265 L/Cpl Cessford, D, 13 Cdn Pro Coy. At approx 1415 hrs 3 Oct 44, while on mobile patrol accompanied by Pte Langford, I was stopped by a Cpl of 2 Cdn Corps HQ Pd Secy who notified me that a drunk was causing a disturbance.

On the Market Square of St Nicholas I was met by a civilian police who also had been told of the offence that was being committed. The police directed me to the house. Upon arriving on the scene I found a Pd Secy Sgt and a civilian policeman there.

The Sgt informed me that the man he had retained had committed rape. He also showed me the woman's clothing in the front room.

While I was being shown the clothing the accused man made a break to get away from us. I chased and caught him in the kitchen of the house.

I then proceeded to the Police Station in St Nicholas where the man is being held.

The a/m man is C/88322 Sgt Rodgers, L M, 6 Cdn Armd Regt.

I reported this case to Sgt Hewitt, "D" Sec 12 Cdn Pro Coy.

The accused declined to cross-examine this witness.

(Sgd) D Cessford, L/Cpl

The accused was cautioned as follows:

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I do not wish to make a statement or to give evidence at this time.

(Sgd) L M Rodgers, L/Sgt

The accused does not call any witnesses.

I certify that the foregoing summary of evidence, consisting of four pages, was taken down by me in the presence of the accused and that R P 4 (C) (D) (E) (F) & (G) [illegible] been complied with.

In the field
17 Oct 44

(Sgd) C G Goff, a/Capt
6 Cdn Armd Regt

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No, sir.(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3).~~ N. C.F.
(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans I do not wish to give evidence or make a statement. Do you intend to call witnesses on your behalf?
Ans Yes, sir. Are they witnesses as to character only? Ans Yes, sir.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1) The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. (Part I of the Schedule is closed and signed.)(2).~~ N. C.F.
~~(1. AA 54(3), RP 45, 117. This announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)~~

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans I wish character evidence already given to be considered.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "A" and Ex "B" respectively.(3)
(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes, sir (see transcript).(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C/86328 Cpl (L/Sgt) Leonard Malcolm RODGERS, X-4 List att "C" Sqn 25 Cdn Armd Del Regt

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Army Act Sec 41		Not guilty of rape but guilty of attempting	
2nd Rape	Not guilty	to commit rape	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ N.D. (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 45 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be discharged with ignominy from His Majesty's Service and to be imprisoned with hard labor for two years.

(Sgd) W G Fraser, Major — 17 Nov 44 — (Sgd) W J Keogh, Lt-Col

Judge-Advocate, if any. — Date awarded. — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) J F Bingham, Brig

Date 22 Nov 44 — Commanding 2 Cdn Armd Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C/86328 L/Sgt Leonard Malcolm RODGERS	On parade 24 Nov 44	(Sgd) D G Raven, a/Major Officer Commanding "C" Sqn 25 Cdn Armd Del Regt (BLOIN R)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FTT-263

Pte Rodgers, P.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-4590 Pte Rodgers P.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note. As to finding of Not Guilty of offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in lieu of list see RP 44 fn b.)

~~At present under sentence to~~ ~~imprisonment~~ ~~detention~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B2.)

Time in confinement awaiting present trial—a total of 13 days, of which nil days were spent in hospital. (2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

~~Ninety (90) Days Detention~~

To undergo detention for ninety days.

(Sgd) ..... Judge-Advocate, if any. 8 Aug 44 Date awarded. (Sgd) F. M. Brook Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) P Montgomery

Date ..... Commanding ..... Confirming Officer.

No illegalities or irregularities such as would warrant withholding confirmation.
A.J.A.G., G.M.H.Q.
(K. G. Lesch) Lt-Col.
11 Aug 44

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C 4590 Pte. Rodgers P.	16 Aug. 44.	E/ J Young Col.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 11 AUG 1944 JAG BRANCH

RECORDED AT CMHQ IN AB 160 [illegible]

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier P.J. Montague Comd B.B. 6 Cdn Armd Bde dated 9th July 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C-4590	Pte	Percy	Rodgers	H. & P.R.

PROCEEDINGS REVIEWED

J Kenyon Colonel Capt

19 Aug 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 8 Aug 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to as interpreter? Ans~~

The Interpreter is sworn.(1) ~~Do you object to as shorthand writer? Ans~~

~~The shorthand writer is sworn.(2)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	W. J. COOKING E.D.	ROYAL CANS
Member	Capt	D.M. THOMPSON	C.I.C.
Member	Lieut	B.A. QUELTON	C.I.C.
Judge-Advocate			
Prosecutor	MAJOR	H.E. DALTON	Q.O.R. of C.
Defending Offr	Lieut	P.C. REA	Q.O.R. of C.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused Pte ROGERS P before arraignment make(s) ~~(not to)~~ plea

~~Pte Rodgers~~

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ~~3~~ 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 105 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans Yes (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p. 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his ~~(their)~~ plea(s) of Guilty to Not Guilty on the charge(s). The accused is ~~(are)~~ so informed, ~~and his (their) plea(s) of Guilty to the charge(s) is (are) withdrawn accordingly.~~ ~~Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 113-114 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with it the same weight as court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the defender RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(1. AFB 355 or AFB 296. 2. MML 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes through my Defending Officer (Capt)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 119. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused Number C-4590 Private RODGERS, Percy Hastings and Prince Edward Regiment, (Number 4 Canadian Infantry Reinforcement Unit) on strength of Roman Way Convalescent Hospital, R.C.A.M.C. a soldier of the Canadian Army Overseas, when on active service is charged with: -

FIRST CHARGE: Sec 15(1) Army Act.

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field on 1 July 1944, absented himself without leave from Roman Way Convalescent Hospital, R.C.A.M.C. from 1200 hours on said 1 July 1944 until he surrendered himself to the Regimental Police of Roman Way Convalescent Hospital at about 0630 hours 12 July 1944.

SECOND CHARGE Sec 15(1) Army Act.

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field on 18 July 1944, while under close arrest, absented himself without leave from Roman Way Convalescent Hospital R.C.A.M.C. from approximately 0730 hours on the said 18 July 1944 until he surrendered himself to the Regimental Police of Roman Way Convalescent Hospital at about 0600 hours on the 26 July 1944.

E J Young

(E.J. YOUNG) Colonel,
Officer Commanding,
Roman Way Convalescent Hospital,
R.C.A.M.C.-C.A.(O).

IN THE FIELD
27 July 1944

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

P J Montague

In the Field
Jul 44

(P.J. Montague) Major-General
In Charge of Administration
CANADIAN MILITARY HEADQUARTERS
Convening Officer

(P.J. Montague) Major-General In Charge of Administration Canadian Army Headquarters 1944

CFA96 (In lieu of AFA3)
40(PAM/1697 (2008)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-4590	Pte	Percy	RODGERS	H & PER, #4 CIRU (on strength of Roman Way Convalescent Hospital, RCA&C)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(jointly)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) this date endorsed by me, ~~"for by the oath of my staff (or this)."~~ To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it cannot be made practicable to delay the trial of the offence(s) for the time it would take~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I nominate as appmt. (or detail) Offrs to form the Court, and I detail Offrs to be deputies for the members in case~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate the officer specified hereunder.~~ (RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	W S COOLIN ED (Must be named. RP 106.)	CIC Records Office (Unit.) CMHQ

MEMBERS.

Captain (Rank.)	D M THOMPSON	CIC (Patient at Roman Way Conv. Hosp.) (Unit.)
Lieut. (Rank.)	B A OULTON (Named or detailed. RP 106.)	CIC (Patient at Roman Way Conv. Hosp.) (Unit.)

WAITING MEMBER.

Captain (Rank.)	S A GILLIES (Named or detailed, if any. RP 106.)	RCA (Patient at Roman Way Conv. Hosp.) (Unit.)

JUDGE-ADVOCATE.

(Rank.)	Nil (Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Dated Jul 44

P. Montague Major-General (Rank.)

(Signed personally. RP 105 fn 2.)

(P J Montague)

Commanding Major-General i/c Administration CANADIAN MILITARY HEADQUARTERS

Approved 25 Jul 44 (R. G. Norden) Lt-Col. A.J.A.G., C.M.H.Q.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

I certify that No. C-4590, Pte. RODGERS, P., of Hasting and Prince Edward Regiment, is FIT to undergo trial by Court-Martial.

8 Aug 41

Geo. W. McKee Capt.
(G.W. McKee) Captain,
Medical Officer,
Roman Way Convalescent Hospital
C.A.(C)
R.C.A.M.C.,

Evidence in the Trial of C 4590, Pte. RODGERS, Percy - Hastings and Prince Edward Regiment

President - Do you wish to make any statement.

Answer - Yes.

Having been duly sworn in C 4590, Pte. RODGERS, Percy, makes the following statement:-

"On the 29 June received letter from my wife saying not well. I went to C.O. to apply for 36 hours compassionate leave. The O.C. turned it down so I decided to go, so I went, when she got better I returned. After I was in guardhouse I received a letter and telephone call saying she was ill again. So I went again. When she got better I returned. Then received another letter and at present am still worried but can do nothing about it. That's all I have to say. I would like to add that both times I returned voluntarily and at all times, while away, I was with my wife.

'M'

Evidence in the Trial of C 4590, Pte. ROGERS, Percy - Hastings and Prince Edward Regiment

Counsel for the Defence

Gentlemen:

The defence does not attempt to condone this man's actions. In the army no man can take the law into their own hands without punishment. However, before passing sentence, I would ask you to consider carefully the following facts:

Firstly, that due to the illness of his wife, the accused was suffering considerable anxiety.

Secondly, that he applied for compassionate leave for only 36 hours in order that he might visit her at her home, and the request was refused.

Thirdly, that he spent the whole of his time with his wife.

Fourthly, that when he was reassured as to her condition he voluntarily gave himself up.

Finally that although the accused's conduct sheet shows many offences, all but three are for being A.W.L. for four days or less.

That is all I have to say except that at this time, when all Canadians are urgently needed in the fighting zones, it would be regrettable if this man were to be too long prevented from doing what he voluntarily joined up to do.

Summary of Evidence in the case of C-4[illegible]
Private, RODGERS, Percy, Hastings and Prince
Regiment, on strength of Roman Way Convalescen
Hospital, R.C.A.M.C., a soldier of the Canadian
Overseas.

By Order of the Commanding Officer the Summary of Evidence is taken on Oath.

First Witness: C-58806 Cpl. Taylor, G.A. on strength of Roman Way Convalescent Hospital, R.C.A.M.C., Canadian Army Overseas, having been duly sworn states as follows:

On the 1st of July, while on duty, I found Pte. Rodgers had not reported for duty at 1200 hours, when he was due. I reported him absent. He had not reported for duty up until 2200 hours of the 2nd of July when I was relieved. I recognize the accused as Pte. Rodgers.

GA Taylor, Cpl.

The accused declines to cross examine this witness.

Second Witness: H-16526 Cpl. Sanders, W.H. on strength of Roman Way Convalescent Hospital, R.C.A.M.C., Canadian Army Overseas, having been duly sworn states as follows:

While on duty on the 12th of July about 0630 hours Pte. Rodgers whom I now recognize, reported to the Guard Room, properly dressed and sober from being absent without leave. I placed him under close arrest and reported it accordingly.

H-16526 Cpl. Sanders, W.H.

The accused declines to cross-examine this witness.

THIRD WITNESS: M-25801 R.S.M. McCallum, D. on strength of Roman Way Convalescent Hospital, R.C.A.M.C. canadian Army Overseas, states:

I present Daily Order Part II, No.24 dated 11 July 44, para 5(c) showing C-4590 Pte. Rodgers P. A.W.L. from 1200 hours 1 July 44 and still absent 1200 hours 9 July 44. (Exhibit "A".)

The accused declines to cross examine this witness.

The accused was cautioned as follows:.

"Do you wish to make any statement or to give any evidence on Oath ? You are not obliged to say anything, or give any evidence unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of four pages was taken by me in the presence and hearing of the accused, and the Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

(A.S.Dunton.) Major.
Registrar.
Roman Way Conv Hosp.
R.C.A.M.C.-C.A.(O).

Roman Way Convalescent Hospital,
R.C.A.M.C.-C.A.(O)

13 July 1944

CERTIFIED TRUE COPY

A.S. DUNTON, Major
Registrar,
Roman Way Convalescent Hospital

SUMMARY OF EVIDENCE

Additional Summary of Evidence in the case of C-4590 Private RODGERS, Percy, Hastings and Prince Edward Regiment on strength of Roman Way Convalescent Hospital, RCAMC., a soldier of the Canadian Army Overseas.

Additional by Order of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS

F-49959 Pte. Canning, T.A. on strength of Roman Way Convalescent Hospital, R.C.A.M.C., Canadian Army Overseas having been duly sworn states as follows: -

The morning of the 18th July 44 at about 0715 hours I left the guard Room to go to breakfast after handing over to Pte. McAinsh at 0700 hours. Pte. Rodgers whom I now recognize was in custody when I left the Guard Room.

Pte. T.A. Canning.

The accused declines to cross examine this witness.

SECOND WITNESS

B-135892 Pte. Thomas, W.J. on strength of Roman Way Convalescent Hospital, R.C.A.M.C. Canadian Army Overseas, having been duly sworn states as follows: -

On the 18th of July 44 at about 0700 hours I was releived of duty by Pte. Geiger at the Guard Room. About 0715 hours I left the Guard Room to go to my quarters. When I left Pte. Rodgers was in the ablution room of the Guard House. I recognize Pte. Rodgers as the man in the ablution room at that time.

W.J. Thomas.

The accused declines to cross examine this witness.

THIRD WITNESS

C-58806 Cpl. Taylor, G.A. on strength Roman Way Convalescent Hospital, R.C.A.M.C. Canadian Army Overseas, having been duly sworn states as follows: -

On the morning of the 18th of July 44 at about 0720 hrs or 0730 hrs when I was on duty I came out into the main part of the Guard House and found Pte. McAinsh on duty I looked around and then asked him where Rodgers was. He said "~~He is in the wash room.~~" I looked and found Rodgers was not there. Immediately we both looked around the Guard Room and failed to find him. I then sent McAinsh out on the bicycle to look for Rodgers and notify the guard at the gate. I also notified the R.S.M. of the unit who secured a car for the guard who went down town to look for him. I also notified the Military Police and the Colchester Police.

G.A. Taylor.

The accused declines to cross examine this witness.

FOURTH WITNESS : D-116398 Sgmn. McAinsh J. on strength of No.1. C.I.H.U. Canadian Army Overseas, having been duly sworn states as follows: -

On the morning of the 18th July 44 I reported for duties as Regimental Police at 0700 hrs. I relelved Pte. Canning at that hour. I went into the ablution room and asked Pte. Rodgers whom I now recognize if he wished to go to breakfast. He said "no", so I went myself to breakfast leaving Rfn. Geiger in charge of the room. I bame back from breakfast at about 0715 hrs. I went over to the desk, sat down by the desk. Rfn. Geiger said to me, "I'll go out to the gate first to stand guard." about two or three minutes after he left, a patient came in asking for some information on another patient, who was doing C.B. at the time and asked if I could give him the location of the Spider in which the patient slept. I looked up the "C.B." book and gave him the information he required. I went over to put some coal on the stove afterwards and Cpl. Taylor got up while I was putting the coal on the stove and he(Cpl. Taylor) checked the prisoners. He looked in the room, (detention room) and asked me where Pte. Rodgers was. I said to him, "Is he not there ?" and he said "no". I then went over to the ablution room with Cpl. Taylor. Pte. Rodgers was not there. It was between 0720 hrs and 0730 hrs that we made the inspection. I then went to the gate and warned the guard that Pte. Rodgers ~~had broken out~~ and left Cpl. Taylor in charge of the Guard Room.

Sgmn. J. McAinsh.

The accused declines to cross examine this witness.

FIFTH WITNESS B-102433 Rfn. Geiger, R.J. on strength of 2 C.I.H.U. Canadian Army Overseas, having been duly sworn states as follows:-

On July 18th 1944 at 0700 hrs I reported for duty as Regimental Police to relelve Pte. Thomas. I remained there till 0715 hrs. Pte. Rodgers, whom I now recognize was still in custody. I then proceeded to the gate for further duties.

R.J. Geiger.

The accused cross examined this witness as follows:

Question 1. When you came on duty did you see me there ?

Answer: Yes.

Question 2. You say you went to the gate at 0715 hrs.?

Answer: Yes, Approximately.

Question 3. In between the time you went to the gate and they found me missing there was no one on cuty, then ?

Answer: Pte. McAinsh was in charge at that time.

SIXTH WITNESS: B-130955 Spr. MacDonald, R.A. on strength of No.1. C.E.R.U. Canadian Army Overseas having been duly sworn states as follows: -

While on duty as Regimental Police at Roman Way Convalescent Hospital, on July 26th, 1944 at approximately 0600 hrs Pte. Rodgers, whom I now recognize, surrendered himself to me. He was sober and properly dressed.

R.A. MacDonald.

The accused declines to cross examine this witness.

SEVENTH WITNESS: K-25801 R.S.M. McCallum, D. on strength of Roman Way Convalescent Hospital R.C.A.M.C. states as follows:

I hereby present D.C. Pt.II No.26 dated 24 Jul 44. para 5(k) showing C-4590 Pte. Rodgers, F. A.W.L. from 0730 hrs 18 July 44, still absent 0730 hrs 19 July 44. (Exhibit "A".) Private Rodgers returned at about 0600 hrs 26 July 44.

D. McCallum, R.S.M.

The accused was cautioned as follows:

"Do you wish to make any statement or to give any evidence on oath ? You are not obliged to say anything or give any evidence unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I Certify that the foregoing Summary of Evidence consisting of eight pages was taken by me in the presence and hearing of the accused, and the Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

(A.S. Dunton.) Major.
Registrar.
Roman Way Convalescent Hospital.

Roman Way Convalescent Hospital.

26 July 44.

Certified True Copy.

A.S. Dunton

(A.S. Dunton.) Major.
Registrar,
Roman Way Conv. Hosp.
R.C.A.M.C.-C.A.(C).

A

Summary of Evidence

Summary of Evidence in the case of C4590 Private Rodgers, Percy, Hastings & Prince Edward ~~[illegible]~~ Regiment, on strength of Roman Way Convalescent Hospital, Reame, a Soldier of the Canadian Army Overseas.

By order of the Commanding Officer the Summary of Evidence is taken on oath.

First Witness

C58806 Cpl. Taylor, G.A., on strength Roman Way Convalescent Hospital, Reame, Canadian Army Overseas, having been duly sworn states as follows:

On the 1st of July, while on duty, I found Pte. Rodgers had not reported for duty at 1200 hrs, ~~the time~~ when he was due. I reported him absent. He had not reported for duty up until 1200 of the 2nd of July when I was relieved. I recognize the accused as Pte Rodgers.

A. Taylor Cpl.

The accused declines to cross examine this witness.

Second Witness

H16526, Cpl Sanders W.H., on strength Roman Way Convalescent Hospital, R.C.A.M.C., Canadian Army Overseas, having been duly sworn states as follows:

While on duty on the 12th of July about 0630 hrs, Pte Rudgers, whom I now recognize, reported to the Guard room, properly dressed and sober, from being absent without leave. I placed him under close arrest, and reported it accordingly.

H 16526.
Cpl Sanders W.H.

The accused declines to cross examine this witness

Third Witness.

M 25801 R.S.M. McCallum, A., on Strength Roman Way Convalescent Hospital, RCOMC, Canadian Army Overseas States:

I present Daily Order Pt 11, No 24 dated 11 July 44, Para. 5 (c) showing C 4590, Pte Rodgers, P. A.W.L. from 1200 hrs 1 Jul 44 and still absent 1200 hrs, 9 Jul 44. (Exhibit A)

D. McCallum
R.S.M.

The accused declines to cross examine this witness

The accused was cautioned as follows:

"Do you wish to make any statement, or to give any evidence on oath? You are not obliged to say anything, or give any evidence unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence"

The accused declines to make a statement and reserves his defence

I certify that the foregoing summary of evidence consisting of four pages was taken down by me in the presence and hearing of the accused, and the Rules of Procedure 4(c), (d), (e), (f), and (g) have been complied with

H. J. Dunton Maj.
Registrar
Roman Way Convalescent Hospital

Roman Way Convalescent Hospital
13 July 1940

"A"

Additional Summary of Evidence in the case of C-45790 Private Rodgers, Roy. Hastings and Prince Edward Regiment, on strength of Roman Way Convalescent Hospital, R.C.A.M.C., a soldier of the Canadian Army Overseas.

By order of the Commanding Officer the Summary of Evidence is taken on oath.

Civil Witness

2-47959 Pte. Canning, T.A. on strength of Roman Way Convalescent Hospital, R.C.A.M.C. Canadian Army Overseas having been duly sworn states as follows:

The morning of the 18th July 44 at about 0715 hrs. I left the Guard Room to go to breakfast, after handing over to Pte Mc Cinds at 0700 hrs. Pte Rodgers, whom I now recognize, was in custody when I left the Guard Room.

Pte. T.A. Canning.

The accused declines to Cross examine his witness

Second Witness

B135892 Pte. Thomas W.J., on strength of Roman Way Convalescent Hospital, Rcomc Canadian Army, Overseas, having been duly sworn states as follows:

On the 18th of July 44 at about 0700 hrs I was relieved of duty by Pte. Geiger, at the Guard Room about 0715 hrs I left the Guard Room to go to my quarters. When I left Pte Rodgers was in the ablution room of the Guard House. I recognize Pte Rodgers as the man in ablution room at that time.

W J Thomas

The accused declines to cross examine this witness.

Third Witness

C58806 Cpl. Taylor, G.A. on strength Roman Way Convalescent Hospital, Rcomc Canadian Army Overseas, having been duly sworn states as follows:

On the morning of the 18th of July 44 at about 0720 hrs ~~and~~ or 0730 hrs when I was on duty, I came out into the main part of the Guard House and ~~found~~ Pte McAinch on duty. I looked

around and then asked him where Rodgers was. He said "He is in the wash room" I looked and found Rodgers was not there. Immediately we both looked around the Guard Room and failed to find him. I then sent McAleash out on the bicycle to look for Rodgers and notify the guard at the gate. I also notified the R.S.M. of the unit who secured a car for us the guard who went down town to look for him. I also notified the military police and the Colchester Police.

E. A. Taylor.

The accused declines to cross-examine this witness

Fourth Witness

D116398 Sgmn. McAinsh, J. on Strength of No 1 C.S.R.U. Canadian Army Overseas, having been duly sworn states as follows:

On the morning of the 18th July 44, I reported for duties as Regimental Police at 0700 hrs. I relieved Pte Canning at that hour. I went into the ablution room and asked Pte Rodgers, whom I new recognize, if he wished to go to breakfast. He said "no" so I went myself to breakfast leaving Rfn. Geiger in charge of the room. I came back from breakfast at about 0715 hrs. I went over to the desk, I sat down by the desk. Rfn Geiger said to me "I'll go out to the gate first to stand guard." About two or three minutes after he left, a patient came in asking for some information on another patient, who doing C.B. at the time and asked if I could give him the location of the spider, in which the patient slept. I looked up the "C.B." book and gave him the information he required. I went over to put some coal on the stove afterwards and Cpl. Taylor got up while I was putting the coal on the stove and he (Cpl Taylor) checked the prisoners. He looked in the

room (detention room) and asked me where Pte Rodgers was. I said to him "Is he not there" and he said "No" I then went over to the ablution room with Cpl. Taylor. Pte Rodgers was not there. It was between 0720 hrs and 0730 hrs that we made the inspection. I then went to the gate and warned the guard that Rodgers had broken out, and left Cpl. Taylor in charge of the Guard Room

Sgmr. J. McAirish

The accused declined to cross-examine this witness

Fifth Witness

H 102433 Rfn Geiger, R.J. on Strength of 2 C.I.R.W. Canadian army overseas, having been duly sworn states as follows:

On July 18th 1944 at 0700 hrs. I reported for duty as Regimental Police. I relieved Pte Thomas [illegible] till 0715 hrs. Pte Rodgers, whom now recognize, was still in custody. I then proceeded to the gate for further duties.

R J Geiger

The accused cross examined this witness as follows:

Q1 When you came on duty did you see me there?

A1 Yes

Q2 You say went to the gate at 0715 hrs

A2 Yes, approximately

Q3 In between the time you went to the gate and they found me missing, there was no one on duty then?

A3 Pte McAinch was in charge at that time

Sixth Witness

B130955 Spr. MacDonald, R.A. on strength of No 1 C.E.R.U. Canadian Army Overseas, having been duly sworn states as follows:

While on duty, as Regimental Police at Roman Way Convalescent Hospital, on July 26th 1944, at approximately 0600 hrs Pte Rodgers, whom I now recognize, surrendered himself to me. He was sober and properly dressed

R A MacDonald

The accused declined to cross examine this witness

Seventh Witness

M2581. R.S.M. McCallum D., on strength of Roman Way Convalescent Hospital, R.C.A.M.C. states as follows:

I hereby present D.O. Pt II No 26 dated 24 Jul 44. Para 5 (K) showing C4590 Pte Rodgers. P., A.W.L. from 0730 hrs 18 July 44, still absent 0730 hrs 19 July 44 (Exhibit A) Private Rodgers returned at about 0600 hrs 26 Jul 44. ~~which~~

X McCallum
R.S.M.

The accused was cautioned as follows:

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything, or give any evidence unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of ~~four~~ eight pages was taken ~~down~~ by me in the presence and hearing of the accused, and the Rules of Procedure 4 (c), (d), (e), (f), and (g) have been complied with.

A. J. Dunton Maj.
Registrar
Remon Way Convalescent Hospital

Remon Way Convalescent Hospital
26 July 1844

Exhibit A

ROMAN WAY CONVALESCENT HOSPITAL
R.C.A.M.C.-C.A.(O).
DAILY ORDERS PART II
Issued by
Colonel E.J. Young - Officer Commanding

Last Order
23
6 July 44.

24
11 July 44

SECTION "A" OFFICERS

1. STRENGTH DECREASE:
(a) S.O.S. to Y.T. List #1 C.G.R.U. on admission to B.N. & P.S. Hospital, RCAMC., w.e.f. [illegible] June 44.
Major. C.H. Ployart. R.C.A.M.C.

2. ATTACHMENTS:
(a) Ceases to be attached from #1 Cdn. Gen. Hospital w.e.f. 6 July 44. (Auth: 11/[illegible]/1 ([illegible]) dated 7 Jul 44.)
Lieut. (N/S) [illegible]
(b) Ceases to be attached from [illegible] to P.N. & P.S. [illegible] 3 July 44. (Auth: 10/[illegible]/1 ([illegible]) dated 7 July 44.)
2/Lieut. (N/S) P.G. Hogan.
2/Lieut. (N/S) M.F. McMahon.
(c) Ceases to be attached from #1 C.G.R.U. on posting to #13 Cdn. Gen. Hospital., RCAMC., w.e.f. 3 July 44. (Auth: 10/LeBlanc F.M./1 (MS 5a), 10/Quirk N.M./1 (MS 5a) dated 7 July 44.)
2/Lieut. (N/S) F.M. LeBlanc.
2/Lieut. (N/S) N.M. Quirk.
(d) Ceases to be attached from #1 C.G.R.U. w.e.f. 6 July 44. (Auth: REC/4349 restricted dated 4 July 44.)
Lieut. (P/A) E.J. Ely.

3. LEAVE OF ABSENCE:
(a) Granted 14 days Sick Leave with Sick Leave All'ces in accordance with Art. 793 F.R. & I Overseas. (Auth: 10/Chappell N.M./1 A.M.B.2. dated 21 Jun 44.)
Lieut. N.M. Chappell. from 2[illegible] Jun 44 returned 6 July 44. (1 CAC RU., Patient in Roman Way Convalescent Hospital.)
(b) Granted 7 days Sick Leave with Sick Leave All'ces in accordance with Art. 793 F.R. & I Overseas. (Auth: 10/Tacherenu, L/1 A.M.B.2. dated 30 Jun 44.)
Capt. L. Tacherenu. from 3 Jul 44 to(returned) 10 Jul 44. (#6 CIRU., Patient in Roman Way Convalescent Hospital.)

SECTION "B" OTHER RANKS

1. STRENGTH INCREASE:
(a) T.O.S. from #1 C.G.R.U. w.e.f. 7 July 44. (Auth: CMHQ Demand No.7047 dated 26 Jun 44.)
M-11747 Cpl. Johnstone, R.L. Shoemaker Gp."B"
(b) Our D.O. #8 para.1(b) dated 20 Apr 44 insofar as it refers to the undermentioned by adding:
H-16322 Cpl. Hazell, H.S. Postal Sorter Gp "B".
(c) Our D.O. #22 para 1(b) dated 4 July 44 insofar as it refers to the undermentioned is amended by adding:
C-36792 Pte. Doan, E.A. Storeman Gp. "C"

2. STRENGTH DECREASE:
(a) S.O.S. on posting to #2 Cdn. Conv. Depot, RCAMC., w.e.f. 7 July 44. (Auth: REC/EA2/485/Restricted, dated 6 July 44.)
D-95164 A/Sgt. Lapointe, R.L.

PTO

...A.O. #23 dated 11 July 44 R.C.A.M.C. (A.V.) C.M.V.Sec. R.C.A.S.C. Para 2

3. ATTACHMENTS:

(a) Cease to be attached from #5 Cdn. Artisan Works Coy R.C.E. w.e.f. 11 July 44.

A-20595	Sgt.	Ludy, C.W.	
H-89237	Spr.	Cunningham, A.	Electrician "A"
G-40454	A/L/Cpl.	Gaddes, G.	Concretor "B"
C-2553	Spr.	Gauthier, V.	Carpenter "B"
H-36597	Spr.	Hoegeman, E.R.J.	Carpenter "B"
A-99248	Spr.	Quast, P.S.	Bricklayer "B"

4. LEAVE OF ABSENCE:

(a) Granted 3 days Sick Leave with Sick Leave all'ces in accordance with Art. 793 F.R. & I Overseas. (Auth: 10/ Crampin, C.S./1 A.M.D.S. dated 5 July 44.) RETURNED.
H-89199 Bdr. CHAMPAIN, C.S. from 30 Jun 44 to 2 July 44. (#1 CANU., Patient in Roman Way Convalescent Hospital.)

(b) Granted 7 days Sick Leave with Sick Leave all'ces in accordance with Art. 793 F.R. & I Overseas. (Auth: 10/ Forsyth R.A./1 A.M.D.S. dated 30 Jun 44.) RETURNED.
C-5307 Pte. Forsyth, D.J. from 27 Jun 44 to 4 Jul 44. (#1 CANU., Patient in Roman Way Convalescent Hospital.)

(c) Granted 7 days Sick Leave With Sick Leave All'ces in accordance with Art. 793 F.R. & I Overseas. (Auth: 10/ Muir, R.L./1 A.M.D.2. dated 3 July 44.) RETURNED
C-72758 Sgt. Muir, R.L. from 30 Jun 44 to 7 Jul 44. (#2 CANU., Patient in Roman Way Convalescent Hospital.)

(d) Granted 14 days Sick Leave with Sick Leave All'ces in accordance with Art. 793 F.R. & I Overseas. (Auth: 10/ Quartz, A.L./1 A.M.D.2. dated 23 Jun 44.) RETURNED.
D-16021 Spr. Quartz, A.L. from 26 Jun 44 to 10 Jul 44. (#1 CANU., Patient in Roman Way Convalescent Hospital.)

5. ABSENT WITHOUT LEAVE:

(a) A.W.L. from 2230 hours 30 June 44. Still absent 2230 hours 8 July 44. (Eighth day.)
F-78572 Pte. Burke, C. #4 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(b) A.W.L. from 2230 hours 30 Jun 44. Still absent 2230 hours 8 Jul 44. (eighth day.)
F-77978 Pte. Snow, S. #4 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(c) A.W.L. from 1200 hours 1 July 44. Still absent 1200 hours 9 July 44. (Eight day.)
C-4590 Pte. Rogers, P. R.W.C.H.

6 PROMOTIONS:

(a) To be A/Sgt. w.e.f. 7 July 44.
A-103322 Pte.(A/Cpl.) Short, J.R.

(b) To be A/Cpl. w.e.f. 7 July 44.
K-49965 Pte. Ford, E.C.

7. TRADESMEN'S RATES OF PAY:

(a) Ceases to draw Tradesmen's Rates of Pay Storeman Gp. "C" w.e.f. 27 Jun 44 Having ceased to be employed at his trade.
C-38792 Pte. Dean, E.A.

(b) Our D.O. #8 para 7(a) dated 20 Apr 44 insofar as it refers to the undermentioned is hereby cancelled:
R-16322 Cpl. Hazell, H.W.

8. PUNISHMENTS:

(a) Our D.O. #22 para 7(c) dated 4 July 44 insofar as it refers to the undermentioned is amended to read:
"Net forfeiture 4 days pay."
K-42027 Pte. Krantz, E.P. #1 C.G.R.U.
(Patient in Roman Way Convalescent Hospital.)

[illegible] dated 13 July 44. Nominal Roll C.R.U. #2 CMHT in Hospital, Rowan, Para 3.

3. PUNISHMENTS (contd)

(b) On 10 July 44 awarded 7 forfeiture of 14 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 9 Jul 44 to 0400 hours 10 July 44. (Total absence: 5 hours, 30 minutes.)
Forf 14 days pay under F.R. & I 149(2).
3 days concurrent forfeiture with award of 15 Jun 44, vide our D.O. Part II #20, para 7(b) dated 20 June 44.
Net Forfeiture 11 days pay.
G-4315 Gnr. LeBlanc, F. #2 C.A.R.U.
(Patient in Roman Way Convalescent Hospital.)

(c) On 8 July 44 awarded 7 days C.B. and forfeiture of 3 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 7 July 44 to 0020 hours 8 July 44. (Total absence: 1 hour, 50 minutes.)
Forf. 3 days pay under F.R. & I 149(2) concurrent with award of 7 July 44 vide D.O. Part II #20, para 7(b) dated 20 Jul 44.
Nil Forfeiture.
C-11851 Pte. Malloy, [illegible] #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(d) On 8 July 44 was reprimanded for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 7 July 44 to 0020 hours 8 Jul 44. (Total absence: 1 hour, 50 minutes.)
H-205070 Cpl. Bodner, F. #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(e) On 10 July 44 awarded 14 days C.B. and a forfeiture of 14 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 7 July 44 to 2200 hours 9 July 44. (Total absence: 1 day, 23 hour, 30 minutes.)
Forf 2 days pay under F.R. & I 149(1)(a)
Forf 14 days pay under F.R. & I 149(2)
Total Forf. 16 days pay.
B-87416 Pte. Bohenberger, R. #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(f) On 7 July 44 awarded a forfeiture of 14 days pay for an offence under A.A.Sec. 8(2).
Forf 14 days pay under F.R. & I 149(2)
B-55149 Pte. Boucher, L.A.J. #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(g) On 11 July 44 awarded 14 days C.B. and a forfeiture of 14 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 1500 hours 8 Jul 44 to 0800 hours 11July 44. (Total absence: 2 days, 17 hours.)
Forf 3 days pay under F.R. & I 149(1)(a)
Forf 14 days pay under F.R. & I 149(2)
Total Forf. 17 days pay.
L-64972 Pte. Burton, J.A. R.W.C.H.

(h) On 11 July 44 awarded 7 days C.B. and a forfeiture of 7 days pay for (1) an offence under A.A.Sec. 15(1) A.W.L. from place of duty at approx 1400 hours 10 July 44. (2) an offence under A.A.Sec. 40.
Forf. 7 days pay under F.R. & I 149(2)
C-24550 Sgmn. Burridge, E.A. #1 C.S.R.U.
(Patient in Roman Way Convalescent Hospital.)

(i) On 11 July 44 awarded 7 days C.B. for two offences under A.A.Sec. 11.
A-38319 Pte. Butters, C.W. #2 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(j) On 8 July 44 awarded a forfeiture of 14 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 30 Jun 44 to 2145 hours 7 July 44. (Total absence: 6 days, 23 hours 15 minutes.)

8. PUNISHMENTS(cont'd)

(j) On 8 July 44 awarded a forfeiture of 14 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 30 June 44 to 2145 hours 7 July 44. (Total absence: 6 days, 23 hours, 15 minutes.)
Forf. 7 days pay under F.R. & I 149(1)(a)
Forf 14 days pay under F.R. & I 149(2)
Total Forf. 21 days pay.
F-80701 Gnr. Church, E.L. #2 C.A.R.U.
(Patient in Roman Way Convalescent Hospital.)

(k) On 11 July 44 awarded 7 days C.B. for an offence under A.A. Sec 15(1) A.W.L. from 2230 hours 10 July 44 to 0020 hours 11 July 44. (Total absence: 1 hour, 50 minutes.)
G-22319 Pte. Fournier, R.J. #4 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(l) On 10 July 44 was reprimanded for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 8 July 44 to 0200 hours 9 Jul 44. (Total absence: 3 hours, 30 minutes.)
E-14193 Cpl. Gauvin, L. #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(m) On 10 July 44 awarded 7 days C.B. for an offence under A.A. Sec 15(1) A.W.L. from 2230 hours 8 July 44 to 2355 hours 8 July 44. (Total absence, 1 hour 25 minutes.)
B-11142 Pte. Gilmore, G.A. #1 C.O.R.U.
(Patient in Roman WayConvalescent Hospital.)

(n) On 10 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from place of duty at approx 1000 hours 8 July 44.
B-54690 Pte. Hamilton, J. #2 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(o) On 8 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from 2230 hours 7 July 44 to 0030 hours 8 July 44. (Total absence: 2 hours.)
H-35762 Pte. Hopkins, J.H. #1 C.G.R.U.
(Patient in Roman Way Convalescent Hospital.)

(p) On 11 July 44 awarded 14 days C.B. and a forfeiture of 14 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 10 July 44 to 0530 hours 11 July 44. (Total absence: 7 hours.
Forf. 1 days pay under F.R. & I 149(1)(a)
Forf.14 days pay under F.R. & I 149(2)
Total Forf.15 days pay.
H-35762 Pte. Hopkins, J.H. #1 C.G.R.U.
(Patient in Roman Way Convalescent Hospital.)

(q) On 11 July 44 awarded 7 days C.B. and forfeiture of 7 days pay for an offence under (1) A.A.Sec. 15(1) A.W.L. from place of duty at approx 1400 hours 10 July 44. (2) A.A.Sec. 40.
Forf. 7 days pay under F.R. & I 149(2)
L-17307 Pte. Kerr, L.R. #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(r) On 11 July 44 awarded 7 days C.B. and a forfeiture of 7 days pay for an offence under A.A.Sec. 11.
Forf. 7 days pay under F.R. & I 149(2)
G-63344 Pte. Landry, A. R.W.C.H.

(s) On 10 July 44 awarded a forfeiture of 3 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 9 Jul 44 to 0030 hours 10 July 44. (Total absence: 2 hours.)
Forf. 3 days pay under F.R. & I 149(2)
B-92558 Pte. McGann, C.H. #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

8. PUNISHMENTS:(cont'd)

(t) On 11 July 44 was reprimanded for two offences under A.A. Sec. 11.
B-55146 Cpl. McKenzie, W.J. #2 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(u) On 11 July 44 was reprimanded for (1) an offence under A.A. Sec. 15(1) A.W.L. from place of duty at approx 1400 hours 10 July 44. (2) an offence under A.A.Sec. 40.
C-962 Bdr. McMeekin, C.F. CMHQ. Records Office
(Patient in Roman Way Convalescent Hospital.)

(v) On 8 July 44 awarded 7 days C.B. and a forfeiture of 3 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 7 July 44 to 0020 hours 8 July 44. (Total absence: 1 hour, 50 minutes.)
Forf. 3 days pay under F.R. & I 149(2)
L-47412 Tpr. [illegible], G.S. #1 [illegible]
(Patient in Roman Way Convalescent Hospital.)

(w) On 11 July 44 awarded 10 days C.B. and a forfeiture of 10 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 7 July 44 to 1400 hours 10 July 44. (Total absence: 2 days, 15 hours, 30 minutes.)
Forf. 3 days pay under F.R. & I 149(1)(a)
Forf 10 days pay under F.R. & I 149(2)
Total Forf. 13 days pay.
A-17272 Gnr. O'Dell, J.M. #1 C.A.R.U.
(Patient in Roman Way Convalescent Hospital.)

(x) On 10 July 44 awarded 7 days C.B. and a forfeiture of 7 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 8 July 44 to 2045 hours 9 July 44. (Total absence: 22 hours, 45 minutes.)
Forf. 1 days pay under F.R. & I 149(1)(a)
Forf. 7 days pay under F.R. & I 149(2)
Total Forf. 8 days pay.
B-89338 Pte. Ogden, R. #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(y) On 6 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from 2230 hours 5 July44 to 2345 hours 5 July 44. (Total absence: 1 hour, 15 minutes.)
L-35021 Gnr. Parisien, N. #2 C.A.R.U.
(Patient in Roman Way Convalescent Hospital.)

(z) On 7 July 44 awarded a forfeiture of 10 days pay for an offence under A.A.Sec. 40.
Forf. 10 days pay under F.R. & I 149(2)
C-93009 Pte. Powell, J. #1 C.G.R.U.
(Patient in Roman Way Convalescent Hospital.)

(aa) On 10 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from place of duty at approx. 0950 hours 8 July 44.
B-136943 Pte. Purdy, J.R. #6 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(bb) On 10 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from place of duty at approx. 0950 hours 8 July 44.
A-28714 Pte. Roberts, C.E. #2 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(cc) On 8 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from 2230 hours 7 July 44 to 0020 hours 8 July 44. (Total absence: 1 hour, 50 minutes.)
L-36388 Tpr. Thomas, L.R. #1 C.A.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(dd) On 10 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from place of duty at approx 0930 hours 8 July 44.
K-51706 Pte. Wardell, W.D. #1 C.G.R.U.
(Patient in Roman Way Convalescent Hospital.)

R.O. #24 [illegible]/11 July 44. ROMAN WAY CONVALESCENT HOSPITAL, RCAMC. Page 6.

9. MARRIAGES, BIRTHS & DEATHS:
   (a) Married with permission to Miss Lily May Pither at Alton, Hants on 1 July 44.
   M-15730 A/Cpl. Lomas, A.E. R.W.C.H.

10. NEXT OF KIN:
   (a) Change of next of kin from Mr. J. Lomas (uncle) to Mrs. Lily May Lomas (wife) 198 Cuckoo Corner, Holybourn, Alton, Hants, Eng.
   M-15730 A/Cpl. Lomas, A.E. R.W.C.H.
   (b) Change address of next of kin to Mrs. Beatrice Maude Small (wife) 27 Beckett Str., Bolton, Lancs. Eng.
   K-74848 Gnr. Small, M. #2 C.A.R.U.
   (Patient in Roman Way Convalescent Hospital.)

11. HONOURS AND AWARDS:
   (a) Awarded Cdn. Volunteer Service Medal with Clasp W.e.f. 15 Jan 1944. (Auth: Overseas R.O. 4167.)
   C-53872 Pte. [illegible]ny, [illegible]. [illegible]
   C-36792 A/Cpl. [illegible], [illegible]. [illegible]

12. [illegible] ALLOWANCES:
   (a) Granted a daily regimental rate of pay of $1.50 per diem w.e.f. 25 Aug 43 having completed 6 months proficient service. (Auth: G.O. 486/42.)
   G-63344 Pte. Landry, A. R.W.C.H.

C.J.E. Young

(C.J.E. YOUNG) Colonel.
Officer Commanding,
Roman Way Convalescent Hospital,
R.C.A.M.C.-C.A.(O).

Certified True Copy of Record in my possession
H.J. Drenton
Officer i/c records Major
Registrar
Roman Way Convalescent Hospital
R.C.A.M.C. C.A.(O.S)

Last Order
25
18 July 44

ROMAN WAY CONVALESCENT HOSPITAL
R.C.A.M.C.-C.A.(O).
DAILY ORDER PART II
Issued by
Colonel E.J. Young - Officer Commanding.

Exhibit A

26
24 July 44

SECTION "A" OFFICERS

1. STRENGTH DECREASE:
(a) S.O.S. on posting to #1 C.S.R.U. w.e.f. 18 July 44. (Auth: M.S. 2594, dated 17 July 44.)
Major, J.H. Negru. R.C.A.M.C.

2. ATTACHMENTS:
(a) Our D.O. #25, para 3(e) dated 18 July 44 insofar as it refers to the undermentioned is amended by adding;
2/Lieut. (H/S) E.M. Walker. R.C.A.M.C.
(b) Attached f.a.p. from #24 Cdn. General Hospital w.e.f. 21 July 44. (Auth: M.S. 2612, dated 19 July 44.)
Capt. K.O. Hawthorne. R.C.A.M.C.
Capt. D.K. Wise, R.C.A.M.C.

3. HOSPITAL:
(a) Admitted to #18 Cdn. Gen. Hospital w.e.f. dates shown:
Capt. L.M. White. Adm. 13 Jul 44 discharged 19 July 44.

SECTION "B" OTHER RANKS

1. STRENGTH INCREASE:
(a) T.O.S. from #1 C.G.R.U. w.e.f. 19 July 44. (Auth: CMHQ Demand 7170 dated 10 July 44.)
K-16138 Pte. ASHWORTH, W.J. R.C.A.M.C.
(b) T.O.S. from #1 C.I.R.U. w.e.f. 22 July 44. (Auth: 444/Hospital/1(PTA) & 52 Bell G.A./1, dated 14 July 44.)
K-62744 Pte. Bell, G.A. #1 C.I.R.U.
(c) T.O.S. from #6 C.I.R.U. w.e.f. 21 July 44. (Auth: REC/B.127702 dated 18 July 44.)
B-127702 Cpl. Ginger, E.T. #6 C.I.R.U.
(d) T.O.S. from #1 C.I.R.U. w.e.f. 21 July 44. (Auth: REC/K-69789 (R4), dated 18 July 44.)
K-69789 Cpl. Middleton, T.H. #1 C.I.R.U.
(e) T.O.S. from Y.3. List #1 C.I.R.U. on discharge from #18 Cdn. General Hospital w.e.f. 19 July 44.
K-85531 Pte. Mummery, E. R.W.C.H.
(f) T.O.S. from #2 C.I.R.U. w.e.f. 21 July 44. (Auth: REC/A.11583 (R4) dated 18 July 44.)
A-11583 Pte. Stears, R.W. #2 C.I.R.U.
(g) T.O.S. from C.R.U. Postal Unit w.e.f. 20 July 44. (Auth: CPC Letter 53/Postings/1/5.)
L-110064 Pte. Windsor, J.D.H. C.Postal C.

2. STRENGTH DECREASE:
(a) Our D.O.#24 para 2(a) dated 11 July 44 insofar as it refers to the undermentioned is amended by adding:
D-95164 A/Sgt. Lapointe, R.L. Clerk Gp. "C"

3. ATTACHMENTS:
(a) Attached f.a.p. from #1 Cdn. Admn. Trans Coy RCASC., w.e.f. 20 July 44.
B-87469 Pte. Feagan, H.D.

4. LEAVE OF ABSENCE:
(a) Granted 14 days Sick Leave with Sick Leave All'ces in accordance with Art. 793 P.R. & I)verseas. (Auth: 10/MacKay D.K./1 AMD 2 dated 5 July 44.) RETURNED
B-74153 Pte. MacKay, D.K. from 8 July 44 to 22 July 44 (3 CIRU. Patient in Roman Way Convalescent Hospital.)

4. LEAVE OF ABSENCE:(cont'd)

(b) Granted 7 days Sick Leave with Sick Leave All'ces in accordance with Art. 793 F.R. & I Overseas. (Auth: 10/Gautschi, E.H.M./1 AMD 2 dated 14 July 44.) RETURNED
K-76182 Sgmn. Gautschi, E.H.M. from 13 Jul 44 to 20 Jul44
(1 CSRU. Patient in Roman Way Convalescent Hospital.)

(c) Granted 7 days Sick Leave with Sick Leave All'ces in accordance with Art. 793 F.R. & I Overseas. (Auth: 10/Slatter E.T./1 AMD 2 dated 14 July 44.) RETURNED.
H-33075 Cpl. Slatter, E.T. from 13 Jul 44 to 20 Jul 44.
(2 CIRU. Patient in Roman Way Convalescent Hospital.)

(d) Granted 7 days Sick Leave with Sick Leave All'ces in accordance with Art. 793 F.R. & I Overseas. (Auth: 10/Mitchell, R.J./1 AMD 2 dated 10 July 44.)
C-4920 Cpl. Mitchell, R.J. from 12 Jul 44 to 19 Jul 44.
(#1 CGRU. Patient in Roman Way Convalescent Hospital.)

(e) Granted 7 days Sick Leave with Sick Leave All'ces in accordance with Art. 793 F.R. & I Overseas. (Auth: 10/Lilly R.H./1 AMD 2 dated 10 July 44.) RETURNED.
B-39760 Spr. Lilly, R.H. from 13 Jul 44 to 20 Jul 44
(1 CERU. Patient in Roman Way Convalescent Hospital.)

(f) Granted 7 days Sick Leave with Sick Leave All'ces in accordance with Art. 793 F.R. & I Overseas. (Auth: 10/Fourcault A.J./1 AMD 2 dated 10 July 44.) RETURNED.
B-76067 Sgt. Fourcault, A.J. from 12 July 44 to 19 Jul 44
(6 CIRU., Patient in Roman Way Convalescent Hospital.)

(g) Granted 7 days Sick Leave with Sick Leave All'ces in accordance with Art. 793 F.R. & I Overseas. (Auth: 10/Middleton T.H./1 AMD 2 dated 6 Jul 44.) RETURNED.
K-69789 Cpl. Middleton, T.H. from 8 Jul 44 to 15 Jul 44
(1 CIRU., Patient in Roman Way Convalescent Hospital.)

(h) Granted 14 days Sick Leave with Sick Leave all'ces in accordance with Art. 793 F.R. & I Overseas. (Auth: 10/Wallace J.H./1 ADM 2 dated 5 July 44.) RETURNED.
A-97822 Cpl. WALLACE, J.H. from 8 Jul 44 to 22 Jul 44.
(2 CIRU., Patient in Roman Way Convalescent Hospital.)

5. ABSENT WITHOUT LEAVE:

(a) A.W.L. from 2230 hours 30 Jun 44. Returned from A.W.L. 0745 hours 20 Jul 44. #4C.I.R.U.
F-78572 Pte. Burke, C.
(Patient in Roman Way Convalescent Hospital.)

(b) A.W.L. from 2230 hours 30 June 44. Returned from A.W.L. 0745 hours 20 July 44. #4 C.I.R.U.
F-77978 Pte. Snow, S.
(Patient in Roman Way Convalescent Hospital.)

(c) A.W.L. from 2230 hours 30 Jun 44. Returned from A.W.L. 2220 hours 7 July 44. #2 C.A.R.U.
P-80701 Gnr. Church, E.L.
(Patient in Roman Way Convalescent Hospital.)

(d) A.W.L. from 2230 hours 15 July 44. Still absent 2230 hours 23 July 44. (eighth day.) #1 C.G.R.U.
B-88261 L/Cpl. Correy, J.H.
(Patient in Roman Way Convalescent Hospital.)

(e) A.W.L. from 2230 hours 14 July 44. Still absent 2230 hours 22 July 44. (eighth day.) #2 C.I.R.U.
H-17144 Pte. Crowder, W.H.
(Patient in Roman Way Convalescent Hospital.)

(f) A.W.L. from 2230 hours 15 July 44. Still absent 2230 hours 23 July 44. (eighth day.) #3 C.A.C.R.U.
B-102617 Tpr. Fedor, A.
(Patient in Roman Way Convalescent Hospital.)

5. ABSENT WITHOUT LEAVE:

(g) A.W.L. from 2230 hours 15 July 44. Still absent 2230 hours 23 July 44. (Eighth day.)
M-102360 Pte. Flett, G.W. #1 C.I.R.U.
(Patient in Roman WayConvalescent Hospital.)

(h) A.W.L. from 0140 hours 15 July 44. Still absent 0140 hours 23 July 44. (Eighth day.)
B-19591 Pte. Lebar, D.L. #1 C.G.R.U.
(Patient in Roman Way Convalescent Hospital.)

(i) A.W.L. from 2230 hours 16 July 44. Still absent 2230 hours 17 July 44.
A-571 Tpr. Cobby, P.R. #1 C.A.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(j) A.W.L. from 2230 hours 15 July 44. Returned from A.W.L. 2230 hours 19 July 44.
B-61936 Tpr. Lamb, V. #2 C.A.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(k) A.W.L. from 0730 hours 18 July 44. Still absent 0730 hours 19 July 44.
C-4590 Pte. Rodgers, F. R.W.C.H.

(l) A.W.L. from 0915 hours 17 July 44. Still absent 0915 hours 18 July 44.
D-91554 Pte. Larkin, D. #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(m) A.W.L. from 2200 hours 22 July 44. Stillabsent 2200 hours 23 July 44.
A-3582 Cpl. Osborn, A.L. #1 C.A.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

6. TRADESMEN'S RATES OF PAY:

(a) Our D.O. #19 para 6(b) dated 13 Jun 44 insofar as it refers to the undermentioned is amended to read:
"Carpenter Gp "C" granted Carpenter Gp."B".
M-35489 Pte. Dorschied, J.B. R.W.C.H.

7. PUNISHMENTS:

(a) Our D.O. #22 para 7(m) insofar as it refers to the under mentioned is amended to read:
L-1370 Pte. Fraser, A. #6 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(b) Our D.O. #25 para 7(t) dated 18 July 44 insofar as it refers to the under mentioned is hereby cancelled:
G-63344 Pte. Landry, A. R.W.C.H.

(c) On 22 July 44 awarded 14 days C.B. and a forfeiture of 14 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 1330 hours 19 July 44 to 2200 hours 21 July 44. (Total absence: 2 days, 6 hours, 30 minutes.)
Forf 3 days pay under P.R. & I 149(1)(a). 2 days concurrent with award of 17 July 44 vide our D.O. Part II #24 para 7(u) dated 18 July 44.
Forf 14 days pay under P.R. & I 149(2).
Net. Forf. 15 days pay.
L-12215 Pte. Langley, E.J. R.W.C.H.

(d) On 18 July 44 awarded 7 days C.B. and a forfeiture of 7 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 15 July 44 to 0700 hours 16 July 44. (Total absence: 8 hours, 30 minutes.)
Forf. 1 days pay under P.R. & I 149(1)(a)
Forf. 7 days pay under P.R. & I 149(2)
Total Forf. 8 days pay.
B-74647 Pte. Allen, L.E. #3 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

7. PUNISHMENTS: (cont'd)

(e) On 24 July 44 was reprimanded for an offence under A.A. Sec. 15(1) A.W.L. from 2200 hrs. 23 Jul 44 to 0100 hours 24 Jul 44. (Total absence: 3 hours.)
B-112005 L/Cpl. Ames, W. #1 C.E.R.U.
(Patient in Roman WayConvalescent Hospital.)

(f) On 19 Jul 44 awarded 7 days C.B. and a forfeiture of 3 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 18 Jul 44 to 0130 hours 19 Jul 44. (Total absence: 3 hours, 30 minutes.)
Forf. 3 days pay under F.R. & I 149(2)
M-3865 Spr. Anderson, A. #1 C.E.R.U.
(Patient in Roman Way Convalescent Hospital.)

(g) On 20 Jul 44 awarded 7 days C.B. for an offence under A.A. Sec 15(1) A.W.L. from 2200 hours 19 Jul 44 to 2255 hrs 19 July 44. (Total absence: 55 minutes.)
B-42650 Gnr. Anderson, P.M. #1 C.A.R.U.
(Patient in Roman Way Convalescent Hospital.)

(h) On 21 July 44 awarded a forfeiture of 7 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 20 Jul 44 to 0200 hrs 21 July 44. (Total absence: 4 hours.)
Forf. 7 days pay under F.R. & I 149(2)
B-42650 Gnr. Anderson, P.M. #1 C.A.R.U.
(Patient in Roman Way Convalescent Hospital.)

(i) On 20 July 44 awarded 7 days C.B. for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 19 Jul 44 to 2250 hours 19 Jul 44. (Total absence: 50 minutes.)
L-10801 Gnr. Bennett, G. #2 C.A.R.U.
(Patient in Roman Way Convalescent Hospital.)

(j) On 20 July 44 was reprimanded for an offence under A.A. Sec. 15(1) A.W.L. from 2200 hours 19 Jul 44 to 2225 hours 19 July 44. (Total absence: 25 Minutes.)
H-205070 Cpl. Bodner, F. #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(k) On 20 July 44 awarded 14 days C.B. and a forfeiture of 28 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 30 Jun 44 to 0745 hours 20 July 44. (Total absence: 19 days, 9 hours 15 minutes.)
Forf 20 days pay under F.R. & I 149(1)(a)
Forf 28 days pay under F.R. & I 149(2). 3 days concurrent with award of 26 Jun 44 as amended in our D.O. #22 Para 7(e) dated 4 Jul 44. Net Forf 25 days pay.
TotalForf. 45 days pay.
F-78572 Pte. Burke, C. #4 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(l) On 21 July 44 awarded a forfeiture of 7 days pay for an offence under A.A.Sec. 8(2).
Forf. 7 days pay under F.R. & I 149(2)
A-42338 Tpr. Charters, G.A. #2 C.A.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(m) On 20 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from 2200 hours 19 Jul 44 to 2225 hrs 19 July 44. (Total absence: 25 minutes.)
D-16838 Spr. Cloutier, G. #1 C.E.R.U.
(Patient in Roman Way Convalescent Hospital.)

(n) On 22 July 44 awarded 14 days C.B. and a forfeiture of 14 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 1330 hours 19 Jul 44 to 2200 hours 21 July 44. (Total absence: 2 days, 6 hours 30 minutes.)
Forf. 3 days pay under F.R. & I 149(1)(a)
Forf 14 days pay under F.R. & I 149(2)
Total Forf 17 days pay.
F-3054 Pte. Dodson, C. R.W.C.H.

7. PUNISHMENTS:(cont'd)

(o) On 24 Jul 44 awarded 7 days C.B. for (1) an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 22 Jul 44 to 2340 hours 22 Jul 44, (Total absence: 1 hour 40 minutes.) (2) an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 23 Jul 44 to 2330 hours 23 Jul 44, (Total absence: 1 hour 30 minutes.)

M-8079 Pte. Doty, A.F. #1 C.G.R.U.
(Patient in Roman Way Convalescent Hospital.)

(p) On 24 July 44 awarded 7 days C.B. and a forfeiture of 7 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 0115 hours 23 Jul 44 to 2000 hours 23 July 44, (Total absence: 18 hours 15 minutes.)

Forf. 1 days pay under F.R. & I 149(1)(a)
Forf. 7 days pay under F.R. & I 149(2)
Total Forf. 8 days pay.

B-27379 Spr. Doxtater, R.W. #1 C.E.R.U.
(Patient in Roman Way Convalescent Hospital.)

(q) On 18 July 44 awarded a forfeiture of 7 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 1600 hours 28 July 44 to 1825 hours 29 June 44, (Total absence: 1 day, 2 hours 25 minutes.) and awarded a forfeiture of 21 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 1800 hours 12 Jul 44 to 1000 hours 17 Jul 44, (Total absence: 4 days, 16 hours.)

Forf 2 days pay under F.R. & I 149(1)(a) on 1st charge.
Forf 5 days pay under F.R. & I 149(1)(a) on 2nd charge.
Forf 21 days pay under F.R. & I 149(2)
Total Forf 28 days pay.

C-53105 Pte. Ennis, R.G. #4 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(r) On 22 Jul 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from 2200 hours 21 Jul 44 to 2300 hours 21 Jul 44, (Total absence: 1 hour.)

K-988 Pte. Fairbairn, H.A.F. #4 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(s) On 20 Jul 44 awarded 7 days C.B.for an offence under A.A. Sec 15(1) A.W.L. from 2200 hours 19 Jul 44 to 2350 hours 19 July 44, (Total absence: 1 hour, 50 minutes.)

M-102354 Tpr. Fergstad, C.A. #2 C.A.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(t) On 22 July 44 awarded 7 days C.B. for an offence under A.A. Sec 15(1) A.W.L. from 2200 hours 21 Jul 44 to 2245 hours 21 Jul 44, (Total absence: 45 minutes.)

L-100904 Spr. Ferguson, G.S. #1 C.E.R.U.
(Patient in Roman Way Convalescent Hospital.)

(u) On 20 July 44 awarded 14 days C.B. and a forfeiture of 14 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 18 Jul 44 to 0400 hours 19 Jul 44, (Total absence: 6 hours.)

Forf. 1 days pay under F.R. & I 149(1)(a)
Forf 14 days pay under F.R. & I 149(2)
Total Forf. 15 days pay.

(v) On 24 July 44 awarded 7 days C.B. and a forfeiture of 7 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 22 Jul 44 to 1420 hours 23 July 44, (Total absence: 16 hours, 20 minutes.)

Forf. 1 days pay under F.R. & I 149(1)(a)
Forf. 7 days pay under F.R. & I 149(2)
Total Forf. 8 days pay.

A-55348 Tpr. Gray, H.C. #2 C.A.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

7. PUNISHMENTS: (cont'd)

(w) On 20 July 44 awarded 7 days C.B. and a forfeiture of 3 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 19 Jul 44 to 2225 hours 19 July 44. (Total absence: 25 minutes.)
Forf. 3 days pay under F.R. & I 149(2)
B-87646 Pte. Griesbach, J.A. #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(x) On 20 July 44 awarded 14 days C.B. and a forfeiture of 14 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 19 Jul 44 to 2225 hours 19 Jul 44. (Total absence: 25 minutes.)
Forf. 14 days pay under F.R. & I 149(2).
C-12651 Pte. Haley, A.N. #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(y) On 18July 44 awarded 10 days C.B. and a forfeiture of 10 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 1300 hours 15 July 44 to 1435 hours 17 July 44. (Total absence: 2 days, 1 hour, 35 minutes.)
Forf. 3 days pay under F.R. & I 149(1)(a)
Forf 10 days pay under F.R. & I 149(2)
Total Forf. 13 days pay.
K-85351 Pte. Hill, G.T. #1 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(z) On 24 July 44 awarded 7 days C.B. for an offence under A.A. Sec 15(1) A.W.L. from 2200 hours 22 Jul 44 to 2315 hours 22 Jul 44. (Total absence: 1 hour, 15 minutes.)
B-58841 Gnr. Hill, H.L. #2 C.A.R.U.
(Patient in Roman Way Convalescent Hospital.)

(aa) On 24 July 44 awarded a forfeiture of 3 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 22 Jul 44 to 2310 hours 22 Jul 44. (Total absence: 1 hour, 10 minutes.)
Forf. 3 days pay under F.R. & I 149(2)
K-73285 Gnr. Hobbs, S.D. #1 C.A.R.U.
(Patient in Roman Way Convalescent Hospital.)

(bb) On 24 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from 2200 hours 22 Jul 44 to 2315 hours 22 July 44. (Total absence: 1 hour, 15 minutes.)
B-53595 Tpr. Hollandy, M. #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(cc) On 22 July 44 awarded a forfeiture of 3 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2359 hours 21 Jul 44 to 0745 hours 22 July 44. (Total absence: 7 hours, 46 minutes.)
Forf. 1 days pay under F.R. & I 149(1)(a)
Forf. 3 days pay under F.R. & I 149(2)
Total Forf. 4 days pay.
B-77114 Tpr. Holloway, E.H. #3 C.A.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(dd) On 20 July 44 awarded 7 days C.B. and a forfeiture of 14 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 0800 hours 18 July 44 to 2045 hours 19 July 44. (Total absence: 1 day, 12 hours, 45 minutes.)
Forf. 2 days pay under F.R. & I 149(1)(a)
Forf 14 days pay under F.R. & I 149(2)
Total Forf. 16 days pay.
M-62325 Pte. Hume, W.E. #1 C.O.R.W.
(Patient in Roman Way Convalescent Hospital.)

(ee) On 24 July 44 was admonished for an offence under A.A.Sec. 15(3).
H-11115 Cpl. Lake, N. R.W.C.H.

7. PUNISHMENTS:(cont'd)

(ff) On 21 July 44 awarded 14 days C.B. and a forfeiture of 14 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 15 Jul 44 to 2330 hours 19 July 44. (Total absence: 4 days, 1 hour.)
Forf. 5 days pay under F.R. & I 149(1)(a)
Forf. 14 days pay under F.R. & I 149(2)
Total Forf. 19 days pay.
B-61936 Tpr. Lamb, V. #2 C.A.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(gg) On 24 July 44 was reprimanded for an offence under A.A. Sec. 15(1) A.W.L. from 2200 hours 22 Jul 44 to 2315 hours 22 July 44. (Total absence: 1 hour, 15 minutes.)
D-36611 Cpl. Lecouffe, J.E. #1 C.A.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(hh) On 24 July 44 awarded 7 days C.B. and a forfeiture of 7 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 22 July 44 to 2000 hours 23 July 44. (Total absence: 22 hours.)
Forf. 1 days pay under F.R. & I 149(1)(a)
Forf. 7 days pay under F.R. & I 149(2)
Total Forf. 8 days pay.
H-37053 Pte. LeMoine, E.T. #1 C.O.R.U.
(Patient in Roman Way Convalescent Hospital.)

(ii) On 24 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from 2200 hours 22 July 44 to 2345 hours 22 July 44. (Total absence: 1 hour, 45 minutes.)
H-102567 Tpr. Lopuck, J. #2 C.A.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(jj) On 19 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from 2200 hours 18 July 44 to 0130 hours 19 July 44. (Total absence: 3 hours, 30 minutes.)
H-26298 Tpr. Lusk, F.A. #2 C.A.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(kk) On 22 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from 2200 hours 21 Jul 44 to 2355 hours 21 Jul 44. (Total absence: 1 hour 55 minutes.)
C-41849 Pte. McGeein, J.M. #1 C.G.R.U.
(Patient in Roman Way Convalescent Hospital.)

(ll) On 19 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from 2200 hours 18 Jul 44 to 2240 hours 18 Jul 44. (Total absence: 40 minutes.)
G-23215 Pte. Michaud, A. #4 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(mm) On 22 July 44 was severely reprimanded for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 21 Jul 44 to 0215 hours 22 July 44. (Total absence: 4 hours, 15 minutes.)
B-79010 Sgt. Morrison, J. #2 C.A.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(nn) On 21 July 44 awarded 7 days C.B. and a forfeiture of 7 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2359 hours 19 July 44 to 1930 hours 20 July 44. (Total absence: 19 hour, 31 minutes.)
Forf. 1 days pay under F.R. & I 149(1)(a)
Forf. 7 days pay under F.R. & I 149(2)
Total Forf. 8 days pay.
K-85331 Pte. Mummery, E. R.W.C.H.

(oo) On 22 July 44 was reprimanded for an offence under A.A.Sec. 15(1) A.W.L. from 0115 hours 22 Jul 44 to 0545 hours 22 Jul 44. (Total absence: 4 hours 30 Minutes.)
A-3582 Cpl. OsBorn, D.L. #1 C.A.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

7. PUNISHMENTS:(cont'd)

(pp) On 12 July 44 awarded a forfeiture of 28 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 18 June 44 to 2000 hours 28 June 44. (Total absence: 9 days, 22 hours.)
Forf. 10 days pay under F.R. & I 149(1)(a)
Forf. 28 days pay under F.R. & I 149(2)
Total Forf. 38 days pay.
E-34915 Sgmn. Paulin, P.A. #1 C.S.R.U.
(Patient in Roman Way Convalescent Hospital.)

(qq) On 24 July44 awarded 7 days C.B. for (1) an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 22 Jul 44 to 2340 hours 22 July 44. (Total absence: 1 hour, 40 minutes.) (2) an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 23 July 44 to 2330 hours 23 July 44. (Toal Absence: 1 hour 30 Minutes.)
K-71278 Pte. Plested, A. #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(rr) On 22 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from 2200 hours 21 Jul 44 to 2359 hours 21 July 44. (Total absence: 1 hour, 59 minutes.)
B-138749 Rfn. Smith, G.A. #3 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(ss) On 20 July 44 awarded a forfeiture of 28 days pay and 7 days C.B. for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 30 Jun 44 to 0745 hours 20 July 44. (Total absence: 19 days, 9 hour, 15 minutes.)
Forf. 20 days pay under F.R. & I 149(1)(a)
Forf 28 days pay under F.R. & I 149(2) 3 days concurrent with award of 26 Jun 44 as amended in our D.O. #22 para 7(f) dated 4 July 44. Net Forf 25 days pay.
Total Forf. 45 days pay.
P-77978 Pte. Snow, S. #4 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(tt) On 20 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from place of duty .
E-5528 Pte. Tangway, M. #6 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(uu) On 24 July 44 awarded 7 days C.B. for (1) an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 22 Jul 44 to 2340 hours 22 July 44. (Total absence : 1 hour, 40 minutes.) (2) an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 23 July 44 to 2330 hours 23 July 44. (Total absence: 1 hour, 30 minutes.)
B-54397 Pte. Waldron, L.W.C. #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(vv) On 20 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from 2200 hours 19 Jul 44 to 2250 hours 19 July 44. (Total absence: 50 minutes.)
P-89600 Pte. White, P.J. #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(ww) On 20 July 44 awarded 7 days C.B. and a forfeiture of 7 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 1200 hours18 July 44 to 1300 hours 20 July 44. (Total absence: 2 days, 1 hour.)
Forf. 3 days pay under F.R. & I 149(1)(a)
Forf. 7 days pay under F.R. & I 149(2)
Total Forf. 10 days pay.
L-9060 Pte. Young, J.L. #1 C.O.R.U.
(Patient in Roman Way Convalescent Hospital.)

8. MARRIAGES BIRTHS & DEATHS:

(a) Married with permission to Miss Isobel Jane Williamson at Buckie, Banffshire, Scot., 18 July 44.
K-21055 Sgt. Malin, N.H. C.D.C. (att'd.)

(b) Married with permission to Miss Helen Jones on 19 July 44 at Southport, Lancs. Eng.
L-17194 Sgt. Hill, W.R. #1 C.G.R.U.
(Patient in Roman Way Convalescent Hospital.)

(c) Daughter, Patricia Anne Marie, born at Toronto, Ont., Canada on 2 July 44. Wife, Patricia Rose Rellinger, 147 Curzon Ave. Toronto, Ont. Canada.
B-146791 Pte. Rellinger, G.A. #1 C.G.R.U.
(Patient in Roman Way Convalescent Hospital.)

9. NEXT OF KIN:

(a) Change of next of kin from Mr. S.G. Hill, (father) 1250 Oxford Str., E. Moose Jaw Sask., Canada. to Mrs. Helen Hill, (wife) 195 Bispham Rd., Southport Lancs., Eng.
L-17194 Sgt. Hill, W.R. #1 C.G.R.U.
(Patient in Roman Way Convalescent Hospital.)

10. HONOURS AND AWARDS:

(a) Having complied with Overseas R.O. 4630 the undermentioned are entitled to the award of the "1939 - 43 STAR."
K-69789 Cpl. Middleton, T.H. R.W.C.H.
L-12034 Cpl. MacDonald, J. R.W.C.H.

E J Young

(E.J. YOUNG) Colonel.
Officer Commanding,
Roman Way Convalescent Hospital,
R.C.A.M.C.-C.A.(O).

Certified True Copy Records in my Possession

A L Johnston
Ofc Records

Major
Registrar
Roman Way Convalescent Hospital
R.C.A.M.C. C.A.(O's)

Exhibit "B"

ROMAN WAY CONVALESCENT HOSPITAL
R.C.A.M.C. - C.A.(O)
DAILY ORDERS PART II
Issued by
Colonel E.J. Young - Officer Commanding

Last Order 26 24 July 44 | 27 27 July 44

SECTION "A" OFFICERS

N I L

SECTION "B" OTHER RANKS.

1. STRENGTH DECREASE:
(a) S.O.S. to #1 N.E.T.C. w.e.f. 25 July 1944.
F-96690 Pte. Buell, J.I. Category, M.4.S.5.
B-91353 Pte. Hatch, L.E. Category, M.1.S.5.
(b) S.O.S. to Y.3. List #1 C.I.R.U. on admission to #18 Cdn. Gen. Hospital w.e.f. 23 July 44.
K-62744 Pte. Bell, G.A. #1 C.I.R.U.

2. ATTACHMENTS:
(a) Our D.O. #18 para 2(a) dated 7 Jun 44 insofar as it refers to the undermentioned is amended by deleting:
L-64822 Pte. Chaykowski, M.
M-37755 Cfn. Magnusson, S.
C-28660 Cfn. Meloche, D.
F-79885 Cfn. Meyers, V.F.
A-102529 Cfn. Royant, A.
(b) Ceases to be attached on posting to #20 Cdn. Gen. Hospital, w.e.f. 24 Jul 44. (Auth: CMHQ A'X: 6-1 dated 24 July 44.)
D-166279 Pte. D'Aoust, J.L.

3. LEAVE OF ABSENCE:
(a) Granted 14 days Sick Leave with Sick Leave All'ces in accordance with Art. 793 F.R. & I Overseas. (Auth: 10/ Brown H.W./1 A.M.D. 2. dated 8 July 44.) RETURNED
A-4471 Pte. Brown, H.W. from 12 Jul 44 to 26 Jul 44 (#2 CIRU., Patient in Roman Way Convalescent Hospital.)
(b) Granted 7 days Sick Leave with Sick Leave All'ces in accordance with Art. 793 F.R. & I Overseas. (Auth: 10/ Hill, W.R./1 A.M.D. 2. dated 10 Jul 44.) RETURNED
L-17194 Sgt. Hill, W.R. from 17 July 44 to 24 Jul 44. (#1 CGRU., Patient in Roman Way Convalescent Hospital.)
(c) Granted 7 days Sick Leave with Sick Leave All'ces in accordance with Art.793 F.R. & I Overseas. (Auth: 10/ Duhig, J./1 A.M.D.2. dated 13 July 44.) RETURNED
K-47427 Sgt. Duhig, J. from 17 Jul 44 to 24 Jul 44. (#6 CIRU., Patient in Roman Way Convalescent Hospital.)
(d) Granted 7 days Sick Leave with Sick Leave All'ces in accordance with Art. 793 F.R. & I Overseas. (Auth: 10/ Armit W./1 A.M.D.2. dated 13 July 44.) RETURNED
B-80200 Sgt. Armit, W. from 17 July 44 to 24 July 44. (#1 CASCRU., Patient in Roman Way Convalescent Hospital.)
(e) Granted 7 days Sick Leave with Sick Leave All'ces in accordance with Art. 793 F.R. & I Overseas.(Auth: 10/ Stirrat, J./1 A.M.D. 2 dated 14 July 44.) RETURNED.
B-73604 Pte. Stirrat, J. from 13 Jul 44 to 20 Jul 44 (#4 CIRU., Patient in Roman Way Convalescent Hospital.)

4. ABSENT WITHOUT LEAVE:
(a) Our D.O. #26 para 5(k) dated 24 July 44 insofar as it refers to the undermentioned is amended to read:
"Still absent 0730 hours 19 July 1944."
C-4590 Pte. Rodgers, P. R.W.C.H.

Certified True Copy of Records in my possession.

A.J. Dunlop Major
Ofc Records Registrar
Roman Way Convalescent Hospital
R.C.A.M.C. C.A.(O's)

4. ABSENT WITHOUT LEAVE:(cont'd)

(b) A.W.L. from 2230 hours 15 July 44. Returned from A.W.L. 1800 hours 25 July 44.
B-88261 L/Cpl. Correy, J.H. #1 C.G.R.U.
(Patient in Roman Way Convalescent Hospital.)

(c) A.W.L. from 0730 hours 18 July 44. Returned from A.W.L. 0600 hours 26 July 44.
C-4590 Pte. Rodgers, E. R.W.C.H.

(d) A.W.L. from 0915 hours 17 July 44. Returned from A.W.L. 1715 hours 24 July 44.
D-91554 Pte. Larkin, D. #1 C.A.S.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

5. PUNISHMENTS:

(a) Our D.O. #26 para 7(q) dated 24 July 44 insofar as it refers to the undermentioned is amended to read:
"A.W.L. from 1600 hours 28 June 44 to 1825 hrs 29 Jun 44."
C-53105 Pte. Ennis, R.G. #4 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(b) Our D.O. #6 para 4(b) dated 5 Apr 44 insofar as it refers to the undermentioned is amended to read as follows:
On 31 Mar 44 awarded 7 days C.B. and a forfeiture of 7 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 30 Mar 44 to 0820 hours 31 Mar 44. (Total absence: 10 hours, 20 minutes.)
Forf. 1 days pay under F.R. & I 149(1)(a)
Forf. 7 days pay under F.R. & I 149(2)
Total Forf. 8 days pay.
K-11281 Gnr. Hiltz, J.H. #2 C.A.R.U.
(Patient in Roman Way Convalescent Hospital.)

(c) On 27 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from 2359 hours 26 Jul 44 to 0140 hrs 27 July 44. (Total absence: 1 hour, 41 minutes.)
C-94584 Pte. Blythe, C.G. 11 Bn. C.A.R.G.
(Patient in Roman Way Convalescent Hospital.)

(d) On 26 July 44 was reprimanded for an offence under A.A. Sec. 15(1) A.W.L. from 2359 hours 24 July 44 to 0045 hours 26 July 44. (Total absence: 1 day, 46 minutes.)
Forf. 2 days pay under F.R. & I 149(1)(a)
C-40778 Sgt. Caley, J. #4 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(e) On 27 July 44 awarded 7 days C.B. and a forfeiture of 7 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 26 Jul 44 to 0900 hours 27 Jul 44. (Total absence: 11 hours.)
Forf. 1 days pay under F.R. & I 149(1)(a)
Forf. 7 days pay under F.R. & I 149(2)
Total Forf. 8 days pay.
C-17915 Pte. Cleghorn, A.F. #4 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(f) On 26 July 44 was reprimanded for an offence under A.A.Sec. 15(1) A.W.L. from 2230 hours 15 July 44 to 1800 hours 25 July 44. (Total absence: 9 days, 19 hours, 30 minutes.)
Forf. 10 days pay under F.R. & I 149(1)(a)
B-88261 L/Cpl. Correy, J.H. #1 C.G.R.U.
(Patient in Roman Way Convalescent Hospital.)

(g) On 25 July 44 awarded 7 days C.B. for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 24 July 44 to 2305 hours 24 July 44. (Total absence: 1 hour 5 minutes.)
P-30069 Pte. Doucette, E. #4 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

5. PUNISHMENTS: (cont'd)

(h) On 26 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from 2200 hours 25 Jul 44 to 0100 hours 26 July 44. (Total absence: 3 hours.)
B-58511 Pte. Harris, J.R. #1 C.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(i) On 25 July 44 awarded a forfeiture of 7 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 0915 hours 17 July 44 to 1715 hours 24 July 44. (Total absence: 7 days 2 hours 30 minutes.)
Forf. 8 days pay under F.R. & I 149(1)(a)
Forf. 7 days pay under F.R. & I 149(2)
Total Forf. 15 days pay.

(j) On 25 July 44 was admonished for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 24 July 44 to 0630 hours 25 July 44. (Total absence: 8 hours, 30 minutes.)
C-4920 Cpl. Mitchell, R. #1 C.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(k) On 27 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from 2200 hours 26 July 44 to 0200 hours 27 July 44. (Total absence: 4 hours.)
B-26587 Spr. McGuire, J.M. #1 C.E.R.U.
(Patient in Roman Way Convalescent Hospital.)

(l) On 25 July 44 awarded a forfeiture of 3 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 20 July 44 to 1530 hours 24 July 44. (Total absence: 3 days, 13 hours, 30 minutes.)
Forf. 4 days pay under F.R. & I 149(1)(a)
Forf. 3 days pay under F.R. & I 149( )
Total Forf. 7 days pay.
A-22854 Pte. Renaud, J.F. #2 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(m) On 27 July 44 awarded 7 days C.B. for an offence under A.A. Sec. 15(1) A.W.L. from 2200 hours 26 July 44 to 2315 hours 26 July 44. (Total absence: 1 hour, 15 minutes.)
B-142617 Pte. Ruzuck, A.P. #3 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

(n) On 26July 44 awarded a forfeiture of 7 days pay for an offence under A.A.Sec. 8(2)
Forf. 7 days pay under F.R. & I 149(2)
R-82838 Dvr. Weegman, J.
#1 Cdn. Adm. Trans Coy RCASC att'd Roman Way Conv Hospital.

(o) On 24 July 44 awarded 7 days C.B. and a forfeiture of 7 days pay for an offence under A.A.Sec. 15(1) A.W.L. from 2200 hours 22 July 44 to 2345 hours 22 July 44. (Total absence: 1 hour, 45 minutes.)
F-89600 Pte. White, P.J. #1 C.A.C.C.R.U.
(Patient in Roman Way Convalescent Hospital.)

(p Our D.O. #25 para 7(cc) dated 18 July 44 insofar as it refers to the undermentioned is amended to read.
M-16770 Pte. McLennan, D.L. #1 C.I.R.U.
(Patient in Roman Way Convalescent Hospital.)

6. PROMOTIONS:

(a) To be A/Sgt. w.e.f. 27 July 44.
M-42126 Pte.(A/Cpl.) Merry, J.C. R.W.C.H.

(b) To be A/Cpl. w.e.f. 27 July 44.
B-66931 Pte. Giles, E.K. R.W.C.H.

(c) To be A/Cpl. w.e.f. 27 July 44.
L-59871 Pte. Hoffman, A.R. R.W.C.H.

7. NEXT OF KIN:

(a) Change of next of kin from Mrs. Eileen F. Malin (mother) 227 Mowat Str., New Westminster, B.C. Canada to Mrs. Isobel Jane Malin, (wife) 20 West Church Str., Buckie, Banffshire, Scotland.
K-21055 Sgt. Malin, N.H.
17 Cdn. Base D. tal Coy CDC.(c) att'd Roman Way Conv Hosp.

8. HONOURS AND AWARDS:

(a) Awarded Can. Volunteer Service Medal with Clasp w.e.f. 15 Jan 44. (Auth: Overseas R.O. 4167)
L-12034 Cpl. McDonald, J. R.W.C.H.

(b) Awarded One Good Conduct Badge, w.e.f. 6 July 1944.
B-52477 Pte. Roberts, J. R.W.C.H.

E.J. Young

(E.J. Young.) Colonel.
Officer Commanding,
Roman Way Convalescent Hospital.
R.C.A.M.C.-C.A.(O).

13

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
C-4590	Pte.	Rodgers, P.	Roman Way Convalescent Hospital

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheet, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For	A.A.Sec. 15(1) 4 times	20 times
For	times	times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct;~~

or

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or*

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 76 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for N/A. beginning on the day of N/A.

4. The accused has been in confinement, awaiting trial on the present charges, for nill days in civil custody, and 1 days in military custody, making a total of 1 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 27 years.

6. The date of his commission / attestation specified in his record of service / attestation paper is 12 Sept 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A.

8. The accused is entitled to deferred pay or gratuity in respect of N/A. service

9. The accused is entitled to reckon N)A. service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*. K/ C.V.S.M. with Clasp. 1939 - 43 STAR.

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or corps or* department) the rank of dated

W3.57622/1519 20M. 5/44. P. Ltd. T52-5.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		N/A.		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27th day of July 1944

[signature] Major
Registrar
Roman Way Convalescent Hospital
R.C.A.M.C., C.A.(O's)

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of _____ years, _____

In the rank of _____ years, _____

In the rank of _____ years, _____

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

MFM 6
(AFB 122)
40/P.25/156 (3438)

No C.4590 Name RODGERS P. Sqn, Battery, or Company Corps CDN. INF. CORPS Date of enlistment 12 Sept 39 GC Badges Proficiency Pay NA

Date of last entry in Company Conduct Sheet NA No and date of last drunk NA Period not reckoning towards freedom from extra fine NA Sheet No #1 Signature OC Company, etc C.A. Beattie Maj. Character 31 Mar.43

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	7/8/40			W.O. A.S. A.W.L. A.A. 15(1) 2300 hrs 2/8/40 to 1700 hrs 6/8/40 (3 Dys 18 Hrs)	Sgt. Gray	14 Days C.B.	7/8/40	Lt. Col. SALMON	4 Days Pay F.R.1 149 (1a)
FIELD	1/1/41			W.O. A.S. A.W.L. A.A. 15 (1)from 0800Hrs 1/1/41 to 1500 hrs. 3/1/41(2 Dys,7 hrs.)	Cpl. Murtazer	7 Days C.B.	4/1/41	Maj.Abraham	3 Days Pay F.R.1 149 (1a)
FIELD	23/2/41			W.O. A.S. A.W.L. A.A. 15 (1)from 2230hrs. 23/2/41 to 2230 hrs 24/2/41 (1 Day)	Sgt. Reid	1o Days C.B.	25/2/41	Capt.Rultan	1 Days Pay F.R.1 149 (1a)
FIELD	14/3/41			W.O. A.S. A.W.L..A.A. 15 (1) from 2230 hrs 14/3/41 to2130 hrs 17/3/41 (2Days 23 hrs)	Sgt. Reid	14 Days C.B.	18/3/41	Maj. Abraham	3 Days Pay F.R.1 149 (1a)
FIELD	1/8/41			W.O. A.S. A.W.L. A.A. 15 (1) from 2359 hrs 1/8/41 to 2100 hrs 4/8/41 (2 Days 22 hrs)	Sgt. Fitzpatrick	14 Days C.B.	5/8/41	Capt. Rultan	3 Days Pay F.R.1 149 (1a)

(PTO)

Place	Date of Offence	Rank	No. of Accused	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	16/9/41			A.A. 15(1) W.O.A.S. A.W.L. from 2359 hrs 16/9/41 to 2300 hrs 19/9/41 (2 Days 23 hrs.)	Cpl. Mooney Cpl. Butterworth	14 Days C.B.	24/9/41	Maj. Abraham	3 Days Pay F.R.1 149 (1a)
FIELD	20/12/41			W.O.A.S. A.W.L. A.A.15(1) from 1800 hrs 20/12/41 to 1800 hrs 9/1/42 (20 Days)	Lt. Madden L/cpl. Ray	10 Days F.F.	13/1/41	Lt. Col Graham	20 Days Pay F.R.1.149(1a) 10 Days Pay F.R 1.149(1a)
Field	1/5/42			W.O.A.S. A.W.L. A.A. 15(1) from 2300 hrs 1/5/42 to 1630 hrs 3/5/42 (1Day22hrs 50 Mins.)	Cpl. Blood Cpl. Gravelle	14 Days C.B.	6/5/42	Capt. Rultan	2 Days Pay F.R.1 149 (1a)
Field	15/8/42			W.O.A.S. AWL. A.A. 15(1) from 2300 hrs 15/8/42 to 1630 hrs 16/8/42 (17 hrs 30mins)	Sgt. La Plam	14 Days C.B.	17/8/42	Maj. Church	1 Days Pay F.R.1. 149 (1a)
FIELD	27/9/42			W.O.A.S AWL. A.A. 15 (1) from 2359 hrs 27/9/42 to 2000 hrs 4/10/42 6 Days 20 hrs)	Cpl. Kellar Cpl. Bloom	28 Days F.F.	8/10/42	Maj. Sutcliffe	7 Days Pay FRd. 149 (1a) 28Days Pay FRd. 149 (1a)
FIELD	26/12/42			WO.A.S. AWL. A.A. 15 (1) from 2359 hrs 26/12/42 to 1215 hrs 28/12/42 (1 Day 12 hrs 15 Mins.)	R.S.M. Gaigir	2 Days Pay F.R.1 149 (2)	29/12/42	Maj. Gray	2 Days Pay F.R.1 149 (1a)

No C.4590 Name RODGERS P. Sqn, Battery, or Company Corps CDN. INF. CORPS Date of enlistment 12 Sept. 39 GC Badges Sol[illegible] Proficiency Pay NA MFM 6 (AFB 122) 40/P&S/156 (3438)

Date of last entry in Company Conduct Sheet NA No and date of last drunk NA Period not reckoning towards freedom from extra fine NA Sheet No#2 Signature OC Company, etc C.A. BEATTIE MAJOR Character 31 Mar 43

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	6/3/43			W.O.A.S. AWL. A.A. 15 (1) from 2200 hrs to 2240 hrs 9/3/43 (3 Days 40 Mins.)	C.S.M. DARWIN DOC.	7 Days C.B. 7 Days Pay FRI. 149 (1) (a)	16/3/43	Lt. Col. Clingan	4 Days Pay F.R.1 149 (1)(a)
FIELD	29 Mar 43	Pte.		W.O.AS. AWL. FROM 0800 hrs 29 Mar 43 till 0630 hrs 30 Mar. 43 (Total absence 22 hrs 30 mins.) A.A. Sec 15 (1)	Sgt. McKee CSM Darwin	Forf. 7 Days Pay	31 Mar 43	Col. A.S. Pearson	Forf. 1 days pay FRI 149 (1) (a)
FIELD	18 Apr. 43	Pte		WOAS A.W.L. in that he absented himself without leave from 0700 hrs 18 Apr.43 untill 1200 hrs 18 Apr.43 (Total 5 hrs) A.A. Sec 15(1)	Cpl. Wassil-askus	Forf. 2 Days Pay RFI. 149 (2)	19 Apr.43	A.B. NOBLE Lt. Col.	

(PTO)

Place	Date of offence	Rank	Number	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dissolving with trial	By whom awarded	Remarks
FIELD	20 May 43	Pte.		WOAS A.W.L. from 0600 hrs, 29 May 43 to 2200 hrs. 1 June 43 (Total absence 3 Days 16 Hrs.) A.A. Sec 15(1)	Cpl. Mason W.O. Sgt. Smith T.J.	Forf. 12 Days pay FR&I 149 (2)	2 June 43	A.B. NOBLE Lt. Col.	Forf. 4 Days Pay FR&I 149 (1) a.
FIELD	17 June 43			WOAS A.W.L. from 2359 hrs 15 June 43 until 1200 hrs 16 June 43 (Total absence 12 hrs 1 Min.)	Documentary	Forf. 5 Days Pay F.R.&I. 149 (2)	17 June 43	A.B. Noble Lt. Col.	Forf. one days pay F.R.&.I 149 (1) a.
FIELD	14 Aug. 43			WOAS A.W.L. from 0600 hrs. 14 Aug. 43 until 2245 hrs 16 Aug. 43 (Total absence 2 Days 16 hrs 45 Mins.) A.A. Sec 15 (1)	Cpl. Huffman Documemtary	12 Days F.P. 12 Days Pay		A.B. Noble Lt. Col.	Forf. 12 Days Pay FR&I. 149 (1) (b) Forf 3 Days pay FR&I 149 (1) (a)
U.K.	25 Sept 43			WOAS A.W.L. from 1500 hrs 25 Sept, 43 to 2330 hrs. 26 Sept. 43 (Total absence 32 hrs 30 Mins.)	A.3258 Cpl. Day R.D.	7 Days C.B.	27 Sept 43	E.J. Young Lt Col.	Forf. 2 Days Pay under FR&I 149 (1)(a)

No. 4590 Name RODGERS, P. Sqn, Battery, or Company — Corps CDN. INF. CORPS. Date of enlistment 12 Sept 39 GC Badges — Sig[illegible] Proficiency Pay NA

MFM 6 (AFB 122) 40/PAM/196 (3458)

Date of last entry in Company Conduct Sheet NA — No and date of last drunk NA — Period not reckoning towards freedom from extra fine NA — Sheet No — Signature OC Company, etc — Character 14 Mar 44

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
U.K.	6 Mar 44	Pte.		WOAS, A.W.L. from 2359 hrs 6 Mar 44 to 1600hrs 13 Mar. 44. (Total Absence 6 Days, 16 hrs. 1 Min.) A.A. Sec 15(1)	C-34460 Cpl. Burns, W.L. A-3258 Opl. Day, R.D.	14 Days C.B. 28 days Forf. of Pay under FR&I. 149 (2)	14 Mar. 44	E.J. Young Col.	Aut. Forf. of 7 days pay under FR&I. 149 (1)(a) Total Forf of 35 Days Pay.
U.K.	22 Apr. 44	Pte.		WOAS, A.A. Sec 15 (1)., A.W.L. from 2359 hrs. 22 Apr. 44 to 2200 hours 25 Apr. 44 (Total absence: 2 Days, 22 hours, 1 minute.)	H-16526 A/Cpl. SANDERS, H.W.	14 Days C.B. 28 Days Forf. of Pay under FR&I. 149 (2)	26 Apr. 44	E.J. Young Col.	Aut. Forf of 3 Days Pay Total Forf. 31 Days Pay

(PTO)

55-121

Sgt. Rodgers. W J

AA 180 - 58-121

CHANGE (To item of AFAA) 40/P & D/1008 1-10-44

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Lt Col G.A. Griffith, Comd 1 Cdn Armd Bde dated 28 July 45

RECEIVED 5 SEP 1945 JAG BRANCH

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 55257	Lt	William Edwin Rodgers		21 Cdn Armd Regt.

PROCEEDINGS REVIEWED
J.M. Brady Capt
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 30 July 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a charge has been added, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and every alteration initialled. Where appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record admissible evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 10.53 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to~~ ..... as interpreter ? Ans .....

~~The Interpreter is sworn.~~(1) ~~Do you object to~~ ..... as shorthand writer ? Ans .....

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major R. Styffe	Lake Sup Regt (Mot)
Member	~~Capt H.V. Pritchard~~	~~21 Cdn Armd Regt~~
Member	Capt S.E. McAdam	22 Cdn Armd Regt.
Judge-Advocate	Capt L.R. Bergkvint	28 Cdn Armd Regt.
Prosecutor	Major E.E. Wassen	4th Cdn Armd Div
Defending Offr	Capt N.F. Westheuser	21 Cdn Armd Regt.
	Capt W.D.A. Dillman	21 Cdn Armd Regt.

Questions by President: Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... Before arraignment make(s) (no) ~~(1)~~ plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C 58257 Sgt Rogers W.J. 21 CAR (C.G.F.G.)

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15 (1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1) B

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which No days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

to be reduced to the rank by corporal.

(Sgd) [signature] Judge-Advocate, if any. 30 July 45 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

[signature]

(C.M. Drury) Brigadier
A/Comd 4 Cdn Armd Div

CMD 11 4 Aug 45

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
Present	6 August 45	A. O. Burke Capt. Adjutant. 21 C.A.R. (C.G.F.G.)

C 58256 Sgt William John Rogers 21 Cdn Armd Regt. 10 SEP 45 ENTERED DO 4-B(3LS(CD)) 10 Sep 45 [signature] Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A)(B), 90, 92(C)(D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D)(E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans..... Do you intend to call witnesses on your behalf? Ans..... Are they witnesses as to character only? Ans.....
(1. RP 115. 2. RP 40(A), see 40(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(2)(6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. Yes Sir.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1)(g)(h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. X and Ex. Y respectively.(3)
(1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes, I may very respectfully plead for mercy.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 562-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans..... Do you intend to call witnesses on your behalf? Ans..... Are they witnesses as to character only? Ans.....

(1. RP 115. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(7) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. Yes Sir.

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. X and Ex Y respectively.(3)

(1. MFB 355 or AFB 295. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes, my Defending Officer.(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICER'S REPORT

I certify that No. C58257 Sgt. Rodgers, W.J. of 21 C.A.R.(GGFG) is in a fit/~~unfit~~ SS state of health, and able/~~unable~~ SS to undergo Trial by Court martial.

Sparling Eastcapt.
Medical Officer

Station In the Field

Date 30 Jul 45

0800 hrs. SS.

M. F. B. 246
20M—3-40 (4590)
H.Q. 1772-39 480

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C58257	Sgt		William John	RODGERS	~~28~~ 21 Cdn Armd Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 28 Jul 45 endorsed by me, (~~or by an offrs of my staff for me~~), " To be tried by Field General Court-Martial ".
(as by an offr of my staff for me)

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~[illegible]~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reason I have [illegible]~~.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank	Name	Unit
Major	R. STYFFE	Lake Sup R (M)

(Must be named. RP 106.)

MEMBERS.

Rank	Name	Unit
Capt	H.V. PRITCHARD	21 Cdn Armd Regt
Capt	S.F. McADAM	22 Cdn Armd Regt

(Named or detailed. RP 106.)

WAITING MEMBER.

Rank	Name	Unit
Capt	L.R. BERGKLINT	28 Cdn Armd Regt

(Named or detailed, if any. RP 106.)

JUDGE-ADVOCATE.

Rank	Name	Unit
Major	E.E. WASSON	DJA 4 Cdn Armd Div

(Must be named, if any. RP 106.)

On Active Service in the Fd

in Holland
(Country.)

(Signed personally. RP 105 fn 2.)

~~Lt Col.~~, Brigadier
(Rank.)

Dat 28 Jul 45

A/ Commanding (C.M.Drury) 4 Cdn Armd Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 95 (In lieu of AFA 3) 40/1-& S/1697 (6143)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (*AA 52, KR Can 562, RP 26, 29, 111.*)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will to the best of my ability truly interpret and translate [illegible] required to do, touching the matter before this court-martial.

6. WITNESS. (*AA 52, MML 763, RP 82, 111.*)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (*RO (Can) 2693.*)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(*Referred to throughout CF A 96 as "Notes".*)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (*or*, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the paras in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 110 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 95(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)
(iii) Evidence of witnesses for accused as to facts or his character or both, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions (*RP 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*See RP 40 fn 7, 87(C), 92(C) (D).* (*When accused charged jointly see RP 61.*)
(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C).*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D).* *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(K), KR Can 563(a).*)
(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:
(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 557.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)
(v) Exhibits numbered Ex A, Ex B, etc.
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

CHARGE SHEET

The accused C 58257 Sergeant William John RODGERS, 21 Cdn Armd Regt (GGFG)(CA), a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE: WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

SEC 15(1) ARMY ACT

in that he,
in the field on 9 July 1945 absented himself without leave from 1200 hours 9 July 1945 until 2330 hours 16 July 1945.
(Time absent 7 days 11 hours and 30 minutes)

(E.M. Smith) Lt.-Col
Officer Commanding
21 Cdn Armd Regt (GGFG)(CA)

In the field
18 July 1945

28 Jul 45

Remanded to F.G.C.M.

28 July 45

(E.M.Smith) Lt-Col.
A/Commander,
4 Cdn Armd Bde.

To be tried by Field General Court Martial

(C.M.Drury) Brig
A/Comd 4 Cdn Armd Div

In the Field
28 Jul 45

Pbo in mitigation

The accused is 27 yrs of age - married with a wife and family in Canada. He has over five years army service, almost all of which was with 21 C.A.R. He saw action with Armd Carrier Regt from Jany of this year till end of war. I draw your attention of AFB 296 and in FM6 which show no entries against him during that long period of service. I would also like to point out that for this long period of satisfactory service - his accumulated total of 180 de-mob points and is actually named on a repat. draft list for Wed. of this week.

I would also like to point to statement of Mr. Rusk in summary of evidence. You will note that the accused was returned to Regt. from Fd. detachment to be despatched on privilege leave. Sgt Rodgers has not had privilege leave since August 1944 - nearly a year. However you will also note in same statement that he was not despatched on leave.

I do not ask the Court to condone the action he took. He is guilty and so pleads but I would ask the Court to carefully consider the long period he

had gone without have only to be
disappointed after having been warned.
I point out too his excellent period
of service and fact that he is due for
reassignation.

SUMMARY OF EVIDENCE

in the case of

C 58257 Sgt. William John RODGERS, 21 Cdn Armd Regt (GGFG)(CA).

Charge: Absenting himself without leave.

The Officer Commanding directs that the evidence be taken on oath.

First Witness: C 40012 S.S.M. Brown, C.W., 21 Cdn Armd Regt (GGFG) having been duly sworn states:

"I am C 40012 S.S.M. Brown, C.W. I am Sqn Sgt.Major of 2 Squadron 21 Cdn Armd Regt (GGFG). Prior to 9 July 1945, C 58257 Sgt. Rodgers, W.J. to my knowledge was in charge of a guard detail at Erbeek, Holland. This detachment was ordered to return to the Squadron and did so at 1200 hours 9 July 1945. On neither the 7th or 8th of July 1945 did Sgt Rodgers, W.J. report to me nor did I see him in the Squadron area on those days. Sgt. Rodgers did not return with the detachment on 9 July, 1945. On 9 July 1945 I looked through the Squadron area and could not find him. At 2330 hours 16 July 1945 Sgt Rodgers reported to me. Between that time and 1200 hrs 9th July 1945 Sgt Rodgers was not in the Squadron area."

.....
(C40012 SSM Brown, C.W.)
21 Cdn Armd Regt (GGFG)(CA)

The accused declines to cross examine the witness.

Second Witness: Lieutenant L.N.G. Rusk, 21 Cdn Armd Regt (GGFG)(CA) having been duly sworn states:

"I am Lieutenant L.N.G. Rusk, 21 Cdn Armd Regt (GGFG). On the 5th July 1945 I was officer in charge of a guard at Erbeek, Holland. C 58257 Sgt Rodgers, W.J. was an NCO of the guard under my command. On 5 July 1945 I despatched Sgt Rodgers to 2 Squadron 21 Cdn Armd Regt (GGFG) in order that he might go on leave. On the evening of 6 July 1945 Sgt Rodgers reported back to me having not been despatched on leave. As I did not wish to retain Sgt Rodgers under my command, on 7 July 1945 at about 0830 hours, I despatched Sgt Rodgers in a truck with orders to report back to the regiment. The guard of which I was in charge returned to the regiment on 9 July 1945, and between the 7 July 1945 and the 9 July 1945 Sgt Rodgers did not again report to me at Erbeek."

The evidence is read back to the witness.

.....
(Lieut. L.N.G. Rusk)
21 Cdn Armd Regt (GGFG)

The accused declines to cross examine the witness.

Third Witness: Captain C.W. Conlon, 21 Cdn Armd Regt (GGFG) having been duly sworn states:

"I am Captain C.W. Conlon, A/OC 2 Squadron, 21 Cdn Armd Regt (GGFG). Sgt. Rodgers,W.J. is a member of my Squadron. At no time between 7 July 1945 and 16 July 1945 did I or anyone in authority under my command give permission to Sgt. Rodgers to be absent."

C.W. Conlon
.....
(Capt. C.W. Conlon)
A/OC 2 Sqn, 21 C.A.R.(GGFG)

The accused declines to cross examine the witness.

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The Accused: "I have nothing to say at this time".

W.J. Rodgers
.....
(C 58257 Sgt. Rodgers,W.J.)
21 Cdn Armd Regt (GGFG)(CA)

I certify that R.P. 4 has been complied with.
Taken down by me in the field in the presence and hearing of the accused this 18th day of July 1945.

A.R. Jessup Capt
.....
(A.R. Jessup) Captain
21 Cdn Armd Regt (GGFG)(CA)

SUMMARY OF EVIDENCE

Second Witness : Lieutenant L.N.G. Rusk, 21 Cdn Armd Regt(GGHG)(CA) whose statement appears in Summary of Evidence will not be able to appear at the F.G.C.M. due to his absence on leave to U.K.

No signature can be obtained on his statement also due to the a/m reason.

A. O. Burke Capt

(A.O.Burke) Captain,
Adjutant,
21 Cdn Armd Regt(GGHG)(CA)

Character Evidence.

Lieut. A. E. Pettigrew, 21 Cdn Armd Regt.
having been duly sworn states:-
I recognize the accused, Sgt. Rodgers W. J.
He and I joined Regt in June 1940 and we
were together until 1 May 43.
I soldered with him as Tdsm and's CO. He
was enthusiastic about soldiering and
sports. He has worked under me as an
N CO I always found him satisfactory.
I have heard that he was cool and reliable in
action altho I've never been with him
in action. In future I would be very
glad to have him as an N CO.
(R.P. 83 B complied with)

Capt. F. C. McKergow, 21 Cdn Armd Regt.
having been duly sworn states:-
I am Sgn. Cmdr. #1 Sgn.
I recognize the accused as Sgt. Rodgers.
I have known him for over 5 yrs as a soldier.
From June 1942 to Feb '44 he served under
me as wireless and P.T. instructor and
Tp. Sgt. He was always enthusiastic,
efficient and most reliable. As long as I have
known him he has always been a credit to
the Regt. and I would gladly have him
under my command at any time in
the future. (R.P. 83 B complied with)

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
C58257	SGT.	RODGERS, W.J.	21 Cdn Armd Regt(GGFG)(CA)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be tendered to court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For	NIL times	NIL times
For	~~XXXX

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of _____ Date of Promotion

In the rank of _____ years,

In the rank of _____ years,

In the rank of _____ years,

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.*)

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C58287 *Rank* Sgt. *Name* Rodgers, W.J. of 21 Cdn Armd Regiment (or as the case may be).

(*INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30 day of July 1945

A. O. Burke (Adjutant) Captain

M.F.M. 6
(A.F. B.122)
40/P.A./8136 (2965)

No. C58257 Name RODGERS, W.J. Sqn., Battery, or Company Corps CAC Date of enlistment 27 Jun 40 G.C. Badges Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 1 Signature O.C. Company, etc. C.E.Slack, Capt. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed 17 Dec 43 Last entry on Nil: No cases of drunkenness ;Last instance on Nil C.E.Slack, Capt.									

CERTIFIED TRUE COPY:

A. O. Burke Capt.
(A.O.Burke) Adjutant,
28 Jul 45.

Exhibit Y
Bulk

(P.T.O.)

M.F.M. 6
(A.F. B.122)
40/P & S136 (2965)

No. C58257 Name RODGERS, W.J. Sqn., Battery, or Company | Corps CAC | Date of enlistment 27 Jun 40 | G.C. Badges | Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature O.C. Company, etc. C.E.Slack, Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed 17 Dec 43 Last entry on Nil; No cases of drunkenness ;Last instance on Nil C.E.Slack, Capt.									

CERTIFIED TRUE COPY:

A. O. Burke Capt.
(A.O.Burke) Adjutant,
28 Jul 45.

Exhibit Y
[illegible]

(P.T.O.)

COUNTER NUMBER 574500

HOUR 17.08

OPERATOR'S INITIALS JA

RELIEVING OPERATOR BH

TTT-214

Pte Rodriguez C F

CHARGE SHEET

The accused, C 5513 Private Cecil Frank RODRIGUE
Prince Edward Regiment, on the strength of No 4 C... and
Reinforcement Unit, a Soldier of the Canadian Army ... Infantry
charged with:

FIRST CHARGE

Section 10(3)
Army Act

WHILE ON ACTIVE SERVICE, Resisting an escor...
duty it was to have him in charge,

in that he,

In the Field, at approximately 2245 hours 26 July 1944
in Helmsley, while under escort of M 17171 L/Cpl Nixon,
M.E., and S 61927 L/Cpl Giebner, G.F., resisted the
said escorts by kicking and struggling.

(J. Gavan Power) Colonel,
Commanding Officer,
4 Cdn Inf Rft Unit.

IN THE FIELD
29 JULY 1944

To be tried by Field General Court Martial.

(J.R. Stewart Lough) Brigadier
Commander
"D" Group, Cdn. Rft. Units
Convening Officer

In the Field
1 Aug 44

RECORDED AT CMHQ IN AB 160 TTT-214

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig J.R. Stewart Lough Comd "D" Gp, CRU dated 1 Aug 44
DSO, MC, VD

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/B or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.5513	Pte	Cecil, Frank	RODRIGUEZ	Hast & PER 4 CIRU

PROCEEDINGS REVIEWED
JCTC J Rodriguez Lieut Capt
REVIEWING OFFICER, JAG BRANCH CMHQ
pgl Aug 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 2 Aug/44 WDH

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 752. A brief record of each variation is made and given a number having reference to appropriate or preceding extra number in the Proceedings of Trial, Cr Ans, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1)
WDH The Court is satisfied that it is properly convened and constituted(2), accused is (not) amenable to military law, and WDH each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

WDH A3. The Court is opened. The accused is (not) brought before the Court. At 1600 hours trial commences. WDH

WDH A4. The Prosecutor produces a Medical Certificate that accused is (not) fit to undergo trial by court-martial.(1) WDH
~~WDH The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with~~ WDH
~~WDH summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

WDH A5. President to accused: Do you object to N/A as interpreter? Ans N/A. WDH
~~WDH The Interpreter is sworn.(1)~~ Do you object to N/A as shorthand writer? Ans N/A. WDH
~~WDH The shorthand writer is sworn.(1)~~ WDH

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
WDH Ans Nil.(2) WDH

(1. RP 110. 2. If no objection, waiting member retires. RP 60(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

WDH President	Major	W.D. Anderson	#4 CIRU WDH
WDH Member	Capt.	W.G. Smith	#4 CIRU WDH
WDH Member	Lieut	H.A. Staples	#4 CIRU WDH
WDH Judge-Advocate	N/A.		WDH
WDH Prosecutor	Lieut.	A.E. Welby	#4 CIRU WDH
WDH Defending Offr	Lieut.	G.M. Hodge	#4 CIRU WDH

WDH Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans Nil. WDH

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for Information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

WDH A8. The accused C.5513 Cecil Frank Rodriguez before arraignment make(s) (no) plea(s). WDH
WDH of Not Guilty or no plea in bar. WDH

(1. Of a special plea in bar for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused, charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB room and name of the accused making the plea.)

WDH A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (not) WDH object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proWDH ceedings are continued on Record Form D WDH

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C.5513 Pte Cecil, Frank RODRIGUEZ - Hast & PER - 4 CIRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 10(3)	Not guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and re loss of kit see RP 44 fn 6.)

At present under sentence for N/A, beginning on (date) (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: WDH
To undergo detention for ~~a period~~ WDH
WDH ~~of~~ Thirty (30) days.

(Sgd) 3 Aug/44 (Sgd) W.D. Anderson Mayor
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.)

(Sgd) [signature] Brigadier Commander "D" Group
Date 4 Aug 44 Commanding Can. Reinforcement Units C.A. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C.5513 Pte Cecil Frank Rodriguez	5 Aug 44	D.J. Gamble Lt A/Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 75(3) fn 5 para 3, MML p 744 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin by Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No. (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RF 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans No. Do you intend to call witnesses on your behalf Ans Yes. Are they witnesses as to character only ? Ans No.
(1. *RP 114.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1. 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces ~~the finding(s), if any, of Not Guilty, and states~~ to the accused that the finding(s) of the Court on the 1st charge(s), being subject to confirmation, will be promulgated later.(1)
Or, ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 353 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes.
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 36(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 3091, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

WDB 2nd Aug/44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/PA8/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.5513	Pte		Cecil, Frank	RODRIGUEZ	Hast & PER 4 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) 1 Aug 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	W.D. Anderson (Must be named. RP 106.)	N Shore R	4 CIRU (Unit.)

MEMBERS.

A Captain	to be detailed by Commanding Officer	4 CIRU
A Lieutenant (Rank.)	to be detailed by Commanding Officer (Named or detailed. RP 106.)	4 CIRU (Unit.)

WAITING MEMBER.

A Lieutenant (Rank.)	to be detailed by Commanding Officer (Named or detailed, if any. RP 106.)	4 CIRU (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

J.R. Stewart Lough (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(J.R. Stewart Lough)

Date 1 Aug 44

Commanding "D" Group, Cdn. Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MDF

Medical Officer's Certificate. 40/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. C 5513
Pte Rodriguez C.P. of 4 C.I.R.U.
and in my opinion, he is F.I.T. to undergo trial by Court Martial.

Station Field

Date 2 Aug 44 (Sgd.) D.B.M. Fra Capt
(Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3, para 27, d/6 Jan 42)

WD 4.

Medical Officer's Certificate. 40/25
K.R. (Can.), para 357.

I certify that I have this morning examined No. C 55 13

Pte. Rodriguez C.F. of 4 C.I.R.V.

and in my opinion, he is fit to undergo trial by Court martial.

Station. Field

Date. 3 Aug 44 (Sgd.) (Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3, para 27, d/o Jan 42)

Plea of mitigation in the case of C5513 Pte Rodriguez C. F. Hast & P E Regt. tried by F. G. C. M.
2 Aug 44

WDK. Page (1)

Sir - I hereby submit plea of mitigation of sentence in the case of C5513 Pte. Rodriguez C. F.

The accused is well known to me having had him in my platoon in the H & P E Regt for a considerable time and knew him as being in the same company while serving in Sicily. I have been discussing the accused with an officer who was his platoon commander during the fighting in Sicily. He assured me that C5513 Pte Rodriguez C. F. had done extremely good work in action, was entirely dependable and loyal to him and the battalion during even the most difficult engagements.

The officer concerned thought well enough of him to promote him to the rank of A/L/cpl. in charge of the mortar group. The accused in the time that I have known him has always been of an extremely argumentive and belligerent nature. This has been confirmed by the report of the S.P.O. who has already recommended him for return to Canada on the grounds of emotional instability. Since the accused came overseas in AUG 1940 nearly all his crimes in the army have been as result of an argument followed by a fight of some description. Since he left his regiment in Sept 1943 due to a foot wound which categorized him as L-4, he has been in numerous hospitals and convalescent depots which is pretty well

intolerable for a man of his temperament and particular type of instability. An example of this happened in Dec 1943 when he had an argument with a member of the Provost Corps thus losing his stripe.

He returned to England only a short time ago thoroughly browned off yet with an earnest desire to keep out of trouble for the sake of his wife and child at present living in England. He also fears that too severe a punishment will mean the break up of his home.

WDF Page 2

G. M. Hodge Lieut.
Defending Officer

Final address in trial by F.G.C.M. of C5513 Pte Rodriguez C.F.

Mr. President and Members of the Court. WKH Page(1)

(1) It would seem from evidence heard this morning that several blows were struck throughout the encounter but the accused is the only one bearing marks of the struggle. I also think that the accused has had enough army experience to think twice before striking a Provost.

(2) When the accused was ordered to produce his pay book he did so without hesitation. After being put under arrest he walked quietly to the lavatory and then when returning received a blow in the face that would make anyone struggle to avoid receiving another.

(3) With this Gentleman, I sincerely hope the Court may come to a division finding the accused not guilty.

G. M. Hodge Lieut.
Defending Officer.

The accused pleads not guilty to the first charge.

OPENING ADDRESS BY THE PROSECUTION

The case for the prosecution will be simply to prove what is alleged in the charge; namely to prove that the accused, while under arrest, resisted by struggling & kicking. The witnesses will speak for themselves.

FIRST WITNESS For the Prosecution

B 61927 L/Cpl Giebner, G.F., Canadian Provost Corps, on strength of No. 1 Detachment, 7 Cdn Provost Coy, "D" Group, Cdn Reinforcement Units, having been duly sworn, states.

Q1 Do you recognize the accused?
A1 Yes Sir.

Q2 Tell the Court what you recall as regards the accused on what happened July 26 1944.
A2 While on patrol in Helmsley, in company with L/Cpl Nixon, we were requested by the proprietress of the Crown Hotel at about 2235 hrs on the night of 26 Jul 44, to order 3 Canadian Soldiers from the Hotel, as she had called time at the Bar. She asked them to drink up their beer and leave, which they refused to do. On entering the hotel, the accused and two other Canadian Soldiers were arguing with a Sergeant and another Private. The Sgt was trying to persuade the accused to leave. On entering the room I told the Sgt that we would take over and asked the Sgt to leave, which he did. The accused was very loud in his language, stating he had just come back from Italy. Considering this, I asked him to drink his beer and leave the Hotel without causing any further disturbance. Before leaving the Hotel he asked me for permission to speak to the proprietress. The remark that he said was: I have just come back from Italy, fighting for the likes of you, but after tonight I would rather fight for Heinie. On this remark I helped the accused out of the Hotel. He still argued outside. As I was still considering that he came from Italy, I was still lenient with him. Two Canadian Officers standing in front of the Swan Hotel on recognizing the three soldiers, came over and stated: "I know these men, I'll take charge of them". I saluted and L/Cpl. Nixon and myself went to the town lavatory across the square. Upon coming back across the square and stopping in front of the Town Hall, I was again approached by the accused. He still wished to argue, which I did not want to do, feeling I had been lenient enough. I asked for his MBM I. Upon taking his particulars I then placed him in close arrest. Having no vehicle of our own present and recognizing Cpl. Popinesu, whom I knew, and who was in charge of a vehicle, I asked permission to use his vehicle to take the accused to No. 4 CIRU Guard Room. I opened the vehicle door and ordered the accused inside, which he refused to do. I asked "Why?" and he stated after hesitation, I want to take a piss I stated in two minutes time he could take a piss in the guard-room. He still refused to get in the vehicle, so I accompanied him to the Lavatory of the Royal Oak Hotel. On going to the lavatory, we were accompanied by the two men and a third soldier whom the accused was drinking with. Upon coming from the lavatory I asked him to move along to the vehicle, but the other three soldiers interfering claimed I could not take the accused without taking them. I asked them not to interfere as it did not concern them. I asked them for their MBM I, and also placed them under close arrest. L/Cpl. Nixon attempted to escort Pte. Sturgeon. Upon doing so, he was taken hold of by the accused who stated: "Let go of him". L/Cpl. Nixon stated: "You let go of me", which he did. Seeing a disturbance would follow, he asked for the assistance of Cpl. Sharp of our Detachment, again taking hold of Pte. Sturgeon, he was struck on the right eye by the accused. Cpl. Sharpe then took hold of the accused, and, with my assistance

FIRST WITNESS (Cont'd)

A 2 (cont'd) took him to the vehicle still resisting. I was then attacked from the rear by an unknown soldier. In the disturbance which followed I had to take care of myself. Cpl. Sharp still had the accused. When I got here myself Cpl. Sharp summoned L/Cpl Nixon and myself to help him put the accused into the vehicle, as he was still resisting. Being a high vehicle it took considerable force to put the accused into it. Cpl Sharp said to turn him into the guard room and get a body receipt for him. Upon going to the guard room the accused still wished to be violent. I ordered him to behave himself and had to use force to keep him in the vehicle.

Q3 This resistance, was it in the form of kicking and struggling?
A3 Yes, it was sir.

CROSS-EXAMINATION BY THE DEFENCE

Q1 Did you have any trouble when in the lavatory?
A1 I stayed outside sir.

Q2 Were there any marks on the accused face when you first put him under arrest?
A2 I didn't recognize any.

Q3 Do you know where the accused received the blow over the right eye?
A3 No, I do not.

The witness states the three men who interfered were Ptes. Sturgeon, Masters and Kennedy. Charges were laid against Ptes. Sturgeon and Masters.

SECOND WITNESS For the Prosecution

M 17171 L/Cpl. Nixon, M.E., Canadian Provost Corps., on strength of No. 1 Detachment, 7 Provost Company, "D" Group, Cdn. Reinforcement Units, having been duly sworn states:

Q1 In full give the Court name, rank and number.
A1 I am M 17171 L/Cpl. Nixon, M.E. No. 1 Detachment, 7 Provost Company, Canadian Provost Corps, stationed at "D" Group.

Q2 Do you recognize the accused?
A2 Yes sir.

Q3 Pertaining to July 26th, in what connection.
A3 At 2235 hours, 26 July 1944, we were called to the Crown Hotel, Helmsley, by the proprietress, who complained that there were four Canadian Soldier's there who refused to leave. Upon entering the public house, L/Cpl Giebner and myself told the four soldiers to drink their beer and leave. Before leaving, the accused told the proprietress; I have just come back from Italy, fighting for people like you. Now I would sooner fight for Heinie himself. L/Cpl. Giebner then forced them out of the Pub. Two Canadian Officers came along and said they would take charge of the four soldiers, so we agreed to that. We went over to the Public House in Helmsley and then came to the front of the NAAFI. The accused then came up to L/Cpl. Giebner again. L/Cpl. Giebner asked him for his Pay Book, which he gave up. L/Cpl. Giebner took all his particulars and told him he was under close arrest. He asked a Cpl. who was driving a Canadian Vehicle if he would transport the accused to the Guard Room at #4 CIRU. He told the accused to get into the vehicle and the accused said: I have to go to the lavatory. So L/Cpl. Giebner took him to the lav. behind the Royal Oak

SECOND WITNESS (Cont'd)

Page 3
WDH.

Hotel. There were a number of Soldiers come up and said we could not take the accused unless we took them also, so I asked the man who made the statement for his Paybook. He refused, so I started shoving him up the stairs. One soldier grabbed me by the arm and said: you cant do that to that fellow. I then called Cpl. Sharp and came back to take my man in. I shoved him to one side and he struck me over the right eye. Cpl. Sharp then dealth with him and I took my man away. Cpl. Sharp called me back to assist him because the accused was resisting arrest, struggling. We put him into the vehicle by force and brought him up to No. 4 C.I.R.U. guard room. The resistance was by kicking and struggling.

CROSS-EXAMINATION BY THE DEFENCE

Q1 Did you overhear the remarks made by the accused in the Pub?
A1 Yes sir.

Q2 Were those the exact words?
A2 Not the exact words, but words to that effect.

Q3 How did Cpl Sharpe deal with the accused?
A3 Just like the accused, the accused struck Cpl Sharpe and he struck back.

Q4 Was Cpl Sharpe alone dealing with the accused.
A4 Yes sir.

The witness states that it was approximately 10 minutes from the time the accused left the Pub until the time he contacted them again.

THIRD WITNESS

For the Prosecution

K 52869 Cpl. Sharp, J., Canadian Provost Corps, on strength of No. 1 Detachment, 7 Provost Company, 2nd Group, Cdn Reinforcement Units, having been duly sworn, states.

Q1 Do you recognize the accused?
A1 Yes sir.

Q2 What in particular happened on the night of July 26, 1944?
A2 On the evening of 26 July, 1944, at approximately 2245 hours I was called to the assistance of L/Cpl Nixon who was on duty in the town of Holmsley. On my arrival at the side of the NAAFI I noticed a disturbance. I saw L/Cpl Nixon holding a soldier obviously under close arrest. At this time I saw the accused strike L/Cpl Nixon with his fist, which resulted in the man in custody being released. I immediately placed the accused under close arrest. He refused to come along with me and I was compelled to use necessary force to take him into custody. He resisted violently until he was put into a vehicle. I detailed L/Cpl Nixon and L/Cpl Giebner to take the accused to his Unit guard room.

Q3 This resistance, was it by kicking and struggling?
A3 Yes sir.

Page 4 evidence

THIRD WITNESS (Cont'd)

CROSS-EXAMINATION BY THE DEFENCE

Q1 Did the accused actually strike you with his fist?
A1 He pushed me sir.

Q2 Have you any idea where the accused got the blow over the right eye?
A2 The accused drew back his hand to strike me and it was necessary for me to strike him to prevent him from doing so.

Counsel for the Defence does not wish to make an opening address.

The Accused does not wish to give evidence or make a statement.

FIRST WITNESS C 5x16 Pte. Masters, K.F., North Shore Regiment, on strength of 4 C.I.R.U., having been duly sworn, states:
For the Defence

A1 Do you recognize accused?
Q1 Yes sir.

Q2 Will you tell us what happened on the night of July 26th?
A2 On the night of July 26 I was in the Crown Hotel in company with the accused. We bought 4 beers and just then the proprietress called time. We told her we would go as soon as we had finished our beers. A Sgt told us we must leave at once. Two Provost came in now and ordered us to leave. The accused came out with some urging by Provost. Accused was asked for Paybook. Two Officers came over and told Provost that they would take care of it. We went to NAAFI. The Provost again asked the accused for his Paybook and placed him under close arrest. The accused was allowed to go to latrine. We followed and asked a L/Cpl if we could take the accused back to Camp and to let the charge go by. We were told to scram. General fighting followed in which a Cpl of the Provost struck the accused. This was the last I saw of accused. He was taken away in a truck.

Q3 Did you see the accused strike any member of the Provost Corps?
A3 No sir.

CROSS-EXAMINATION BY THE PROSECUTION

Q1 Did you see the accused get in truck?
A1 No sir.

Q2 Did you see some one hit Cpl Sharpe?
A2 Yes sir.

SECOND WITNESS C 4332 Pte. Turgeon, L., Hastings & Prince Edward Regiment, on strength of 4 C.I.R.U., having been duly sworn, states:
For the Defence

Q1 Do you recognize the accused?
A1 Yes sir.

Q2 Were you with him the night of July 26, 1944?
A2 Yes sir.

Q3 Explain what happened that night of July 26th?
A3 In company with the accused we went into Crown Hotel and bought several beers. Time was soon called and we were told to leave. Two Sgts came in and told us to leave, then the provost came

Page 5 Index

SECOND WITNESS (Cont'd)

for the Defence

up and ordered us to leave. The accused came out with a push from the Provost. Outside more arguing continued with the Provost. Two Canadian Officer's came up and told Provost that they would look after it. The Provost went away towards the Canteen. Shortly afterwards we followed. Later I heard the accused saying to the Provost: "I want to go to the latrine". I followed the accused to the latrine. When the accused came from the latrine I saw another argument starting with the Provost Cpl. I saw the Cpl strike the accused and then grab him. A L/Cpl of the Provost hit the accused a rabbit punch. I left and the last I saw of the accused he was getting into a truck.

Q4 Would you say that any time before the accused was struck by the Cpl that he was resisting arrest?
A4 No sir.

Q5 Did you at any time see the accused strike any member of the Provost Corps?
A5 I did not sir.

CROSS-EXAMINATION BY THE PROSECUTION

Q1 Were you put under charge?
A1 I was put under close arrest next day.

Q2 Were you tried before the C.O. for the events of July 26th?
A2 Yes Sir.

Q3 Were you acquitted?
A3 I got 7 days pay.

THIRD WITNESS C 5492 Pte. Kennedy, M., Hastings & Prince Edward Regiment, on strength of 4 C.I.R.U., having been duly sworn, states:

For the Defence

Q1 Do you recoginzie accused?
A1 Yes sir.

Q2 Were you with him the night of July 26th?
A2 Yes sir.

Q3 In your own words describe the events of that night?
A3 On the night of July 26th I walked into the Crown Hotel and met the accused, Pte Masters and Pte Turgeon. It was just about closing time and we ordered two rounds of beer. The proprietress called time and we proceeded to drink our beer as fast as we could. Two Provost came in and ordered us out. I drank my beer and left. I went to the NAAFI later and saw the accused being taken to the lavatory by a Provost. A commotion started when they came out of lavatory. A full Cpl of the Provost came along. Pushing and shoving around started. Then the Provost Cpl hit the accused and the L/Cpl Provost used the Rabbit punch. After this the Provost escorted the accused up to the road. Another commotion started. The full Cpl of the Provost was struck. He in turn struck some young soldier.

Q4 Did you at any time see the accused strike any member of the Provost Corps?
A4 No sir.

CROSS-EXAMINATION BY THE PROSECUTION

Q1 You are a friend of the accused?
A1 Yes sir.

Q2 You were drinking with him that evening?
A2 Yes sir.

P.T.O.

Certified that R.P. 83 B has been complied with in taking the above evidence

C.W. Anderson Major
3rd Aug/44

Exhibit A
10134

M.F.D. 355
9236—5-41 (579-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C 5813	Pte	Rodrigues, C.F.	4 C.I.R. U.

1. The following is a fair and true summary of the entries in the ~~Service and Casualty~~ Regimental and Squadron Ledger ~~Conduct sheet~~ and Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment ~~or appointment~~
For	A.A. Sec 15 (1)	Nil times	A.A. Sec 15 (1) 0 times
For	A.A. Sec 40	Nil times	A.A. Sec 40 1 times
~~For~~		~~times~~	~~times~~
~~For~~		~~times~~	~~times~~

~~The particulars of any gallantry or distinguished conduct~~ or

~~There are no entries in the conduct sheets of the accused.~~

~~Note.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~

2. The accused has not been previously convicted

or

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act~~ A.A. Section 47 of the Army Act, and dispensations with trial under A.A. 75 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or

~~The accused at the present time is under sentence for~~ beginning on the ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 8 days in ~~Air Force~~ military custody, making a total of 8 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is ~~attestation paper~~ 24

6. The date of his ~~enrolment~~ attestation specified in his record of service is ~~attestation paper~~ 3 Apr 40

7. ~~The service which the accused is allowed to reckon towards discharge~~ is

8. ~~The accused is entitled to reckon~~ service for the purpose of determining his pension, etc.

9. The accused is ~~in possession of or entitled to~~ the ~~air force~~ military ~~or~~ ~~air force~~ military ~~or~~ is in possession of, or entitled to). State any ~~air force~~ military decoration or reward. 1939 - 1943 Star

10. ~~(If the prisoner is a warrant officer.) The accused before he was made a warrant officer last held Air Force~~ the regimental rank of

11. ~~(In the case of an officer.)~~ The accused holds in the Royal Canadian Air Force the rank of [illegible]
Permanent Force
unit
..... dated ....., and in his regiment (or corps), the rank of
..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....
Unit
Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3rd Aug 44 day of [illegible]

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

No C 3513 Name RODRIGUEZ, C Coln, Battery or Company "A" Corps HASTATER Date of enlistment 3 APR 40 QC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/136 (9438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature OC Company, etc | Character

Exhibit B. 1084

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				AASEC 96(1)					
On the Field	2 Nov 41	Pte		WOAS Broke Detention AWL from 2330 Hrs 2 Nov 41 to 1945 Hrs 19 Nov 41	Cpl Cornish	28 Days Detn	22 Nov 41	Lt-Col Graham	Sgt to Corp (Cpl 7 AAS 3 Nov 41) (Sgt 7 AAS 16 Dec 41)
On the Field	22 Dec 41	Pte		WOAS AWL from 0230 Hrs 22 Dec 41 to 0845 Hrs 23 Dec 41, AASEC 15(1)	Cpl Pearson Lt/Cpl Monderville	5 Days CB	22 Dec 41	Capt Why took	Corp to Sgt (Sgt 7 AAS 1 Jan 42)
On the Field	13 Aug 41	Pte		WOAS AWL from 1130 Hrs 13 Aug 41 to 0145 Hrs 19 Aug 41 AASEC 15(1)	Sgt Cameron Cpl Pearson	21 Days F.P.	19 Aug 41	Lt-Col Graham	Sgt to Corp (Cpl 7 AAS 1 Sep 41) (Sgt 7 AAS 16 Dec 41)
On the Field	4 Mar 42	Pte		WOAS AWL from 0800 Hrs 14 Mar 42 to 2200 Hrs 15 Mar 42 AASEC 15(1)	Lt Sgt Chisholm	5 Days F.P.	18 Mar 42	Maj Sotcliffe	Forf 3 Days Pay (Pay 1 Apr 42)

On completion of 2 yrs Service this Soldiers Pregnancy sheet was destroyed 3 Apr 42 and the above entries being transferred in accordance with Ro. 11 CASF. (Overseas)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field		Pte		WOAS Charged With Assault to a Civilian Causing Bodily Harm	Cpl. Vanalstine	28 days F.P.		Lt. Col. Graham	28 days pay FR 9 149 (1) (b)
In the Field	12 MAY 42	Pte		WOAS, AWL from 2300 Hrs 12 MAY 42 to 1830 Hrs 13 MAY 42 - AA SEC 15 (1)	Cpl MURRAY	3 days C.B.	14 MAY 42	CAPT ALLISON	FORF 1 day pay FR 9 149 (1) (a)
In the Field	2 JUL 42	Pte		WOAS AWL from 0800 Hrs 2 JUL 42 to 1200 Hrs 12 JUL 42 AA SEC 15 (1)	Cpl. Hollingsworth Cpl Mounte nay	28 days F.P.	13 JUL 42	Lt-Col GRAHAM	FORF 11 days PAY FR 9 149 (1) (a)
In the Field	9 AUG 42	Pte		WOAS AWL from 2300 Hrs 9 AUG 42 to 2300 Hrs 12 AUG 42 AA SEC 15 (1)	Cpl. POSTER L/SGT PEARSON	28 DAYS F.P.	19 AUG 42	MAJ KENNEDY	FORF 3 days pay under FR 9 149 (1) (a)
In the Field	11 DEC 42	Pte		WOAS AWL from 2300 Hrs 11 DEC 42 to 2315 Hrs 28 DEC 42 AA SEC 15 (1)		28 DAYS F.P.	4 JAN 43	Lt. Col. SUTCLIFFE	FORF 18 DAYS PAY FR 9 149 (1) (a)

Certified True Copy
A. J. Gaulter Lt.
Officer Having Custody of Regimented Books
3 Sep 44

1034.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of C 5513 Private Cecil Frank RODRIGUEZ, Hastings and Prince Edward Regiment, on the strength of No 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS

For the Prosecution

B 61927 L/Cpl Giebner, G.F., No 1 Detachment, 7 Provost Company, Canadian Provost Corps, having been duly sworn, states:

I am B 61927 L/Cpl Giebner, G.F., of No 1 Detachment, 7 Prov Coy, Canadian Provost Corps, stationed at H.Q., "D" Group, C.R.U. While on patrol in Helmsley on 26 Jul 44 at approximately 2235 hrs with L/Cpl Nixon, we were requested by the proprietress of the Crown Hotel to order three Canadian soldiers to leave, as it was past closing time. The accused, whom I now recognise, was one of the soldiers. We asked them to drink up their beer and leave. The accused said he had just come back from Italy and considering this we wished to be lenient. After much persuasion and delay they drank their beer. As we were going out the accused said to the proprietress "I have just come back from Italy fighting for the likes of you but after tonight I would rather fight for Heinie", or words to that effect. After leaving the Hotel two Canadian Officers came over and said they knew the men and would take charge of them. L/Cpl Nixon and I then walked across the square to the lavatory behind the Royal Oak Hotel. Later, in front of the N.A.A.F.I., I was approached by the accused. He still wished to argue which I did not want to do, and ordered him to produce his pay book which he did. I took his particulars and placed him in close arrest. I detailed a vehicle and ordered the accused into it but he refused. When I asked for the reason he said he wanted to go to the lavatory. I told him he would be at the Unit Guard Room in a few minutes and he could wait. He still refused to get into the vehicle so I escorted him to the lavatory behind the Royal Oak Hotel. I was followed by the other two Canadian soldiers who had been with the accused in the Crown Hotel earlier. On leaving the lavatory I was interfered in my duties by the other two soldiers. They said I could not take him unless I took them too. I warned them not to interfere but they persisted. I asked them for their pay books which they refused to produce. I then placed them in close arrest. While L/Cpl Nixon attempted to hold one of these soldiers, he was grabbed by the accused who said "Let him go". L/Cpl Nixon told him to let go and went for the assistance of Cpl Sharp and when he returned took hold of the same soldier. On doing so he was struck on the eye by the accused. Cpl Sharp took charge of the accused. I assisted in putting the accused into a vehicle, as he still refused to get in himself. During the journey to the guard room the accused still struggled and I had to use force to retain him in the vehicle.

G F Giebner

(B 61927 L/Cpl Giebner, G.F.)

Cross-examined by the accused.

Q.1. Did you see anyone strike me?
A.1. No.

SECOND WITNESS

For the Prosecution

M 17171 L/Cpl Nixon, M.E., No 1 Detachment, 7 Provost Company, Canadian Provost Corps, having been duly sworn, states:

I am M 17171 L/Cpl Nixon, M.E., 1 Det, 7 Prov Coy, Canadian Provost Corps, stationed at H.Q., "D" Group, C.M.U. At approximately 2235 hrs 26 Jul 44 L/Cpl Weibner and myself were called to the Crown Hotel, Helmsley, by the proprietress, who complained that there were four Canadian Soldiers who would not leave the hotel. We asked them to drink up their beer and leave but they seemed to take their time but left with us. On the way out the accused, whom I now recognize, asked to speak to the proprietress. He said to her "I have just come back from Italy fighting for people like you but now I would sooner fight for Heinie himself", or words to that effect. I told him never to make a statement like that again. As we came out of the Hotel two Canadian Officers came up and said they would take charge of the soldiers and we agreed. L/Cpl Giebner and I went across the Square to the lavatory. On coming back, in front of the N.A.A.F.I., the accused came up to us, and L/Cpl Giebner asked to see his pay book, as he had not gone along with the officers previously referred to. The accused produced his pay book without any hesitation. The accused was then ordered into a vehicle to be conveyed to his Unit Guard Room, but he said he first wanted to go to the lavatory. There were quite a number of Canadian soldiers about and one of them said we could not take the accused to the Guard Room. I asked the soldier who said this for his pay book and he refused. As I tried to take him to the vehicle I was grabbed by the arm and I called to Cpl Sharp, No 1 Det, 7 Prov Coy, for assistance, and went back to take my man in. At this time the accused grabbed me by the arm and I shoved him to one side. He then struck me over the right eye and Cpl Sharp dealt with him from then on. The accused was later placed in a vehicle by force and taken to the Unit Guard Room of 4 C.I.R.U.

M E Nixon
(M 17171 L/Cpl Nixon, M.E.)

Cross-examined by the accused.

Q.2. Did you see anyone strike me?
A.2. No, I did not see anyone strike you.

THIRD WITNESS

For the Prosecution

K 52869 A/Cpl Sharp, J No 1 Detachment, 7 Provost Company, Canadian Provost Corps, having been duly sworn, states:

I am K 52869 A/Cpl Sharp, J., of 1 Det, 7 Prov Coy, Canadian Provost Corps, stationed at H.Q., "D" Group, C.M.U. On 26 Jul 44 at approximately 2245 hrs I visited the Helmsley Provost patrol. I was called to assist L/Cpl Nixon. I went to the N.A.A.F.I. building in the Market Square where I saw a large number of soldiers gathered. L/Cpl Nixon was holding a soldier who was obviously in close arrest. While he held this soldier, the accused, whom I now recognize, struck L/Cpl Nixon with his fist. I immediately placed the accused in close arrest. He resisted my efforts to hold him and it was necessary to use force to take him into custody. He said "I'll get you yet, you big bastard"

THIRD WITNESS

For the Prosecution

or words to that effect. He was put into a vehicle and escorted to his Unit Guard Room.

James S Sharp
(K 9286 A/Cpl Sharp, J.)

Cross-examined by the accused.

Q.3. Did you see me strike L/Cpl Nixon first?
A.3. I don't know if it was the first blow struck but I did see the accused strike L/Cpl Nixon. It was the only blow I saw struck.

FIRST WITNESS

For the Defence

C 5516 Pte Masters, K.F., North Shore (NB) Regiment, on the strength of No 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am C 5516 Pte Masters, K.F., of "A" Wing, 4 Cdn Inf Rft Unit. On 26 Jul 44 I was in the Crown Hotel with the accused whom I now recognize, and the [illegible] to leave. We had just bought two beers and we told [illegible] we would go as soon as we had finished our beers. A Sgt whom I did not recognize said we had to get out right away, and we told him we would leave as soon as we had finished our beer. Two Provosts came in and ordered us out. When we got outside one of the Provosts asked the accused for his pay book. The accused produced his pay book without any hesitation. The provosts took the accused to the lavatory behind the Royal Oak Hotel and Pte Turgeon and I went down into the yard by the lavatory and asked the Provosts to let him go. They told us to go away. I then saw a Cpl of the Provosts whom I now know to be A/Cpl Sharp of No 1 Det 7 Prov Coy, Cdn Prov Corps, go down into the yard and I saw Cpl Sharp strike the accused with his fist and cut him over the eye. There did not appear to be much of an argument going on before the blow was struck. The accused started to hit back. The three Provosts then brought the accused up to the street and a number of other people gathered around and I saw someone strike Cpl Sharp. I did not recognize the person who struck him. Cpl Sharp did not look around for the man who had struck him but started hitting another soldier and knocked him down several times. I and another soldier went over and picked him up, and told the Provosts to leave him alone. The Provosts went away with the accused and put him in a truck. At no time did they ask me to produce my identification but the next afternoon I was sitting in my hut and a L/Cpl of the Provosts whom I now know to be L/Cpl Wiebner of 1 Det 7 Prov Coy, Cdn Prov Corps, asked me for my pay book and told me I was under close arrest and to go outside. He also told another soldier in the hut to go outside. After we got outside the other soldier asked the Provost what the charge was and the Provosts said "You should know - you were one of the men in the pub last night". The other man denied this, but said he had seen the incident. The Provost said to me "Isn't this the fellow who was with you in the pub"? and I told him "No". The Provost then asked me if I was one of the men in the pub and I told him I was.

K.F. Masters
(C 5516 Pte Masters, K.F.)

The accused declines to cross-examine this witness.

COPY

SECOND WITNESS

For the Defence

C 4332 Pte Turgeon, L., Hastings and Prince Edward Regiment, on the strength of No 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am C 4332 Pte Turgeon, L., of "A" Wing, 4 Cdn Inf Rft Unit. On 26 Jul 44 at approximately 2230 hrs I was with the accused and Pte Masters in the Crown Hotel and the Provosts came in and asked us to leave. After we had left two officers came along and told the Provosts to go away which they did. I went with the accused and Masters towards the NAAFI and one of the Provosts said something to the accused, who said he wanted to go to the lavatory. He went down to the lavatory in the yard behind behind the Royal Oak Hotel followed by a L/Cpl Provost whom I now know to be L/Cpl Glebner of 1 Det 7 Prov Coy, Cdn Prov Corps. I saw a Cpl of the Provosts whom I now know to be Cpl Sharp of the No 1 Det 7 Prov Coy, Cdn Prov Corps, go down into the yard and just as the accused came out of the lavatory Cpl Sharp struck the accused. I was standing about 15 feet away on the ramp leading down into the yard. Cpl Sharp held on to the accused and L/Cpl Glebner struck the accused several times on the back of the neck. I came back up to the Square and saw the Provosts put the accused into a truck.

L. Turgeon.

(C 4332 Pte Turgeon, L.)

The accused declines to cross-examine this witness.

The accused was cautioned as follows: Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of FOUR pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

(F.A.H. Gallop) Capt,
Officer Detailed to Take Summary.

IN THE FIELD
29 JULY 1944

ADDITIONAL SUMMARY OF EVIDENCE

Additional Summary of Evidence in the Case of C 5513 Private Cecil Frank RODRIQUEZ, Hastings and Prince Edward Regiment, on the strength of No 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the evidence is taken on oath.

THIRD WITNESS for the Defence. C 5492 Private Kennedy, M. Hastings and Prince Edward Regiment, on strength 4 Cdn ~~Rx~~ Inf Rft Unit having been duly sworn, states:

I am C 5492 Pte Kennedy M. On 26 July 44 at approx 2240 hrs. I was in the town of Helmsley, near the NAAFI building, when I saw the accused, whom I now recognize, go down into the yard behind the Royal Oak Hotel, accompanied by a L/Cpl of the Canadian Provost Corps. Several other Canadian soldiers followedthem down. Shortly after I saw a Corporal of the Cdn Provost Corps, whom I now know to be A/Cpl Sharp, go down into the yard, there was an argument, and I saw Cpl Sharp strike the accused. Cpl Sharp then held the accused and the L/Cpl, whom I now know to be L/Cpl Geibner, struck the accused several times on the neck. Both the Provosts then brought the accused up out of the yard on the street, and there was a further commotion. I saw Cpl Sharp strike another soldier, and I went to his assistance, as he did not appear to have taken any part in the affair up to that time.

M. Kennedy

(C 5492 Pte Kennedy M).

The accused declines to cross-examine this witness.

The accused was cautioned as follows: Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing additional Summary of Evidence, consisting of ONE page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c)(d)(e)(~~xf~~) and (g) have been complied with.

IN THE FIELD, 31 Jul 44.

(F.A.H. Gallop) Capt.
Officer detailed to take Summary.

1084

LIST OF WITNESSES

In the Case of C 5513 Pte Rodriguez, C.F., Hast & P.E.R., 4 C.I.R.U.

FOR THE PROSECUTION

1. B 61927 L/Cpl Giebner, G.F., 1 Detachment, 7 Provost Company, Canadian Provost Corps.

2. M 17171 L/Cpl Nixon, M.E., 1 Detachment, 7 Provost Company, Canadian Provost Corps.

3. K 52869 A/Cpl Sharp, J., 1 Detachment, 7 Provost Company, Canadian Provost Corps.

FOR THE DEFENCE

1. C 5513 Pte Masters, F.P., 4 Cdn Inf Rft Unit.

2. C 4332 Pte Furgeson, L., 4 Cdn Inf Rft Unit.

LIST OF EXHIBITS

In the Case of C 5513 Pte Rodriguez, C.F., Hast & P.E.R., 4 C.I.R.U.

N I L .

30 Jul 44.

This is to certify that I have received, free of charge, the following papers in connection with my forthcoming trial by F.G.C.M.

1 Copy of Charge Sheet
1 Copy of Summary of Evidence
1 List of Witnesses
1 List of Exhibits.

C F Rodriguez

(C 5513 Pte Rodriguez, C.F.)

WDH.

#4 CANADIAN INFANTRY REINFORCEMENT UNIT, C.A.(O). 4C/24

.....29.Jul.....1944...

I, No....C.6513..Pte..Rodriguez, C.F....., wish to have
(Rank) (Name)
an Officer defend me at my forthcoming trial by Court Martial.

I desire the services of.....Capt. P.H. Knobbs.....
if he is available.

(Sgd.) C F Rodriguez

Court.

The court convened 2nd Aug/44 and adjourned till 0930 hrs 3rd Aug/44. all members were present.

Adjournment necessitated so as to allow time to secure witnesses

C.O. Anderson Maj

3rd Aug/44

The accused had no objection to the fact that the Prosecutor was a lawyer.

C.O. Anderson Maj

3rd Aug/44

1084.

CHARGE SHEET

The accused, C 5513 Private Cecil Frank RODRIGUEZ, Hastings and Prince Edward Regiment, on the strength of No 4 Canadian Infantry Reinforcement Unit, a Soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE

Section 10(3) Army Act

WHILE ON ACTIVE SERVICE, Resisting an escort whose duty it was to have him in charge,

in that he,

In the Field, at approximately 2245 hours 26 July 1944 in Helmsley, while under escort of H 17171 L/Cpl Mixon, M.E., and M 61927 L/Cpl Giebner, G.F., resisted the said escorts by kicking and struggling.

J. Gavan Power Col
(J. Gavan Power) Colonel,
Commanding Officer,
4 Cdn Inf Rft Unit.

IN THE FIELD
29 JULY 1944

To be tried by Field General Court Martial.

(J.R. Stewart Lough) Brigadier
Commander
"D" Group, Cdn. Rft. Units
Convening Officer

In the Field
1 Aug 44

III-45-

SGT ROE F.H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-33123 Sgt. ROE, F. H. RCCS, Tp. Att'd 1 Cdn Armd Regt (RCD)

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NCB 1 (1)	GUILTY	GUILTY	
2nd	NCB 69 (1)	GUILTY	GUILTY	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1) N.A.

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be severely reprimanded and to forfeit all ordinary pay for a period of seven days.

(Sgd) [signature] Capt. 29 Mar 44 (Sgd) [signature] Major President (RP 45, 50.)

Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1) £10

(1. AA 57A. Delete if not used.)

(Sgd) [signature] Maj

Date 28 Aug 44. Commanding RCRA 1 Cdn Corps

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B-33123 Sgt ROE F H RCCS Tp Att'd to 1 Cdn Armd C Regt (RCD)	29 Mar 44	Guy Simard, Maj for & in behalf of K D Landell) Lt Col Comd 1 Cdn Armd C Regt (RCD)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 ... 11345

CPA96 (To form of AFA2) A.G.P.S. R/1608 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig. D.C. L. Cdn Comd 1 Cdn Corps dated 25 Mar 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-33123	Sgt	Franklin H.	ROE	RCCS Tp att'd 1 Cdn Armd Corps Regt (RCD)

PROCEEDINGS REVIEWED AT H.Q. 1 CDN CORPS
3 APR 1944
REVIEWING OFFICER, JAG (RAINNIE) CANADA

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date(s)) 27 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0910 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans .....(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(5). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Brig.	G. P. Kitching, 1 Cdn Corps Tp. Work RCOC
Member	Capt.	R.E. Newcombe, 14 Cdn Fd Coy RCE.
Member	Capt.	G.F. Nemoth, 13 Cdn Fd Coy RCE.
Judge-Advocate	Capt.	A.H.J. Gerrie, RCA. HQ, 1 Cdn Corps.
Prosecutor	Lieut.	J.L.R. Waddell, 1 Cdn Armd Car Regt. RCD.
Defending Offr	Capt.	C. Kennedy, 1 Cdn Corps Sigs. RCCS.

Questions by President: Is the Prosecutor a lawyer? Ans. No Is the Defending Offr a lawyer? Ans. No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea

(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 5

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*b*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused : Do you wish to make a statement ? Ans .....[5]
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP ,3) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ..... , initialled and read aloud by the President.[1]
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....[1]
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.[1]
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.[1]
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use record alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath but is not so made does not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. RP 145. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?[1]
Ans .....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.[3]
(1. MFB 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 555. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?[1] Ans .....[2]
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would offset the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(1. When several accused tried separately see RP 30(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

B 33123 Sergeant F H Roe RCOS Troop attached 1 Cdn Armd C Regt (RCD), C M F is charged with:

FIRST CHARGE: A A Sec 19

WHEN ON ACTIVE SERVICE DRUNKENNESS

in that he

in the field, at approximately 2230 hrs, 15 Mar 44, was drunk

SECOND CHARGE: Sec 40 A A

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, at approximately 2230 hrs, 15 Mar 44, was creating a disturbance in the Unit lines.

IN THE FIELD

15 Mar 44

(K D Landell) Lt Col
Comd
1 Cdn Armd C Regt (RCD)

To be tried by Field General Court Martial.

(E C Plow) Brigadier
CCRA 1 Cdn Corps.

In the Field
25 Mar 44.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1097 (2803)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-33123	Sergeant		F H	ROZ	RCCS Tp att 1 Cdn Armd Car Regt (RCD)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) 25 Mar 44 endorsed by me, ~~(or by an offr of my staff for me),~~ "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) J J Legate (Must be named. RP 106.) 1 Cdn Corps Tps Wkshop RCOC (Unit.)

MEMBERS.

Capt to be detailed by OC 14 Cdn Fd Coy RCE

Capt or Lieut to be detailed by OC 12 Cdn Fd Coy RCE (Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

Captain to be detailed by OC 1 Cdn Armd C Regt (RCD) (Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

Captain (Rank.) A P L DesRosiers (Must be named, if any. RP 106.) ADJA 1 Cdn Corps (Unit.)

On Active Service in the Fd

in ITALY (Country.) (E C Plow) Brigadier (Signed personally. RP 105 fn 2.) (Rank.)

Date 25 Mar 44 Commanding 1 Cdn Corps Artillery Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Ca.) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:
First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.
Cross exam: He did not say he was sick. (or, None.)
Re-exam: None.
Exam by Court: He said—" I've had enough parades ".
RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:
(i) Opening address by Defending Offr. (*RP* 86(C), 87(C), 92(C) (*D*).)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 80(B)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)
(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)
(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(E), *KR Can* 563(a).)
(vii) Summing up by J.A, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written forms MUST BE INITIALLED by President or J.A, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:
(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can* 557.)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*ix*).)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(C), *MML p* 759.)

4. The President or J.A, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

This is to certify that I have today examined B-33123 Sgt Roe F H, RCCS Tp, Attd to 1 Cdn Armd C Regt (RCD) and find him free from infectious disease and FIT/~~UNFIT~~ to undergo trial by Field General Court Martial.

In the field
27 Mar 44

H. G. Metcalfe Capt
W O 1 Cdn Armd C Regt (RCD)

Notes of proceedings in FECM
B. 33123 Sgt Franklin H. Ric RCCS Tp. att. 1 Can Armd Car Regt (R.C.D.)

E-1 - Evidence as to character

1st Witness - The accused, Sgt F. H. Roe having been duly sworn, states:

Prior to Christmas 1943 I had no trouble at home. On December 43 I received a letter from my wife stating she had financial troubles. Subsequent letters stated that my grandmother whom I support and who is quite old was taken sick with pneumonia, this winter. Here were doctor's bills as well as trained nurses to pay. The expenses were very high - over $100. a month. My wife and very worried as it made me spend more money than I earn.

My present job carries high responsibilities for a Sgt.

No cross-examination by Prosecutor.

R.P. 83 (B) complied with.

2nd Witness - K-34828, L/Sgt A.R. Button, RCCS Tp. att. 1 Can Armd Car Regt (R.C.D.) sworn, states:

Acc. came to this unit 6 months ago. I was his corporal and we worked together. This job carries high responsibilities. It requires looking after 30 odd men spread through the whole regiment.

Acc. always conscientious to see that his job done right.

He never had any trouble of any kind and is not known as a drinking man. This present occurrence is completely out of the ordinary. I know he has been quite worried lately

No cross-examination by Prosecutor

R.P. 83 (B) complied with.

Defending Officer offers written statements by capt W. J. Stevenson, T.M.A. Sigs. 1 Cdn Corps, Capt. F.J. McCauley, S.W.O. Sigs 1 Cdn Corps, and Lt. Col. A.P. Birnie, OC Sigs, 5 Cdn Armd Div. which are accepted in evidence and marked Exhibits "X", "Y", "Z", respectively.

Statement in mitigation of punishment by defending officer.

Acc. pleaded guilty to 2 charges. Refers to M.M.L. Ch. III paras 47 + 48. Submits that acc. was drunk & otherwise would not have acted in such manner.

By his actions, acc. did not cause undue hardship to any

Acc. did not resist arrest and did not ~~resist~~ make any noise when taken into custody.

Acc. has very good character and high technical capabilities and his good record in the past should be taken into consideration.

Difficulties at home and steps are being taken to assist him. Arrangements can also and will be made for a change of employment.

It is respectfully submitted that a lement sentence will not only avoid augmenting troubles at home, but keep a valuable N.C.O. for the Army.

26 Mar 44

Character Reference
B33123 Sgt Roe F.H.

This is to certify that Sgt Roe was in my Section and under my command for a considerable time. He was a most skilled workman and an asset to the Section at all times. His character and behaviour were of the highest order.

W. J. Stevenson Capt.
T.M.O.
Sigs 1 Can Corps.

Exhibit "X"
AD.

1 "A" Main Wireless Section,
Sigs, 1 Cdn. Corps.
26 Mar 44.

Character Reference.
B33123 Sgt. Roe F.H.

1. The m/n N.C.O. was under my direct command when I was carrying out the duties as Technical Maintenance Officer, Sigs. 1 Cdn. Corps during the period Dec. 42 until May 43. At that time serjeant Roe was a signalman electrician signals or instrument mechanic.

2. During my command of this section Sigmn. Roe's ability both as a tradesman and a leader came to my notice and I instigated his initial promotion from signalman to acting corporal. He proved his ability both as a tradesman and a N.C.O. and his confirmation was made three months after his initial promotion. During my six months command of this section, it was never necessary to check this N.C.O. for his conduct as an N.C.O. or as a supervisor in his trade. His work was always of the highest order.

3. In due course he was promoted to acting lance serjeant and continued to carry out his duties in an excellent manner so much so that when a section serjeant's vacancy occured in the Armoured Car Signal Troop, he was recommended for it and obtained this further promotion.

4. In my opinion this N.C.O. was an excellent soldier on parade as well as off parade and was one who could carry his liquor very well, though he did not drink heavily in my estimation, nor did he ever let his drinking interfere with his work which normally consisted of a get together of the section that part which was off duty, at the local pub on pay nights, where singing and a few drinks helped to break the monotony that most of us went through while waiting in England.

5. If ever I was to take up the duties as unit Technical Maintenance Officer, I would endeavour to acquire the services of this N.C.O. knowing that I had an N.C.O. whom I could depend on to do his work to the best of his ability and who would carry out his duties as an N.C.O. similarly.

(P.J. McCauley) Capt.
Senior Wireless Officer,
Sigs, 1 Cdn. Corps.

Exhibit "Y" 88.

To whom it may concern:-

This is to certify that B33123 Sgt Roe FH served under my comd for approx 16 mos. I found him an excellent tradesman and a very good NCO. During the above period, on no occassion did Roe cause any troubles.

A. P. Dunnel
Lt Col

26 Mar 44. OC Sigs 5 Cdn Armd Div.

Exhibit "Z" AB.

SUMMARY OF EVIDENCE "A" #2.

In the case of

B 28185 Sgt Roe W H, RCCS Troop Attached 1 Cdn Armd C Regt (RCD), Canadian Army Overseas, C E F.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS for the Prosecution

I B4619 Sgt Zaverganietz W, 1 Cdn Armd C Regt (RCD), CEF, having been duly sworn, states:

" At approximately 2330 hrs 18 Mar 44, while lying in my pup-tent, I heard some noise in the direction of the Signals quarters, such as cans being knocked around and someone talking in a very loud voice. A few minutes later I heard someone approaching my tent and calling my name. The voice sounded heavily under the influence of liquor, it was Sgt Roe. I at once started dressing to investigate what was wrong. When I got into the yard [redacted] Hearing Cpl Wilson's story I called two Sgts to assist me, located Sgt Roe and placed him under close arrest. His breathe smelt heavily of alchol, his voice was thick and he had difficulty in walking and getting up to his quarters even with the help of the two Sgts."

Cross-examined by the accused.

Q. When you found me was I creating a disturbance?

A. When I found you, you were either talking or arguing with one of your men. I was not able to determine whether you were talking or arguing as a motor was running.

Signature of Witness
Prosecution

SECOND WITNESS for the Prosecution

B 52002 Cpl Wilson G P, RCCS Troop att 1 Cdn Armd Regt (RCD), C E F, having been duly sworn, states:

"At approximately 2100 hrs, 18 Mar 44, the accused Sgt Roe came into the Signals quarters in a very disorderly manner. It was quite apparent that he had been drinking heavily. His voice was thick and smelt of alcohol and he was staggering. He seemed to want to pick an argument with someone and Signm Lane and myself were present so he chose us, chiefly Signm Lane. It was only when that we decided that he was drunk and was not responsible for his statements. We proceeded to humour him and tried several times to put him to bed all to no avail. After some time he seemed to get worse and directed his arguments and threats toward Signm Lane. Realizing his condition we did not attempt to antagonize him except when after challenging Signm Lane he insisted that he fight saying, "I'll knock hell out of you". He was however disuaded from this fairly easy. Further attempts were made to put him to bed. He then began giving a number of orders such as ordering Signm Lane to bed, the time being 2130 hrs precisely. I intervened and he threatened to put Signm Lane under close arrest. He left the quarters saying," I'll get Zaverganietz to place Lane in the Guard Room". After an elapse of about five m minutes Lane and myself went out after Sgt Roe with two ideas in mind. Firstly to make an attempt to find him

SECOND WITNESS for the Prosecution (cont'd)

and br me him back and put him to bed. Secondly if we could not find him, my intentions were to see Sgt Zaverganietz and to tell him not to put Lane under close arrest and not to take any unnecessary action, that Sgt Roe was drunk and not responsible for any orders towards Lane. We could not find Sgt Roe but could hear him calling "Zavie". I then went alone to Sgt Zaverganietz's tent and explained the situation about Lane and that Sgt Roe was out of control. Sgt Roe during the hours of 2100 hrs and 2230 hrs was not responsible for anything he said or did."

Cross-examined by the accused.

Q. On any occasion have I antagonized any of my men or created a disturbance while I was sober?

A. No.

Signature - and Witness
Prosecution

THIRD WITNESS for the Prosecution

L 22957 Sigmn Lane E, MCCS Troop att 1 Cdn Armd C Regt (RCD), CMF, having been duly sworn, states:

"At approximately 2100 hrs on 15 Mar 44, Sgt Roe came into the Sigs quarters. He was argumentive, disagreeable and had been drinking as he smelt of alcohol, his voice was quite thick and he was staggering about. Usually he comes in good spirits but on this night he decided to pick an argument with Cpl Wilson and myself. He ended up by picking it mostly with me. He made threats saying, "I'll knock hell out of you" or words to that effect. Cpl Wilson and the boys tried to prevent this. He never touched me. He gave me an order to go to bed saying it was a direct order. The time was 2130 hrs. As I did not go he said that he would get the Provost Sgt and have me placed under close arrest, then he went out. A few minutes later Cpl Wilson and I decided to go out, find him and bring him back before he got into trouble elsewhere. Cpl Wilson and I could not find him. Cpl Wilson decided to go to Sgt Zaverganietz and tell him that Sgt Roe was wandering around hollering and looking for him."

Cross-examined by the accused.

Q. You have been with the troop since I've been here?

A. Yes.

Q. During my stay here with the troop have you at any time when I was sober witnessed my creating a disturbance in the lines? Used profanity or gave unnecessary orders to the men or any other one of the things mentioned in your evidence.

A. No.

THIRD WITNESS for the Prosecution (cont'd)

Q. Would you say that these actions of mine were due to drink?

A. Yes.

E. Lane
Signature 3rd Witness
Prosecution

FOURTH WITNESS for the Prosecution

R 1475 Sgt Martin J, 1 Cdn Armd C Regt (RCD), C M F, having been duly sworn, states:

"At approximately 2340 hrs on the night of 15 Mar 44, Sgt Zaverganietz came into the Sergeants' quarters to get two sergeants to place Sgt Roe under close arrest. Sgt Brett and myself accompanied him and found Sgt Roe in the Signals' battery charging truck. Sgt Zaverganietz placed Sgt Roe under arrest and the accused was escorted to his quarters by Sgt Brett and myself. The accused at the time was considerably under the influence of liquor. He staggered as he walked but came quietly with the escort."

Cross-examined by the accused.

Q. Sgt Martin, were you aware of a disturbance in camp prior to the time that Sgt Zaverganietz called for you?

A. No, I was not. I was in a building and could not have heard a disturbance if there were one.

Q. Was I creating a disturbance when you first saw me?

A. As far as I can say you were creating no disturbance but standing quietly.

Q. Did I resist arrest at anytime during the escort?

A. I have stated in my evidence that you came quietly under arrest.

J C Martin
Signature 4th Witness
Prosecution

FIFTH WITNESS for the Prosecution

R 1490 Sgt Brett, 1 Cdn Armd C Regt (RCD), C M F, having been duly sworn, states:

"At approximately 2 40 hrs 16 Mar 44 Sgt Zaver ganietz entered the Sergeants' mess to call two sergeants in order to have Sgt Roe placed under arrest. Sgt Martin and myself accompanied Sgt Zaverganietz to the Signals' battery charging truck. Sgt Zaverganietz placed Sgt Roe under arrest and we escorted the accused to his quarters. The accused at the time was under the influence of alchol but did not attempt to resist the escort. He staggered as he walked and had some difficulty negotiating the stairs to his quarters."

FIFTH WITNESS for the Prosecution (Sworn)

Cross-examined by the accused.

Q. Were you aware of any disturbance in camp prior to the time Sgt Havergnietz called for you?

A. No, I was not. I was in a building and if there was a disturbance I could not hear it.

Q. Was I creating a disturbance when you first saw me?

A. No, you were standing quietly.

Q. Did I resist arrest at any time during the escort?

A. I have stated in my evidence that you came quietly when placed under arrest.

P B Britt
Signature - 5th Witness
Prosecution

The accused was cautioned as follows: "Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The accused elects to give evidence on oath.

The accused, No H 58185 Sgt Roe F H
of H Q C S Troop att 1 Cdn Armd C Regt (RCD), C M F
a soldier of the C M F, states: On the night of 18 Mar 44, I do not deny that I was under the influence of liquor. With the evidence already given and since I don't remember the disturbance that went on between 2100 hrs and the following morning, it is evident that the disturbance I was supposed to have caused was entirely due to the state of my intoxication.

Frank H Roe
Signature of accused

I certify that the foregoing Summary of Evidence consisting of 4 pages was taken down by me in the presence of the accused, and that Rules of Procedure 4(c),(d),(e),(f) and (g) have been complied with.

J C R Waddell Lt
(J C R Waddell) Lt
1 Cdn Armd C Regt (RCD)
C M F

IN THE FIELD

19 Mar 44

No. B 5 12 Name ROE F H Sqn., Battery, or Company S Coy Corps RCOS Date of enlistment 8 Sep 39 G.C. Badges 1 Service or Proficiency Pay

M.F.M. 5 (A.F.B. 122) 11554—7-41 (112-20) H.O. 1772-39-1634

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Nil Sheet No. 1 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Certified no entries previous six months 2 Mar 40									
Field	6 Jan 44	Sgt		1st Charge A A Sec 11 WOAS neglecting to obey Regt standing orders in that he at about 1928 hrs, 6 Jan 44, was found in an "Out of Bounds" cafe namely Cafe St Lucia 2nd Charge - A A Sec 40 Conduct to the prejudice etc in that he about 1928 hrs, 6 Jan 44 created a disturbance in an "Out of Bounds" cafe.		(See reverse side)			

(F.T.O.)

"B" AD

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 58135	Sgt	ROE F H	RCCS Tp Att 1 Cdn Armd C Regt (RCD)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this statement must be compiled from the last conduct sheet.

The conduct sheet(s) mentioned should be produced in court with the statement and proved in the proceedings.

† See para. 677, K.R., 1940.

‡ The conduct sheets must be the originals or copies of entries in the conduct sheets, produced in court, being given to the court strictly adhere to each entry, and to any recorded special acts of gallantry or distinguished conduct.

Corrections.—If the charge is for drunkenness, the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A A Sec 11	one (1) times	times.
For A A Sec 40	two (2) times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct JAKB

or

Nil entries in the conduct sheets of the accused JAKB

2. The accused has not been previously convicted, *or*

Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act and dismissals with ignominy from the service in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* the accused at the present time is under sentence of [illegible] dated the [illegible] day of [illegible] JAKB

4. The accused has been in confinement, awaiting trial on the present charges, for [illegible] days, and [illegible] days in military custody, making a total of [illegible] days, of which [illegible] days were spent in hospital. JAKB

5. The present age of the accused according to his record of service / attestation paper is 31 yrs

6. The date of his attestation specified in his record of service / attestation paper is 8 Sep 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 5 mos

8. The accused is entitled to deferred pay or gratuity in respect of [illegible] service.

9. The accused is entitled to reckon [illegible] service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)) CVSM and Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of [illegible]

12. (*In the case of an officer.*) The accused holds in the army the rank of [illegible] dated [illegible] and in his regiment (*or* corps *or* department) the rank of [illegible] dated [illegible]

(71810) W1 15832/144 125,000 6/41 A.&E.W.,Ltd. Gp.498

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B 38185 Rank Sgt Name ROE F H of RCCS Tp Att 1 Cdn Armd C Rgt(RCD) Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1st day of March 1944

[signature] Capt

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13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion
In the rank of Corporal	1 month [illegible] years.	31 Jan 43
In the rank of Lance Sergeant	1 month 1[illegible] days years.	1 Mar 43
In the rank of Sergeant	8 months 15 days.	6 Jul 43

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

40-121
Pte Roe W.J.

O. H. M. S.

M. F. B. 270
HAQ 1772-30-67

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-89279 Pte William Joseph ROE - CIC - 2 CITR

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15 (1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To undergo detention for a period of Six (6) Months

(Sgd) ..... Judge-Advocate, if any. 23 Jan 45 (Date awarded.) (Sgd) ..... President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention herein still further orders.~~ (1)
(1. AA 57A. Delete if not used.)

Date 24 Jan 45 (Sgd) E Blackader Brig
Commanding Comd 18 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B89279 Pte. ROE, W.J.	30 Jan 45	(A J A BAXTER) Major ADM OFFR 2 CITR

ENTERED ORDER No. 27
DATE 1 Feb 45
BY

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 180, 40-121

FIELD GENERAL COURT-MARTIAL

CFA96 (To lieu of AFA81) 40/P&S/1000-7(144) 4/38B

Convened by Order of Brigadier E G Blackader DSO, MC, ED Comd 18 CITR dated 21 Jan 45

REFER TO RECORDS

PROCEEDINGS REVIEWED

REVIEWING OFFICER

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-89279	Pte	William Joseph	ROE	CIC 2 CITR

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 23 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form occurs, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 895, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1120 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (2).~~
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

~~A5. President to accused: Do you object to ..... as interpreter? Ans: .....~~

The Interpreter is sworn.(1) Do you object to ~~Pte~~ 26 ~~Sgt~~ SINCLAIR AH as shorthand writers? Ans NO
The shorthand writers sworn.(1) C-76030 Sgt Sinclair AH
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO SIR
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D L REDMAN	HQ CRU
Member	CAPT	F C KARN	2 CITR
Member	LT	M GAGNON	4 CITR
Judge-Advocate			
Prosecutor	LT	P SAPERIA	2 CITR
Defending Offr	LT	J P HARRIS	2 CITR

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans NO.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~)~~ plea ..... (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of witnesses see RP 90, 87(C), 92(D), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 55-59, 86, 116; use of Summary of Evidence at Trial see RP 47(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO, SIR.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1) The Court decide (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the ... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on the ... charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ~~A~~, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (2).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ... charge(s), and allowed on the ... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans..... Do you intend to call witnesses on your behalf?

Ans..... Are they witnesses as to character only? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(c).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans NO, SIR.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ~~A~~ and Ex ~~B~~ respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans ~~Yes, I do~~ (NOTE AFB)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182. RP 46-50, 69, 118, 119(A). KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B.89279, Pte. William Joseph ROE, CIC, on strength of 2 Cdn. Inf. Trng. Regt., a soldier of the Cdn. Army Overseas, is charged with:-

Spec 15(1) Army Act

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, at 1300 hrs. 26 Nov 44, while undergoing Field Punishment, illegally absented himself without leave until he surrendered himself to the Unit Guard Room at 1110 hrs. 10 Jan 45.

(Total time absent; 44 days, 22 hrs. 10 min.)

Laurentide Camp,
19 Jan 45.

(J A Wilson) Col
Comdr
2 CITR

To be tried by Field General Court Martial.

In the Field
21 Jan 45

(K G Blackader) Brig
Comd
13 Cdn Inf Trg Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-89279	Pte		William Joseph	RCE	CIC 2 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(x) named above as the accused, being subject to military law, has (~~xxxx~~ committed the offence(x) set forth in the Charge Sheet(x) attached and on (*date*) 21 Jan 45 endorsed by me, ~~xxxxxxxxxxxxxxx~~ (*name*), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(x) should be tried by an ordinary General Court-Martial; ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(x), and to consist of the Offrs appointed or detailed hereunder.

~~xxxxxxxxxxxxxxxxxxxx

M.I.R. 2 C.I.R.U.

This is to certify that I have examined 889779 PTE ROE W.J.H

on JAN 23 1945 and I find him medically fit to stand

Trial by Court Martial.

C. L. Sears Capt

Medical Officer
2 C.I.R.U.

Plea of Mitigation
in the case of B89279 Pte W.J.M. Roe.
Pte Roe enlisted in the Canadian army in Sept 1940 at the age of 28 and served with the Royal Regiment of Canada, in Normandy, being wounded 13 July during the drive on Caen.
Pte Roe's history is one that precluded him from having a normal childhood and normal maturing. When he was eight, his family was broken up, and he went with his father who was a traveller in the U.S.A. His life, until he was sixteen was spent travelling with his father, his education being neglected completely. At the age of sixteen, he left his father and struck out on his own. At seventeen he joined the army of the U.S.A. and served with them for two years, with a good record. He came back to Canada in 1936 and went to live with his mother in Toronto. He settled down for the first time in his life, got a job, and in 1939 got married. He has one son who has spent the past two years in hospital, having had four major operations during that time.
Pte Roe's wife apparently has decided that the responsibility is too much for her and has stopped writing to him. As a result, he has little knowledge of his sons condition, which has caused him great worry. It was in this condition that he went A.W.L. I respectfully request the court to be as lenient as possible, and that Pte Roe be given an opportunity to see the necessary authorities in order to get his affairs straightened out.

J.P. Harris Lt.

E-3
MY

SUMMARY OF EVIDENCE.

In the case of R.89279, Pte. William Joseph ROE, C1C, on strength of 2 Cdn.Inf. Trng. Regt., a soldier of the Cdn. Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

.....

First Witness Prosecution. K.46993, Pte. Bujnak, S., Regt. Police, 2 CITR, having been duly sworn, states as follows:-

"I am K.46993, Pte. Bujnak, S. of Regt. Police, 2 CITR. I was in charge of the defaulters at 1800 hrs. 26 Nov 44. I called the defaulters' roll in the front of the Regt. Guard Room. Pte. Roe, W.J., one of the defaulters, and whom I now recognize as the accused, failed to answer his name at 1800 hrs and at 2130 hrs. I checked with H. & D. wing, to which Pte. Roe was attached, and found that he had been marked A.W.L. on the morning of the 27 Nov 44. I placed a charge against Pte. Roe for being absent from defaulters' parade. I called defaulters' roll on the 28th, 29th, and 30th Nov 44 but Pte. Roe was still absent."

The accused declines to cross-examine this witness.

S. Bujnak ...Pte.
(S. Bujnak)

Second Witness Prosecution. A.56620, Cpl. Earl, D. of 2 CITR, having been duly sworn states:-

"I am A.56620, Cpl. Earl, D. of 2 CITR. On 26 Nov 44, I was company orderly Sgt. for H. & D. Wing, Depot Bn., 2 CITR, to which Pte. Roe, W.J., whom I now recognize as the accused, belonged.

At 1300 hrs. 26 Nov 44, I called the roll of the H. & D. Wing and Pte. Roe, W.J. did not answer his name. At 0830 hrs. 27 Nov 44, I called the roll again and Pte. Roe was still absent. I called the roll at 0830 hrs. and 1330 hrs. daily from 28 Nov 44 until 1330 hrs. 8 Dec 44 and Pte. Roe did not answer his name at any time."

The accused declines to cross-examine this witness.

D. Earl .....Cpl.
(D. Earl) A56620

(Cont'd Page 2)

SUMMARY OF EVIDENCE.

In the case of B.89279, Pte. ROE, Wm. Jos. CIC,
on strength of 2 CITR, a soldier of the C.A.(O)

(Continued)

.....

Third Witness Prosecution. Lieut. H.J. Boake, Reg. H.Q., 2 CITR, having been duly sworn, states as follows:-

"I am Lt. H.J. Boake, Reg. H.Q., 2 CITR, and I produce the following exhibits for the prosecution:

Exhibit "A":- Certif. True Extract of 2 CITR Pt. II D.O. No. 9, dated 11 Jan 45, showing B.89279, Pte. Roe, W.J. TOS from desertion wef 10 Jan 45, on surrendering himself at Unit Guard Room at 1110 hrs. 10 Jan 45.

Exhibit "B":- Certif. True Extract of 2 CITR Pt. II D.O. No. 88, d/27 Nov 44, showing that B.89279, Pte. Roe, W.J.N. was tried by FGCM on 15 Nov 44 and received the following sentence: "To suffer Field Punishment for 28 days and to forfeit all ordinary pay for a period of 60 days". This document also shows that he was undergoing Field Punishment when he went AWL at 1300 hrs. 26 Nov 44.

Which above exhibits pertain to the accused herein.

The accused declines to cross-examine this witness.

.....Lieut.
(H.J. Boake)

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C) (D) (E) and (F) have been complied with.

Laurentide Camp.

18 Jan 45 .....Lieut.
(J.F. Lake)
Officer detailed to take the Summary of Evidence.

EXA

Ex "A"

2 CANADIAN INFANTRY TRAINING REGIMENT

Last Order No: 8 d/10 Jan 45

PART II DAILY ORDERS BY:

A/COLONEL J A WILSON, COMMANDER

This Order No: 9 d/11 Jan 45.

Para 1. (8)

ABSENT WITHOUT LEAVE

TOS from desertion wef 10 Jan 45. on surrendering at unit Guard room at 1110 hrs 10 Jan 45.

B89279 PTE ROE W J (CIG)

CERTIFIED TRUE COPY OF PART II ORDER PURPORTING TO BE SIGNED BY

J.L. Menslowe Capt
Records Officer 2 C.I.T.R.

13 Jan 1945.

2 CANADIAN INFANTRY TRAINING REGIMENT

Last Order No: 21 d/26 Nov 44 — PART II DAILY ORDERS BY: A/COLONEL J A WILSON, COMMANDER — This Order No: 22 d/27 Nov 44

Pars 10. (d)

PUNISHMENTS

B-89279 PTE ROE W J M (RRC)

CHARGE: On 15 Nov 44, tried by F G C M A A SEC 15 (1) AWL whilst undergoing F.P. from 1745 hrs 20 Oct 44 until sirrendering himself to Unit Guard Room 3 CIRU at 2240 hrs 9 Nov 44. (Absent 20 days 4 hrs 55 mins)

Findings: To undergo detention for sixty (60) days.

FINDINGS AND SENTENCE CONFIRMED by: Brigadier K G Blackader, Commander 13 Inf Trg Bde on 18 Nov 44, but sentence commuted to read: "to suffer P P for 28 days and to forfeit all ordinary pay for a period of 60 days."

CLOSE ARREST: from 2240 hrs 9 Nov 44 until 2400 hrs 14 Nov 44.(5 days 1 hr 20 mins)

FORFEITS: 21 days pay FR&I 149 (1) (a) days of which are conc. award of 26 Sep 44. 3 CIRU DO 226 d/28 Sep 44.)

60 days pay FR&I 149 (2)
5 days pay FR&I 149 (1) (c) (i)

NET FORFEITURE: 82 days pay.

(Sgd) J.L. HENSLOWE, Capt.
for A J A BAXTER/Major
Admin Officer
2 C I T R

CERTIFIED TRUE COPY OF PART II ORDER
PURPORTING TO BE SIGNED BY:

18 Jan 45

J.L. Henslowe Capt
Records Officer 2 C I T R

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.89279,	Pte.	William Joseph ROE	2 CITR.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ ~~Regimental and Squadron, Battery~~ ~~Conduct sheets~~ ~~or~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

Within last 12 months		Since enlistment	
For Sec. 15(1)	3 times	Sec. 15(1)	12 times
For Sec. 10 (4)	0 times	Sec. 10 (4)	1 times
For	times		times
For	times		times

~~Number of instances of gallantry or distinguished conduct~~

~~or,~~

There are no entries in the conduct sheets of the accused.

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

~~or,~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.F.A. 73~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or,~~

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and 13 days in military custody, making a total of 13 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 32 yrs 9 month

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 4-9-40

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to ~~no air force~~ military decoration, or ~~air force~~ military reward ~~(or is in possession of or entitled to).~~ State any ~~air force~~ military decoration or reward.

CVSM & Clasp.

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

E + B

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

dated, and in his regiment (or corps), the rank of

dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number B59273 Rank Pte. Name Wm. Jos. ROE of 2 C I T Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
FGCM	Field 15 Nov 44	Sec. 15(1) AWL 20 days, 4 hrs.55 min.	28 days F.P. & forf all ordinary pay for 60 days.	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23rd day of Jan 45 Victoria Rifles of Canada

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

No. B-89279 Name Roe W.J.M. Sqn, Battery, or Company Corps C.I.C. Date of enlistment 4/9/40 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) [illegible]

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31Mar 42	Pte	✓	A.A. Sec. 15(1) AWL 2400 hrs 31 Mar 42 to 2045 hrs 7 Apr 42		14 days Forf pay FR&I 149(2) 14 days C.B.	8Apr 42	Lt-Col Basher	Forf 7 da pay FR&I 149 (1) (a)
Field	21Jul 42	Pte	✓	A.A. Sec. 15 (1) AWL from 2400 hrs 21 Jul 42 to 2150 hrs 26 Jul 42		10 days Forf pay FR&I 149(2) 14 days C.B.	5 Aug42	Lt-Col. Catto	Forf 5 day pay FR&I 149(1) (a)
Field	21Aug 42	Pte	✓	A.A.Sec 15(1) AWL from 2400 hrs 21 Aug 42 to 1930 hrs 10Sep 42		14 days F.P.	11 Sep42	Lt-Col. Fraser	Forf 20 days pay FR&I 149 (1) (a)
Field	15Jan 43		✓	A.A.Sec.15(1) AWL from 2359 hrs 15 Jan 43 till 2140 hrs 2 Feb 43		15 days F.P.	4 Feb 43	Lt-Col Nicholls	Forf 18 days pay FR&I 149(1) (a)

(PTO)

Place	Date of Offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with Trial	By whom awarded	Remarks
Field	3Mar 43	Pte		A.A. Sec.15(1) AWL from 1100 hrs to 1159 hrs 3 Mar 43		Forf 1 day pay FR&I 149 (2)			
Field	15May 43			A.A. Sec. 15(1) AWL from 2100hrs to 2200 hrs and from 2205 hrs to 2235 hrs 15 May 43		21 days F.P.		Lt-Col Nicholls	
				A.A. Sec.16(4)					
				A.A. Sec.15(1) AWL from 2120 hrs to 2150 hrs 16 May 43					
Field	29Aug 43	Pte		A.A. SEC. 15(1) AWL from 1000 hrs 29 Aug 43 to 0730 hrs 30 Aug 43	Cpl. Purdy W.R.	FORF & DAYS pay FR&I 149 (2) 7 days C.B.	L	Lt-Col. Wilder	Forf 1 days pay under FR&I 149(1) (a)

CERTIFIED TRUE & CORRECT COPY RECEIVED FROM OFFICER i/c RECORDS, C.M.H.Q.
d/12 Jan 44

No. 69289 Name ROE, W.J.M. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 4/9/40 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 00/PAS/180 (5415)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25Dec 43	Pte		A.A. Sec.15(1) AWL from 2245 hrs 25 Dec 43 until 2200 hrs Dec 43	L/Cpl Lang	Forf 15 days pay FR&I 149(2)	30 Dec 43	Major A.M. Young	For 3 days pay FR&I 149 (1)(a)
Field	24May 44	Pte		A.A. Sec.15(1) AWL from 1600 hrs 24May 44 until 1700 hrs 25May 44 1 hr.	C.S.M. Stewart	3 days C.B.	26 May 44	Major J.D. Fairhead	
Field	9 Jun 44	Pte		A.A. SEC. 15(1) AWL from 2245 hrs 9 Jun 44 until 1830 hrs 19 Jun44 (Absent 9 days 19 hrs. 45 mins.)	Sgt.Turner CSM Stewart	14 days C.B. Forf 14 d.Pay FR&I 149 (2)	20Jun44	Lt-Col A.M. Young	Forf 10 d. Pay (a) FR&I 149(1)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6Sep 44	Pte		AA Sec. 15 (1) WOAS AWL from 2300 hrs 6 Sep 44 until 1945 hrs 25 Sep 44. Absent 16 days 20 hrs 45 mins.	DOCUMENTARY	28 days F.P. 28 days Pay FR&I 149(2)	26 Sep 44	Lt-Col A.R. Noble	Forf 19 days pay FR&I 149(1) Total Forf: 47 days pay.
Field	20 Oct 44	Pte.		Sec. 15(1) AWL 20 dys.4hrs 55 min		28 days F.P.	15 Nov 44	F C C M	

CERTIFIED TRUE COPY CONSISTING OF .....2..... PAGES

DATE.....17 Jan 45.....

[signature] Lt

.....

(H.W.J. Dearness) Lieut
Officer having custody of Regimental Books.

LIST OF WITNESSES

In the case of B.89279, Pte. ROE, W.J.

CIC, on strength of 2 CITR, a soldier of the C.A.(O).

(For Prosecution)

1. K.46993, Pte. Bujnak, S. Reg.Police, 2 CITR.
2. A.86620, Cpl. Earl, D. 2 CITR.
3. Lt. H.J. Boake, Reg.H.Q., 2 CITR.

(For Defence)

NIL.

.....

LIST OF EXHIBITS

In the case of B.89279, Pte. ROE, W.J.

CIC on strength of 2 CITR, a soldier of the C.A.(O)

(For Prosecution)

Exhibit "A": Certif. True Extract of 2 CITR, Pt. II D.O. No. 9, of 11 Jan 45, showing accused having surrendered himself to Unit Guard Room at 1110 hrs. 10 Jan 45.

Exhibit "B": Certif. True Extract of 2 CITR Pt. II D.O. No. 22, d/27 Nov 44, showing accused was awarded 28 days F.P. on 15 Nov 44.

(For Defence)

NIL

.....

Request for Defending Offr.

I, B.89279, Pte. Wm. Joseph ROE, CIC,

hereby request that the Convening Officer appoint Major Earl 1 CRD. to represent me at my forthcoming trial by Court-Martial, should he be available.

Laurentide Camp. 18 Jan 45. W. Roe Pte. (W.J. Roe)

.....

RECEIPT FOR DOCUMENTS.

I, B.89279, Pte. Wm. Joseph ROE, CIC.

hereby acknowledge that I have received a true copy of the Summary of Evidence taken in England preliminary to my Court-Martial, and I further acknowledge receipt of a true copy of the Charge Sheet under which I am being brought to Court-Martial.

Laurentide Camp. 18 Jan 45. W. Roe Pte. (W.J.Roe)

4G-61.

Pte. Roe W.J.M.

RECORDED AT CMHQ IN AB TO [illegible] 1/6/61

CP A66 (To face of AFAR) 40-P-AB-1000 1-44 4/38B

FIELD GENERAL COURT-MARTIAL

Convened at Bny G S N Gostling, ED Comd "A" GP CRU dated 14 NOV 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B89279	Pte	William Joseph Martin	ROE	3 CIRU CIC

PROCEEDINGS REVIEWED

Jotc Fidler Aitken Lieut 11 Dec 44

REVIEWING OFFICER JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*) 15 NOV 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiter, if Member, J/A, if any~~, and Offr~~s~~ under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for CCM in MML pp 741 to 749. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(~~s~~) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1430 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. ~~President to accused: Do you object to ... as interpreter? Ans: ...~~

~~The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans: ...~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~J/A, if any~~, and Offr~~s~~ under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	L R ST LAURENT	4 CITR
Member	Capt	J P Cote	2 CIR
Member	Lt	J R L Stein	2 CIR
Judge-Advocate			
Prosecutor	Lt	P Saveria	2 CIR
Defending Offr	Lt	N H Fletcher	2 CIR

Questions by President: Is the Prosecutor a lawyer? Ans: No. Is the Defending Offr a lawyer? Ans: No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B89279 Pte ROE, WJM before arraignment make(s) (no) (~~a~~) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on ~~all~~ charge~~s~~ in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part 1 of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PLEA(S), FINDING(S) AND SENTENCE.

Pte William Joseph Martin ROE - 3 CIRU - CIC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ... beginning on ...

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be f...

Time in confinement awaiting present trial—a total of 5 days, of which ...

(1. See RP 46(A) fn 2. Information should be found on MF B3...

Sentence Awarded by the Court: The Court ...

B89277 Pte William Joseph Martin ... detention for a period ...

(Sgd) ...

Judge-Advocate, if any. ...

(See back of C...

PART II. MINUTE W...

Date ...

(Sgd) ...

PART III.

(For duties and ... confirmation and ... not confirmed, ... promulgation ... 57A, RP 53A, ...

Me decision ...

... 19 Nov 44

PART I. PROMULGA...

Accused ...

B89277 Pte R. W.J.M. 24 ...

PART II ORDER ... 22 ...

ALL DELETIONS AND ALTERATIO...

E2. The ... copy (copies) of ... examination, and ... to the accused, beca... to refer to (a) soldie... marked Ex. D ...

(1. MFB 355 ... para 1.)

E3. President to a... mitigation of punishment ...

(1. RP 37(C), 46(D) ... on oath anything here or ...

E4. The President state... by the Court, being subject ... proceedings in open court are a...

(1. AA 54(6), RP 120(A).)

E5. The Court considers the ... is dated and signed by him and the ...

(1. When several accused tri... laid down in AA 41, 44 and its prov... RP 49. As to sentences see AA 44. ... MML p 60, 757-759. As to sentences ... already under sentence of imprisonment ... Confirming Offr see KR Can 567. As to ...

PRESIDENT OR JA WI...

RECORDED AT CMHQ IN AB 10[illegible] 4761

FIELD GENERAL COURT-MARTIAL

CPA/SS. 70 (Hist) of AFA/51 as to s. 1(6)(a) / (b)(ii)

4/388

Convened by Brig G S N Gostling, ED Comd "A" GP CRU dated 14 NOV 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B89279	Pte	William Joseph Martin	ROE	3 CIRU CIC

PROCEEDINGS REVIEWED
JCJC
11 Dec 44
REVIEWING OFFICER JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*) 15 NOV 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~Judge-Advocate, if any~~, and Offr[s] under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1430 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. ~~President to accused: Do you object to as interpreter? Ans~~
~~The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 75, 76, MML p 742.)

A7. The President, Members, ~~Judge-Advocate, if any~~, and Offr[s] under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	L S ST LAURENT	4 CITH
Member	Capt	J P Corc	2 CDIR
Member	Lt	R H Stern	2 CDIR
Judge-Advocate			
Prosecutor	Lt	P Saperia	2 CDIR
Defending Offr	Lt	H A Fletcher	2 CDIR

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B89279 Pte ROE, WJM before arraignment make[s] (no) ~~a~~ plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~separately~~) on ~~all~~ charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; securing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. ~~C~~ D. ~~[illegible]~~ (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. ~~As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)~~

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a seperate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using ~~Record Form E on p 3.~~

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B89279 Pte William Joseph Martin ROE - 3 CIRU - CIC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which 10 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: The Court sentence the accused B89279 Pte William Joseph Martin ROE, 3 CIRU, CIC to undergo detention for a period of 60 days.

(Sgd) Judge-Advocate, if any. 15 Nov. 44 Date awarded. (Sgd) [illegible] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the findings but commute the sentence to read "to suffer Field Punishment for 28 days and to forfeit all ordinary pay for a period of 60 days" and I confirm the sentence so commuted.

~~I direct that the accused be not committed to prison or detention [illegible] Adtil further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) K G Blackader

(K G Blackader) Brigadier

Date 19 Nov 44

Commanding 13 Cdn Inf Trg Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B89279 Pte Roe W.J.M.	24 Nov 44	[illegible]

PART II ORDER No. 22 dt 1 Dec 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. ~~President to accused: Do you wish to apply for an adjournment on the ground that any of the rules~~ relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans.....Are they witnesses as to character only? Ans.....

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 147(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using ~~Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans. [illegible] (See loose sheet E1-1 Statement by Witness) (See E1-2 Statement by Mr [illegible] Counsel)

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. (See loose sheet E3).....(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6). RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused convicted. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), AA [illegible] 308, 330, 563-566. Overseas [illegible] MML p 60, 757-759. As to sentences assigned for civil offences by the law of [illegible] see AA 41(1), MML p [illegible] already under sentence of imprisonment or detention see AA 44(1B), 56(1), KR Can [illegible] 2. RP 50. As to [illegible] confirming Offr see KR Can 567. As to assembly and disposal of record after [illegible] the instrs on back of Convening [illegible]

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

DGCM - 689219 - Pte Roe, W.J.M. - 3 CSR4, CIC

Remarks for attention of Convening Officer —

Sir

It is noted in the evidence given by the above that he claims to have made vains attempts and seen two unit padres in order to find a solution to rectify his domestic troubles which he states are the root of his numerous absences without leave.

The Court was not in a posn to check his statement, nor was defence counsel capable of bringing forth corroboration. However the Court feel that, if this man applied in the proper manner to his former platoon, Coy or unit Commander for help in adjusting his home affairs and was never given a reply, as his evidence implies, then the officer responsible should be censured and the neglect rectified.

Whether such neglect exists or not it was not possible for this Court to establish as the accused pleaded guilty and did not decide to make a statement early enough in the proceedings to allow adjournment without

prejudice to the validity of the Court proceedings. If neglect exists such a fact would in the opinion of the Court establish slight provocation which might have extenuating effect on confirmation of the sentence as it stands. If on the other hand no such neglect exists, and it is considered that fact can easily be established between your AJ and 3 CIRC, then the Court respectfully submit that justice will have been served to all possible extent.

Submitted please

L. J. St. Laurent
Hol.
President FSCM

CHARGE SHEET

The accused Number B89279, Private William Joseph Martin ROE, Canadian Infantry Corps, on the strength of 3 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 15(1)

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

In the Field, whilst undergoing Field Punishment, did absent himself without leave from 3 Canadian Infantry Reinforcement Unit, from 1745 hours on the 20th day of October, 1944, until surrendering himself to Unit Guard Room, 3 Canadian Infantry Reinforcement Unit, at 2240 hours, the 9th day of November, 1944.

Total time absent: 20 days, 4 hours and 55 minutes.

(A.S. Pearson) Colonel,
Commander,
3 Cdn Inf Rft Unit.

In the Field,
10th day of November,
1944.

To be tried by Field General Court Martial.

Field
14 Nov 44

(G S N Gostling) Brig
Comd
"A" Gp Cdn Rft Units
C A (O)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B89279	Pte		William Joseph Martin	ROE	3 CIRU CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 NOV 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~XXXXXX XXXXX

MED OFFRS CERTIFICATE

KR Can Para 557

I certify that I have t is morning examined No. B89279

PTE ROE WA and in my opinion he is

FIT ~~UNFIT~~ to undergo trial by Court Martial.

Station: 261TR

Date 15 NOV 44

C. F. Sears Capt
(Med Offr)

~~Pleads Guilty.~~

Statement of Accused:-

"I can't soldier in the mental condition I'm in. Have applied for compassionate leave twice due to worries at home. Just after middle of Aug 42 I received word that my boy was in hospital and had several operations. I applies for leave at this time. When I got hit in France, I nearly went crazy. My wife isn't doing as she should. I have received word my boy is out of hospital and there is no home for him as my mother wrote regarding this. The boy is eight years old now.

I thought/I'd go A.W.L. I'd get a Court-Martial and bring the whole thing out but I've found if from my lawyer since it will gain me nothing. I don't enjoy being A.W.O.L. and came back myself, but I feel there is an injustice here.

I've been to every Padre I've had and am always told it is being investigated. The pension board has notified me of a special grant for hospita l bills. My wife writes asking me why I don't get home and don't I care.

My medical category is still "A". Shrapnel wounds in chest--I've never been re-boarded.

That's all, Sir."

Rules of Proced. 83 B has been complied with.

STATEMENT FOR THE DEFENCE.

The accused has given evidence on oath stating his marital difficulties and the mental anguish that her conduct combined with his invalid son's unfortunate circumstances have caused him. Also for nearly two years he has constantly tried to obtain a compassionate leave or posting so that he could settle the situation but without success. I ask the court to consider the effects on his morale and his usefulness to the Army

He has been completely miserable while on duty. He has been equally miserable while absent. He fought bravely in France, but there especiall y his misfortunes hampered him. Since he was wounded he has worried more and more. The army has done nothing to help him.

He mistakenly thought that by committing an offence which would be tried by Court-Martial he could bring matters to a head and obtain some redress. We know that this is not the correct way to go about it, but the accused considered this to be his last chance. As proof that this was his purpose, is the fact that he voluntarily surrendered after a period of absence which is the minimum normally tried by a court-martial.

I think the Court will agree that if not excusable, the accused's conduct is at least understandable. I therefore ask for leniency, so that another effort through the proper channels may be made, and a good soldier restored to the Army.

Capt WH Fletcher .....Lieut.
2 CIR

E 3

STATEMENT BY ACCUSED.

All but two of the offences were committed following my boy's illness.

R.P. 83 B complied with.

Ex "C" 1

SUMMARY OF EVIDENCE

In the case of Number B89279, Private William Joseph Martin ROE, Canadian Infantry Corps, on the strength of 3 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas:-

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

FIRST WITNESS FOR THE PROSECUTION

Lieut. James Howard Galloway, Canadian Infantry Corps, Assistant Records Officer, 3 Canadian Infantry Reinforcement Unit, having been duly sworn states:-

I am Lieut. J.H. Galloway, Assistant Records Officer, 3 Canadian Infantry Reinforcement Unit. I produce from my custody a certified true extract of 3 Canadian Infantry Reinforcement Unit Part II Daily Order No. 247, dated the 23rd day of October, 1944, as amended by Part II Daily Order No. 266, dated the 13th day of November, 1944, issued by Colonel A.S. Pearson, OBE, ED, showing the accused, whom I now recognize as absenting himself without leave from 3 Canadian Infantry Reinforcement Unit from 1745 hours, the 20th day of October, 1944. This document purporting to be signed by Lieut. J.H. Galloway, for Capt. M.R. Medland, A/Adjutant, 3 Canadian Infantry Reinforcement Unit, is marked Exhibit "A". I also produce a certified true extract of 3 Canadian Infantry Reinforcement Unit Part II Daily Order No. 226, dated the 28th day of September, 1944, issued by Colonel A.S. Pearson, OBE, ED., showing the accused, whom I now recognize, as having been awarded 28 days field punishment on 26th day of September, 1944. This document purporting to be signed by Capt. W.E. Thorne, for Capt. M.R. Medland, A/Adjutant, 3 Canadian Infantry Reinforcement Unit, is marked Exhibit "B".

(J.H. Galloway) Lieut.

The accused declines to cross-examine this witness.

SECOND WITNESS FOR THE PROSECUTION

Number C-100013, Corporal William Alexander PAYMENT, Canadian Infantry Corps, on the strength of the Regimental Police, 3 Canadian Infantry Reinforcement Unit, having been duly sworn, states:-

I am C-100013, Cpl. Payment, W.A., Canadian Infantry Corps, on the strength of 3 Canadian Infantry Reinforcement Unit, and attached to the Regimental Police of this Unit. On the 9th day of November, 1944, I was NCO i/c Guard Room, when at 2240 hours, the accused, B89279, Pte. Roe, W.J.M., whom I now recognize, surrendered himself to me as an absentee. I immediately placed him in close arrest.

C100013 Cpl Payment W A
(C100013, Cpl. Payment, W.A.)

The accused declines to cross-examine this witness.

The accused having been warned according to Rules of Procedure 4(E) reserves his defence.

I certify that the foregoing Summary of Evidence consisting of One Page was taken down by me in the presence and hearing of the accused and the Rules of Procedure 4(c)(d)(e)(f) & (g) have been complied with.

W G Moore Lt
(W.G. Moore) Lieut.
Officer detailed to take the Summary of Evidence.

In the Field,
10th November, 1944.

Exhibit "A"

3 CANADIAN INFANTRY REINFORCEMENT UNIT
DAILY ORDERS PART II
Issued by
COLONEL A.S. PEARSON, O.B.E., E.D.,
COMMANDER

Last Order
No. 246
21 Oct 44.

No. 247
23 Oct 44

12. ABSENCE WITHOUT LEAVE

(a) The u/m are absent without leave from times shown:-

B89279 PTE ROE W J M R REGT C 1745 hrs, 20 Oct 44 (SUS)

as amended by Daily Order Part II No. 266 d/13 Nov 44.

CERTIFIED TRUE EXTRACT OF THE ORIGINAL DOCUMENT WHICH IS IN MY POSSESSION.

(W.R. Galloway) Lieut.
for (W.R. Medland) Capt.
A/Adjutant,
3 Cdn Inf Reinf Unit

(W.R. Medland) Capt & Adjt
3 Cdn Inf Rft Unit.

Exhibit "B"

3 CANADIAN INFANTRY REINFORCEMENT UNIT
DAILY ORDERS PART II
issued by
COLONEL A.S. PEARSON, OBE, ED.,
COMMANDER

Last Order
No. 225
27 Sep 44

No. 226
28 Sep 44

7. PUNISHMENTS

(1) B59279 PTE ROE W J N

AA 15(1) AWL from 2300 hrs 6 Sep 44 to 1945 hrs 25 Sep 44 (Absent 18 days, 20 hrs, 45 mins) Awarded 28 days FP Punishment and to forfeit 28 days Pay FW&I 149(2) on 26 Sep 44. Forfeits 19 days Pay FW&I 149(1)(a) Total forfeitures: 47 days Pay.

"W.B. Thorne" Capt.
For (W.B. Medland) Capt. & A/Adjt,
3 Cdn Inf Rft Unit.

CERTIFIED TRUE EXTRACT OF THE ORIGINAL DOCUMENT WHICH IS IN MY POSSESSION.

(W.B. Medland) Capt
Adjutant, 3 Cdn Inf Rfts Unit.

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B 89279	PRIVATE	ROE W.J.M.	CIC 3 CIBU

1. The following is a fair and true summary of the entries in the Field Service and General ~~Regimental and Squadron, Battery or Company Conduct sheets of~~ Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. 15(1)	4 times	A.A. 15(1) 12 times
For	times	A.A. 10(4) 1 times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct NIL

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule~~ Air Force Act A.A. 73 ~~annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in ~~Air Force~~ civil custody, and 5 days in military custody, making a total of 5 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 34 years, ~~attestation paper is~~

6. The date of his ~~enrolment~~ attestation specified in his record of service is 4 Sep 1940 ~~attestation paper is~~

7. The service which the accused is allowed to reckon towards discharge is 4 years,

8. The accused is entitled to reckon 4 yrs service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to no air force decoration, or air force reward~~ military military or is in possession of or entitled to). State any ~~air force~~ decoration or reward. C.V.S.M. & Clasp

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer was~~ Air Force ~~held the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force ..... dated ..... unit ..... dated ....., and in his regiment (or corps), the rank of .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

In the rank of ..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Name ..... of ..... Unit ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13th day of Nov 44

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked D signed by the president, and annexed to the proceedings.

(W.E. THORNE) CAPT.,
Records Officer,
3 Cdn.Inf.Rft.Unit.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE (CONTINUED FROM PREVIOUS PAGE)	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15-5-43	PTE		15 May 43; (2) AA 10(4);AA 15(1) AWL from 2120 hrs to 2150 hrs 16 May 43.					
Field	29-8-43	PTE		AA 15(1) AWL from 1000 hrs 29-8-43 to 0730 hrs 30-8-43	Cpl Purdy W.R.	21 days F.P. Forf 7 days pay FR&I 149(2) and 7 days C.B.		Lt.Col. Nicholls Lt.Col. Wilder	Forf 1 days pay under FR&I 149(1)(a)
Field	12-1-44			CERTIFIED TRUE AND CORRECT COPY RECEIVED FROM OFFICER i/c RECORDS, C.M.H.Q. dd/12 Jan 44. (Signed: P.L. Hogue Lieut., Capt & Adjt., Royal Regiment of Canada).					
Field	25-12-43	PTE		AA 15(1) AWL from 2245 hrs 25-12-43 until 2200 hrs 28-12-43	L/Cpl Lang CSM	15 days pay FR&I 149(2).	30-12-43	Major AM Young	5 days pay FR&I 149(1)(a)(Forfeits)
Field	24-5-44	PTE		AA 15(1) AWL from 1600 hrs 24-5-44 until 1700 hrs 25-5-44(T.A. 1 Hr)	Stewart	3 days C.B.	26-5-44	Major D. Fairhead	
Field	9-6-44	PTE		AA 15(1) AWL from 2245 hrs 9-6-44 until 1830 hrs 19-6-44 (Absent 9 days 19 hrs 45 minutes)	Sgt Turner CSM Stewart	14 days C.B. Forf 14 d.pay FR&I 149(2)	20-6-44	Lt.Col.A.M. Young	Forfeits 10 days pay FR&I 149(1)(a).
Field	6-9-44	PTE		AA 15(1) WOAS AWL from 2300 hrs 6-9-44 until 1945 hrs 25 Sep 44 (Absent 18 days 20 hours 45 mins)	Documentary	28 days F.P. 28 days Pay FR&I 149(2).	26-9-44	Lt.Col.AB Noble	Forf 19 days pay FR &I 149(1a),Total Forf:47 days pay

No B89279 Name ROE W.J.M. Sqn. Battery or Company [illegible] Corps C.I.C. Date of enlistment 4-9-40 OC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/P&S/136 (3438)

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No ONE | Signature OC Company, etc R.T. Gower Major. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31-3-42	PTE		AA 15(1) AWL 2400 hrs.31-3-42 to 2045 hrs 7-4-42		14 days Forf pay FR&I 149(2) and			Forf 7 days pay FR&I 149 (1)(a).
Field	21-7-42	PTE		AA 15(1) AWL from 2400 hrs 21-7-42 to 2150 hrs 26-7-42		14 days C.B. 10 days Forf pay FR&I 149(2) and	8-4-42	Lt.Col. Basher	Forf 5 days pay FR&I 149 (1)(a).
Field	21-8-42	PTE		AA 15(1) AWL from 2400 hrs 21-8-42 to 1930 hrs 10-9-42		14 days C.B.	5-8-42	Lt.Col. Catto	20 days pay FR&I 149(1a)
Field	15-1-43	PTE		AA 15(1) AWL from 2359 hrs 15-1-43 till 2140 hrs 2-2-43		14 days F.P.	11-9-42	Lt.Col. Fraser	18 days pay FR&I 149(1a)
Field	3-3-43	PTE		AA 15(1) AWL from 1100 hrs to 1159 hrs 3-3-43		15 days F.P. Forf 1 days pay FR&I 149(2)	4-2-43	Lt.Col. Nicholls.	
Field	15-5-43	PTE		AA 15(1) AWL from 2100 hrs to 2200 hrs and from 2205 hrs to 2235 hrs					

(CONTINUED OVERLEAF)

(PTO

No B89279 Name ROE W.J.M. Sqn. Battery or Company Corps C.I.C. Date of enlistment 4-9-40 GC Badges Service or Proficiency Pay

MFM 6 (AFR 199) 40/PAR/136 (3438)

Company Conduct Sheet Date of last entry in No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No 2. Signature OC Company, etc R.T.Gower Major. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10-11-44	PTE		CERTIFIED TRUE COPY OF MFM 6 in MY POSSESSION Officer having custody of Regimental Books.					
/whm				(W.E.THORNE) CAPT., Records Officer, 3 Cdn.Inf.Rft.Unit.					

(PTO

Ex. 'C' 3

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Aldershot Hants on the 10th day of November, 1944, preliminary to My Court Martial.

I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

W Roe
(B89279, Pte. Roe, W.J.)

Dated at Aldershot Hants,
this 10th day of November, 1944.

I hereby request that the Convening Officer appoint an Officer to represent me at my Trial.
I desire the services of
if he is available.

W Roe
(B89279, Pte. Roe, W.J.)

Dated at Aldershot Hants,
this 10th day of November, 1944.

Ex "C" 2

LIST OF WITNESSES

In the case of Number B89279, Private William Joseph Martin ROE, Canadian Infantry Corps, on the strength of 3 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

FOR THE PROSECUTION

1. Lieut. J.H. Galloway — Asst't Records Officer, 3 Cdn Inf Rft Unit.

2. C100013, Cpl. Payment, W.A. — Regimental Police, 3 Cdn Inf Rft Unit.

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

In the case of Number B89279, Private William Joseph Martin ROE, Canadian Infantry Corps, on the strength of 3 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

FOR THE PROSECUTION

"A" - Certified true extract of 3 Cdn Inf Rft Unit Part II Daily Order No. 247, d/23 Oct 1944.

"B" - Certified true extract of 3 Cdn Inf Rft Unit Part II Daily Order No. 226 dated 28 Sep 44.

FOR THE DEFENCE

N I L

75 B.

Pte. R. J. Rogal.
H.16263. (P.P.C.L.I)

10| Rogal R. J/1.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this eleventh day of May, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 2 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[I am unable to appoint:—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

*(3. Three Officers having more than one year's service.)

for the following reasons, namely:—]

President.

Rank.	Name.	Regiment.
Major	J.D. Forin	Seaforth of C

Members.

Rank.	Name.	Regiment.
Lieut	W.S. Backman	Edmn R
Lieut	D.C.R. Sims	Edmn R

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

Numbered by me after being read & accepted 17 May 41
J.D. Forin Maj.
President

*Signed Arthur E. Potts
(Arthur E. Potts) Brig
Commanding Comd 2 Cdn Inf Bde
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
H16263 Pte Raymond Jack ROGAL PPCLI	(1) AOAS absenting himself without leave	GUILTY	GUILTY	
	(2) AOAS neglecting to obey general orders.	GUILTY	GUILTY	
	(3) AOAS conduct to the prejudice.	GUILTY	GUILTY	
	(4) AOAS conduct to the prejudice.	GUILTY	GUILTY	
	(5) AOAS neglecting to obey general orders.	GUILTY	GUILTY SENTENCE: TO UNDERGO 103 DAYS' DETENTION	Confirmed ARP

* Question to be asked of accused if he pleads not guilty (R. of P. 39 (*a*)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on a separate sheet if necessary*):—

(Signed) Arthur D Potts (Signed) A Holmes Capt.
(Arthur D. Potts) Brig
Commanding Comd 2 Cdn Inf Bde *President.*
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings

I certify that the above Court assembled on the 17th day of May 41 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. ~~The witnesses~~
*(3. ~~The interpreter~~) DSO
*(4. ~~The officers under instruction~~)

* Omit if not applicable.

were duly sworn.

Signed this 17th day of May 1941.

A. Holmes Capt.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1920.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 20 day of May 1941

Arthur D Potts
Confirming Officer.
Brigadier,
Acting 2 Can. Inf. Bde.

Promulgated and extracts taken in the case of H16263 Pte. Rogal, J.R

(*a*) (Dated) 22 May 41 (Signed) (J.N. EDGAR) Lieut-Col. Commanding, P.P.C.L.I.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(21710) Wt. 40123—993 500 m 1/40 J. B. G. Ltd.

CHARGE SHEET

The accused, Nol. H16263 Pte. Raymond Jack ROGAL, P.P.C.L.I., a soldier of the Canadian Army is charged with

First Charge
Sec.15(1)A.A.

Whilst on Active Service:

Absenting himself without leave

In that he

G.

Was absent from 1500 hrs 2 May 41 until apprehended in Croydon by the Metropolitan Police at 1615 hrs 2 May 41.

Second Charge
Sec. 11 A.A.

Whilst on Active Service:

Neglecting to obey general orders

In that he

G.

At Croydon on 2 May 41 rode pillion on a W.D. motorcycle.

Third Charge
Sec. 40 A.A.

Whilst on Active Service:

Conduct to the prejudice of good order and military discipline

In that he

G.

At Croydon on 2 May 41 rode pillion on a W.D. motorcycle knowing it to be in improper possession of the driver.

Fourth Charge
Sec.40 A.A.

Whilst on Active Service:

Conduct to the prejudice of good order and military discipline

In that he

G.

At Croydon on 2 May 41 did give a false name, Regimental Number, and address to the Metropolitan Police.

Fifth Charge
Sec.11 A.A.

Whilst on Active Service:

Neglecting to obey general orders

In that he

G.

At Croydon on 2 May 41 was not in possession of his steel helmet and respirator.

J.N. Edgar

(J.N. EDGAR) Lieut-Col.
Commanding, P.P.C.L.I.

Godstone, Surrey.
6 May 1941.

A.S.P.

To be tried by Field General Court-Martial.

'B'

Marked by me after accused had been arraigned thereon this 8 May 41

[illegible]
President.

Proceeding of a Field General Court Martial held at GODSTONE on the 17th day of May, 1941 by order of Brigadier A.E. Potts Commanding 2nd Can Inf Bde. dated 11 May 1941.

President.

Major	J.D. Forin	Seaforth or C.

Members.

Lieut.	W.S. Backman	Edmn R.
Lieut.	D.C.R. Sims	Edmn R.

The Court satisfied themselves as provided by Rules of Procedure 22 and 23.

Prosecutor	Lieut. S.A. Cobbett	P.P.C.L.I.
Defending Officer	Lieut. R.C. Coleman	P.P.C.L.I.

At 0945 o'clock the trial commenced.
The order convening the Court was read and was marked "A" signed by the President and attached to the proceedings. The names of the president and members of the Court were read over in the hearing of the accused, and they severally answered to their names.

Ques. 1. Do you object to be tried by me as president, or by any of the Officers whose names you have heard read over ?
Ans. 1. No.

The President and members were duly sworn.

The charge sheet was signed by the President marked "B" and annexed to the proceedings.

The accused was arraigned upon all charges in the above-mentioned charge sheet and pleaded guilty.

The accused having pleaded guilty to the charges, the provisions of Rule of Procedure 39(B) were complied with.

The summary of evidence was read, marked "C", signed by the President, and attached to the proceedings.

Ques. 2. Do you wish to make any statement in mitigation or punishment?
Ans. 2. No.

The prosecuting Officer declined to make any statement.

The defending Officer stated ~~that~~ in mitigation of sentence that the accused had apparently been influenced by Pte. Morettin and had gone for a ride on the motor-cycle without considering the seriousness of the crime he was committing.

Ques. 3. Do you wish to give any evidence yourself or to call any witnesses as to character?
Ans. 3. No.

Ques. 4. How long has the accused been in close arrest?
Ans. 4. 16 days.

Ques. 5. How long has the accused been with the regiment?
Ans. 5. Since 21 Sept. 1939.

The prosecuting Officer produced the original field conduct sheet together with a certified true copy marked "D" and attached to the proceedings.

The accused, H.16263 Pte. Rogal R.J. P.P.C.L.I., is found guilty of all the charges.

The Court closed at 1035 hours to consider its findings.

Major
President of the Court.

Summary of Evidence in the case of No.H16263 Pte. Rogal M.J., H.Q. Coy, P.P.C.L.I.

1st WITNESS for the PROSECUTION

No. P21494 Cpl. Davidson W.D., H.Q. Coy, P.P.C.L.I., having been duly cautioned states:

"At approximately 1500 hrs 2 May 41 upon returning to my billet I found Pte. Rogal, whom I identify as the accused, absent. He is billetted in the same house as I am and had been instructed to remain in his billet until 1600 hrs. The Pl. Sgt. had given this order. I reported his absence to the C.O.S."

W.D. Davidson Cpl.
P.P.C.L.I.

The accused declines to cross-examine this witness.

2nd WITNESS for the PROSECUTION

No. P22289 Sgt. Robinson A.G., H.Q. Coy, P.P.C.L.I., having been duly cautioned, states:

"Standing Orders for No.3 Platoon, H.Q. Coy, is a written order posted in the billet that no one will be absent from his billet area during duty hours except at meal parades or when detailed for duty away from his billet. Pte. Rogal whom I identify as the accused, is a member of No.3 Platoon. On the afternoon of 2 May 41 I instructed the platoon to spend the remainder of duty hours cleaning rifles and equipment."

A.G. Robinson Sgt.
P.P.C.L.I.

The accused declines to cross-examine this witness.

3rd WITNESS for the PROSECUTION

H16160 Sgt. Hosegood T., P.P.C.L.I., having been duly cautioned states:

"On 2 May 41, at about 1800 hrs, I was ordered to accompany the R.P. to go to Croydon to help identify a motorcycle. I was told that this motorcycle had been driven by a member of this Regiment. On arrival at the Police Station there was no W.D. number on the motorcycle outside of 1st Cdn. Divisional marking. We took the number of the engine which was W5425. I got in touch with Bn.H.Q. and asked them if they would communicate with the Units in this Brigade. The Transport Officer of the Seaforth Highlanders of Canada soon arrived and identified the machine as belonging to his Regiment."

Sgt.
P.P.C.L.I.

The accused declines to cross-examine this witness.

4th WITNESS for the PROSECUTION

No. K85230 Cpl. Strom C.A., P.P.C.L.I., having been duly cautioned states:

"On 2 May 41 at about 1800 hrs I was ordered by the Adjutant to proceed to Croydon Police Station and apprehend Pte. Morettin and Pte. Rogal. The motorcycle which Pte. Morettin had been driving was later identified by T.C. of the Seaforths as their vehicle. When the prisoners were released I returned them in arrest to the P.P.C.L.I. guard room."

C.A. Strom Cpl.
P.P.C.L.I.

The accused declines to cross-examine this witness.

5th WITNESS for the PROSECUTION

No. K52408 Cpl. G.W. McCullough, Seaforth Highlanders of Canada, having been duly cautioned states:

"On Thursday, 1 May 41, I parked motorcycle No.4102982, which was on charge to me, in front of Hookwood House, Limpsfield, its usual parking place, at about 1800 hrs. I discovered that it was missing the following morning at 0530 hrs. I did not see my motorcycle again until about 1730 hrs 2 May 41 when it was returned to me by Lieut. Thompson, Seaforths of C., our Transport Officer who had picked the motorcycle up at the Croydon Police Station. The unit number plates 61 had been removed, also the tail light and a haversack belonging to me."

G. W. McCullough Cpl.

The accused declines to cross-examine this witness.

The accused having been duly cautioned in accordance with Rule of Procedure 4 (E) reserves his defence.

Certified that Rule of Procedure 4 (C) (D) (E) (F) have been complied with.

Taken down by me in the presence and hearing fo the accused this 6th day of May, 1941, at Battalion Orderly Room, P.P.C.L.I., Godstone, Surrey.

S. Cobbett

(S.A. COBBETT) Lieut.
Adjutant, P.P.C.L.I.

Attached to this Summary of Evidence is signed statement of Police Constable 803 "Z" Wm. Spinks, Metropolitan Police. At the time of taking the Summary, Constable Spinks was on leave; he can however be obtained in case of trial of the accused by Field General Court-Martial and his name appears as a witness for the prosecution.

S. Cobbett

(S.A. COBBETT) Lieut.
Adjutant, P.P.C.L.I.

SAC/LET.

"C"

Marked by me this 17 May 41 after being read to accused

[illegible]
President

[illegible]

METROPOLITAN POLICE

Statement of Witness Croydon Station "Z" Division
2 May 1941.

Name: William Spinks.

Occupation: Police Constable 803 "Z".

Statement: At 4.15 p.m. on 2nd May 1941, I was on Traffic Patrol duty with P.C.330"Z" Hooper in Police Car C.U.C.216, Fleet No.297 "T",in Mitcham Road Croydon, when I saw an Army solo motor cycle being driven in an eratic manner.

I stopped the driver and asked him his name and he replied,"I haven't got my pay book but I'll tell you my name". He then gave me his name as Pte.B.7896 Jim Allen of the Royal Canadian Corps of Signals stationed at Blindley Heath. There was also a pillion passenger on the machine who gave his name as Pte B22301 K.Ray,Royal Canadian Corps of Signals, stationed at Blindley Heath.

I then asked Allen who gave him authority to use the vehicle and he said,"Cpt Egan. I saw him at 3 o'clock and he said that we could use it ". I examined the machine and was unable to find a W.D.number thereon or any distinguishing number.

I told both men that I was not satisfied with their explanation and conveyed them to Croydon Police Station for enquiries to be made.

On arrival at the Police Station Allen said to Ray,"Lets tell them". Ray gave his correct name as Pte K.Rogal,H16263 P.P.C.L.I.stationed at Godstone. Allen gave his correctb name as Pte 16151 G.P.Morettin. P.P.C.L.I. stationed at Godstone. I then asked Morettin where he got the vehicle he said,"I found it in a hedge between Godstone and Bletchingley. I explained to him that he was not covered by Insurance also that he had no driving licence, the vehicle was not taxed and that he had no index plates.

Morettin made no reply.

Neither men had respirators or steel helmets.

Both men were then detained for escort.

(Signed) William. Spinks P.C.803 Z

Signature witnessed by. R.Hobbs
S.P.C.58 Z.

927

CERTIFIED TRUE COPY.

(J.N.EDGAR) Lieut-Col.
Commanding C.A.V.U.

No. H16263 Name Rogal J.R. Son, Battery or Company H.Q. Corps P.P.C.L.I. Date of enlistment 26-9-39 O.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Major Mitchell Character

M.F.M. 5 (A.F.B. 1325) 100m. 4-5-39 (Sgd.) H.Q. 1937-38-19

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Godstone	2-8-40	Pte.		W.A.O.S. Absent without leave from 0530 hrs 2-8-40 until 1730 hrs 4-8-40(Absent 2 days 12 hrs)	Cpl.Nicholl Cpl.Darby	5 days C.C. Fined 3 days pay Forfeits 3 days pay by F.R.&I.	5-8-40	Major J.N. Edgar	
On Service	20-10-40	Pte.		W.A.O.S. Absent without leave from 2230 hrs 20-10-40 till 2315 hrs 20-10-40(Absent 45mins)	L/Cpl.Small	7 days C.B.	21-10-40	Major R.A. Lindsay	C.B.to commence 30 Oct.
England	29 Oct.40	Pte.		W.O.A.S. Absent without leave from 0600hrs 29Oct.40 until reporting in at 1430 hrs 29Oct. 40.(Absent 8hrs 30 mins.)		5 days C.B.	30-Oct. 40	Major C.H. Ware	

(P.T.O.)

Place	Date of offence	Rank	Cause of drucker-ness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On Serv-ice	17-12-40	Pte.		W.O.A.S. Conduct to the prejudice of good order & military discipline in that he was involved in an accident with a Civilian vehicle A.A.Sec..40 2.Failing to report an accident to the proper authority A.A. Sec.26 para. 2	Lieut D. Brain Sgt.Isaac J.	(admonished)		Major R.A. Lindsay	
O.A.S.	17Mar 41	Pte.		W.O.A.S. Conduct to the prejudice of good order and military discipline) (i.e.)driving a W.D.Vehicle(No. C.Z.4204315 15CWT Ford)away from vehicle harbour without permission (2)Being involved in an accident with said vehicle.(3)Leaving said W.D. Vehicle unattended.	Pte.Barr H. Pte.Shields G. Pte.Stout J.B. Pte.Cameron A. Fay Pte.Novadile H. Cpl.Saniuk W. Sgt.Currie.	Remanded to C.O. 19Mar.41	19 Mar. 41	Lt.Col.J.A. Edgar.	

Place	Date of offence	Rank	Case of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On Service	8-4-41	Pte.		W.C.A.S.-Losing by neglect articles of W.D. property i.e. one seat cushion and one starting crank extension. (A.A.Sec.24 para. 8)	Cpl. Saniuk	Admonished & stoppages to make good the cost of articles		Major J.D. Sylvis.	

Certified True Copy

(J.A. Edgar) Lieut.Col.
Commanding, R.C.A.S.C.

SHORT STATEMENT AS TO PARTICULARS OF
SERVICE OF THE ACCUSED

16 days & late friend

(a) The accused has been in confinement awaiting trial on the present charges for five days. None of this time was spent in civil custody or hospital.

(b) The present age of the accused according to his Attestation Paper is 20 years.

(c) The date of his attestation specified in his Attestation Paper is 21 September 39.

(d) The accused is in possession of, or entitled to no military decoration or military reward.

I hereby certify that the foregoing particulars are true extracts from the Regimental Books in my custody.

J.N. Edgar.

(J.N. EDGAR) Lieut-Col.
Commanding, P.P.C.L.I.

Godstone, Surrey.
6 May 41

I, No. H16263 Pte. Raymond Jack Nogal, P.P.C.L.I.,
desire that an officer be assigned by the convening
officer to represent me at my trial.

R J Nogal Pte.
H16263 P.P.C.L.I.

Godstone, Surrey.
8 May 41

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. H16263 Pte. Rogel, R.J., P.P.C.L.I.

and in my opinion he is ~~unfit~~ fit to undergo Trial

by Court Martial.

Godstone, Surrey.

Date 19/May/41

Medical Officer

17.
17 May 41

LIST OF WITNESSES FOR

PROSECUTION

H16160 Sgt. Hosegood, T.
P.P.C.L.I.
2 Cdn Inf Bde.

K68230 a/Cpl. Strom, C.A.
P.P.C.L.I.
2 Cdn Inf Bde.

P21454 Cpl. Davidson, W.D.
P.P.C.L.I.
2 Cdn Inf Bde.

Police Constable 60Z 'S' Spinks, Wm.
Metropolitan Police,
Croydon, Division.

P82269 Sgt. Robinson, A.G.
P.P.C.L.I.
2 Cdn Inf Bde.

K82403 Cpl. McCullough, G.W.
S.H. of C.
2 Cdn Inf Bde.

DEFENCE

N I L

(J.S. EDGAR) Lieut-Col.
Commanding, P.P.C.L.I.

Godstone, Surrey.
6 May 41

4/I 88.

KIN- ROGAN G A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H/41344 Rfn. George Arthur ROGAN, Royal Winnipeg Rifles

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 40	Not Guilty.	Not Guilty	Brought to the Notice of the Major-General
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for:- beginning on (date) (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of days, of which days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

(Sgd) Judge-Advocate, if any. 27 Nov 44 Date awarded. (Sgd) G A M Edwards, Major President (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Noted

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

Date 29 Nov 44 (Sgd) Brigadier,
Commanding 7 Canadian Infantry Brigade.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 20 DEC 1944 HQ BRANCH CMHQ

RECORDED AT CMHQ IN AB 169 [illegible]

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AF B32) (See P.S.F. 1608 (1944))

Convened by Brig J G Sprague Comd 7 Inf Bde dated 22 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H.41344	Rfn	George Arthur	ROGAN	R Winn Rif

PROCEEDINGS REVIEWED To Offr Commdg Unit 21 Dec 44 REVIEWING OFFICER, HQ BRANCH CMHQ

PROCEEDINGS REVIEWED Date 21 Dec 44 Offr Commdg 7 Can Inf Bde Sub Sec G HQ 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 27 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 14/11$

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (1) attached thereto. The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1555 Hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused — Do you object to as interpreter? Ans~~
The Interpreter is sworn.(1) ~~Do you object to as shorthand writer? Ans~~
~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JAs, if any, and Offrs under instr, if any, are sworn.~~(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G A M Edwards	HLI of C
Member	Lieut	F L Aylward	15 Cdn Fd Regt, RCA
Member	Capt	W H Hayward	North Shore (NB) Regt
Judge-Advocate			
Prosecutor	Lieut	A A Dyson	R Winnipeg Rifles
Defending Offr	Lieut	G H Dyson	R AR

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes. (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for Information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused H/41344 Rfn G A ROGAN before arraignment make(s) (no) (~~and~~) plea (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RaP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D1.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Prmnt page 1 of 2

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, cle, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; securing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(D), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 80, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No .(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (and) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 353. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the First charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the First charge(s), and allowed on the ~~(charges)~~, and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty of the latter charge(s).~~(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans No Do you intend to call witnesses on your behalf ?
Ans Yes Are they witnesses as to character only ? Ans Yes.
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)~~
Or The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 183(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 86(B). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, H41344 Rifleman George Arthur Rogan, 1st Battalion, Royal Winnipeg Rifles, a soldier of the Canadian Army, placed on Active Service, is charged with:-

First Charge
Sec 40
Army Act

WHILE ON ACTIVE SERVICE, NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he, at approximately 1330 hrs, 18 Nov 44, did handle a pistol in such a negligent manner as to cause it to discharge thereby fatally wounding H41285 Rfn Komarnieki, W.

In the Field

19 November 1944

(L R FULTON) Lt-Col,
OC, THE ROYAL WINNIPEG RIFLES (AF)

To be tried by Field General Court Martial:

Date:

22 Nov 44.

.....
Convening Officer

MEDICAL OFFICER'S CERTIFICATE

24 Nov 44

This morning I have examined H41344 Rfn ROGAN G A, and have found him ..fit..... to undergo trial by Court Martial.

R. M. Caldwell Capt
.....
Signature of Medical Officer

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/PAS/1697 (2663)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H.41344	Rfn		George Arthur	ROGAN	R Wpg Rif

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 NOV 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

2. ~~[illegible]~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Name.	Unit.
Major	G A M EDWARDS (Must be named. RP 106.)	H L I of C

MEMBERS.

Rank.	Name.	Unit.
Capt	A COMPTON-LUNDIE	1 C Scot R
An offr to be detailed by Comd 8 Cdn Inf Bde	(Named or detailed. RP 106.)	

WAITING MEMBER.

Rank.	Name.	Unit.
An offr to be detailed by CRA 3 Cdn Inf Div	(Named or detailed, if any. RP 106.)	

JUDGE-ADVOCATE.

Rank.	Name.	Unit.
	(Must be named, if any. RP 106.)	

On Active Service in the Fd

in Holland (Country.)

J G Spragge (Signature of Convening Officer. RP 105 fn 2.)

(J G Spragge)

Brigadier (Rank.)

Date 22 Nov 44

Commanding 7 Canadian Infantry Brigade
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (*AA 52, KR Can 562, RP 26, 29, 111.*)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (*AA 52, MML 763, RP 82, 111.*)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (*RO (Can) 2693.*)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(*Referred to throughout CF A 96 as "Notes".*)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 119 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 86.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 81.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D).* *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 565(a).*)
(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 557.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (k).*)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

1ST. WITNESS FOR PROS.

Gerardus Rissenbeek of Groesbeeksewek 227 Nijmegen, sworn states, — At one o'clock I came home and dinner was not ready so I went into garage and standing at door watching traffic on street. I was there for a couple of minutes and suddenly I heard a shot behind me. I looked around and saw a fellow lying on the ground and another soldier went to him and he asked me to call the other soldiers. I did so and the two came from the house to the garage. Then I saw the bullett wound in his (the victim's) chest. The victim was sitting on a bench when I went in and I saw some pieces of the pistol lying on the table. The other soldier was standing at the other end of the table but I could not see what he was doing for it was pretty dark. I did not hear any conversation before or after the shot was fired. ~~He calls~~ ~~The lieutenant~~ One of the two soldiers who came from the house was putting a dressing on the victim's wound.

I did not see anything in the other soldier's hands or anything else on the table.

The same 2 people were still in the garage after the shot was fired. The wound was on the left side of the victim.

I could recognize the wounded man afterwards but not the other person.

2ND. WITNESS

K53861 Rfn Moulton H.O., R.W.R., sworn, states, — The day of the accident I was sitting in the front room of the house in which I was

billeted talking to Sgt. Smith. I heard the report of a shot but did not pay any attention to it until a young civilian who lives in the house came in and told us one of our men had been shot. Sgt. Smith and I went out into the garage. I saw Pfn. Romaniskey lying on the floor and Pfn. Rogan was kneeling over him. I then went for a field dressing and assisted Pfn. Rogan to dress the wound.

I did not see any other weapons outside of a pistol laying on the table that had been stripped. I have known the two men for about 2 yrs. They were always the best of friends. There was nobody else in the garage outside of Pfn. Rogan and Romaniski when I entered after having been called by the civilian.

Before the accident I did not see Pfn. Rogan handling any weapon.

I can identify the 1st. witness as the civilian who called me.

It was impossible for a shot to be fired from the stripped weapon on the table, due to its ~~bein~~ stripped condition.

3RD. WITNESS

H40796 L/Sgt. Smith E. G., R.W.R., sworn, states,—

On the 18 Nov. 44 at approx. 1330 hrs I was sitting in the front room of the house when a civilian came in and told me that one of the boys had been shot. I ran out into the garage and saw Pfn. Romaniski lying on the floor. Pfn. Rogan was kneeling beside him holding up

his head and undoing his tunic. He asked me to get a field dressing when Pfn. Houston came in and said he would go after one and I would go for an ambulance. I ran up 3 houses and told Sgt. Koshick that Komarnicke had been shot and he went down to the garage and I went for a D.R. to summon the ambulance. I then returned to the garage and they were applying the dressing etc. I stayed around until the ambulance arrived.

I saw two pistols lying on the table. One was in pieces and the other was together except for the butt plates which were missing. I recognized the pistol without the grips as belonging to Pfn. Rogan.

I saw Pfn. Rogan making grips for the pistol but did not see him handling the pistol itself. I do not know whether it was in working order. The 2 pistols were P38's.

I recognize this pistol (Exhibit B) as that of Pfn. Rogan's.

~~There is no possible~~

4TH. WITNESS

H41187 Sgt. Meyers, R.W.R., sworn, states, —

At about 1315 hrs I was leaving in a truck for rations. At that time one of the D.Rs. came to me on a W/C. and said that Pfn. Komarnicki had been shot. I sent the D.R. for an ambulance and went to see Pfn. Komarnicki. When I arrived I looked at Pfn. Komarnicki and he seemed to be in great pain. Sgt. Koshik mentioned if he had morphine, he would give the victim a shot of it. I had a phial of morphine in my pocket

rssued to me by the M.O. I administered the phail to Komaniski's arm. I had on another occasion administered morphine before.

I saw a pistol on the table in the garage and also some parts of a pistol but cannot say whether these parts belonged to ~~the~~ the pistol. I don't know who owned the pistol. Previous to the accident I never saw the pistol known as Exhibit C. I did not see the accused handling a weapon and do not recognize Exhibit C as the pistol lying on the table.

5TH. WITNESS

H 40530 Sgt. Kochick J., R. W. R., sworn states

On the day of the accident at apbox 1315 hrs I was in my room when Sgt Smith came in notified me that Pte Komaniski had been shot. We ran down towards the building and on the way I told Sgt. Smith to notify pl. H.Q. and to get an ambulance. I then went into the building and saw Pte. Rogan applying a bandage to Pte Komaniski. By that time one of my corporals had come in and I asked the two men either to lift the victim or turn him over so I could see whether the bullet had passed through the body. Upon inspection I did not find any wound in the back. I then got blankets and a pillow and comforted the wounded man. By that time Sgt. Meyer had arrived and I asked him for morphine which he administered to the victim. After that I waited for the ambulance. I saw

Exhibit C

two weapons on the table when I went into the building. One pistol was in pieces and the other was intact except for the lack of pistol grip plates. I recognize Exhibit B as Pfn. Rogan's pistol. I cannot say whether Rogan's pistol was in working order. The pistol known as Exhibit B appears to be the same one as that lying on the table after the accident.

I have known the 2 men for approx. ~~two~~ three years and have never known two men to get along better than they did. I did not see Pfn. Rogan handle the weapon before the accident.

~~PROSECUTOR~~ DEFENDING OFFICER

In my opinion the prosecution has not established a prima facie case against the accused therefore the case should be dismissed

1ST. CHARACTER WITNESS

(DS) LIEUT. ~~X~~ G.R. WYBOURNE, RWR.

I have known Pfn. Rogan for approx. 4 yrs. since April '41. During that time I have been a Pfn, NCO. and officer. Also for 10 mos. of that time Pfn. Rogan was my driver. I know him to be an excellent soldier, dependable conscientious hard worker, and as good a soldier as we had in the platoon. As a man he is honest and of a happy nature. Since I have known him I have never heard of him having a serious argument of ~~opinion~~ difference of opinion with anyone. He is not of a mean nature. His vehicle was always in

perfect shape when he was driving. I would not regard him as careless but rather a steady worker.

Mrs Wilkins recalled.

Q ~~You may have when you~~ Can you recognize where the two men were when you first went into the garage?

A

Q When, after hearing the shot, you went into the garage where were the two men.

Q Did you see what, [illegible] was on the table?

Q What was the relative position of the weapons.

Mrs Wilkins recalled by [illegible].

Q You saw the weapons on the table -

Q What was their relative positions -

Q Where was the deceased lying -

Q Where exactly was the bullet wound.

Summary of Evidence in the case of H41344 Rfn Rogan, G.A., 1st Battalion, Royal Winnipeg Rifles, a soldier of the Canadian Army, Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

First Witness

Gerardus Rissenbeek of Groesbeeksewek, 227, Nijemegen, Holland, having been duly sworn states:

I am Gerardus Rissenbeek of Groesbeeksewek, 227, Nijemegen, Holland. I was standing at the door of the garage looking out when I heard a shot behind me. I looked around and saw that one of the soldiers was lying on the ground. Before I went to the door I had noticed that the two soldiers were at a table and one of them was cleaning a pistol. It was a bit dark and I couldn't see what the other soldier was doing. The one who was cleaning the pistol was the one who was shot. It happened about one o'clock. The other soldier was helping the wounded one and he told me to tell the others in the house, which I did.

Question: Did you hear any loud talking at all before the accident?
Answer: No.

The accused declines to cross-examine this witness.

Rissenbeek
.....
Signature of Witness

Second Witness

K53861 Rfn Moulton, H.C., Royal Winnipeg Rifles, having been duly sworn states:

I am K53861 Rfn Moulton, H.C., of the Carrier Pl, R Wpg Rif. I was sitting in the front room of the house talking to Sgt Smith at about 1345 hrs. I heard an explosion. At the time I didn't pay any attention to it, until a few minutes later the young civilian who lives in the house came into the room and said that one of our men had been shot. Sgt Smith and I both came out and saw Rfn Komarniski lying on the floor. I saw that he had been wounded and I went to my carrier for a field dressing. When I first came into the room Rfn Rogan was kneeling over Rfn Komarniski. I noticed on the table a pistol that had been stripped.

Question: Did you see any other weapon?
Answer: No.

Question: Do you know Rogan and Komarniski very well?
Answer: Yes. I've known them both for over two years and have never known them to have an argument.

The accused declines to cross-examine this witness.

H.C. Moulton
.....
Signature of Witness

Third Witness — H40796 L/Sgt Smith, E.C., Royal Winnipeg Rifles, having been duly sworn states:

I am H40796 L/Sgt Smith, E.C., of No 1 Sec, Carrier Pl, R Wpg Rif. I was sitting in the house talking to Rfn Moulton when the civilian came in and told me one of the boys had been wounded. I ran out of the house and into the garage where I saw Komarniski lying on the floor. Rogan was kneeling down beside him holding up his head and undoing his tunic to see where the wound was. Rogan told me to get a field dressing and Rfn Moulton came out and said he would get the field dressing and that I should go and get an ambulance. I went up to tell Sgt Roshick, who was three houses away, that Komarniski had been wounded. He came down and I went towards Pl HQ to get a DR and sent him for the ambulance. I then came back into the building.

Question: Did you see any weapons in the garage when you came in?
Answer: Yes. There were two pistols lying on the table, one was in pieces and the other had no butt grips on it.

Question: Have you known Rogan and Komarniski long?
Answer: Yes. Since June 1943 and they were always the best of pals.

The accused declines to cross-examine this witness.

L/Sgt. Smith. E.C.
Signature of Witness

Fourth Witness — H41187 Sgt Meyers, H., Royal Winnipeg Rifles, having been duly sworn states:

I am H41187 Sgt Meyers, H., Sgt of the Carrier Pl, R Wpg Rif. I was just starting away for rations when a DR came up and told me that Komarniski had been shot. I sent the DR for an ambulance and went to see Komarniski. When I arrived I saw a pistol on the table and also some parts of a pistol. Komarniski was lying on the floor covered with blankets to keep him warm. Cpl Frank was there beside him making him comfortable. Sgt Roshick said that he would give Komarniski some morphine if he had any. I had some and as the wound was quite painful I administered an issue phial.

Question: Where did you get this morphine?
Answer: I was issued with two phials by our MO, Capt Caldwell, before D day. I used one of these.

Question: Have you administered morphine before?
Answer: Yes, once.

Question: Have you known Rogan and Komarniski long?
Answer: Yes. I have known them both since March 1944 and as far as I know they always get along.

The accused declines to cross-examine this witness.

H. Meyers Sgt.
Signature of Witness

Fifth Witness

H40530 Sgt Roshick, J., Royal Winnipeg Rifles, having been duly sworn states:

I am H40530 Sgt Roshick, J., of No 1 Sec, Sgt of the Carrier Pl, R Wpg Rif. I was first notified of the accident by Sgt Smith. He told me that Rfn Komarniski had been shot and on the way down I told him to notify Pl HQ and see about an ambulance. When I came into the garage I noticed Rfn Rogan applying a dressing to the wounded man. We raised him up and I checked his back for any signs of the bullet having come out. I then got some blankets and a pillow and made him as comfortable as possible. During that time Sgt Meyers had come in and I asked him for some morphine, which he administered to Rfn Komarniski. I noticed two pistols on the table. One was stripped and the other one wasn't. The unstripped one I recognized as belonging to Rfn Rogan because the pistol grips were not on it, (attached as Exhibit "B").

Question: Have you knowr Rogan and Komarniski long?
Answer: Yes, I have known them about three years. They were two of the best men I had and I have never known them to quarrel or have any disagreements.

The accused declines to cross-examine this witness.

.....
Signature of Witness

Sixth Witness

Major G.P. Tanton, RCAMC.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence attached as Exhibit "A".
Having regard to exigencies of the service the attendance of this witness cannot in my opinion be readily procured.

.....
Officer taking Summary

The accused does not demand the attention of this witness for cross-examination.

The accused was cautioned as follows:

Question: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.
Answer: I don't think I'll say anything till I see the officer who is going to represent me.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of three pages, was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

.....
Officer taking Summary

In the Field
19 Nov 44.

I, H41344 Rfn Rogan, G.A., request an officer to conduct my defence at Field General Court Martial, in connection with Charge Sheet dated 19 Nov 44.

If possible I should like this officer to be Lieutenant C.H. Dyson, Royal Winnipeg Rifles.

Signed. G.A. Rogan

Witnessed. C.H. Dyson Lt

Witnesses for the Prosecution:

Gerardus Rissenbeek			Groesbeeksewek, 227, Nijemegen, Holland
K53861	Rfn	Moulton, H.C.,	R Wpg Rif
H40796	L/Sgt	Smith, E.C.,	R Wpg Rif
H41187	Sgt	Meyers, H.,	R Wpg Rif
H40530	Sgt	Roshick, J.,	R Wpg Rif
	Major	G.P. Stanton,	RCAMC

Witnesses for the Defence:

The accused declines to summon witnesses for his defence.

List of Exhibits:

Exhibit "A" - Statement by Major G.P. Tanton, RCAMC
Exhibit "B" - German P38, No 1976

TO WHOM IT MAY CONCERN:-

18 Nov 44

This is to certify that H 41285 Rfn Komarniski, W. of R Wpg Rif was brought into this A.D.S. at 1350 hrs 18 Nov 44 with GSW(pistol) left chest. He was dead on arrival.

(G P Tanton) Major RCAMC

This is Exhibit "A" referred to in the Summary of Evidence in the case of H41344 Rfn ROGAN, G.A., taken before me this 19 day of November 1944.

.....
Officer taking Summary

18 Nov 44

TO WHOM IT MAY CONCERN:-

This is to certify that H 41285 Rfn Komarniski,W. of R Wpg Rif was brought into this A.D.S. at 1350 hrs 18 Nov 44 with GSW(pistol) left chest. He was dead on arrival.

(G P Tanton) Major RCAMC

This is Exhibit "A" referred to in the Summary of Evidence in the case of H41344 Rfn HOGAN, G.A., taken before me this 19 day of November 1944.

.....
Officer taking Summary

18 Nov 44

TO WHOM IT MAY CONCERN:-

This is to certify that H 41285 Rfn Komarniski,W. of R Wpg Rif died of GSW (pistol) left chest at 1350 hrs 18 Nov 44.

Medical Officer

66 U

Cpl ROGERS, C.

REVIEW SHEET

F.G.C.M. - Trial of No.: B86622, Cpl Rogers, C. 2 Cdn Div Sup Coy(S Coy)

Date of Trial: 7 Dec 42

President of Court: Major F. J. Gilmour R C A

1. For the information of the Officers asked to sign below the following irregularities are noted:

No comments, other than there was a slight delay in preparation of the abstract, and a long delay in promulgation after confirmation



2. May these remarks and the authorities quoted be read by the following officers, signed and returned to this H.Q., please

O.C.,

Adjutant

President

Staff Officer for Convening Officer

Staff Officer for Confirming Officer

W.M.W. Shaw
(W.M.W. Shaw), Capt.,
A.D.J.A. 2 Cdn Div

/DRLS
Encls.

Rear H Q 1 Cdn Corps (Legal)

CRCASC 2 Cdn Div: Please circulate.

18 Dec 42

660

Correspondence to be PINNED here.

Army Form A.3.

"A"
F. Gilmour
Major
Pres.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this SIXTH day of DECEMBER, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 2nd CANADIAN DIVISION CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

J.C.L.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*~~I am unable to appoint:—~~
*~~(1) Three Officers to form the Court;~~
*~~(2) A Field Officer as President;~~

J.C.L.

~~for the following reasons, namely:—~~

In my opinion military exigencies, namely the dispersion of units, difficulties of communication, and other difficulties, render it inexpedient to comply with those rules inconsistent with Appendix "A" to 2 D.R.C. 772 on the trial of the soldier named in the annexed schedule

75

President.

Rank.	Name.	Regiment.
MAJOR	F. J. GILMOUR	R C A H.Q. 2 Cdn Div

Members.

Rank.	Name.	Regiment.
A CAPTAIN	To be detailed by CRCASC 2 Cdn Div	R.C.A.S.C.
~~A CAPTAIN OR A LIEUT~~	To be detailed by ADOS 2 Cdn Div WAITING MEMBER	R.C.O.C.
~~A CAPTAIN OR A LIEUT~~	To be detailed by CRCASC 2 Cdn Div	R.C.A.S.C.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J.C. Roberts Major-General
Commanding 2 Canadian Division
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B86622 Cpl Charles Rogers, 2 Cdn Div Sup Coy (6 Coy) R.C.A.S.C.	FIRST CHARGE Sec. 40 Army Act AN ACT, ETC. (See charge sheet attd)	Guilty	Guilty	
	SECOND CHARGE (Alternative) Sec. 40 Army Act CONDUCT, ETC. (See charge sheet attd)	Withdrawn by Prosecutor		
		To be reduced to the ranks. 7 Dec 1942 F Gilmour Major Pres		Confirmed J.U.L.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) J.U. Roberts (J.H. Roberts) Major-General
Commanding 2 Canadian Division
Convening Officer (e)

(Signed) F Gilmour Major
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 7th day of December '42, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~) F.G.

were duly sworn.

* Omit if not applicable.

Signed this 7th day of December 1942.

F Gilmour Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this F.G. day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.) J.U.L.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 9th day of Dec 1942

J.U. Roberts Maj. Gen.
Confirming Officer.

Promulgated and extracts taken in the case of B86622 Cpl Rogers C.

(a) (Dated) 16 Dec 42. (Signed) [illegible] Major.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[B4] Wt. 38092/1316 70m 2/41 W. & Co. Ltd. Gp. 748/2

Charge Sheet

The accused No D 86642 Corporal Charles Rogers 2 Can. Div. Sup. Coy. (6 Coy) RCASC a soldier of the Canadian Army active is charged with

First charge Sec 40 Army Act

An act to the prejudice of good order and military discipline

In that he In the Field on 9 Sep 42 was in Brighton on Canadian Motorcycle 1040103, without authority

Alternative charge Sec 40 Army Act.

~~Conduct~~ to the prejudice of good order and military discipline

In that he "In the Field" on 9 Sep 42 was not at Hove Co-operative when his duty required him to be there at 0900 hrs.

In the Field
23 Nov 42

[signature] major
2 Can. Div. Sup. Coy. (6 Coy) RCASC

To be tried by F.G.C.M.

6 DEC 42.

[signature]

B2 [signature]
Major
Pres

I desire to have Captain D. Careless
R.C.A.S.C. represent me at my trial

In the Field
27 Nov 42

2 CDN. DIV. ~~ASC.~~ SUP. COY. R.C.A.S.C.

MEDICAL OFFICER'S CERTIFICATE

I have this morning examined No. B86622 Cpl CHARLES ROGERS soldier of the above mentioned Unit and in my opinion is fit or ~~unfit~~ to undergo Court Martial.

In The Field

[signature]
Medical Officer Att'c.
2 Cdn Div RCASC Overseas.

Dec 9 - 1942

"C" [signature]
Major
Pres

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT In the Field ON THE 7 DAY OF Dec 42

TRIAL OF:- No. B-86622 Cpl. Chas Rogers Unit 2 Cdn Div Sup Coy 6 Coy RCASC

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Capt E. G. Swift (Unit) RCASC. 2 Cdn Div Sup Coy

Defending Officer:- (Name) Capt W D S Careless (Unit) ditto.

At 1145 hrs the trial commences.

The order convening the court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 - no Sir.

The President, members and judge-advocate (if any) are duly sworn.

The following constitute the Court:

President Major T J Gilmour ..... (Unit) RCA HQ 2 Cdn Div

Members Capt P. L. C. Douthwaite ..... (Unit) RCASC 2 Cdn Div Ann Co

Lieut J A Plamondon ..... (Unit) 4 Coy ditto

~~The officers under instruction are duly sworn.~~

Q2 Do you object to ~~.....~~ acting as shorthand writer? A2.-

7 Cs ~~The shorthand writer~~ is duly sworn.

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court is closed to consider its finding. Court is re-opened.

Name Capt. E. G. Swift ....(Unit). RCASC ..... sworn, produces AFB 296 and MFM 6 and upon being questioned by Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3. (To accused) - Do you wish to make any statement in mitigation of punishment? A3 - no sir.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4 - I have a stmt from Major Bigelow

---

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

For character evidence see written testimonial by Major Bigelow admitted by consent of prosecutor + attached.

For statement in mitigation of punishment see written address of defending officer attached.

The Court is closed to consider sentence

T J Gilmour
Major Pres.

Character Evidence.

In case of B86622 Cpl. Rogers, C. —

Cpl. Rogers has proven himself on past occasions to be a reliable NCO and very capable. He was considered one of the better NCO's. He is in front of the Court Martial for a breach of discipline as shown by the charge. He has no past build up that brings the case to trial but merely that he is a confirmed corporal. I ask you to deal with the case on its merits

"A" Fitzhugh Major
Pres

Tom Bigelow Major
O.C. 2 Cdn Div Sup Bay (6 Bay)
RCASC

Statment in Mitigation of Sentence.

in case of, B 86622 Cpl Charles Rogers,
2 Cdn Div Sup Coy (6Coy)

Cpl.Rogers is charged with and has pleaded guilty to to taking a C.M.-M/C without proper authority,this as is defending officer I do not condone. But due to circumstances which I would like to point out,he Cpl Rogers did nothing more than you or I would do. He has for many months being trying to obtain a divorce,this I can confirm because I was his Echelon Commander some months ago and I had attempted to help him,his case being one that warranted help.
On the day in question Sept 9th 1942 when he was in Hove on the bread draw he having finished his duty of Transport Cpl (not having any duty until the lorrys were loaded) went one and a half miles into Brighton to try and see a lawyer.On his arrival at the lawyers office he found that he had not arrived,not wanting to be away from his convoy too long he returned immediatly. On his return journey in an attempt to avoid hitting a civilian who was jay walking he hit a lamp standard. He was badly injured and was in hospitable for 60 days these injuries being sustained with no thought of himself but by regard for others.
Another point I would like to bring to the courts attention is Cpl Rogers crime sheet(M.F.M.6) absolutely clean ~~an excellent~~ record as his attestation was 16-4-40 32 months without any crime at all. That gentlemen should mean a lot in awarding punishment.
You have heard the statement made by his Commanding Officer that speaks for itself.
So if it may plrase the Court I ask on behalf of Cpl Rogers the greatest leniency that they can possibly show.

W.D.S. Careless Capt
W.D.S.Careless Capt.
B.R. C.A.S.C. O
5 Cdn Inf Bde.
Defending Officer

Field.
7 Dec 42.

"H" F Fuhmeier
Major
Pres

Abstract of Evidence

In the case of No B 86622 Corporal Charles Rogers 2 Cdn. Div. Sup. Coy. (6 coy) R.C.A.S.C.

1st witness for the prosecution

No B 85917 L/Sergeant John A. H. Law 2 Cdn. Div. Sup. Coy. (6 coy) RCASC States

On 9 Sep 42 I was administrative sergeant in No 2 Transport Platoon the 2 Cdn. Div Sup. Coy. and B 86622 Cpl. C. Rogers was in charge of No 4 section of this platoon. On 8 Sep 42 I detailed Canadian Motorcycle 1040103 for the bread draw, this meant that the Cpl having this Motorcycle on his charge took the bread convoy to Hove. On 9 Sep 42 Canadian Motorcycle was on the charge of B 86622 Cpl Rogers. His duty while in charge of the bread convoy called for him to take the convoy from his Station at Arundel to Hove, to supervise the loading then bring the convoy back, his duty did not call for him to be in Brighton.

2nd witness for the prosecution

No B 86410 L/Corporal John Fuller 2 Cdn. Div. Sup. Coy. (6 coy) RCASC States

On 9 Sep 42 as private in No 2 Transport Platoon I was detailed and went on the bread draw. Cpl Rogers was in charge of this convoy and took us to Hove on the usual road direct from where we were stationed in Arundel to Hove

"D" J. Fulmore
Major
Pres.

Abstract of Evidence

3rd witness for the Prosecution

E. H. Botting 28 Crown Street Brighton States
At about 9 o'clock on Wednesday 9th of September I was walking East on Western road and was on the North side of the road. Coming from the East on this road was a soldier on a Motor-cycle travelling about 20 to 25 m.p.h. Just then I saw a Man Start to cross the road without looking from South to North. The cyclist made an effort to avoid the man by swerving but could not and knocked him down.

4th witness for the Prosecution

Captain Robert W Scott 2 Cdn. Div. Sup. Coy. (6 Coy) R.C.A.S.C. States
I am a lead quarters Captain in 2 Div. Sup. Coy. and as such know that person not on the bread draw have no reason to go to Brighton as it is not on the route, the route being from Sup Coy Quarters in Arundel to Hove. I also know that the U.C.O. in charge of the convoy has to supervise the loading of his trucks. On 9 Sep 42 Cpl Rogers who was in charge of his section trucks was not at Hove Co-operative at about 0900 hrs where his duty required him to be.

Taken down by me In the Field this 23 Nov and 5 Dec 42 in accordance with appendix "A" to D.R.O. 770

[signature] Capt

2 Cdn. Div. Sup. Coy. (6 Coy) R.C.A.S.C.

M.F.M. 6
(A.F.B. 122)
(1551—7-41 (:210-20)
H.Q. 1772-39-1052

No. B86622 Name Cpl Rogers, Charles

Sqn., Battery, or Company } 5th Div Sup Coy (6 Coy) Corps RCASC

Date of enlistment } 16-4-40 G.C. Badges } 1 Service or Proficiency Pay } na

Date of last entry in Company Conduct Sheet } na No. and date of last drunk } na Period not reckoning towards freedom from extra fine } na Sheet No. 1 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
No entries from previous sheet, destroyed 16-4-42 on completion of two years service.									

Certified true copy for (T.W.Bigelow) Major
O.C. 2 Cdn Div Sup Coy (6 Coy)
R.C.A.S.C. Cdn Army (Overseas)

"7" Cushman Major

(P.T.O.)

(Substitute for A.F.B.296)

B

NO. 86622 RANK Cpl NAME CHARLES ROGERS

UNIT 2 Con. Div. Sup. Coy. (6 Coy) RCASC

AGE 35 DATE OF ENLISTMENT 16 APR 40

MARRIED OR SINGLE M NO. OF DEPENDENTS 1 (FATHER)

NO. OF DAYS SPENT IN CLOSE ARREST 0 HOSPITAL 60 TOTAL 60

RECORD OF PROMOTIONS, IF ANY to A/Cpl 30 MAY 41

to Cpl 1 JAN 42

Dated this 7th day of Dec 1942

In the Field.

Officer i/c Records.

Capt.

Major

(This form must be accompanied by M.F.M6, and be brought up to date as of the day of the trial.)

232 b. Pte. Rogers L. A.

8 Dec. 41 Original proceedings A. G. 5

Correspondence to be PINNED here.

1

232B

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this Tenth day of June, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 2nd. CANADIAN DIVISION, CANADIAN ARMY (ACTIVE), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[I am unable to appoint

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

*(3. Three Officers having more than one year's service.)

for the following reasons, namely:—]

Proceedings checked and found in order

A.A. Finnegan Capt

Kapp/ [illegible]

President.

Rank.	Name.	Regiment.
MAJOR	R. J. DUFRESNE	2 Cdn Div. Petrol Coy. R. C. A. S. C.

Members.

Rank.	Name.	Regiment.
MAJOR	J. B. WEIR	1 R. H. C.
MAJOR	F. A. VOKES	8 Cdn Recce Bn.(14H)
CAPT.	WAITING MEMBER T. W. BIGELOW	H.Q. R.C.A.S.C.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (Victor W. Odlum); Major-General
Commanding 2nd Canadian Division, C.A.(A)
Convening Officer.

2

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
No. D-105018 Pte. Charles Allen Rogers, R.C.A.S.C. attd'd for all purposes to II Cdn. Fd. Amb., R.C.A.M.C. a soldier of the Canadian Army, (Active)	FIRST CHARGE A.A. Sec. 64(1)(a) When on Active Service Deserting His Majesty's Service (See Charge Sheet attached)	Not Guilty	Guilty	
	SECOND CHARGE A.A. Sec. 48 When in Lawful Custody of an escort Escaping (See Charge Sheet Attached)	Not Guilty	Guilty.	I Confirm the finding and sentence of the Court, but commute the sentence to detention in stead of imprisonment and remit one year. H. C.W.O.
Sentenced to 2 years imprisonment.				I direct that the promulgation be read on parade. H. C.W.O.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):

(Signed) H. C.W. Odlum (V.W. Odlum) Major-General
Commanding 2 Cdn. Div., C.A. (A.)
Convening Officer (e)

(Signed) R.J. DeFresne Maj.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

3

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 19th day of June 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~
*(4. ~~The shorthand writer~~)

* Omit if not applicable.

were duly sworn.

Signed this 19th day of June 1941

R.J. DeFresne Maj.
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (f) on page 764 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suppression.

*(~~I direct that the soldier named in the margin be not committed to prison until further orders.~~)

Signed this 27 day of June 1941

H. C.W. Odlum
Confirming Officer Maj.-Gen. Commanding 2 Cdn Div.

Promulgated on Parade

(a) (Dated) 1 JULY 1941. (Signed) W.M. Hurst LIEUT. COLONEL COMDG. 11TH. FIELD AMBULANCE R.C.A.M.C. C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(47755) Wt. 40152—907 100 6/40 P. S. & Co.

Aldershot, Hants. June 13th 1941 3

I have today examined #D105 18 Pte C.A. Rogers.

It is my opinion that he is mentally and physically fit to stand trial by Court Martial.

F.H. van Nathan Major
Psychiatrist.
11th Cdn Fd Ambulance

R.J.D.

Aldershot, Hants.
June 19th 1941.

I have to day examined # D 1055 18 Pte C.A. Rogers and find him mentally and physically fit to stand trial by Court Martial.

T.H. van Nostrand Major
Psychiatrist.

R.J.D

7

CHARGE SHEET

The accused, No. D105518, Pte. Charles Allen Rogers, R.C.A.S.C., attached for all purposes to 11 Cdn Fd. Amb., R.C.A.M.C., a soldier of the Canadian Army, Active, is charged with:

FIRST CHARGE
A.A.Sec.12(1)(a)

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he

at Aldershot, Hants. at 2130 hours on 17 Feb 41, absented himself with intention to desert from his Unit, until 1330 hours 24 Apr 41, when he surrendered himself to 11 Cdn Fd. Amb., R.C.A.M.C., at Aldershot, Hants.

SECOND CHARGE
A.A.Sec. 23

WHEN IN LAWFUL CUSTODY OF AN ESCORT, ESCAPING

in that he

on 17 Feb 41, at 2130 hours, when in lawful custody of an escort, at Aldershot, Hants., escaped.

~~THIRD CHARGE~~
~~A.A.Sec. 24(2)~~

~~LOSING BY NEGLECT HIS CLOTHING, EQUIPMENT AND REGIMENTAL NECESSARIES,~~

~~in that he~~

~~at Aldershot, Hants., on or about 24 Apr 41, was deficient of:~~

[signature] LtCol.

ALDERSHOT.
10 JUN 1941.

[signature]
(AMBULANCE) LIEUT. COLONEL
COMDR. HTH. FIELD AMBULANCE
R.C.A.M.C. C.A.S.F.

TO BE TRIED BY F.G.C.M.

[signature]

June 41, Aldershot, Hants.

PROCEEDINGS OF A FIELD GENERAL COURT
MARTIAL HELD AT ALDERSHOT, HANTS ON
13th and 19th JUNE, 1941

TRIAL OF NO. D105518, Pte. Charles Allen Rogers, R.C.A.S.C., att'd. for all purposes to 11 Cdn Fd. Amb.

PROSECUTOR: Lieut. J. H. Broughall, 5 Cdn Inf Bde. Legally Qualified
Lieut. T. Mirsky, 2 Cdn Fd. Pk. Ordnance, R.C.O.C. Legally Qualified

DEFENDING OFFICER: Major H. F. Lazier, R.H.L.I. - Legally Qualified
Lieut. T. H. Montgomery, 5 Cdn Fd. Regt., R.C.A. Legally Qualified

SHORTHAND REPORTER: D24030, S/Sgt. J. H. Spence, H.Q. 2 Cdn Div.

---

1. The Order Convening the Court is read to the accused.

2. The accused is asked the following questions:

1. Q. Do you object to being tried by me as President or by any of the other Members of the Court?
1. A. No, sir.

2. Q Do you object to S/Sgt. Spence taking down the evidence in shorthand?
2. A. No, sir.

3. The President, Members of the Court and Shorthand writer are sworn.

4. The accused answers to his name and number and is duly arraigned on the two charges.

The accused pleads "Not Guilty by reason of an unbalanced mind"

5. R. P. 39(A) is complied with and the accused answers "No".

6. THE COURT IS ADJOURNED FOR THE PURPOSE OF HAVING THE ACCUSED MENTALLY EXAMINED.

7. The Court is re-opened and the first witness for the Prosecution, Major F. H. Van Nostrand, 11 Cdn Fd. Amb., R.C.A.M.C., is sworn:

Q 1 Will you tell the Court what qualifications you hold in your profession?
A 1 M. D. Toronto, 1927, B.Sc. Toronto, 1929. I have been general psychiatrist for the Department of Pensions and National Health for about 12 years. From September 1, 1939 until coming to the 11 Cdn Fd. Amb. on the 15th of May 1941. I was neuro-psychiatrist to the 15th General Hospital, Bramshott.
Q 2 And you are of the opinion that the accused is mentally and physically fit to stand trial by Court Martial?
A 2 Yes, I have made out a certificate to that effect.

MAJOR LAZIER: Mr. President, in the circumstances I don't feel that I can competently act for the accused. I have not prepared any defence along these lines and I have no knowledge of the conditions that he must be relying upon to make this plea. As far as I, myself, am concerned I am quite willing to accept Major Van Nostrand's certificate, but I think possibly the accused either better ask for another defending officer, or maybe he would like to look after this part of the case himself.

THE PRESIDENT: Pte. Rogers, do you wish to cross-examine Major Van Nostrand?

THE ACCUSED: I don't believe that it can be ascertained by swap judgment in a short period of time such as Major Van Nostrand has made, whether or not a man is of balanced or unbalanced mind.

BY THE ACCUSED

Q 3 Major Van Nostrand what physical check did you make of my condition just now?

A 3 I made a very brief physical examination for two reasons, the chief one was that I had made a much more lengthy examination of the prisoner on May 24th and I have here in my own handwriting the findings of that date, of which this Court has a certified copy. Today's examination was brief, in that the man was stripped and I listened to his heart and to his chest and I noted the tremor of his extended fingers, his bitten finger nails and increased sweating and increased heart. In my certificate I am certifying that he is mentally and physically fit to stand trial and not, as you notice, fit or otherwise to do such things as strenuous manual labour or Field Punishment. If I had not examined Pte. Rogers more fully as of that date I would have conducted a more detailed examination today, but in the brief examination I did conduct there was nothing to indicate that there was anything that would render him unfit to stand trial.

Q 4 Isn't it true that this examination today was purely a physical one, sir?

A 4 No, I asked you a group of questions, one of them being the date and place. You said you had been told repeatedly today that it was the 13th. You answered all questions in a rational manner. In other words you were able to recollect xx as to who you are, where you are, the time of day and the week and the date. The other answers to all questions were not that of a man in a deranged mental condition. If you had answered a single question abnormally, or shown what I consider beha viour delusions the examination would not have been of ten minutes duration.

Q 5 Isn't it true that my answer to one of your questions was: "What the Hell's the use of talking"?

A 5 I believe so

Q 6 Would you consider that a normal answer by a private to a question by a high ranking officer?

A 6 In a psychiatric examination the difference in rank is overlooked by the examining physician, because at the time of that examination he is a physician rather than an officer and to obtain the information necessary he acts as a physician and ignores things that he would not condone on the parade ground. The reason for that is obvious. If a private is brought before a fairly senior officer and is checked for every small statement he makes the information which the physician is trying to obtain is not divulged.

Q 7 Isn't it true, sir, that in cases of insane persons, even persons who have been committed to an institution for the insane, that certain cases are known where a man may be violently insane and perfectly all right at times, that is, that he may be of unbalanced mind one day and perfectly all right the next?

A 7 Yes.

THE PROSECUTOR: I object to that question and the answer. The problem is whether he is fit to be tried today.

THE PRESIDENT: The Court is interested in finding out whether you are fit to stand trial, which involves pleading guilty or not guilty. Now for that reason we are letting you cross-examine Major Van Nostrand. Do you wish to call any witnesses to support your plea of insanity?

THE ACCUSED: Pte. Stone, sir.

The Witness, as to mental fitness, D91913, Pte. Allan A. Stone, RCASC, having been duly sworn, is examined by the accused:

Q 8 Pte. Stone at approximately what date did you first make my acquaintance?

A 8 It would be sometime in April, 1940.

Q 9 Shortly after you joined the army?

A 9 Yes, I joined the Army on the 29th of March.

Q 10 That was in Montreal, Canada?
A 10 Yes.
Q 11 At that time what was your opinion of me-- I mean to say on the mental angle-- was I abnormal?

THE PROSECUTOR: I am not sure that this witness can give opinion evidence as to his mental condition. He can state facts.

Q 12 What was the general opinion, getting to facts, the opinion of the other men in our Company, the 11 Cdn Fd. Amb. details, so called, in that time in Montreal, about me, was I regarded as quite normal at the time?
A 12 Well, you kept by yourself quite a bit, but I don't know if anybody ever thought about you being abnormal at that time.
Q 13 Did I have any moods of depression, or appear as I appear now at that time?
A 13 No, I think you were perfectly all right at that time.
Q 14 How long ago would you say that you noticed a change, or did you notice a change since then?
A 14 Well, yes, about the middle of January, 1941 you were in detention and I used to come over and see you quite often-- as many as sometimes three times a day and your behaviour was very-- well, very unusual anyway. You seemed to be unusually worried about the whole thing and about the confinement. Well, you just didn't make sense.
Q 15 Is it true that at that time you and I were the best of friends?
A 15 Yes, I would say we were the best of friends at all times.
Q 16 Is it true that at some times when you came to see me you were unable to get a word out of me, and then only a bare yes or no?
A 16 Yes, quite often.
Q 17 And at other times I was quite talkative?
A 17 No, I would say you were never very talkative.
Q 18 Did I complain to you about the close confinement in the detention cells in the R.H.L.I. Guard House?
A 18 Yes, many times.
Q 19 Did I say that I hated the horrible nights? When the door was locked?
A 19 Yes, practically every day, every time I saw you
Q 20 Did I say I was pretty tired and worn out at that time and I wasn't sleeping at nights?
A 20 I don't remember you mentioning about being tired but I do remember that you said you didn't sleep nights.
Q 21 Is it true that I complained to you about waking up in the night with nerve twitches?
A 21 Yes, you did.
Q 22 And at various times you have already said I have appeared quite irrational and you, yourself, were worried as to what was the matter with me?
A 22 Yes, I was, very much.

THE PROSECUTOR DECLINES TO CROSS-EXAMINE THE WITNESS.

THE COURT IS CLOSED TO CONSIDER THE EVIDENCE ON INSANITY.

THE COURT IS RE-OPENED AND THE PLEA OF INSANITY IS DISALLOWED BY THE COURT

THE COURT IS ADJOURNED UNTIL 0900 HOURS THURSDAY, 19 JUNE 1941.

THE COURT INFORMED THE ACCUSED THAT A SUITABLE DEFENDING OFFICER WITH LEGAL QUALIFICATIONS WOULD BE PROVIDED TO REPLACE MAJOR LAZIER.

THE COURT IS RE-OPENED AT 0900 HOURS THURSDAY, 19 JUNE 1941.

LIEUT. T. H. MONTGOMERY HAS BEEN APPOINTED AS DEFENDING OFFICER, REPLACING MAJOR H. F. LAZIER.

LIEUT. T. MIRSKY IS APPOINTED PROSECUTOR, REPLACING LIEUT. J. H. BROUGHALL.

THE CERTIFICATE AS TO MEDICAL FITNESS IS PRODUCED.

The 2nd Witness for the Prosecution, B37063, Pte. R. J. Greenaway, R.H.L.I., having been duly sworn, is examined:

Q 23 What were your duties on 17 Feb 41?
A 23 I was guard on the R.H.L.I.
Q 24 Would you please tell the Court any interesting incident that you know took place on that particular date?
A 24 One of the prisoners which I was guarding escaped.
Q 25 What was the prisoner's name?
A 25 Private Rogers.
Q 26 Is that the accused?
A 26 Yes, sir.
Q 27 Would you please tell the circumstances involved in the escape, as far as you were concerned?
A 27 I was ordered by the Sgt. of the Guard to escort Pte. Rogers to the R.A.P.
Q 28 At what time was this?
A 28 Between the hours of nine and ten.
Q 29 In the evening?
A 29 Yes, sir.
Q 30 Yes?
A 30 And on arriving at the R.A.P. there was no M.O. there and so we had to wait until the M.O. came and during that time there was two orderlies there and they took Pte. Rogers' temperature and said he would have to wait until the M.O. came and in the meantime Pte. Rogers made an excuse he had to go to the latrines and on doing so he got up and went to the latrines.
Q 31 How far from the R.A.P. were the latrines?
A 31 He could either have gone upstairs to the latrines, so he said, and anyway he got there before me. I saw where he went but I couldn't see--
Q 32 Do you mean he got up and walked out absolutely by himself to go to the latrines?
A 32 He got to the door ahead of me and it was one of those nights you couldn't see your hand in front of your face.
Q 33 Did you make any attempt to follow him?
A 33 Knowing he had gone we immediately searched the building.
Q 34 In the interval of time which elapsed between the time he left the building and the time you searched for him, how long would that be?
A 34 About half a minute.
Q 35 Yes?
A 35 And then I immediately reported to the Guard Sergeant.
Q 36 Who was that?
A 36 Sgt. Bishop.
Q 37 After you reported to Sgt. Bishop what did you do?
A 37 That was left in the sergeant's hands. He got the Orderly Officer.
Q 38 Did you assist in the search for Rogers?
A 38 Yes, sir.
Q 39 How long did you search?
A 39 Between five and ten minutes.
Q 40 Were any statements made in the presence of Pte. Rogers by the orderlies concerning Pte. Rogers' condition?
A 40 I believe one of the orderlies said he still had a temperature of 100 and something.
Q 41 Can you be more exact?
A 41 It is pretty hard to recall, it has been quite some time.
Q 42 How was he dressed at the time of this incident?

A 42 He had on his uniform and I believe he had a great coat-- I am not sure whether he had a respirator and steel helmet with him or not
Q 43 Did you have any instructions regarding releasing him?
A 43 No, sir.
Q 44 Did you know Pte. Rogers at the time you were acting as escort for him?
A 44 Only his name from being a prisoner.
Q 45 Had you seen him before that time?
A 45 No, sir.
Q 46 Have you seen him since the time he made the alleged escape and the 17th of February, 1941 and the 24th of April, 1941. Did you see him in between these two times?
A 46 I couldn't say, that is the only time I seen him from the time he escaped was when he was brought back, when I was in the 11 Fd. Amb. Orderly Room.
Q 47 About what date was that?
A 47 They summonsed me to go to the 11th Field. It could be checked up.
Q 48 Can you state it was after the 24th of April?
A 48 I coudn't swear to itxxxx exactly.

CROSS-EXAMINED BY THE DEFENDING OFFICER:

Q 49 You say one of the Orderlies said that Pte. Rogers had a temperature of over a hundred?
A 49 Yes, sir.

The 3rd Witness for the prosecution, A27191, Sgt. Peakes, H. 11 Cdn Fd. Amb., having been duly sworn, is examined:

Q 50 Sgt/ What were your duties on 17 Feb 41?
A 50 I was on duty the 17th of Feb 41, if that is the date Pte. Rogers escaped.
Q 51 Have you ever seen Pte. Rogers before?
A 51 Yes, sir.
Q 52 Will you describe the times you saw him and what took place at these particular times?
A 52 He came sometimes in the morning after sick parade and had his temperature taken, perhaps again in the afternoon and sometimes in the evening.
Q 53 How long ago was this?
A 53 I couldn't remember but it was just previous to his escape.
Q 54 Previous to the time you had heard of his escape?
A 54 He was practically in every day for a check.
Q 55 Did he come in himself or was he escorted?

THE DEFENDING OFFICER: I don't think this is relevant; apparently these ocasions had nothing to do with the time of his escape.

THE PROSECUTOR: If Mr. Montgomery is going to use the accused's physical condition in the course of his argument I only want the Sgt.'s evidence as to his physical condition.

Q 56 Now, you said that he had made frequent visits to the R.A.F. regarding the state of his health, and you made some intimation that these visits were frivolous?
A 56 He was not ill, sir, at any time. At one time he wasn't very well that was in the afternoon around 4:30.
Q 57 Did Pte. Rogers ever make any statement about the visits, these visits being frivolous?
A 57 He said he liked to get out and get some fresh air.
Q 58 You mean that is the only reason he came up to the R.A.F.?
A 58 That is the way I took it, sir.

CROSS-EXAMINED BY THE DEFENCE:

Q 59 You said that the accused was ill at one time?
A 59 Yes, he said he wasn't very well at one time.
Q 60 He wasn't always pretending not to be well?
A 60 That is correct.
Q 61 Over how long a period did this business of visiting the R.A.F. last?
A 61 Well, if you will tell me how long he was in the Guard House before

he escaped/

(Cross-Examination concluded)

The 4th witness for the prosecution, A27162, Pte. C.W. Miller, 11 Cdn Fd. Amb. R.C.A.M.C., having been duly sworn, is examined:

Q 62 Would you tell the Court what your duties consisted of on 17 Feb 41?
A 62 I was on duty at the R.A.P. We had no patients, we were just there.
Q 63 What was the nature of your duties?
A 63 We were looking after patients.
Q 64 Were there any other soldiers in the R.A.P.
A 64 No, sir.
Q 65 Have you ever seen Pte. Rogers before?
A 65 Not until that night.
Q 66 Would you tell the Court what happened that particular night?
A 66 He and the guard came up and came in the R.A.P. He said he wanted some cough medicine and I went over to the dispensary and looked in the room, but he wasn't there and I said if they would come back in about an hour he would be back, so they came back in about an hour and the Sgt. still wasn't there, but the second time he had a fever, so I took his temperature; it was around 99 and he said he had to go upstairs to go to the toilet and he went upstairs and he never came down.
Q 67 Did you xxi aid in the search for Rogers?
A 67 We checked upstairs.
Q 68 Have you seen Rogers since the 17 Feb 41 until the 24 Apr 41?
A 68 I am not sure, sir.
Q 69 Have you noticed him about the barracks?
A 69 No, sir.
Q 70 When was the last time you saw Pte. Rogers?
A 70 In the 11th Fed. Amb. Guard room
Q 71 At the time of the Court of Inquiry?
A 71 Yes, sir.
Q 72 What is the normal temperature of an individual?
A 72 98.
Q 73 Would you call 99 excessive, in your own experience?
A 73 I don't think he would be very sick with 99.
Q 74 Are you on duty regularly in the R.A.P.?
A 74 I was for three weeks.
Q 75 Before that?
A 75 Yes, sir.
Q 76 You hadn't seen Rogers there before?
A 76 No, sir, that was the first time.
Q 77 Could anybody have heard you saying his temperature was over 100 at that time?
A 77 I don't think so.

THE DEFENCE DECLINES TO CROSS-EXAMINE THE WITNESS:

The 5th Witness for the Prosecution, D91386, Sgt. R.F. Colthorpe, R.C.A.S.C., att'd as in W.L. to 11 Cdn Fd. Amb., having been duly sworn, is examined:

Q 78 I understand, sgt. that you returned from leave on 17 Feb 41?
A 78 Yes, sir.
Q 79 Did any incident involving Pte. Rogers take place on that particular date?
A 79 Yes, sir.
Q 80 Would you please tell the Court what happened?
A 80 I had returned from my quarters on that date. I met the accused man in the premises. At that time it was the R.A.P., and I asked him how was he doing and he said he was a little unwell and I went upstairs to my quarters and left him downstairs in the R.A.P.
Q 81 When was the next time you saw him?
A 81 When he returned to Camp after he had been A.W.L.
Q 82 Could you give the approximate date?
A 82 I would say the 27th of April.

Q 83 How did you become aware of the fact that he had returned to barracks?
A 83 One of my corporals reported to me that he had seen him in the lines-- Cpl. Frost.
Q 84 And then what did you do?
A 84 I gave him an order to go and get the man and put him in detention and I seen the man later that afternoon when I was detailed to take him to Bordon with an escort.
Q 85 How was he dressed?
A 85 Civilian clothing. He had on a pair of boots which I would say were military boots and no hat of any description.
Q 86 Did he make any remarks as to where he had been?
A 86 Not to me-- in general.
Q 87 Did he make any remarks to you that would enable you to make any suggestions as to where he had been?
A 87 Yes, his remarks were that he had gone to Liverpool and from there he had been in Ireland, both north and south, and then he had been on a vessel, a liner of some description to get back to Canada, but after he got some 200 miles from shore the boat was supposed to have been torpedoed and they were picked up and brought back to the shores of England and then they made their way back to Aldershot
Q 88 You heard this statement yourself?
A 88 Yes, sir, right out of the accused's mouth.

THE DEFENCE DECLINES TO CROSS EXAMINE THE WITNESS

The 6th witness for the Prosecution, D92036, Cpl. Frost, S. W., 11 Cdn Fd. Amb. having been first duly sworn, is examined:

Q 89 The 24th of April should be a significant date in your mind. Will you please tell the Court anything that took place on that date?
A 89 I was ordered by Sgt. Colthorpe to take two men down and place them under arrest.
Q 90 Just a minute, start right from the beginning?
A 90 I seen them first and then reported to Sgt. Colthorpe.
Q 91 Who was he with?
A 91 Stone and some ambulance drivers.
Q 92 Was he in custody at that time?
A 92 No, sir. And I reported to Sgt. Colthorpe and he told me to take two men down and place him under arrest.
Q 93 How was he dressed?
A 93 Civilian clothes.
Q 94 Did he make any statement as to where he had been?
A 94 Ireland.
Q 95 Would you repeat to the Court what statement he made as to his previous whereabouts?
A 95 He said he had been to Ireland. He had been out at sea 400 miles and they were torpedoed and brought back.
Q 96 Did he say where he was going at the time?
A 96 He said he was going home to turn himself in.
Q 97 That is the essence of the statement-- he was going home to turn himself in?
A 97 Yes, sir.
Q 98 Did he make any other statements as to his whereabouts, or as to his intention?
A 98 No, sir, not that I remember.

CROSS-EXAMINED BY THE DEFENCE:

Q 99 Is it not true Corporal Frost that the accused said to you, at the time you asked, that he and his companion were going to give themselves up in Canada and get it off their chests?
A 99 Yes, sir.

The 7th Witness for the Prosecution, A27002, S/Sgt. Tipping, C.G., 11 Cdn Fd. Amb., having been first duly sworn, is examined:

Q 100 What are your duties with the 11 Cdn Fd. Amb.?
A 100 Orderly Room sergeant.
Q 101 Were you in complete charge of the Orderly Room?
A 101 Yes, sir.
Q 102 The senior N.C.O.?
A 102 Yes, sir.
Q 103 Tell the Court what happened on 17 Feb 41 as regards the accused?
A 103 At about 1930 hours on that day I was in the Orderly Room and the guard from the R.H.L.I. came over and told me Pte. Rogers had broken away from his escort--

THE DEFENDING OFFICER: Just a minute, this is hearsay evidence.

Q 104 In your position as senior N.C.O. in the orderly room you are familiarx with part II Orders. What was the exact status of Pte. Rogers on 17 Feb 41?
A 104 According to a copy of the part II Orders of No. 2 Petrol Coy. on the 10th of February he was on the strength of the Holding Unit. He wasn't on our strength on 17 Feb 41.
Q 105 To your knowledge, what was Pte. Rogers status on 17 Feb 41?
A 105 He was on strength of No. 1 Holding Unit, R.C.A.S.C., through the 2 Cdn Div. Petrol Coy. He was awarded 35 days detention and was automatically struck off strength of our unit back th the 2nd Div. Petrol Coy. and through them to the Holding Unit.
Q 106 You also made the entry regarding his return, after being taken on strength?
A 106 Yes, sir.
Q 107 Would you tell the Court, and you will subsequently confirm this with the part II Order?
A 107 He was taken back on strength on a special order issued by records. He was automatically to be taken back on his original unit, and if necessary carried supernumerayy to the strength. Pte. Rogers returned at 1530 hours on 24 Apr 41, in civilian clothes.
Q 108 Did you see him in civilian dress?
A 108 No, sir, I kdidn't see him until 1600 hours, but I had come back from leave that day and the first greeting I had was that Ptes. Rogers and Stone had returned.
Q 109 But in any event Pte. Rogers returned, to your knowledge, on the 24th day of April?
A 109 That is according to Part II Orders.

THE DEFENCE DECLINES TO CROSS-EXAMINE THE WITNESS

THE PROSECUTOR:

That is the evidence for the prosecution.

THE PROSECUTION IS CLOSED.

25

D E F E N C E

R. P. 40 is complied with and the accused elects to give evidence under oath.

The 2nd Witness for the Defence, D105518, Pte. Charles Allan Rogers, the accused, having been first duly sworn, is examined:

Q 110 What were you doing in civilian life before joining the army?
A 110 Immediately before joining the army I was employed by the Coca-Cola Coy. of Rhode Island, U.S.A.
Q 111 What were you doing for them?
A 111 I was doing a combined advertising and selling job, known as a sign spotter.
Q 112 Both advertising and selling?
A 112 Yes, sir.
Q 113 How long were you working at that job?
A 113 I worked at that job from 1937, in June, until February, 1940, when I left Providence to go to Montreal.
Q 114 Making a total time of--
A 114 Almost three years.
Q 115 What about before that?
A 115 I was employed as salesman in the New England States. I had part of New Hampshire and Massachussetts, and part of the state of Maine.
Q 116 What Company?
A 116 Stilson Coy., Inc., Providence, R.I.
Q 117 What education have you had?
A 117 High school and three years University at Brown University, Providence.
Q 118 How did you come to join the Canadian Army?
A 118 It was never my intention of going to Canada to join the Canadian Army, but my intention was to volunteer for air crew duties with the R.C.A.F.
Q 119 How did you happen to get into the 11 Cdn Fd. Amb?
A 119 On arriving in Montreal I found that the R.C.A.F. at that time were not recruiting for air crews and I had maintained myself in Montreal for appoximately five weeks, during which time I went down to the recruiting offices practically daily and always received the same answer, that they were not recruiting for air crews that day. During this time I got acquainted with a M.P.A.M. officer and he, at that time was attached to the 4th Divisional Signals at the armoury on Bleury Street in Montreal. He suggested that where my ambition was to get into flying that I attend a class at the Bleury St. Armoury which he was conducting, in elementary Morse. I did so join his M.P.A.M. class in elementary Morse and continued for three nights each week for a period of a month. At the end of that time I was becoming increasing impatient about the delay in getting into active service with the Air Force and on his suggestion to me that the solution of my problem was to join a Canadian unit that was slated to go overseas very soon, with the object that once I had arrived here in England that, with my qualifications, my having had elementary ground training in the US.A. in flying and proper educational qualification, and in view of the fact that I fell within the right age group to become a pilot, I would have not have any difficulty once I was here in England, in being transferred, or at least being released from the Canadian Army to volunteer for flying or crew duties with the Royal Air Force.
Q 120 Did you follow that suggestion?
A 120 I did, sir, I went to M.D.4 recruiting depot at Place Viger Hotel in Montreal and checked with the officer i/c recruiting there and on his advice, in accordance with the advice that had been given me, the officer concurred with the suggestion, and he expressed all confidence that once I was in England I would have no difficulty in transferring from one service to the other, and I followed his suggestion.
Q 121 Did you come overseas with that unit then?
A 121 Yes, they were recruiting at that time the M.T. Sections, or at

or at least the details for the three Field Ambulances in the 2nd Division. I was attested first and then taken to St. Helen's Island and there sworn in and assigned to the 11th Field Ambulance.

Q 122 When you got here did you make any effort to be transferred to the R.A.F.?

A 122 Yes, sir, immediately on arrival in England, the first or second week, I obtained a week-end pass and went, in company with Pte. Stone, to London, to the Air Ministry at Astral House, in Kingsway, in London.

Q 123 Did you have any success there?

A 123 We went there mainly to enquire as to the proper procedure to go about being released and getting into the R.A.F.

Q 124 What did they tell you?

A 124 We were there told by the Information Bureau that it was being done, transfers were being made in several cases, although they were not numerous and that the proper procedure was for us to make application to our O.C. of our Unit and if the O.C. approved he would forward it on to Divisional Headquarters and they in turn would approve it.

Q 125 Did you apply to your O.C.?

A 125 I did.

Q 126 What happened after that?

A 126 My application was taken into the O.C. and he approved it, seemed quite enthusiastic about it and gave me a good recommendation. He said it was necessary I sign certain waivers, waiving rights of transportation back to Canada, any compensation or credit from the Canadian Army, which I actually did. These papers were made out and attached to my application which was forwarded to 2 Cdn Div. H.Q.

Q 127 Did you hear anything more about it?

A 127 About two months later I was paraded to our orderly room to find out if anything had come of it yet and was told that nothing had come through. This application originally went in, I should say, around the latter part of September, or the 1st of October, 1940 and then it was around just previous to Christmas that I inquired about it

Q 128 At about what time did you absent yourself from the Unit?

A 128 On the 17 Feb 41.

Q 129 At that time then you had received no further word on your application?

A 129 No, sir.

Q 130 What was your physical condition at the time of absenting yourself?

A 130 For two or three days immediately previous to the 17th I was running an extremely high temperature and was in an extremely nervous state. I was sleeping very little at night.

Q 131 When you left and went to Ireland what was the object you had in view. What did you intend to do?

A 131 In my mind at that time I felt that it was useless to wait any longer for any application on this transfer into the Air Force. I felt in my own mind that the sentence which I was serving at the time of leaving was unjust. My intention was to go back to Canada and present my case to as high a military circle as possible in Canada. I hopes that they might still see fit to transfer me into the R.C.A.F.

Q 132 So you wanted to get back to Canada to get to the root of the matter and effect your transfer there. Is that the case?

A 132 Yes, sir, it always struck me on this side that the only chance I had was to get back to Canada and put my case to the authorities there. I felt that the authorities here were too busy with other matters, our orderly room was always busy, they were flooded with applications for transfers and I felt that months would drag on.

Q 133 Have you any evidence to put forward to show that while you were in Ireland you intended to remain a part of the Army.

A 133 The fact that I always carefully retained my Pay Book. I made no attempt to rid myself of it. On the contrary I always kept it very safely, either on my person or among my effects, while at the same time not knowing how the Government of Eire would regard a person of my status. It might be said that if I were picked up, simply claiming American Citizenship, as I was, with that in my pocket, it would prejudice my standing in the eyes of the Irish Government.

Q 134 Why did you take off your Uniform? And get yourself civilian

21

clothes?

A 134 I took off my uniform in Belfast, after crossing the Irish Sea from Stranear, Scotland, to Belfast and going from there by train to Belfast I knew that it was quite necessary, on entering a neutral country, to be in civilian clothes.

CROSS-EXAMINED BY THE PROSECUTOR:

Q 135 Rogers you said that you enlisted in April, 1940?
A 135 That is right.
A 136 Therefore, at the time of your trip to Ireland you had been in the army approximately a year?
A 136 Yes, sir.
Q 137 You were aware of the fact that you could even appeal from the Commanding Officer to a higher authority?
A 137 Yes, sir.
Q 138 Therefore, if you had any grievances you were fully aware of the right method of rectifying them?
A 138 Yes, sir.
Q 139 Instead, you chose another method, namely trying to contact the higher authorities in Canada?
A 139 Just for the reason I had several rather startling experiences in trying to reach my Commanding Officers here.
Q 140 Would you like to enumerate some of these experiences?
A 140 I had often asked to be paraded and was never taken seriously by the N.C.O.
Q 141 Are you sure you weren't properly paraded?
A 141 No, sir.
Q 142 You never at any time had contact with officers concerning your desire to join the R.C.A.F.?
A 142 Yes, sir, I have been paraded on several occasions.
Q 143 You have no reason to state, then, that your request wasn't properly forwarded by the officers?
A 143 No, sir.
Q 144 Well, then as far as you are concerned you had no reason to resort to other methods, when you are not objecting to the methods being properly carried out?
A 144 I only objected to the long delay of four months.
Q 145 Now, during this year's service in the army you got acquainted with army discipline?
A 145 Yes, sir.
Q 146 What date did you arrive in Ireland?
A 146 I should say 25 Feb 41.
Q 147 And what date did you leave Ireland to come back to England?
A 147 I left Eire on April 21st or 22nd.
Q 148 In other words you were in Ireland nearly a month?
A 148 Nearly two months.
Q 149 At what date did you arrive back to Ireland after your unfortunate attempt to cross the Atlantic Ocean?
A 149 I believe it was the 8th of April.
Q 150 How soon after you got back to Ireland did you attempt to get back to England?
A 150 Not until the 22nd.
Q 151 It was nearly two weeks?
A 151 Yes, sir.
Q 152 Did it take you that length of time in order for you to decide to do the right thing?
A 152 No, sir, during that length of time that elapsed during the 8th and 22nd we were attempting to ascertain what to do.
Q 153 You mean you were attempting to decide in your own mind, or were you doing something towards getting back?
A 153 We were trying to decide in our own minds.
Q 154 It took you two weeks of sitting around Ireland to decide whether you should come back to England or not?
A 154 That was quite a decision to make.
Q 155 During that time how did you occupy yourself?
A 155 In reading and checking on the possibility of getting another boat.

Q 156 Were you deprived of any opportunities for reading during your stay in the 11 Cdn Fd. Amb.?
A 156 Only while in detention. I could have bought periodicals on the outside.
Q 157 There was plenty of literature of all types if you had wanted it?
A 157 Not of all types. Plenty of pulp magazines.
Q 158 Did you ever try Boots Rental Libraries A 158 Yes,sir.
Q 159 Were you satisfied with the quantity of material there?
A 159 Yes, sir. When I could afford it.
Q 160 Did you find that your surroundings were such that they stunted your hunger for learning?
A 160 Yes, sir.
Q 161 And you state the reason for that is that literature wasn't available?
Q 162 That is right.
Q 163 And where did you try to get this literature?
A 163 At every opportunity and when I had the money I bought it on the outside.
Q 164 Did you ever approach the Canadian Legion War Services?
A 164 No, sir.
Q 165 Did you ever approach the Hunter's Library over here?
A 165 No, sir.
Q 166 Where did you sail from Scotland?
A 166 Stranear.
Q 167 How did you pass the authorities there?
A 167 With a fabricated pass.
Q 168 And where did you get that pass?
A 168 We made them up while in Liverpool overnight
Q 169 Where did you get the forms?
A 169 At a stationer's, they weren't regulation army forms.
Q 170 You have said in evidence given in the Court of Inquiry that you made these forms on passes you had from Camp Borden. Did you get your forms in Camp Borden, Ontario?
A 170 I was carrying several long out-dated passes.
A 171 Where did you get these?
A 171 Camp Borden.
Q 172 Why did you take these extra forms at Camp Borden, Ontario?
A 172 They were expired passes
Q 173 Why were you carrying them?
A 173 I think if a check were made, I think most every fellow has some. I was carrying them for no nefarious purpose; they could not have been altered.
Q 174 But you subsequently used them?
A 174 No, sir, we didn't use these passes.
Q-175 Were you at any time A.W.L. from your unit prior to this last occasion?
A 175 Yes, sir, I believe the MP.M. 6 will show two A.W.L. remarks
Q 176 In other words you have been A.W.L. twice and you have been charged with being a deserter the third time and on the basis of that you still insist that you had no intention of using this Camp Borden passes?
A 176 I don't think they could be used as a pass.
Q 177 Now, you stated you kept your Pay Book?
A 177 Yes,sir.
Q 178 Is it not true that some of the money you obtained in Ireland and your transportation was obtained on the basis of your presenting your Pay Book?
A 178 Only an amount of five shillings,obtained in Belfast.
Q 179 Well, you obtained your ticket from the R.T.O., did you not, on presenting your service book?
A 179 No, sir.
Q 180 You didn't present your service book to obtain your ticket from the R.T.O.?
A 180 No, sir.
Q 181 You couldn't get money without it,isn't that right?
A 181 We had plenty of money.
Q 182 Where did you get the money?
A 183 By cable from America
Q 184 Where did you intend to go from Ireland?

A 184 To Canada to report to the Military authorities there
Q 185 Where was the ship bound?
A 185 New York, but we intended to go on to Montreal by rail.
Q 186 Assuming you would have been able to obtain transport across the Atlantic would you still have returned to England?
A 186 You mean after the torpedoing?
A 187 Yes?
A 187 I couldn't say what my intention was.
Q 188 How do you know there were no other ships available?
A 188 We were told that.
Q 189 And you made no further attempt to cross to America?
A 189 We knew perfectly well there were no more ships.
Q 190 Now, you made a statement: "Pte. Stone and I hereby appeal to whatever properly constituted authority of the Canadian Army Overseas, on the grounds we are both unlikely to become efficient soldiers, our whole desire is to return to civilian life"?
A 190 Yes, sir.
Q 191 Now, on the basis of this statement, did you intend on arrival in Canada to remain in the Canadian Army?
A 191 Yes. That was, of course, up to the Canadian Army.
Q 192 What did you intend to do when you got to Canada?
A 192 Report to the military authorities and appeal for a discharge.
Q 193 Why didn't you adopt that method here?
A 193 We found it impossible, sir.
Q 194 Well, at any rate, when you escaped detention here, you intended, or did you intend to leave the army?
A 194 No, sir.
Q 195 Will you just repeat your intention?
A 195 My intention at no time was to desert the army and return to the United States and just let the thing hang over my head.

BY THE COURT:
Q 196 You borrowed ten shillings from the Trade Commissioner?
A 196 I presume you refer to the time at Belfast when we obtained, I think five shillings each from, I believe it was a fund that was set up there by the Canadian Bureau of Trade, or whatever it was called there in Belfast.
Q 197 Why did you borrow this money?
A 197 Because at that time we were running short of our initial money, that was before we were able to send a cable to America.
Q 198 Did you borrow any money subsequently?
A 198 Yes, before we left Ireland we presented ourselves to the Acting High Commissioner for Canada in Dublin, who advanced us 1o shillings for incidental expenses, along with the ticket.
Q 199 Why did you need the 10 shillings?
A 199 Because at that time we were rather low in funds between cables.
Q 200 How many cables did you send?
A 200 I believe we received five lots of money while we were there, in all a total of over $200.
Q 201 You went to the Salvation Army and you claim you left your uniforms there and got civilian clothes?
A 201 Yes.
Q 202 What was your reason for doing that?
A 202 Because we knew it was impossible to cross into Eire in uniform.
Q 203 And not having a pass you were willing to take a chance.
A 203 Well, actually I did have a pass that I knew then would stand scrutiny.
Q 204 Why did you go to Eire?
A 204 To get a boat, it was a neutral port.
Q 205 You know there are several more neutral ports on the way to Belfast?
A 205 No, sir, not that I know of.
Q 206 There are more ships go from Belfast than any other port in Ireland?
A 206 That is true, but we were told in Liverpool. That is true, but we were told at the time that there were several neutral boats in Eire. We knew at that time that it would be practically impossible to ship as seamen on a British boat, because of the necessity of being a member of the British Merchant Navy.
Q 207 Are you aware that neutral ships were more liable to be calling at

Belfast than at Dublin?
A 207 No, sir.
Q 208 You claim you were torpedoed. Do you remember what kind of a boat picked you up?
A 208 Yes, it was what I would describe as a small destroyer; about the smallest destroyer I have ever seen.
Q 209 What nationality?
A 209 I assumed and I still believe it was British.
Q 210 You didn't see any colours flying?
A 210 No.
Q 211 Where were you landed?
A 211 At a point near Claway.
Q 212 What did the sailors have on their hats?
A 212 I think, as far as I can recall, simply "H.M.S."
Q 213 What time was it you arrived at Galway?
A 213 It was in the evening, very nearly dark
Q 214 Did you have to produce any credentials before they allowed you to proceed?
A 214 Only American birth certificates.
Q 215 Did you produce any credentials aboard the destroyer?
A 215 Yes, someone looked at my birth certificate aboard the destroyer/ And again on landing the authorities ~~xhx~~ checked each man's papers before allowing us to go on our way.
Q 216 Did you show your Pay Book then?
A 216 No, sir.
Q 217 But you had your Pay Book?
A 217 Yes, sir.

(Examination concluded).

THE COURT IS CLOSED TO CONSIDER THE FINDING.

THE COURT IS RE-OPENED AND THE PROSECUTOR FILES A.F.B. 296 and M.F.N. 6, IN CONNECTION WITH THE ACCUSED, WHICH IS FORMALLY ADMITTED BY THE DEFENCE.

THE COURT IS CLOSED TO CONSIDER THE SENTENCE.

I HERE BY CERTIFY THAT THE FOREGOING PAGES OF TYPEWRITTEN MATTER, NUMBERED 1 to 14, INCLUSIVE, IS A TRUE AND ACCURATE TRANSCRIPT OF SHORTHAND NOTES TAKEN BY ME IN THE ABOVE MATTER AT THE TIME AND PLACE FIRST HEREINBEFORE WRITTEN.

J.H.Spence (Sworn)
B240350, S/Sgt. J.H.Spence.

R.J.D.
37

Part 11 Order No.14 para 3 dated 21 Feb 1941.

3. ATTACHED.

D105518 Pte Rogers C A. RCASC — Ceases to be attached to the 11 CDN Fd Amb for all purposes as in W E., on return to 2 Div Petrol Coy on being awarded 35 days detention by F G C M, w e f, 10 Feb 41. (Authy AA&QMG 2D 6-2 d/7 Feb 41.)

Part 11 Order No. 30 para 1 dated 12 May 41.

1.ATTACHED.

D105518 Pte Rogers C A RCASC — Attached to the 11 CDN Fd Amb for all purposes as in W E., from 2 Div Petrol Coy, on return from desertion w e f, 24 Apr 41.

CERTIFIED TRUE COPY.

for (L M STUART) Lieut Colonel.
Commanding 11 CDN Field Ambulance RCAMC.

Aldershot.
19 Jun 1941.

R.J.D.

Part 11 Order No.14 para 3 dated 21 Feb 1941.

2. ATTACHED.	D105518 Pte Rogers C A. RCASC	Ceases to be attached to the 11 CDN Fd Amb for all purposes as in W E., on return to 2 Div Petrol Coy on being awarded 35 days detention by F G C M, w e f, 10 Feb 41. (Authy AA&QMG 2D 6-2 4/7 Feb 41.)

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CERTIFIED TRUE COPY.

for (L M STUART) Lieut Colonel.
Commanding 11 CDN Field Ambulance RCAMC.

Aldershot.
19 Jun 1941.

SUMMARY OF EVIDENCE - D105518 PTE. ROGERS, C.A.

Summary of Evidence in the case of D-105518 Pte. ~~H~~ Rogers, C.A., R.C.A.S.C., attached as in W.E. to 11th CDN. Field Ambulance, R.C.A.M.C., in Aldershot, Hants. The Commanding Officer directs that the evidence of all Witnesses be taken on oath.

1st WITNESS
D92036 Cpl. Frost, S.W. R.C.A.S.C., attached as in W.E., to 11th CDN. Field Ambulance R.C.A.M.C., after being duly sworn, states:-

Q. What can you tell me about this case?
A. All I can say is that he turned himself in to me on his return. I placed him under Close Arrest.
Q. What were your duties on that day?
A. I was on Regimental Duties.
Q. Do you remember the date of their return?
A. No, sir.
Q. Or the time of day approximately?
A. I don't remember that either. It was I believe before noon.
Q. You say that he turned himself over to you?
A. He was over there, and I saw him, and I went up to report to Sgt. Coltherpe, and I went down to place him under arrest. They were already waiting for me to place them under arrest.
Q. Did you place them under arrest?
A. Yes, sir.
Q. Did the accused make any statement to you at that time?
A. Just that they returned, and that they went to Ireland.
Q. Did he say that he had been in Ireland?
A. Yes, sir.
Q. Did he say why he left?
A. No, sir.
Q. Did he tell you how long he had been in Ireland?
A. No, sir.
Q. Did he tell you what he did when in Ireland?
A. He said he boarded a boat, and got out so far and got sunk and came back.
Q. Did he say where they intended to go?
A. He said they were going to give themselves up in Canada and get it off their chest.
Q. Did he tell you why they returned?
A. He said the boat was sunk and they came back here.
Q. As nearly as you can remember, what time of day was it when you first saw them on their return?
A. I can't say definitely, sir. Between 10 and 12 I think.
Q. How was the accused dressed when you first saw him?
A. In civilian clothes.
Q. Did he say anything to you about being in civilian clother, the reason for it?
A. He just said he had to get a job aboward ship, and he couldn't get into Ireland in uniform.
Q. Did he tell you where he left his uniform?
A. He said somewhere in Ireland.
Q. Is there any other evidence you can give?
A. No, sir.

D105518 Pte. Rogers, C.A. declined to question the Witness.

S. W. Frost
.....

2nd WITNESS
A27017 S/SGT. WILSON, A.M. 11th CDN. Field Ambulance, R.C.A.M.C., after being duly sworn, states:-

Q. What evidence can you give regarding these charges against Pte. Rogers?
A. I was called on the evening of February 17th to see Pte. Rogers, who was reporting sick at the R.A.P., and when I came down to the R.A.P., Pte. Rogers had gone. The Guard told me that he had gone to the toilet. About 5 minutes later the Guard discovered that Pte. Rogers had left the R.A.P. altogether. That is all I know sir. I didn't see the man at all.

Q. You say this happened on the night of Feb. 17th?
A. Yes, sir.
Q. About what time would that be when he reported to the R.A.P. and you were notified?
A. I should think about 2230 hours.
Q. Had you been on duty at the R.A.P?
A. I wasn't on duty. I was relieving Sgt. Peaker, who was away, and I was relieving for that evening.
Q. Just that evening?
A. I was relieving him while he was on leave. I was doing duty in the evening for Sgt. Marshall at the R.A.P. I was in my quarters.
Q. Had you seen Pte. Rogers before in the R.A.P?
A. Not that I am aware of sir. Not that day or evening. I may have seen him previously.
Q. Do you remember definitely whether you had seen him previously?
A. No, I can't sir.
Q. About how long after you got the message was it before you arrived at the R.A.P?
A. It was just a matter of the time it took me to come down stairs. I live in the room above the R.A.P.
Q. Did you hear anything going on?
A. No, I didn't sir.
Q. Did you hear anybody come in just previous to the time you were notified that there was a patient down in the R.A.P?
A. I could have heard a door open and closing. I could have heard anybody going into the building. I wouldn't be positive where they were going. I wouldn't be positive that I heard anybody go into the R.A.P.
Q. Did you hear anybody leave?
A. No, sir.

D105518 Pte. Rogers, C.A. declined to question the Witness

Lee Wilson

3rd WITNESS
B37004 SGT. BISHOP J.H.E. R.H.L.I. of Canada, after being duly sworn, states:-

Q. Were you in charge of the Guard Room of the R.H.L.I. at that time, the 17th Feb.?
A. Yes, sir.
Q. How many men are in the Guard?
A. 12 men, sir.
Q. Had Pte. Rogers been confined to the Guard Room?
A. Yes, sir. He had been confined for some time. I was on Guard on several occasions, and he was still there.
Q. Could you say how long the accused had been confined?
A. No, sir. I could'nt.
Q. Do you recall that on the 17th Feb. he was in the Guard Room at some time during the day?
A. He was in the Guard Room when I took over the Guard at 7 o'clock that day.
Q. Could you tell us what happened after you took over the Guard?
A. I should say approximately around 1930 he said that he was sick. He had been previously during the day to the R.A.P. and had a temperature. I sent him to the R.A.P. again under escort. The escort brought him back and reported him with a temperature of over 100, and to report again around 9 o'clock when the M.O. would be present. I sent him out again a little after 9 o'clock, under another escort, and they must have been gone approximately 20 minutes to a half hour, when my escort returned and said that the prisoner had escaped. That is all I can give on my own knowledge, sir. I then notified this Orderly Room, and also the R.H.L.I. Orderly Room.
Q. How many times, as far as you know, was the accused escorted to the R.A.P. during that time?
A. Twice to my knowledge, sir.
Q. Can you state the times?
A. Yes, sir. The first time was about 1920 or 1930, just after I took over the Guard, and it would be around 2100 hours, because my Cpl. had just changed the sentries that I sent him up the 2nd time.

Q. How many escorts did you send with Pte. Rogers?
A. One, sir.
Q. Was there any particular reason for having one?
A. I figured a man with a temperature over 100 would be in no condition to escape, otherwise I would have sent 2.
Q. What made you believe this man had a temperature?
A. My man, the first escort, came back from the R.A.P., and reported that to us, when they told the sentry at the R.A.P. to bring him back again. The reason the same escort didn't go back again was because he had been posted as a sentry at that time.
Q. Was all of Pte. Rogers' equipment with him at the Guard House?
A. I couldn't say about that sir. Different Sgts. take over each day, and the equipment is generally taken charge of by the Police when the man is turned into the Guard Room.
Q. Was there any equipment there after he left?
A. Not to my knowledge, sir. He only had just a towel and soap.
Q. Do you mean that that was left when he escaped?
A. That was all I could find, and I turned that over to the other Sgt.
Q. Did you see Pte. Rogers yourself just previous to leaving the 2nd time for the R.A.P?
A. Yes, sir.
Q. What was he wearing at that time?
A. Serge and an overcoat and a cap, sir.

Questions by D105518 Pte. Rogers, C.A.
Q. Wasn't it true that on the date of Feb. 17th, regulations were in force at the R.H.L.I Guard House that each prisoner committed there from an outside Unit was to be accompanied by his full equipment, including 4 blankets, and that such equipment must be taken with him into his cell, less the blankets, which were stored on a rack in the main Guard Room?
A. As far as that goes, I don't know whether or not any orders were issued to that effect. Any man coming into the Guard Room, his equipment is generally taken from him and stored in a room by the Police, and all he has in his cell with him is his Respirator, Steel Helmet, and shaving and washing materials.
Q. That is the regulation in effect at the present date, but at that time was not the reverse true, namely that he must have all equipment in the cell?
A. Not to my knowledge.

D105518 Pte. Rogers, C.A. declines to question the Witness further.

.....J.H.F. Bishop, Sgt.....

4th WITNESS
B37063 PTE. GREENAWAY, R.J., R.H.L.I. of CANADA, after being duly sworn, stateas-

Q. Were you on Guard in the Guard Room of the R.H.L.I. on Feb. 17th, 1941?
A. Yes, sir.
Q. Do you remember Pte. Rogers?
A. Yes, sir.
Q. Was he a prisoner in Detention?
A. Yes, sir.
Q. What can you tell me regarding (as far as evidence goes) these charges?
A. I was ordered by the Guard Sgt. to escort Pte. Rogers over to the R.A.P. and in doing so he escaped.
Q. Who ordered you to take the accused over to the R.A.P?
A. The Sgt. of the Guard.
Q. At what time would this be?
A. It would be between 2100 and 2200 hours.
Q. Were you the lone escort?
A. Yes, sir.
Q. Can you tell us exactly what happened at the R.A.P?
A. When I entered the R.A.P., there were 2 Orderlies there, and one of them proceeded to take Roger's temperature, and then there was quite a bit of stalling around, they said that he had to wait for the M.O. to arrive, so we sat there for quite some time and Pte. Rogers made the excuse that he had to go to the latrine. In doing so he got to the door first and he could have either gone upstairs or out to the side door, and being so dark I could not see exactly which way he went. We searched upstairs, went down outside to the latrines, and then one of the Orderlies took me to his room and still we could find no trace of Rogers. Therefore I reported to the Guard Sgt. as soon as possible.

Q. Do you know whether or not Pte. Rogers had any temperature?
A. His temperature was taken as soon as we got there, and one of the Orderlies remarked that it was still up. That is why we were waiting for the M.O.
Q. How long did you search for Pte. Rogers?
A. About 10 minutes.
Q. You mentioned that you searched his room, which room, in the Barracks, or in the Detention?
A. In the Barracks. The Orderly went through the room.
Q. I understood you to say you searched the R.A.P, and upstairs. Is that right?
A. Yes, sir.
Q. Do you know who the Orderlies were?
A. I don't know their names, sir.

D105518 Pte. Rogers, C.A. declined to question the Witness.

.....Pte. R.J. Greenaway.....

5th WITNESS.
A27002 A/S/SGT. TIPPING, C.G. 11th CDN. Field Ambulance, after having been duly sworn, states:-

Q. Can you tell me anything as far as records go regarding Pte. Rogers?
A. All I know is at about 2130 hours on the 17th February, a Guard Commander of the R.H.L.I. (I happened to be in the Orderly Room at the time) reported that Pte. Rogers had escaped. I made a note of it, and that was all that was done that night. The next day descriptions were made out and sent to the R.H.L.I. That is allm I know regarding the escape from the escort. Regarding the Desertion, a record shows this man was S.O.S. this Unit on the award of 35 days Detention on the 10th February. He escaped from the escort, occurring on the 17th, did not obligate this Unit making any records, but in conjunction with the Adjutant of the R.H.L.I., records were made to the Pay Office, and certain articles of Kit left in the Guard Room were sent over to #1 Holding Unit. On his return at 1330 hours on the 24th April, he was T.O.S., Supernumerary to Establishment, and placed under Close Arrest. These records were entered in Part II Orders, and the Pay Office notified of his return.
Q. You stated that he was S.O.S. What Unit was he S.O.S. to?
A. #1 Holding Unit, R.C.A.M.C.
Q. Was it to that Unit that his equipment went?
A. Yes, sir.
Q. Was a Court of Inquiry held?
A. Not in this Unit. Not at that time. Later there has been.
Q. Was that after his return?
A. Yes, sir. After his return.
Q. So far as our Records show, this man was not on our strength at the time of his escape?
A. No, sir. He was S.O.S. on the 10th February 1941.

D105518 Pte. Rogers, C.A. declined to question the Witness.

.....C. Tipping A/SGT.

6th WITNESS
D91366 SGT. COLTHORPE, B.P., R.C.A.S.C., attached as in W.E. to 11th CDN. Field Ambulance, R.C.A.M.C., after being duly sworn, states:-

Q. What can you tell us regarding these charges against Pte. Rogers?
A. On the 17th February, sir, I had returned from Leave, which was after dark, approximately after 2100 hours, when I met the accused in the hall of the Sgts. sleeping quarters over the R.A.P. I asked him how he was getting along. He replied he wasn't feeling well. I then went over to the Sgts' Mess, and after a short time, a Private from the R.H.L.I. came over and asked me if I knew where the accused was. My reply was no, he should be in the Guard Room. That was the last I heard of the accused until I ordered him to be put under arrest when he returned to Camp. At that time he was wearing civilian clothing. Suit, topcoat, and no hat. That is my story on that, sir.

Q. When ~~were~~ you were notified of his disappearance on February 17th, did you search for him?
A. Yes, sir. I went to look around his quarters, through the garden, and up in the rooms of the Sgts' Quarters or the R.A.P., and saw no signs of him.
Q. Did he previous to his disappearance given any indications whatsoever that he might disappear?
A. No, sir.
Q. When he returned, did he tell you where he had been, or why he had gone, or why he came back?
A. Nothing direct to me.
Q. Do you mean nothing that you had heard, or was it just to a group around you?
A. It was to a bunch of people.
Q. So far as you know, did he bring any equipment of a Military nature with him when he returned?
A. No, sir. I am just under the impression that he had heavy Army Boots.
Q. Why do you think so?
A. They were a large pair of boots, and they were not polished. They looked like Army boots to me.
Q. Do you recall the date he returned?
A. It was the 24th, and just after Roll Call. As close as I can remember it would be 1345 hours.
Q. When you saw Pte. Rogers in the R.A.P., on the night of February 17th, was his escort with him?
A. The escort was standing in the door way on the right going into the R.A.P Room proper.
Q. Did he go upstairs?
A. Not at that time, sir.
Q. Which way did he seem to be going?
A. Just standing, sir. Waiting around.
Q. He wasn't actually moving when you saw him?
A. No, sir.
Q. So far as you know he may have gone upstairs before you arrived?
A. Yes, he could have gone all over the building.
Q. Do you know whether or not he went upstairs after you had been speaking to him?
A. No. I couldn't state that sir.
Q. Did you know Pte. Rogers had been in Detention?
A. Yes, sir.
Q. Just previous to the time of his disappearance?
A. Yes, sir.

D105618 Pte. Rogers, C.A. declined to question the Witness.

.....Sd/- [illegible].....

7th WITNESS
A27080 ~~Rank~~ PTOLEMY, R. - 11th CDN. Field Ambulance, R.C.A.M.C. after being duly sworn, states:-

Q. Can you tell me anything in relation to these charges against Pte. Rogers, particularly concerning his equipment and clothing?
A. When Pte. Rogers was admitted to the R.H.L.I. Guardhouse, we took his ammunition, and rifle, bayonet and scabbard and frog from him, and everything else went with him to the Guardhouse. That is the last I saw of him. He took everything as far as I know that belonged to him.
Q. Did he take everything with him with the exception of his rifle, bayonet, scabbard, frogand ammunition?
A. Yes, sir. It is the custom when a man goes to Detention Barracks. We check his Kit at that time, and not before, and with Pte. Rogers, he wasn't due to go to Detention Barracks, his kit had not been checked by us.
Q. Can you tell me what happened to his rifle, bayonet, scabbard, frog and ammunition?
A. We have that in the Stores. It hasn't been re-issued to him yet, sir.
Q. Do you know anything, I mean as far as you yourself are concerned about his disappearance?
A. No, sir.
Q. When did you see him on his return?
A. When they were paraded to our Stores. In Rogers case, we issued a suit of denim to work in.

Q. Did you see him before that at any time?
A. No, sir.

D105518 Pte. Rogers, C.A. declined to question the Witness.

.....R.P. Stacey.....

8th WITNESS
A27191 SGT. PEAKER, H. 11th CDN. Field Ambulance, R.C.A.M.C. after being duly sworn, states:-

Q. Were you on duty in the R.A.F. previous to Pte. Rogers' disappearance?
A. Yes, sir.
Q. Had Pte. Rogers been over to the R.A.F. previous to his disappearance?
A. Yes, sir.
Q. How often would you say?
A. It just got to be a nuisance how often he came over. Sometimes twice a day.
Q. Had he been seen by an M.O?
A. Yes, sir. Captain Norris was the M.O.
Q. Had Captain Norris told you what was the matter with him?
A. No, sir. Capt. Norris and the Staff of the R.A.F. found nothing wrong with him. One time he got 2 aspirins.
Q. Had Capt. Norris told you he found nothing the matter with him?
A. No, sir.
Q. So far as you know, did Pte. Rogers ever have an elevation of temperature, just previous to his disappearance?
A. At no time did he have an elevation of temperature.
Q. What makes you think Pte. Rogers wasn't sick?
A. He admitted himself that he just came up to get some fresh air.

Questions by D105518 Pte. Rogers, C.A.
Q. Did you take my temperature, or even see me on February 17th, or for 2 days previous?
A. I can't say that. I know you were over quite a lot.

D105518 Pte. Rogers, C.A. declined to question the Witness further.

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9th WITNESS
A27162 PTE. MILLER, C.W. - 11th CDN. Field Ambulance, R.C.A.M.C., after being duly sworn, states:-

Q. What can you tell me about this incident that happened allegedly on the 17th February 1941?
A. Pte. Rogers and a Guard came up, and he wanted some medicine. First they were over in the Dispensary part, and I was on duty in the R.A.F. They came over there and asked me if I knew where Sgt. Peaker was, to get some medicine. I went over to the Dispensary when they came, to see if Peaker was in his room, and he wasn't there. I told them if they came back in half an hour or an hour he might be here, so they came back the 2nd time, and Peaker still wasn't there. He still didn't know what kind of cough medicine he wanted. He said he had a fever, so I took his temperature, which was around 99 I think. Then they were there for a little while waiting for Sgt. Marshall. Pte. Rogers said he was going upstairs for a leak, and the Guard was there all the time with him. After about 5 minutes he didn't come down, so the Guard and me went up to look for him, but he wasn't there.

Q. Previous to that night, 17th, had you had much experience taking temperatures?
A. Yes, sir. I took quite a few.
Q. Did you actually take his temperature yourself?
A. Yes, sir.
Q. Are you convinced in your own mind that you can take a temperature and read the thermometer accurately?
A. I am quite sure, sir.
Q. Was there anyone else on duty with you at that time?
A. No, sir. I was alone.
Q. Do you remember about what time Pte. Rogers came in earlier in the evening?
A. I am not quite sure, I imagine it was around 7 o'clock.
Q. Did he have any elevation of temperature the first time?
A. I never took his temperature the first time. He didn't say he had a fever. He just wanted some medicine.
Q. What time, as nearly as you can remember, did he come in the 2nd time?
A. I would say it was about an hour later.
Q. Was it then that you took his temperature?
A. Yes, sir.

Questions by Pte. Rogers, C.A.
Q. Do you recall the exact thermometer reading at the time, when you took my temperature on the night of the 17th February?
A. As far as I recall it was 99.
Q. Did you remark to Sgt. McCullough, of the M.T., who was present at the time, saying, "It is away up over 100".?
A. No, I can't remember that I did.
Q. Do you recall that Sgt. McCullough was present?
A. Yes, he was there for a minute.
Q. Do you recall any conversation between Sgt. McCullough, yourself and myself?
A. What I told him was if he should see Peaker down there, to send him up.
Q. Is that all you can recall remarking to him?
A. That is all that I can say that was necessary to say to him.
Q. Are you positive of this figure 99?
A. I read the thermometer, and that is what it said.
Q. That is, to the best of your recollection, after the lapse of a period of 3 months?
A. Right.

D105518 Pte. Rogers, C.A. declined to question the Witness further.

****

STATEMENT OF EVIDENCE GIVEN BY D105518 PTE. ROGERS, C.A. R.C.A.S.C., attached as in W.E. to 11th CDN. Field Ambulance, R.C.A.M.C.

D105518 Pte. Rogers, C.A. requested that his statement not be made under oath.

I, D105518, Pte. Rogers, C.A. 11th CDN. Fd. Amb. RCAMC., RCASC. attached as in W.E., do readily admit to having left the Unit Lines and area on February 17th, as alleged, and that this act, and subsequent actions having to do with these 2 charges were done while I was of an unbalanced and errational mind. Friday the 17th February, 1941 co-incides with the date of the Promulgation of the award of the D.C.M. sitting at Lille Barracks, Aldershot, February 10th, 1941. By the terms of said award I was sentenced to 35 days in Detention. For a period of 30 days previous to this date, i.e. February 17th, I was detained under Close Arrest, pending the aforementioned Court Martial.

Since Childhood I have suffered from a form of mental derangement, known to psychiatrists as Claustrophobia - fear of enclosed or confined spaces. The pronouncement of this sentence on February 17th, I refer to this sentence of 35 days Detention, was to me the culmination of several weeks brooding over injustices, real or fancied, as may be proven. The effect of this 30 days confinement in a room having the dimensions of 8' square had caused acute mental suffering, finally resulting on February 16-17th when my running extremely high temperatures. My nerves were acutely upon edge, and at times I was unaware of my own movements and surroundings. In this state of mind, I submit that I would not have taken thought as a normal person might of a multitude of details and possible consequences of my acts. I submit further that the above outlined mental state was not of a temporary nature, a matter of a moment, but has continued ever since that time. In support of this claim, I appear for an examination by the proper authorities of #1 CDN. Neurological Unit.

Charles A. Rogers

D105518 Pte. Rogers, C.A. R.C.A.M.C. attached as in W.E. to 11th CDN. Field Ambulance, R.C.A.M.C., after having the Summary of Evidence and his own Statement of Evidence read to him, wishes to make the above statement with a few alterations under oath, and after having been cautioned, and duly sworn, re-states the above Statement of Evidence.

Charles L. Rogers

.....

11th CDN. Field Ambulance, R.C.A.M.C.,

I certify that the foregoing Summary of Evidence, consisting of.....10.....pages was taken down in my presence in writing, and in the presence of the accused, and rules of procedure 4 (C), (D), (E), and (F) have been complied with.

.....Captain.
Officer i/c Summary.

LJB.

I, Private Rogers, Charles Allan , do hereby confess that I am No. D105518 of the 11 CDN Field Ambulance RCAMC.-ROASC Attached as in W.E. - and that I deserted from the Canadian Army (Overseas) on 17 Feb 1941 and remained absent till 24 April 1941, at 1330 hrs when I surrendered to the Officer Commanding, 11 CDN Field Ambulance RCAMC.

Charles A. Rogers Signed this 26th day of April 1941.

I have explained to the above soldier the effect of this confession, and I am satisfied that he understands thoroughly the nature and consequences of the same and that he is not immune from trial under Section 161 of the Army Act.

ORDERLY ROOM 26 APR 1941 11 CDN FIELD AMBULANCE R.C.A.M.C.

(L M STUART) Lieut Colonel,
Commanding 11 CDN Field Ambulance RCAMC.

EXHIBIT #2.

I, Private Rogers, Charles Allan , do hereby confess that I am No. D105518

of the 11 CDN Field Ambulance RCAMC.-ROASC Attached as in W.E. - and that I deserted from the Canadian Army (Overseas) on 17 Feb 1941 and remained absent till 24 April 1941, at 1330 hrs when I surrendered to the Officer Commanding, 11 CDN Field Ambulance RCAMC.

Charles A. Rogers Signed this 26th day of April 1941.

I have explained to the above soldier the effect of this confession, and I am satisfied that he understands thoroughly the nature and consequences of the same and that he is not immune from trial under Section 161 of the Army Act.

ORDERLY ROOM 26 APR 1941 11 CDN FIELD AMBULANCE R.C.A.M.C.

(L M STUART) Lieut Colonel,
Commanding 11 CDN Field Ambulance RCAMC.

I, Private Rogers, Charles Allan , do hereby confess that I am No. D105518 of the 11 CDN Field Ambulance RCAMC.-RCAMC Attached as in S.E. - and that I deserted from the Canadian Army (Overseas) on 17 Feb 1941. and remained absent till 24 April 1941, at 1330 hrs, when I surrendered to the Officer Commanding, 11 CDN Field Ambulance RCAMC.

Charles A. Rogers Signed this 26 day of April 1941.

I have explained to the above soldier the effect of this confession, and I am satisfied that he understands thoroughly the nature and consequences of the same and that he is not immune from trial under Section 161 of the Army Act.

[signature]
(L M Stuart) Lieut Colonel,
Commanding 11 CDN Field Ambulance RCAMC.

ORDERLY ROOM
26 APR 1941
11th CDN. FIELD AMBULANCE, R.C.A.M.C.

61

EXHIBIT #1

Certificate under Army Act, Section 163 (1) (j)

I Lt. Col. L. M. Stuart certify that D105518 Pte. Rogers, Charles Allan

of the .....R.C.A.S.C..... Regiment surrendered

himself to 11th Cdn. Fd. Amb. R.C.A.M.C. at Aldershot, Hants

on the .....24th..... day of .....April..... 1941.

as a deserter.

DATE ..24/Apr./41..... Signature ...L.M. Stuart Lt. Col. C.D. 11th Cdn. Fd. Amb.

A.A. 163 note 12. This soldier was wearing curtain clothes on surrender

[illegible]

70

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 19th day of June 1941.

LIEUT. COLONEL
COMDG. 11TH. FIELD AMBULANCE
R.C.A.M.C. C.A.S.F.

63

RECEIVED
MAY 14 1941
H. Q.
2 CDN. DIV.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

D105518 Pte. Rogers, C.A. of the R.C.A.S.C. attached 11th CDN. Fd. Amb. RCAMC.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Para. 664, K.R., 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	*Within last 12 months.	*Since Enlistment.
M.F.M. 6 forwarded to Records - not yet returned.		
For Absence without leave	2 times	2 times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

Nil

or,

There are no entries in the Conduct sheets of the accused.

2. ~~The accused has not been previously convicted.~~

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Wt. 42848/864 50,000 2/40 W. S. Ltd. 51—000a

3. ~~The accused is not under sentence at the present time.~~

or,

The accused at the ~~xxxxxxx~~ time of his escape was under sentence for 35 days Detention - Award of D.O.M. beginning on the 10th day of February 1941

4. The accused has been in confinement, awaiting trial on the present charges for Nil days in Civil Custody,

and X 8 D. days in Military Custody.

Total X 8 D. days.

Of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~xxxxxxxxxxxxx~~ attestation paper is 29 yrs - 8 mths

6. The date of his ~~xxxxxxxxx~~ attestation specified in his ~~xxxxxxxxxxxxxx~~ attestation paper is 5.4.40.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N.A.

8. The accused is entitled to deferred pay or gratuity in respect of N.A. years' service.

9. The accused is entitled to reckon N.A. years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward ~~xxxxxxxxxxxxxxxxxxxxxxxx~~

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N.A.

12. (*In the case of an officer.*) The accused holds in the army the rank of N.A., dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date, N.A.

		Date of Promotion
In the rank of	years,	
In the rank of	years,	
In the rank of	years,	

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name D-105718 Private Rogers, C.A. of the 11 Cdn Field Ambulance R.C.A.M.C.

Note.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of Court by which tried, or nature of Officer dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted
F.G.C.M.	10 Feb 1941	(1) Sec 41 ~~A.A.~~ W.O.A.S. committing a civil offence	Not Guilty	
		(2) Sec. 40 A.A. W.O.A.S. an Act to the prejudice of good order and military Discipline.	Guilty 35 Days Detention.	
		(3) Sec. 41 A.A. W.O.A.S. committing a civil offence.	Not Guilty	

(Continued overleaf.)

M.F.M. 6
A.F.B. 122
500M—8-20 (1762)
H.Q. 1772-43-38

No. D105518 Name Rogers, C.A. Sqn., Battery, or Company 11th Cdn. Field Ambulance, R.C.A.M.C. Date of enlistment 5.4.40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden,	30.6.40	Pte.		A.W.L. 0101 hrs. to 2215 hrs. 30.6.40	CSM Jones, Sgt. Colthorpe.	Admonished	5.7.40	L. M. Stuart, Lieut-Col.	Forf. of pay - 1 day.
Aldershot, Hants.	8.12.40	"		Sec. 15(1) W.O.A.S. did absent himself without leave from 2359 hrs. 7.12.40 to 0900 hrs. 8.12.40	L/Cpl. McGee Cpl. McCullough	7 days CB.	9.12.40	D.H.Eckold, Lieut.	Forf. 1 days Pay.
Field.	20.1.41	"		(1) Sec. 41 A.A. W.O.A.S. committing a civil offence	Not guilty,	10.2.41	F.G.C.M. sentence confirmed by G.O.C. 2 Cdn. Div. 15.2.41 & promulgated by Unit O.C. 17.2.41		Forf. Of pay 21 days.
				(2) Sec. 40 A.A. W.O.A.S. an to the prejudice of good order and military discipline	Guilty 35 days detention.				
				(3) Sec. 41 A.A. W.O.A.S. committing a civil offence.	Not guilty.				

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED TRUE COPY,

(L. M. STUART) Lieut-Colonel,
Commanding 11th Cdn. Field Ambulance, R.C.A.M.C.

No. D105518 Name Rogers, C.A. Sqn., Battery, or Company 11th Cdn. Field Ambulance, R.C.A.M.C. Date of enlistment 5.4.40 C.C. Badges Service or Proficiency Pay M.F.M. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden,	30.6.40	Pte.		A.W.L. 0101 hrs. to 2215 hrs. 30.6.40	CSM Jones, Sgt. Colthorpe.	Admonished	5.7.40	L. M. Stuart, Lieut-Col.	Forf. of pay - 1 day.
Aldershot, Hants.	8.12.40	"		Sec. 15(1) W.O.A.S. did absent himself without leave from 2359 hrs. 7.12.40 to 0900 hrs. 8.12.40	L/Cpl. McGee Cpl. McCullough	7 days CB.	9.12.40	D.H.Eckold, Lieut.	Forf. 1 days Pay.
Field.	20.1.41	"		(1) Sec. 41 A.A. W.O.A.S. committing a civil offence		Not guilty,			
				(2) Sec. 40 A.A. W.O.A.S. an to the prejudice of good order and military discipline		Guilty 35 days detention.	10.2.41	F.G.C.M. sentence confirmed by G.O.C. 2 Cdn. Div. 15.2.41 & promulgated by Unit O.C. 17.2.41	Forf. Of pay 21 days.
				(3) Sec. 41 A.A. W.O.A.S. committing a civil offence.		Not guilty.			

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY,					
				(K. M. STUART) Lieut-Colonel, Commanding 11th Cdn. Field Ambulance, R.C.A.M.C.					

56 A

10/R/275

D-105518 Pte Rogers C. A.
119 Lt. Amb. R.C.A.M.C.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this SIXTH day of FEBRUARY, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 2nd CANADIAN DIVISION, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

~~I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.~~

~~*[I am unable to appoint:—~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~*(3. Three Officers having more than one year's service.)~~

~~for the following reasons, namely:—]~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

PROCEEDINGS CHECKED AND FOUND TO BE IN ORDER.

(A. W. EMBURY) MAJOR, J.A.G.3., C.M.H.Q.

ENTERED IN RECORDS OF C.M.

President.

Rank.	Name.	Regiment.
Major	T. M. Medland	4 Cdn Fd. Regt.

Members.

Rank.	Name.	Regiment.
Captain	C. H. Alleyn	15 Cdn Fd. Amb.
Lieutenant	P. G. Cornell	Tor. Sco. R. (M.G.)

*Signed (V. W. Odlum), Major General.

Commanding 2 Canadian Division.

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D105510, Pte. Charles Allan Rogers, R.C.A.S.C., att'd. for all purposes to 11 Cdn Fd. Amb., R.C.A.M.C., a soldier of the Canadian Army	FIRST CHARGE A.A.Sec. 41 (W.O.A.S.) Committing a civil offence (see charge sheet attached) In the Alternative	not guilty	not guilty	
	SECOND CHARGE A.A.Sec 40 An Act to the prejudice of Good Order and Military Discipline (See charge sheet att'd).	not guilty	guilty 35 days detention	Confirmed [illegible]
	THIRD CHARGE A.A.Sec. 41 (Committing a civil offence (See charge sheet attached)	not guilty	not guilty	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [signature] (V.W. Odlum), Major-General
Commanding 2 Cdn Division
Convening Officer (e)

(Signed) [signature] Major
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings

I certify that the above Court assembled on the 10 day of Feb, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~
~~*(4. The officers under instruction)~~

* Omit if not applicable.

were duly sworn.

The writer shorthand [illegible]

Signed this 10 day of Feb 1941.

[signature] Major
President of the Court Martial.

C. Certificate in case of death sentences.

~~* See footnote (b) on page 702 M.M.L. 1929.~~

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 15th day of February 1941.

[signature]
Confirming Officer
Maj Gen
Comd 2 Cdn Div

Promulgated and extracts taken in the case of

(a) (Dated) (Signed) [signature] LIEUT. COLONEL COMDG. 11TH. FIELD AMBULANCE R.C.A.M.C. C.A.S.F.

ORDERLY ROOM 17 FEB 1941 11TH CDN FIELD AMBULANCE R.C.A.M.C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] P. St. G. [illegible]

B 2 3

CHARGE SHEET

The accused, No.D105518, Pte.Rogers,Charles Allen,R.C.A.S.C., attached for all purposes to 11 Cdn. Field Ambulance, R.C.A.M.C., a soldier of the Canadian Army, is charged with :-

FIRST CHARGE
A.A. Sec.41

When on Active Service, committing a civil offence, that is to say, when in charge of a motor vehicle on a road, was wrongfully under the influence of drink, contrary to Sec 15(1) of the Road Traffic Act, 1930;

in that he

On the road between Guildford and Staplefield on 20 Jan 41 was in charge of an R.C.A.M.C. anbulance and was under the influence of drink, to such an extent as to be incapable of having proper control of said vehicle

SECOND CHARGE
A.A. Sec.40

In the alternative

An Act to the prejudice of good order and military discipline,

in that he

at Guildford and at divers other places between Guildford and Staplefield on 20 Jan 41, rendered himself unfit for duty as a driver i/c by reason of previous indulgence in alcoholic stimulants in circumstances aforesaid.

THIRD CHARGE
A.A. Sec. 41

Committing a civil offence, that is to say:
Damaging real property, contrary to Sec 51 of the Malicious Damage Act 1861,

in that he

at the billet known as "Staplefield Place" on 20 Jan 41 did unlawfully and maliciously damage a window in the room used as a Guard Room in the said billet and did injury thereto to the amount of approximately £1-0-0.

Aldershot,Hants,

January, 1941.

[signature] Lieut.Colonel
Comd. 11 Cdn Fd Amb.,R.C.A.M.C.

[signature]

[signature] Major

PROCEEDINGS OF A FIELD GENERAL
COURT MARTIAL HELD AT LILLE BARRACKS,
ALDERSHOT, HANTS ON 10 FEBRUARY 1941

Trial of No. D105818, Pte. Charles Allan Rogers, R.C.A.S.C.

Prosecutor: Lieut. J. D. Harrison, 4 Cdn. Fd. Regt.

Defending Officer: Major H. F. Lazier.

1. The Order convening the court is read in the presence of the accused.

2. The accused is asked the following question:
"Do you object to be tried by the President or any of the Members of the Court, whose names you have heard read over?"
Answer: "no."

3. The President, the Members and the Shorthand Writer are duly sworn.

4. (a) The accused answers to his name and number and is duly arraigned on the charges.

(b) The accused pleads "not guilty" on all three charges set out in the charge sheet.

5. The accused is asked the question at the foot of page 2 of A.F.A.3, and his answer "No" is recorded beneath the question.

6. Opening address of Prosecutor: "With the Court's permission I will give a brief summary of what I propose to bring forth. The accused is charged with being in control of a vehicle when not in a proper condition, firstly under the Civil Act and secondly under Section 40, Conduct to the Prejudice of Good Order and Military Discipline, and the facts which I propose to bring out are that the accused was driving an ambulance on the day in question; that he went from his Main Dressing Station, quite properly under orders, to Bramshott, where he picked up some personnel, whom he was to return to the A.D.S. He then proceeded to Guildford and other places. While he was returning from there he was stopped by an officer of his own unit; was told to get into the car in which the officer had been driving, and the officer drove the ambulance back to the unit, where the accused was placed under close arrest. Subsequently in the guard house certain events took place, the result of which the accused is charged with the third charge; e.g.: malicious damage.

The 1st Witness for the Prosecution, D02043, Pte. Ewing, G. E., R.C.A.S.C., having been first duly sworn, is examined by the Prosecutor:

Q 1 Pte. Ewing, you are attached to the 11 Cdn Fd. Ambulance?
A 1 Yes, sir.
Q 2 And you are a driver, I believe?
A 2 That is right.
Q 3 On the night of 20 Jan 41 you were driving Mr. Eckold in the Staff car?
A 3 Yes, sir.
Q 4 What sort of a car is that?
A 4 Ford Sedan.
Q 5 Now, will you tell the Court how you came to be driving Mr. Eckold and what happened?
A 5 I was driving him from Staplefield to Terry's Cross, approximately 15 miles, when I happened to see this ambulance ahead. Going to overtake it he asked me to check up and see what ambulance it was. He said to pull alongside and pass it, and then it passed us again, we let it do that. When he passed us again I pulled up behind it close to try and see the number on the back. The number was pretty well blacked out on account of the mud. I then pulled alongside and blew the horn for the ambulance to stop and Mr. Eckold [illegible] of the car and pulled into the curb and walked back to the

ambulance. Private Rogers was dismounting from the ambulance at the time.

Q 6 Pte. Rogers was driving the ambulance at the time was he?
A 6 He had been, yes.
Q 7 Did you hear Mr. Eckhold say anything when he came to the ambulance?
A 7 I can't remember whether I did or not.
Q 8 In any event, Rogers was getting out?
A 8 Yes, sir.
Q 9 And what happened then?
A 9 Mr. Eckhold got into the ambulance and told me to take Pte. Rogers back to Staplefield.
Q 10 And did Rogers go with you into the sedan?
A 10 Yes, sir.
Q 11 And was there anybody else in the sedan at that time?
A 11 No, sir.
Q 12 Did anybody else get into the sedan later on?
A 12 Yes, sir.
Q 13 Who was that?
A 13 Private Masuret.
Q 14 Where did he come from?
A 14 From the passenger side of the ambulance in front.
Q 15 Just tell the Court how it came about?
A 15 The ambulance stopped and and Masuret got out to relieve himself and while he was relieving himself Mr. Eckhold told him to get back in the car with me.
Q 16 When Rogers got into the car which you were driving did you notice anything about his condition?
A 16 He had been drinking, sir.
Q 17 How could you tell that?
A 17 By smell and actions.
Q 18 And did anything unusual happen you on your way back.
A 18 He was sick, sir, on the way back.
Q 19 And was there a strong odour of liquor in the car after he got in?

THE DEFENDING OFFICER: Now, just a minute, I haven't objected to all these leading questions, but surely--

A 19 Not that I can recall now, sir.
Q 20 You said Rogers was sick, was he sick in the car?
A 20 No, sir, he informed me and I stopped the car and he opened the door and got out.
Q 21 There was no question in your mind that he had been drinking?
A 21 No, sir.

CROSS-EXAMINATION BY THE DEFENDING OFFICER:

Q 22 What were the weather conditions along the road on this night?
A 22 It was a fair driving night, sir; it was dark, but it was a fair driving night.
Q 23 What was the condition of the surface of the road?
A 23 I believe it was dry, sir, but I wouldn't swear to that.
Q 24 Any fog?
A 24 Not that I can recall, sir.
Q 25 At what rate of speed was the ambulance being driven?
A 25 I would say twenty to twentyfive miles an hour.
A 26 Anything unusual about the manner in which is was travelling?
A 26 No, sir.
Q 27 It was only the fact that it was one of your own ambulances that drew your attention to it, was it?
A 27 That is right, sir.
Q 28 Did you form any opinion as to whether Rogers was in a fit condition to drive a car or not?
A 28 I believe I did, sir.
Q 29 What was your opinion?
A 29 I don't think at the time he was fit to drive an ambulance, sir.
Q 30 What would you say as to whether he was intoxicated or not?
A 30 I believe I said in the first statement that I didn't think he was what you would call intoxicated. When he was sick in the car it seemed that while he had been drinking it wasn't a case of his being drunk. He had had a few drinks and I have been the same way when I have had a few drinks. I have felt sick myself.
Q 31 Well, then, by that do you mean that you didn't consider him drunk or intoxicated?

A 31 No, I wouldn't say that, sir. I don't know how to explain it myself, but he had been drinking, and in my estimation he wasn't fit to be driving.

Q 32 Well, the ambulance was being driven all right?

A 32 It was, sir, to an extent where it started to pass me, it hesitated before passing me, though, but until I saw Rogers it made no impression of being badly driven.

Q 33 And other than the fact that Rogers smelt of liquor, have you anything on which to base your opinion?

A 33 No, sir, I cannot.

The 2nd Witness for the Prosecution, Ammore, Pte. Davis, R., having been duly sworn, is examined by the Prosecutor:

Q 34 You are attached to 11 Gen. Fd. Amb.?

A 34 Yes, sir.

Q 35 And sometime prior to January 20th of this year I believe you had been sent to Bramshott, suffering with--

A 35 Influenza or bronchitis, sir.

Q 36 And how long before January 20th was it that you had been sent to Bramshott?

A 36 About a week.

Q 37 And do you remember how long you had been in bed?

A 37 Yes, sir, it was about three days.

Q 38 And then you had been up for three days?

A 38 Yes, sir.

Q 39 And you got your discharge papers from Bramshott on January 20th?

A 39 Yes, sir. I was discharged from the hospital.

Q 40 And told to return to your unit?

A 40 Yes, sir.

Q 41 What arrangement was made for transporting you back to your unit?

A 41 I reported to the Administration Building and was informed by Pte. Maguret that I was to proceed back to the unit in their ambulance.

Q 42 And did you do that?

A 42 Yes, sir.

Q 43 Do you remember what time you left Bramshott?

A 43 Not exactly, sir. Approximately a quarter to one or so.

Q 44 And where did you go to from Bramshott?

A 44 To Guildford.

Q 45 Did you stay there?

A 45 Yes, sir.

Q 46 And what was the purpose of that stop?

A 46 Pte. Rogers and Pte. Maguret stated that they wanted nothing to eat and they got out of the ambulance and proceeded down the street.

Q 47 What time did you get to Guildford, do you remember?

A 47 About half past two, sir.

Q 48 And you saw them proceed down the street?

A 48 Yes, sir.

Q 49 Did they take anything with them when they left?

A 49 No, sir.

Q 50 And how long were they gone?

A 50 About two hours.

Q 51 What time did you leave Guildford?

A 51 Around five o'clock.

Q 52 Were you talking to Pte. Rogers when he returned to the ambulance?

A 52 No, sir.

Q 53 Where did you go from Guildford?

A 53 From Guildford we stopped at Dorking again, sir.

Q 54 And how long did you stay there?

A 54 About 15 minutes.

Q 55 What did you stop there for?

A 55 For Pte. Maguret and Pte. Rogers and McPherson to proceed to the Laundry.

Q 56 Did you leave the ambulance?

A 56 No, sir.

Q 57 They were gone about 15 minutes?

A 57 Yes, sir.

Q 58 Were you talking to Rogers then?

A 58 No, sir, just to McPherson.

Q 59 Did you make any objection to that stop?
A 59 I just asked that not be too long and said I was feeling kind of chilly.
Q 60 In any event, you got started again in about 15 minutes?
A 60 Yes, sir.
Q 61 And what happened?
A 61 We proceeded along the road and we stopped in order to urinate along the road.
Q 62 Just somewhere on the side of the road?
A 62 Yes, sir.
Q 63 And then you proceeded again; did you stop after that?
A 63 Yes, sir. We stopped at Dandarawa Hotel.
Q 64 And what happened there?
A 64 Pte. McPherson and Pte. Lamarat went to the hotel and I got out of the ambulance and objected to them going in there and Pte. Lamarat said that they wouldn't be long, so they went into the hotel and about ten minutes later I asked Pte. Rogers to proceed to the hotel with me to get the others. I entered the hotel with Pte. Rogers.
Q 65 And did you find Lamarat and McPherson in the hotel?
A 65 Yes, sir.
Q 66 Where were they?
A 66 In the barroom
Q 67 And did you and Rogers go in then?
A 67 Yes, sir.
Q 68 And what was said then?
A 68 I asked Lamarat how long he was going to be. I said I thought I had been held up long enough on the road. I told him I thought I had a temperature and he said we would be through right away and I left the hotel
Q 69 Was there anybody left with the ambulance when you and Rogers went into the hotel?
A 69 No, sir.
Q 70 Did Rogers take anything with him from the ambulance?
A 70 No, sir.
Q 71 And what happened then?
A 71 I waited until they returned.
Q 72 Did they come back together or separately?
A 72 I believe they all came back together.
Q 73 And about how long was that after you left?
A 73 10 or 15 minutes.
Q 74 And when you were talking to Rogers at the ambulance did you notice anything out of the ordinary, as far as he was concerned?
A 74 His speech was kind of slurred, sir.
Q 74 Did you notice any smell of liquor?
A 75 Yes, sir.

THE DEFENDING OFFICER: Mr. President, that is a very leading question; the Prosecutor shouldn't suggest answers like that. It is most unfair.

THE PRESIDENT: Objection sustained.

BY THE PROSECUTION:

Q 76 In any event, you say you waited about ten minutes and then they returned?
A 76 Yes, sir.
Q 77 And then what happened?
A 77 Then we proceeded on our way to the M.D.3.
Q 78 Just before we get on further -- you say you proceeded towards the M.D.3. and what occurred next?
A 78 We proceeded on the highway and we were stopped by Lieut. Eckhold.
Q 79 And what happened then?
A 79 Lieut. Eckholds took the ambulance over and proceeded back to the M.D.3. and we were put under close arrest when we arrived back.
Q 80 What was the last -- you were in the back of the ambulance, but you didn't see anything?
A 80 No, sir.
Q 81 Did you overhear anything that was said when the ambulance was stopped?
A 81 No, sir.
Q 82 Now, what was the nature of the driving during this trip?
A 82 It was, as we neared to our destination, it was jerky and we stopped and jerked.

Q 85 Well, then, you were all four of you put under close arrest?
A 85 Yes, sir.
Q 84 And I believe you were subsequently released and sent on to your destination?
A 84 Yes, sir.
Q 85 You were taken to the guard house with Rogers and McPherson and Knaurat?
A 85 Yes, sir.
Q 86 Did there seem to be anything unusual about Rogers when you were at the Guard House, or when you finally arrived at the M.D.S.?
A 86 He was a little talkative.
Q 87 How long were you in the guard house?
A 87 About five minutes, sir.
A 88 And then you and McPherson left?
A 89 Yes, sir.

CROSS-EXAMINED BY THE DEFENDING COUNSEL:

Q 90 You were riding in the back of the ambulance all the way?
A 90 Yes, sir.
Q 90 Could you see out at all?
A 90 Yes, sir.
Q 91 Were you watching?
A 91 Just twice, sir.
Q 92 When was that?
A 92 At Guildford and at Dorking.
Q 93 And you did mention that the only thing about the driving was a light darkness
A 93 Yes, sir.
Q 94 And you don't know whether that was caused by traffic or not?
A 94 No, sir.

The 3rd witness for the Prosecution, A7/7000, Sgt. G.A. McCullough, 11 Cdn. Fd. Amb., having been duly sworn, is examined by the Prosecutor:

Q 95 You are attached to the 11 Cdn. Fd. Amb.?
A 95 Yes, sir.
Q 96 And you were at the M.D.S. on the night of January 20th?
A 96 Yes, sir.
Q 97 When Mr. Bothold, I believe, drove up with an ambulance, followed by Ewing in the staff car?
A 97 Yes, sir.
Q 98 Will you tell the Court what happened to your knowledge at that time?
A 98 The door was opened. Mr. Bothold came out and called me to put Pte. Rogers and Pte. Knaurat under close arrest.
Q 99 And did you do that?
A 99 I went back to the hall, sir, and Cpl. Good was there and got two escorts to take them to the guard house.
Q 100 And at that time did you notice anything about Rogers' condition?
A 100 Not particularly, sir, not at that time.
Q 101 Did you have any idea of why he was being put under arrest?
A 101 Yes.
Q 102 Why?
A 102 Because his ambulance had been out longer than it should have been and I figured that that was the reason for the below put under close arrest.
Q 103 That was the only thing that crossed your mind?
A 103 Yes, and the acting of Pte. Rogers when he was brought in.
Q 104 And did you subsequently go to the guard house?
A 104 Not at that time, but later on.
Q 105 What was the reason for that?
A 105 There had been some commotion down there and the orderly came up and told me that Rogers wanted to get outside in the fresh air.
Q 106 You say there had been a commotion down there?
A 106 Yes, sir.
Q 107 And did you go down to the guard house then?
A 107 Yes, sir.
Q 108 And what did you find?
A 109 Rogers was quite quiet, but he wanted outside for some fresh air.
Q 109 Did you notice anything about his condition at that time?
A 109 He wasn't acting naturally. I figured he had had a few drinks.

Q 110 You say he wanted to get out?
A 110 Yes, sir.
Q 111 How was he acting, sitting down and saying "would you mind taking me
outside," or what was this suggestion?
A 111 It had happened before I arrived there and he asked me if I would
let him outside and I said no.
Q 112 What happened then?
A 112 He walked over and put his fist through the window, sir.
Q 113 How do you mean?
A 113 He walked over and as he was going past just went like that (indicating
A 114 Do you mean he went over and put his fist through the window deliber-
ately?
A 114 I don't know whether it was done deliberately or by accident; I
don't know.
Q 115 Well, then what happened?
A 115 Well, he cut his hand and we called the M.O. to look after it.
A 116 And what happened when the M.O. arrived?
A 116 They attempted to bind his hand up for the M.O. to do.
A 116 They attempted to bind his hand up for the M.O. to do.
said it wasn't serious enough to bother with.
Q 117 And was it a pane of glass?
A 117 Yes, sir.
Q 118 Just tell the Court how that was done?
A 118 He laid down on the bed there, sir and I held his wrist and another
fellow held his shoulder.
Q 119 Where did you say he was?
A 119 Just what we call biscuits on the floor.
Q 120 Did you have any difficulty at that time with him?
A 120 Well, we did, sir, he didn't want to have his hand bandaged at all.
Q 121 Did he say anything at that time?
A 121 He was just complaining about his hand; he didn't care to have it
bandaged.
Q 122 How long did you stay there?
A 122 I was there for perhaps, oh, ten minutes.
Q 123 And you left then?
A 123 Yes, sir.
Q 124 And Rogers was left in the custody of the guards, maybe?
A 124 Yes, sir.
Q 125 And did you see Rogers again?
A 125 Not until next morning.
Q 126 Was there anything said at that time?
A 126 I met him in the hall downstairs; he had been up for a wash and he
said "I guess I caused a bit of trouble last night," and he was quite
sorry to have caused it.

CROSS-EXAMINED BY THE DEFENDING OFFICER:

Q 127 Was the reason that Rogers objected to having his hand bandaged
because he thought it was too trivial?
A 127 He said he thought it wasn't worthwhile.
Q 128 But after Major Thomson had been there and said it should be done,
he submitted then, didn't he?
A 128 Not altogether, sir, he still didn't want that hand bandaged.

6th Witness for the Prosecution, Lieut. H. V. Nichols, RA
(On Pd. Amb.),

Q 129 You are an officer of 11 Cdn. Fd. Ambulance?
A 129 Right.
Q 130 Will you tell the Court just what happened on the day of January 30,
in connection with this case, as far as you know?
A 130 On the day, January 30th, at approximately 7:30 p.m. I had occasion
to go to Perry's dress to one of our A.D.S. I proceeded down the
Brighton Highway towards this A.D.S. and about a mile from the Road-
cross Station, the first road block toward Brighton we caught up
with a Canadian ambulance. I couldn't tell who it could be because
as I had just left the Main dressing station I was pretty sure that
no ambulances had been called out before I had left. We pulled up
close behind this vehicle in an attempt to read the T.D. number on
the rear. As it was covered with dirt and mud it was impossible to do
this. We then passed the ambulance, still trying to read the

numbers on it, but we were unable to do so. After pulling past it we stopped a distance ahead of this ambulance. The ambulance caught up with the staff car and appeared to slacken speed, but it continued straight on. We started up again, this was after catching up to the ambulance, and holding even with it, it gradually slackened off speed and pulled over to the side of the road. I got out and Ewing, the staff car driver pulled the car ahead of the ambulance, blocking its way in case it was going to move off again. It was a dark night and the side curtain was up and I couldn't see the driver. I asked who the driver and the answer came "Rogers". I ordered him to get out of the ambulance, which he did, and I told him to get into the staff car, and as he walked from the ambulance to the staff car he passed in front of the lights of the ambulance and I could see that he was unsteady on his feet. Also in the manner in which he answered me I could tell that he had been drinking. I turned the ambulance around and headed back to the M.D.S., with Ewing following me in the staff car. A couple of miles from the M.D.S. the ambulance orderly insisted that the vehicle stop so that he could urinate, and when we stopped Ewing came up and informed me that he thought that there were two men in the back of the ambulance, and Masuret then got in the staff car, along with Rogers, and we carried on to the M.D.S.. On reaching the M.D.S. the back door of the ambulance opened and two men, Pte. Davis and Pte. McPherson, got out, and Rogers and the ambulance Orderly got out of the staff car. I opened the door to see if Sgt. McCullough and Cpl. Good were there and called them both and told them to get an escort and put all four men in the guard house under close arrest. After seeing them safely to the guard room I reported the matter to the Orderly Officer of the day.

Q 131 Did you have any conversation with Rogers when you stopped the ambulance?

A 131 I believe, yes, I asked him where he was going. He said he was going to rejoin his unit near Handcross. I told him he had gone past that point. At the time I didn't know he had two passengers, who should have gone to the A.D.S. at Gerry's Cross.

Q 132 And did you notice anything out of the ordinary in that conversation?

A 132 Nothing other than the way in which he spoke.

Q 133 Just describe that to the Court?

A 133 Rogers speaks very clearly, his enunciation is quite perfect and the conversation that came up-- his speech was-- had a tendency to be slurry, which was very unlike his regular manner of speaking.

Q 134 That is where, I think you said you saw him in the beam of light and he was unsteady?

A 134 Yes, he was unsteady on his feet.

Q 135 And when you got into the barracks you placed him under close arrest? Why did you do that?

A 135 He was on duty and he evidently had been drinking.

Q 136 What is your opinion, insofar as his driving is concerned?

A 136 Well, I don't think that any man who has been drinking should drive; that is, a man who seemed to have had as much to drink as Rogers had.

Q 137 Well, now the driver of an ambulance-- what are the responsibilities when one is driving an ambulance. Are they greater than when driving an ordinary car?

A 137 I would say yes, the ambulance driver is responsible for the patients, for men who possibly can't take care of themselves

Q 138 And I suppose that your ambulance men must always be ready to take in any emergency job at any time?

A 138 We keep our ambulances as prepared as we possibly can.

Q 139 So that if you had just passed a serious accident, you might have been expecting to call upon this ambulance--

THE PRESIDENT: Mr. Harrison, you are continually suggesting as your answers. Please don't do that.

CROSS-EXAMINATION BY THE DEFENDING OFFICER:

Q 140 How long has Rogers been in your M/T Company?

A 140 Since I joined the unit in August, 1940

Q 140 And had Rogers been in before your joining?

A 140 Yes.

Q 141 What is Rogers' record with the Platoon?
A 141 I have had no trouble.
Q 142 Has he been a good driver?
A 142 He has been a very good driver.
Q 143 Have you any idea of the approximate distance from Guildford to where you stopped this ambulance?
A 143 It may be thirty miles.
Q 144 And as far as you know Rogers had driven the ambulance that distance without any trouble?
A 144 Well I couldn't say that he had had no trouble.
Q 145 When you saw the ambulance it was being driven properly?
A 145 It was on its own side of the road, right in a straight line.
Q 146 Was it being driven properly as far as you know?
A 146 Yes, sir.
Q 147 So that you wouldn't have stopped the ambulance apart from the fact that you recognized it as one of your own ambulances?
A 147 No.

8th Witness for the Prosecution, A2VU04, L/Cpl. Howden, H., having been duly sworn, is examined by the prosecutor:

Q 148 On the night of January 20th I believe you were orderly n.c.o. of 11 Cdn Fd. Ambulance?
A 148 Yes, sir.
Q 149 And did you see the accused, Pte. Rogers, that evening?
A 149 Yes, sir. I was sitting up in the picquet room at at approximately 2020 hours I heard a disturbance down in the guard room downstairs. I went down to investigate and I found the accused under escort in charge of the Cpl. Good of the M/P Company. Cpl. Good informed me that the man was under close arrest and then he went out of the room. A little later on he came back in again. I would go in and out of the room and in the meantime the accused had been shouting for fresh air. Owing to the blackouts making it necessary to have the windows shuttered, I couldn't open the door, because I would have to put the lights out. I offered to have the accused taken out under escort, in order that he might get fresh air and he refused.
Q 150 Now, you said this "racket" Just what was going on, or what occurred?
A 150 Well, sir, there was an excessive racket in the guard room and I went down to investigate and I found Pte. Rogers under escort of Cpl. Good and a number of them were talking quite loudly together.
Q 151 Did you notice anything out of the ordinary about the condition of Rogers?
A 151 It seemed to me that he was rather, well, I would say, sir, in an intoxicated condition.
Q 152 And just on what did you come to that conclusions?
A 152 On the fact of his speech and the way he was acting. I would say he wasn't in a fit condition todrive an ambulance.
Q 153 And you say that he said he wanted to get some fresh air and you offered to take him outside and he refused?
A 153 I offered to take him outside under escort, sir.
Q 154 I think you said you couldn't open the door on account of the blackout?
A 154 I did, sir; I couldn't just open the door and leave it open.
Q 155 And what else happened while you were there?
A 155 I refused to allow the door to be opened. The accused became a little violent in his actions. He started to swing his arms around and he turned and came in towards the room again. At the time mentioned he was passing the door and I was standing with my back to the door and he turned in towards the room and started swinging his arms around and his fist came in contact with a pane of glass running along the wall.
Q 156 Was that a window?
A 156 No, sir, it was a sliding partition; it had been used as a saddlery, and there was a partition there which closed off a narrow siding, only about a foot wide and there was a wall right behind the glass partition all the way along.
Q 157 And did it break the glass?
A 157 Yes, sir.
Q 158 And what happened then?
A 158 I had the escorts take him away from the partition and theoCpl. Good came in and I left him in charge while I went up and got the Orderly Officer.

Q 159 And did you subsequently return?
A 159 I returned with the Orderly Officer, who also acted as M.O.
Q 160 Who was that?
A 160 Major Thomson.
Q 161 And what happened when you got back?
A 161 The patient didn't want to have his hand dressed which, as I saw was bleeding profusely quite necessitated me going up to get the M.O.
Q 162 Where was the accused at that time?
A 162 He was in the guard room, sir.
Q 163 And was his hand dressed?
A 163 Yes, sir.
Q 164 Exactly what happened?
A 164 The accused initially refused to have his hand dressed, so I had the escorts hold him and I handcuffed, while his hand was dressed.
Q 165 And what was the position of the accused at that time?
A 165 He was in a prone position, on the palliasses, on the floor.
Q 166 And you say you had the guard hold him while his hand was dressed?
A 166 Yes, sir.
Q 167 And did the accused have anything to say at that time?
A 167 He spoke a few garbled words, sir. I couldn't make it out.
Q 168 And what happened next?
A 168 After he had his hand dressed the orderly officer left and then he submitted to going outside under escort for fresh air.
Q 169 And did you remain there?
A 169 I remained there for approximately an hour and a half after, sir.
Q 170 And what went on?
A 171 The accused had refused to have his hand dressed and then at this time he was quite passive, and at other times he, by his actions, swinging his arms around, and when he was walking around, and at other times he appeared to be normal.

CROSS-EXAMINED BY THE PRESIDING OFFICER:

Q 172 What time was it when you first went down?
A 172 2000 hours approximately.
Q 173 And what was the accused doing at that time?
A 173 He was walking around the room and just causing a general disturbance.
Q 174 What-- by just walking around the room?
A 174 No, he was swinging his arms around and didn't like the idea of being under close arrest.
Q 175 You said you judged him to be in an intoxicated condition by his actions. What were these actions you are referring to?
A 175 Well, sir, yes and on account of his speech.
Q 176 You don't think it could have been brought on by xxxi excitement at feeling that he was wrongfully put under close arrest?
A 176 I very much doubt it, sir.
Q 177 Was he quite excited about it, sir.
A 177 He seemed to be, yes, sir.
Q 178 And I believed that you volunteered the opinion that he wasn't fit to drive an ambulance?
A 178 I would say so, sir.
Q 179 Do you know that he drove an ambulance all the way from [illegible] Ford to Maidenhead, in the dark, without any trouble?
A 179 Yes, sir.
Q 180 And in the face of that you still make that statement?
A 180 I make that statement on my own opinion, sir, I don't think I would care to ride in an ambulance with a man in his condition driving.
Q 180 Now, after his hand was dressed and he was did get the fresh air, what happened then?
A 180 He subsided to the extent that he lay down on the palliass and then in about an hour's time he fell asleep.
Q 181 Did you go out with him when he went to get the fresh air?
A 181 No, sir Cpl. Good went out.
Q 182 What was the condition of the guard room, was it hot and stuffy, or cold?
A 182 Well, I wouldn't say it was-- I would say it was normal.
Q 183 What is normal?
A 183 Well, normal temperature.
Q 184 I suppose the blanket prevented the possibility of a draught of fresh air in the room?
A 184 It did, sir.

Q 193 How large a room was it?
A 193 I would say it was about approximately from here to the door (indicating)
Q 194 How many people were in the guard room?
A 194 At that time, sir, I couldn't just say.
Q 195 Have you any idea at all?
A 195 I believe there were three or four of them. There was Sgt. McCullough came in and went out again, I believe. There was six of us altogether

Sixth witness for the prosecution, A3077, Pte. Bryan, R. J., having been first duly sworn, is examined by the prosecutor:

Q 196 You are attached to the 11 Cdn Fd. Ambulance?
A 196 Yes, sir.
Q 197 On the night of January 20th you were on guard?
A 197 That is right, sir.
Q 198 And what time did you go on guard, approximately?
A 198 Between 8:30 and 9.
Q 199 And did you report to the guard house?
A 199 Yes, sir.
Q 200 And what did you find there?
A 200 I found Pte. Rogers and Pte. Masuret.
Q 201 And I suppose there were other personnel, too?
A 201 There were two or three as well, there, sir.
Q 202 Did you notice anything peculiar about Rogers' condition?
A 202 Not very much, sir.
Q 203 Did you notice anything?
A 203 Just that he was wanting air all the time, that is about all, sir.
Q 204 Were you speaking to Rogers at all?
A 204 No, sir.
Q 205 Where was Rogers, in the guard house?
A 205 Just walking around when I came in.
Q 206 And did anything occur after you came in?
A 206 Just that he was trying to get out and get some fresh air, that was all, sir.
Q 207 Nothing else occurred at all?
A 207 No, sir.
Q 208 Who went on guard the same time you did?
A 208 Pte. Hood.
Q 209 Anybody else come to the guard room while you were there?
A 209 Corporal Good was there and Sgt. McCullough.
Q 210 When did he come?
A 210 Well, he was there when I got there.
Q 211 Did anybody come in afterwards?
A 211 Capt. Boyd and Major Thomson.
Q 212 Did you see them come in?
A 212 They came down to dress his hand.
Q 213 Was his hand cut when you got there?
A 213 It wasn't exactly cut.
Q 214 Was it cut when you got to the guard room?
A 214 No, sir.
Q 215 How did it get cut?
A 215 He got his hand through one of these windows in the guard room.
Q 216 Will you just describe how he did that?
A 216 He just walked over and he was swinging his arms around and it just went through the window, that was all. I don't know whether it was intentional or accidental.
Q 217 And you say that Major Thomson and Capt. Boyd came down to dress that cut?
A 217 They were called down.
Q 218 And did they dress that hand?
A 218 Yes, sir.
Q 219 Will you just describe to the Court what went on at that time?
A 219 Pte. Rogers was lying on these biscuits when Major Thomson came down and he wanted fresh air and he didn't want his hand dressed because he didn't think it was bad enough to have it dressed and Major Thomson said he had better have it dressed as a kind of a precaution for infection and then he had it dressed after that.

Q 229 Was there anything unusual in this dressing?
A 229 No, sir, not that I could see.
Q 231 Did you take any part in it?
A 231 No, sir, I was standing behind Capt. Boyd when he was dressing the wound.
Q 232 Why did Rogers want air?
A 232 I don't know what he wanted it for. He was asking for air all the time.
Q 233 And you weren't talking to him during the evening?
A 233 No, sir.

THE DEFENSE DESIRES TO CROSS-EXAMINE THE WITNESS.

The seventh witness for the prosecution, Pvt. Mc 40 Pt. Bowlde, A.,having been duly sworn, is examined by Prosecut

Q 231 You are attached to the 11 Gen Hd. Amb?
A 231 Right, sir.
Q 232 Now, on the night of January 20th I believe you were on duty as guard?
A 232 Right, sir.
Q 233 And what time did you go on duty-- approximately-- do you remember?
A 233 About 9:30, sir.
Q 234 And what did you find when you got to the guard house?
A 234 I heard a lot of noise in the guard room and I opened the door and walked in and I seen Privats Rogers and Mille Maurer carrying on a little bit of rampus and then I understood they wanted to get some air and then Pte. Rogers threw up his hands and broke a window there.
Q 235 And did you notice anything peculiar about Rogers then?
A 235 Only an awful sweat on his face.
Q 236 Was that the only peculiar thing you noticed?
A 236 Yes, sir.
Q 237 Did he give you any indication of why this condition existed?
A 237 I got hold of him to try and quieten him and I smelt liquor
Q 238 Were you talking to him?
A 238 Yes.
Q 239 Was there anything peculiar about that?
A 239 His speech was a bit slurred.
Q 240 Was there anything else peculiar about his actions.
A 240 I hadn't seen him acting that way before since I have known him.
Q 241 What did you think had happened to him?
A 241 It is pretty hard to say, Sir.
Q 242 And how did he break this window?
A 242 Rogers or Less, he threw up his hands and his hand connected with the window.
Q 243 And what happened then?
A 243 I went over and looked at his hand and told him I had better get the M.O. It was bleeding pretty bad.
Q 244 And was the M.O. sent for?
A 244 Yes, sir.
Q 245 And was it attended to?
A 245 It was.
Q 246 Under what circumstances?
A 246 Well, sir, we held him down and he had his hand closed. He didn't want it dressed. It wasn't big enough and I had to hold his hand while it was dressed.
Q 247 And did Rogers say anything at this time?
A 247 No, he only kept repeating that he didn't want it dressed. It was only a small trifle and we were making a big thing out of a small trifle.

CROSS-EXAMINATION BY THE DEFENDING COUNSEL:

Q 248 What was the temperature in the room?
A 248 It was quite warm, sir.
Q 249 Did you go outside with Rogers when he was taken out?
A 249 No, sir.

The eighth witness for the Prosecution, Major [illegible], having been first duly sworn, is examined by the prosecutor:

R.C.A.M.C.,

Q 250 You are the S 1/C of the 11th Cdn Fd. Amb. R.C.A.M.C.?
A 250 Yes, sir.
Q 251 And on the night of January 20th, were you called down to the guard room of your barracks?
A 251 At Stapleton.
Q 252 And what did you find when you got there?
A 252 I found the accused with an injured hand, a lacerated left hand, that apparently had been caused from pushing it through a pane of glass in a glass door.
Q 253 Where was that door?
A 253 It was in the wall of this building where we had our guard room.
Q 254 Did it have a number?
A 254 No, it was just a doorway.
Q 255 And what did the Court see with respect to the medical inspection room, and I want you to tell the Court what happened then?
A 255 Capt. [illegible], who was with the prisoner when I arrived, came down and helped to lift him from the floor, where he was on the floor struggling with some other men and he was restrained by his escorts and it was difficult for us to get in with the dressing and clean up the wound. However, after a time, we got him properly restrained and got his hand cleaned with water and then thoroughly disinfected with Iodine and put a dressing on.
Q 256 Did you notice anything peculiar about the accused then?
A 256 He was trying to struggle and get away from his escort and in an ugly mood.
Q 257 Any reason for that that you could ascertain?
A 257 Well, this hasn't been mentioned by me; there was a strong odour of alcohol about him.
Q 258 You say he seemed to be in an ugly mood?
A 258 Yes, very.
Q 259 He was on the floor, you say, at this time?
A 259 Yes, sir.
Q 260 And would you tell the Court who restrained him?
A 260 His escorts.
Q 261 And just in what way was it necessary for them--
A 261 They had to get right on top of him, almost. His legs and arms were flying around.
Q 262 Would it be your opinion that his condition could be termed by the accident which he had had to his hand?
A 262 No, I don't imagine that there would be a great deal of pain from that, because the would was too superficial. We had only minor lacerations.
Q 263 And you noticed a strong odour of alcohol?
A 263 Yes.
Q 264 Were you talking to the accused?
A 264 As little as possible.
Q 265 Was there anything peculiar in his speech?
A 265 I can't recollect a great deal about that, I think, the single person that I was trying to avoid getting into conversation with him. He spoke, of course, some of the time; he was asking for help, and his speech was, of course, [illegible] actually to his speech, or to the particular suffocated feeling which he had his head. He had his head sore of turned down on a pillow, held up by a post or something, and he was yelling for air all the time. At the same time he was cutting off his own air by burying his head, so I really don't know whether the speech was garbled or not.
Q 266 From what you saw what would be your opinion as to his fitness to drive an ambulance?
A 266 When I went in there he was lying on the floor, though we did get him up to take him to the door, pressure by two men, he wouldn't even help himself. When they let him up he just let his weight hang on his escorts and he wanted to go out alone, so when they gave him the opportunity to go out under escort, he wouldn't go.
Q 267 From your observation of the conduct of the accused that is your opinion as to his fitness at that time to drive an ambulance?

A 267 Well, of course, we consider any man who has been drinking alcohol in any quantity is not fit and he wouldn't be allowed to drive the ambulance. Whether he is physically fit to drive or not. That is a very hard question for a medical man to answer because it involves more than one thing, because different people react differently to alcohol. Some people might be fit to drive an ambulance and others might not. I don't know in this case whether that man wouldn't be fit,but if we knew he had been drinking he wouldn't be allowed to.

Q 268 Can you distinguish between, say, being physically capable of driving and being a proper person to be in charge of an ambulance?

A 268 He certainly wouldn't be a proper person to be in charge of an ambulance

CROSS-EXAMINED BY THE DEFENDING OFFICER:

Q 269 You are a medical officer, are you not?

A 269 Yes,sir.

Q 270 I suppose in your experience you have some knowledge of the effect of alcohol and other things on the human system?

A 270 Yes, sir.

Q 271 If a person consumes a quantity of alcohol, within, oh, three-quarters of an hour and he then eats something and is shortly afterwards violently ill, and vomits, will he get rid of most of that alcohol, or will it affect him

A 271 How long did you say?

Q 272 Supposing you had three drinks over a period of 45 minutes and then you eat something, and apparently it disagreed with you and you vomited very violently--

A 272 How long after you had eaten?

Q 272 Practically immediately?

A 272 He would get rid of some of the alcohol, no doubt, but he certainly wouldn't get rid of it all, because alcohol is absorbed into the stomach. If he took three or four drinks on a partially empty stomach he would absorb a lot of his alcohol before he ate; of course, he wouldn't absorb it all.

Q 274 I suppose without knowing the quantity of alcohol that was taken you couldn't give your opinion as to how long the effects would last?

A 274 Yes, I would have to have more knowledge.

Q 275 And if that occurred-- supposing there was something wrong with the food or the combination, would the tendency to cause the illness, would that produce similar effects to having consumed too much alcohol?

A 275 I want to get your question clear.

Q 276 If either there was something wrong with the alcohol or with the food, or with the combination, that didn't agree with the person-- made them ill-- would the illness, suppose we say this poisoning, produce effects on the person, as well as from the alcohol-- I mean insofar as feeling ill, perspiring greatly?

A 276 When I saw the man he wasn't ill.

Q 277 I am not asking about that; I am asking about--

A 277 Yes, those are possibilities.

Q 278 What time did you see this man?

A 278 I would say it was between 2130 and 2200 hours; it might have been earlier than that.

Q 279 You say that at the time you saw Rogers he wasn't ill?

A 279 I wouldn't call him ill.

Q 280 You don't know whether he had been ill previously or not?

A 280 No.

Q 281 Would you say that his condition couldn't have been owing to the fact that he had been previously ill?

A 281 That question to me is rather ambiguous. Do you want my opinion of whether his illness previously was responsible for his condition at that time?

Q 282 Yes?

A 282 No, I don't think so.

Ninth witness for the Prosecution, Capt. J. W. Boyd, C.D.C., having been duly sworn,is examined by the prosecutor:

Q 283 You are, I believe a dental officer, attached to the 11 Cdn Fd. Amby

A 283 Yes, sir.

Q

Q 284 And on the night in question you were at the M.D.S. of that unit?
A 284 Yes, sir.
Q 285 And I believe that you went to the Guard Room during the evening of that day, with Major Thompson?
A 285 I followed him down.
Q 286 A6 about what time was that, do you remember?
A 286 I don't recall the hour, it was in the early evening.
Q 287 And will you just tell the Court what you found when you got to the guard room?
A 287 Major Thomson had gone on ahead of me and when I got down there he was dressing the wound in Rogers' hand. Rogers was on the floor and Major Thompson was trying to put the dressing on his hand. There was someone sitting on Rogers' feet, I think, and someone had his head, holding him down while the wound was being dressed. He was rolling around the floor.
Q 288 And were you speaking to him at all, or did you overhear any talking he was doing?
A 288 I overheard some conversation and I was talking to him directly later on, after the wound was dressed, not at the time Major Thompson was dressing the wound.
Q 289 Did you notice anything peculiar about his condition?
A 289 Yes, I did. I felt that he was probably under the influence of alcohol; he was rolling around the floor a bit, which would give me the impression that he was under the influence of alcohol.

CROSS-EXAMINED BY THE DEFENDING OFFICER:

Q 290 Do you recall any statement that you made in the guard room about the condition of Rogers?
A 290 To whom?
Q 291 Well, I don't know whether it was to the escort or to the guard. Did you make any at all, that you can recall?
A 291 I don't recall having made any.
Q 292 You don't recall making the statement-- referring to Rogers-- he isn't drunk, he is just sick, working himself into a lather. Leave him alone?"
A 292 Oh, yes, I said-- I don't think I said he wasn't drunk. I think I said directly to Rogers, to be quiet, because he was just working himself into a state by rolling around the floor, but I don't think I said he wasn't drunk.
Q 293 Are you positive that you didn't, or not?
A 293 No, I am not positive, but I don't think I felt that way about it.

RE-EXAMINED BY THE PROSECUTION

Q 294 How did you feel about it?
A 294 As I said before, from his behaviour, I felt he wasunder the influence of liquor.

[illegible]

Statement made by the accused at the taking of the summary of evidence is admitted in evidence upon the admission by the defence that the accused had been properly warned, and formal proof of this document is unnecessary.

(Exhibit P. 1)

THE CASE FOR THE PROSECUTION IS CLOSED.

D E F E N C E

THE PRESIDENT: Rogers, do you apply to give evidence yourself as a witness?

THE DEFENDING OFFICER: First of all, I am going to submit that Pte. Rogers has no case to answer; that the charges have not been substantiated.

THE PREISDENT: Are you making an address in defence--

THE DEFENDING OFFICER: No, I am making a submission that we have no case to answer, that the charges haven't been proved. The first charge is that "When on active Service committing a civil offence, that is to say, when in charge of a motor vehicle on a road, was wrongfully under the influence of drink, contrary to Sec 15(1) of the Road Traffic Act, 1930." Now, we have no evidence whatsoever that Pte. Rogers was in charge of a motor vehicle on the 20th of January, or any other day, in the first place. Also that he was wrongfully under the influence of liquor, contrary to Sec. 15(1) of the Road Traffic Act. There has been no introduction of the Road Traffic Act and I don't know what the Road Traffic Act is, or what it says and it is up to the prosecution to prove that fact, which they haven't done. I also submit that the second charge: "That he rendered himself unfit for driving by reason of previous indulgence in alcoholic stimulants." Now, the only evidence we have of that is Pte. Rogers' own statement and his own statement has to be taken as a whole. If you accept the part about his having drinks, you must also accept the part where he says he didn't start out until he was in a fit condition to drive. And as far as the third charge is concerned, there is absolutely no evidence about malicious damage to substantiate the third charge. Of all the witnesses nobody says it was done deliberately. It was apparently done in one of Pte. Rogers' attempts to get some fresh air when he felt ill.

THE PRESIDENT: The Court will be closed while this is being considered.

THE COURT IS CLOSED

THE COURT IS RE-OPENED

THE PRESIDENT: The motion is denied and the charges stand. Rogers, do you apply to give evidence yourself as a witness?
THE ACCUSED: Yes, sir.
THE DEFENDING OFFICER: I have another witness first.

The 1st Witness for the Defence, A27097, Pte. McPherson, S. B., 11 Cdn Fd. Amb., having been duly sworn, is examined by the Defence:

Q 1 McPherson, do you recall the 20th January 1941?
A 1 Yes, sir.
Q 2 What happened on that day?
A 2 I was discharged from Bramshott Hospital.
Q 3 Where did you proceed from Bramshott?
A 3 To Guildford, sir.
Q 4 In what vehicle?
A 4 In the 11th Field Ambulance.
Q 5 Who was in the ambulance?
A 5 Pte. Rogers, Pte. Masuret and Private Davis and myself, as patients.
Q 6 Were you all riding--
A 6 Davis and myself were in the back and Rogers and Masuret were in the front.
Q 7 Now, will you tell the Court what happened on your way from Bramshott until you were finally placed under close arrest at Staplefield?
A 7 We left Bramshott approximately at two o'clock and proceeded to Guildford. Pte. Masuret and Rogers went out to get something to eat and they returned in a couple of hours, about five o'clock, I should say, and we proceeded on to the M.D.S. at Handcross and stopped--
Q 8 Wait a minute, where was the first place you stopped after you left Guildford?
A 8 At the side of the road, sir, a small place.
Q 9 Do you remember the name of it?
A 9 No, sir.

Q 10 What did you stop for?
A 10 To ~~urinate~~urinate urinate.
Q 11 Did you stop at Dorking?
All Yes, sir.
Q 12 What happened there?
A 12 We went in to urinate, sir.
Q 13 And where did you stop next, after Dorking?
A 13 Handcross.
Q 14 Go all the way from Dorking to handcross without stopping?
A 14 Yes, sir.
Q 15 And what happened at Handcross?
A 15 We went in the hotel and had a beer.
Q 16 Who went in?
A 16 Pte. Masuret and myself.
Q 17 Did Rogers go with you?
A 17 No, sir.
Q 18 Did Rogers go in at any time later?
A 18 I didn't see him
Q 19 And it was shortly after Handcross that you were stopped by Mr. Eckold.
A 19 I heard his voice.
Q 20 Now, on any occasion that you stopped between Guildford and Staplefield did Pte. Rogers go in anywhere and have anything to drink?
A 20 Not that I saw.
Q 21 Do you know whether he did or not?
A 21 Not to my knowledge.
Q 22 He was driving. Were you at all nervous about riding with Pte. Rogers?
A 22 No, sir.
Q 23 Was the ambulance driven in a proper manner?
A 23 Yes, sir.
Q 24 Did either you or Davis at any time make any complaints about the manner in which the ambulance was being driven?
A 24 I didn't sir.
Q 25 Did Davis?
A 25 Not to my knowledge.
Q 26 He was riding in the back with you, wasn't he?
A 26 Yes, sir.
Q 27 What was the condition of Pte. Rogers during the trip from Guildford to Handcross?
A 27 As far as I saw him, sir, he was all right.
Q 28 Quite all right?
A 28 Yes, sir.
Q 29 What time did you leave Guildford?
A 29 I should say about five o'clock.
Q 30 And what time was it when Mr. Eckold stopped you?
A 30 I couldn't say, sir, I haven't any idea.

THE PROSECUTION DECLINES TO CROSS-EXAMINE THIS WITNESS.

The 2nd Witness for the Defence, A27211, Pt. Masuret, R. P., 11 Cdn. Pd. Amb., having been duly sworn, is examined by the Defence:

Q 31 Do you recall the night of the 20th January last?
A 31 Yes, sir.
Q 32 On leaving Bramshott you went first of all to Guildford?
A 32 Yes, sir.
Q 33 Will you tell the Court what took place in Guildford?
A 33 As it was late in the day we decided to stop and get some lunch.
Q 34 Approximately what time was it?
A 34 Approximately 2:30. So we stopped and went to this restaurant and ordered a sandwich and coffee and in the course of waiting for our order we met a soldier who was playing a guitar and singing and he invited us to have a drink. We had possibly two drinks and Pte. Rogers became quite ill and went to the toilet at the back, to be sick. When he came back I had another drink and Pte. Rogers not feeling well, he took another drink to see if it wouldn't make him feel a little better and it made him ill again. We had a fourth drink and I told Pte. Rogers he had better wait until he felt better before carrying on to Terry's Cross and Brighton. We were there approximately two hours until Pte. Rogers felt a little better and we decided to carry on

back to the units.
Q 35 So you left somewhere around 5:30, did you?
A 35 Yes, sir.
Q 36 And what took place on the way back, how many stops did you make?
A 36 Three in all, sir.
Q 37 What happened at those stops?
A 37 Well, at two of the stops we stopped to urinate, and at the third stop at Handcross we stopped to go into the hotel, Pte. McPherson and myself, and Pte. Rogers was inquiring the best road through to Terry's Cross.
Q 38 At either of the first places ~~XXXX~~ where you stopped to urinate, were there any hotels?
A 38 None that we went to, but there might have been, but we went to the railway station.
Q 39 And did Pte. Rogers come into the hotel at Handcross after you were in there?
A 39 No, sir.
Q 40 You didn't see him?
A 40 No, sir.
Q 41 Do you know whether or not Pte. Rogers had anything to drink after he left Guildford?
A 41 I know he did not.
Q 42 What was his condition?
A 42 Well, he seemed to be sick to his stomach, as though he had probably eaten or taken something that had upset his stomach.
Q 43 How was his driving?
A 43 His driving was perfectly all right. It was such a dark, rainy and slippery night we proceeded very slowly.
Q 44 You weren't at all nervous about driving with Pte. Rogers?
A 44 Not a bit, sir.
Q 45 Were you in the guard room with Pte. Rogers?
A 45 Yes,sir.
Q 46 Did his condition in there change from what it had been previously, while driving down?
A 46 No, I still think he wasn't feeling very well, sir.
Q 47 What was the temperature in the guard room?
A 47 It was very hot, sir. I don't know exactly what it might be but it was very close and hot.
Q 48 Have you any idea, approximately, of the distance from Guildford to where Mr. Eckold stopped you?
A 48 I imagine it must be fifty some odd miles.
Q 49 How long did it take you to make that journey?
A 49 Oh, about two and a half hours, sir.

CROSS-EXAMINED BY THE PROSECUTION

Q 50 I believe on this trip when you started out you were the ambulance orderly?
A 50 Yes, sir.
Q 51 And Rogers was the driver in charge of the vehicle?
A 51 Yes, sir.
Q 52 And when you got to Handcross you say you and McPherson went into the hotel?
A 52 Yes, sir.
Q 53 And had a beer, is that right?
A 53 Yes, sir.
Q 54 And did you see Pte. Davis at that time?
A 54 Pte. Davis was waiting with the ambulance.
Q 55 Are you quite sure that Pte. Davis and Rogers didn't come into the hotel while you were there?
A 55 Davis came into the hotel.
Q 56 But you didn't see Rogers?
A 56 I didn't see Rogers in the hotel, no sir.
Q 57 What would you say if Davis said he did come in with him-- that Davis was lying?
A 57 No, I wouldn't say that.
Q 58 To the same extent you don't know whether he had a drink or not?
A 58 Not to my knowledge sir, he didn't.
Q 59 Do you know?
A 59 Not to my knowledge, I couldn't say so.

Q 60 Davis had been in hospital, I think, with a
A 60 I don't recall, I think it was some ear trou
Q 61 And do you remember him objecting to the lengt
was taking?
A 61 He did say once to hurry up, if possible, but on
Rogers being ill I didn't think it was advisable t
he felt better
Q 62 Now, you told us that Pte. Rogers had a couple of dri
and that he was then ill, after he had had a couple o
A 62 Yes, sir.
Q 63 And then he came back and tried to consume some more of
madicine?
A 63 Yes, he had another.
Q 64 He had another two drinks?
A 64 One or two.
Q 65 You were somewhat concerned about his condition, were you?
A 65 Yes, sir.
Q 66 And you weren't sure that he should drive?
A 66 I wasn't sure that he should drive at the time until he felt bette
Q 67 In fact you were quite sure he shouldn't drive?
A 67 Until he felt better, sir.
Q 68 And you considered calling another driver at that time?
A 68 Yes, sir.
Q 69 And when you finally did start off you started pretty slow, did you?
A 69 He drove approximately 20 miles an hour all the way.
Q 70 And did Rogers feel a little sick from time to time while he was
driving?
A 70 Well, he wasn't up to his best form.
Q 71 Well then what was your own condition-- how did these four drinks
affect you?
A 71 I had a very bad headache, sir, and a little nausea.
Q 72 Is it fair to say that you were somewhat intoxicated?
A 72 No, sir, I had more of a headache than anything else.
Q 73 You felt the influence of the liquor?
A 73 I had a headache, sir.
Q 74 Well, then after Mr. Eckold stopped the ambulance and Rogers got in
the staff car, subsequently on the way up the road the ambulance
was stopped again, while you got out to relieve yourself, and then
you got into the staff car, is that right?
A 74 Yes, sir.
Q 75 And I suppose you and Rogers were rather worried at that time?
A 75 Yes, sir.
Q 76 And what was Rogers' condition in the staff car?
A 76 Well, he was upset about being stopped, because he figured had they
known we had to go Bo Brighton and to Terry's Cross we wouldn't
possibly be returning to the M.D.S. on our scheduled time.
Q 77 Did Rogers have his rifle with him in the cab of the car?
A77 I couldn't say, sir.
Q 78 You didn't see him with a rifle all day?
A 78 No, I didn't see the rifle;it is generally kept in the can of the car.
Q 79 Was the vehicle immobilized at any time?
A 79 What do you mean, exactly, sir.
Q 80 Was it immobilized; did he do anything to the engine to render it
impossible to drive it?
A 80 No, sir.

RE-EXAMINED BY THE DEFENCE

Q 81 Was the vehicle ever left alone?
A 81 No, sir. At no time, sir.

BY THE PRESIDENT:

Q 82 When you knew you had to go to Terry's Cross and Brighton-- how
did you know?
A 82 They told us at Brmashott.
Q 83 How far is Brighton from Terry's Cross?
A 83 I couldn't tell you, I don't know the miles.
Q 84 Do you know just exactly what was that drink you had?
A 84 No, sir, it was something I had neverhad before.

Q 60 Davis had been in hospital, I think, with an attack of influenza?
A 60 I don't recall, I think it was some ear trouble, sir.
Q 61 And do you remember him objecting to the length of time this trip was taking?
A 61 He did say once to hurry up, if possible, but on account of Pte. Rogers being ill I didn't think it was advisable to move on until he felt better
Q 62 Now, you told us that Pte. Rogers had a couple of drinks in Guildford and that he was then ill, after he had had a couple of drinks?
A 62 Yes, sir.
Q 63 And then he came back and tried to consume some more of the same medicine?
A 63 Yes, he had another.
Q 64 He had another two drinks?
A 64 One or two.
Q 65 You were somewhat concerned about his condition, were you?
A 65 Yes, sir.
Q 66 And you weren't sure that he should drive?
A 66 I wasn't sure that he should drive at the time until he felt better.
Q 67 In fact you were quite sure that he shouldn't drive?
A 67 Until he felt better, sir.
Q 68 And you considered calling another driver at that time?
A 68 Yes, sir.
Q 69 And when you finally did start off you started pretty slow, did you?
A 69 He drove approximately 20 miles an hour all the way.
Q 70 And did Rogers feel a little sick from time to time while he was driving?
A 70 Well, he wasn't up to his best form.
Q 71 Well then what was your own condition-- how did these four drinks affect you?
A 71 I had a very bad headache, sir, and a little nausea.
Q 72 Is it fair to say that you were somewhat intoxicated?
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Q 73 You felt the influence of the liquor?
A 73 I had a headache, sir.
Q 74 Well, then after Mr. Eckold stopped the ambulance and Rogers got in the staff car, subsequently on the way up the road the ambulance was stopped again, while you got out to relieve yourself, and then you get into the staff car, is that right?
A 74 Yes, sir.
Q 75 And I suppose you and Rogers were rather worried at that time?
A 75 Yes, sir.
Q 76 And what was Rogers' condition in the staff car?
A 76 Well, he was upset about being stopped, because he figured had they known we had to go to Brighton and to Terry's Cross we wouldn't possibly be returning to the M.D.S. on our scheduled time.
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Q 78 You didn't see him with a rifle all day?
A 78 No, I didn't see the rifle;it is generally kept in the can of the car.
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A 79 What do you mean, exactly, sir.
Q 80 Was it immobilized; did he do anything to the engine to render it impossible to drive it?
A 80 No, sir.

RE-EXAMINED BY THE DEFENCE

Q 81 Was the vehicle ever left alone?
A 81 No, sir. At no time, sir.

BY THE PRESIDENT:

Q 82 When you knew you had to go to Terry's Cross and Brighton-- how did you know?
A 82 They told us at Brmashott.
Q 83 How far is Brighton from Terry's Cross?
A 83 I couldn't tell you, I don't know the miles.
Q 84 Do you know just exactly what was that drink you had?
A 84 No, sir, it was something I had neverhad before.

The 3rd witness for the defence, the accused, D105558, Pte. Rogers, C. A., 11 Cdn Fd. Amb., having been duly sworn, is examined by the Defence:

Q 85 Do you recall the 20th of January?

A 85 I do.

Q 86 You have heard the other witnesses giving evidence right up to the time when you left Guildford, but first, when you reached Guildford at about two o'clock in the afternoon?

A 86 Yes, sir.

Q 87 You tell the Court what you did from that time until you were stopped by Lieut. Eckold?

A 87 The time of our arrival in Guildford was 2:30. We went to the restaurant at approximately a quarter to three and we had given our order for a lobster sandwich each. We had been there perhaps five minutes when we first talked to this sergeant of the R.C.E. and he immediately produced this bottle that I assumed to be wine, about 40 ounces, of which about one-third had been consumed. He offered us a drink and poured it out in what I believe to be an 8 oz. glass and I should say he would have poured out an inch to an inch and a half in the bottom of this water glass. The Sgt. said that it was sherry wine. However, its colour was a very pale amber and I thought as I tasted it it had been adulterated with something else-- Scotch whiskey, I thought at the time. It had a very peculiar taste. I had another drink or two, possibly three, along with the sandwich. It is not correct to say that I had two drinks, then was sick and then came back and took some more drinks. After going to the toilet and vomiting I never had another drink at any time that day. I vomited two or three times and everything that was in my stomach seemed to come up, and although subsequently I attempted to vomit-- retched-- nothing more ever came up. This vomiting occurred between 3:15 and 3:30, after which time Pte. Masuret and I had this conversation regarding the advisability of 'phoning to have another driver come out and replace me. Pte. Masuret and I agreed that if we were to delay starting until this feeling of intense nausea passed that I would then be in a fit condition to carry on with me duty as driver. So, after a lapse of approximately an hour and a half, having emptied my stomach, we returned to the ambulance and proceeded straight through to Rygate before stopping. No stop was made at Dorking Private Davis evidently has this confused with Rygate and the distance I should say would be approximately 18 miles. In Rygate we stopped and Ptes. Masuret and McPherson did leave the ambulance to go to what they told me was the railway to urinate. However, I didn't go more than twenty feet from the cab of the ambulance.. I simply went ahead of the ambulance to ascertain whether the next corner was the proper corner for me to turn south on to the proper highway for Brighton, and returned to the cab and was sitting at the wheel when Ptes. McPherson and Masuret returned. We then proceeded to Handcross, with perhaps a short stop that would only actually take a minute, along that road. There was a light fog coming in in waves, necessitating my slowing down in several instances which may have given McPherson and Davis the impression of jerky riding. On stopping in Handcross I made this stop primarily to make sure that I was getting on the right fork to continue south to Terry's Cross. Once I had stopped McPherson got out, was joined by Masuret and they went into the hotel. I remained standing by the car with Pte. Davis, who had also gotten out of the body of the ambulance. We discussed which fork it was-- there are several at that point. Private Davis did ask me to go to the Hotel, and ask Masuret and McPherson to hurry along, but I did not go inside the hotel. I became engaged in conversation with a civilian on the sidewalk just outside the door of the Saloon Bar, ascertaining from him that I was taking the right fork. After Masuret and McPherson returned to the ambulance we proceeded along for approximately two miles before being overtaken by Lieut. Eckold. During all of this trip from Guildford to this point where Lieut. Eckold overtook us I was at all times in complete control of my faculties and of the vehicle.

I recall snatches of conversation I had with Masuret in connection with turnings in the road and I discussed various landmarks which appeared in the dark. At no time, after leaving Guildford which, it may be borne in mind, was at 1630 hours, until being put in the guard room at approximately 2030 hours, did I have anything more to drink, nor would it have been possible for me to do so without having been observed by Masuret.

On arrival in the guard house I found the room, which has the approximate dimensions of 12 x 15 feet, to be extremely hot and stuffy. This tended to cause to recur my former condition of nausea. On arriving there in the guard house it became immediately apparent to me that the guards all took it for granted that I was intoxicated. They made a lot of joking remarks regarding that and I would say that any semblance to a state of intoxication that I may have shown while in that guard house was purely feigned on my part. I simply felt that I should cooperate in a good joke. I recall vividly everything that transpired there, and was at no time in a condition of intoxication. Resistance to the dressing of my hand was purely verbal and made to the guards, and not to the medical officer, Major Thompson. As concerns the broken glass, I submit that that was done entirely accidentally and with absolutely no malicious intention. That is all.

Q 88 How far is it from Guildfrod to where you were stopped?
A 89 I would estimate it to be 40 miles, more or less.
Q 90 By the road you took?
A 90 Yes, sir.
Q 91 That is the most direct road, is it?
A 91 No, sir, it would be possible to go through Fleet and Reading. That way it would be possible to go threre in 30 miles. The only thing is they are very secondary roads and roads which would have been entirely unfamiliar to me.

CROSS-EXAMINED BY THE PROSECUTION

Q 92 When you got to Handcross, Davis objected to that stop?
A 92 No, sir, not to me directly.
Q 93 Weren't you talking to him after Masuret and McPherson went into the hotel?
A 93 Yes, sir.
Q 94 And didn't he object to that stop there?
A 94 He insinuated in this way "I wish they would hurry up. I would like to get back. I am hungry and I don't feel well."
Q 95 How far away was this hotel?
A 95 Directly across the street from the spot where we were stopped.
Q 96 And you heard Davis give evidence here to the effect that you and he want in to find Masuret?
A 96 That is incorrect. I wasn't inside the door. I went as far as the sidewalk-- perhaps he imagined I was behind him-- but I spoke to this civilian and asked him if this were the right fork, just as we got to the door.
Q 97 When you met this sergeant, he said this drink he had was sherry?
A 97 Yes, sir.
Q 98 And you thought it was something like Scotch whiskey?
A 98 Yes, sir, or some sort of an adulterant.
Q 99 So you had about four drinks of this?
A 99 That would be the total, sir, four.
Q 100 Now, Masuret said you had a couple of drinks, you were feeling ill, you went out to the lavatory, vomited and came back and had a coupl more?
A 100 That is incorrect.
Q 101 You think Masuret isn't telling the truth?
A 101 Well, of course, there was a certain amount of confusion regarding my being sick immediately.
Q 102 When you say immediately feeling sick, you had been there for some 45 minutes after you had had these drinks. You didn't knock down four drinks right one after another?
A 102 As I recall it I had two of these drinks before the sandwich arrived-- it was a lobster sandwich.

Q 103 I suggest they were good strong drinks?
A 103 They were an inch or an inch and a half in an 8 oz. water glass.
Q 140 Just drink it neat?
A 140 Yes, it tasted more like wine than any hard liquor.
Q 141 Well, then in any event, after about 45 minutes you became sick?
A 141 Yes, sir
Q 142 And at that stage of the game--
A 142 I thought I was poisoned.
Q 143 You thought you were poisoned, and I suppose you agree with me you were in no fit condition to drive an ambulance?
A 143 Not right at that moment; I couldn't drive an ambulance when I was vomiting.
Q 144 You were feeling pretty dizzy?
A 144 Yes, sir, this was combined dizziness and nausea.
Q 145 Have you ever experienced that before?
A 145 Yes, sir.
Q 146 And then you made the statement that you got to the guard house, in your sick and unsteady condition--
A 146 I think that I said being confined in these close quarters caused a recurrence of my sick and nauseated condition.
Q 147 Yes, that is what you started out to say. I suggest that you felt dizzy and you were nauseated from time to time after you left Guildford?
A 147 Along the road, sir?
A 148 From time to time after you left Guildford, before you got to the guard house?
A 148 I never was sick.
Q 149 Did you feel sick?
A 149 Well, more or less a hangover from this vomiting.
Q 150 A hangover from the drinking?
A 150 I think I was sick, rather than intoxicated. I know I didn't feel high or do any singing.
Q 151 You said in your statement of evidence; "several short stops were made along this road both to enquire directions and to stop until I felt less dizzy." I suggest to you you felt dizzy from time to time as you were driving along?
A 151 Yes, sir and I thought it would be in the interests of safety.
Q 152 Now, you heard the evidence of Pte. Ewing here, driving the staff car. He said that he stopped after Masuret got in, and you indicated you were going to be ill and he stopped so that you could be sick?
A 152 He stated, I believe, that I simply retched. Nothing came up.
Q 153 In any event, that was about the way you were feeling?
A 153 Yes, sir, I believe there was one stop where I felt like retching.
Q 154 Now, then, when you got into the guard house, you have made this rather extraordinary statement, "any semblance of intoxication on my part was feigned. I thought I should participate in a good joke. Is it your intention to have your impression that your entire conduct in the guard house was feigned?
A 154 Absolutely, sir.
Q 155 Was simply an act you were putting on?
A 155 Absolutely, sir.
Q 156 And yet you said in your statement; "I presume that in a fit of temper I rushed for the door and in passing struck the window"?
A 156 Yes, sir.
Q 157 So you were in a bad temper?
A 157 I wanted some fresh air.
Q 158 We have had two witnesses who say that they offered to take you out under escort, what do you say as to that?
A 158 That wasn't true.
Q 159 I suggest that you were so much under the influence of liquor that you don't know what happened there?
A 159 No, sir.
Q 160 You say that at no time, prior to your cutting your hand, or after Major Thompson came in to dress your hand, that they offered to take you out, under escort?
A 160 I believe it is L/Cpl. Howden that makes that statement, which I would challenge absolutely, as being untrue.

Q 161 Major Thompson makes that statement, too. What would you say as to that?

A 161 I believe that Major Thompson formed an opinion through Max Howden or some of the guards saying they offered to take me out, but they didn't.

Q 162 And you want us to believe that in the presence of the second in command of your unit, that you put on a show such as you did, requiring two men to hold you down, while Major Thompson dressed your hand?

A 162 What is that again?

Q 163 Are you suggesting that we should believe that in the presence of the 2nd in command of your unit, that was simply an act, put on, and that notwithstanding the presence of the 2 i/c you continued to put this show on, requiring two men to enable Major Thompson to dress your hand?

A 163 I think perhaps that I could paint the picture a little more clearly One witness has stated that there were only four or five guards in that room--

Q 164 Four or five persons?

A 164 At the time Major Thompson was there there were at least ten persons in that room, who were crowding around me, shoving out their hands, crowding in front, close over me, causing a lot of confusion and my natural reaction to that, on being made to do all this was to not disappoint them and cooperate a bit with them. They wanted to make me out drunk, so I thought I would play ball.

Q 165 And you were quite happy about it?

A 165 I think I would be a spoil sport of I simply lay there and did nothing.

THE COURT IS CLOSED FOR CONSIDERATIONOF FINDING.

After Finding:

The Prosecutor files M.F.B. 296 and M.F.M. 6 in connection with the accused.

THE DEFENDING OFFICER: I would just like to point out that Mr. Eckold, his Company Commander, states that he had a good previous record, had given no trouble, and that the only things on his conduct are minor things, and that he has already spent 21 days in custody, awaiting trial on this charge.

Transcribed at Aldershot, this

13th day of February 1941

STATEMENT OF EVIDENCE

46A

AA Sec. 18 - D 105518 Pte. Rogers C.A. "MT" Coy.,11 CDN Fd Amb RCAMC

The accused after being Duly warned states:-

I D105518 Pte. Rogers C.A. a member of "MT" Coy.,11 Cdn. Fd.Amb. RCAMC., was one of the duty Ambulance Drivers on 20th January 1941 at a Field Position. I received a call at 0930 hours from Cpl.Marshall in the Medical Inspection Room ordering me to proceed to "H" Coy A.D.S. at Preston Road, Brighton. We arrived at A.D.S. and were given a Pneumonia patient with instructions to proceed back to the M.D.S. On arriving there the patient was not removed from the Ambulance. Captain Pugh the Medical Officer of the Day instructing me to proceed to No. 15 General Hospital at Bramshot, which I did,leaving the M.D.S. at 1050 and arriving there at approximately 1330 hrs. The patient was received and admitted to Hospital and Pte Masuret the ambulance orderly received a stretcher and blankets in exchange for the ones we had brought in. Just as we were about to leave No.15 General Hospital to return to the M.D.S. Pte. MacPherson saw Pte. Masuret and told him that he and Pte. Davis were being discharged from Hospital and asked if it would be possible for them to get a lift back to the M.D.S. with us. I believe that Pte Masuret told Ptes. MacPherson and Davis that we would be glad to give them a lift back with the permission of the Hospital Authorities. This permission was obtained on Pte.Masuret's signature.

On our departure from Bramshot Ptes. Masuret, MacPherson, Davis and myself discussed stopping for a lunch along the way,Pte. Masuret and myself having had no dinner. At no time whatsoever did I, in my own mind, regard Ptes MacPherson and Davis as patients entrusted in my care. Hospital discharge papers for both men,which I saw, recommended return to duty.

We left Bramshot at approximately 1400 hours and proceeded without stopping to Guildford, where it had been agreed that we would stop for something to eat.

I parked the Ambulance at approximately 1430 hours, on a quiet side street and asked Ptes. MacPherson and Davis if either or both would stay with the Ambulance while Pte Masuret and I want to eat. Both did so. Masuret and I went to a resturant which I knew well, having visited it several times. We ordered food and while waiting for it to be served, got into conversation with a Sergeant of the R.C.A. who was there playing a guitar and singing. The Sergeant had what I believed to be a 40 oz.bottle of wine. He invited Masuret and I to have a drink. I We had 4 over a period of approximately 45 minutes, along with our food. The wine had an immediate effect on me. I became very dizzy and sick to my stomach, and told Masuret that I had better wait for awhile till I felt better before attempting to drive. The total length of time spent in the resturant was approximately two hours, at the end of which time we returned to the ambulance and proceeded on toward the A.D.S. at Terry's Cross, which was Davis' destination.

I still felt rather sick but was capable of driving and proceeded very slowly. We left Guildford at 1630 hours, passed through Ringate at approximately 1800 hoursand proceeded down the Brighton highway. Several short stops were made along this route, both to inquire directions and to stop until I felt less dizzy.

At approximately two miles south of Handcross, Lieut.Mckold, in a staff car overtook us. I stopped. He inquired if I had been drinking and I admitted I had. He requested me to ride in the staff car driven by Pte. Ewing, while he(Lieut.Mckold) drove the ambulance. Both vehicles proceeded to the M.D.S. On our arrival at M.D.S. Pte. Masuret and myself were placed under close arrest.

WITNESS. R.A. Mentec Capt

Exhibit "P" Signed.

J.H. Mckold Capt C.A. Rogers

SUMMARY OF EVIDENCE

against

D-105518 Pte. Rogers, Charles Allan,

a member of the R.C.A.S.C. attached for all purposes to the

11 Cdn. Field Ambulance, R.C.A.M.C.

charged under Section 18 A.A.

with

When on Active Service being wilfully guilty of Misconduct, in that he , whilst in charge of Military Ambulance No. 25065, did cause the delay of patients entrusted to his charge, in that they were held , in the Ambulance on the Public Highway for six hours, in so doing he delayed the return from Hospital of Ptes. Davis,R. and Pte.MacPherson S.S. to their Unit.

STATEMENT OF EVIDENCE

A A Sec 18 - Lieut. D.H. Eckold "MT" Comy. 11 CDN Fd Amb.

THE FIRST WITNESS - Lieut. D.H.Eckold States:-

I Lieut D.H. Eckold, Officer in charge of "MT" Company 11 CDN. Field Ambulance, RCASC attached as in W.E. left the M.D.S. at approximately 1930 hours on 20 Jan 1941 and proceeded down the Brighton highway on my way to A.D.S. at Terry's Cross. About a mile or so on the Staplefield side of the first road block on the Brighton road, we Pte.Ewing(Staff Car driver) and myself passed a Canadian Ambulance. On seeing this particular vehicle I wondered who was in charge of it because I could not see the numbers as they were covered with an accumulation of dirt and mud and also as I had just left the M.D.S. , I was pretty sure none of our ambulances had received a call.

I decided to investigate . Pte.Ewing and myself passed the ambulance and stopped by the side of the road some distance ahead. No signals were given to the driver at this time . The ambulance appeared to slacken speed but continued on past. My reason for stopping and not giving signals being that the driver of the vehicle would have seen the unit serial number and in all probability would stop.

After the Ambulance passed as we were parked at the side of the road we started away again, caught up with the ambulance and drove beside it. It was dark, the side curtain was up and I was unable to see who was the driver. The speed of the ambulance gradually decreased and finally came to a stop against the left side of the road.

The Staff car stopped and I got out and Ewing pulled ahead in front of the ambulance. I walked over to the vehicle and opened the door and asked "Who is this". The first thing that came to my attention was the very strong odour of liquor. The answer to my first question was "Rogers". From the odour in the cab and the way the driver answered my question, I realized that he (the driver) was under the influence of liquor. I ordered Rogers from the wheel of the cab and told him to get in the staff car. I xlimbed behind the wheel of the ambulance, turned the vehicle around and headed back to the M.D.S. with Ewing following me in the staff car. The Ambulance orderly whom I later found out to be Pte Masuret was also under the influence of alchol.

About three miles from Staplefield, Masuret had been muttering , insisting that he be allowed to get out in order to urinate. I brought the Ambulance to a stop and allowed him to get out. Ewing came up to me and reported that he thought someone was in the back of the Ambulance. I did not know anyone was in the back. I did not investigate but carried on to the M.D.S.

On arriving I opened the door of the MDS and called Sgt. McCullough and seeing Cpl.Good called him also. The back of the Ambulance was opened and I saw Pte Davis and another Private who dismounted and all four men were taken into the M.D.S. and placed under close arrest in charge of Sgt.McCullough who was the senior N.C.O. present.

After seeing that the four men had been put in the Guard Room, I immediately reported the matter to the Orderly Officer of the day Major Thompson. I then resumed my trip to the A.D.S. at Terry's Cross. Pte Rogers had signed out for a trip to Bramshot at 0900 hours the same morning and had not been seen or heard of until 2000 hours when we found them on the Brighton Highway.

Q. You were not aware Sir, that my call at 0900 hrs 20 Jan 41 was to proceed to the A.D.S. at Brighton?
A. No.
Q. Did you check the sheet that I had signed out Sir?
A. I was told you had gone to Bramshot. The time was 0900 hours.
Q. You did not personally read Bramshot on that sheet Sir?
A. No.
Q. You were then unaware Sir, that this call first necessitated my proceeding to Brighton, waiting for a patient and returning to M.D.S. a matter of approximately 35 miles before proceeding thence to Bramshot?
A. I did not know that.
Q. At the time you first noticed this as yet unidentified ambulance travelling in front of your staff car, was it in your opinion, at that time being operated in an improper manner?
A. The distance with the ambulance covered at that time would be about 200 or 300 yards, and in that time I could perceive nothing wrong in the way it was being handled.

STATEMENT OF EVIDENCE

A A Sec 18 - Lieut. D.H. Eckold, MT Coy 11 CDN Fd Amb. (

(continued)

Q. The speed was not excessive?
A. No.
Q. Did anything give you reason to suspect that it's driver might have been drinking?
A. No.
Q. Upon opening the Cab door and noting the odour of liquor, did this odour strike you as being like the breaths of a person who had been ill or sick and vomiting or was it that of freshly consumed liquor.?
A. I would say that the odour in the cab was due to freshly consumed liquor because it was so strong.
Q. Could the odour have emenated from either of the two persons in the cab?
A. There is no doubt in my mind that the odour in the cab was due to the two people riding in it. Their speech was inclined to be thick and when Rogers got out and went to the staff car he had a tendency to walk unsteadily.

Pte. Rogers declines further questioning.

SIGNED. [signature] SIGNED. [signature]
WITNESS.

STATMENT OF EVIDENCE

A A Sec 18 - D92042 Pte. Ewing G.E. "MT" Coy. 11 CDN Fd.Amb.

THE SECOND WITNESS - D92042 Pte. Ewing,G.E. states:-

I D 92042 Pte. Ewing G.E. a member of "MT" Company, 11 CDN Fd.Amb. RCASC attached in W.E. was on duty as staff car driver on Jan 20, 1941 I was driving Lieut.Eckold from M.D.S. to A.D.S. Terry's Cross between 2015 and 2030 hours. While on the way we met an ambulance. Recognizing the same as one of our own I asked Lieut Eckold who it would be.

I was then told by Lieut Eckold to pull ahead and stop. The Ambulance passed me . I then started up again and drew along side of the ambulance and blew the horn for it to stop. The ambulance stopped and Lieut Eckold got out of the car and told Rogers to get out of the ambulance. Then he got in the ambulance and told me to take Rogers back to the M.D.S. in the Staff Car, which I did.

Q. Was there any question of me refusing to get out of the Ambulance?
A. Not to my knowledge.
Q. Did I step out of the Ambulance without being ordered to ?
A. I can't say for sure, because, when Lieut Eckold got out of the car I pulled ahead to the curb and walked back to the ambulance.
Q. Do you mean you did not hear Lieut Eckold give me an order to get down from the Ambulance?
A. No, I did not hear any such order.

Pte. Rogers declines further questioning.

WITNESS. A A Martens Capt SIGNED. G E Ewing

STATEMENT OF EVIDENCE

A A Sec 18 - A27096 Sgt. McCullough S.A. "MT" Coy 11 CDN Fd Amb

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THE THIRD WITNESS - A27096 Sgt. McCullough S.A. states:-

I A27096 Sgt. McCullough S.A. "MT" Company 11 CDN Fd.Amb., RCASC attached as in W.E. was on duty at the M.D.S. in charge of the M T Company on 20 Jan 1941 at approximately 2030 hours when Lieut.Eskold called me to put Pte. Rogers under arrest. I put him under close arrest.

Pte. Rogers declines to question the witness.

WITNESS. R.K. Hamilton Capt SIGNED. S McCullough

STATEMENT OF EVIDENCE

A A Sec 18 - B 3608 Cpl. Good R E "MT" Coy 11 CDN Fd Amb.

THE FOURTH WITNESS - B3608 Cpl. Good R.E. states:-

I B 3608 Cpl. Good R.E., M T Company 11 CDN. Field Ambulance, RCASC attached as in W.E. was on duty at the M.D.S. in the Orderly Room of the MT Company on 20 Jan 1941. I was ordered by Sgt. McCullough to detail two men for escort and place Pte Rogers under close arrest. I carried out this order and had him placed in the guard room at approximately 2030 hours, where I detailed special guards to take over from the escort. My duties were then turned over to L/Cpl. Howden as Cpl. of the guard at about 2100 hours.

Pte. Rogers declines to question the Witness.

WITNESS. [signature] SIGNED. [signature]

STATEMENT OF EVIDENCE

A A Sec.18 - A27097 Pte. MacPherson S.B., 11 CDN. Fd. Amb. RCAMC

THE FIFTH WITNESS - A27097 Pte. MacPherson S.B. states:-

I A27097 Pte. MacPherson S.B. a member of "B" Company 11 CDN. Field Ambulance RCAMC was at No. 15 General Hospital, Bramshot on 20 Jan 1941 as a patient.

I was discharged from 15 Gen. Hospital at approximately 1400 hrs and proceeded into the ambulance for my trip back to the Unit. We stopped at Guildford for about 2 hours and we left there at about 1700 hrs. We made a coulpe of other stops for the purpose of urinating. Then we resumed to the M.D.S. We were put under close arrest and remained there a short while.

We were paraded before Major Thompson. He released us and told us to get something to eat. After which we were returned to A.D.S. at 251 Preston Road, Brighton.

Q. Were you at Bramshot as a bed patient, an out patient or for observation?
A. I was there for an X-ray of left wrist and after cast had set was allowed up and out. I was there from Friday to Monday. The cast was put on on Saturday morning.
Q. How did you happen to contact Pte. Masuret to get this ride back to the Unit in our ambulance?
A. I was told to report at the Administration Building at 1330 hours. A few minutes later I met Pte.Masuret bringing in a stretcher. I asked him what he was doing and he said he was going back to the Unit. I then got in touch with the clerk and he advised me to return to my Unit with Pte. Masuret.
Q. To your knowledge was there any prearranged plan that you and Pte.Davis should return in our ambulance?
A. I saw Pte. Davis and told him we would likely go back with Pte.Masuret and he said it was satisfactory to him.
Q. Did the Hospital Authorities plan to send you back in our ambulance before you inquired of Pte Masuret if it would be possible for yourself and Pte. Davis to do so?
A. No.
Q. I assume then that we were simply a means of transportation back to the Unit ?
A. Yes, the Hospital was short of ambulances.
Q. At the time you entered the ambulance did you consider yourself a sick patient?
A. No, I did not as I was told by Major White I could return to my Unit and carry on my regular work as a dispenser.
Q. Do you recall that before leaving Bramshot it was mutually agreed betwean Pte Davis, yourself, Pte. Masuret and myself that we would stop at Guildford while Pte.Masuret and I had dinner?
A. I believe it was either Pte. Masuret or yourself said you were going to stop in Guildford for dinner. I can't say about Pte. Davis.
Q. Do you recall that any of the persons above mentioned objected to this proposed stop?
A. Not to my knowledge.
Q. Were you aware that we had been overtaken by Lieut Eckold on the highway and that he had taken over the driving of the ambulance?
A. I heard Lieut. Eckold's voice but I did not know who was driving till after we arrived at the M.D.S.
Q. At any time after leaving Guildford had you any fear that the driver was operating the vehicle in such a manner as to endanger your lives?
A. Personally the ambulance was being driven in a good manner.
Q. Would you say in a slow and cautious manner?
A. Yes.
Q. At any time were you riding anywhere but in the enclosed body of Ambulance
A. No I was travelling in the back.
Q. Were you at liberty at any time during a stop to come out of the Ambulance if you so wished?
A. Yes.

Pte. Rogers declines further questioning.

WITNESS. A.L. Morton Capt

S.B. MacPherson
SIGNED.

STATEMENT OF EVIDENCE

A A Sec 18 - R A27066 Pte. Davis R., 11 CDN Fd.Amb. RCAMC.

THE SIXTH WITNESS - A27066 Pte. Davis R. states:-

I A27066 Pte. Davis R. a member of "B" Company 11 CDN Field Ambulance RCAMC was a patient at 15 General Hospital, Bramshot on 20 Jan 1941. At 1330 hours I reported to the Administration Office for my discharge papers. When I arrived at the office I met Pte. Masuret and MacPherson. Pte Masuret informed me that he was going to take MacPherson and myself badk to the Unit.

Leaving the hospital at approximately 1400 hours we proceeded toward the Unit area. Pte. Masuret told me he was going to stop in Guildford, asking me if I had any objections of them stopping there for something to eat. I stated to Pte. Masuret that it did not matter as long as he was not too long. He said that he would only be 20 minutes.

When we arrived at Guildford Ptes.Masuret,Rogers and MacPherson left the ambulance and proceeded down the street for something to eat. They were in Guildford for two hours. Leaving Guildford at approximately 1700 hours. We made three stops; stopping at Dorking Ptes. Rogers, MacPherson and Masuret left the ambulance to go to a lavatory and returned in a short time. Our next stop was farther along the road.

As we were near the M.D.S. Ptes. Masuret and MacPherson left the ambulance and proceeded to an Hotel which was at Handcross. Pte. Rogers and myself stood outside the ambulance talking about the road to A.D.S. "B", while Ptes.MacPherson and Masuret were in the hotel for some time. I asked Pte. Rogers to go to the hotel with me to get Masuret and MacPherson to come and go on to the A.D.S. I cannot state whether Masuret and MacPherson were drinking. Pte.Rogers did not have a drink in the hotel at Handcross.

Proceeding from there along the Highway towards Brighton we were stopped by Lieutenant Eckold, who, taking over the ambulance, drove it back to the M.D.S. When we arrived we were placed under arrest. Pte. MacPherson and I were taken before the Major and were released to go back to our Company. During all the trip Pte. MacPherson and myself were riding in the back of the Ambulance.

Q. Were you discharged from the 15 General Hospital, Bramshot, with the simple recommendation: 'Back to duty?'
A. I was discharged from hospital - back to my unit and was to report on Sick Parade at 0800 hours in the morning.
Q. Did you read your Hospital Discharge paper?
A. I did not read my Hospital Discharge paper.
Q. On entering our Ambulance did you think of yourself as a sick patient?
A. No. I was in hospital for one week with Influenza and Mastoid of the ear. I had been up for three days.

Pte. Rogers declines further questioning.

WITNESS: [signature] SIGNED: Pte R Davis

I CERTIFY THAT THE FOREGOING SUMMARY OF EVIDENCE, CONSISTING OF EIGHT PAGES WAS TAKEN DOWN BY ME IN WRITING IN THE PRESENCE OF THE ACCUSED AND RULES OF PROCEDURE 4 (c),(d), (e) and (F) HAVE BEEN COMPLIED WITH.

[signature] Captain

January 1941

Aldershot, Hants.

First Witness being recalled - Additional Statment of Lieut.D.H.Eckold

I Lieut.D.H.Eckold, R.C.A.S.C. attached for allppurposes to
11 Cdn Fd.Amb. R.C.A.M.C., after being duly sworn states,
Insert 1. Rogers normal speech is clear, and his enunciation perfect, and when he replied to my first question, it was done in an obviously slurred and peculiar manner, which together with the fumes in the cab made me come to the difinite conclusion that this man had been drinking and for that reason was unfit to drive.

Insert 2. Roger's during the time I saw him drove 3-4 hundred yards down the Brighton Highway, which was a straight road at this particular point.
When Rogers got out of the Ambulance and walked to the Staff Car, he was lit up by the headlights of the Ambulance. He was definitely unsteady as he walked toward the Staff Car.

Accused declines to question at this time.

WITNESS R.D.Mentz Capt SIGNED. D.H.Eckold Lieut

I CERTIFY THAT THE FOREGOING SUMMARY OF EVIDENCE, CONSISTING OF EIGHT PAGES WAS TAKEN DOWN BY ME IN WRITING IN THE PRESENCE OF THE ACCUSED AND RULES OF PROCEDURE 4 (c),(d), (e) and (F) HAVE BEEN COMPLIED WITH.

[signature] Captain

January 1941

Aldershot, Hants.

57

I Major F.C.Thompson, 2 i/c of the 11 Cdn. Field Ambulance R.C.A.M.C. after being duly sworn in, state, that to the best of my knowledge, the private building at Staplefield Place which housed the M.D.S. had been requisitioned by the War Department for Military purposes. As this incident regarding breaking of the glass occurred one day before leaving it was not and has not yet been possible to get an exact estimate but in my opinion the damage would be approximately £1-0-0.

WITNESS. [signature] Capt

SIGNED, [signature] Major

Additional Statement of Witness.

3rd Witness - A27086 Sgt. McCullough, S.A. being re-called, after being duly sworn, states:-

I was on duty at the M.D.S. whem Lieut Eckhold called to the door to come and arrest Pte. Rogers and Masuret. I came out, and Rogers was just getting out of the Staff Car. Rogers and Masuret came into the hallway. I then told them to stay right where they were. I noticed Roger's breath was smelling of alcohol. He was complaining aloud that someone else was placed in charge of the Ambulance. In the hallway Rogers and Masuret started to clown. Cpl. Good, R.E. and 2 escorts then took the men away to the Guard Room. When I saw Rogers he did not appear to me to be much out of the normal. When Rogers started to fool around with Masuret, I was surprised to see him do that, because normally he was a well conducted chap, and I have known him for a long time.

The accused declines to question the witness at this time.

WITNESS. [signature] Capt SIGNED. S McCullough

Additional Statement of Witness.

4th Witness - B3608 Cpl. Good, R.E. being re-called, after being duly sworn, states:-

I was detailed to arrest Rogers. When I searched him for weapons, I was satisfied he had no liquor on his person, and I am satisfied that he could not get any liquor in the Guard Room in which he was placed. I s aw that he was taken to the Guard Room and left in there in charge of the 2 temporary escorts. About half an hour later I returned with 2 permanent Guards. At that time Rogers was demanding to see an Officer. His speech was different from normal. He was somewhat unsteady in his gait and manner. I went back to the Guard Room, and I stayed there for awhile. I came and went back several times. On my 3rd trip of the evening to the Guard Room I s aw that Roger's hand was bleeding. Major Thompson came in too, and dressed his hand. Rogers was lying down, first on his back and then on his stomach. He resisted his hand being dressed, and I had to hold down one hand, and others assisted in keeping Rogers in the position so that his hand could be dressed. He w as asking for air and finally he said, "Alright, you can dress my hand". During this time he was commenting on the various Officers, whether he thought them good or bad. His remarks were definitely insubordinate. The 2nd time I went into the Guard Room, I noticed that he had difficulty in keeping his head up. After his hand was dressed, the lights were turned out and the door opened. Later I took the accused outside. There he retched, but nothing came up. He came back and his speech became clear, and he had less difficulty in holding up his head. Then he settled down for the night. The Guard Room was hot and stuffy, without proper ventilation. Cpl. Howden came into the Guard Room while I was there with the 2 ~~temporary~~ Guards, and he remained there for some time.

Accused declines to question the Witness at this time.

WITNESS. [signature] Capt SIGNED. R.E. Good Cpl

Additional Statement of Witness.

5th Witness - AP7004 L/Cpl. Howden, R. being recalled, and after being duly sworn, states:-

I have known Rogers for some time, and how he normally acts. Down in the Guard Room he seemed to swing his arms about in a strange manner. I did not smell his breath. At times his speech was slurred and different. Normally he speaks precisely and clearly. He seemed at times to have difficulty in keeping his head erect. While I was there Rogers put his hand through the window. He had previously been asking for air, and I told him I could not open the door on account of the blackout. On 2 or 3 different occasions he walked around the room, swinging his arms, and resisting attempts to quieten him down. At times he seemed to walk alright, and at other times his knees seemed to buckle under him. I cannot swear that it was owing to his behaviour or whether it was a deliberate act that the window was broken. Also because his back was turned to me, I could not closely observe what happened at the time. I had previously offered, when refusing to open the window, to take his outside under escort, and he had declined to do so. When the accused hurt his hand, I, leaving the accused in charge of Cpl. Good, went up to get Major Thompson, who was Acting Orderly Officer that night.

The accused declines to question the witness at this time.

WITNESS. SIGNED. R Howden

6th Witness. A3077, Pte. Brine, E.J. 11th Cdn. Fd. Amb. RCAMC CASF (RCASC) after having been duly sworn, states:-

On the night of Jan. 20th, 1941 at approximately 2030 hours I went on guard in the Guard Room. Pte. Rogers and Pte. Masuret had been placed in detention some time previous. Pte. Rogers seemed to me to be dizzy and complaining of the lack of air. At times he was choking, and seemed to be mad because the door could not be opened because of the blackout precautions. In my estimation Pte. Rogers had been drinking, but I would not say he was drunk, but I think his behaviour was due to lack of fresh air. He got mad and put his fist through the window.

Q. Did he object to having his hand dressed?
A. He objected for a minute, because he did not think it was worth while going to all the trouble of putting a bandage on. Then Major Thompson thought he had better because of possible infection, and then he did not object any longer. He held his hand out, and Major Thompson dressed it. After we took him outside for fresh air, he came in and laid down on the bed, and went to sleep. He was outside for about 5 minutes.

Accused declines to question the witness at this time.

WITNESS. [signature] Capt

SIGNED.
Pte. E. J. Brine

7th Witness -

D92040 Pte. Herridge, A.A. 11th Cdn. Fd. Amb. RCAMC CASF(RCASC) after having been duly sworn, states:-

I was posted as Guard in the Guard Room on the evening of January 30th, 1941. Pte. Rogers had the smell of drink on his breath. He w as throwing himself about, and he did not know actually what he was doing. Every time he got up his knees seemed to buckle under him. ~~[illegible]~~ Just when I walked in he threw his arms out and broke a pane of glass. He figured his cut wasn't big enough to have treatment. It was necessary for me to hold his hand open. It was awful warm in the Guard Room, and I feel it made him worse, in that he threw himself about more after his hand was dressed. He w as taken outside for a time, and then came in and was feeling much better, and went off to sleep.

Accused declines to question the witness at this time.

WITNESS. [illegible] SIGNED. Pte A. Herridge

79

Additional Statement of Witness.

2nd Witness For the Defence - A27097 Pte. MacPherson, S.B. being recalled, and after having been duly sworn, states:-

I now recall stopping at Handcross, when Masuret and I went to the bar of a local Hotel. I had a glass of beer and chatted for a few minutes with Sgt. Marshall. Masuret came into the bar with me, but I did not know whether he had a drink or not. Davis said 2 or 3 times during the trip that he felt miserable, and did not want to be delayed on the trip. As far as I can place it, before we stopped at Handcross, he said he thought he had a temperature, and wanted to get on the way. He objected to the slow way the Ambulance was being driven. We stopped for 10 or 15 minutes at the Handcross Hotel. The Ambulance was being driven much slower than usual, but in a jerky manner. I did not smell any alcohol on his breath. I wasn't looking for it. When Rogers and Masuret returned from lunch at Guildford, they just looked in and said they had been detained, and closed the door and drove on.

The accused declines to question the witness at this time.

WITNESS [signature] Capt

S B MacPherson
SIGNED.

Additional Statement of Witness.

3rd Witness for the Defence - A27066 Pte. Davis, R. being recalled, and after being duly sworn, states:-

When Pte. Rogers and Masuret returned from the stop at Guildford to the Ambulance, Masuret opened the back door, looked in, and said they had been detained, and shut the door and got in the front of the Ambulance. At Dorking and Handcross I had objected to being detained any longer than necessary. When we stopped at Handcross I told all of them that I thought I had a temperature and wanted to go on. Masuret stopped in town, and he and MacPherson went to the Hotel at Handcross. Rogers and I waited for about 5 minutes and went to get them from the Hotel. We found Masuret and MacPherson and Sgt. Marshall standing up by the bar. They were not drinking at the time, but there were empty glasses in front of them. There was nobody else at the bar at the time. I asked Masuret to come along, [illegible] was not feeling well, and wanted to get going, and Masuret said he would be along in a few minutes. Then I left. Then Masuret and MacPherson came to the Ambulance about 15 minutes later. Rogers stayed behind at the Hotel with Masuret and Sgt. Marshall. At Handcross I noticed that Roger's speech was slurred. He did not seem unsteady on his feet. Rogers was quite talkative, and he seemed to pay no attention to what we said to him, which was unusual for Rogers to do so. His breath smelled of alcohol. Rogers drove the Ambulance very slowly. He frequently stopped in a jerky manner along the road.

The accused declines to question the Witness at this time.

WITNESS. [signature] SIGNED. Pte R Davis

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
		N/L		

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day of February 1941.

J.G. Thompson MAJOR
COMDG. 11 Cdn FD AMD R.C.A.M.C.

B 3
83

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

D105518 Pte Rogers. C.A. the 11 Cdn FD AMD R.C.A.M.C.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Para. 664, K.R., 1935.

*The numbers herein stated should correspond with the number of *Entries* in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	*Within last 12 months.	*Since Enlistment.
For Absent without leave.	2. times	2. times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, N/L.

or,

There are no entries in the Conduct sheets of the accused. N/A.

2. The accused has not been previously convicted, N/A.

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement. N/A.

Wt. 42640/664 50,000 2/40 W. S. Ltd. 51—6004

3. The accused is not under sentence at the present time, N/A.

or,

The accused at the present time is under sentence for N/A. beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges

for ✓ days in Civil Custody,

and ~~17~~ 21 days in Military Custody,

Total ~~17~~ 21 days. as of Feb 10 1941

Of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service ~~attestation paper~~ is 29 yrs 4 mths.

6. The date of his ~~commission~~ attestation specified in his record of service ~~attestation paper~~ is 5 April 1940.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 9 MTHS 2 DAYS.

8. The accused is entitled to deferred pay or gratuity in respect of N/A. years' service.

9. The accused is entitled to reckon 9 MTHS. years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to NIL.]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A.

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of N/A dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of , years,

In the rank of N/A. , years,

In the rank of , years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked B 3, signed by the president, and annexed to the proceedings.

[signature] major

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name D10548 Pte Rogers C.A. of the 11 Cdn Fd AMB R.C.A.M.C.

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
		NIL.		

(*Continued overleaf.*)

M.F.M. 6
(A.F.B. 122)
[illegible]
H.Q. 1772-45-[illegible]

No. 105518 Name ROGERS C.A. Sqn., Battery, or Company 11 Cdn Field Ambulance RCASC attached Corps Date of enlistment 5.4.40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	30.6.40	Pte	-	A.W.L. 0101 hrs to 2315 hrs 30.6.40	CSM Jones Sgt Colthorpe	Admonished	5.7.40	L.M.Stuart Lt.Col.	Forf of Pay 1 Day
Aldershot Hants	7.12.40	Pte	-	Sec 15(1) WOAS did absent himself without leave from 2359 hrs 7.12.40 to 0900 hrs 8.12.40	L/Cpl.McGee Cpl.McCullough	Forf of 1 days pay. 7 days C.B.	9.12.40	DH.Eckold Lieut	

CERTIFIED TRUE COPY

F.G. Thompson Major
.....Jr. Lieut.Colonel
Commanding 11 Cdn Field Ambulnce RCAMC

(F.T.O.)

ZZZ-66 Case #2

Ote Rogers. C.B.

Case #1- 000-1/0

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F 54888 CHARLES BERNARD ROGERS 1 Bn 1 CBRD

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 36 days, of which 11 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for one year

12th Sept 1944 (Sgd) C. L. Henry Major

(Sgd) ..... Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings and sentence but remit three months imprisonment

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

Date 14 SEP 44 (Sgd) [signature] Col RCE

Commanding COMMANDER 1 CDN BASE RFT GROUP

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F 54888 Pte Rogers, C.B.	16-9-44	[signature] Lieut Lt-Col

Officer Commanding 1 Bn 1 Cdn Base Reinforcement Depot

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 16 OCT 1944 JUDGE ADVOCATE GENERAL'S BRANCH

RECORDED AT CMHQ IN AB 160 222-66

CFAMS (T) [illegible] AF A(1) 40-P-M-45-1000 (1) [illegible]

FIELD GENERAL COURT-MARTIAL

4/38B

Convening Order of Brig. E.W. Haldenby Comd 1 Cdn Base dated 10th Sept 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to restart for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 102, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F 54888	Pte.	CHARLES BERNARD	ROGERS	1 Bn 1 CBRD

PROCEEDINGS REVIEWED

JAG K. Lawrence Lt 17 Oct 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 12th Sept 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant from RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93. For words and insrtns on how to record addresses, evidence, etc, which insrtns are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (as) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3) CH

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1500 hours trial commences. CH

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2) CH

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to CH as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans N.O. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(E). If objection, see procedure AA 51, RP 22, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	C.L. HENRY	(C.H.C)	5 Bn 2 CBRD
Member	CAPT.	D.M. CREIGHTON	(O.C)	1 Bn 1 CBRD
Member	LIEUT	E.R. STAUFFER	(C.C)	2 Bn 1 CBRD
Judge-Advocate				
Prosecutor	LIEUT.	N. PINEL	(O.C)	1 Bn 1 CBRD
Defending Offr	LIEUT.	R.A. PICHE	(C.C)	1 Bn 1 CBRD

CH

~~No Capt or 5/F from 2 Cdn Reception Centre being available, proceedings remanded to this place.~~

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans N/C. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 27 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused F 54888 Pte. CHARLES BERNARD ROGERS before arraignment make(s) (no) plea. CH

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. CH

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D CH

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Tnstrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-86; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement(5)? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3, para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras C1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO.(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~(an)~~ (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the FIRST charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the FIRST charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed on the former, ~~but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, ~~make a statement, or do neither~~? Ans. YES. Do you intend to call witnesses on your behalf? Ans. No. ~~Are they witnesses as to character only? Ans. No.~~
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding.(1) The finding of the Court is [redacted] recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the [redacted] charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(2) (d), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement [redacted] as to Character and Particulars of Service(1), and certified true copy ~~(copies)~~ of Conduct Sheet ~~(s)~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. P.S. and Ex. C. respectively.(3)
(1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement [redacted] and Conduct Sheet [redacted], and in mitigation of punishment?(1) Ans. Yes.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 50, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused, F 5408 Cpte Charles Maynard [illegible], 1 Cdn. Base Rft. Bn., 1 Cdn. Base Rft. Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
A.A. Sec. 40

WHEN ON AFFIRMED SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

In that he,

In the Field, in Italy, at 2210 hrs. 4 Aug 44, was improperly in possession of Public Property, namely,

2 Blankets, G.S.
1 pr Trousers, Battle Dress
2 Slips, cover, pillow } Hospital Necessities
1 Sheet, cotton, bed }
1 Towel, hand

[signature] Lt-Col
(VINCENT [illegible])
Commanding Officer
1 Cdn Base Rft Bn., 1 C.A.R.D.

In the Field
12 August 44

TO BE TRIED BY FIELD ~~GENERAL~~ COURT MARTIAL

E W Haldenby

(E.W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Group

In the Field
In Italy
10 Sep 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
P54888	Pte		Charles Bernard	ROGERS	1 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (*date*) 10 Sep 44 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ". EWH

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~) EWH

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ EWH

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ EWH

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	C.L. Henry (CAC)	5 Bn 2 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
	Capt or Lt to be detailed by OC 2 Cdn Reallocation Centre	
	Capt or Lt to be detailed by OC 1 Bn 1 CBRD	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	Capt ~~or Lt to~~ be detailed by OC 2 Bn 1 CBRD	

~~JUDGE-ADVOCATE.~~ EWH

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.) — EWHaldenby (Signed personally. RP 105 fn 2.) — Brigadier (Rank.)

(E.W. Haldenby)

Date 10 Sep 44 — Commanding 1 Cdn Base Rft Group

Convening Officer

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA95 (In lieu of AFA3) 40/P & S/1697 (4931)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE
(KR (Can) 557)

CH

I certify that I have this morning examined No F54888 Rank Pte.

Name Rogers C.B. of #1 Bn #1 C.B.R.D.

and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

In the Field

Date 12 Sept 44

John McFraser Capt
(Medical Officer)

R.P.

First Witness for Prosecution.

A 49630 Pte Tickner, L.A. - 1 CBR Bn, 1 CBRD being duly sworn states:

At approx 2210 hrs 4 Aug 44 I noticed three men depart from Borden Bldg Canada Barracks - I watched the men with bundles in their arms. I watched them and saw that they went to the rear of 1 Bn cook house, Canada Barracks. I immediately summoned 2 R.P.s to assist me in apprehending the men. On arriving at the rear of 1 Bn cook house I found two men sitting on bundles. We put our light on the bundles and noticed them to be public property. We escorted two of them to 1 Bn Guard Room. We placed them under close arrest.

Q. Why did you watch them?

A. - I wanted to see the direction in which they were going. (1) { R. Blankets G.S. / 1 Pr Trousers B.D. / [illegible] / [illegible] } Ex Exhibit "A"

Q. - Do you recognize these articles to be the same ones you saw at that time?

A. The articles are similar, sir.

Q. Can you recognize the accused as one of the men who left the bldg with a bundle?

A. No.

No Cross examination by RP 83(B) is complied with.

Second Witness for the Prosecution

E 5980 Pte Duchene A.J. - 1 CBR Bn, 1 CBRD being duly sworn states:

I was in the guard room 1 Bn, 1 CBRD when pte Tickner came in and asked for two escorts to go with him behind the kitchen of 1 Bn, 1 CBRD. We saw the accused with articles. I put my

Left on the articles. ~~They were~~ One man ~~sitting down on the articles~~ was sitting down on the articles and I ~~do not~~ know ~~where~~ on what the other was sitting. We told them to take their stuff and bring it to the guard room. The N.C.O.s opened the bundle and I saw some articles to be blankets and white cloth. That is all I saw.

Q. Do you recognize the articles - Exhibit A you see there to be the same ones you saw that night?

A. Yes.

Q. Do you know who was sitting on the bundles?

A. No because it was dark and I was behind them.

RP 83(B) is complied with.

No Cross-examination

Third Witness for Prosecution.

F77212 Pte Stevens TR. 1 CBR Bn 1 CBRD being duly sworn states:

I was on duty as R.P. at approx 2210 hrs and was called by pte Tickner to go behind 1 Bn cook house and when I got there I found the accused with some equipment alongside him.

Q. The equipment they had - were they sitting on it or beside it?

A. I couldn't say but I thing they were sitting alongside it

Q. Do you know what the equipment was?

A. No sir, I think there was a sheet and blankets and pillow cases.

Q. What did you do?

A. We took them to the guard room.

Q. Did someone look at the equipment?

A. After we got to the guard room pte Tickner and myself looked at it.

Q. Did you do that in front of the accused?

A. No sir.

2 blankets G.S.
1 trousers B.D.
1 sheets G.S.
2 cases pillow
1 towel hand
marked in lieu A

Q. Do you recognize those articles to be the same ones as you saw that night

A. They resemble the same ones but I couldn't say for sure.

Cross Exam - None

R.P. 83(B) is complied with

Fourth Witness for the Prosecution

F 35118 C.Q.M.S. FOSTER D.K. 1 CBRBn + 1 CBRD

Q. ~~Where~~ was your rank confirmed?

A. - August 1942.

Q. - Will you tell the court of the articles you see there are all public property?

A. - I recognize the following ~~marked in lieu~~ marked in lieu A

blankets	G.S.	2
trousers	B.D.	1
sheets	G.S.	1
cases pillow		2
towel - hand		1

Cross Exam - None

R.P. 83(B) is complied with

Address by Prosecution

The court has heard the three first witnesses and saw pte Rogers with the articles which are proved by a C.Q.M.S. who has a lot of experience in his work to be public property. The accused never denied that they were in possession of these articles, so I ask the court that pte Rogers be found guilty and justice be made in that case.

Defending officer submits that evidence for the prosecution does not establish a prima facie case against the accused on the charge because no evidence has been produced by the prosecution witnesses of the prosecution establishing his identity in this court.

= The COURT disallows this submission =

Hons Witness defence
f 54888 Pte CHARLES Bernard Rogers

Being duly sworn states:

On the evening of Aug 4 I was in company with pte Wilson and proceeded to the town of Avellino together to a vino shop and remained there until it closed. at approx 2200 hrs. We immediately went home and were coming across the square in Canada Barracks and I asked Wilson to go with me to the kitchen to see if we could get a cup of tea. We both went that way - behind the kitchen. As I was going behind I tripped and fell on my knee. We sat down on the kerb and was going to pull up my trouser leg to see if my knee was bleeding. A couple of R.P.'s came along and shone their lights on us and told us to pick up that bundle and come with them. I didn't know the bundles were there until they told us to pick them up. They took us to the guard room and they placed a charge against us of being in possession of these articles.

Cross-Exam. by Prosecution

Q Does the Kitchen give tea to men at that hour of the night?

A No.

Q Is it a habit of yours to go there for tea at night?

A No - I knew a fellow who was working there that night.

Q Was it dark enough that you could not see the articles that were there near you?

A It was very dark, sir.

Q If it was so dark how would you see your knee bleeding?

A I could feel if it was bleeding.

Q Any medical attention given by M.O.?

A No.

No re-exam) RP 83(B)

is enclosed with.

Address by Defence in Mitigation

I would like the court to take into consideration the following facts:

The accused got married in 1935 and is the father of three children. He enlisted voluntarily on 2 Sept. 1939. He came overseas to England on 30 Dec. 1939. He made the landing in Sicily on 10 July 1943. with his unit the West Nova Scotia Regt. and was still with his unit until the beginning of May 1944. During that time he was evacuated three times for malaria and got only two charges against him during that time. I ask the court to take into consideration that the accused has a family and I ask the clemency of the court for the accused.

Exhibit B Ctd.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
P 5488	Pte	Rogers, Charles Barnard	1 C.M.R.Bn., 1 C.M.R.D.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be supplemented from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not entered in the proceedings.

† See para. 677, K.R., 1940.

* The complete entries strictly should correspond with the numbers of entries in the conduct sheet, but the omission of trivial entries which do not materially affect the character given in the most recent entries is permissible.

	* Within last 12 months.	*Since Enlistment.
For ...1...(1)	3 times	10 times.
For ...40	nil times	4 times.
For ...10(3)	nil times	2 times.
For ...10	nil times	1 times.
For Other Specific Offences	Nil times	1 times.

Instructions.—If the character is not drunkenness the entries for drunkenness must be stated separately and dated.

Number of instances of gallantry or distinguished conduct, Nil

or

There are no entries in the conduct sheets of the accused.

2. ~~The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for ~~imprisonment~~ beginning on the Nil day of

4. The accused has been in confinement, awaiting trial on the present charge, for N/A days in civil custody, and 38 days in military custody, making a total of 38 days, of which N/A days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 29

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 2 Sept 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated and in his regiment (*or corps or department*) the rank of dated

(P.18228) A1/13482/144 125,000 8/41 A.F.E.W.3.51 Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. F5488 Rank Pte. Name Rogers, C. B. of 1Bn, 1CBRD Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
F.G.C.M.	In the Field, 10-5-44	A.A. Sec. 15(1) AWL 7 days 17 hrs 3 mins	120 days detention	—
Civil Court	England 29-9-42	Larceny.	9 months detention	

CEF

CEF

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th day of August 1944

C. E. Fenwick Sheriff

~~10. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.~~

Date of Promotion.

~~In the rank of~~ CEF years.

~~In the rank of~~ CEF years.

~~In the rank of~~ CEF years.

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph conformed accordingly.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Italy	21-3-44	Pte		AA.15(1). (absent 3 days 8 hrs and 45 mins.)		Forf 4 days pay FR&I 149(1)(a). Forf 14 days pay FR&I.149(2). Total Forf 18 Days pay.			
Italy	10-4-44	Pte		AA.15(1). (absent 3 days 4 hrs and 30 mins)		Awarded 14 days pay F.P, Forf 14 days pay FR&I.149(2) Forf 4 days pay FR&I.149(1)(a). Toal Forf 18 days pay.			
Italy	10-5-44	Pte		F.G.C.M. AA.15(1) (absent 7 days 17 hrs and 30 mins) in close arrest from 0830 hrs 2 May 44 to date of trial.		Guilty, 120 days detention Forf 8 days pay FR&I.149(1)(a) Forf 120 days pay FR&I.149(1)(b). Forf 8 days pay FR&I.149(1)(c)(i). Total Forf 136 days pay. 168 hrs detn, 8 dys pay.			
U.K.	16-10-40	Pte		AA.15(1)		7 ds C.B. & 1 ds pay FR&I 149(1)(a)			
U.K.	12-8-42	Pte		AA.15(1).					
U.K.	20-9-42	Pte		Was sentenced at East Sussex Session to 9 months detention with hard labour for Store Breaking, Larceny (Civil offence) Forf 273 days pay.					

Certified true copy from the regimental books in my custody.....

Officer i/c R Regimental Books

No F5488 Name ROGERS C B Sqn, Battery, or Company Corps C.I.C. Date of enlistment 2-9-39 GC Badges Service or Proficiency Pay

Exhibit "C"

MFM 6 (APB 122) 40/P&S/136 (5438)

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
U.K.	18-3-40	Pte		AA.15(1)		1 days pay under FR&I 149(1)(a)			
U.K.	7-5-41	Pte		(4) offences under AA.40 (2) under AA.15(1) and(3) under AA.10(3)		14 days detention 14 days pay FR&I 149(1)(a)			
U.K.	2-8-41	Pte		AA.15(1) (absent 11 hrs 10 mins)		168 hrs detention 1 days pay FR&I 149(1)(a), 2 days pay FR&I.149(b). Total Forf 8 days pay			
U.K.	21-11-42	Pte		Drunkeness		Fined 15.00			
U.K.	4-4-42	Pte		AA. 15(1)		Awarded 21 days F.P. Forf 2 days pay FR&I.149(1)(a), Forf 1 days pay FR&I 149 (1)(c)(d) Forf 21 days pay FR&I 149(2)			

Total Forf 24 days pay

(PTO)

Summary of Evidence

On the case of

F 5488 Pte Rogers, Charles Bernard, #3 Coy, #1 Bn, #1 CBRD, a soldier in the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken under oath.

First Witness For the Prosecution — A 49630 Pte. Tickner, L.A., an R.R. of #1 Bn, #1 CBRD, having been duly sworn states

At approx 2210 hrs. I was standing in front of the Gordon Building and I saw three men departing from the building with bundles under their arms. I watched them to see where they were going and they went to the rear of #1 Bn cookhouse. I came to the guardroom and summoned two R. R's to assist me. On arriving behind the cookhouse of #1 Bn there were two men sitting on bundles. On putting our lights on the bundles we noticed that they were public property. We put them under arrest and brought them to the guardroom. After returning to the guardroom we found one to be Pte. Rogers, C.B.

Sgd. L.A. Tickner
R.R. of #1 Bn #1 CBRD.

The accused declined to cross-examine the witness.

Summary of Evidence in the case of F5488 Pte. Rogers, Charles Bernard, #3 Coy, #1 Bn, #1 CBRD. (contd)

Second Witness for the Prosecution

E5980 Pte. Duchesne, Andrew Joseph, an R.P. of #1 Bn, #1 CBRD, having been duly sworn states:

A fellow R.P. came in the guardroom and asked me along with another R.P., to go with him. He told us that he had seen some fellows go behind #1 Bn cookhouse.

We followed him behind the cookhouse and found two men sitting by bundles. We turned the light on the bundles and saw blankets with something white wrapped around them. He made them bring the bundles to the guardroom and the other R.P.'s looked after the prisoners.

I do not know the names of the prisoners but I recognize them now.

Sgd A. Duchesne
R.P. of #1 Bn #1 CBRD.

The accused declined to cross-examine the witness.

Summary of evidence in the case of
F 6488 Gte Rogers, GB (contd)

Third Witness for the prosecution. F 17216 Gte Stevens, Thomas Reginald, an O.R. of #1 Bn, #1 CBRD, having been duly sworn, states:-

At approximately 2210 hrs I was called by Gte Zietsch, a fellow CBR to go with him behind the cookhouse of #1 Bn.

When we arrived there we saw Gte Wilson and Gte Rogers with some equipment. We then escorted them to the guard house.

Sgd. TR Steve
O.R. of #1 Bn #1 CBRD.

The accused declines to cross examine the witness.

—

Summary of Evidence in the case of F5488 Pt. Rogers, CB. (contd)

(Page 4)

Fourth Witness For the Prosecution

#40844 C2 M.S. Evans, David Henery, C2 M.S. of #3 Coy, #1 Bn, #1 CBRD having been duly sworn, states:

I hereby declare the undermentioned articles are public property:

2 Blankets C.S.
1 pr. Trousers, Battle Dress
2 Slips, cover, pillow } Hospital Necessities
1 Sheet, cotton bed }
1 Towel, hand

The remaining article I shall not declare as public property.

Sgd. D H Evans
C2 M.S. of #3 Coy, #1 Bn, #1 CBRD

The accused declined to cross-examine the witness.

Question to the Accused

Do you wish to make any statement or to give any evidence upon oath? You are not obliged to do so but any statement you make or any evidence you give will be taken down in writing and may be given in evidence.

Answer by the Accused

I reserve my defence.

I certify that the foregoing Summary of Evidence was taken by me in the presence of the accused and that Rules of Procedure #4 (c), (d), (e), (f) and (g) have been complied with.

Sgd. E. R. Crat, Lieut.
Officer taking the Summary

In the field
8 Aug 44.

(6)

Abstract of Evidence

In the case of F 5488 Pte Rogers CB 1 CBRBn 1 CBRD a Soldier of the Canadian army Overseas.

1st Witness A 4 96 30 Pte Tickner L.A. an RP of 1 Bn will give further evidence as follows

The bundle that F 5488 Pte Rogers CB was sitting on contained the following articles which are offered as exhibits

2 blankets
1 pair trousers BD.
2 Pillow slips
1 Cotton sheet
1 Hand towel

I examined the bundle on the night of 24 Aug 44

L. A. Tickner

2nd Witness F 77212 Pte Stevens T R an RP of 1 Bn will give further evidence as follows:

I was present when Pte Tickner examined the bundle that F 5488 Pte Rogers CB had been sitting on and it contained the following articles

2 blankets
1 pair trousers BD
2 Pillow Slips

Abstract of evidence in the case of
F 54188 Pte Rogers C B (Contd)

Evidence to be given by F 77212 Pte Stevens T R (Contd)

1 Cotton Sheet
1 Hand Towel

T R Stevens

Taken down by me this 29th day of August 1944 Copy of this abstract given to the accused in accordance with R. 76

W. Campbell Lieut
Officer taking Abstract of Evidence

STATEMENT BY THE ACCUSED.

I certify having received free of charge, a copy of the Summary of Evidence, list of Witnesses, list of Exhibits and Charge Sheet.

I desire the services of an Officer to represent me at the trial.

I also acknowledge receipt of notice under R.P. 76 if further evidence to be given against me & a copy of such evidence

Date 5 Sept 44

Charles B. Rogers

CHARGE SHEET

LIST OF WITNESSES

In the Case of F 5488 Pte Charles Bernard ROGERS, 1 Cdn. Base Rft. Bn., 1 Cdn. Base Rft. Depot.

For the Prosecution.

A 49630 Pte Tiekner, L.	-	1 C.B.R.Bn., 1 C.B.R.D.
F 5990 Pte Duchaine, A.J.	-	1 C.B.R.Bn., 1 C.B.R.D.
F 77212 Pte Stevens, T.R.	-	1 C.B.R.Bn., 1 C.B.R.D.
F 35118 CQMS FOSTER D.K.		1 CBR BN 1 CBRD

For the Defence.

NIL

LIST OF EXHIBITS

In the case of F 5488 Pte Charles Bernard ROGERS, 1 Cdn. Base Rft. Bn., 1 Cdn. Base Rft. Depot.

Exhibit A
2 Blankets K.D.
1 pr Trousers Battle Dress
2 Caps cover peak
1 Sheet Cotton red
1 Towel hand.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F 54888 Charles Bernard ROGERS 1 Bn. 1 Cmwlth

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

"OH" At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 30 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for one (1) year.

(Sgd) ..... 12th Sept 1944 (Sgd) "C.L. Henry Major"
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence but remit three months imprisonment.

I direct that the accused be not committed to prison or detention barracks until further orders.(1) "SAL"
(1. AA 57A. Delete if not used.)

(Sgd) "E.A. Lee" Col.
Date 14 Sep 44 P/COLONEL
Commanding 1 CDN BASE REINF GROUP
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F54888 Pte Rogers, C.B.	16-9-44	"Vincent McKenna Lt-Col" Officer Commanding 1 Bn 1 Cdn Base Reinforcement Depot.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Committed to Civil Jail (D.M. Aldw) Capt "Milton"

222-66

FIELD GENERAL COURT-MARTIAL

CF A86 (to Regs of AFAs) 40-9-M 85/1888 (40th)

4/38B

Convened by Order of Brig W.W. Maldenby Comd 1 Cdn Base Wks Dated 10th Sept 44 Gp.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-54888	Pte	Charles Bernard	ROGERS,	1 Bn, 1 C.B.R.D.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 12th Sept 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) "CIL" The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....
The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer? Ans .....~~
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	C.L. Henry	(CAC) 5 Bn 2 Cmwlth
Member	Capt	D.W. Creighton	(CIC) 1 Bn 1 CMWLTH
Member	Lieut	T.B. Stauffer	(CIC) 2 Bn 1 CMWLTH
Judge-Advocate			
Prosecutor	Lieut	M. Pinel	(CIC) 1 Bn 1 CMWLTH
Defending Offr	Lieut	R.A. Plohe	(CIC) 1 Bn 1 CMWLTH

No Capt or Lt from 2 Cdn Reception Centre being available within 100 miles for duty, Lt Plohe from 1

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; securing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 5.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement.* Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply also recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 47.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement, without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans .....
Do you intend to call witnesses on your behalf ?
Ans .....
Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The Court is re-opened.
The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2)
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s) being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(1) as to Character and Particulars of Service(2), and certified true copy (copies) of Conduct Sheet(s)(3), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(4) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(5)
(1. *MFB 353 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(1) and Conduct Sheet(s), and in mitigation of punishment ?(2) Ans .....(3)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-56, 69, 118, 119(A), KR Can 308, 330, 363-366. Overseas RD 309, 2322, MML p 80, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Hq 1 CDN BASE RFT GROUP

Ech

(Attn - DJA)

FGCM - 12 Sep 44
F54888 Pte Rogers, C.E. (K.114)
1 Bn 1 CBRD

1 Herewith m/n proceedings, together with completed AFA 3104, for review and forwarding to CMHQ, please.

2 It is submitted that sufficient evidence was adduced at trial to warrant confirmation of the Court's finding of guilty.

3 The transcript was not in as satisfactory shape as might be expected, and this has been pointed out to the President of the Court.

"W.B. Bate Capt"
for (E.W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Group

WBB:Gem
DRLS/

Hq 1 CDN BASE RFT GROUP
CDN ARMY - CMF

5-4/CSM Conf/1
21 Sep 44

OIC
Cdn Sec GHQ 2 Ech
AAI

(Attn - DJA)

FGCM - 12 Sep 44
F54888 Pte Rogers, S.B. (K.114)
1 Bn 1 CBRD

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"W.B. Bate Capt"
for (E.W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Group

WBB:Gem
DRLS/

"GH"

C H A R G E S H E E T

The accused, M 54688 Pte Charles Bernard ROGERS, 1 Cdn. Base Rft. Bn., 1 Cdn. Base Rft. Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
A.A. [illegible] 40

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER & MILITARY DISCIPLINE,

In that he,

In the Field, in Italy, at 2210 hrs. 4 Aug 44, was improperly in possession of Public Property, namely,

2 Blankets, B.S.
1 pr Trousers, Battle Dress
2 Slips, cover, pillow } Hospital Necessities
1 Sheet, cotton, bed }
1 Towel, Hand.

"Vincent McKenna" Lt-Col
(VINCENT McKENNA)
Commanding Officer
1 Cdn Base Rft Bn., 1 C.R.A.S.D.

In the Field
12 August 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
10 Sep 44

"E W Haldenby"
(E.W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Group

"CH"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F54 888	Pte		Charles Bernard	ROGERS	1 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 10 Sep 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial". "EWH"

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~) "EWH"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "EWH"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ "EWH"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	C.L. Henry (CAC)	5 Bn 2 CBRD
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt or Lt to be detailed by OC 2 Cdn Reallocation Centre

	Capt or Lt to be detailed by OC 1 Bn 1 CBRD	
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

	Capt or Lt to be detailed by OC 2 Bn 1 CBRD	
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~ "EWH"

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy	"E W Haldenby"	Brigadier
(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)

Date 10 Sep 44 Commanding (E.W. Haldenby) 1 Cdn Base Hft Group
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA95 (In lieu of AFA3) 40/P & S/1697 (4931)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE
(R.R (Can) 557) "CH"

I certify that I have this morning examined No F54888 Rank Pte

Name ROGERS, C.B. of #1 Bn # 1 C.B.R.D.

and in my opinion he is fit to undergo trial by Court Martial.

In the Field

Date 13 Sept 44

"John M Fraser Capt"
(Medical Officer)

First Witness for Prosecution

A49630 Pte Tickner, L.A., 1 CBRBn, 1 CBRD, being duly sworn states:

At approx 2210 hrs 4 Aug 44 I noticed three men depart from Bordon Bldg Canada Barracks with bundles in their arms. I watched them and saw that they went to the rear of 1 Bn cook house, Canada Barracks. I immediately summoned 2 R.P.s to assist me in apprehending the men. On arriving at the rear of 1 Bn cook house I found two men sitting on bundles. We put our light on the bundles and noticed them to be public property. We escorted two of them to 1 Bn Guard Room. We placed them under close arrest.

Q. Why did you watch them?
A. I wanted to see the direction in which they were going
(2 Blankets G.S.,1 pr trousers S.D., 2 Slips pillow, 1 sheet cotton bed, 1 towel hand) Exhibit "A"
Q. Do you recognize these articles to be the same ones you saw at that time?
A. The articles are similar, sir.

Q. Can you recognize the accused as one of the men who left the bldg with a bundle?
A. No.

No Cross examination R.P. 83(3) is complied with.

Second Witness for the Prosecution

E5980 Pte Duchene, A.J., 1 CBRBn, 1 CBRD, being duly sworn states:

I was in the guard room 1 Bn 1 CBRD when Pte Tickner came in and asked for two escorts to go with him behind the kitchen of 1 Bn 1 CBRD. We saw the accused with articles. I put my

---

light on the articles. One man was sitting down on the articles and I do not know on what the other was sitting. We told them to take their stuff and bring it to the guard room. The accused opened the bundle and I saw some articles to be blankets and white cloth. That is all I saw.

Q. Do you recognize the articles - Exhibit A, you see where to be the same ones you saw that night?
A. Yes.

Q. Do you know who was setting on the bundles?
A. No because it was dark and I was behind them.

No Cross-examination R.P. 83 (3) is complied with.

Third Witness for Prosecution

F77212 Pte Stevens W.E., 1 CBRBn, 1 CBRD, being duly sworn states:

I was on duty as R.P. at approx 2210 hrs and was called by Pte Tickner to go behind 1 Bn cook house and when I got there I found the accused with some equipment alongside him.

Q. The equipment they had, were they sitting on it or beside it?
A. I wouldn't say but I think they were sitting alongside it.
Q. Do you know what the equipment was?
A. No sir, I think there was a sheet and blankets and pillow cases.
Q. What did you do?
A. We took them to the guard room.
Q. Did someone look at the equipment?
A. After we got to the guard room Pte Tickner and myself looked at it.

Q. Did you do that in front of the accused?
A. No Sir.

Q. Do you recognize those articles, 2 blankets G.S., 1 Trousers S.D. 1 sheet G.S., 2 cases pillow, 1 towel hand (Marked Exhibit "A") to be the same ones as you saw that night?
A. They resemble the same ones but I couldn't say for sure.

Cross-exam- None. R.P. 83(B) is complied with.

Court Witness for the Prosecution

F35118 CQMS Foster D.F. 1 CBRBn, 1 CBRD.

Q. When was your rank confirmed?
A. August 1942.

Q. Will you tell the court if the articles Marked Exhibit A, you see there are all public property?
A. I recognize the following: Blankets G.S.-2, trousers S.D.-1, sheets, G.S.- 1, cases pillow - 2, towel hand -1.

Cross Exam None

R.P. 83 (B) is complied with.

Address by Prosecution

The court has heard the three first witnesses and saw Pte Rogers with the articles which are proved by a CQMS who has a lot of experience in his work , to be public property. The accused never denied that they were in possession of these articles so I ask the court that Pte Rogers be found guilty and justice be made in the case.

Defending officer submits that evidence for the prosecution does not establish a prima facie case against the accused on the charge because no evidence has been produced by the witnesses of the Prosecution establishing his identity in this court.

THE COURT DISALLOWS THIS SUBMISSION.

First Witness Defence

F54888 Pte Charles Bernard ROGERS, being duly sworn states:

On the evening of Aug 4 I was in company with Pte Wilson and proceeded to the town of Avellino together to a vino shop and remained there until it closed at approx 2200 hrs. We immediately went home and were coming accross the square in Canada Barracks and I asked Wilson to go with me to the kitchen to see if we could get a cup of tea. We both went that was - behind the kitchen. As I was going behind I tripped and fell on my knee. We sat down on the kerb and was going to pull up my trouser leg to see if my knee was bleeding. A couple of R.P.s came along and shone their lights on us and told us to pick up that bundle and come with them. I didn't know the bundles were there until they told us to pick them up. They took us to the guard room and they placed a charge against us of being in possession of these articles.

Cross-Exam by Prosecution

Q. Does the kitchen give tea to men at that hour of the night?
A. No.

Q. Is it a habit of yours to go there for tea at night?
A. No - I knew a fellow who was working there that night.

Q. Was it dark enough that you could not see the articles that were there near you?
A. It was very dark, sir.

Q. If it was so dark how would you see your knee bleeding?
A. I could feel it it was bleeding.

Q. Any medical attention given by M.O.?
A. No.

No re-exam

R.P. 83 (B) is complied with.

Address by Defence in Litigation

I would like the court to take into consideration the following facts:

The accused got married in 1935 and is the father of three children. He enlisted voluntarily on 2 Sept 1939. He came overseas to England on 30 Dec 1939. He made the landing in Sicily on 10 July 1943. with his unit the West Nova Scotia Regt., and was still with his Unit until the beginning of May 1944. During that time he was evacuated three time for Malaria and got only two charges against him during that time. I ask the court to take into consideration that the accused has a family and I ask the clemency of the Court for the accused.

Exhibit B "CH"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
F 5488	Pte	Rogers, Charles Bernard	1 C.B.R.Bn., 1 C.B.R.D.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	AA 15(1)	3 times	10	times.
For	AA 40	nil times	4	times.
For	AA 10(3)	nil times	3	times.
For	AA 19	nil times	1	times.
For		times		times.

~~Number of instances of gallantry or distinguished conduct~~ "CES"

or

~~There are no entries in the conduct sheets of the accused~~ "CES"

2. ~~The accused has not been previously convicted, or~~ "CES"

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence for~~ "CES" ~~beginning on the day of~~ "CES"

4. The accused has been in confinement, awaiting trial on the present charges, for No days in civil custody, and 38 days in military custody, making a total of 38 days, of which No days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ "CES" attestation paper is 29

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 2 Sept 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated , and in his regiment (*or* corps *or* department) the rank of dated

(*22847) Wt.31703.1977 10,000 10/42 A.& E.W.Ltd. Gp.698
(22827) Wt.32858.1237 72,000 3/43

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. F5488 Rank Pte Name Rogers, C.B. of 1 Bn 1 [illegible] Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	In the Field 10-5-44	AA Sec 15(1) AWL 7 days 17 hrs 30 mins.	120 days detention	——
CIVIL COURT	ENGLAND. 29-9-42.	LARCENY	9 MONTHS DETENTION	
		"CES"		

"CES"

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th day of August 1944 "Undecipherable Lieut"

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of _____ years, _____ Date of Promotion.

In the rank of _____ years _____

In the rank of _____ years, _____

"CES"

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

Exhibit B "O"

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F 5468	Pte	Rogers, Charles Bernard	1 C.M.R.Bn., 1 C.M.R.D.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheet(s)† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries on the conduct sheets, the utmost being given in the most serious offence in each entry, and to any recorded special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the details for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA 15(1)	3 times	10 times.
For AA 40	nil times	4 times.
For AA 10(2)	nil times	3 times.
For Ass. 19	nil times	1 times.
For	times	times.

Number of instances of gallantry or distinguished conduct, if any, "OES"

or

There are no entries in the conduct sheets of the accused. "OES"

2. The accused has not been previously convicted, or "OES"

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 77 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence of "OES" imprisonment on the [illegible] day of "OES"

4. The accused has been in confinement, awaiting trial on the present charges, for No days in civil custody, and 38 days in military custody, making a total of 38 days, of which No days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 29

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 2 Sept 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to *(state any military decoration or reward)*.)

11. *(If the accused is a warrant officer.)* The accused before he was made a warrant officer last held the regimental rank of N/A

12. *(In the case of an officer.)* The accused holds in the army the rank of N/A dated and in his regiment (*or* corps *or* department) the rank of dated

(P.29647) W.31702/1877 10,000 10/42 A.A.E.W.Ltd. Gp.498
(E.P.C.) W3.52868/123* 12,000 3/43

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Italy	21-3-44	Pte		AA 15(1) (Absent 3 days 8 hrs and 45 mins.		Forf 4 days pay FR&I 149(1)(a) Forf 14 days pay FR&I 149(2) Total forf 18 days pay			
Italy	10-4-44	Pte		AA 15(1) (Absent 3 days 4 hrs and 30 mins)		Awarded 14 days F.P. Forf 14 days pay FR&I 149(2) Forf 4 days pay FR&I 149(1)(a) Total forf 18 days pay.			
Italy	10-5-44	Pte		F.G.C.M. AA 15(1) (Absent 7 days 17 hrs and 30 mins) in close arrest from 0830 hrs 2 May 44 to date of trial.		Guilty, 120 days detention Forf 8 days pay FR&I 149 (1)(a) Forf 120 dys pay FR&I 149(1)(b) Forf 8 days pay FR&I 149(1)(c)(i) Total forf 136 days pay			
U.K.	16-10-40	Pte		AA 15(1)		168 hrs detn, 8 dys pay.			
U.K.	12-6-42	Pte		AA 15(1)		7 dys CB, 1 dys pay FR&I 149(1)(a)			
U.K.	29-9-42	Pte		Was sentenced at East Sussex Session to 9 months detention with hard labour for Store Breaking, larceny (Civil Offence) Forf 273 days pay.					

CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY "Undecipherable Lieut"

Officer i/c Regimental Books

No 25488 Name ROGERS G.E. Sqn, Battery or Company Corps CIC Date of enlistment 2-9-39 Badges Service or Proficiency Pay

Company Conduct Sheet
Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

MFM 6
(AFB 122)
40/PAS/130 (3438)

Exhibit No. [illegible]

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
						Character			
U.K.	15-3-40	Pte		AA 15(1)		1 days pay under FRAI 149(1)(a)			
U.K.	7-5-41	Pte		(4) offences under AA.40 (2) under AA 15(1) and (3) under AA.10(3)		14 days detention 14 days pay under FRAI 149(1)(a)			
U.K.	2-8-41	Pte		AA 15(1) (Absent 11 hrs 16 mins)		168 hrs detention 1 days pay FRAI 149(1)(a) 7 days pay FRAI 149(b) Total forr 8 days pay			
U.K.	21-11-42	Pte		Drunkenness		Fined $5.00			
U.K.	4-3-42	Pte		AA 15(1)		Awarded 21 days F.D. forr 2 days pay FRAI 149(1)(a) forr 1 days pay FRAI 149 (1)(e)(i) forr 21 days pay FRAI 149(2) Total forr 24 days pay.			

(PTO)

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

000-140

Pte ROGERS C B.

Correspondence to be PINNED here.

RECORDED AT CMHQ IN A5 160 000-140

30 MAY 1944 H.Q. 2nd ECHELON

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. 2.

On Active Service, this Ninth day of May, 1944. (Order convening the Court)

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

RECEIVED 16 JUN 1944 JAG BRANCH OTTAWA

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*~~[I am unable to appoint :—~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely :—]~~

PROCEEDINGS REVIEWED 20 June 44

[illegible] CMHQ

REVIEWING OFFICER

87

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	P Trudeau	R 22e R

Members.

Rank.	Name.	Regiment.
Capt	C B Bent	HQ 3 Cdn Inf Bde
Lieut	L P J Mongeon	3 CIB Sp Gp (SLI)

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed P Trudeau Brigadier

Commanding 3 Cdn Inf Bde

Convening Officer.

H25

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F54888 Pte Charles Bernard ROGERS, West NSR	First Charge Sec 15(1) AA	Guilty	Guilty 4 months To undergo 120 days detention 10 5 44	Confirmed 13 May 44

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) [illegible] Brigadier (Signed) [illegible] Major
Commanding 3 Cdn Inf Bde
Convening Officer (c) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings

I certify that the above Court assembled on the 10 day of May 1944 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~
*~~(4. The officers under instruction)~~

* Omit if not applicable.

were duly sworn.

Signed this 10 day of May 1944

Fernand Gendron, Major.
President of the Court Martial.

C. Certificate in case of death sentences

* See footnote (b) on page 762 M.M.L. 1920.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this 13th day of May 1944.

[illegible]
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ YES

Signed this 13th day of May 1944.

[illegible]
Confirming Officer.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Promulgated and extracts taken in the case of F54888 Pte C B Rogers

(a) (Dated) 25 May 44 (Signed) C Wrotham Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W.V. 47787/1837 35 M. 5/41 K.H./9565(2) Gp. 698/3

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

Army Form A 9.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a F. G. Court-Martial held at in the field on the 10th day of May 1944 by order of Brigadier P. E. Bernatchez, officer Commanding 3 C. I. B. dated the 9th day of May 1944

President

Major F. Fredeau
R 22 Rgt

Members.

Capt C. E. Bent
H.Q. 3 C.I.B.
W.N.S. Rgt

Lieutd P. J. Mongeon
#1 Group S.C.I.

Trial of* F 54888 Pte Rogers C.B. ~~Judge Advocate.~~
W.N.S. Rgt

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that G.S. is not available to serve owing to G.S. G.S., waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt A.H. McLean W.N.S. Rgt

Counsel‡ or defending officer† Capt J.J. Taylor " "

At 1855 o'clock the Trial commences.

The order convening the Court is read, and is marked A 2, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

Ferrand Fredeau Major

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

20057 Wt.W4182/20 10,000 sets. 12/41 K. & H., Ltd. G657/11 Forms 88/55

B

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (3), the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The medical officer's certificate is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty. *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

The accused having pleaded Guilty to the Charge charge, the provisions of Rule of Procedure 35 (B) are here complied with. Yes.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

132.

CHARGE SHEET

THE ACCUSED F54888 Pte Charles Bernard ROGERS, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, A A I , on Active Service, is charged with,

First Charge
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

IN the Field, at approximately 1500 hrs 24 Apr 44 did absent himself without leave and remained absent until surrendering himself to F29714 Cpl Day, N E , Cpl of the Town Picquet at Jelsia at about 0830 hrs 2 May 44 (Total absence 7 days 17 hours 30 minutes)

In the Field
6 May 44

Waterman
(R S E Waterman) Lt-col
Comd, West NSR

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
9th May 1934

J P E Bernatchez
(J P E Bernatchez) Brig
Comd 3 Cdn Inf Bde

Lieut and Tendrey Major

B3.

MEDICAL OFFICERS CERTIFICATE

KR (CAN) PARA 557

I certify that I have this morning examined

No. F54888 Pte Rogers C B

of West N S R and in my opinion he is

fit to undergo Trial by Court Martial

Station Field

Date 10 May 44

Burns Findlay Mgr

H Wilson Capt

Medical Officer

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused FS 4888 Pte Rogers C.B. is found guilty of the charge

†The summary (or abstract) of evidence is read, marked C 3 signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:— no

[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Edward Tuckey, Maj.

F.J.

Instruction. † If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer.

Evidence as to character.

710.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

F.T.

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction before Sentence.

*Evidence of character, &c.

*The ~~Court being reopened, the accused is again brought~~ before it.

Capt. A.H. MacLean. W.H.S.R. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* yes.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E2 & E3 signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* yes, the adjudant did

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* yes.

Cross-examined by the accused.

Question to the accused.

Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

Fernand Tuesday Major

F

Sentence.

The Court sentence the accused

Sentence

F 54888 Fe Charles Bernard. Rogers.
West N. S. R
120 days detention
to ~~four months' field punishment~~
Fernand Jurdeau. Major
President

10 5/44

C 3

SUMMARY OF EVIDENCE in the case of F54888 Pte Charles Bernard ROGERS, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas A A I , on Active Service.

By the order of Lt-col R S E Waterman, Comd, West NSR

Evidence taken on oath.

First Witness for Prosecution

F43571 CSM Hamm, F L, "D" Coy, West NSR, having been duly sworn states ,

I am F43571 CSM Hamm, F L of "D" Coy West NSR. On checking "D" Coy off the TCV's at 1500 hrs on the 24 Apr 44 I found that F54888 Pte Rogers, C B was absent from the company. He remained absent until reported as under close arrest at 0830 hrs 2 May 44.

Signed F L Hamm

The accused declines to cross examine this witness.

Second Witness for Prosecution

F29714 Cpl Day, N E, West Nova Scotia Regiment, having been duly sworn states,

I am F29714 Cpl Day N E West NSR. On 2 May 44 I was Cpl of the Town Picquet in Jelsia. At approximately 0830 hrs the accused F54888 Pte Rogers C B reported to me at the Guard Room as being an absentee . I placed him under close arrest and returned him to the Unit Detention.

Signed N E Day

The accused declines to cross examine this witness

Certified that Rule of Procedure 4 (c) (d) (e) & (f) have been complied with.

The accused having been duly cautioned as follows, "Do you wish to make any statement or to give evidence upon oath ? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence that you give will be taken down in writing and may be given in evidence against you." declines to make a statement or to give evidence upon oath.

Taken down by me, in the Field, in the presence and hearing of the accused this 6th Day of May 1944

In the Field
6 May 44

.....
(Officer taking Summary)

No. 54888 Name Rogers, C.B. Sqn., Battery, or Company C.I.C. Corps

Date of last entry in Company Conduct Sheet N/A. No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Date of enlistment Sheet No. Supplementary. G.C. Badges Signature O.C. Company, etc. Service or Proficiency Pay E-2 M.F.M. 6 (A.F. B.122) 40/P.S./8136 (2965) Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dismissing with trial	By whom awarded	Remarks
Field	4-3-44	Pte		See 22 AA. WAAS. AWL 1330 hrs 4-3-44 To 2215 hrs. 7-4-44.	4 Cd Shellett Cmp.	14 days Pay.	21-3-44	RSM Valmore	Lt Col. Forfeits 4 days Pay.

Certified true copy from the regimental books in my custody.

6 May 44

[signature]
(A J W Dyer) Capt
Officer i/c Regtl records

Forward Trudeau Major

(P.T.O.)

E 3

F54888 Pte Charles Bernard ROGERS

Supplementary Sheet.

Sec 15 (1) 1 entry

8

29

F54888 Pte Rogers, C B

121

10th May

Leonard Lindsay Major.

102a

10/R/298

K-52297 Pte Rogers E H V
No 3 Ldn Inf Hold Unit

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

On Active Service, this 19th day of February, 1941.

A.
Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

[redacted]

ENTERED IN RECORDS OF C.M.

President.

Rank.	Name.	Regiment.
Major	R.W. Lent	Lorne Scots

Members.

Rank.	Name.	Regiment.
Captain	R.M. Jones	No.1 Cdn Arty Hldg Unit
Lieutenant	W.L. Snortbreed	No.2 Cdn Arty Hldg Unit
Lieutenant	J. Eccleston	No.1 Cdn Sigs Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed F.R. Phelan Brigadier
Commanding Canadian Base Units
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
K-52297 PTE. ROGERS, E.H.V. (S H of C Fd Unit.) No.3 Cdn Inf Bldg Unit.	First Charge A.A. Sec.15 (1) as per charge sheet.	GUILTY	GUILTY TO UNDERGO DETENTION FOR A PERIOD OF 160 DAYS.	Confirmed L.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) (F.R. Phelan) Brigadier
Commanding Canadian Base Units
Convening Officer (*c*)

(Signed) Rpt Smith Major
Anne Scott
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 21st day of February, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~ Court Stenographer ✓ Rpt
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 21st day of February 1941.

Rpt Smith Major
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of R.A.C.I. 570 of 1918 have been complied with.~~

* See footnote (*b*) on page 762 M.M.L. 1929.

Signed this day of 19 .

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison until further order.~~ ✓ L

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 28th day of February 1941.

L. R. Ryan, Brigadier.
Confirming Officer.

Promulgated and extracts taken in the case of K52297 Pte. Rogers. E.H.V.

(*a*) (Dated) 11 March 1941 (Signed) Thos. Atkins Lt Col for (T.L. Nelson) Lieut Colonel O.C. No. 5 Cdn. Inf H Unit C.A.[10]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(43239) W5 40455—8[illegible] 100 M [illegible] P. Bl. C. Ltd.

Army Form B 252

CHARGE SHEET

The accused, No. K-52297 Pte. ROGERS, E. H. V., (Seaforth Highlanders of Canada) No. 3 Canadian Infantry Holding Unit, a soldier of the Canadian Army (Overseas) is charged with, while on active service,

A.A. SEC. 15 (1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, when in arrest, on the 30th day of October, 1940, did absent himself without leave until he surrendered himself on the 9th day of January, 1941, at Limpsfield, Surrey.

Absent 71 days.

Dated at Witley Camp, Witley, Surrey this 14th day of February, 1941.

Lt. Col.
(D.L. Redman)
Officer Commanding
No. 3 Canadian Infantry Holding Unit.

To be tried by Field General Court Martial

.....Brigadier
Commanding Cdn Base Units

Bordon, Hants
This day of Feb 41.

MEDICAL OFFICER'S CERTIFICATE

I CERTIFY that No. K-52297 Pte. ROGERS, E.H.V. of the No. 3 Canadian Infantry Holding Unit is fit to undergo trial by Court-Martial.

Signature of the Medical Officer K. L. Conacher
Mgr

This man is a patient at No 5 Can Gen Hospital although he is fit for court martial he should be returned to hospital after to continue his treatment.

KLC

R.V.L.

K-52297, Pte. Rogers, E.H.V., (S.H. of C. Fd. Unit) No. 3 Can. Inf. Holding Unit, tried by Field General Court-Martial at Witley, Surrey, on the 21st day of February, 1941.

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

Prosecutor - Lieut. A. MacCullie
Defending Officer - Lieut. L.O. Burton.

At 0930 hours the trial commences.

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No, sir.

The President and members are duly sworn.

Q2 - Do you object to M-15577 Sgt. Stanley Fidler, The Edmonton Regiment, C.M.H.Q., acting as Court Stenographer.
A2 - No, sir.

The Court Stenographer is duly sworn.

The charge-sheet is signed by the President and annexed to the proceedings

The accused is arraigned upon each charge in the above mentioned charge-sheet.

Q3 - Are you guilty or not guilty of the charge against you, which you have heard read?
A3 - Guilty, sir.

R.P. 35(B) is complied with by the Court.

Q4 - Do you wish to make any statement in mitigation of punishment?
A4 - (Accused) I have been here for fourteen months now and I have just had four week-end leaves and four days landing leave. I was not able to obtain a seven day leave and so I stayed out on my own.

Q5 - Do you wish to give evidence yourself or to call any witnesses as to character?
A5 - No, sir.

Lieut. A. MacCullie, No. 3 Can. Inf. Holding Unit, is duly sworn.

Q6 - Have you any evidence to produce as to the character and particulars of service of the accused?
A6 - I produce A.F.B. 296 and M.F.M. 6 of the accused.
Q7 - Is the accused the person named in the statement which you have heard read?
A7 - Yes, sir.
Q8 - Have you compared the contents of the above statement with the regimental books?
A8 - Yes, sir.
Q9 - Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A9 - Yes, sir.

The accused declines to cross-examine.

Do you wish to address the Court?
No, sir.

The Court is closed for the consideration of the sentence.

SUMMARY OF EVIDENCE

In the case of K-52297 Pte. ROGERS, E.H.V.

1st Witness for the Prosecution - K-52847 Sjt. Tracey, J. E., No. 3 Can.Inf.Holding Unit, having been duly sworn, states:

"I am K-52847 Sjt. Tracey, J. E., of No. 3 Can.Inf.Holding Unit in which Unit I am N.C.O. In charge Records. I submit herewith the following documents:

(1) Certified copy of declaration of a Court of Inquiry concerning absence of the accused.

(2) Certificate of Surrender of the accused.

as exhibits No. 1 and 2 for the Prosecution and duly initialled by me for purpose of identification.

(J. E. Tracey) Sjt.

The accused declined to question the witness.

The accused states that at this time he does not wish to make a statement or produce witnesses.

(Thos. H. Knight) Lieut.

I certify that all provisions of the Rules of Procedure 4(c), 4(d) and 4(e) have been duly complied with in connection with the above Summary of Evidence.

(Thos. H. Knight) Lieut.

Dated at Louisburg (South) Barracks this 20th day of Jan. 1941.

LIST OF EXHIBITS

In the case of K-52297 Pte. Rogers, R.H.V.

(1) Certified copy of declaration of a Court of Inquiry concerning absence of the accused.

(2) Certificate of Surrender of the accused.

LIST OF WITNESSES

In the case of K-52202 Pte. Rogers, E.N.V.

For the Prosecution

Sjt. Tracey, J. E., No. 3 Can.Inf.Holding Unit

For the Defence

None

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21st day of February, 1941

(D. L. Redman) Lt. Col.
Officer Commanding
No. 3 Canadian Infantry Holding Unit.

Army Form B.296

Statement as to Character and Particulars of Service of Accused.

K-52297 Pte. Rogers, E.H.V. of the No. 3 Cdn. Inf. Hldg. Unit

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be answered to the proceedings.

See Para. 664, K.R. 1935.

*The numbers herein stated should correspond with the number of *Entries* in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For Absent without leave	5	times	5	times.
For Misc.	15	times	16	times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct, NIL

~~There are no entries in the Conduct sheets of the accused.~~

2. The accused has not been previously convicted,

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.~~

WO. 4286-K004 50,000 2/40 W. S. Ltd. 11—6004

3. The accused is not under sentence at the present time,

~~XXX~~

~~XXX~~

4. The accused has been in confinement, awaiting trial on the present charges

for Nil days in Civil Custody,

and 43 days in Military Custody.

Total 43 days.

Of which 12 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 25 years

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 14 Oct. 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 year

8. The accused is entitled to deferred pay or gratuity in respect of 1 years' service.

9. The accused is entitled to reckon 1 years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward ~~[illegible]~~

11. ~~[illegible]~~

12. ~~[illegible]~~

13. ~~[illegible]~~

~~[illegible]~~

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ....., signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name ..... of the .....

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer dispensing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(*Continued overleaf.*)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	5/7/40	Pte.		W.O.A.S. AWL 2200 hrs, 1/7/40 to 2200 hrs. 4/7/40.	Cpl. Helliwell	5 days C.B. 5 " extra fatigues	5/7/40	Major Vicars	Forfeit 3 days pay
Bordon	2/8/40	"		W.O.A.S. AWL 2200 hrs. 2/8/40 to 2300 hrs. 2/8/40 Absent 1 hr.	Cpl. Jack	1 days pay 14 days C.B.	6/8/40	Major Vicars	
Oxted Camp	16/8/40	"		W.O.A.S. was guilty of neglect to the prejudice of good order and Military discipline in that he neglected to carry out his duties while detailed to kitchen fatigues from 1500 to 1800 hrs. 16/8/40. (2) Was absent from duty and his quarters without leave from 1800 hrs. 16/8/40 to 0530 hrs. 17/8/40, absent 11½ hrs. (3) Was guilty of conduct (Sec. 40) in that he on the 16/8/40 failed to comply with Coy. Standing order to the effect that all men leaving Coy. Camp Area shall report through the Coy. Orderly Room. Sec. 40.	Pte. McCafferty Pte. O'dare	7 days C.B. 1 days pay.	17/8/40	Major Forin	

No. K-52297 Name ROGERS, E.H.V. Sqn., Battery, or Company "A" Coy. Corps S. H. of C. Date of enlistment 14/9/39 G.C. Badges Nil Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character Poor

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishments awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Vancouver	28/9/39	Pte.		Absent from duty without proper permission. From 0800 hrs. 28/9/39 to1119 hrs. 28/9/39 when brought back to barracks under escort. Absent 3 hrs. 15 min.	CSM Nicholson L/Cpl. Shipperbottom Sgt. Gibson Pte. Cormack	3 days C.B.	28/9/39	Major Stevenson, J.B.	
Barrosa Barracks	1/6/40	"		W.O.A. S. AWL from 2130 hrs., 29 May 40 to 2210 hrs. 31 May 40. Absent 3 days 40 mins.	Pte. Begley	3 days pay 7 days C.B.	1/6/40	Lt. H.E. Snider	
"	12/6/40	"		W.O.A.S. AWL 1400 hrs. 12/6/40 to 2245 hrs. 12/6/40. Sec. 15 Dirty Rifle, Failure to be on Parade	Sjt. Luttrell Cpl. Helliwell	1 days pay 7 days C.B.	14/6/40	Major Stark.	

(P.T.O.)

No. K-52297 Name ROGERS, E.H.V. Sqn., Battery, or Company | Corps | Date of enlistment | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B.122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Oxted	5/9/40	Pte.		W.O.A.S. Sec. 40, in that he reported sick well knowing such report not to be genuine.	Cpt. Robertson CSM Nicholson Sjt. Meiser	(See Below)			
"	10/9/40			W.O.A.S. Sec. 40, in that he reported late for "Stand To" parade (2) improperly dressed.	Sjt. Gibson CSM Hardy Pte. Mac Ashill " Naudry	20 days detention for this and the preceding 3 charges.	21/9/40	Lt.Col. Stevenson	

CERTIFIED COPY

For Padre Lt.

Signature of Officer having custody of the original record.

(P.T.O.)

Place	Date of offence	Rank	Corps of Regiment etc.	OFFENCE	Names of witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Oxted Camp	19/8 40	Pte.		W.O.A.S. Sec. 40., in that he neglected to obey an order given to him by a superior N.C.O.	C.S.M.Nicholson L/Cpl. Reid	10 days Field Punishment	24/8/40	Major Ferrie	
"	2/9/ 40	"		W.O.A.S. Sec. 40 in that he while on a route march, removed his socks and attempted to continue the route march wearing boots without socks thereby detracting from his ability to march.	Sit.Snider (P.T.O.) " MacDuff " Bauer				
"	5/9/ 40			W.O.A.S. Sec. 40, in that he neglected to carry his Dressing F.F. in contravention of Rn. Standing Orders.	P.S.M. Hardy. (P.T.O.)				

K-[illegible] ROGERS, E.H.V.

No. Name

Sqn., Battery, or Company

Corps

Date of enlistment

G.C. Badges

Service or Proficiency Pay

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No. 2

Signature O.C. Company, etc.

Character

M.F.M. 5 (A.F.B. 122) 500M — 4 [illegible] H.Q. [illegible]

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Oxted Camp	17/8 40	Pte.		W.O.A.S. Sec. 40, in that he while parading as a defaulter neglected to obey an order given to him by his superior Sjt.	CSM Nicholson Sjt. MacNutt Cpl. Hosfield	10 days Field punishment	24/8/40	Major Forin	
"	"	"		W.O.A.S. Sec. 40 in that he without proper authority or permission removed from Coy. Q.M.Stores certain Govt. property, to wit, on suit of battle dress.	C.Q.M.S. Lucas	10 days Field punishment to run concurrently with the above.	24/8/40	Major Forin	
"	"	"		W.O.A.S. Sec. 40 in that he paraded for defaulters duties, improperly dressed. (2) neglected to obey an order given to him by his superior C.S.M. Sec. 40	C.S.M. Nicholson	10 days Field Punishment	24/8/40	Major Forin	

(P.T.O.)

Z-65

PTE ROGERS G.L.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 3rd. day of MARCH, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 3rd. Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * and that it is not practicable to delay the trial for reference to a superior qualified officer;

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* [I am unable to appoint:

*(1. Three Officers to form the Court; or

*(2. A Field Officer as President;

for the following reasons, namely:—]

*Omit if not applicable.

Notes.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	G.A. Turcot	R 22e R

Members.

Rank.	Name.	Regiment.
Captain	J.W.K. Smeltzer	West N.S.R.
Lieut.	E Tweedie	Carlt & York Regt
(Waiting) Lieut.	P.F. Potvin	R 22e R

*Signed Charles Walker Brigadier,

Commanding 3rd. Can Inf Bde.
Convening Officer.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE

Number, Rank (*a*) Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
F40774 Pte. George Leslie , ROGERS West N.S.R.	FIRST CHARGE Sec 7 (2) A.A.	Not Guilty	Guilty To undergo 28 days detention. G.R. Turnbull Major 3 Mar 43	Confirmed Harley Saulkner Brigadier, Comd. 3 Cdn. Inf. Bde.

3. March 1943

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— NO

(Signed) Harley Saulkner Brigadier, (Signed) G.R. Turnbull Major,
Commanding 3rd. Cdn Inf Bde. Presiding 22nd Batt
Convening Officer (*e*) President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 3rd day of March 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

*Omit if not applicable.

1. The members of the Court
2. The witnesses
*~~3. The Interpreter~~
*(4. The officers under instruction)

were duly sworn.

Signed this 3rd day of March 1943.

G.R. Turnbull Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (f) on page 762 M.M.L. 1918.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barracks, and I further order~~

Signed this 3rd day of March 1943

Harley Saulkner Brigadier,
Confirming Officer. 3 Cdn Inf Bde.

Promulgated and extracts taken in the case of F40774 Pte Rogers, G.L. West N.S.R.

(a) (Dated) 4 Mar 43 (Signed) John R. Clemens Capt Adjt West N.S.R.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(20764) W1 475,535 242 25,000 7/42 A-A S. & W. Ltd. Gp.s.88
(22783) W1 130,000 1359 40,000 7/42

CHARGE SHEET

The accused, F40774 Pte. George Leslie ROGERS, West Nova Scotia Regt, a soldier of the Canadian Army Overseas, stationed in the Field, is charged with:

FIRST CHARGE
Sec 9 (2)
ARMY ACT

When on active service, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,

in that he,

in the Field, at about 1500 hrs on 28 Feb 43, when ordered by L/Cpl. R.W. Bennett, "C" Coy Guard-Commander, to return to the guard room, did not return, saying, "I will not come back", or words to that effect.

(H.D. King), Lt-Col,
Comd, West N.S.R.

In the Field,
2 Mar 43.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
3 March 43

(C. Foulkes), Brigadier,
3 Cdn Inf Bde Comd.

WITH N.S.R.

Number 340974 Rank Pts Name Rogers G L Date 3/3/43

has been examined and found free from contagious diseases and is FIT/[redacted] to

to stand Court Martial.

H. K. Walker [illegible]

Art 3
[illegible]

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for Field General ~~and District~~ Courts-Martial.

Proceedings of a Field General Court-Martial held at Peacehaven on the 3rd day of March 1943 by order of Brigadier Charles Faulkner Commanding 3rd Cdn Inf. Bde dated the 3rd day of March 1943

President.

Major G. A. Durant R.M.R.

Members.

Capt J. W. K. Smaltzer W.N.S.R.

Lieut E. Tweedie C.S.Y. Regt

, ~~Judge Advocate~~

Trial of* F 40779 Pte George Leslie Rogers West Nova Scotia Regt

The order convening the Court, the charge-sheet and the summary of ~~for abstracts~~ of evidence are laid before the Court.

The Court satisfy themselves that is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut H. M. Eisenhauer W.N.S.R.

~~Counsel~~ or defending officer† Lieut G. W. Theakston W.N.S.R.

At 15.30 o'clock the Trial commences.

The order convening the Court is read, and is marked Appx R, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q261. W1/WA2303/426. 10,000 sets. 1/40. K. & H., L81. G622/11. Forms A 9/55.

G. A. Durant Judge

B

The President, members and ~~judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Lieut P.F. Patrick Rev-R

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Question to the accused.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

NOT Guilty

Answer.

Question.

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ Cf

Answer.

Question.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ Cf

Answer.

Question.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ Cf

Answer.

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.~~ Cf

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. NO

~~The prosecutor makes an opening address [hands in a written address which is read, marked ... signed by the President, and attached to the proceedings.]~~ NA

The prosecutor proceeds to call witnesses.

First witness for prosecution.

F40181, L/Cpl Bennet, R. W., "C" Coy, W. N. S. Regt. being duly sworn, is examined by the prosecutor.

I am a member of "C" Coy, W. N. S. Regt.

On 28 Feb. 43 I was in charge of "C" Coy Guard, also in charge of the men undergoing Field Punishment in the Coy. About 1500 hrs. Pte. Rogers, G. L., the Accused, who was undergoing Field Punishment started to leave the Guard Room. I asked him where he was going and he said "I am going for a wash". I asked him who had given him permission and he said "A Corporal". He didn't state any name. I told him he couldn't go out without an escort, but he just kept on going. I told him to come back, and I repeated that order two or three times. He kept on going and said "I will not come back". I reported the incident to the next guard commander when the guard was changed.

When I first ordered Rogers to come back he was about two or three yards away from me.

The Defence defines to cross-examine.

R.P. 85 B complied with. [illegible]

C2

2nd Witness for Prosecution

F40312, Pte. Deveau, E.A., "C" Cay, W.N.S. Regt., having been duly sworn, is examined by the Prosecutor:—

I was on guard on the afternoon 28 Feb. 43, when Pte. Rogers, the Accused came back from the Range. He was a prisoner in the guard room. He started to go out, and the Corporal in charge asked him where he was going. Cpl. Bennet asked him who had given him permission to go out, and he answered "Some Corporal." Cpl Bennet told him to go back to his room, and he just kept on going. Cpl Bennet told him again to go back to his room. He said that he would not, as he was going to have a wash, and he kept on going.

When Cpl Bennet ordered Pte. Rogers to return Pte. Rogers was about twenty feet away. Cpl Bennet spoke in a loud voice. I was six feet from Cpl Bennet.

The Defence declines to cross-examine

R.P. 85 B complied with 41

[illegible signature]

D

The prosecution is closed.

R.P. 40 & footnote 2 complied with 48.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes

Question. Do you intend to call any other witness in your defence?

Answer. NO

Question. ~~Is he a witness as to character only? Answer.~~

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

~~(*Where any evidence is given for the defence.*)~~

~~The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (see overleaf).~~

~~(*Where the accused does not give evidence upon oath.*)~~

Question to the accused. ~~Have you anything to say in your defence?~~

Answer. ~~The accused in his defence says†~~

~~[hands in a written address which is read, marked~~

~~signed by the President and attached to the proceedings.]~~

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

The accused elects to give evidence on oath.

F40774, C. D2 Rogers, J. L.,

having been duly sworn, states:-

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

On 28 Feb. 43 I returned from the Range where I was on a Working Party and we all jumped off a truck. I ran up to my room, got my soap and towel and shaving gear and came downstairs, passing by the guard-room door. [illegible] was standing in the doorway. There were no guards in sight, although he may have been inside.

C de Bennet waited until I got down on the sidewalk, about forty or fifty feet from him, and then I heard him call out. I turned around and he asked "Where is your escort?" or words to that effect. I said "There are none up there". He asked me if I gave me permission to go out and wash and I said "The Corporal who was in charge of us". I heard him say something else after that, but I couldn't hear what it was. Then he put his hand up, and beckoned with his finger for me to come back. I didn't say anything. I just turned around and went in and washed. After five or ten minutes one of the guards came in and said I was wanted up at the Guard Room. I saw the guard went in to play cards and I went up to the Guard Room. No escort had been appointed to me while I was there. I had no escort while on the Working Party. I had had an escort on Saturday.

D3

I had been in the Corner House three days.

Cross-Examined by Prosecutor.

I did not hear L/Cpl Bennet say "Come back". When he beckoned to me I understood that he wanted me to come back.

R.P. 65 B complied with by

No closing addresses by prosecuting or defending officer.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused FHO 774 Pte George Leslie Rogers West Kinn section Regt. is guilty of the charge laid against him

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before Sentence.*

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut H.M. Eisenhower W.H.S.R. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked [illegible], signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

~~Cross-examined by the accused.~~ [illegible]

(Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the Meeting of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.* Yes (attached sheet)

The Court is closed for the consideration of the sentence.

[illegible signature]

F

Sentence.

The Court sentence the accused

Sentence.

F. 40774 Pte George Leslie Rogers W.N.S.R.

to undergo 28 days detention.

[illegible signature]

3 Mar 43

Plea in mitigation:-

The accused joined the Army in 1940, coming overseas in 1941. He has had three years service, and from that time his conduct sheet bears only two entries, which shows that he has been a good soldier.

This episode was partly due to a misunderstanding, through his not knowing that S/Sgt Bennet was in charge of him. He had no intention of committing a crime.

I would ask the Court to take into consideration when dealing with this case.

Summary of Evidence 2 Mar 43.

in the case of

F40774 Pte. George Leslie ROGERS West Nova Scotia Regt, a soldier of the Canadian Army Overseas, stationed in the Field,

by order of Lt-col. R. D. King, Officer Commanding, West N. S. R.

The Commanding Officer directs that the evidence be taken on oath.

First witness for Prosecution

F 40181, L/cpl Ross Wilfred Bennett, "C" coy, West N.S.R, having been duly sworn, states:

I am a L/cpl of "C" coy, West N.S.R. On Sunday, 28 Feb 43 I was Guard commander of "C" coy guard, and was also in charge of the men who were doing Field Punishment in the coy. Pte. Rogers, G.L. was serving a sentence of Field Punishment. He was in the guard room about 1500 hrs. He started to leave the guard room and I asked him where he was going. He said "I'm going for a wash". I asked him who had given him permission. He said "Corporal". I told him [illegible] could not go without an escort. He kept on going. I said "Come back". He paid no attention. I repeated "Come back" about three times, with no result. He did not come back. While he was still within hearing distance, I heard him say "I will not come back". He disappeared from sight, and I reported the matter to L/cpl. Robichaud, who was just taking over as guard commander.

~~The accused cross-examines the witness~~:

Ross Bennett.

The accused declines to cross-examine this witness.

George Rogers

Second witness for Prosecution

F 40312, Private Edward Deveau, "C" coy, West N.S.R, having been duly sworn, states:

I am a pte. in "C" coy, West N.S.R. On Sunday 28 Feb 43, about 1450, I was on coy guard at "C" coy. Pte. Rogers G.L was serving Field Punishment. About 1450 hrs Pte. Rogers, G.L started to leave the guard room. L/cpl Bennett asked him who gave him permission to go. He said "I got permission from some corporal". L/cpl Bennett said "Come back!". Pte. Rogers kept on going away. L/cpl Bennett repeated "Come back" two or three times, but Pte. Rogers walked out onto the sidewalk. The second time that L/cpl Bennett said "Come back", I heard Pte Rogers say "No, I'm going for a wash". That is all I heard him say. He had not returned when I came off guard between five and ten minutes later.

Edward Deveau

The accused declines to cross-examine this witness.

George Rogers

The accused is cautioned in accordance with R.P(4)(E).

After the above caution the accused elects to give evidence:

Evidence of the Accused.

The Accused F40774 Pte. George Leslie ROGERS, "C" coy, West N.S.R., having been duly sworn, states:

I am a pte. in "C" coy, West N.S.R. On Sunday, 28 Feb 43, I was serving a Field Punishment Sentence in "C" coy Guard Room. About 1500 hrs, I took my towel and soap and went downstairs by the guard room door. I did not see any guard there. I saw L/Cpl Bennett in the guard door. He did not say anything when I went past him at first. When I was about 50 yds away, I heard somebody shout, but I did not know who shouted until I turned around. I saw it was L/Cpl Bennett. He said something like "Where's your escort?" I said "There is no escort up there" (meaning "in the guard room"). When I said that I heard him say something, but I could not understand what he was saying, as I was too far away. I saw him put his hand up and beckon with his finger for me to come back. I turned around and kept on going, and I heard him say "Alright". Several times while L/Cpl Bennett was guard commander, I saw a number of the other prisoners leave the guard room without their escort, but whenever I tried to leave, he made me get an escort or he would not allow me to go.

George Rogers.

~~The accused~~ The accused does not wish to call any witnesses in his defence.

I certify that the foregoing Summary of Evidence, consisting of three (3) folios, was taken down by me in the presence of the accused, and that R. P. 4 (C), (D), (E), and (F) have been complied with.

H. M. Eisenhower, Lieut.
West Nova Scotia Regt.

In the field
2 March 43.

WEST NOVA SCOTIA REGT.

2 Mar 43

LIST OF WITNESSES in the case of F40774 Pte. George Leslie Rogers .

For the Prosecution:

(1). F40181 L/Cpl. Ross Wilfred BENNETT, West NSR.
(2). F40312 Pte. Edward Deveau, West N.S.R.

For the Defence: - nil -

LIST OF EXHIBITS - nil -

STATEMENT OF THE ACCUSED AS TO A DEFENDING OFFICER

If I am to be tried by Court-Martial on the charge(s) now pending against me, I wish to have

..Capt..A.W.Rogers, West.N.S.R.....

act as defending Officer on my behalf.

.....George R. Rogers.....

In the Field
2 Mar 43

This is to certify that I.....,have received, free of charge, a copy of the Summary of Evidence, Charge Sheet, List of Witnesses, and any other documents and exhibits relative to my trial by Court-Martial.

.....George R. Rogers.....

In the Field
2 Mar 43.

M.F.M. 6
A.F.B. 122
175M—7-41 (1272-20)
H.Q. 1772-20-1552

No. F40774 Name Rogers, G.L. Sqn., Battery, or Company Corps W.H.S.R. Date of enlistment 20.6.40 G.C. Badges Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet 15.11 No. and date of last drunk nil Period not reckoning towards freedom from extra fine N/A Sheet No. 1 Signature O.C. Company, etc. MG Clennett, Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Fray sheet destroyed 15.11.42 completed two yrs service clear of any entry. No cases of drunkenness. Last entry 15.11.40. Aug. RO 2084. M.G. Clennett, Major									
Field	2Jan43	Pte		30AS, AWL 2300 hrs 2Jan43 to 2230 5 Jan 43(2 days, 23 hrs, 30min)Sec15(1)	L/C Mader Pte Cameron	For.6 days pay	6Jan43	Maj J.A. Hebb auto.for.3 days pay JRC (Total for.9 days pay)	
Field	19Feb43	Pte		30AS, Sec 15(1) AA - AWL from 0700 hrs 19Feb to 1400 hrs 22Feb 43(3 days, 7 hrs)	L/Sjt DeLorey	14 days FF	22Feb43	Lt-Col R.D.King, DSO For.17 days pay.	

CERTIFIED TRUE COPY

J.R. Cameron Capt
Adjt
5 Mar 43

(P.T.O.)

W.F.B. 335
(2M—5-41 (372-2)
H.Q. (772-80-62)
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E40774	Private	George Leslie Rogers,	West Nova Scotia Regt

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	nil times	ANL Two times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or, N/A

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement. N/A

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for 14 days (F.P.) beginning on the 23 day of February, 1943

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and nil days in Air Force military custody, making a total of no days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 24 yrs, 1 day

6. The date of his ~~commission~~ attestation specified in his record of service is attestation paper 20Jun 40

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force military decoration, or air force military reward (or is in possession of or entitled to). State any air force military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit ..... dated N/A ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A ..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

N/A SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Air Force Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~twenty-third~~ 3 day of March 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

223 b. Pte. Rogers F.G.

Original
~~Duplicate.~~

Correspondence to be PINNED here.

D-76684 Pte. Rogers, F.G.
R.M.R. (MG)

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Tenth day of JULY, 1941.

Whereas it appears to me, the undersigned, ~~an officer in Command of~~ CHIEF ENGINEER, CANADIAN CORPS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers ~~hereunder named~~ appointed or detailed hereunder.

* Omit if not applicable.

*~~I am unable to appoint~~ —

*(1. ~~Three Officers to form the Court.~~)

*(2. ~~A Field Officer as President.~~)

*(3. ~~Three Officers having more than one year's service.~~)

~~for the following reasons, namely~~ —

Proceedings checked and found to be in order
A H Friesgut Capt.
Jdg. Ck
Cdn Corps
19-7-41

President.

Rank.	Name.	Regiment.
Major	H.P. Bonnick.	Cdn Corps Petrol Pk.

Members.

Rank.	Name.	Regiment.
Captain	J.S.Dunphy	1st Medium Regt. R.C.A.
Lieutenant	G.M. Henderson.	11th Cdn A Fd Regt. R.C.A.
Judge Advocate	Major A.W. Embury.	D.J.A. Cdn Corps.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed C.S.L. Hertzberg Brigadier.
(C.S.L. Hertzberg)
Commanding Chief Engineer, Cdn Corps.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-76634 PTE. ROGERS, F.G. R.A.S.C. (MT) CDN ARMY	First Charge. A.A. Sec. 24 (1) as per charge sheet.	Guilty	Guilty	Finding and Sentence confirmed [illegible]
	Second Charge. A.A. Sec. 41 as per Charge Sheet. To be imprisoned with Hard Labour for 40 days. Signed in the fields this 11th day of July, 41. [illegible] Major. Judge Advocate.	Guilty	Guilty	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) [illegible] Brigadier. (Signed) [illegible] Major
(U.S.L. Hertzberg)
Commanding Chief Engineer, 1st Corps. President.
Convening Officer (a) Judge Advocate

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 11th day of July 41, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*3. ~~The interpreter~~ Judge Advocate.
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 11th day of July 19 41.

[illegible] Major
President of the Court Martial
Judge Advocate.

C. Certificate in case of death sentence.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 370 of 1918 have been complied with.~~

Signed this ~~day of~~ 19

~~President of the Court Martial~~

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I declare that the soldier named in the margin be not committed to prison until further orders.~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 12th day of JULY 1941.

[illegible] Brig
Confirming Officer.

Promulgated and extracts taken in the case of D76634 Pte Rogers F.G.

(a) (Dated) 13 July 41 (Signed) [illegible] Lt Col

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(41758) W7. 40123—483 200 M. 1/40 P. St. G. 760

Description of Court by which trial, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 24th day of June 1944

Mathew Capt. Adj. Lund (MG)

E.

[signature]

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

D76684 Pte.Rogers,F.G. of the Royal Montreal Regiment (MG)

NOTE.—The Regimental and Squadron, Battery or Company Conduct sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

Rec Pers. 604. K.R. 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For A.W.L.	4	times	6	times.
For Conduct to Prejudice etc.	1	times	3	times.
~~For Stealing~~		~~times~~	~~1~~	~~times~~ BWB.
For Failing to appear at parade		times	1	times.

~~Number of instances of gallantry or distinguished conduct.~~

~~or,~~

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

BWB

~~or,~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

W1 [illegible] 30,000 2/40 W. S. [illegible]

3. The accused is not under sentence at the present time,

~~or,~~

~~The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges for days in Civil Custody,

and 22 days in Military Custody.

Total 22 days.

~~Of which days were spent in hospital.~~

5. The present age of the accused according to his ~~record of service~~ attestation paper is 23

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 5 Sep 1939

~~7. The service which the accused is allowed to reckon towards discharge or~~ transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of years' service.

9. The accused is entitled to reckon years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, ~~or~~ entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to

]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of , years,

In the rank of , years,

In the rank of , years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which trial, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority	Punishment remitted.

(*Continued overleaf.*)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
SUTTON	26/2/40	PTE.		LEAVING HIS POST ON GUARD (AA SEMO)	A.N. [illegible]	7 DAYS C.B.	27/2/40	MAJ MCRAE	

CERTIFIED TRUE COPY
[illegible] JUN 41

[signature]
(B. W. STEVENS Capt. & Adj.)
For O.C. R.M.R. (MG)

No. 7166 Name ROGERS F.G. Sqn., Battery, or Company D Corps

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Date of enlistment 5-10-39 | G.C. Badges | Sheet No. | Signature O.C. Company, etc. | Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 30M — 8-39 (1703) H.Q. 1771-41-18

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
MONTREAL	6-11-39	PTE.		CAMBLING IN BARRACKS (AIR SC 110)	CPL JONES	2 DAYS C.B.		MAJ. MACRAE	
MONTREAL	26-11-39	PTE.		LATE RETURN TO BARRACKS (AIR SC 15)	CPL O'SULLIVAN	1 DAYS C.B.		MAJ. MACRAE	
MONTREAL	2-1-40	PTE.		~~CONDUCT~~ TO PREJUDICE OF GOOD ORDER & DISCIPLINE (AIR SC 4) TALKING	CPL MCKNIGHT	168 HRS CONFINED TO BARRACKS	8-1-40	MAJ. MACRAE	
~~CONFINED~~	~~CONFINED~~	~~PTE.~~			~~CPL MCKNIGHT~~	~~CONFINED TO BARRACKS~~	~~8-1-40~~	~~MAJ. MACRAE~~	~~CANCELLED~~
ABBOTSFORD	1-6-40	PTE.		FAILING TO APPEAR FOR P.T. (AIR 15 (a))	CPL PYPER	3 DAYS C.B.	3/6/40	MAJ. MACRAE	
CHANDLER	1-6-40	PTE.		ABL 3 HRS 50 MIN (AIR SC 15 (1))	PTE. LAROCQUE	3 DAYS C.B.	11-6-40	"	
EDSON	29-7-40	PTE.		ABL AT TATTOO 11 HRS (CRIM.)	PTE. BOWER	7 DAYS C.B. FORFEIT 3 DAYS PAY	29-7-40	"	
SUTTON	29-7-40	PTE.		ABL AT EXPIRATION OF HIS PASS 23 HRS 30 MIN	CPL ROWLES (CANADA)	14 DAYS C.B. FORFEIT 3 DAYS PAY	23-9-40	"	
SUTTON	7-12-40	PTE.		ABL AT EXPIRATION OF HIS PASS 23 HRS 10 MIN	PTE OWENS.	7 DAYS C.B. FORFEIT 3 DAYS PAY	3/12/40	"	
STEPHENSON	6-12-40	PTE.		ABL FOR TATTOO 7 HRS 30 MIN	CPL CUTHLAND	7 DAYS C.B. FORFEIT 3 DAYS PAY	11-12-40	"	

(P.T.O.)

I, Gladys Kathleen Edney of 38 Carshalton Rd., Sutton Surrey, on Saturday, 31 May 41 purchased four blankets from a soldier whom I now identify as No. D76684 Pte. Rogers F.G. of The Royal Montreal Regt (MG) for fourteen shillings.

He claimed that were not army blankets, but did say that he could get steel helmets and respirators if I wanted to buy them. I declined his offer.

(Signed) G.K. Edney

Witness: [illegible]

"I wish to have an officer defend me at my tri
to the Convening Officer I wish to have Capt T.P. Lewis of
defend me at my trial".

Capt Lewis is wish to
for and is available
~~to be with~~ act as defending
officer Br Seven Capt ad
Kirk (NG)

F. G. Ro

(signed) D76684 F.G.

List of witnesses for the prosecution, in the case of D76684 Pte. Rogers F.G.;

D76209 Sgt. Sutherland W.B. "D" Coy. R.M.R. (MG)
76430 A/Sgt. Davies M.I. "D" Coy. R.M.R. (MG)
76210 L/Cpl. Strong C.M. "D" Coy. R.M.R. (MG)
76261 Pte. Carr E.G. "D" Coy. R.M.R. (MG)
76510 Cpl. Leatherbarrow A.N. "D" Coy. R.M.R. (MG)
76452 A/Cpl. Gregoire R.J. "D" Coy. R.M.R. (MG)
77207 Pte. Wert C. "D" Coy. R.M.R. (MG)
77205 Pte. Morrow J.W. "D" Coy. R.M.R. (MG)
77222 Pte. Menzies R.F. "D" Coy. R.M.R. (MG)
77388 Pte. D'Amour F. "D" Coy. R.M.R. (MG)
Detective Sgt. Thomas Cunningham, Metropolitan Police, Sutton, Surrey.

C.

8 CDN. FLD. AMB. HOSP.

This is to certify that D76684 Pte. Rogers, M. has been medically examined and is declared fit to stand trial by Court Martial.

In the Field,
11 July 41

Capt., RCAMC
Medical Officer
8 Cdn. Fld. Amb. Hosp.

application for Field General Court Martial
D76684, Pte. Rogers, F.G. Royal Montreal Regt. (MG)

CHARGE SHEET

1st Charge — While on active service making away with by selling, public property issued to him for his own use,
AA Sec 24 (1)

In that he at Sutton, Surrey, on 31 May 41, sold to Gladys Kathleen Edney, of 38 Carshalton Rd. Sutton, Surrey, two blankets, being the property of the Canadian Government, issued to the said Private Rogers, F.G. for his use.

2nd Charge — While on active service committing a Civil Offence, that is to say, assisting a person in selling blankets issued for the use of a soldier, contrary to Sec 156 of the Army Act.
Sect 41 AA

In that he at Sutton, Surrey on 31 May 41, assisted D76210 Pte. (L/Cpl) Strong, C.M. in selling two blankets, property of the Canadian Government, ~~issued to Pte. (L/Cpl) Strong, C.M. for his use as a soldier.~~

(J.A. Calder) Lt. Col.
Commanding R.M.R. (MG)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
This 11th day of July 41.

..... Brigadier.
(C.L. Hertzberg)
Chief Engineer, Cdn Corps.

Proceedings of a FIELD GENERAL COURT MARTIAL held in the Field on 11th.JULY 41 in the Case of No.D.76684 Private ROGERS F.G. Royal Montreal Regiment, (M.G.)

President: Major H.P. Bonnick, Cps. Pet. Pk.

Member: Capt. J.S. Dunphy, 1 Med. Reg. RCA.

Member: Lieut.G.M.Henderson, 11 A.Fd. Reg. RCA.

Judge Advocate: Major A.W.Embury, D.J.A., Cdn. Corps.

Officers under instruction:

Lieut. P.B. Waud: R.M.R. (M.G.)

Lieut. W.F. Mussell R.M.R. (M.G.)

Prosecuting Officer; Capt. W.B. Stevens, R.M.R. (MG)

Defending Officer: Capt.T.C. Lewis, R.M.R. (MG)

Court Stenographer: No.B.93703 S/Sgt. Warren. Cdn. Corps

The Convening Order, the Charge Sheet and the Summary of Evidence are laid before the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

The trial commences at 1105 hours.

Judge Advocate read the Convening Order.

Q.1. Do you object to be tried by me as President, or by any of the Officers whose names you have heard read?
A.1. No Sir.
Q.2. Have you any objection to the Shorthand Writer S/Sgt.Warren?
A.2. No Sir.

The President, Members, Judge Advocate, Officers under instruction and Shorthand Writer are duly sworn.

Judge Advocate read the Charge Sheet.

Q.3. To Defence: Have you any objection to the form of these charges?
A.3. No Sir.
Q.4. The accused is not prejudiced by the lack of a preamble?
A.4. No Sir.
Q.5. You understand the nature of the charges and the accused has no objection?
A.5. No Sir.
Q.6. Are you guilty or not guilty of the first charge against you which you have heard read?
A.6. Guilty Sir.
Q.7. Are you guilty or not guilty of the second charge against you which you have heard read?
A.7. Guilty Sir.

Judge Advocate explained in detail as provided by R.P. 35(B).

Q.8. You fully understand what that means?
A.8. Not exactly Sir. (Judge Advocate explained minutely to the accused)

Accused: I did not intend to steal them I intended to pay for them.

Q.9. But you sold them?
A.9. Yes Sir.
Q.10. You figured that you would have to pay the Q.M. for them?
A.10. Yes Sir.
Q.11. When you got some money you would pay for them?
A.11. No Sir, I was going to tell the Q.M. that I was short two blankets and he would charge them against me.
Q.12. And you aided in selling those blankets?
A.12. I admit I helped him in selling the blankets.
Q.13. And you admit that the charge is true and that you actually helped in selling them?
A.13. Yes Sir.

Summary of Evidence read by the Judge Advocate.

J.A. Q.14. Capt. Stevens, was this evidence of Capt. Lewis taken at the Summary?
A.14. No Sir, Afterwards.
Q.15. Was it is the hearing and presence of the accused?
A.15. No Sir, but it was given to him afterwards.

Judge Advocate: I do not think we can accept that.

Court adjourned for consideration of the finding.

On re-opening.

Q.16. Do you wish to make any statement in mitigation of punishment?
A.16. Accused: Well Sir, on the charge of selling blankets, I do not know anything about Army Law. I was at sea for a number of years in the Merchant Marine and there it was usual to be able to sell them and pay for them.

Q.17. Do you wish to give evidence yourself or to call any witnesses as to character?
A.17. There are no witnesses Sir but I would like to examine the accused?

No.D. 76684 Private Rogers F.G., R.M.R. (M.G.) having been duly sworn is examined by the defence.

Q.18. When you were in the Navy prior to the war did you sell blankets?
A.18. It was a common occurrence Sir.
Q.19. What was your attitude towards that?
A.19. Well you used to refund the money.
Q.20. When you sold these blankets had you been drinking?
A.20. Yes Sir I had one or two drinks.
Q.21. Had you been drinking?
A.21. I am not in the habit of drinking Sir.

Witness cross-examined by the Prosecution.

Q.22 How long have you been in the Army?
A.22. Twenty months.
Q.23. Have you ever read certain Sections of the Army Act?
A.23. No Sir, and I do not know anything about it now Sir.
Q.24. But you underatand about obeying an order?
A.24. Yes Sir I understand that.
Q.25. And you knew that you were selling Army Blankets?
A.25. Well I was going to pay for them Sir.

Capt. W.B. Stevens, Adjutant, R.M.R. (M.C.) is duly sworn?

Q.26. Have you any evidence to produce as to character and particulars of service of the accused?
A.26. I produce A.F.B. 296 and M.F.M6.
Q.27. Is the accused, the person named in the statement?
A.27. Yes Sir.
Q.28. Have you compared the contents of the above statement with the regimental books?
A.28. Yes Sir.
Q.29. Are they true extracts from the Regimental Books, and is the statement of entries in the Conduct Sheets a fair and true summary of those entries?
A.29. Yes Sir.

Judge Advocate read A.F.B. 296.

Q.30. Do you wish to cross examine?
A.30. No Sir.
Q.31. Do you wish to make any statement?
A.31. No Sir.

Court adjourned for consideration of Sentence.

Summary of Evidence in the Case of No D76684 Private Frederick George Rogers, a soldier of The Royal Montreal Regiment (MG).

By direction of the Commanding Officer the summary of evidence is taken on oath.

1st Witness. No. D76209 Sgt. Sutherland W.B., R.M.R. (MG), having been duly sworn, states;

On Saturday 31 May 41 I was Coy. Orderly Sgt. After supper parade Cpl. Leatherbarrow came to me and asked me if there were any blankets missing from 15 Pl., I told him that there were none that I knew of at the time. I then asked him what he meant by this inquiry. He said that a 14 Pl. driver had been used to convey Pte. Rogers, whom I now recognize and a bundle down town.

Owing to the fact that 15 Pl. was Bn. Duty Pl., I decided to wait until the next day at 1600 hrs. before making a blanket inspection in the platoon. During that inspection I found that Pte. Rogers was missing two blankets. I immediate ly placed him under close arrest and reported to Capt. Lewis for further instructions. Sgt. Sutherland W.B.

The accused declined to cross-examine this witness.

2nd Witness No D76430 Cpl. Davies M.I., R.M.R. (MG), having been duly sworn, states;

I have a sleeping-out pass and rarely use my blankets. Every morning I check over my equipment and found nothing amiss until Capt. Lewis requested me to see if I had the right number of blankets. On checking I found the right number there, but one of them was not mine. I knew that because I had sewn tabs on each blanket and on the substitute blanket there was no tab. The next day in our Coy. Office Capt Lewis asked me if I could identify a blanket which he produced. I recognised the blanket as the one on which I had sewn my number tab.

on 2nd June 1941

M.I. Davies

The accused declined to cross-examine this witness.

3rd Witness No D76210 L/Cpl. Strong C.M., R.M.R. (MG), having been duly sworn states;

On 31 May 41 I was guard commander in charge of company guard. At approximately 1630 hrs. Pte. Rogers, whom I now recognize, asked permission to go down town. After some demur I consented and seeing Pte. Carr about to take Cpl. Gregoire to the baths, I asked Pte. Carr to take Pte. Rogers down and bring him back again. Again sometime between supper time and 1800 hrs. I was asked by the Orderly Sgt. Sgt. Sutherland to go to the Bn. Guard Room and get Pte. Menzies to help sort out Pte. Cole's equipment. The duty truck being there but the driver not having had his supper, Pte Wert as spare driver was given the duty truck in place of the regular driver who was Pte. D'Amour. I then proceeded to the Bn. Guard Room and had Pte. Menzies excused from his guard. While returning by the Plaza Theatre we picked up Pte. Rogers, who was crossing the street in front of the theatre. I then returned to the guard room. I took Pte. Menzies to the billets and finding there was none of Pte. Cole's equipment there, I reported to the Orderly Sgt.

D

The accused cross-examined this witness.

Q.- Did you take me down town with you in the truck going to the Bn, Guard Room?

A.- Not that I know of.

Q.- Did you stop outside the store near the garage on Carshalton Rd., where the blankets were sold, to drop me off the truck?
A.- Not to my knowledge. We were stopped several times by traffic in the district.
Q.- Did you not put your head outside the cab and say I will callfor you in a few minutes?
A.- No!
Q.- In the guard room after the first trip down town did I not give you the sum of 3 shillings and 6 pence?
A.- No!
Q.- After the second trip back, outside Albion Rd., did you not lean out of the cab and I gave you another sum of 3 shillings and 6 pence?
A.- You opened the cab door as I was not getting out and passed me 3 shillings and 6 pence and said " here is the 3 shillings and 6 pence I owe you.
Q.- All the time I was in the guard room or in the vicinity of the guard room, did you see me enter No. 20 Albion Rd at any time?
A.- No!
Q.- Did you give me permission to go down town the second time?
No!

L.A. Strong (2/Lt)

4th Witness No D76261 Pte. Carr E.C., R.M.R. (MG) having been duly sworn, states;

On Saturday 31 May 41 at about 1630 hrs. I was driving for 14 Pl. I brought my truck up to the car park on Albion Rd. The guard commander was standing near No. 26 Albion Rd and said the cook, Cpl. Gregoire, wanted to go down town and have a bath and would I drive him down. I said I would if he would not be too long. Cpl. Gregoire got on my truck and as we were ready to go Pte. Rogers whom I now recognise came up and shouted " I want a ride too " , so I let him get on the truck and he rode down town with us. I drove to the baths first and Cpl. Gregoire said to take Pte. Rogers to his destination and then come back and pick him up. Pte. Rogers told me to drive him to Carshalton Rd. Pte. Rogers came in to the cab with me. He instructed me where to drive to on Carshalton Rd. and then told me where to stop. When we stopped Pte. Rogers got out and said he would only be a minute or two. After a few minutes I went to tell Pte. Rogers to hurry up as I was not waiting any longer. I went to the store door, looked in and saw Pte. Rogers and told him to hurry up as I would leave without him. I then came back to get Cpl. Gregoire and returned to company lines on Albion Rd. I let Pte. Rogers get off and then parked my truck. I ~~did not~~ remember seeing Pte. Rogers taking ~~any~~ parcels, with him, downtown. E.C. CARR.

The accused cross-examined this witness.

Q.- You say you did not know I was going to get on the truck until you were driving away?
A.- No! commander
Q.- Did not the guard ask you to take me down town?
A.- No!

E.C. Carr Pte

5th Witness No D76510 Cpl. Leatherbarrow A.N., R.M.R. (MG) having been duly sworn, states;

On Saturday 31 May 41 Pte. Carr reported to me at about 1800 hrs. that L/Cpl. Strong had ordered him to take Pte. Rogers, whom I now recognise, and Cpl. Gregoire down town, Cpl. Gregoire to the baths and Pte. Rogers to where ever he wanted to go. Pte. Carr did not like the appearance of the thing so when he came back he reported the happenings to me. Pte. Carr mentioned seeing a parcel which he thought might be blankets and what he thought they might be doing with them. I reported to Sgt. Sutherland.

Cpl Leatherbarrow A.N.

The accused declined to cross-examine this witness.

6th Witness — No. D76452 A/Cpl. Gregoire R.J., R.M.R. (MG) having been duly sworn, states;

Between 1530 hrs. and 1600 hrs. Saturday 31 May 41, I asked L/Cpl. Strong who was guard commander, if he could arrange for me to get a ride down town to the baths. He got Pte. Carr to drive me down. When I got into the truck I noticed Pte. Rogers, whom I now recognise, in the back. L/Cpl. Strong said he was going to do some shopping and buy a few things. He took me down to the Sutton Baths and when he let me out Pte. Rogers was still in the back of the truck I told Pte. Carr to call back for me in about twenty minutes and in the meantime to take Pte. Rogers to his destination. As I did not wait for my turn at the baths I walked back.

A/Cpl Gregoire

The accused declined to cross-examine this witness.

7th Witness — No D77207 Pte. Wert C., R.M.R. (MG) having been duly sworn, states;

On the 31 May 41 I was on company guard and at approximately 1740 hrs. I was ordered by the guard commander L/Cpl. Strong to drive him over to Bn. Guard Room. Pte. Rogers, whom I now recognise came out and got into the truck. The guard commander told me to drive around by the Plaza Car Park and let Pte. Rogers off there. He told Pte. Rogers he would return for him when he came back from the Bn. Guard Room. We then proceeded over to the Bn. Guard Room The guard commander went into the Bn Guard Room and got Pte. Menzies. Pte. Menzies got on the back of the truck and we went down by the Plaza Car Park and picked up Pte. Rogers. We then drove back to the Coy. Guard Room at No 26 Albion Rd. Pte. Rogers got out of the back of the truck, came around, and passed the guard commander 3 shillings and 6 pence.

The accused cross-examined this witness.

Q.- When we came back from the first trip down town did you see me give L/Cpl. Strong any money in the guard room
A.- Yes!
Q.- How much was it?
A.- 3 shillings and 6 pence.
Q.- All the time I was on guard, between the time I went on and the time this happened, did you see me go into No. 20 Albion Rd?
A.- No!

C. Wert Pte.

8th Witness — No D77205 Pte. Morrow J.W. R.M.R. (MG) having been duly sworn, states;

On Saturday 31 May 41 I was on guard duty with Pte. Rogers, whom I now recognise, Pte. Wert and L/Cpl. Strong. At 1745 hrs. I was told to relieve Pte. Wert on sentry duty. I saw Pte. Rogers get aboard a truck driven by Pte. Wert. L/Cpl. Strong was in the cab. I did not see Pte. Rogers take any parcels. They went down towards Langley Park RD.

Pte Morrow

The accused declined to cross-examine this witness.

9th Witness — No D77222 Pte. Menzies R.F., R.M.R. (MG) having been duly sworn, states;

On 31 May 41 I was on Bn. Guard. L/Cpl. Strong came and got me to come up and identify some articles belonging

to Pte. Cole. I do not remember definitely but I believe Pte. Wert was driving. We came along Mulgrave RD., I believe it was, turned left opposite the station and then turned right onto Carshalton Rd. We stopped a little past the corner of Carshalton Rd. and the High St. and picked up Pte. Rogers, whom I now recognise. We then proceeded back to Albion Rd.

M. Wert Pte

The accused declined to cross-examine this witness.

10th Witness — No D77388 Pte. D'Amour F., R.M.R. (MG), having been duly sworn, states;

On Saturday at approximately 1745 hrs. 31 May 41, I was duty driver, but L/Cpl. Strong arranged for Pte. Wert to drive my truck while I went and had supper. Pte. Wert turned the truck back to me at about 1830 hrs. I saw Pte. Wert drive off with L/Cpl. Strong and with Pte. Rogers, whom I now recognise, sitting in the back. I did not notice Pte. Rogers carrying any parcels. I heard L/Cpl. Strong instruct Pte. Wert to drive to the Bn. O.R. I was there when the truck returned. I saw aboard the truck Pte. Wert, Pte. Rogers, Pte. Menzies, and L/Cpl. Strong.

F D'Amour Pte

The accused declined to cross-examine this witness.

11th Witness — Detective Sgt. Thomas Cunningham, Metropolitan Police, Sutton Surrey.

A written statement of this witnesses evidence, purpoting to be signed by him has been read to the accused and is included in the Summary of Evidence.

Having regard to the loss of time involved, the attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

D MacRae Major

The accused declined to make a statement, having been duly warned.

F G Rogers

Certified that Rule of Procedure 4 (C) (D) (E) (F) and (G) have been complied with. (c)
Taken down by me in the presence and hearing of the accused this 9th day June 41, at Sutton, Surrey.

D MacRae Major

D MacRae, Major,
O.C."D" Coy. R.M.R. (MG)

to Pte. Cole. I do not remember definitely but I believe Pte. Wert was driving. We came along Mulgrave RD., I believe it was, turned left opposite the station and then turned right onto Carshalton Rd. We stopped a little past the corner of Carshalton Rd. and the High St. and picked up Pte. Rogers, whom I now recognise. We then proceeded back to Albion Rd.

D. Menzies Pte

The accused declined to cross-examine this witness.

10th Witness No D77388 Pte. D'Amour F., R.M.R. (MG), having been duly sworn, states;

On Saturday at approximately 1745 hrs. 31 May 41, I was duty driver, but L/Cpl. Strong arranged for Pte. Wert to drive my truck while I went and had supper. Pte. Wert turned the truck back to me at about 1830 hrs. I saw Pte. Wert drive off with L/Cpl. Strong and with Pte. Rogers, whom I now recognise, sitting in the back. I did not notice Pte. Rogers carrying any parcels. I heard L/Cpl. Strong instruct Pte. Wert to drive to the Bn. O.R. I was there when the truck returned. I saw aboard the truck Pte. Wert, Pte. Rogers, Pte. Menzies, and L/Cpl. Strong.

F. D'Amour PTE

The accused declined to cross-examine this witness.

11th Witness Detective Sgt. Thomas Cunningham, Metropolitan Police, Sutton Surrey.

A written statement of this witnesses evidence, purpoting to be signed by him has been read to the accused and is included in the Summary of Evidence.

Having regard to the loss of time involved, the attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

12th Witness Gladys Kathleen Edney of 38 Carshalton Rd. Sutton, Surrey

A written statement of this witnesses evidence, purpoting to be signed by her has been read to the accused and is included in the Summary of Evidence.

Having regard to the loss of time involved, the attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

The accused questions the second paragraph of Mrs Edneys evidence

D MacRae major

Second para not material to the charge Bulfever Capt

D MacRae, Major,
O.C."D" Coy. R.M.R. (MG)

METROPOLITAN POLICE.

No. 995.
(Thin Typing)

STATEMENT OF WITNESS.

Sutton *Station.* "Y" *Division.*

5th June, 19 /41

Name Thomas Cunningham,

Address Police Station,

Sutton, Surrey.

Age . Occupation Detective Sergeant.

Statement On 3rd June, 1941, as the result of a communication from Captain Lewis, Royal Montreal Regiment, I went to 38, Carshalton Road West, Sutton, at 10.30 a.m. and saw Mrs. Gladys Kathleen Edney, who carries on business there in partnership with Mrs. Dorothy Orme, as Manor Gate Dress Agency (Mrs. Roberts).

I told Mrs. Edney I was a Police Officer making enquiries respecting Army blankets which I had reason to believe she had bought from a Canadian Soldier on Saturday afternoon. She said "I am glad you have come. I phoned the Station last night." She then produced four blankets and said "Here they are."

I said to her "Would you care to explain how you came to buy these from a soldier?" She said "I did not know they were Army blankets. I asked him if they were his own. He said 'Yes'. I certainly would not have bought them had I known they were Army blankets. I thought they were always brown. I gave him 14/- for them"

I took possession of the blankets and took them to Sutton Police Station where I later handed them to Captain Lewis.

Later the same day I applied for a summons against Mrs. Edney for the following offence:-

"On 31st May, 1941, at 38, Carshalton Road West, did unlawfully buy or receive four Army blankets to the value of £2.12.0, the property of H.M. Canadian Government."
Contrary to Sec. 156 (1), Army Act, 1881."

This summons will be for hearing at 9.30 a.m. on 12th June, 1941, at Sutton Petty Sessions, Court House, Lodge Road, Sutton.

T. Cunningham
Det. Sergt. "Y".

Signature

Signature witnessed by

W. 19168 40,000 Nov. 1939 w154 (8)

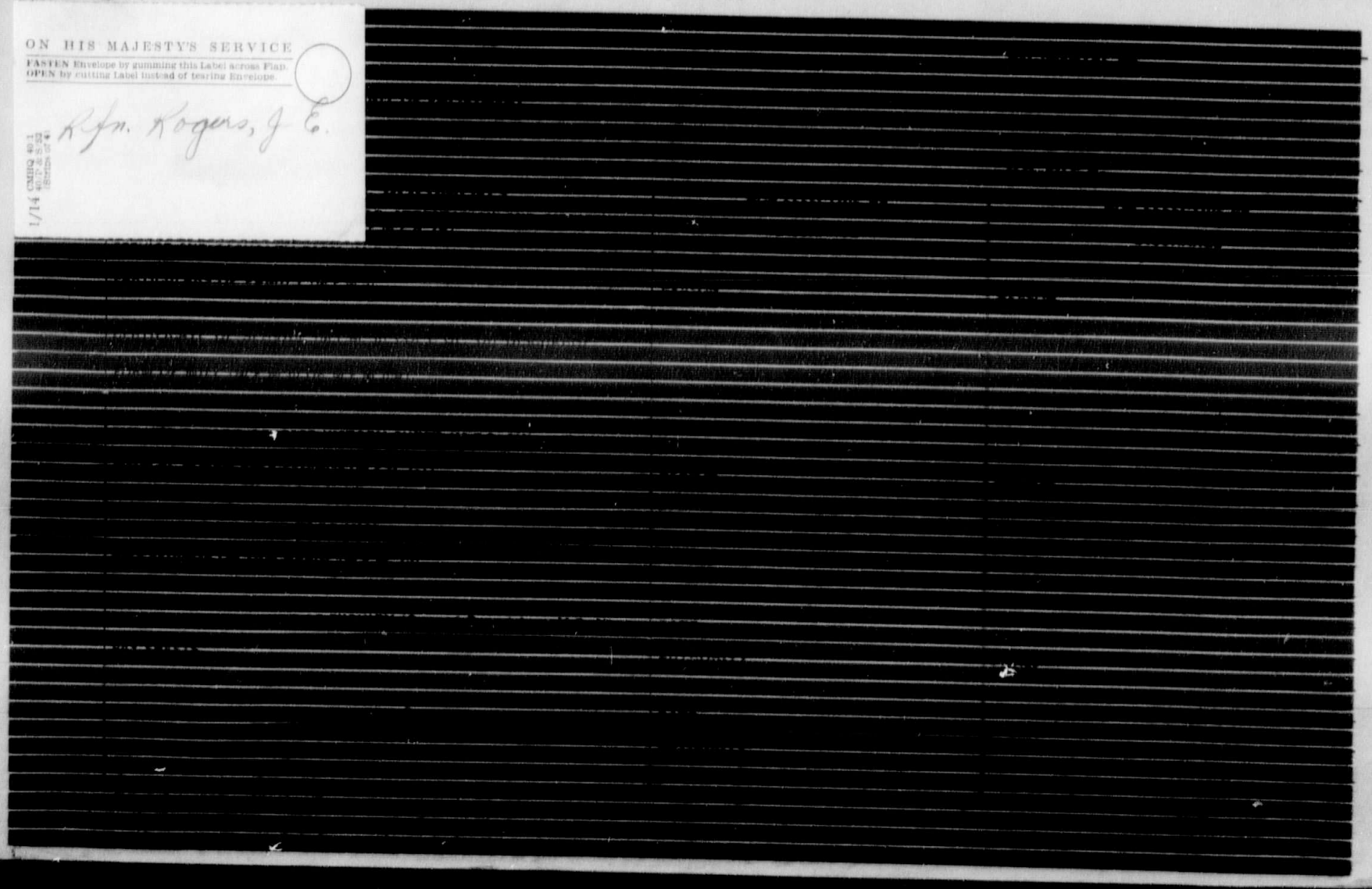
5X-41

ON HIS MAJESTY'S SERVICE

FASTEN Envelope by gumming this Label across Flap.
OPEN by cutting Label instead of tearing Envelope.

Rfn. Rogers, J. E.

1/14 CMHQ 40-1
40 P. & S. 53
(Strips of 4)



MINUTE OF PROMULGATION

B-137475 Rfn ROGERS, John Edward
1 Cdn Ord Emob Depot

Charges: 1st Charge AA Sec 8(2) WHEN ON ACTIVE SERVICE STRIKING HIS SUPERIOR OFFICER,
in that he
In the Field, at Tilburg, on 29 Oct 45, struck with his fist in the face, 4346819 L/Cpl Morley, R., an NCO of the C.M.P.

2nd Charge AA Sec 10(3) WHEN ON ACTIVE SERVICE RESISTING AN ESCORT WHOSE DUTY IT WAS TO HAVE HIM IN CHARGE,
in that he
In the Field, at Tilburg, on 29 Oct 45, whilst under escort of 2055398 L/Cpl Churcher of the C.M.P., resisted the escort by kicking him in the face.

3rd Charge AA Sec 40 WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE
in that he
In the Field, at Tilburg, on 29 Oct 45, when arrested by C.M.P. was in improper possession of Smith & Wesson .38 calibre pistol WD No V-586128.

Date(s) of Trial: 4 Dec 45

Findings:

1st Charge GUILTY
2nd Charge GUILTY
3rd Charge GUILTY

Sentence:

To undergo detention for a period of one hundred and twenty (120) days.

Date of Sentence: 4 Dec 45

Confirmation:

CONFIRMED

Date of Confirmation:
6 Dec 45

(J G Spragge) Brig
Comd 4 Tps Area, First Cdn Army

Time in confinement awaiting trial: 35 days

of which nil days were spent in hospital.

Promulgated and extracts taken

B-137475 Rfn RODGERS, John Edward
Accused

10 Dec 45
Date

(W W FINLAYSON) Lt-Col
Signature of Officer

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 137475 RFN ROGERS J E 1 CDN ORD DEPOT DEMOB DEPOT

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 8 (2)	Not Guilty	Guilty	
2nd AA 10 (3)	Not Guilty	Guilty	
3rd AA 70	Not Guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 35 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) for information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: TO UNDERGO DETENTION FOR A PERIOD OF ONE HUNDRED & TWENTY (120) DAYS.

(Sgd) J. K. Kidd Capt 4 Dec 45 (Sgd) [illegible] President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offr's: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.)

(Sgd) ..... Brigadier.
COMD ADMIN TROOPS AREA, FIRST CDN ARMY
Commanding ..... Confirming Officer.

Date 6 Dec 45.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

4/3BB

Convened by Order of BRIG J G SPRAGGE Comd A TPS AREA FIRST CDN ARMY dated 2 DEC 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or substantive rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Permt R. (b) Appmt, A/B or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 137475	RFN	JOHN EDWARD	ROGERS	1 CDN ORD DEPOT DEMOB DEP

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 4 Dec 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 38/145.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding point number herein. See back of Convening Order, CF 665, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet with ~~attached thereto~~.(1) The Court is satisfied that it is properly convened and constituted(2), accused is [illegible] amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 4. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [illegible] brought before the Court. At 1401 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 567. 2. AA 48(2), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~an interpreter?~~ Ans ~~an shorthand writer?~~ Ans

~~Interpreter is sworn.~~(1) ~~Shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	W J BAIRIE	1 CDN CORPS TRY COY 62 ASC
Member	CAPTAIN	L W MCNABB	16 SPEC EMB
Member	CAPTAIN	C L COMRIE	9 FDS
Judge-Advocate	CAPTAIN	J K KIDD	HQ A TPS AREA FIRST CDN ARMY
Prosecutor	CAPTAIN	J G LANGSTAFF	1 CDN ORD DEPOT DEPOT
Defending Offr	LIEUT	H T FINDLAY	1 CDN ORD DEPOT DEPOT

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused BIS/T/E RFN ROGERS J E before arraignment make(s) (no) objection.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D 1 E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-86 ; calling or re-calling of witnesses by Con A, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. ~~The President or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having ~~been found~~ Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. ~~As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8~~ inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are ~~read~~ to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a seperate sheet.)

C3. The accused ~~having been found~~ Guilty on one or more ~~of the charges~~, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO SIR (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (~~no~~) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 91(C) (D). Record address per Notes, subject to RP 93(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. ~~The Prosecution is closed (1) The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the ~~latter charge(s) (4).~~
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 80(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. EVIDENCE ON OATH Do you intend to call witnesses on your behalf ?
Ans. YES , Are they witnesses as to character only ? Ans. YES.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 493. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 45(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1ST, 2ND + 3RD charge(s), being subject to confirmation, will be promulgated later (1). The President announces that the accused is found Not guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part II of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. A and Ex. B respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. BY My Defending Officer.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(D) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schodule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Camp Borden Ont	24-1-44	Tpr		Sec 15(2) A A Absenting himself from a place of parade appointed by his Commanding Officer, in that he was absent from Defaulters Parade at 1830 hrs 24-1-44	Documentary	Fined 3 days pay 14 days C.B.	27-1-44	J Hegg Lt-Col	
Field	30-10-44	Pte		Drunkenness	Documentary	14 days C.B.	4 Nov 44	LT-COL F N Mitchell	

CERTIFIED TRUE COPY

.....Major
(A G Finalater)
A/OC 1 Cdn Ord Depot Dep NWOC

No. B137479 Name Rogers, John Edward | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 11-1-43 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/TAS/136 (3488)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY.....Capt					
Orillia	14 Feb 43	Tpr		Charged with conduct to the prejudice of good order and military discipline (A A Sec 40)	Cpl Anderson A.W.	1 days C.B.		J Dugood Major	
Camp Borden Ont	5 Nov 43	Tpr		Sec 15(1)A A AWL from 220 hrs 5 Nov 43 to 0730 hrs 8 Nov 43 (absent 2 days 9 hrs 30 mins)	Documentary	7 days C.B.	8 Nov 43	J Begg Lt-Col	Forfeits 3 dys pay
Camp Borden Ont	31 Dec 43	Tpr		Sec 15(2) A A Charged with being absent from B Mens Mess at 0800 hrs 31 Dec 43 and had to be replaced by H-86161 Tpr Harding R R	Cpl Strachan	Admonished	3-1-44	A Kuntz Lieut	Forfeits 1 dys pay

(P.T.O)

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-137475 Rank Rfn Name ROGERS, J.E. of 1 Cdn Ord Demob Dep RCOC Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
		N/A		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~19th~~ 4th day of ~~November~~ Dec 45

Major

A/OC 1 Cdn Ord Demob Dep RCOC

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

			Date of Promotion
In the rank of	N/A	years,	N/A
In the rank of	N/A	years	N/A
In the rank of	N/A	years,	N/A

(INSTRUCTION.—If any matter in any of the above paragraphs carried by stroke from the regimental books the paragraph must be struck out, except that in the case of a trial by field general court-martial the information may be collated from such sources as are available and the paragraphs inserted amended accordingly.)

Ep Y

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B-137475	Rfn	ROGERS, J.E.	1 Cdn Ord Demob Depot RCOC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	A.A. Section 40	NIL times	ONE	times.
For	A.A. Section 15(1)	NIL times	THREE	times.
For	A.A. SECTION 19	NIL times	ONE	times.
For		times		times.
For		times		times.

~~[illegible]~~ gallantry or distinguished conduct, N/A

or

~~[illegible]~~

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* ~~[illegible]~~ or _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and ~~Fifteen~~ 35 days in military custody, making a total of ~~Fifteen~~ 35 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 20

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper is 11 Jan 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is two years nine months and thirty-three days

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 9 mos and 33 days service.

9. The accused is entitled to reckon 2 yrs 9 mos and 33 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). 39-45 Star, France-Germany Star, CVSM

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated N/A and in his regiment (*or* corps *or* department) the rank of N/A dated N/A

[illegible] Wt.24808/1730 20,000 10/43 A.& E.W.Ltd. Gp.698
[illegible] Wt.53384/1499 12,000 9/44 " "

MEDICAL CERTIFICATE 4 Dec 1945

This is to certify that I have medically examined B 137475, Rfn. ROGERS, J.E. this date and found him fit/~~unfit~~ to undergo trial by court martial on 4 Dec 1945.

(Medical Officer)

CHARGE SHEET

The Accused B-137475 Rfn Rogers, John Edward, 1 Cdn Ord Demob Depot, a soldier of the Canadian Army Overseas is charged with:

First Charge
Sec 8(2)
Army Act

WHEN ON ACTIVE SERVICE STRIKING HIS SUPERIOR OFFICER,

in that he,

In the Field, at Tilburg, on 29 Oct 45, struck with his fist in the face, 4546819 L/Cpl Morley, R., an NCO of the C.M.P.

Second Charge
Sec 10(3)
Army Act

WHEN ON ACTIVE SERVICE RESISTING AN ESCORT WHOSE DUTY IT WAS TO HAVE HIM IN CHARGE,

in that he,

In the Field, at Tilburg, on 29 Oct 45, whilst under escort of 2055398 L/Cpl Chorcher of the C.M.P., resisted the escort by kicking him in the face.

Third Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

In the Field, at Tilburg, on 29 Oct 45, when arrested by C.M.P. was in improper possession of Smith & Wesson .38 calibre pistol WD No V-586128.

D. S. Findlater

(D S Findlater) Major
A/Officer Commanding
1 Cdn Ord Demob Dep RCOC

In the Field
12 Nov 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
29 Nov 45

(J G Sprague) Brig
Comd A Tps Area, First Cdn Army

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(5).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-137475	Rfn	John Edward	ROGERS	1 Cdn Ord Demob Dep RCOC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 29 Nov 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder. (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
MAJOR	W J Baillie		1 Cdn Corps Tpt Coy RCASC

MEMBERS.

Captain to be detailed by ADMS HQ A Tps Area

Capt or Lieut to be detailed by OC 16 Cdn Spec Emp Coy
(Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

Capt or Lieut to be detailed by OC 16 Cdn Spec Emp Coy
(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Captain	J K Kidd		HQ A Tps Area, First Cdn Army

On Active Service in the Fd

in Holland (Country.)

Date 3 Dec 45

(Signed personally. RP 105 fn 7.)
(J G Sprague) Brig
Commanding A Tps Area, First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 98 (In lieu of AFA 3) 40/P & S/1697 (6143)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, Ins, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-137475	Rfn		John Edward	ROGERS	1 Cdn Ord Demob Dep RCOC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 29 Nov 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior (punished offr))~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President for the reasons I have attached hereto.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

MAJOR (Rank.) W J Bailie (Must be named. RP 106.) 1 Cdn Corps Tpt Coy RCASC (Unit.)

MEMBERS.

Captain to be detailed by ADMS HQ A Tps Area

Capt or Lieut (Rank.) to be detailed by OC 16 Cdn Spec Emp Coy (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

Capt or Lieut to be detailed by OC 16 Cdn Spec Emp Coy (Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

Captain (Rank.) J K Kidd (Must be named, if any. RP 106.) HQ A Tps Area, First Cdn Army (Unit.)

On Active Service in the Fd

in Holland (Country.)

(Signed personally. RP 105 fn 2.) Brig (Rank.)

(J G Spragge)

Date 3 Dec 45

Commanding A Tps Area, First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/F & S/1697 (8148)

(See overleaf for oaths and notes for use on trial.)

(1)

First Witness For the Prosecution

2055398 L/Cpl Churcher C.W. 248 L of C Prov Coy CMP. Sworn states: - I recognize the accused at Tilbury on the 29th of Oct 45 at about 2115 hrs. I was on duty accompanied by L/Cpl Morley of CMP in the Hewel. We were called to the Naafi Canteen re a disturbance there. On Entering the 1st floor of Naafi I saw a Cdn with a revolver protruding from his jacket. L/Cpl Morley approached accused & asked him what he was doing with the revolver. Without replying the accused took a pace to the rear & struck L/Cpl Morley in the face. L/Cpl Morley recovered & took a pace towards the accused who attempted to draw his revolver but it hooked up in the blouse & fell to the floor. We arrested him & escorted him from the Naafi. He tripped Morley & I on the stairs. I bent down to get the accused to his feet & he kicked me in the face. He was told he was under arrest. We took him to the information post & he was escorted to guard room when transport arrived. I identify & produce to Court Smith & Wesson Cal. Pistol & Holster W.D. No. V 586128 & Cal. Pistol & Holster taken off accused. Exhibit A

Cross Exam

accused caught one eye first as we saw him with the revolver. Accused had to be forcibly taken to the guard room. Accused may have been drinking but I think he was sober at the time. The revolver fell on the floor & was handed to us later by 64784 Dvr Riley E. RASC. 140 Field Ambulance. The Revolver is the same type as accused had in his hand. The Holster is the same one the Revolver is similar. Riley handed it to us next morning. I didn't see anybody else ~~[illegible]~~ at time. When we arrived - I saw accused with the

(2)

gun so W I went over to him first. Accused Struck Morley with his Fist. I had several cuts on the face from accused boots. Morley & I had accused arm in arm when we were going out of Naafi then He Kicked Me in the Face. Morley was dressed in duty order he is a L/Cpl & was at the time in question.

R.P. 83b Complied With

Prosecution states He is Unable to call L/Cpl Morley, Cpl Murdoch, L/Cpl Rowland, Pte Barrow & L/Cpl Phillips as they are Now out of the Country. ~~I do no~~ Defending Officer does Not desire these Witnesses for the purpose of Cross Examination

(3) FIRST WITNESS FOR THE DEFENCE
Accused Swan States :-
On the 29 of Oct 45

Exm I had been drinking since 1400 hrs. I was drinking Rum + proceeded to Tilbury in order to get a few Naafi beers after the fight bee I went down stairs to get something to eat + on returning to the wet canteen I ordered more bee from that time on my Memory is a complete blank. Until awaking in the cell at Breda.

Cross Exm - None
Re Exm - None
Court - On 29 Oct I was working at Vole 9 on guard duty. The revolver & holster Ex A was used on guard duty as my personal weapon. Revolver is similar to Mine I dont know whether it is Mine as I cant remember the Number of Mine. I drank 3/4 Bibe of Rum before leaving. I was off duty at the time. I dont Remember the CMP at all. I have been in Ordnance since Dec 44. I landed in Normandy with 20 R on D+1 I left 20 R on Aug 14 at Falaise I was an exhaustion casualty. The holster in Ex A is Mine. When I left for Tilbury I had a revolver with me. I was carrying it in a shoulder Holster. I know I should Have left the Revolver at Unit bree I forgot

RP 83 b Complied With.

SECOND
B139225 Cpl McEwen R. 1 Cdn Ord
Exm Dembb Depot Swan States :-
I am guard Comd. at Vole 9 Stores. Rogers has bee with Me since June. He is an average soldier, Never gave Me any Trouble always on duty. Doesnt drink Much.

Cross Exm None
Re Exm None
Court None.

R P 83 (b) Complied With

(4)

Third Witness for the Defence.

E 52859 L/Cpl Irwin JJ 1 Cdn Ord Dem Bn Depot Swan Stew

Exam I have known accused 5 months, he is on guard with me at Vole 9. He is always on duty, fairly quiet read considerably

RP 85B Complied With

Dec 4th 1945

From Evidences given by 2055398
L. C/o. Churcher C. W. the three charges

1. Struck a Superior officer
2. Resisting and Escort
3. Improper possession of 38 Calibre Smith & Wesson Pistol

Have been presented to the Court.

No other witnesses are available.

J. G. Langstaff Capt
1 Cdn. Ord. Demob. Depot

Summary of Defence on behalf of:

B-137475 Pte Rogers. John Edward.
1 Can Ord Depot.

In endeavouring to bring out all the facts of the case the Prosecution has neglected to show that the accused had been drinking and that he probably was in a drunken condition when in the MESS Tap Room. The evidence of the C.M.P. to the contrary is not conclusive.

If Pte Rogers had been in his right and normal state he would not have resisted a C.M.P. Representative even although they approached him in molesting manner which can be seen by the evidence.

As to the charge of kicking, ~~The C.M.P.~~ the C.M.P Representative accounts that this was done in the struggle before he was placed under arrest. The kick was received in the struggle when the Provost were grappling with him and could only be expected as the inevitable result of not being out of the way of the feet.

Pte. Rogers being accustomed to carrying a revolver which incidentally had not been removed from him by a person in authority, did wear it from force of habit more than anything else just as the officers used to do when pistols were our personal weapons.

A Findlay Lieut.

PLEA IN MITIGATION OF PUNISHMENT.

No. B-137475 Rfn. Rogers, J.E.
1 Cdn Ord Demob Depot,
Canadian Army Overseas.

The Court will have reviewed the evidence presented before it by the Prosecution against this young Soldier possibly with some doubts as to the type of individual that they are having to deal with. It is quite apparent in the first place that the Accused is not to be considered a hardened offender regardless of his present misdemeaners.

Rfn. Rogers is but yet a youth of only 20 years who has been in the Army for nearly three years, having joined when he was but 17 years old. In this time he has had a good record as his crime sheet shows. He has not become involved in any serious army offence.

Rfn. Rogers comes from Toronto, where his parents are still living. He has one young Sister and a Brother who is also in the Canadian Army Overseas. The Family is of the working class and the young man is proud of their position as anyone might well be who considered the enormous contribution made by the Workers of Canada in winning the War.

Questioned on his intentions upon return to Civilian Life again Rogers feels the need of further schooling and technical training and is happy that the Government have planned to make it possible for him to go back to school. At the same time he feels that it is high time that he got out on his own to make an honest living. We hope that our competent advisers can persuade him to take the former course. He has already had a period of employment in Canada's Munitions Plants and knows what it is like to earn one's own living.

D Day plus 1 was the date on which Rfn. Rogers came to the continent. He was then in the thick of the fighting with the Queen's Own Rifles of the Third Cdn Inf Div. and he served with them until the division was within a couple of miles of the now famous Falais Gap. At that time he had performed a number of patrols and had undergone the continuously telling strain of attacks and waiting periods. He became an exhaustion case and was taken out to be put into one of the special employment coys.

Before coming to the Ordnance Maintenance Coy in December 1944 he was drafted once again to the Cdn. Inf. Corps but was not called. It should be mentioned as relevant to his service in the Queen's Own Rifles that before going into action Rogers has undergone only limited training and had not passed through a battle innoculation course. This was due to the fact that he had been employed on the Tank Proving Grounds at Camp Borden in Canada and that Overseas he had been transferred to the Cdn Inf Corps.

Cfn. Rogers's service with the Ordnance Corps for the past year has included general duty work of practically all kinds as well stretch after stretch of guard duty. Although his duties have probably been thankless at best during this period he has performed his duties faithfully as his conduct sheet has no entries for the period.

Finally, it is to his credit to explain that he was anxious to go before this Court with a plea of guilty to all charges and to request the Court to deal him his due. He is completely repentant for what he has done. The Defence Officer feeling that such an accused could not rightly admit blindly to something about which he has no recollection, not the slightest intention, has persuaded him to this presentation of his case.

May it please the Court to deal lightly in sentencing this young man. He has offered his country his life and now deserves to repatriated as soon as possible and to be given the best guidance obtainable in his rehabilitation program. It is our plea that he be returned to civilian life not a further casualty due to disciplinary measures.

Respectfully submitted,

.....

(H.T.Findlay) Lieut.
Officer detailed to defend.

J.A. Sums Up.

Adverse Court Re

1. Function of J.A.
2. Court Sole Judge of the Facts
3. Analysis of charge

First Charge

AA Sec 8(2) Read + Explained Fn 3 to AA Sec 8(2) Page 433 MML

Second Charge A.A. 10.(3)

Read + Explained Fn 3 to AA 10(3) Page 435 MML.

Third Charge AA 40. Conduct Must be to prejudice of both good order + Military discipline.

Adversed Court Re.

1. Credibility of Witnesses
2. accused innocent Until proven guilty.
3. Onus proof
4. Reasonable Doubt

Prosecutor, Defending officer Nor court request any further advice on being asked by J.A.

J.H. Capt

Exhibit A.

1 Smith + Wesson Pistol Serial # V 586128 + leather shoulder Holster released to the Adjutant 1 Cdn Ordnance Demob Depot.

4 Dec 45

V Bailie
Major

Received From Major Bailie 1 Smith + Wesson Pistol Serial # V 586128 + leather shoulder Holster

J S Thompson Capt

4 Dec 45

SUMMARY OF EVIDENCE

in the case of:

B-137475 Rfn Rogers, J.E., of 1 Cdn Ord Demob Dep RCOC, a soldier in the Canadian Army Overseas on active service.

First Charge:- WOAS striking his superior officer (AA Sec 8(1))

Second Charge:- WOAS resisting an escort (AA Sec 10(3))

Third Charge:- WOAS improper possession of Smith & Wesson .38 caliber pistol WD No V-586128 (AA Sec 40)

~~Fourth Charge:- WOAS not in possession of his KBK I Parts I, II & III (AASec 40)~~

First Witness — 4346819 L/Cpl Morley, R — 248 L of C Prov Coy C.M.P.

Second Witness — 2055398 L/Cpl Churcher, C W — 248 L of C Prov Coy C.M.P.

I certify that in my opinion the attendance of 4346819 L/Cpl Morley, R and 2055398 L/Cpl Churcher, C.W. is, owing to exigencies of the service, expense and loss of time involved, not readily procurable: a written statement of evidence signed by 4346819 L/Cpl Morley and corroborated by 2055398 L/Cpl Churcher has been read to the accused and is attached hereto as Exhibit "A".

.....
(M E Gale) Capt

The accused declines to cross-examine the witnesses.

Third Witness — 14382950 Cpl Murdoch, J F — 248 L of C Prov Coy C.M.P.

Fourth Witness — 3976386 L/Cpl Rowland, R G — 248 L of C Prov Coy C.M.P.

I certify that in my opinion the attendance of 14382950 Cpl Murdoch, J F and 3976386 L/Cpl Rowland, R G is, owing to the exigencies of the service, expense and loss of time involved, not readily procurable; a written statement of evidence signed by 14382950 Cpl Murdoch, J F and corroborated by 3976386 L/Cpl Rowland, R G has been read to the accused and is attached hereto as Exhibit "B".

.....
(M E Gale) Capt

The accused declines to cross-examine the witnesses.

Fifth Witness

T/140329 Dvr Phillips, C, RASC 140 Fd Ambulance.

I certify that in my opinion the attendance of T/140329 Dvr Phillips, C is, owing to the exigencies of the service, expense and loss of time involved, not readily procurable; a written statement of his evidence signed by T/140329 Dvr Phillips, C has been read to the accused and is attached hereto as Exhibit "C".

.....
(M E Gale) Capt

The accused declines to cross-examine this witness.

Sixth Witness

H-64894 L/Cpl Phillips, D A , a soldier of the Canadian Army Overseas, on strength of 1 Cdn Ord Demob Dep RCOC, having been duly sworn, states:-

"I am the Q.M. representative at Vote 9 and withdrew Part III from Rfn Rogers, J E on authority of Q.M. as all Parts III were held in the Q.M. Office."

.....
H-64894 L/Cpl Phillips, D A

The accused declines to cross-examine this witness.

Seventh Witness

F-30955 Pte Barrow, D.F., a soldier of the Canadian Army Overseas, on strength of 1 Cdn Ord Demob Dep RCOC, having been duly sworn, states:-

"I am employed in the Unit Pay Office and MBM 1 Part II belonging to Rfn Rogers was turned in to Paymaster on or about 28 Oct 45 for purpose of purchasing cigarettes. It was returned to Vote 9 early in November.

.....
F-30955 Pte Barrow, D F

The accused declines to cross-examine this witness.

The accused was cautioned as follows:

Question: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer: I wish to make a statement.

Question: Do you wish to make your statement on oath?

Answer: Yes sir.

The accused, having been duly sworn, states:

"on the day in question 29 Oct 45 I had been drinking since 1400 hrs. I was drinking rum and after leaving my Unit I went to Tilburg with the idea of taking a few NAAFI beers. After finishing my fifth order of beer I went downstairs to get something to eat. On coming upstairs again I remember sitting down and ordering one more beer. After that my mind is a complete blank until awakening in the Guard Room at Breda.

My AEM I Part I was lost while on U.K. Leave in March 1945. It was reported to the Orderly Room. 21 Cdn Spec Employ Coy prior to unit being disbanded.

My AEM I Part II was in the Paymaster's office.

My AEM I Part III was in Q.M. Stores at my unit."

.....
B-157475 Rfn Rogers, J E

I certify that the foregoing summary of evidence, consisting of (3) pages has been taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d), (e), (f) have been complied with.

.....
(M E Gale) Captain
1 Cdn Ord Demob Dep RCOC

The Field
9 Nov 45

APPENDIX "A"

Statement of EVIDENCE in the case of:
B/137475 Rfn ROGERS, J.E.
1st. Canadian Ordnance Demob. Depot.
Vote 9 Spare Parts,
NIJMEGEN.

This is Exhibit "A" referred to in the Summary of Evidence in the case of B-137475 Rfn Rogers, J.E. taken before me this 9th day of Nov 1944.
[illegible] Capt.
Offr taking Summary.

Sir,

At TILBURG on the 29th. OCTOBER at about 2115 hrs., I was on duty accompanied by L/Cpl. CHURCHER, C.M. Police, in the HEUVEL, when I was called into the NAAFI-canteen to deal with two CANADIAN soldiers, who were alledged to be causing a disturbance with drawn pistols. On entering the first floor of the premises, I saw the a/n. soldier with the butt of a pistol protruding from his open BATTLE DRESS BLOUSE.

I asked him what he was doing with a pistol in his possession, he did not reply, but took a pace back and struck me in the face. I took a pace towards him and he drew a SMITH and WESTON 38 CALIBRE W.D. No. V-586128. On drawing it the butt caught in his blouse and was wrenched from his grasp. As the soldier was being escoreted from the N.A.A.F.I. by L/Cpl. CHURCHER and myself, he tripped us on the stairs. When picking the soldier up he kicked L/Cpl. CHURCHER in the face. I told him, he was under arrest and detained him in the MILITARY POLICE INFORMATION POST until transport arrived. He was then taken to the GUARD ROOM at BREDA and handed over to the N.C.O. i/c. GUARD to be detained.

He had no means of identification, so I took his particulars verbally and verified them from his unit by telephone.

The pistol was picked up during the incident and handed to me later by No. T/64784 Dvr. RILEY, E., R.A.S.C., 140 FIELD AMBULANCE. It is now in the safe custody of 248 L. of C. Provost Coy., H.Q.

Later L/Cpl. CHURCHER had to receive medical attention. The sick-report is attached to this report.

Six soldiers volunteered statements, which are attached to this report. Statements have been detached as unnecessary [illegible]

The certificate of arrest is attached to this report.

He was sober.

Field,
29th. Oct. 1945.

4346819 [illegible] L/Cpl.
248 L. of C. Provost Coy.
Corps of Military Police.

Sir,

I have read over and corroborate the above statement.

Field,
29th. Oct. 1945.

2055398 [illegible] L/Cpl.
248 L. of C. Provost Coy.
Corps of Military Police.

APPENDIX 'B'

Statement of **EVIDENCE** in the case of:
No. B-137475 Rfn. ROGERS J.E.
1st. Canadian Ordnance Demob Depot.
NIJMEGEN.

Sir,

At TILBURG on 29th. Oct. 1945 at about 2200 hrs., I was on duty in the HEUVEL accompanied by L/Cpl. ROWLAND R.G., C.M. Police, when I saw the a/n. soldier, who was placed under close arrest by L/Cpl. MORLEY R. C.M. Police for drawing a W.D. SMITH and WESSON .38 CALIBRE PISTOL No. V-586126 at him. I ordered him into our truck and he struck me with his right fist, which knocked me down to the ground. After a struggle I managed to get him into our truck assisted by other members of the C.M. Police.

He had no means of identification, so I obtained his particulars verbally and verified them by telephone from his unit.

He was conducted to TOWN GUARD NIJMEGA and handed over to N.C.O. i/c. GUARD to be detained.

Certificate of arrest is attached to this report.

Field,
29th. Oct. 1945.

14382950 J. L. Mussleck Cpl.
248 L. of C. Provost Coy.
Corps of Military Police.

Sir,

REMARKS

I have read over and corroborate the above statement.

Field,

3976386 R.G. Rowland L/Cpl.
248 L. of C. Provost Coy.
Corps of Military Police.

1974

CHARGE O.C. 248 L. of C. PROVOST COY CMP

1st. CANADIAN ORDNANCE DEMOB. DEPOT.

Regiment
Battery
Squadron
Troop or
Company

CHARGE against No. B-137475 Rank Rfn.

Name ROBERTS, J.E.

Place TILBURG. Date of Offence 29 Oct. 45.

OFFENCE W.O.A.S. Conduct to the prejudice of good order and Military Discipline, i.e. Striking an N.C.O. of the Corps of Military Police (Sec. 40 A.A.) in the HEUVEL at about 2200 hrs.

CAPT.
D.A.P.M. 5 L. of C. SUB AREA.

Names of Witnesses:—

14382950 Cpl. MURDOCH J.F. 248 L. of C. Prov. Coy C.M.P.

3976386 L/Cpl. ROWLAND R.G. 248 L. of C. Prov. Coy C.M.P.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

LIST OF WITNESSES

1. 4346819 L/Cpl Morley, R, 248 L of C Prov Coy, C.M.P.
2. 2055398 L/Cpl Churcher, C W, 248 L of C Prov Coy, C.M.P.
3. 14382950 Cpl Murdoch, J F, 248 L of C Prov Coy, C.M.P.
4. 3976386 L/Cpl Rowland, R G, 248 L of C Prov Coy, C.M.P.
5. T/140329 Dvr Phillips, C, RASC 140 Fd Ambulance
6. H-64894 L/Cpl Phillips, D A, RCOC 1 Cdn Ord Demob Depot
7. F-30955 Pte Barrow, D F, RCOC 1 Cdn Ord Demob Depot

LIST OF EXHIBITS

Appendix "A" - Statement of 4346819 L/Cpl Morley, R
248 L of C Provost Coy
Corps of Military Police

Corroborated by 2055398 L/Cpl C Churcher
248 L of C Provost Coy
Corps Of Military Police
(CERTIFIED TRUE COPY)

Appendix "B" - Statement of 14382950 Cpl Murdoch, F J
248 L of C Provost Coy
Corps of Military Police

Corroborated by 3976386 L/Cpl Rowland, R G
248 L of C Provost Coy
Corps of Military Police
(CERTIFIED TRUE COPY)

Appendix "C" - Statement of T/140329 Dvr Phillips, C
R.A.S.C. 140 Field Ambulance
(CERTIFIED TRUE COPY)

1 Cdn Ord Demob Dep RCOC

12 Nov 45

This is to certify that I do not wish to appoint ayone to defend me at my forthcoming Field General Court Martial.

A C Rogers

B-137475 Rfn Rogers J E

40-127

Pte Rogers P.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C4590 Pte Percy ROGERS - CIv - 3 CITR

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for 28 days F.P. beginning on (date) 2 Jan 1945 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of NIL days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for a period of Sixty (60) days.

(Sgd) ..... 27 Jan 45 (Sgd) [illegible]
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 52, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)
(1. AA 57A. Delete if not used.)

Date 30 Jan 45 (Sgd) [illegible] Brig
Commanding Comd 13 Cdn Inf Trg Bde

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C-4590 Private ROGERS, Percy	Promulgated 31 Jan 45 Extract D.O. 31 dated 3 Feb 45	[illegible] Lt-Col. Asst Adjt 13 Cdn Inf Trg Bde

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 ... 110-127
12 FEB 1945

FIELD GENERAL COURT-MARTIAL

CFA66 (In lieu of AFAN) 40/P & R/1698 (8144) 4/38B

Convened by Order of Brigadier K G Blackader Comd 13 CITB DSO, Mc, ED. dated 25 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C4590	Pte	Percy	ROGERS	CIv 3 CITR

PROCEEDINGS REVIEWED
[illegible]
REVIEWING OFFICER'S BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 27 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, J.A. if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95 (1) for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.~~(1) Do you object to C. BROSSO as shorthand writer? Ans No
The shorthand writer is sworn.(1) SGT WG SHANLEY
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No, Sir.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~J.A. if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L. REDMAN	No CRU
Member	Capt	R.G. STAGG	1 CITR
Member	Lt	J.E. CHIASSON	4 CITR
~~Judge-Advocate~~			
Prosecutor	LT	G.F. ADAMSON	2 CITR
Defending Offr	LT	L. BROSSO	3 CITR

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment makes(s) (no) (~~no~~) plea .....(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed) and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, ete, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO, SIR.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 71 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 40(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1. 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 113(3). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(7) (6), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO - SIR.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex E respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans NOTHING FURTHER (NOTE AT 1)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, C4590 Private Percy ROGERS, Hastings and Prince Edward Regiment, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHILE ON ACTIVE SERVICE, Absenting himself without leave,

Section 15 (1) Army Act

in that he,

In the Field, absented himself without leave whilst undergoing Field Punishment, from 2230 hours 14 January 1945 until 2200 hours 17 January 1945. Total absence 2 days, 23 hours, 30 minutes.

IN THE FIELD
22 JAN 1945

(S.W. Thomson) Colonel,
Commander,
3 Cdn Inf Trg Regt.

To be tried by Field General Court Martial.

(J.G Blackader) Brig
Comd
13 Cdn Inf Trg Bde

In the Field
25 Jan 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
✓4590	Pte		Percy	ROGERS	CIC 3 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused being subject to military law, has committed the offence set forth in the Charge Sheet attached and endorsed by me, "To be tried by Field General Court-Martial" (*date*) 25 Jan 45

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial; (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. (RP 106(E). Delete, if none appointed.)

PRESIDENT.

LT ✓OL (Rank.)	D L REDMAN, VD (Must be named. RP 106.)	HQ ✓RU (Unit.)

MEMBERS.

✓aptain	to be detailed by ✓ommanding Officer	1 CITR
Lieutenant (Rank.)	to be detailed by ✓ommanding Officer (Named or detailed. RP 106.)	4 CITR (Unit.)

WAITING MEMBER.

✓aptain (Rank.)	to be detailed by ✓ommanding Officer (Named or detailed, if any. RP 106.)	1 CITR (Unit.)
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 25 Jan 45

K G Blackader (Signed personally. RP 105 fn 1.)

Brigadier (Rank.)

(K G Blackader) Brig
Commanding 13 Cdn Inf Trg Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (PAGS (In lieu of AFAS) 40/P & S/1667 14693)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(*B*), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(*C*) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in *CF A 96*, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 563(*a*).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 163 (1) (*g*) (A).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML p* 709.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
ᵥ4590	Pte		Percy	ROGERS	CIC 3 ᵥITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has [illegible] committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 Jan 45 endorsed by me, [illegible], "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
LT ᵥOL	D L REDMAN, VD		HQ ᵥRU

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
ᵥaptain	to be detailed by ᵥommanding Officer		1 CITR
Lieutenant	to be detailed by ᵥommanding Officer		4 CITR

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
ᵥaptain	to be detailed by ᵥommanding Officer		1 CITR
[illegible]			

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 25 Jan 45

(Signed personally. RP 105 fn 2.)

(K G Blackader) Brig

Commanding 13 Cdn Inf Trg Bde

Convening Officer.

Brigadier (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAO 40 (In lieu of AFAO 40/F & S/1697 (46051))

(See overleaf for oaths and notes for use on trial.)

Medical Officer's Certificate. 4C/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. C 4590
Pte Rogers. P of No. 3. C.I.T.R
and in my opinion, he is fit to undergo trial by Court Martial.
Station. Field
Date. 27 Jan 1945 (Sgd.). [illegible]
(Medical Officer)
(Canadian Reinforcement units Routine Order No. 3, para 27, d/6 Jan 42)

Sir.

This man joined the army in Dec 1914. He came overseas with the Hastings & Prince Edward Regiment and has been with them ever since. He got posted to a reinforcement unit and missed going with his unit into action. This has made him very discontented and accounts for the crime which he has committed.

I wish to draw to your attention the fact that the man was away two days and twenty three hours and after this short period gave himself up which proves that his intention was not to absent himself but to draw attention to his case.

I am going to ask the court to be very lenient with this man and to give him all possible help to rejoin his unit by shortening his sentence.

Respectfully your
[illegible] Lieut

E-3

SUMMARY OF EVIDENCE

Summary of Evidence in the case of C4590 Private Percy ROGERS, Hastings and Prince Edward Regiment, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding the Summary is taken on oath.

FIRST WITNESS — For the Prosecution

D82483 Sgt Nelson A.M., Canadian Infantry Corps, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am D82483 Sgt Nelson A.M., and on the night of 14 Jan 45 was employed as Camp Orderly Sergeant. I called the roll in the F.P. quarters at 2230 hrs 14 Jan 45, and the accused C4590 Pte Rogers P., whom I now recognize, did not answer his name. I marked him AWL.

A M Nelson, Sgt.
(D82483 Sgt Nelson A.M.)

The accused declines to cross-examine this witness.

SECOND WITNESS — For the Prosecution

F39799 Sgt O'Connell E., West Nova Scotia Regiment, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am F39799 Sgt O'Connell E., and on the night of 17 Jan 45 was employed as Camp Orderly Sergeant. At 2200 hours 17 Jan 45, the accused, C4590 Pte Rogers, P., whom I now recognize, reported to me. I placed him under close arrest.

E O'Connell
(F39799 Sgt O'Connell E)

The accused declines to cross-examine this witness.

THIRD WITNESS — For the Prosecution

Capt E.F. Stewart, General List, on the strength of No 3 Canadian Infantry Training Regiment, an officer of the Canadian Army Overseas, having been duly sworn, states:

I am Capt E.F. Stewart, and am Adjutant of No 3 Cdn Inf Depot Bn. I hereby present, marked Exhibit "A", Certified true Extract from No 3 Cdn Inf Trg Regt Part II Daily Order No 4 dated 4 Jan 45, which shows that the accused, C4590 Pte Rogers, P., whom I now recognize, was awarded 28 days F.P. on 2 Jan 45.

E F Stewart Capt
(E.F. Stewart) Capt.

The accused declines to cross-examine this witness.

The accused was cautioned as follows: Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

P

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of TWO pages was taken down by me in the presence and hearing of the accused, and that rules of procedure 4 (c) (d) (e) and (f) have been complied with.

IN THE FIELD
22 January 1945

(G.L. Pallett) Lieut
Officer detailed to take Summary

EXA
MM

NO #3 CANADIAN INFANTRY TRAINING REGIMENT C A (E)

PART II DAILY ORDERS

LAST ORDER	Issued by	THIS ORDER
NO 3		NO 4
3 JAN 45	LT/COL S W THOMSON, DSO, MC, A/Commander	4 JAN 45

5 PUNISHMENTS

(g) On 2 Jan 45, awarded 28 days F P and a forf of 28 days pay for an offence under AA Sec 15(1), AWL from 0830 hrs 23 Dec 44 to 2245 hrs 1 Jan 45. (Absent 9 days 14 hrs 15 mins)
Forf 10 days pay under FR&I 149(1)(a)
Forf 28 days pay under FR&I 149(2)
Total forf of 38 days pay

C 4590 PTE ROGERS P "HAPE"

"A.J. Geisler" Lt
.....
for(S.W. Thomson) Lt-Col,
A/Commander
No 3 Cdn Inf Trg Regt,
C A (E)

Certified True Extract

[signature]
Officer having custody of Original Record.

Exhibit "A" to [illegible]

M.F.B. 356
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number C45590 Rank Private Name Percy ROGERS Regiment (or unit) Hastings and Prince Edward Regiment. (#3 C.I.T.R.)

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets or Company Regimental and Squadron, Battery Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	A.A. Sec 15 (1) 3 times	A.A. Sec 15 (1) 21 times
For	~~times~~	~~times~~
For	~~times~~	~~times~~
~~For~~	~~times~~	~~times~~

~~Number of instances of gallantry or distinguished conduct~~

~~or,~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

~~or,~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement. A.F.A. 73

3. ~~The accused is not under sentence at the present time.~~

~~or,~~

The accused at the present time is under sentence for 28 dys FP beginning on the 2nd day of Jan 45

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and Nil days in military custody, making a total of Nil days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 27 yrs.

6. The date of his ~~commission~~ attestation specified in his record of service is 18 Sept 39 ~~attestation paper~~

7. The service which the accused is allowed to reckon towards discharge is 5 yrs 4 mos.

8. ~~The accused is entitled to reckon service for the purpose of determining his~~ pension, etc.

9. The accused is ~~in possession of or entitled to~~ no air force decoration, or ~~air force reward~~ military (or is ~~in possession of or entitled to~~). State any ~~air force~~ military decoration or reward. C.V.S.M. & Clasp 1939-40 Star.

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

EX B

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated , and in his regiment (or corps), the rank of dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number C 4590 Rank Pte

Name Rogers, P. of 5 Cdn Inf Trg Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	In the Field 8 Aug 44	(1) AA Sec 15(1) 90 dys (2) AA Sec 15(1) detr		30 days.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27th day of January 1945 [illegible] R.C.I.R.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

MFM 6
(AFB 122)
40/PAM/136 (3408)

No C.4590 Name Rogers, P. | Sqn. Battery or Company | Corps C.I.C. | Date of enlistment 12 Sept 39 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7/8/40			WOAS. AWL. from 2300 hrs. 2/8/40 to 1400 hrs 6/8/40. (3 days 18 hrs.)	Sgt. Gray	14 days C.B.	7/8/40	Lt. Col Salmon	4 days pay FRI 1490
Field	1/1/41			WOAS. AWL. AASec 15 from 0800 hrs. 1/1/41 to 1500 hrs. 2/1/41 (2 days 7 hrs)	Cpl. Mortezer	7 days C.B.	4/1/41	Maj. Abraham	3 days pay FRI 1490
Field	23/2/41			WOAS. AWL. AASec 15 from 2230 hrs 23/2/41 to 2230 hrs 24/2/41 (1 day)	Sgt. Reed	10 days C.B.	23/2/41	Cpt. Rultan	1 day pay FRI 1490
Field	14/3/41			WOAS. AWL. AASec 15 from 2230 hrs 14/3/41 to 2130 hrs 17/3/41 (2 days 23 hrs)	Sgt. Reed	14 days C.B.	3/3/41	Mjr. Abraham	3 days pay FRI 1490
Field	1/8/41			WOAS. AWL. AASec 15 from 2359 hrs 1/8/41 to 2100 hrs 4/8/41 (2 days 22 hrs)	Sgt. Fitzpatrick	14 days C.B.	5/8/41	Capt. Rultan	3 days pay FRI 1490
Field	16/9/41			WOAS. AWL. AASec 15 Abroad from 2359 hrs 16/9/41 to 2300 hrs. 18/9/41 (3 days 23 hrs)	Cpl. Mooney Cpl. Butterworth	14 days C.B.	24/9/41	Maj. Abraham	3 days pay FRI 1490

(PTO)

Place	Date of offence	Rank	Class of Offender: Corps	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10/11/41			Wand. abt. a.a. Sec 15(1) from 2359 hrs 10/11/41 to 2300 hrs 11/11/41. (23 hrs 1 min)	Pte. Hay. Pte. Anderson	10 days F.P.	13/11/41	Lieut. Graham	2 days Pay 7 Feb 1942
Field	15/5/42			W.O.A.S. a.w.l. a.a. Sec 15(1) from 2300 hrs 15/5/42 to 2150 hrs 16/5/42 (1 day 22 hrs 50 min)	Cpl. B. Cox	14 days C.B.	5/6/42	Capt. Bolton	2 days pay
Field	27/5/42			W.O.A.S. a.w.l. a.a. Sec 15(1) from 2300 hrs 15/5/42 to 1630 hrs 16/5/42 (17 hrs 30 mins)	Cpl. Donnelly Sgt. La Plante	14 days C.B.	17/6/42	Maj. Church	2 days pay
Field	26/6/42			W.O.A.S. a.w.l. a.a. Sec 15(1) from 2359 hrs 27/6/42 to 2000 hrs 4/7/42 (6 days 20 hrs)	Cpl. Keller Pte. Bloom	28 days F.P.	5/7/42	Maj. McKillop	2 days pay
Field	6/2/43			W.O.A.S. a.w.l. a.a. Sec 15(1) from 2359 hrs 26/1/43 to 2215 hrs 27/1/43 (1 day 22 hrs 15 min)	R.S.M. Sargent	2 days pay	29/1/43	Maj. Gray	2 days pay
Field	29/1/43	Pte.		W.O.A.S. a.w.l. a.a. Sec 15(1) from 2200 hrs 29/1/43 to 2300 hrs 31/1/43 (2 days 1 hrs)	C.S.M. Harrison Pte.	2 days C.B. 2 days pay	1/2/43	Capt. Chapin	2 days pay
Field	15/4/43	Pte.		W.O.A.S. a.w.l. a.a. Sec 15(1) from 0500 hrs 29/3/43 to 0130 hrs 30/3/43. (21 hrs 30 mins)	Sgt. Tpr. Lee C.S.M. Farrow	1 day's pay	31/3/43	Lt. Rowe, A.A.	
				W.O.A.S. a.w.l. a.a. Sec 15(1) from 0700 hrs 14/4/43 to 1200 hrs 15/4/43. (5 hrs)	Lt. Abercrombie	2 days pay	19/4/43	A.B. Todd, R.A.F.	

No. C 4570 Name Rogers, P. Sqn. Battery or Company | Corps C I C | Date of enlistment 11/Sept/39 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc

MFM 6 (AFB 122) 40/PAB/136 (3438)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award Re-order (Discharge with trial)	By whom awarded	Remarks
Field	29/3/43	Pte.		W.O.S.L. A.W.L. 0.A. Sec 15 (1) from 0600 hrs. 29/3/43 to 2200 hrs 1/4/43 (3 days 16 hrs.)	Cpl. Mason Cpl. Smith Commentary	Rep. 1 day pay FR1	2/4/43	A.C. Todd, RAOC	Rep. 1 day pay FR1 1/49 (1)
Field	17/4/43	Pte.		W.O.S.L. A.W.L. 0.A. Sec 15 (1) from 2359 hrs 15/4/43 to 1200 hrs 16/4/43 (12 hrs. 1 min.)	Cpl. Hoffman Commentary	3 days pay FR1 1/49 (1)	17/4/43	A.C. Todd, RAOC	Rep. 1 day pay Rep. 1 day pay
Field	25/4/43	Pte.		W.O.S.L. A.W.L. 0.A. Sec 15 (1) from 0600 hrs.		12 days F&P			
Field	6/3/44	Pte.		W.O.S.L. A.W.L. 0.A. Sec 15 (1) from 1500 hrs. 25/4/43 to 2330 hrs 26/4/43 (32 hrs 30 mins)	Cpl. Day	12 days pay 7 days C.B.	27/4/43	A.C. Todd, RAOC	1 day pay FR1 1/49 (1) 7 days pay FR1 1/49 (1)
Field	22/4/44	Pte.		W.O.S.L. A.W.L. 0.A. Sec 15 (1) from 2359 hrs 6/3/44 to 1600 hrs 13/3/44 (6 days 16 hrs 1 min.)	Cpl. Burns Lab. Cpl. Day R.D.	14 days C.B. 28 days pay FR1 1/49 (1)	14/3/44	E. J. Young Lt.	Rep. 1 day pay FR1 1/49 (1)
				W.O.S.L. A.W.L. 0.A. Sec 15 (1) from 2359 hrs 22/4/44 to 2200 hrs 25/4/44. (2 days 22 hours 1 min.)	R.A.P.I. Sanders R.W.	1 days C.B. 21 days pay FR1 1/49 (1)	26/4/44	E. J. Young Lt.	Rep. 1 day pay FR1 1/49 (1) Rep. 1 day pay FR1 1/49 (1)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10 July 44	Pte.		Tried By. F.G.C.M. (1) Sec 15 (1) A.A. A.W.L. (2) Sec 15 (1) A.A. A.W.L. Close Arrest 14 days 4 hrs.	RSM McCallum Gd. Taylor	90 days detention	8 Aug 44	[illegible]	Total fwd 120 days pay
Field	23/12/44	Pte.		A.A. Sec 15 (1) A.W.L. from 0830 hrs hrs 23/12/44 to 2240 hrs. 1/1/45. (9 days 14 hrs 15 mins)	Documentary Lt. Smith Cpl. Monte	28 days F.P. 28 days pay & Rel 149 [illegible]	2/1/45	[illegible]	10 days pay [illegible] Total fwd 28 days pay

Certified true Copy [illegible]

[illegible] Capt

OFFR HAVING CUSTODY OF REGTL BOOKS.

3 CANADIAN INFANTRY TRAINING REGIMENT (C.A.O.) 3D/11

I, No. C4590 (Rank) Pte Rogers P. (Name) ..... 22 January 1945 ..... 194..
wish to have an Officer defend me at my forthcoming trial by Court Martial.

I desire the services of ~~an Officer~~ .....
if he is available.

(Sgd.) P. Rodgers.

LIST OF WITNESSES

In the Case of C4590 Private Rogers P., H&PE Regt, on the strength of No 3 Cdn Inf Trg Regt.

FOR THE PROSECUTION

1.	D82483	Sgt Nelson	A.M.	3 Cdn Inf Trg Regt
2.	F39799	Sgt O'Connell	E.	3 Cdn Inf Trg Regt
3.		Capt E.T. Stewart		3 Cdn Inf Trg Regt.

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

In the case of C4590 Pte Rogers P., H&PE Regt, on the strength of No 3 Cdn Inf Trg Regt.

EXHIBIT "A" - Certified True Extract from No 3 Cdn Inf Trg Regt Part II Daily Order No 4 dated 4 Jan 45.

22 January 1945

This is to acknowledge that I have received, free of charge, the following papers in connection with my forthcoming trial by F.G.C.M.

1 Copy of Charge Sheet
1 Copy of Summary of Evidence
1 List of Witnesses
1 List of Exhibits

P Rodgers
.....
C4590 Pte Rogers P.

282A

Ple S. Rogers
R. R. R

10 / R/344/

Correspondence to be PINNED here.

5-4-1

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this ELEVENTH day of JANUARY, 1941.

Whereas it appears to me, the undersigned, an officer in Command of FOURTH CANADIAN INFANTRY BRIGADE, CANADIAN ARMY, SECOND CANADIAN DIVISION, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*~~[I am unable to appoint~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

*~~(3. Three Officers having more than one year's service.)~~

~~for the following reasons, namely:—]~~

JUDGE ADVOCATE - Lieut. R.C. NEWMAN, R.A., 2 CDN. DIV.

CERTIFIED TRUE COPY OF CONVENING ORDER, CHARGE SHEET AND TRANSCRIPT OF PROCEEDINGS.

W.N. Newman Lieut.
R. C. Newman, Lieut.

President.

Rank.	Name.	Regiment.
Major	B.J.S. MACDONALD	ESSEX SCOT.

Members.

Rank.	Name.	Regiment.
Capt.	G.E. HATCHETT	R.H.L.I.
Lieut.	R.L. HARKS	R. REGT. C.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (G.E. TOPP) Brigadier
Commanding Comd. 4 CDN. INF. BDE.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B.66800, Pte. ROGERS, S. R. REGT. C.	FIRST CHARGE: A.A.Sec. 9 (2) Disobeying a lawful command given by his superior officer. (See Charge sheet attached.)	Not Guilty	NOT GUILTY	
	SECOND CHARGE: A.A. Sec. 8 (1) Striking his superior officer being in the execution of his office.	Guilty	GUILTY	"Confirmed" "H.W.O."
	SENTENCE: To undergo detention for 42 days.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer *(to be recorded on separate sheet if necessary)* — No.

(Signed) "C.B. Topp" (Signed) "B.J. Macdonald," Major
(C.B. Topp) Brigadier *President.*
Commanding 4 CDN. INF. BDE.
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 13th day of January 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn. Sgt. Shorthand writer.

Signed this 13th day of January 19 41.

"B. J. Macdonald," Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 702 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

Signed this 17th day of January 19 41

"H. W. Odlum" Major General, Comd 2 Cdn Div.
Confirming Officer.

Promulgated and extracts taken in the case of B66800 Pte. Rogers, S. 1 R. Regt. C.

(*a*) (Dated) 20 Jan 41 (Signed) "H.O.West" Major, A/Adjt. 1 R Rgt Co.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(43779) Wt. 46113—893 200 6. 1/41 P. St. G. Sec

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this ELEVENTH day of JANUARY, 1941.

Whereas it appears to me, the undersigned, an officer in Command of FOURTH CANADIAN INFANTRY BRIGADE, CANADIAN ARMY, SECOND CANADIAN DIVISION on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

~~*I am unable to appoint:~~

~~*(1 Three Officers to form the Court.)~~

~~*(2 A Field Officer as President.)~~

~~*(3 Three Officers having more than one year's service.)~~

~~(or the following reasons, namely:—)~~

JUDGE ADVOCATE - Lieut. W.C. NEWMAN, H.Q., 2 CDN. DIV.

President.		
Rank.	Name.	Regiment.
Major	B.J.S. MACDONALD	ESSEX SCOT.
~~Capt.~~	*Members.*	
Rank.	Name.	Regiment.
Capt.	G.E. MATCHETT	R.H.L.I.
Lieut.	R.L. MARKS	R. REGT. C.

Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed (C.B. TOPP) Brigadier
Commanding Comd. 4 CDN. INF. BDE.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.66580, Pte. ROGERS, S. R. REGT. C.	FIRST CHARGE: A.A.Sec. 9 (2) Disobeying a lawful command given by his superior officer (See Charge Sheet attached.)	Not Guilty	Not Guilty	
	SECOND CHARGE: A.A. Sec. 8 (1) Striking his superior officer being in the execution of his office.	Guilty	Guilty	Confirmed V.W.O.

Sentence to undergo detention for 42 days

W. C. Newman Lieut. Judge Advocate

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— No.

(*Signed*) C. B. Topp (C.B. TOPP) Brigadier
Commanding 4 CDN. INF. BDE.
Convening Officer (c)

(*Signed*) B. J. Macdonald Major
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 13th day of January, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
✓ ~~*(3. The interpreter)~~
~~*(4. The officers under instruction)~~
were duly sworn. 3. Shorthand writer ✓

* Omit if not applicable.

Signed this 13th day of January 1941.

B. J. Macdonald Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 17 June day of 19

V. V. Odlum
Confirming Officer.
Major General Cmd. 2 Cdn Div.

Promulgated and extracts taken in the case of B66580 Pte Rogers S. 1 R Regt C

(a) (Dated) 22 Jan 41 (Signed) Majest major A/Adj 1 R Regt C

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(11736) Wt. 40173—983 000 1/40 P. St. G. 680

COPY

M.F.M. 6

No. B66580 Name ROGERS S. Sqn., Battery, or Company D Corps R. REGT. C. Date of enlistment 8/9/39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. D.E. CATTO Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dismissing with trial	By whom awarded	Remarks
Aldershot	13/12/40	Pte		PREVIOUS SHEET DESTROYED 8-3-40. A.A. Sec 8(1)Striking a superior officer.	Cpl Finch W.G. " Edgson AJR Pte Seago A. " Barr W. " Cotgreave A.	42 DAYS DETENTION	13 Jan.41	Fd Gen. Court Martial. Sentence confirmed by Maj. Gen. V.W. Odlum Comd. 2 Cdn Div. on 19 Jan.41.	Forfeits 42 days pay whilst undergoing detention, 31 days pay whilst in close arrest.

1 Day Remitted Under Rule 129 Rules for Military Detention Barracks and Military Prisons.

RELEASED FROM THE DETENTION BARRACK ALDERSHOT on 8 - 2 - 1941. SENTENCE HAVING EXPIRED. Remission earned under "Rules for Detention Barracks and Military Prisons"- 15 Days

CERTIFIED TRUE AND CORRECT COPY

[signature] A/Adj

COMMANDANTS INITIALS H.G.

BY LT. COLONEL COMMANDING
[illegible]
THE ROYAL REGIMENT OF CANADA
C.A.S.F.

CHARGE SHEET

The Accused, No. S66680, Private STEVEN ROGERS, 1st Bn. The Royal Regiment of Canada, a soldier of the Canadian Active Service Force, is charged with:-

First Charge (Sec. 9(r) Army Act.

When on Active Service disobeying a lawful command given by his superior officer,

In that he, at Manders Barracks, ALDERSHOT, ENGLAND, on 13 Dec 40, when personally ordered by No. S67030, Cpl. Finch M.G., 1st Bn. The Royal Regiment of Canada, to empty a pail of swill, did not do so, and when again personally ordered by No. S67341, Cpl. Edgson A.J.R., 1st Bn. The Royal Regiment of Canada, C.A.S.F., to empty the pail of swill, again refused to do so.

Second Charge (Sec. 8(1) Army Act.

When on Active Service, striking his superior officer, being in the execution of his office, in that he, at Manders Barracks, ALDERSHOT, ENGLAND, on 13 Dec 40, struck with his fist on the side of the head No. S67341, Cpl. Edgson A.J.R., 1st Bn. The Royal Regiment of Canada, who was at the time in command of the dining room and kitchen fatigue.

C. Hedley Basher.

(C. Hedley Basher),
Lieut-Colonel, Commanding,
1 R.Regt.C., CASF.

Manders Barracks,
Aldershot, England,
20 Dec 40

To be tried by Field General Court Martial

On the field
11 Jan 41.

W. [illegible]
Brigadier
Commanding Fourth Canadian Infantry Brigade.

PROCEEDINGS OF A FIELD GENERAL COURT
MARTIAL HELD AT "ROEDEAN", BRIGHTON
ENGLAND ON THE 13th DAY OF JANUARY 1941

Trial of No. B66580 - Private Rogers, Stephen, R. Regt. C., C.A.S.F.

Prosecutor: - Lieut. L. M. Howell, R. Regt. C.

Defending Officer: - Capt. A. C. Carter

1. The Order Convening the Court is read in the presence of the accused.

2. The accused is asked the following question:
Q Do you object to being tried by the President or any Members of the Court whose names you have heard read over?
A No.

3. The President, Members, Judge-Advocate and Shorthand Writer are duly sworn.

4. (a) The accused answers to his name and number, and is duly arraigned on the charges:
(b) The accused pleads not guilty to the first charge of disobeyance of a lawful command, and guilty to the second charge of striking his superior officer.

5. The accused is asked the question at the foot of page 2 of the A.F.A.3 and his answer "No" is recorded beneath the question.

6. Rule 35 B is complied with in connection with the plea on the second charge.

7. The Prosecutor makes no opening address.

1st Witness for the Prosecution, B67080, Cpl. Finch, W. G., 1st Bn. R. Regt. C., having been first duly sworn is examined by the Prosecutor:

Q 1 Were you present at Mandora Barracks on 13 Dec 40?
A 1 I was, sir.
Q 2 Were you present on a fatigue at that time?
A 2 No, sir.
Q 3 Where were you at the time of the alleged offence?
A 3 In the kitchen.
Q 4 And will you just describe to the Court the events and the order in which they happened?
A 4 I wasn't on the fatigue party at the time I was on permanent duty on the sanitation. To carry on from there, at the time and date stated I was in the kitchen on my own duties and it was informed to me by one of my assistants--
THE JUDGE-ADVOCATE: You can't say what anybody tells you unless it was in the presence of the accused. You can say as to any consequences of what you were told. Was the accused present at the time?
A 5 Yes, sir.
Q 6 It was in his hearing?
A 6 Yes, sir. It was informed to me by my helper that Pte. Rogers refused to empty a swill pail. On doing so I went to Pte. Rogers, which was approximately two steps away and informed him that he must empty that pail immediately. He said to me that he couldn't empty it, that there was no way to empty it. So I said he would have to empty it, I didn't care how he did it, but he would have to do it. And he again refused to do so, saying he would like to see his own Corporal.
BY THE PROSECUTOR:
Q 7 Just explain to the Court what he meant by his own Corporal?
A 7 His own Corporal was Corporal Bigson and he was in charge of a fatigue party to work in the kitchen. He wasn't present at that particular spot at that moment. I told him to go ahead and see his own Corporal but he had to empty the pail. He then turned away and went to see his own Corporal. At the same moment I

saw his Corporal going by and called to him. Provate Rogers went and spoke to him, at the time coming to the place of were I informed him to empty the pail, which was in the washroom part of the kitchen. His Corporal told him in my presence that he must empty that pail. Pte. Rogers then refused to do so, at the same time stating that he had no way to empty it.

Q 8 Who was that Corporal?
A 8 Corporal-- I just can't exactly remember his name, sir.
Q 9 Was it Corporal Edgson?
A 9 That is the name, sir. He started to argue with Cpl. Edgson, so immediately Cpl. Edgson placed him on open arrest.

THE PROSECUTOR: I don't want you to go on in your description of events past the refusal, whatever refusal you were present at.

Q 10 Is it in the normal course of your duties as permanent kitchen Corporal to order people on these fatigues to empty things?
A 10 I am not on a permanent kitchen fatigue. I am on permanent sanitation for the battalion.
Q 11 Is it in the course of your duties on permanent sanitation to do things like this?
A 11 Yes, sir.
Q 12 And did the accused, in your presence, empty the pail, as ordered to do?
A 12 No, sir.
Q 13 At any time, even subsequently. did he empty the pail?
A 13 No, sir.
Q 14 And did you hear Cpl. Edgson order him to empty the pail?
A 14 I did, sir.
Q 15 Was there any specific mention to you of his having to use his hands to empty the pail. I mean run the garbage through his hands?
A 15 No, sir.
Q 16 Was there some other means of emptying the pail without using his hands-- I mean without running swill through his hands. Could he have used a plate?
A 16 There is no other way with a plate, but there is a dozen ways he could have done it.
Q 17 Is it a normal thing for men on kitchen fatigue to do, to empty these pails?
A 17 Yes, sir.

CROSS-EXAMINATION BY THE DEFENCE

Q 18 When you had occasion to speak to Pte. Rogers, after having been informed by one of the members of your squad that he didn't want to sift the swill through his hands, did you say to him "empty the swill buckets," or did you say "you were ordered to empty the swill buckets or swill pails, go ahead and do it," or words to that effect?
A 18 On being informed by one of my squad I ordered Pte. Rogers to empty that pail.
Q 19 Do you remember the exact words you used?
A 19 No, sir. I don't remember the exact words.
Q 20 In other words you are not certain that you said "empty the swill buckets," or "you were ordered to empty the swill buckets"?
A 20 No, sir, I wouldn't.
Q 21 Did you instruct Pte. Cuthgrave to give him the original order to empty the swill buckets?
A 21 My men in my squad, in charge of anything like that they have command of anything in that line.
Q 22 Under whose authority are they placed in charge of privates?
A 22 Myself, sir.
Q 23 You placed this particular man in charge of that room on that day?
A 23 Yes, sir.
Q 24 So it can be inferred then by the fact that you had placed him in that room in that charge that the man in charge had the authority to give that definite order?
A 24 Yes, sir.
Q 25 Was Pte. Rogers aware that Pte. Cuthgrave was temporarily in charge of that room that day?
A 25 I am afraid I can't make the statement, sir.
Q 26 Can it be assumed that Pte. Rogers would be aware that another Pte. could give him an order to him?
A 26 It could be assumed, sir.

RE-EXAMINED BY THE PROSECUTOR

Q 27 Do you remember what you said to Pte. Rogers with regard to this pail of swill?
A 27 Yes, sir.
Q 28 What were your words?
A 28 I said "you go ahead and empty that pail of swill.

BY THE PRESIDENT:
Q 29 From the time that you gave your order to the accused to empty the swill pail until the time that he was placed under arrest for some conduct that subsequently occurred, what would be the lapse of time?
A 29 Close arrest or open arrest?
Q 30 Perhaps it hasn't been fully brought out-- he was placed under arrest--
A 30 On the first charge open arrest.
Q 31 Was he placed under arrest for anything--
A 31 On the first charge he was placed under arrest for refusing to obey an order.
Q 32 Right at that time?
A 32 Yes, sir.
Q 33 And how long after the time you gave him the order was he placed under arrest?
A 33 Approximately five minutes.
Q 34 He was placed under close arrest five minutes after the time you gave the order?
A 34 Open arrest.
Q 35 He continued with his work in the kitchen?
A 35 No, sir.
Q 36 What happened to him?
A 36 He started to argue.
Q 37 And then something else occurred and he was placed under arrest?
A 37 Immediately.
Q 38 And then what happened to him?
A 38 That was the second charge.
Q 39 Was he taken out of the cookhouse somewhere else?
A 39 Excuse me, sir, you have got him on the second charge.
Q 40 Just tell us what happened. What we want to know is what opportunity the accused had to carry out the order you gave him?
A 40 Immediately after he was put on open arrest, Cpl. Edgson, he making a statement to the said Corporal, "that will be the day you can place me on open arrest." His own Cpl. turned around starting to walk away and immediately Pte. Rogers struck him on the left side of the head.
Q 41 Following that was he placed under close arrest?
A 41 Immediately.
Q 42 And he was under close arrest about five minutes after you gave him the original order?
A 42 Yes, sir.

2nd Witness for the Prosecution, B67341, Cpl. Edgson, A.J.R., 1st Bn. The R. Regt. C., having been first duly sworn, is examined by the Prosecutor:

Q 43 What is your name?
A 43 Cpl. Edgson, sir.
Q 44 And your number?
A 44 B67341
Q 45 Were you present at a fatigue on 13 Dec 40 at Mandora Barracks in Aldershot?
A 45 Yes, sir.
Q 46 And was the accused present on that fatigue?
A 46 Yes, sir.
Q 47 And just tell the Court what happened?
A 47 On the day and date stated I was in command of the kitchen and dining room fatigue at Mandora Barracks. Cpl. Finch called my attention to the fact that Pte. Rogers--
Q 48 Was that in Pte. Rogers' hearing?
A 48 Yes, sir.

Q 49 I mean that Pte. Rogers heard everything that Cpl. Finch told you at this time?
A 49 Yes, sir.
Q 50 Carry on?
A He reported to me that Pte. Rogers had refused to carry out an order. I told Pte. Rogers that even though Cpl. Finch was not directly in charge of him he should have carried out the order. I immediately ordered him to carry out the order and he argued about it and I told him unless he carried out this order he would be up for Company office the following morning. He replied to me: "That will be the day when you can bring me up for Company Office." I said to him "if that is the attitude you are taking you are definitely up for Company Office in the morning and in the meantime he turned away from me and that is the last I remember.
Q 51 Do you remember the words you used to Pte. Rogers first; that is with regard to the pail of swill?
A 51 I told him he would have to empty it. I don't remember the exact words I used.
Q 52 That was the substance; he had to empty it?
A 52 Yes, sir.
Q 53 And was that part of the duties of your fatigue, to empty those buckets of swill?
A 53 Yes, sir, on that particular job that he was assigned to that was part of the duties.
Q 54 And did you mention to him any particular way he had to empty it?
A 54 No, I don't think I did. I just said the job had to be done and it was up to him to do it.

CROSS-EXAMINED BY THE DEFENCE

Q 55 Cpl. Egson, how long have you served with the regiment?
A 55 Ever since the start of the war, sir.
Q 56 Have you ever found the accused to be the type of soldier that would refuse to obey an order at any time?
A 56 No, sir. I couldn't understand it at the time and that was the reason I gave him a chance by me turning away and not putting him under arrest at the time. I thought, well, he was probably a little excited or upset about something or other and when he realized the seriousness he would carry out the order and that was the reason I turned away from him, to give him a chance to do it.
Q 57 The Prosecutor has asked you if you remember the words. Did you give him a direct order-- did you use words along these lines: "You have been ordered to empty out the pail of slops or swill and get ahead with it, or if You don't I will know the reason why?"
A 57 As close as I can recollect I told him that he definitely had to do the job, the job that he was told to do and that I wouldn't stand any more arguing about it and he was just to get on with it
Q 58 Did you understand at the time that the order was to empty a bucket of slops or that he was to empty the bucket of slops with his hands?
A 58 The way I understood it he had to drain the water off it and of course he could have used another dish to help empty the slops in the bucket in order to drain it off or use his hands, or which ever way he found most convenient.
Q 59 As I understand it, these swill buckets are pretty heavy?
A 59 Yes, sir.
Q 60 And that normally two men would best empty these buckets, if they were being drained as well as emptied?
A 60 In that particular case the most of the stuff could have been dipped out.
Q 61 Had he the tools to dip it out?
A 61 There are plenty of bashs and pots.
Q 62 No strainers?
A 62 I didn't see any strainers.
Q 63 Have you [illegible] antagonistic

A 63 Well, the only thing I could say in that respect when he came on the job in the morning he seemed to be under the impression that he shouldn't have been on the job, but that someone else should have. But as he had been detailed to me that didn't interest me.
Q 64 What you mean, of course, is that he thought he was doing it out of his turn?
A 64 Yes, sir.
Q 65 Not on the duty roster?
A 65 Yes, sir.

RE-EXAMINATION BY THE PROSECUTION:
Q 66 Was Pte. Rogers detailed to be on this fatigue definitely?
A 66 Yes.
Q 67 Are you Pte. Rogers Section commander?
A 67 No, sir, but I am in the same Platoon.
Q 68 Persuant of that fact did you know he was detailed for the job?
A 68 The Orderly Sergeant told me Pte. Rogers had been detailed, sir.

RE-CROSS-EXAMINATION BY THE DEFENCE
Q 69 Did Pte. Rogers have time to comply with your oders?
A 69 After I gave it to him?
Q 70 Yes?
A 70 Do you mean-- well, of course he didn't have time to comply with it as far as I can remember up to the point. I don't remember any further.
Q 71 You have stated before this Court that Pte. Rogers refused to carry out the Order. Can you tell the Court his words in refusing so to do?
A 71 N o, sir, I don't remember his exact words but the purport of it was that he wasn't going to do that particular job and that is when I ordered him to do it or suffer the consequences.
Q 72 And you still say that you directly ordered him to empty the pail of slops?
A 72 Yes, sir.
Q 73 You didn't say "you were ordered to empty the pail of slops and if you don't I will know the reason why"?
A 73 No, I said he would be up for Company office, in any case in the meantime to get on with the job and do it.

BY THE PRESIDENT:
Q 74 Did you order him to do it immediately or at some future time?
A 74 Immediately.
Q 75 You can't remember whether he said to you "I won't do it," or words to that effect?
A 75 It was words to that effect.
Q 76 You don't remember what the words were?
A 76 No, I am not clear on that point, excepting he definitely refused.

Third Witness for the Prosecution, B67536, Pte. Seago, A., 1st Bn. The R. Regt. C., having been duly sworn, testified as follows:

Q 77 Were you at Mandora Barraks, Aldershot on 13 Dec 40?
A 77 Yes, sir.
Q 78 And were you present there on kitchen fatigue?
A 78 Yes, sir.
Q 79 Just describe to the Court what happened on that fatigue?
A 79 I went in the kitchen, I was in the potatoes but I went in the kitchen to get the potato strainer to strain my potatoes. I heard Cpl. Finch give Pte. Rogers an order to empty a swill pail and I didn't pay much attention to it. I turned around and was coming back with my strainer and I heard Cpl. Finch say to Pte. Rogers, "go and see your Corporal," so Pte. Rogers went to see his Corporal and I just happened to glance over at the steam table--
Q 80 I don't want you to go any further into the events leading up to what subsequently happened to Cpl. Edgson. Did you hear Cpl. Finch give an order?
A 80 I just couldn't understand, it was over the swill pail. He was told he was to empty it.
Q 81 Did you hear Cpl. Finch tell him to empty it?
A 81 I couldn't exactly hear the words of it.

Q.82 What did you hear?
A 82 I heard Pte. Rogers refuse this job.
Q 83 Did you hear Cpl. Finch giving an order to Pte. Rogers?
A 83 It was like "empty the swill pail."
Q 84 Any order for that matter?
A 84 Not an exact order.
Q 85 In other words, you didn't hear what was going on?
A 85 No, sir.
Q 86 Then what happened after that?
A 86 I went back to my work; I happened to look over to this steam table and I seen a whole gang across there and I thought that Cpl. Finch was in a fight or something so I ran across there--
Q 87 Did you hear any conversation at the steam table?
A 87 No, sir. I just heard what had happened.
Q 88 You didn't hear anything yourself?
A 88 No, sir. All I heard was just Cpl. Finch put Pte. Rogers under arrest.

CROSS-EXAMINED BY THE DEFENCE

Q 89 Pte. Seago, you say either that you heard Cpl. Finch give an order to Pte. Rogers or that you heard some kind of an order given to Pte. Rogers?
A 89 Yes, sir.
Q 90 Might it not have been possible that Cpl. Finch didn't actually give him an order when he told him; that he told him to obey an order that somebody else had given him?
A 90 It could have been.

RE-EXAMINATION BY THE PROSECUTION
Q 91 If you state that you didn't hear what was said at the time is that correct?
A 91 Yes, sir.

BY THE JUDGE-ADVOCATE:
Q 92 Tell us exactly, as far as you remember, all that you remember hearing Cpl. Finch tell the accused at this incident on 13 Dec 40 over the swill pail, from the time you went to get this potato strainer?
A 92 I went to get that potato strainer and I just couldn't understand the words Cpl. Finch was giving Pte. Rogers in emptying this swill pail, so I didn't pay much attention, I didn't think it would end up in anything so I got my strainer and went back to work.

4th Witness for the Prosecution, B66807, Pte. Barr, Walter, having been duly sworn, is examined by the Prosecutor as follows:

Q 93 Were you present at Mandora Barracks, Aldershot, on 13 Dec 40?
A 93 I was, sir.
Q 94 And were you on kitchen fatigue on that date?
A 94 I was, sir.
Q 95 Will you just describe to the Court what happened at that time?
A 96 We were on kitchen fatigue in the kitchen and Cpl. Finch ordered Pte. Rogers to empty the swill pail. Pte. Rogers refused to do so so he called Cpl. Edgson. Cpl. Edgson ordered Rogers to empty this swill bucket and he still refused to after being told five or six times to go ahead and do it. He still refused to do it so finally Cpl. Edgson told him if he didn't carry out the order he would be taken to Company Office and Pte. Rogers said something about "that will be the day when you can takeme to Company Office." and just after saying that he turned to walk away and Pte. Rogers hit him on the side of the head.
Q 97 Do you see Pte. Rogers in this room?
A 97 Yes, sir.
Q 98 Pte. Barr, do you remember the words that Cpl. Finch used in his order to Pte. Rogers?
A 98 No, I don't sir.
Q 99 What did you gather from the words he used?
A 99 Well, from what I could make out he wanted him to drain the water off the swill in this bucket.
Q 100 Did it sound like an order to you?
A 100 Yes, it did.

Q 101 And what you are saying is that you don't remember the exact words he used?
A 101 No.
Q 102 And were you present when Cpl. Edgson appeared on the scene?
A 102 Yes.
Q 103 Was Pte. Rogers there?
A 103 Yes, sir.
Q 104 And what did Cpl. Edgson say, if anything, after Cpl. Finch--
A 104 He told Rogers then to carry out his duty.
Q 105 Who do you mean by "he"?
A 105 Cpl. Edgson.
Q 106 Do you remember the words Cpl. Edgson used?
A 106 No, I don't sir.
Q 107 You say there were no facilities there; were there any basins or plates?
A 107 The only thing that was there, sir, was just the buckets. He could have drained it, I suppose by dipping the bucket
Q 108 Could he have got a plate or a basin or a ladle or a dipper of any kind?
A 108 Yes.

BY THE JUDGE-ADVOCATE:
Q 109 Did you hear Cpl. Finch telling Pte. Rogers to go and see his Cpl.?
A 109 No, I didn't, sir.
Q 110 How long did this matter last from the time you heard Cpl. Finch giving his first order to empty the bucket of swill until the time that he spoke to Cpl. Edgson?
A 110 I would say approximately five or six minutes.
Q 111 What took place in that five minutes, as far as you remember?
A 111 The orders were given, sir, and failed to be carried out and there was an argument and Cpl. Edgson was struck and fell to the floor and Pte. Rogers was put under arrest.
Q 112 That alltook place in that five minutes?
A 112 In approximately five minutes.

CROSS-EXAMINATION BY THE DEFENCE:
Q 113 How long did it take in your estimation for Cpl. Edgson to be fetched after Cpl. Finch had finished arguing with the accused? He wasn't in the room at the time, was he?
A 113 I don't think so, sir.
Q 114 He was in the swill room?
A 114 Not exactly.
Q 115 He was outside the door?
A 115 Yes.
Q 116 Would it take any length of time to call him?
A 116 Yes.
Q 117 How long?
A 117 Two or three minutes.
Q 118 So the argument took place in about two minutes?
A 118 Approximately, yes.

THE PROSECUTOR: That is the case for the prosecution.

BY THE PRESIDENT TO THE ACCUSED:
Q 119 Do you apply to give evidence yourself as a witness?
A 119 Yes.
Q 120 Do you intend to call any other witnesses in your defence?
A 120 Yes.
Q 121 Is he a witness as to character only?
A 121 No sir.

The 1st Witness for the Defence, the accused, B66580, Pte. Rogers, S., 1st bn. The R. Regt. Co, having been first duly sworn, testifies as follows:

Q 122 You are Pte. Rogers, are you not?
A 122 Yes, sir.
Q 123 Do you remember the exact words that Cpl. Finch used when he came into the room-- he was called into the room?
A 123 Yes.
Q 124 You are sure of that?
A 124 Yes.
Q 125 Do you remember his exact words?
A 125 Yes, "you were told to empty this swill bucket, if you don't I will know the reason why."
Q 126 You are sure of that?
A 126 Yes.
Q 127 Did you make any reply to that at that time?
Q 128 What did you then?
A 128 I went and finished a job I had in hand.
Q 129 What were you doing at that time?
A 129 Scraping pots.
Q 130 After you had finished scraping pots what did you do?
A 130 I went to get Cpl. Edgson.
Q 131 You went to find him?
A 131 Yes, sir.
Q 132 And when Cpl. Edgson came in you flew off the handle; you lost your temper?
A 132 Yes, sir.
Q 133 And you were immediately placed under close arrest?
A 133 No, sir. Not then.
Q 134 But in a few minutes?
A 134 Yes, sir.
Q 135 Did you have time to comply with the order after you flew off the handle?
A 135 No, sir.

CROSS-EXAMINATION BY THE DEFENCE:

Q 136 Did Cpl. Finch tell you to empty the pail of swill?
A 136 What Cpl. Finch said was that I was told to empty the pail, but he didn't tell me to myself.
Q 137 Did he later tell you to empty the swill?
A 137 No, sir.
Q 138 He didn't, at any time, tell you to empty the swill?
A 138 No, sir.
Q 139 Did Cpl. Edgson tell you at any time to empty the swill?
A 139 No, he just said Cpl. Finch gave me an order to empty it and I had to carry it out.
Q 140 Do you remember what his exact words were?
A 140 "Cpl. Finch gave you the order to empty that pail, now go and do it."
Q 141 Would you consider that an order?
A 141 Not from Cpl. Edgson.
Q 142 He used the words you have just used?
A 142 Cpl. Edgson told me that Cpl. Finch had ordered me to empty the swill pail--
Q 143 And you were to go ahead and do it, are those the words he used?
A 143 Yes.
Q 144 Didn't you consider that an order to empty the swill?
A 144 Unless Cpl. Edgson was speaking for Cpl. Finch.
Q 145 When you were told these words by Cpl. Edgson did you consider that an order to empty the swill, -- "go ahead and do it."?
A 146 I guess so.
Q 147 I want a direct answer?
A 147 Yes.
Q 148 And did you comply with that order?
A 148 No, sir.
Q 149 Why did you not comply with that order?
A 149 Because I asked Cpl. Edgson one question.
Q 150 Was that why you didn't comply with the order?
A 150 I didn't have time.

Q 151 Explain that?
A 151 I was placed under close arrest before I could carry it out.
Q 152 Why were you placed under close arrest?
A 152 For striking Cpl. Edgson.
Q 153 Do you mean to say that you didn't carry out the order and you then struck a Corporal and you were put under close arrest and you say you didn't have time to carry it out?
A 153 No, sir.
Q 154 Would you have had time?
A 154 Yes, because I wouldn't be under arrest then.
Q 155 If you had emptied the pail immediately, instead of arguing would you have had time then to empty it, providing you hadn't done anything further in the way of creating a disturbance?
A 155 No, because it required two men for that pail.
Q 156 Had you ever emptied one of these pails before?
A 156 No, sir.
Q 157 Had you ever been on this job before?
A 157 No, sir.

BY THE PRESIDENT:

Q 158 Why did you go to Cpl. Edgson?
A 158 Because to ask him what my job in the kitchen was.
Q 159 You felt that he was the man you were responsible to, did you?
A 159 Yes, sir.
Q 160 And you went to find out if you had to carry out this order that Cpl. Finch had given you?
A 160 Yes, sir. But he never gave me an order, sir.
Q 161 He didn't give you an order?
A 161 No, sir.
Q 162 But Cpl. Edgson did?
A 162 I hardly call that an order at that time, sir.
Q 163 Well, it wasn't advice, was it?
A 163 No, sir.

2nd Witness for the Defence, B67303, Pte. Cotgreave, Albert, 1st Bn. R. Regt. C., having been duly sworn, is examined by the Defence as follows:

Q 164 Were you on duty in the kitchen of the Royal Regiment at Mandora Barracks on the 13th December 1940, do you remember?
A 164 Yes, sir.
Q 165 Do you remember there was a disturbance there at the time; perhaps that is why you remembered you were there?
A 165 Yes, sir.
Q 166 Did you give an order to Pte. Rogers, the accused here, to do anything?
A 166 I did.
Q 167 What was the order?
A 167 I asked him to drain the water off some swill.
Q 168 You asked him to drain the water from the swill?
A 168 Yes, sir. I asked him.
Q 169 By what authority did you give him this job?
A 169 Well, sir, I am put in charge of the washing room, washing out pans and washing dishes and I am left in charge while the Corporal has left with the other men. I am given charge of the work, though not to order them
Q 170 And you think you have authority by the fact that you are put in a room to order another private?
A 170 I didn't order him, sir, I just asked him to do it.
Q 171 Well, in other words, you considered you were responsible for that room?
A 171 I am sir; I am held responsible.
Q 172 You say your order was that he was to empty the pail of swill?
A 172 Drain the water off.
Q 173 How was he going to drain it?
A 173 Just drain it, sir, and you put your hand over the lip of the container and pour the water off.
Q 174 What is usually in these swill barrels?
A 174 Just bread and meat and stuff off the plates.
Q 175 Any grease?
A 175 Well, no, not an awful lot, the grease is mostly left in the containers that they serve the stuff in.

Q 176 But still there is grease in the pails, normally?
A 176 Yes, there is a certain amount.
Q 177 And you considered it was quite allright to ask a man to lift a swill bucket that is normally lifted by two men, to drain it himself, with his hands?
A 177 No, sir these pails are just small buckets that we carry the tea in.
Q 178 Can one man handle them; lift them and drain them?
A 178 Yes, sir, they would only take about a gallon, sir, at the most.
Q 179 But still he has to drain it with his hands?
A 179 Yes, sir.
Q 180 You say he refused to do that?
A 180 That is correct.
Q 181 What happened then?
A 181 I didn't do anything. I just went to my Corporal-- Corporal Finch and I told him I had asked a man to drain it off and he refused and I let him take on from there.
Q 182 Do you remember the words that Pte. Rogers used when he refused?
A 182 He said he wasn't going to use his hands to drain it off, or he wasn't going to do it.
Q 183 And then you called Cpl. Finch?
A 183 Yes.
Q 184 Cpl. Finch states that he gave an order to Pte. Rogers to carry out what you had told him to do, is that right?
A 184 That is correct, sir.
Q 185 Did he say, do you remember, "empty the pail of swill" or did he say, "you have been told to empty a pail of swill, do what you are told"?
A 185 I couldn't swear to that, sir. I wasn't right there. I left there and let them have it out between them.
Q 186 Youdidn't actually hear what he said, then?
A 186 No.

CROSS-EXAMINED BY THE PROSECUTOR:

Q 187 Which fatigue are you on, the sanitation fatigue?
A 187 Sanitation, sir.
Q 188 And what are the duties of the sanitation fatigue?
A 188 To see that the floors are washed down, clean the tops of the tables and scrub them, see that all the refuse is taken off the tables, see that the washing up room is clean.
Q 189 Is what you ordered Pte. Rogers to do part of what the sanitation fatigue is responsible for?
A 189 It is our job to see that it is done, that the kitchen fatigue are to do it.
Q 190 Did you tell him that he had to use his hands or did you just tell him to do it?
A 190 I didn't tell him what to use; I just asked him to do it.
Q 191 He could have used a plate or anything else?
A 191 He could have used anything, sir.
Q 192 Now, as I understand what you have just said, you don't remember the conversation between Cpl. Finch and Pte. Rogers?
A 192 That is correct.
Q 193 How long did you remain after Cpl. Finch came on the scene?
A 193 I just showed him who refused my request and I saw them talking and I went about my job.
Q 194 You didn't remain with Cpl. Finch?
A 194 No, sir.

RE-EXAMINED BY THE DEFENCE:

Q 195 Was Private Rogers aware that you were supposed to be in charge of the room?
A 195 He did know I was in charge there, because the Corporals told the men in that washroom that I have the responsibility of that room.

At the request of the Defending Officer the Conduct Sheet of the accused is put in prior to the finding.

The Prosecutor: Would the Court accept a certified copy of the Conduct sheet?

The President: Yes.

The Prosecutor is sworn and files M.F.M. 6, Certified true copy of Conduct sheet of accused. The Prosecutor also filed a statement as to Character and Particulars of Service of the accused. Exhibits "D.1" and D.2" respectively.

The Prosecutor: I might also state, sir, that there is no entry whatsoever on Pte. Rogers' conduct sheet and the Conduct Sheet he had previous to this one also bore no entries. As you are aware, sir this was destroyed after six months.

8. The Court is closed for finding.

9. The Court finds the accused not guilty of the 1st charge of disobeying a lawful command

10. The Prosecutor reads the summary of evidence on the second charge to which the accused has pleaded guilty.

11. The accused declines to make any further address to the Court.

12. The Court is closed for sentence.

13. The Court sentences the accused to undergo detention for 42 days.

Dated at Aldershot

this day of January 1941

Lieut.
(W.C.Newman), Judge-Advocate.

LIST OF EXHIBITS
"B" - Medical Certificate
D.1 - Certified Copy of M.F.M. 6.
D.2 - Statement as to Character and Particulars of Service of accused.

THE WITNESS: Yes, I picked up my strainer and went back to work.

THE ACCUSED: Then how could I follow right behind you?

THE WITNESS: You were right behind when I was doing my potatoes and Cpl. Pinch said, "Go and get your Corporal."

THE ACCUSED: Then I did not follow you to the potato room?

THE WITNESS: Yes, you had come down, and I was over there with this other fellow.

(Signed) ..... ?

WITNESS:-

Evidence of Ucd307, Pte. Rahr R.P., 4th Canadian Infantry Brigade, C.A.S.F.,

On the 15 Dec 40 I was attached to "D" Coy, 1st Bn. The Royal Regiment of Canada, C.A.S.F., and was detailed for duty in the kitchen fatigue. At about 1500 hours I was just at the door that goes into the kitchen where the washing machine is, and I heard Cpl. Finch tell Pte. Rogers to empty the swill buckets and Pte. Rogers understood that he had to strain them with his hands and refused to do it, so Cpl. Finch called Cpl. Edgson over and Cpl. Finch told him what he had told Pte. Rogers to do, and Cpl. Edgson ordered Pte. Rogers to do the same thing two or three times. Cpl. Edgson told Pte. Rogers to go ahead, and Pte. Rogers kept talking back, and finally Cpl. Edgson told him that if he did not do as he was told he would be up for coy. office. Pte. Rogers kept on talking, so Cpl. Edgson again told him to be quiet, and Pte. Rogers said, "That will be the day, when you can put me up for office," so Cpl. Edgson told him he was up for office the next morning. Cpl. Edgson then turned to walk away, and as he did so Rogers hit him with his fist, knocking him down, and he fell and hit his head on the warming oven and he was unconscious. Then Cpl. Finch immediately put Pte. Rogers in close arrest.

Capt. KINGSMILL: Do you wish to ask any questions?

THE ACCUSED: Yes, sir. When I was talking back to Cpl. Edgson, do you know what I was saying?

THE WITNESS: You were not using any plain words; you did not use perfect language; it was all muddled up. You were using nothing or anything at all.

THE ACCUSED: What time did this happen?

THE WITNESS: Approximately one o'clock.

(Signed) Pt. W. B. Barr

WITNESS:- Nicol Kingsmill Capt

[illegible] 67080, Cpl. [illegible], "[illegible]" Coy, 1st Bn.
The [illegible] of Canada, [illegible]

On the 13 Dec 40 I was on sanitation duties at the kitchen in Sandore Barracks, Aldershot. At approximately 1005 hrs I was on duty in the kitchen and it was reported that Pte. Rogers had refused to empty a pail, and I immediately proceeded to the accused in the kitchen and ordered him to empty the slop out of the said pail. The accused stated that he would not empty the slop out of the pail with his hands. I said, "I don't care how you empty it, but empty it." He refused to do so at the time, stating it was none of his business, that he was on duty in the kitchen to wash dishes, not to empty slops. I told the accused at that time that he was to do as he was told when engaged on those duties, taking him to one side and trying to explain to him that, being in the army, he had to do whatever he was told to do, and it did not matter what it was. The accused still refused to empty the pail. He turned away and went to find his own Corporal in charge, who was Cpl. Edgson. In my hearing Cpl. Edgson ordered him to empty the pail, Pte. Rogers refusing. Cpl. Edgson then placed him under open arrest, warning him for orderly room the following morning. There was a heated argument, during which Pte. Rogers stated, "That will be the day when you would place me under arrest for coy. office." The statement of Cpl. Edgson was, "You are definitely under arrest and for coy. office tomorrow morning." On Cpl. Edgson turning away from the accused, the accused struck Cpl. Edgson with his right hand on the side of the jaw, knocking him to the ground. In falling, Cpl. Edgson struck his head on the steam table and was knocked unconscious for approximately eight minutes. He was then by my orders taken to the R.O. I immediately placed Pte. Rogers under close arrest with an escort of two privates from the kitchen.

CAPT. [illegible]: Do you wish to ask this witness any questions?

THE ACCUSED: Yes, sir. There was I to empty that slop pail?

THE WITNESS: Any place you could empty it. You were just

1.

[illegible] No 7341, Cpl. [illegible] J.R., "D" Coy, 1st Bn. The Royal Regiment of Canada, C.A.S.F. -

On the 13 Dec 40 I was in charge of the kitchen and dining room fatigues, Kandera Barracks, Aldershot. I do not remember the time now, but Cpl. Finch reported to me that Pte. Rogers had refused to obey an order. Rogers was there at the time. I told Pte. Rogers, Cpl. Finch being a [illegible], the order should have been obeyed, and I ordered Rogers to carry out the order, which was to drain the water from ~~[illegible]~~ the A.E. bucket of A.E. swill, and Pte. Rogers refused to do so, so I told him he would be up for coy. office the following morning. He replied by saying, "That will be the day when you can put me up for coy. office," and I said, "If that is the way you look at it you are definitely up for coy. office tomorrow morning, and in the meantime get on with the job." I turned away, and that is the last I remember until I regained consciousness in the Bn. Hospital.

CAPT. [illegible]: Any questions? THE ACCUSED: No, sir.

(Signed) A. J. R. Edgson Cpl.

[illegible]: R W Ingram Pte

[illegible]

CAPT. [illegible]: You have heard the evidence against you and you have been given an opportunity of cross-examining the witnesses and you may now make a statement or give evidence upon oath.

You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be used in evidence at your trial.

Do you wish to make any statement or to give evidence upon oath?

THE ACCUSED: Yes, sir.

CAPT. KINGSMILL: Do you wish to be sworn on the Bible, or do you prefer to make a statement without being sworn?

THE ACCUSED: I will make a statement without being sworn.

[illegible], 106[illegible], Pte. ROGERS E., "D" Coy, 1st Bn. The Royal Regiment of Canada, C.A.S.F. --

I was detailed for kitchen fatigue on Friday, 15 Dec 40, and was placed in the kitchen, where I had to wash and clean up the pots and pans. I was doing my job all right there until a private who was supposed to be Cpl. Finch's assistant, came up to me and told me I was to drain the water out of the garbage. I asked him what I was going to do it with and he said, "Your hands," and I told him where to get off at. He brought Cpl. Finch over and Cpl. Finch said I would do as I was told and not to argue, and I said my job was to wash pots and clean them out, and I didn't see why I had to do two men's jobs, as the other fellow was not in there, and Cpl. Finch turned away and I kept on doing what I was doing. Then I went over to see if I could find Cpl. Edgson, who was in charge of the kitchen fatigue. Cpl. Edgson came over by the warming counter, and I asked him what my job in the kitchen was and he said it was washing pots and pans and doing any other jobs around there, and I said, "Why do I have to do any job around there when I am the only man in the kitchen from the R.A.D. men there," and he told me not to give any back talk and I told him to answer my question, and he told me to shut up or I would be up for coy. office. After he

said I was for coy. office, I was mad at that time and I hit him. He fell down, but I did not see his head hit the counter.

Witness Pte. S. Rogers

Hyman 196

STATEMENT OF ACCUSED AS TO WHETHER HE DESIRES AN OFFICER TO REPRESENT HIM AT HIS TRIAL.

I hereby request that Capt. A.C. Carter, 1st Bn. The Royal Regiment of Canada, C.A.S.F., be assigned to represent me at my trial by Court Martial.

Pte. L. Rogers

CERTIFICATE

I, NICOL KEVORKIL, hereby certify that Rules of Procedure 4 (c), (d) and (e) have been fully complied with.

Dated this 20th day of December, 1940., at ALDERSHOT, England.

Nicol Kevorkil (Captain),
No. 1 Can Inf Reinforcing Unit Camp.

FINDING:

We, the undersigned members of the Court, find as follows:

1. According to the sworn evidence of Major F.B. WEST, the proceedings concerned were received by the R. REGT. C. where the proper entries were made.

2. The proceedings were prepared for return to H.Q. 4 CDN. INF. BDE. by Major F.B. WEST and according to his evidence were handed to the Sigs. Office for despatch.

3. Owing to Sigs. procedure as laid down in "Signal Training" Vol.5, 1938 further documents relating to the receipt or disposal of the proceedings were NOT available.

4. An examination of the "In" and "Out" Register of H.Q. 4 CDN. INF. BDE. failed to disclose any entries relating to the return of these documents from R. REGT. C. or their submission to 2 CDN. DIV.

5. From the sworn testimony the Court finds that the Proceedings relating to the F.G.C.Ms. referred to in the evidence, had been duly completed insofar as such related to promulgation of the sentences and further that the extracts had been taken and the Army Form A.3 duly signed by Major F.B. WEST as A/Adjutant, R. REGT. C.

D. F. MacRae — PRESIDENT
(D.F. MacRAE) Captain
H.Q. 4 CDN. INF. BDE.

R.C. Bowery — MEMBER
(R.C. BOWERY) Lieut.
R.H.L.I.

R.G. Young — MEMBER
(R.G. YOUNG) Lieut.
R. REGT. C.

ALDERSHOT, Hants.,
2 Mar. 41.

PROCEEDINGS of a Court of Inquiry

assembled at Aldershot, Hants.

on the 2nd day of March, 1941.

by order of Brig. C.B.Topp, D.S.O.,M.C. - Bde.R.O.85 dated 1-3-41.

for the purpose of inquiring into and reporting on the loss of the proceedings of two F.G.C.M. on B.66580 Pte. Rogers, S., and B.66923 Pte. Bulpit, J.O., both of R.Regt.C.

PRESIDENT

D. F. MacRae, Capt. 4 Cdn Inf Bde.

MEMBERS

Lieut. R.G. Young, R.Regt.C.
Lieut. R.C. Bowery, R.H.L.I.

The Court having assembled pursuant to order, proceed to examine the witnesses.

First Witness.
Capt. P.E.R. Wright being duly sworn states:-

"I am the Acting Staff Captain of 4 Cdn.Inf.Bde. in accordance with Bde Routine Order 466 dated 2 Jan 41

When we were in the Brighton area a number of court martials were convened by Bde R.O. 12, F.G.C.M. These duly assembled and two men Pte. Rogers and Pte. Bulpit among others were tried. I prepared the convening order and in company with the J.A.G. supervised completion. Proceedings were duly sent to 2 Cdn. Div. and the findings and the sentence of the Court were confirmed by the G.O.C. as appears in Div. R.O. 101 and 105.

I now produce a letter 2DC-5-4-1 dated 22 Jan 41, and 4 CIB 5-4-1 dated 22 Jan 41, underwhich the proceedings duly confirmed were passed from 2 Cdn.Div. through H.Q. 4 Cdn.Inf.Bde. to R.Regt.C. in the case of Pte. Rogers. I also produce similar correspondence in the case of Pte. Bulpit."

The Court having examined these documents are satisfied that the proceedings mentioned above were received at H.Q. 4 Cdn.Inf.Bde. Exhibit I and II.

The witness continues: "At this time over 10 proceedings of courts martial were handled within the Bde and it was not noticed that these particular proceedings had not been returned until it was brought to my attention by 2 Cdn. Div. on or about 14 Feb 41.

A search was at once commenced and, on the documents not being found here, I referred the matter to the Adj. R.Regt.C. who forwarded a copy of a letter dated 23 Jan 41 returning these proceedings. A most thorough search of all files, the secret boxes and vaults and all records dealing with the receipt and forwarding of mail was then made both by the clerks familiar with the matter and by myself, but no record of the return of these documents were found. In 4 Cdn.Inf.Bde. H.Q. all incoming "A" and "Q" mail is entered in an "A" and "Q" incoming register and no letter dealing with these proceedings appear in that register and I verily believe no such letter was received. Upon these searches being completed efforts were made to find extra copies of the convening order, charge sheets, summaries of evidence, and verbatim proceedings, all of which were secured and have been copied. I am familiar with the state of the proceedings and am in a position to certify that these copies are true copies of the original proceedings."

Second Witness.
Major F.E. West being duly sworn states:-

"I am acting as Adj. 1st Bn. The Royal Regiment of Canada during the absence on command of Capt. G.S.N. Gostling. On 22 Jan 41, proceedings of courts martial on Ptes Bulpit and Rogers were received from H.Q., 4 Cdn.Inf.Bde. I made extracts from these proceedings, the soldiers concerned were paraded at Bn Orderly Room, and I then completed and signed the certificate of promulgation in each case. During this period the proceedings had been handled at all times by myself. When I had signed the certificate I dictated a covering letter which I signed on behalf of the Commanding Officer and the original of which I personally attached to the proceedings. I produce the carbon copy of the covering letter. I then handed the proceedings which I had replaced in the envelope in which they had been received from H.Q. 4 Cdn.Inf.Bde. and handed the envelope to the mailing clerk for addressing and forwarding by D.R.L.S. I produce the correspondence register in which the letter a/m is registered. As the Signal Office is actually a large cupboard off the Orderly Room the envelope was handed directly to the Signal Office by the mailing clerk."

The Court examined the covering letter referred to above, namely 5-4-2 dated 23 Jan 41, and examined the correspondence register in which was found an entry of a letter 5-4-2 dated 23 Jan 41 relating to F.G.C.M. Proceedings on Pte Bulpit and Pte Rogers. According to the register this correspondence was addressed to H.Q. 4 Cdn. Inf. Bde. and was entered as serial No. 6836. Exhibit III.

The witness continues: "On or about 14 Feb 41 I received a telephone call from the Acting Staff Captain, 4 Cdn.Inf.Bde., inquiring as to the whereabouts of the a/m proceedings. I informed him that they had been forwarded on 23 Jan 41, and forwarded a copy of the copy of the covering letter. He then informed me that there was no record of their receipt at 4 Cdn.Inf.Bde. H.Q. whereupon I made a thorough personal search of all files keptby the Bn and in addition had a search conducted of the Orderly Room and of the Signal Office but was unable to find any trace of the documents. As Signal Office records are destroyed in accordance with Signal procedure I am unable to produce a receipt for the docket but I am satisfied that the docket actually left the Bn Orderly Room."

Third Witness.
Lieut. J.E. Gold, 2 Cdn. Div. Sigs. being duly sworn states:

"I am the Acting O.C., J Sec. 2 Div. Sigs. during the absence on a course of Lieut. D.E. Warner."

Question 1. "What is the procedure as regards the destruction of Signal Office Records?"

FINDINGS

We, the undersigned members of the Court, find as follows:

1. According to the sworn evidence of Major F.B. WEST, the proceedings concerned were received by the R. RHQT. C. where the proper entries were made.

2. The proceedings were prepared for return to H.Q. 4 CDN. INF. BDE. by Major F.B. WEST and according to his evidence were handed to the Sigs. Office for despatch.

3. Owing to Sigs. procedure as laid down in "Signal Training" Vol.5, 1938 further documents relating to the receipt or disposal of the proceedings were NOT available.

4. An examination of the "InB and "Out" Register of H.Q. 4 CDN. INF. BDE. failed to disclose any entries relating to the return of these documents from R. RHQT. C. or their submission to 2 CDN. DIV.

5. From the sworn testimony the Court finds that the Proceedings relating to the F.G.C.Ms. referred to in the evidence, had been duly completed insofar as such related to promulgation of the sentences and further that the extracts had been taken and the Army Form A.8 duly signed by Major F.B. WEST as A/Adjutant, R. RHQT. C.

D. F. MacRae — PRESIDENT
(D. F. MACRAE) Captain
H.Q. 4 CDN. INF. BDE.

R.C. Bowery — MEMBER
(R.C. BOWERY) Lieut.
R.H.L.I.

R.G. Young — MEMBER
(R.G. YOUNG) Lieut.
R. RHQT. C.

ALDERSHOT, Hants.,
2 Mar. 41.

PROCEEDINGS of a Court of Inquiry

assembled at Aldershot, Hants.

on the 2nd day of March, 1941.

by order of Brig. C.B. Topp, D.S.O.,M.C. - Bde.R.O.85 dated 1-3-41.

for the purpose of inquiring into and reporting on the loss of the proceedings of two F.G.C.M. on B.66580 Pte. Rogers, S., and B.66923 Pte. Bulpit, J.O., both of R.Regt.C.

PRESIDENT

D. F. MacRae, Capt. 4 Cdn. Inf. Bde.

MEMBERS

Lieut. R.G. Young, R.Regt.C.
Lieut. R.C. Bowery, R.H.L.I.

The Court having assembled pursuant to order, proceed to examine the witnesses.

First Witness.
Capt. P.E.R. Wright being duly sworn states:-

"I am the Acting Staff Captain of 4 Cdn.Inf.Bde. in accordance with Bde Routine Order 466 dated 2 Jan 41.

When we were in the Brighton area a number of court martials were convened by Bde R.O. 12, F.G.C.M. These duly assembled and two men Pte. Rogers and Pte. Bulpit among others were tried. I prepared the convening order and in company with the J.A.G. supervised completion. Proceedings were duly sent to 2 Cdn. Div. and the findings and the sentence of the Court were confirmed by the G.O.C. as appears in Div. R.O. 101 and 105 Jan.

I now produce a letter 2DC-5-4-1 dated 22 Jan 41, and 4 CIB 5-4-1 dated 22 Jan 41, underwhich the proceedings duly confirmed were passed from 2 Cdn.Div. through H.Q. 4 Cdn.Inf.Bde. to R.Regt.C. in the case of Pte. Rogers. I also produce similar correspondence in the case of Pte. Bulpit."

The Court having examined these documents are satisfied that the proceedings mentioned above were received at H.Q. 4 Cdn.Inf.Bde. Exhibit I and II.

The witness continues: "At this time over 10 proceedings of courts martial were handled within the Bde and it was not noticed that these particular proceedings had not been returned until it was brought to my attention by 2 Cdn. Div. on or about 14 Feb 41.

M.F.B. 303
H-Q 1753-39-130

A search was at once commenced and, on the documents not being found here, I referred the matter to the Adj. R.Regt.C. who forwarded a copy of a letter dated 23 Jan 41 returning these proceedings. A most thorough search of all files, the secret boxes and vaults and all records dealing with the receipt and forwarding of mail was thenmade both by the clerks familiar with the matter and by myself, but no record of the return of these documents were found. In 4 Cdn.Inf.Bde. H.Q. all incoming "A" and "Q" mail is entered in an "A" and "Q" incoming register and no letter dealing with these proceedings appear in that register and I verily believe no such letter was received. Upon these searches being completed efforts were made to find extra copies of the convening order, charge sheets, summaries of evidence, and verbatim proceedings, all of which were secured and have been copied. I am familiar with the state of the proceedings and am in a position to certify that these copies are true copies of the original proceedings."

Second Witness.
Major F.B. West being duly sworn states:-

"I am acting as Adj. 1st Bn. The Royal Regiment of Canada during the absence on command of Capt. G.S.N. Gostling. On 22 Jan 41, proceedings of courts martial on Ptes Bulpit and Rogers were received from H.Q., 4 Cdn.Inf.Bde. I made extracts from these proceedings, the soldiers concerned were paraded at Bn Orderly Room, and I then completed and signed the certificate of promulgation in each case. During this period the proceedings had been handled at all times by myself. When I had signed the certificate I dictated a covering letter which I signed on behalf of the Commanding Officer and the original of which I personally attached to the proceedings. I produce the carbon copy of the covering letter. I then handed the proceedings which I had replaced in the envelope in which they had been received from H.Q. 4 Cdn.Inf.Bde, and handed the envelope to the mailing clerk for addressing and forwarding by D.R.L.S. I produce the correspondence register in which the letter a/m is registered. As the Signal Office is actually a large cupboard off the Orderly Room the envelope was handed directly to the Signal Office by the mailing clerk."

The Court examined the covering letter referred to above, namely 5-4-2 dated 23 Jan 41, and examined the correspondence register in which was found an entry of a letter 5-4-2 dated 23 Jan 41 relating to F.G.C.M. Proceedings on Pte Bulpit and Pte Rogers. According to the register this correspondence was addressed to H.Q. 4 Cdn. Inf. Bde. and was entered as serial No. 6836. Exhibit III.

The witness continues: "On or about 14 Feb 41 I received a telephone call from the Acting Staff Captain, 4 Cdn.Inf.Bde., inquiring as to the whereabouts of the a/m proceedings. I informed him that they had been forwarded on 23 Jan 41, and forwarded a copy of the copy of the covering letter. He then informed me that there was no record of their receipt at 4 Cdn.Inf.Bde. H.Q. whereupon I made a thorough personal search of all files keptby the Bn and in addition had a search conducted of the Orderly Room and of the Signal Office but was unable to find any trace of the documents. As Signal Office records are destroyed in accordance with Signal procedure I am unable to produce a receipt for the docket but I am satisfied that the docket actually left the Bn Orderly Room."

Third Witness.
Lieut. J.E. Gold, 2 Cdn. Div. Sigs. being duly sworn states:

"I am the Acting O.C., J Sec. 2 Div. Sigs. during the absence on a course of Lieut. D.B. Warner."

Question 1. "What is the procedure as regards the destruction of Signal Office Records?"

Answer 1. "Signal Office registers, copies of disposed messages, completed D.R. dockets are destroyed by fire when they are 72 hours old in accordance with the procedure laid down in Sig. Training Vol.V, 1938, Chap. VI, Sec. 81(4)."

Question 2. "Is it possible for the Court to obtain from J Sec. 2 Cdn. Div. Sigs. any documents which will show that the Signal Office had received this piece of correspondence or had delivered it to the addressee?"

Answer 2. "No. All records have been destroyed in accordance with a/m regulations."

4 CIB 5-4-1.

H.Q., 4 Cdn.Inf.Bde.
2 March, 1941.

Capt. D.F. MacRae,
President.

Court of Inquiry
Convened by 4 Cdn.Inf.Bde.
Bde Order 85, 1 Mar 41.

1. The matter to be laid before the m/n Court is the loss of the proceedings of two F.G.C.M. on B.66580 Pte. Rogers, S., and B.66922 Pte. Bulpit, J.O., R.Regt.C.

2. The Court will inquire and report into the circumstances surrounding the loss of the said proceedings and will also inquire and report on the state of the proceedings when they were lost.

3. Witnesses from H.Q., 4 Cdn.Inf.Bde., R.Regt.C. and J Sec., 2 Cdn.Div.Sigs. have been warned to attend in accordance with your instructions at 1000 hours, 2 Mar 41.

(P.E.R. Wright) Capt.,
A/S.C., 4 Cdn. Inf. Bde.

4 CIB 5-4-1.

C O P Y

H.Q., 4 CDN. INF. BDE. 22 Jan 41.

EXHIBIT I

O.C.,
R.Regt.C.

F.G.C.M. - B.66580 Pte. ROGERS, S.

1. Returned herewith are Proceedings of the F.G.C.M. which have been confirmed by the General Offr. Comd., 2 Cdn. Div.

2. These proceedings should now be promulgated and extracts taken, and the necessary entries made on folio 53 thereto. When this has been done, the whole is to be returned to this H.Q. for forwarding to 2 Cdn. Div.

(SGD) P.E.R. Wright, Capt.,
A/S.C., 4 Cdn.Inf.Bde.

Certified True Copy
D. Macrae Capt
A.S. Young Lieut
R.C. Bonney Lieut

C O P Y

4 CIB 5-4-1.

H.Q., 4 CDN. INF. BDE.

22 Jan 41.

EXHIBIT II

O.C.,
R.Regt.C.

F.G.C.M. - B.66923 Pte. BULPIT, J.O.

Returned herewith are Proceedings of F.G.C.M. held re the m/n soldier, which have been confirmed by the Div. Comd. These are returned in order that they may be promulgated and extracts taken and the necessary entry made on folio 30. When this has been done the Proceedings should be returned to this H.Q. for record purposes.

(SGD) P.E.R. Wright, Capt.,
A/S.C., 4 Cdn.Inf.Bde.

Certified true copy
[illegible] Capt
[illegible]
R.C. [illegible]

C O P Y

EXHIBIT III

1st Bn., THE ROYAL REGIMENT OF CANADA.
C. A. S. F.

Mandora Barracks,
ALDERSHOT, Hants.
23 Jan 41.

H.Q. - 4 Cdn. Inf. Bde.

F.G.C.M. - B.66923 Pte. BULPIT, C.O.
B.66580 Pte. ROGERS, S.

Reference your letters 4 CIB 5-4-1 dated 22 Jan 41, the Proceedings of the F.G.C.M. are returned herewith completed, please.

F. B. West Major

(SGD) G.Hedley Basher,
Lieut-Colonel, Commanding,
1st Battalion,
The Royal Regiment of Canada,
C.A.S.F.

Certified True Copy
D J Mackee Capt
K. Jones Lieut
C C Barney Lt.

Answer 1. "Signal Office registers, copies of disposed messages, completed D.R. dockets are destroyed by fire when they are 72 hours old in accordance with the procedure laid down in Sig. Training Vol.V, 1938, Chap. VI, Sec. 81(4)."

Question 2. "Is it possible for the Court to obtain from J Sec. 2 Cdn. Div. Sigs. any documents which will show that the Signal Office had received this piece of correspondence or had delivered it to the addressee?"

Answer 2. "No. All records have been destroyed in accordance with a/m regulations."

4 CIB 5-4-1.

H.Q., 4 Cdn.Inf.Bde.
2 March, 1941.

Capt. D.F. MacRae,
President.

Court of Inquiry
Convened by 4 Cdn.Inf.Bde.
Bde Order 85, 1 Mar 41.

1. The matter to be laid before the s/n Court is the loss of the proceedings of two F.G.C.M. on B.66580 Pte. Rogers, S., and B.66923 Pte. Bulpit, J.O., R.Regt.C.

2. The Court will inquire and report into the circumstances surrounding the loss of the said proceedings and will also inquire and report on the state of the proceedings when they were lost.

3. Witnesses from H.Q., 4 Cdn.Inf.Bde., R.Regt.C. and J Sec., 2 Cdn.Div.Sigs. have been warned to attend in accordance with your instructions at 1000 hours, 2 Mar 41.

(P.E.R. Wright) Capt.,
A/S.C., 4 Cdn. Inf. Bde.

4 CIB 5-4-1.

COPY

H.Q., 4 CDN. INF. BDE. 22 Jan 41.

EXHIBIT I

O.C.,
R.Regt.C.

F.G.C.M. - B.66580 Pte. ROGERS, S.

1. Returned herewith are Proceedings of the F.G.C.M. which have been confirmed by the General Offr. Comd., 2 Cdn. Div.

2. These proceedings should now be promulgated and extracts taken, and the necessary entries made on folio 53 thereto. When this has been done, the whole is to be returned to this H.Q. for forwarding to 2 Cdn. Div.

(SGD) P.E.R. Wright, Capt.,
A/S.C., 4 Cdn.Inf.Bde.

Certified true Copy
[illegible]
[illegible]
[illegible]

COPY

4 CIB 5-4-1.

EXHIBIT II

H.Q., 4 CDN. INF. BDE.

22 Jan 41.

O.C.,
R.Regt.C.

F.G.C.M. - B.66923 Pte. BULPIT, J.C.

Returned herewith are Proceedings of F.G.C.M. held re the m/n soldier, which have been confirmed by the Div. Comd. These are returned in order that they may be promulgated and extracts taken and the necessary entry made on folio 30. When this has been done the Proceedings should be returned to this H.Q. for record purposes.

(SGD) P.E.R. Wright, Capt.,
A/S.C., 4 Cdn.Inf.Bde.

Certified true Copy

COPY

EXHIBIT III

1st Bn., THE ROYAL REGIMENT OF CANADA.
C. A. S. F.

Mandora Barracks,
ALDERSHOT, Hants.
23 Jan 41.

H.Q. - 4 Cdn. Inf. Bde.

F.G.C.M. - B.66923 Pte. BULPIT, J.C.
B.66580 Pte. ROGERS, S.

Reference your letters 4 CIB 5-4-1 dated 22 Jan 41, the Proceedings of the F.G.C.M. are returned herewith completed, please.

F. B. West Major

(SGD) for G.Hedley Basher,
Lieut-Colonel, Commanding,
1st Battalion,
The Royal Regiment of Canada,
C.A.S.F.

Certified True Copy

34 - 34.

Mc. Rogers, S.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-139153 Pte Stanley ROGERS R H R att 1 Cdn Disciplinary Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15.01.	Guilty.	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo 90 days detention.

(Sgd) ..... Judge-Advocate, if any. 31 Mar 45 Date awarded. (Sgd) George R Cox President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date 2 APR 45 Commanding (G S N Gostling) Brig 2 CDN BASE RPT GP Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B139153 Pte Rogers, S.	6 Apl 45	Lt-Col. Comdg, 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

B139153 Pte Rogers, S. CR #15 10-8 6/Apr/45

RECORDED AT CMHQ IN AB 160 514-3-4

CFA 88 (To face of cover) 40-P-30-(1)-1008 (43-0230)

FIELD GENERAL COURT-MARTIAL 4/38B

Convened by Order of Lt-Col J Runcie, MC A/Comd 2 CBRG dated 30 Mar 45.

REC'D 15 MAY 1945 JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

(a) Prmnt R.	(b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
B-139153	Pte	Stanley	ROGERS	R H R att 1 Cdn Disciplinary Centre

PROCEEDINGS REVIEWED

L J Rudy Capt

16 MAY 45. REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 31 Mar ~~Apr~~ 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1420 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ..... as interpreter? Ans .....

~~The Interpreter is sworn.(1) Do you object to~~ ..... as shorthand writer? Ans .....

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G B H COX	CAC att 1 Cdn Disciplinary Centre
Member	Major	A. E. LeSueur Stafft Hqrs	att 1 Cdn Dis Centre
Member	Captain	J. D. Hallowell	att 1 Cdn Dis Centre
Judge-Advocate			
Prosecutor	Captain	J. H. Labrie - Rde Maisonneuve	att 1 Cdn Dis Centre
Defending Offr	Captain	N. D. Bowler R.R.R.	att 1 Cdn Dis Centre

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused B-139153 Pte Stanley ROGERS before arraignment make(s) (no) ~~(et)~~ plea

.....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG W/D P 150.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused at Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *attendance and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or ~~JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on ..... charge(s).~~ Part I of the Schedule is ~~amended~~ accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 93(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114; *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* 405. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 45(*A*) *fn* 1; 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*d*). *RP* 45, 120(4). 2. *AA* 54(3). *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form* B *or* C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans ..... No
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46; *KR Con* 550. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes, in contention of punishment as is laid(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(5). *RP* 120(4).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Exhibit F

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined B/39128 (No.)

Pte (Rank) Reeves S (Name) and in my opinion he is

fit to undergo trial by Court-Martial.

Station 1 Cdn Disciplinary Centre

Date 31 Mar 45

(Sgd) (Medical Officer)

Unit 1 Cdn Disciplinary Centre

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-139153	Pte		Stanley	ROGERS	R H R att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 30 Mar 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial ~~; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G B H COX	CAC att 1 Cdn Disciplinary Centre

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	A E LEFROY	Seaforth Highrs att 1 Cdn Disciplinary Centre
Capt	J D POLLOCK	Can Fus att 1 Cdn Disciplinary Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally. RP 105 fn 2.) (J Runcie) Lt-Col (Rank.)

Date 30 Mar 45

A/Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(H)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:
First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. *(or, None.)*
Re-exam: None.
Exam by Court: He said—"I've had enough parades".
RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far* as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:
(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 565(a).*)
(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.
2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:
(i) Charge Sheet. *(On top.)*
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). *(KR Can 557.)*
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)
(vi) Summary of Evidence, if not already an exhibit.
3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)
4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

C H A R G E S H E E T

The accused, B-139153 Pte Stanley ROGERS, 1st Bn The Black Watch RHR of Canada, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 0700 hrs 2 Mar 45 until surrendering himself at GHENT, Belgium at 2230 hrs 15 Mar 45.

(Total Absence: 13 days 15 hrs 30 minutes)

In the Field
29 Mar 45

(A O Hood) Lt col
Commanding
1 Cdn Disc Centre

To be tried by Field General Court-Martial

In the Field
30 Mar 45

(G S H Gostling) Brig
A/ Comd
2 Cdn Base Rft Gp

Exhibit 'D' Offce

Plea in Mitigation

B139153 Pte ROGERS S.

The accused is 21 yrs of age, enlisted 19 Jan 43 at 18 and arrived overseas in Aug 1943. He went into action 10 Aug 44, was wounded 8 Sep 44 and returned to the line 25 Jan 45 where he has been serving ever since.

The accused, who has had no passes since April 44, went absent from his Unit in the rest area, and, being under the impression that his Unit would return to action in approximately two weeks, surrendered himself on the 13th day.

I ask that the Court consider this man's excellent record and show leniency when determining sentence.

W Bowler Capt

Defending Officer

Exhibit 'A' Case

Summary of Evidence in the case of B-139153 Pte ROGERS S, 1st Bn The Black Watch RHR of Can, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Absenced without leave.

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 22 dated 27 Mar 45.

Exhibit "B" - Certificate of surrender dated 16 Mar 45.

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

Maurice Rousseau Capt

(Maurice Rousseau) Capt.
Officer detailed to take Summary of Evidence.

Dated in the Field
29 Mar 45.

Exhibit 'A'
M Rousseau Capt

PART II ORDER EXTRACT FORM

TO: Officer Commanding
1 Cdn Discp Centre
Cdn Army O/s.

99/20/ BW/1a5c

27 MAR 45 19

EXTRACTS FROM: UNIT 1st Bn The Black Watch RHR of Can

Part II Order No. 22 dated 27 MAR 45

ABSENT WITHOUT LEAVE

(a)

AWL from 0700 hrs 2 MAR 45 Still absent 0700 hrs 10 MAR 45
(8th day)
B139153 Pte ROGERS S

Certified to be a true extract from the regimental books and documents in my custody.

Officer IC Records
Cdn. Sec. 2 Ech. HQ. 21 A Gp.

The following documents are { attached. Please acknowledge receipt on attached duplicate
required. Please forward same.

Originating Clerk's Initials

for
Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70 ECH—6
67/P & S/1276 (6704)

Exhibit 'B'

M. Rousseau Capt

CERTIFICATE OF SURRENDER UNDER ARMY ACT
SECTION 16(1)(a)

I, Capt. E. Vernon, certify that No. 8139153 Rank Pte.

Name ROGERS, S. of (Unit) 'D' Coy. 1st Black Patch

surrender is himself to No. 14358003 Rank L/Cpl. Name J. Allan

of the Corps of Military Police at GHENT at 2230 hrs on the

15th March 1945 as a deserter (or absentee with leave. He was

dressed in uniform.

xxxxxxxxxxxxx

Signature [signature] Capt.
(E. Vernon) Commanding,
243 Hld. Provost Coy. C.M.Police

Date 16th March 1945

NOTES

1. If the surrender was made to an OR, this certificate MUST be signed personally by HIS Commanding Officer.
2. If the surrender was made to an officer, this certificate may be signed either by that officer or by HIS Commanding Officer.
3. In no circumstances may it be signed by one officer "for" another, or by anyone who does not hold commissioned rank.
4. In no circumstances should the place of surrender be described as "in the Field". The actual place of surrender should be stated, or if difficulty is to be experienced in describing the place, the map reference should be given.

Exhibit B Case

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
B139153	Pte	ROGERS S	Black Watch of C

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL 15(1) 1 2 times.

For 40 cond to the prej etc 2 2 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 3 Feb 44

Date of last entry in Field Conduct Sheet 26 May 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for NIL beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for NO days in civil custody; and for 15 days in military custody, i.e., NO days in open arrest, 15 days in close arrest; of which NO days were spent in hospital.

5. The present age of the accused is 21 years 2 months old

6. The date of his attestation ~~calling up for military service~~ is 19th January 1943

7. The service which the accused is allowed to reckon is .....

‡State the military decorations (if any) held by accused.

8. The accused is in possession of‡ C.V.S.M. with Clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

		Date of Promotion.
In the substantive rank of	//////	
In the war substantive rank of	//////	
In the acting rank of	//////	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through*

(27833) Wt.24939/3404 24,000 7/44 A.& E.W.Ltd. Gp.498 Forms/B.296(War)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		No record of convictions on MFM 1	by Court-Martial	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ~~27th~~ 31st day of March 1955

[illegible signature]

Exhibit C

MFM 6 (AFB 122) 40/P&S/156 (3438)

No B139153 Name ROGERS S | Sqn, Battery, or Company | Corps C1C | Date of enlistment 19Jan43 | GC Badges | Service or Proficiency Pay 1.50

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Fd		Pte		AA 15 (1) AWL 7 hrs		5 dys forf pay	3Feb44		
"		"		AA 40 cond to the prej etc		6 dys forf pay	20Apr44		
"		"		AA 40 cond to the prej etc		14 dys forf pay	12May44		
"		"		AA 15(1) AWL 23 hrs		14 days Fr & forf 14 days pay	26 May44		

Duplicate created from MFM 4 27 Mar 45 Record of conduct in Canada not available prior to TOS Cdn Army Overseas 25 Aug 43.

"Fenelon" Officer ic Records C Cdn Sec 2 Ech HQ 21 A Gp

Certified true copy of MFM 6 in my possession [signature]

(PTO)

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

Certified true copy of Extract from Pt 11 Order No 22 dated 27 Mar 45 "A"

Certificate of surrender dated 16 Mar 45 "B"

I, B-139153 Pte Rogers S, acknowledge having received one copy of the Summary of Evidence and one copy of the Charge Sheet, free of charge on 29 Mar 45.

B-139153 Pte Rogers S

0000-147

PTE ROGERS T.A

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-136571 Pte. Rogers, T. A. 1 Bn. Black Watch

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd	Not Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~Skkkd~~ present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: to suffer Field Punishment for twenty-one (21) days and to ~~forfeit~~ forfeit all ordinary pay for a period of twenty-one (21) days

(Sgd) Donald MacDougall, Judge-Advocate, if any. 12 June 44, Date awarded. (Sgd) H. Massue, President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. Alt[illegible] ~~Sgd~~ Court.

My decision on the finding(s) and sentence set forth in Part II is: I do not confirm the finding on the first charge: I confirm the finding of the Court on the second charge and confirm the sentence but remit fourteen days field punishment and forfeiture of all ordinary pay

I direct that the accused be not committed to prison or detention barracks, until further order.(1) in fourteen days.

Date 14 Jun 44 (Sgd) Campbell Shantz, Commanding 1 Can Inf Bde, Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B136571 Pte Rogers T.A.	14 Jun 44	Campbell Shantz Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORD AT CMHQ IN AB 160. 800-147

FIELD GENERAL COURT-MARTIAL

CFAMR (In lieu of AFAF) [illegible] (2004)

Convened by Order of Brigadier W. J. Megill, Comd 2 Can Inf Bde dated 11 Jun 44

RECEIVED 23 JUN 1944 JAG BRANCH G.H.Q.

PROCEEDINGS REVIEWED Date 21 Army Gp Cdn. Sec. G.H.Q. J.A.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 338.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B136571	Pte.	THOMAS ARTHUR	ROGERS	Black Watch

PROCEEDINGS REVIEWED

Capt

23rd June 1944.

REVIEWING OFFICER, JAG BRANCH G.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date(s)) 12 Jun 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RoA. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1445 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans .....~~

The Interpreter is sworn.(1) Do you object to ~~Skkkd~~ as shorthand writer? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 35, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col.	H. Massue	R de Mais
Member	Capt.	J.P.G. Kemp	R.H.C.
Member	Lt.	I.J. Coady	Calg. Highrs
Judge-Advocate	Capt.	D.K. MacDougall	HQ 2 Can Div.
Prosecutor	Lt.	A.R.W. Robinson	R.H.C.
Defending Offr	Lt.	T.K. Donovan	R.H.C.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~no~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D 5

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

* See p. 1 attached.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ~~4~~ 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans ..... (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(A) fn 4 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if change is not changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No Sir.(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1) Waives
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans On oath. Do you intend to call witnesses on your behalf? Ans Yes Sir. Are they witnesses as to character only? Ans No
(1. *RP 110.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces ~~the finding(s), if any, of Not Guilty~~, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (d), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans No Sir
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes Sir. I am Reg. Offr.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 20/6/61
(1. *When several accused tried separately see RP 76(B). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

THE ACCUSED ELECTED TRIAL BY COURT MARTIAL

CHARGE SHEET

The accused B-136571 Private Thomas Arthur ROGERS, 1st Bn The Black Watch (RHR) of Canada, a soldier of the Canadian Army Overseas, on Active Service, is charged with:

FIRST CHARGE
Sec. 40
Army Act.

Conduct to the prejudice of good order and military discipline,

in that he,

"In the Field" at 1600 hrs 8 Jun 44 did appear on parade with a dirty rifle.

SECOND CHARGE
Sec 40.
Army Act

Conduct to the prejudice of good order and military discipline,

in that he,

"In the Field" at 1600 hrs 8 Jun 44, while on parade was fighting and fooling.

S. S. T Cantlie
Lt.-Col.
Officer Commanding,
1st Bn The Black Watch
(RHR) of Canada.

In the Field
9 Jun 44.

To be tried by F.G.C.M.

President

COMD. 5 CDN. INF. BDE.

JUN 11 1944

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D136571	Pte	Thomas Arthur	ROGERS	R H C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 11 Jun 44 endorsed by me, "To be tried by GR offr or any court so ~~or~~ ~~not~~." To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereof the Offr mentioned hereunder.~~

(RP 106(E). Delete if none appointed.)

5. I also appoint as Judge Advocate thereof the Offr mentioned hereunder.

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	H Massue	R de Mais

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J P G Kemp	R H C
Lieut	C W McCaw	R H C

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	To be appointed by OC Calg Highrs	Calg Highrs

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	E.F. McDougall	HQ 2 Cdn Inf Div

On Active Service in the Fd

in U.K.
(Country.)

(Signed personally. RP 105 fn 2.)

Brigadier
(Rank.)

Date 11 Jun 44

Commanding (F.O. 14/6/44) Brigadier
Comd 5 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Prevent

MEDICAL OFFICER'S CERTIFICATE
K.R. (Can) Para 557

I certify that I have this morning examined No. B136571 pte Rogers T.A. of 1 R.H.C. and in my opinion he is fit/[redacted] to undergo trial by Court/Martial.

Station Field

Date 12 June 44

R. F. Ohlke Capt.
Medical Officer

(1)

I object to Lt. C.W. McCaw sitting as a member of this Court. I have no other objections. I object for personal reasons

The Court is closed to consider the objection
The Court allow the objection
Court is reopened & decision made known to the Accused

The Court is now as follows

Pres Maj. H. Marcus. R de Pass

Mems Capt. J.P.S. Kemp R.H.C.
Lt. I.J. Coady Calg. Highrs

J.A. Capt. S.K. MacDonald HQ 2 Cdn Div

1 Pros. Wit. Lt. W. A. Magill 1 Bn. Black Watch duly sworn, is examined.

I am Cmdr 14 Pln. C. Coy. Acc. whom I recognize is a member of my Pln. On 8 June 44, at 1600 hours C Coy was formed up for parade. Pte. Rogers was there. I noticed some fooling & heard Cpl. Gale call out to stop it. The fooling was between Ptes. Dupont & Robinson. It then developed into a fight during which Acc's rifle was knocked from his hand & it struck the ground. Gale then stepped between Acc & Dupont. I ordered Gale to place them both on charge. I called Pln. to attention & inspected weapons. Pte. Rogers rifle – the nosecap was partly covered with dust & grit part of which had entered the muzzle.

This was a Coy parade. Rifle was being held halfway between half port & on guard. Ought to have been at stand easy. Acc. had been warned to take proper care of weapons

Cross Ex – Fooling only between these two at the time. Another man was fooling. Whole Coy was on parade. They were standing easy. There was only dust on the muzzle cap. The dust and grit was the direct result of striking the ground

No Re Ex Court – The two were jostling about. They had broken from their ranks. The Coy was formed up in three ranks at the time. I did not see the C.S.M. Cpl. Gale was senior NCO on parade. The rifle is in Coy. liner. I saw it the next day and it had been cleaned. Cpl. Gale saw the rifle too.

2 Pros Ust. D83063 Cpl. Gale, G.M. 1 Bn
Black Watch, sworn is examined -
On 8 June about 1600 hrs the Pln was on weapon inspection parade. We were standing easy when some fooling occurred in the ranks. Ptes Dupont and Reardon were fooling. There were out of their place in the ranks. I said to cut it out. It stopped some few minutes later I heard scuffling & I saw Acc & Dupont scuffling together. I walked over to stop it & Dupont knocked rifle of Acc. to the ground. I stepped between them & told them to get back to their places. Acc picked up rifle and returned to did Dupont. Later Pte Magill found the rifle of the Acc dirty & said for me to charge Acc I did so. All could hear me tell them to stop fooling. I had to go over to stop it. Both had broken ranks by their fooling and scuffling. The outside of the rifle was dirty. I dont know if it had been properly cleaned before coming on parade.

Cross Ex We had been fallen in & were standing easy. I yelled out to them to keep quiet

No Re Ex The dust from the road made the rifle dirty.

Defence.

Acc. duly sworn is examined:-

On 8 June 1600 hrs we were standing easy. There was fooling going on in the ranks between Dupont & Reardon. It was a sort of flat foot floogie between Reardon & Dupont. I was talking to Pte. Boudreau. My rifle was slung on my right shoulder. Dupont had been stepping on my toes. He did it again so I gave him a push. Dupont must have been off balance as he fell against the other members of the section. Dupont grabbed me by the shoulder & we started wrestling. I stepped clear of the ranks. In getting away the rifle slipped to the ground. I asked Dupont what he was doing. He said he was fooling and at that time Cpl. Gale appeared on the scene. Lt. Magill ordered Cpl. to put me on charge when he saw the rifle. I did not hear Gale give a preparatory order. I had cleaned my rifle before going on parade.

Cross Ex - N.1
Court - The rifle was dirty when it was inspected.

Gnd Def Nit. D140010 Dupont D.D.D. R.H.C. sworn is examined:-

Before parade on 8 June I saw Acc. clean his rifle. Reardon & I were fooling. I stepped on R's toe. I happened to step on it later and he gave me a push. I stumbled over my Bren & got up & pushed him back. By doing this I caused him to drop his rifle. Then Cpl. Gale appeared.

Cross Ex I didnt hear Gale give a prior order to stop fooling. We had come out of billets. No roll call had been taken. We were standing easy at the time. We shouldnt have been fooling. I was in the wrong

CT — Nil

3rd Def. Wit. DC 48700 Boudreau, L.D. RHC. sworn is examined

On 8 June before inspection I was talking to Rogers. Dupont stepped on his foot twice. The 2nd time he pushed Dupont who stumbled over his Bren.

No Cross-Ex

J-A Sums Up

Charges are entirely matters of fact. Must decide if facts proved constitute Conduct to the Prejudice etc. Such conduct must be prejudicial to both good order and military discipline

Little else J A can say in case of this kind. Acc innocent till contrary proved beyond reasonable doubt.

Any question of credibility of witnesses to be decided by Court members

Any questions from Pros. Def or Court.

No questions.

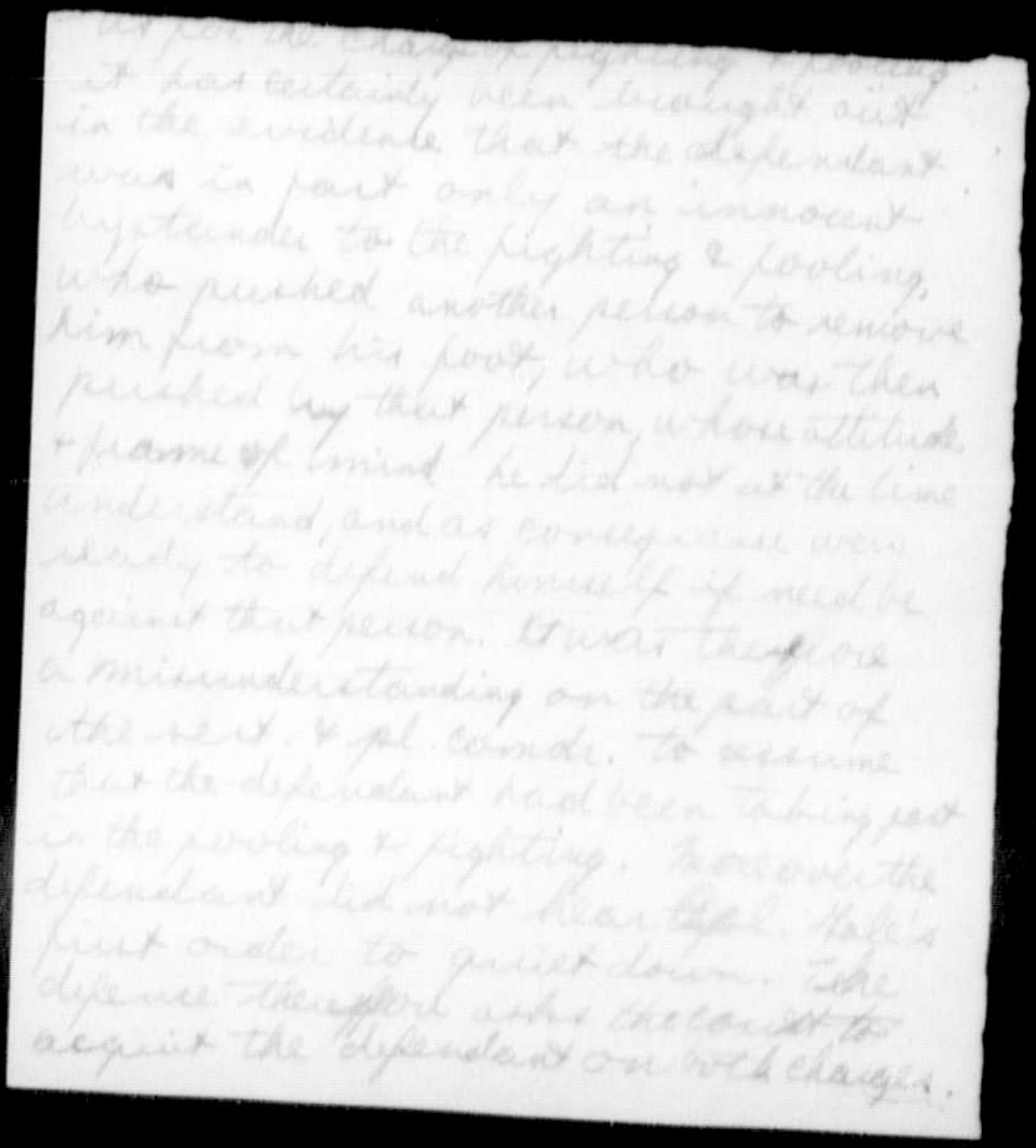
Fifthly: the defence intends to make clear to the court, although this part has no direct bearing on the case, that the defendant was elected trial by court-martial on charges which are obviously not of a nature to warrant court-martial, not through any desire whatever on his part to appear malicious or "smart", nor to embarrass his superior officers by trying to "beat a rap" as it were, but solely & simply because he sincerely believes that through misunderstanding & lack of proper investigation on the part of those who laid the charges he has been accused of crimes of which he is completely innocent, and for which purpose, in justice to himself, he cannot [illegible]

[illegible]
to discipline the section, and as a consequence
was unjustly accused of the offence.

T. H. Sorrance Pt.

[illegible]
President

On the charge of a dirty rifle the prosecution is certainly in some doubt as to whether the rifle had been properly cleaned prior to the accused's coming on parade whereas the defence has provently witnesses that it certainly had. The dust and dust on the muzzle cap was therefore certainly caused ~~the~~ by the rifle's fall; that not unlikely ~~which~~ as brought out in the evidence on the next charge, could not possibly be avoided ~~firstly~~ because the rifle fell through no fault of the defendant; ~~and secondly~~ even if the fault had been the defendant's the charge of a dirty rifle could not be admitted since ~~it certainly is in the~~ admission ~~fact~~ that it fell muzzle down on a very dusty road, and since that fact is included in the second charge of fooling & fighting, ~~and is, in fact, a part of that charge.~~ the right



Closing address by the prosecutor -

The Case is actually very straight forward it has been proven that the accused was on a Coy parade and should have been standing easy - it has been proved that the accused had broken ranks and was fooling and fighting, it has also been proved and admitted by the accused that his Rifle was dirty when inspected by the Pl. Command - these facts proove the charges as laid against the accused -

A. Rex Robinson Lt.
Prosecutor

[illegible]
President

Mitigation

Acc. didn't elect for trial to be smart.
Task for leaseness of Court.

The accused, B-136571 Pte Rogers, T.A., States:

"I wish ~~an~~ Defending Officer".

"I desire the services of Lieut. T.K. Dorrance, if he is available."

In the Field
9 Jun 44.

T.A. Rogers Pte.
B-136571
1st Bn The Black Watch
(RHR) of Canada.

T.K. Dorrance Lieut.
Dist Bn The Black Watch
(RHR) of Canada

SUMMARY OF EVIDENCE

Summary of Evidence in the case of number B-136571 Private Thomas Arthur ROGERS, 1st Bn The Black Watch (RHR) of Canada , a soldier of the Canadian Army Overseas, on Active Service.

Charges: AA Sec 40. Conduct to the prejudice of good order and military discipline.
AA Sec 40. Conduct to the prejudice of good order and military discipline.

The accused is informed of his rights

The C.O. directs that the evidence be taken on oath.

FIRST WITNESS for the Prosecution: Lieut. W.A. Magill, 1st Bn The Black Watch (RHR) of Canada, sworn states:

I am Lieut W.A. Magill, 14 Pl Commander, "C" Coy, Pte Norman Arthur ROGERS, whom I recognize is a member of my platoon. On 8 Jun 44 at [redacted] having been duly warned, "C" Coy was formed up at the appointed place, the accused was present on parade. I noticed that there was some fooling about about going on between the accused and Pte Dupont D.D.D. I heard Cpl Gale call out to them to quieten down, at that time they did not quieten down - a few seconds later the fooling developed into a fight, during the course of which the rifle belonging to the accused was knocked to the ground, the rifle struck the ground forceably nose cap and and muzzle foremost, Cpl Gale at that time intervened by placing himself between the accused and Pte Dupont, I then ordered Cpl Gale to place both the accused and Pte. Dupont on charge - I then called the platoon to attention and proceeded to inspect the weapons - on inspection of the rifle belonging to the accused I found that the nose cap was partially covered with dust and grit, had entered the muzzle of the rifle, I then ordered Cpl Gale to put Pte Rogers on charge for dirty rifle.

Question by officer detailed to take summary:

Q. In your opinion had the rifle been properly cleaned before the accused came on parade?

A. A direct answer to this is difficult due to the fact that the pavement which the rifle struck was comparatively dusty being on the side of the road.

The accused declines to cross-examine.

(W.A. Magill) Lieut.

SECOND WITNESS for the prosecution: D-83063 Cpl Gale, G.M. 1st Bn The Black Watch (RHR) of Canada, sworn states:

I am D-83063 Cpl. Gale G.M. section commander of #6 section, 14 Pl, "C" Coy. On 8 Jun at approx 1600 hrs the Pl was on the coy parade for weapon inspection, while waiting we were standing at easy, there was some fooling in the ranks, I told the men to cut it out or words to that effect, and the fooling ceased. A few moments later on hearing scuffling I turned around and saw Pte Thomas Arthur ROGERS fooling with Pte Dupont, I went over to stop them, Pte Dupont knocked the rifle belonging to the accused out of his hand which fell on the road, both parties looked quite angry and as if they were coming to blows, I stepped between them and told them to stop it, or words to that effect, and to get back to their places, the accused picked up his rifle and returned to his place as did Pte Dupont - Mr Magill in charge of the parade told me that both men would be up on charge, I warned the accused and Pte Dupont of this. On the weapon inspection the

P.T.O.

rifle of the accused was found to be in a dirty condition, Mr Magill told me to lay another charge against the accused which I did.

The accused wishes to cross-examine.

Q. What was the condition of our pl on the right flank?

A. They were on parade quiet and orderly.

Q. What was the condition of the left flank of the Pl?

A. They seemed quiet and orderly until fooling started.

Q. Did you notice whether or not I was fooling the first time you turned around and ordered the fooling to cease?

A. I don't think you were, the command was given to the whole body.

Q. When you came up to us, did we cease sparring immediately on your command?

A. Almost immediately.

Q. Did you hear any words passed between Pte Dupont and I?

A. No, I did not hear any.

The

Cpl.

D-83063

The accused having been duly cautioned as to R.P. 4 (e) states:

"I do not wish to make a statement at this time".

The accused does not wish to call witnesses on his behalf at this point.

Certified that R.P. 4 complied with.

In the Field
10 Jun 44

Alan R. Wilkinson Lieut.
Officer detailed to
take summary.

MFM 6
(AFB 122)
40/P&S/136 (3458)

No B136571 Name ROGERS T.A Sqn. Battery or Company Corps C.I.C. Date of enlistment 23 NOV 42 GC Badges Service or Proficiency Pay

Company Conduct Sheet Date of last entry in N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No I Signature OC Company, etc [signature] Capt. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
ORIGINAL	SHEET	DESTROYED		ON COMPLETION OF SIX MONTHS SERVICE 23 MAY 43 - NO ENTRIES CASE OF DRUNKENNESS NIL					
In the Field	1 Feb 44	Pte		BLOOD DONOR. AA Sec 8(2) WOAS using insubordinate language to his superior offr. in that he, when ordered by E 52744 Cpl Chalmers J.C. to report for coal fatigue replied "go and fuck yourself"	B-53286 Pte JACOBS O. E52744 CPL CHALMERS J.C.	awarded forfeiture of 14 days pay	27 Feb 44	A. P. Henderson Lt Col	forfeits 14 days pay by FRI. 149(2)
Field	6 Apr 44	Pte		AA 15(1) WAOS AWL. Whilst on ex stip from 1815 hrs 6 Apr 44 till 2030 hrs 6 Apr 44 Total absence 2 hrs 15 mins	Capt V.E. Traversey D81820 C.S.M. Jackson JR.	5 days C.B. and forfeits of 2 days pay by FRI. 149(2)	7 Apr 44	V. E. Traversey Capt.	Total forf. 2 days pay FRI. 149(2)

Certified True Copy from Reg'l Docs in my possession
Campbell Shiert Capt Adjt 1 RHC

(Substitute for A.F.B. 296)
or M.F.B. 355

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED.

NO. B-136571 RANK: Pte Name: Rogers T.A. UNIT: 1st Bn The Black Watch (RHR) of Canada.

AGE: 21 MARRIED OR SINGLE: MARRIED NO OF DEPENDANTS: 2

DATE OF ATTESTATION: 23 Nov 42

NO OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL NIL HOSPITAL NIL MILITARY NIL TOTAL NIL

DTAES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

N/A

A CERTIFIED TRUE COPY OF M.F.M. 6 MUST ACCOMPANY THIS FORM

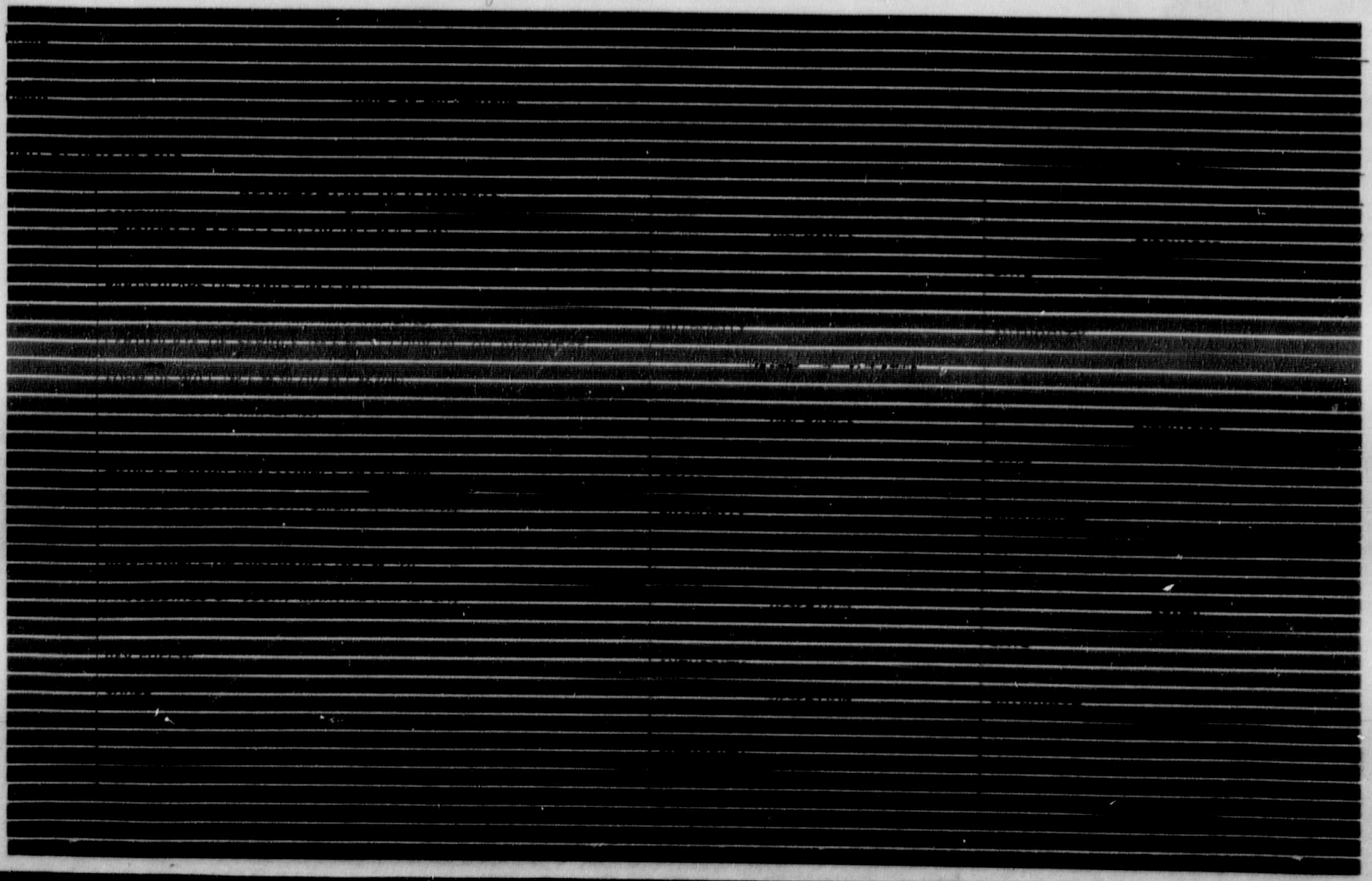
Campbell Stuart Capt
(Officer i/c Records)

1st Bn The Black Watch
(RHR) of Canada

Dated at In the Field
This 12th day of June 1944
(To be dated and signed as of date of trial)

Y
The President

C.A.O.F. -1-101 Pte. Rogers F. E.



SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Sec 15(2) AA	Guilty	Guilty	
2nd Sec 15(1) AA	Guilty	Guilty	
3rd Sec 15(1) AA	Guilty	Guilty	
4th Sec 15(1) AA	Guilty	Guilty	
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 723, and in loss of kit see RP 44 fn 6.)

At present under sentence for one year detention beginning on (date) 4 Jan 46 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 31 days, of which 31 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : To be imprisoned without hard labour for nine months, and to be discharged with Ignominy from His Majesty's Service.

(Sgd) .....
Judge-Advocate, if any.

16 Feb 46
Date awarded.

(Sgd) "P.W.S.Peterson" Lt-Col.
President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : I confirm the findings and sentence but consider the sen ence to read as follows: To be imprisoned without hard labour for nine months.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) "W.C.Scoones" Lt-Gen.

Date 17 Feb 46

A/Commanding 4/D Div.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F.33360 Pte Rogers, T.E.	18 Feb 46	"J.F.Cashmore" Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

TRUE COPY

CAOF - 1 - 101

FIELD GENERAL COURT-MARTIAL

(CAOFs 1 to 100 in AFAO; 101 to 200 in 3rd Echelon, AMF)

4/38B

Convened by Order of Lt-Gen W.C.Scoones, CB, DSO, A/Comd 2/4 Gun Bde dated 16 Feb 46

ACCUSED.

PROCEEDINGS RE "B" FBD

Date 4 MAR 46

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for changes (or permanent) or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.33360	Pte	Thomas Edward	Rogers	2/4 Gun Bde

K Investigation Capt

DJAG
HQ 3 Cdn Inf Div (CAOF)

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) GERMANY on (*date*(s)) 15 Feb 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 9. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1005 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans .....
The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	CAPT	F.R.C.FARRAR	3/Fd Regt RCA.
Member	CAPT	H.W.HAMILTON	5/Fd Regt RCA.
Member	CAPT	G.F.E.DICK	3/Fd Regt RCA.
Judge-Advocate			
Prosecutor	LIEUT	J.L.MACLEAN	3/Fd Regt RCA.
Defending Offr	CAPT	G.F.E.DICK	3/Fd Regt RCA.

Questions by President : Is the Prosecutor a lawyer ? Ans No. Is the Defending Offr a lawyer ? Ans No. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (b) and fn 2 were not followed. See DI p 2.)

A8. The accused F.33360 Pte Thomas Edward Rogers before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 24, 142. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 90(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 90(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-86; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... .(5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(*1. RP 115. 2. RP 40(A), see 80(B). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(2) (b), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans .....

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

F2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)

(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 157-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET.

The ACCUSED, F-37080 Pte Thomas Edward ROGERS, 3/Nth. N.S.Highrs, CASF, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
Sec 15(2)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,
in that he
At Varel, Germany, absented himself without leave from 2300 hrs 11 Nov 45 until 1345 hrs 26 Nov 45.
(Absent 14 days, 14 hrs and 45 minutes)

SECOND CHARGE
Sec 15(2)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,
in that he
In the Field, in Germany, when in confinement absented himself without leave from 2130 hrs 26 Nov 45 till 1520 hrs 27 Nov 45. (Absent 17 hrs, 50 minutes.)

THIRD CHARGE
Sec 15(2)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,
in that he
In the Field, in Germany, when in confinement absented himself without leave from 0655 hrs 28 Nov 45 till 1735 hrs 28 Dec 45. (Absent 30 days, 10 hrs and 30 min.)

FOURTH CHARGE
Sec 15(2)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,
in thathe
In the Field, in Germany, when in confinement absented himself without leave from approximately 2200 hrs 5 Jan 46 until 1400 hrs 15 Jan 46.
(Absent 9 days 16 hrs)

In the Field,
6 Feb 46

"D.F.Forbes"
(D.F.FORBES) Lt-col.
Commanding,
3/North Nova Scotia Highrs,
C.A.O.F.

To be tried by Field General Court Martial.

"D.C.Cameron"
(D.C.CAMERON) Lt-col
A/Cond 2/9 Cdn Inf Bde CASF

In the Field,
12 Feb 46

"FIRST"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
F.33080	Pte		Thomas Edward	ROGERS	3 Mth RD Highrs.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 Feb 46 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ". "DC"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.) "DC"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto. "DC"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder. "DC"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	F.H.S. Paterson	3 SD&G Highrs.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	H.R. Nicholson	3 SD&G Highrs
Capt	C.F. Boulton	3 HLI of C

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	L. Cox	3 HLI of C

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Germany (Country.)	"D.C. Cameron" (Signed personally. RP 105 fn 2.)	Lt-col (Rank.)

Date 12 Feb 46 A/ Commanding (D.C. Cameron) 2/8 Cdn Inf Bde CAOF.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

3/North Nova Scotia Highrs CAOF

15 Feb 46

F.33080 Pte Rogers, T.

The A/M OR has been examined and has been found fit to stand trial by Court Martial.

"J.S.Lewis" Capt.
(J.S.Lewis) Capt.
MO 3/Nth NS Highrs CAOF.

"PNSP".

PLEA OF MITIGATION OF PUNISHMENT
In the case of
F.33080 Pte Rogers T.E.

On behalf of F.33080 Pte Rogers, T.E., I beg to present to the Court the following plea of mitigation of punishment:

The accused showed his willingness to serve his country by volunteering for overseas service on 12 Feb 43 while only 18 years of age. He was held in Canada until he reached the age for service overseas, proceeding overseas in Dec 43.

After the invasion of Europe by the Allied Forces he on 4 Jul 44 joined the North Nova Scotia Highlanders and served with them in action.

In June 1945 he volunteered to serve in the Pacific, showing again his willingness to serve his country.

Although having served in the Army since 12 Feb 43, he has had no privilege leave or furlough, and the embarkation leave of 8 days which he was given in Canada permitted only 3 days leave at home, the remaining 5 days being spent as travelling time.

It has not been possible to check the service of the accused with his documents as they are not up to date so that exact dates of service cannot be given.

In view of his willingness to serve his country, which he has shown by volunteering to do his share in action; his youth on joining the army; and his lack of ever having had privilege leave or furlough, which would tend to have influenced his actions which have brought him before this Court this day; I earnestly beg the Court to show leniency in the sentence which they are about to impose.

"PHLP" 15 Feb 46

"G.E.Mercer"
(G.E.Mercer) Capt.
Defending Officer.

Ex "A"

Summary of Evidence in the case of F.93080 Pte Rogers, T.E.
3/BNS Highrs, CAOF.

The Commanding Officer directs that theevidence be taken on oath.

FIRST WITNESS F.608224 A/Cpl Russell, W.P.W., of "C" Coy, 3/BNS Highrs, CAOF, having been duly sworn, states:

"I am F.608224 A/Cpl Russell, W.P.W., of "C" Coy, 3/BNS Highrs, CAOF.

On the 11 Nov 45 I was acting Coy Orderly Sgt for "C" Coy 3/BNS Highlanders CAOF, and upon carrying out my duties of calling the roll at 2300 hrs on the 11 Nov 45, I found the accused F.93080 Pte Rogers, T.E. absent from his quarters.

That is all sir."

The accused declines to cross-examine this witness.

"W.P.W.Russell"
(F.608224 (W.P.W.Russell) A/Cpl)
3/BNS Highlanders, CAOF.

SECOND WITNESS F.78002 Pte Munro, H.A., HQ Coy, 3/BNS Highlanders, CAOF, having been duly sworn, states:

"I am F.78002 Pte Munro, H.A., "HQ" Coy, 3/BNS Highlanders, CAOF.

On the 26 Nov 45 I was employed as a Regimental Policeman.

I accompanied Pte Hiltz, H.E. to Oldenburg in search of Pte Rogers, T.E. and Pte MacNeil, H.A. Not having found him in the Nat Canteen we proceeded outside and met him, Pte Rogers, T.E. coming in. We took him in custody at 1325 hrs, 26 Nov 45, and returned with him to the unit Guard Room at Caledonia Barracks, Varel.

That is all sir".

The accused declines to cross-examine this witness.

"H.A.Munro"
(F.78002 (Munro HA) Pte)
3/BNS Highrs, CAOF.

THIRD WITNESS G.2663 A/Cpl Larsen, W.B., of "AP" Coy, 3/BNS Highlanders, CAOF, having been duly sworn, states:

"I am G.2663 A/Cpl Larsen, W.B. of "AP" Coy, 3/BNS Highlanders, CAOF.

On the 26 Nov 1945, I was a member of the Regimental Quarter Guard at Caledonia Barracks, Varel. I relieved L/Cpl Marsh, H., of his duties in the corridor at 1900 hrs.

My duty was from 1900 hrs to 2100 hrs, but I remained on duty until 2130 hrs. Upon coming off duty at 2130 hrs accompanied by Sgt MacNeil, L, we checked the cell of the accused and found Pte Rogers, T.E., absent. I do not know how he escaped.

That is all sir."

The accused declines to cross-examine this witness.

"W.B.Larsen" A/Cpl
(G.2663 (W.B.Larsen) A/Cpl)
3/BNS Highrs CAOF.

FOURTH WITNESS F.78002 Pte Munro, H.A., of "HQ" Coy, 3/MMS Highlanders, CAOF, having been duly sworn, states:

"I am F.78002 Pte Munro, H.A. of "HQ" Coy, 3/MMS Highlanders, CAOF.
On 27 Nov 45 while in Oldenburg I was accompanied by Pte Hills, E.H., and at 1520 hrs we apprehended Pte Rogers,T.E.
We took him in custody and lodged him in our unit Guard Room at Caledonia Barracks, Varel.
That is all sir."

The accused declines to cross-examine this witness.

"Munroe"HA"
(F.78002 (Munro HA) Pte)
3/MMS Highrs, CAOF.

FIFTH WITNESS F.55430 Sgt MacNeil, M.J. of "D" Coy., 3/MTH M.S.Highlanders, CAOF, having been duly sworn states:

"I am F.55430 Sgt MacNeil, M.J. of "D" Coy, 3MTH MS Highlanders, CAOF.
On 28th Nov 45 I was Guard Commander of the Quarter Guard, 3/MMS Highrs CAOF. At approximately 0655 hrs on the 28th Nov 1945 accompanied by R&M MacNeil, J.C., I checked the cell of theaccused Pte Rogers, T.E., and found him absent.
That is all sir."

The accused declines to cross-examine the witness.

"M.J.MacNeil" A/Sgt
F.55430 (M.J.Mc Neil) A/Sgt
3/MMS Highrs, CAOF.

SIXTH WITNESS B .159014 Pte Canning, G.E. of "D" Coy., 3/MMS Highrs, CAOF, having been duly sworn, states:

"I am B.159014 Pte Canning, G.E. of "D" Coy, 3/MMS Highrs, CAOF.
On 5 Jan 46 about 2130 hrs I let Pte Rogers out to go to the toilet. Then a German prisoner knocked and also wanted out to the toilet. When I came back from the German's cell I met Pte Long who asked me if I had seen Pte Hayes. I replied I had not. I went to the toilet to look for Pte. Rogers and he was gone. I reported it to the Guard Commander, Cpl. Polrine.

The accused declines to cross-examine this witness.

"G.E.C anning"
B.159014 (G.E.Canning) Pte.
3/MMS Highrs CAOF.

SEVENTH WITNESS F.57780 Cpl Polrine, D.F. "D" Coy, 3/MMS Highrs, CAOF, having been duly sworn states:

"I am F.57780 Cpl Polrine, D.F. of "D" Coy, 3/MMS Highrs, CAOF.
On the 5 Jan 46 at 2140 hrs I was in the office of the Guard Room. Lunch came in and I went to the kitchen to get mine. I came back to the office to eat it. When I was about half finished Pte Long, T.V.came in an informed me that his prisoner Pte Hayes was missing. When searching for Pte Hayes I found that Pte Rogers was missing. I notified the Provost Corps and then our own unit Orderly Officer.
I went upstairs and found an open window. Pte Myers, E.G. was with me and with the use of his flash light we discovered tracks along the water drain from the open window to a pole at the end of the building. There were tracks leading away from the pole on the ground. The door to the upstairs was not locked."

The accused declines to cross-examine the witness.

"D.F.Polrine" Cpl
F.57780 (D.F.Polrine) Cpl
3/MMS Highrs, CAOF.

The Certificate of Apprehension, produced as documentary evidence, was read to the accused, marked Exhibit "B", signed by me and attached hereto.

"Robt N.Mahar" Lt.
Summary Officer.

EIGHTH WITNESS P.82239 Pte Myers, E.G. of "HQ" Coy, 3/NBS Highrs, CASF, having been duly sworn, states:

"I am P.82239 Pte Myers, E.G. of "HQ" Coy, 3/NBS Highrs, CASF. On 5 Jan 46 at approximately 2200 hrs I accompanied Cpl Pelrine in a search of the upstairs of the Guard Room for Pte Rogers. He was not up there but we found an open window. The door leading upstairs was also open. That is all sir."

The accused declines to cross-examine the witness.

"E.G.Myers"
P.82239 (E.G.Myers) Pte.
3/NBS Highrs, CASF.

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused: "I have nothing to say at this time."

"T.E.Rogers"
P.33080 (T.E.Rogers) Pte.

The accused declines to call witnesses in his own behalf.

"T.E.Rogers"
P.33080 (T.E.Rogers) Pte.

I certify that the foregoing Summary of Evidence, consisting of 9 pages, was taken down by me in the presence of the accused and that RP 4(C)(D)(E)(F) and (G)(13) have been complied with.

In the Field,
30 Jan 46

"Robt N.Mahar"
(Robt N.Mahar) Lieut.
3/NBS Highrs CASF.

3/North Nova Scotia Highlanders, C.A.O.F.

List of Exhibits in the case of F.33060 Pte Thomas Edward Rogers, 3/North Nova Scotia Highlanders, CAOF.

Exhibit "A". Certificate of surrender. (CANS 2371 Overseas)

Exhibit "B". Certificate of apprehension. (Army Act 103(1)

"Robt H.Wasser"
(Robt H.Wasser) Lieut.
3/North Nova Scotia Highrs,
CAOF.

The 3/North Nova Scotia Highlanders, CAOF

Varsel, Germany,
31 Jan.1945

Officer Commanding,
3/North Nova Scotia Highlanders, CAOF.

Sir:

I desire to have Capt.G.E.Mercer, 3/North Nova Scotia Highlanders CAOF, to represent me at my forthcoming trial by Field General Court Martial, if he is available.

"T.E.Rogers"
F.35080 (T.E.Rogers) Pte.
Signature of the Accused.

The case against F.13080 Pte Thomas Edward Rogers 3/8th N S Highlanders, CAOF.

List of Witnesses.

PROSECUTION

	F.606224 A/Cpl Russell, W.P.W.	3/NNS Highlanders, CAOF.
	F.78002 Pte Munro, H.A.	3/NNS Highlanders, CAOF.
	G.2663 A/Cpl Larsen, N.B.	3/NNS Highlanders, CAOF.
Recalled for 2nd charge.	F.78002 Pte Munro, H.A.	3/NNS Highlanders, CAOF.
	F.55430 A/Sgt MacNeil, H.J.	3/NNS Highlanders, CAOF.
	F.57780 Cpl Pelrine, D.F.	3/NNS Highlanders, CAOF.
	S.159014 Pte Canning, G.S.	3/NNS Highlanders, CAOF.
	F.82239 Pte Myers, E.G.	3/NNS Highlanders, CAOF.

DEFENCE NIL

"Robt H.Maher"
(Robt H.Maher) Lieut.
3/NNS Highlanders, CAOF.
Summary Officer.

3/North Nova Scotia Highlanders, CAOF.

Varel, Germany
4 Jan 1946

Certificate of Surrender.
C.A.M.C. (Overseas) 2371

This is to certify that the accused F.130383 Pte Rogers, T.E. surrendered himself to the Guard Commander, Sgt W.MacEachern, of 3/North Nova Scotia Highlanders, CAOF on 28 Dec. 1945 at 1735 hrs.

2. He was sober and properly dressed.

"D.F.Forbes"
(D.F.Forbes) Lt-Col.,
Commanding,
3/North Nova Scotia Highrs.
CAOF.

Exhibit "A"
"Robt H.Mahar"

CERTIFICATE UNDER ARMY ACT 163(1)(j)

Certified that No. [illegible] Rank Pte Name [illegible]

of the [illegible] Bn

was apprehended by No. [illegible] Rank [illegible] Name [illegible]

of the 13 CGH Bn at Alverna Holland at 1400 hrs on the 11 Jan 40

as an absentee without leave he was wearing military uniform at the time

of his arrest.

Place Field

Date 1 Feb 40

"W.A.Frank"
(W.A.Frank) Major
Officer Commanding,
1 Cdn Coy, 13 CGH Bn.

"Roby H.Baker"
Exhibit "D"

[illegible]

[illegible]

(For use of [illegible])

Number [illegible] Rank [illegible] (Rank [illegible] may be)

[illegible] Pte. [illegible] Thomas Edward [illegible] 3/Nth NS Highrs CACF.

1. The following is a full and true [illegible] in the field Conduct Sheet of the [illegible], [illegible] Court Martial:

For ... AA Sec 40 ... [illegible] Dated

[illegible] ... AA Sec 9(1) ... [illegible]

[illegible] ... AA Sec 15(1) ... [illegible]

[illegible] ... [illegible]

[illegible] ... 5 Oct 45 ...

2. Previous convictions of the accused by [illegible] court are set out in the schedule below.

3. The accused at ~~the present~~ time [illegible] for 1 Year Detention beginning on the ... 4th ... January 45 ... (Strike out if not applicable)

4. The accused has been awaiting [illegible] ... 31 days in civil custody; and for ... 31 ... days in military custody, i.e., ... 31 ... days in [illegible] ... 31 ... days in close arrest; of which ... 31 ... days were spent in hospital.

5. The present age of the accused is ... 21 years ...

6. The date of his attestation is ... 12 Feb 43 ...

7. The service [illegible] the accused [illegible]

8. The accused is in possession of: CVSM & Clasp, France-Germany Star (Secret military decorations [illegible])

9. (If the accused is a warrant officer or [illegible]). The accused has served continuously, without reduction, to the present date. Date of promotion:

In the substantive rank of ... N/A ...

In the acting rank of ... N/A ...

SUMMARY OF CONVICTIONS BY A COURT-MARTIAL OR DEPTH COURT

Description of Court	Date & Place of Trial	Charges	Sentence of the Court	
FGCM	Field 4 Jan 45	AA Sec 15(1) AA Sec 15(1) AA Sec 15(1) "PHSP".	1 Yr Detention	Sentence suspended wef 25 Aug 45.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 5th ... day of ... February.

"H.M.Cashaback"
(H.M.Cashaback) Capt & Adjt.
3/Nth NS Highrs CACF.

Ex "C"
"PMP"

No. F[illegible] Name [illegible], T.E. Sqn., Battery, or Company Corps GIC

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Date of enlistment 12 Feb 43 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. R.122) 40/P & /8136 (2965)

Sheet No. [illegible] Signature O.C. Company, etc. D.Williamson, Capt. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Farnham, Que			No. 1	SHEET DESTROYED AFTER SIX MONTHS SERVICE	12-8-43				
Farnham, Que	16-6-43	Pte		Conduct to the prejudice of good order and military discipline when told by D.41179 Sgt Hebert to be quiet said: I don't give a fuck for you or anybody else. AA Sec 40.	Sgt Hebert JP Sgt Primeau	8 days DET	27 Jun 43	Cpl A.T.Howard.	
Farnham, Que	30-6-43	Pte		Conduct to the prejudice of good order and military discipline when told by his platoon commander he was put on charge, he replied, You can't scare me by putting me in the clink. AA Sec 40.	Sgt Hebert Documentary	24 days DET	1 Jul 43	Col W.Wright.	
				Certified true copy: (D.Williamson) Capt.					

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Farnham, Que	22-10-43	Pte		Conduct to the prejudice of good order and military discipline Sec 5(a)	Cpl AS Donaldson	5 days CB	22-10-43	Capt JWG Hebert	
Shawinigan Falls Que.	5 Nov 43			Absent from place of parade appointed by his commanding officer AA Sec 15(2)	Sgt Deigan Cpl Fish Doc.	Summ.Forf. 3 days pay	5 Nov 43	Lt-col H.Wright	
Farnham, Que	21-11-43	Pte		Close arrest. Neglect to the prejudice of good order and military discipline AA Sec 40	Sgt B. Polidoro	3 days CB	23-11-43	Major A.L MacLaurin	
	A-12 ADV. INF TRG CENTRE, DEC 25, 1943			CERTIFIED TRUE COPY (D.Williamson) Capt.					
Field	21-2-44	Pte		Neglect to the prejudice of good order & Military discipline did have a dirty rifle.	Sgt. Donaldson	3 days CB	21 Feb 44	Major Davidson.	(G.Herbert) Capt.
Field	29 Mar	Pte		AWL from Physical Trg. 1540 hrs 29 Mar 44 to 1620 Mar 44	Lte Platt L.W.	2 days CB	30 Mar 44	Capt D.Cowan.	

MFM 6
(AFB 122)
40/PAS/136 (3438)

No F.33080 Name ROGERS, T.E. | Sqn, Battery or Company | Corps CIC | Date of enlistment 12-2-43 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5 Apr 44	Pte		AA Sec 40 Conduct to the prejudice of good order and military discipline had a dirty rifle on guard mounting parade	D.82988 Sgt Delany, HRR	5 days CB	6 Apr 44		
Field	9 Apr 44	Pte		AA Sec 15(1) NOAS AWL from Defaulters parade 1730 hrs, 9 Apr 44 to 1815 hrs 9 Apr 44. Total absence - 45 mins.	D82813 Sgt. Blake, V.	5 days CB	10 Apr 44		
Field	15 Apr 44	Pte		AA Sec 40, Conduct to the prejudice of good order and military discipline in that he did wilfully damage his billets.	B.137184 Pte J.E. Smith.	7 days CB	16-4-44	Major Thomas.	

(OVER)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 15	Apr 44	Pte		A.A Sec 40, Conduct to the prejudice of good order and military discipline in that he, failed to comply with an order, when told to go to bed was found outside his billets.	D.81029 L/Cpl McDowan, A. D105095 Sgt. Barrang.	7 days CS	17 Apr 44	Major Thomas	(See Sur sim)

No. F33080 Name [illegible], T.S. | Regt., Battery, or Company | Corps Hq First Cdn Army | Date of enlistment | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/F & /8136 (2068)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field				Supplement.					
Field	22 May 44	Pte		NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MIL DISCIPLINE in that he when ordered by Sgt Stewart to report to him failed to do so. (AA Sec 40)	Sgt Barradell Sgt Stewart	14 days pay FWT 1.40(2)(b)	24 May 44	Lt-col R.D.King.	
Field	22 May 44	Pte		ABSENT AWL from 0700 hrs to 0815 hrs (Absent 1 hr 15 mins) (AA Sec 15(1).)					
Field	22 May 44	Pte		DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER (AA Sec 9(a))					

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 31	Aug 44	Pte	(1)	AA Sec 15(1) WOAS AWL from 1300 hrs 31 Aug 44 to 0001 hrs 15 Sep 44 (14 dys 11 hrs)	Doc.	1 Yr Detn	1 Jan 45	F.G.C.M. Findings & Sentence confirmed on 5 Jan 45 by Comd, 9 CIB	Forf 43 days pay FR&I 149(1)(a) Forf 79 days pay FR&I 149(1)(c)
			(2)	AA Sec 15(1) WOAS AWL from 0700 hrs 24 Sep 44 to 1130 hrs 12 Oct 44 (Absent 18 days 4 hrs 30 mins).					
			(3)	AA Sec 15(1) WOAS AWL from 2000 hrs 13 Dec 44 to 1130 hrs 22 Dec 44 (Absent 8 days 15 hrs 30 mins).					
Field 5 Oct 45		Pte		WOAS - Conduct to the prejudice etc, in that he at Varel, Germany after being warned by Cpl Wheten to go on parade failed to do so.(AA Sec 40)	F.8089 Cpl Wheten WO F9646 Sgt Bourgeois J.	21 days FP 21 days pay		Major W.A.Milroy	

CERTIFIED AS A TRUE COPY OF ORIGINAL MTL.6
"D.F.Forbes"
(D.F.Forbes) Lt-col
Commanding, 4/6th R.S.Highrs, CASF

4P-23

Pte Rogers J.E.

Proceedings
sent to DND
by AGSA

15 4-50

Mr. Rogers, T. E.

56-50

FIELD GENERAL COURT-MARTIAL

4/38B

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F 33080 Pte Thomas Edward Rogers NWS Highrs

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	guilty	guilty	
2nd AA Sec 15(1)	guilty	guilty	
3rd AA Sec 15(1)	guilty	guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of one year.

(Sgd) ~~Judge-Advocate, if any~~ RDH 4 Jan 45 (Sgd) (RD Hodgins) Major
Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: JMR

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) JMR

(1. AA 57A. Delete if not used.)

(Sgd) JM Rockingham (JM Rockingham) Brig

Date 5 Jan 45 Commanding 9 Cdn Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F 33080 Pte Thomas Edward ROGERS Nth N S Highrs	6 Jan 45	(MJ Jefferson) Capt & Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Convened by Order of Brig JM Rockingham DSO Comd 9 Cdn Inf Bde dated 2 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F 33080	Pte	Thomas Edward	ROGERS	NWS Highrs

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 4 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~ RDH, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns from RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereto. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which oaths see hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1200 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor indicates~~ the Court that accused elected ~~to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2) RDH

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to Interpreter: Do you object to~~ as Interpreter? Ans ~~The Interpreter is sworn.~~ (1) ~~President to shorthand writer: Do you object to the shorthand writer? Ans~~ (1) RDH RDH

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~Judge-Advocate, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	RD Hodgins	H L I of C
Member	Capt	JE Gillespie	HQ 9 Cdn Inf Bde
Member	Lieut	JS Smith	S D G Highrs
Judge-Advocate			
Prosecutor	Lieut	RH Bowden	NWS highrs
Defending Offr	Lieut	HE Smith	NWS Highrs

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused F 33080 Pte T E Rogers before arraignment make(s) (no) ~~no~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Europe II page 1441

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 35(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offences. (RP 43(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (ii); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded NOT GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecution makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (ii), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)*

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1; 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (c), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E and Ex F respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans In mitigation of punishment (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) *If not.*
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, RP 48. As to sentences for civil offences by the law of England see AA 41(5), MML p 120. When accused already under sentence of imprisonment or detention see AA 44(1b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused F 33080 Pte Thomas Edward Rogers, North Nova Scotia Regiment, a soldier of the Cdn Army Overseas is charged wi hi-

First Charge WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
A Sec 15(1)

in that he

In the Field, absented himself without leave from 1300 hrs 31 Aug 44 until surrendering himself to the Cdn Provost at 0001 hrs on 15 Sep 44(Absent 14 days 11 hrs).

Second Charge WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
AA Sec 15(1)

in that he

In the field absented himself without leave from 0200 hrs to 24 Sep 44 until apprehended at Boulogne at 1130 hrs 12 Oct 44 Total absence 18 days 4 hrs 30 mins.

Third Charge WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
AA Sec 15(1)

in that he

In the Field, while in confinement, absented himself without leavefrom 2000 hrs 13 Dec 44 until ap rehended by the MPs at Tourcoing at 1130 hrs 22 Dec 44(Absent 8 days 15 hrs 30 mins).

In the Field
31 Dec 44

(FA Sparks) A/ Lt Col
Comd
North Nova Scotia Highrs, BWEF

To be tried by Field General Court Martial.

In the Field
2 Jan 45

(JM Rockingham) Brig
Comd 9 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 33080		Pte	Thomas Edwars	ROGERS	Nth N S Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 2 Jan 4 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	RD Hodgins		HLI of C

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	JE Gillespie		HQ 9 Cdn Inf Bde
Lieut	JS Smith		SD & G Highrs

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	WRA Johnson		HQ 9 Cdn Inf Bde

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in NOR AMB
(Country.)

Dat 2 Jan 4

JM Rockingham
(JM Rockingham)
(Signed personally. RP 105 fn 2.)

Brigadier
(Rank.)

Commanding 9Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3)
40/F & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

MEDICAL CERTIFICATE

RDH

I certify that I have this morning examined F 33080 Pte Rogers TE of NNSH and in my opinion he is fit to undergo trial by Court Martial.

In the Field

4 Jan 45

(HC Read) Capt
MO 23 Cdn Gen Hosp

SUMMARY OF EVIDENCE in the case of F33[illegible]0 Pte Rogers T.E. N N S Highrs a soldier of the Cdn Army Overseas.

64 A. RDH

Commanding Officer directs that the evidence be taken on oath.

The accused is informed of his rights.

FIRST WITNESS for the prosecution, F 55372 Pte Keeping J. of 15 Pl C Coy N N S Highrs, sworn, states:- On the 31 day of Aug 44 at approx 1300 hrs I was acting Pl Sgt of 15 Pl C Coy. After dinner the section leader of No 7 section reported that Pte Rogers was absent. I searched the Coy area and could not locate Pte Rogers and reported the matter to my Pl CO. He has not reported back to my Pl since that date.

(J. Keeping)

The accused declines to cross-examine this witness.

SECOND WITNESS for the prosecution, F 55372 Pte Keeping of 15 Pl C Co NNS Highrs, sworn states:- I hereby present certificate of arrest in accordance with AA Sec 163 (i)(jj) dated 16 Sep 44 and signed by Capt AJ Gillis relating to the accused Pte Rogers, marked as exHIBIT A.

(J. Keeping)

The accused declines to cross-examine this witness.

THIRD WITNESS for the prosecution, F 50197 CSM Baillie, W.A. of C Coy NNS Highrs sworn states:- On 23 Sep 44 Pte Rogers was working in the Coy cookhouse. He was on Coy parade at 1400 hrs. After dismissal of this parade he returned to the cookhouse. He was reported absent the next morning and could not be found in the Coy. area. He has not appeared on a Coy parade simce that date.

(W.A. Baillie) CSM

The accused declinws to cross-examine this witness.

FOURTH WITNESS for the prosecution, F 50197 CSM Baillie WA. NNSHighrs sworn states:- I hereby present certificate of arrest in accordance with AA SEc 163 (i) (jj) dated 12 Oct 44, signed by Lieut H. Foresque, relating to the accused Pte Rogers, marked exhibit B.

(W.A. Baillie) CSM

The accused declines to cross-examine this witness.

FIFTH WITNESS for the prosecution, F 55326 L/Cpl Upton JD of the RP of the NNShighrs sworn states:- On the 13 Dec 44 I was in charge of Pte Rogers who was under close arrest. When the lights came on at 2000 hrs, I checked the room and found PteRogers absent. I then reported to the Pro Sgt and we checked the guard room and the surrounding area and did not find the accused. The nest time I saw the accused was at approx 1800 hrs 27 Dec 44. He was returned to the guard room under close arrest.

(JD Upton) L/Cpl

The accused declines to cross-examine this witness.

SIXTH WITNESS for the prosecution, F 55326 L/Cpl Upton of the RP of NNS Highrs sworn states:- I hereby present certificate of arrest in accordance with AA Sec 15(i) (jj) dated 22 Dec 44 signed by Lieut Kenyon, relating to the accused Pte Rogers, marked exhibit C.

(JD Upton) L/Cpl.

The accused declines to cross-examine this witness.

Question to the accused.

Do you wish to make a statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be used in evidence.

A. No sir

Q. Do you wish to call any witnesses in you defence at this point?

A. No,sir.

Rules of Procedure 4 (c) (d) (e) (f) (g) have been complied with.

I certify that the foregoing summary of evidence, consisting of fo r pages, was taken down by me in writing in thepresence of the accused on the 31 Dec 44.

In the Field
31 Dec 44

(R.H. Bowden) Lieut.
NNSH Offr i/c summary.

Ex 'B'
RDH

CERTIFICATE UNDER SECTION 163 (1) (1) OF THE ARMY ACT

I Capt AJ Gillis certify that No F33080 Pte Rogers T E surrendered Himself to me in the field at Bethune on the 15 Sep 44 as and absentee.

16 Sep 44

(AJ Gillis) Capt
DAPM
HQ 1 Cdn L of C Terminal

E4 E Edd

CERTIFICATE OF ARREST IN ACCORDANCE WITH AA SEC 163(1)(1)

I certify that F33080 Pte Rogers T.E. C Coy 69 Bn N N S Highrs was arrested at Tourcoing at 7.30 hrs on 22/12/44.

He was dressed in uniform.

22/12/44

(G. Kenyon) Lieut
C M P HQ L of C

E & 'D'

Certificate in accordance with AA Sec 163 (1) (ii)

I certify that Pte Rogers T E F/33080 was arrested at Boulogne at about 1130 hrs 12 Oct 44.

[redacted] Lieut
241 Cdn Provost Coy CMP

No F33080 Name ROGERS, T.E. Sqn, Battery, or Company HQ FIRST CDN ARMY Corps C.I.C. EXHIBIT "F" RDH

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Date of enlistment 12 Feb43 GC | Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PA8/126 (3488)

Sheet No | Signature OC Company, etc | Character

No 1 Sheet destroyed after six months service 12-8-43

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Farnham Que	16-6-43	Pte		AA Sec 40 Conduct etc When told to be quiet said"I dont give a fuck for you or anyone else.	Sgt Hebert J.P. Sgt Primeau	8 days Det.	27 Jun 43	~~Lt~~ Col AT Howard	
Farnham Que	30-6-43	Pte		AA Sec 40 Conduct etc When told by his platoon commander he was put on charge said "You can't scare me by putting me in the clink"	Sgt Hebert Documentary	14 days Det.	1 Jul 43	Col W. Wright	
Farnham Que	22-10-43	Pte		AA Sec 9(2) Conduct etc	Cpl Donaldson A.S.	5 days C.B.	22-10-43	Capt JWG Hebert	
Shawinigan Falls	5-11-43	Pte		AA Sec 15(2) Absent from parade	Cpl Fish D.C.	Summ forf 3 days pay	8 Nov 43	Lt-Col W Wright	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Farnham Qua	21-11-43	Pte		AA Sec 40 Neglect etc	Sgt B. Polidoro	3 days C.B.	23-11-43	Maj A.L. MacDurin	
Field	21/2/44	Pte		AA Sec 40 Neglect etc did have a dirty rifle.	Sgt Donaldson	3 days C.B.	21 Feb 44	Major Davidson	
Field	29/3/44	Pte		AWL from PT 1540 hrs 29 Mar 44 until 1620 hrs 29 Mar 44	Lt Platt LW	2 days C.B.	30 Mar 44	Capt D. Cowan	
Field	5 Apr 44	Pte		AA Sec 40 Conduct etc dirty rifle	Sgt Delaney	5 days C.B.	6 Apr 44	S. Illegible	
Field	9 Apr 44	Pte		AA Sec 15(1) AWL 1730 hrs 9 Apr 44 until 1815 hrs 9 Apr 44	Sgt Blake, V	5 days C.B.	10 Apr 44	D. Cowan Capt	
Field	15 Apr 44	Pte		AA Sec 40 Conduct etc unlawfully damaged his billets	Pte Smith TE	7 days C.B.	16-4-44	Major Thomas	
				Failed to comply with an order When told to retire was found outside his billets	L/Cpl McGowan A Sgt Farren E	7 days C.B.	17-4-44	Maj Thomas	

No P33080 Name ROGERS T.E. Sqn, Battery, or Company — -2- — Corps CIC — Date of enlistment 12/2/43 GC Badges — Service or Proficiency Pay — MFM 6 (AFB 121) 40/PAM/158 (3488)

Date of last entry in Company Conduct Sheet — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No 2 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (Discharging with trial	By whom awarded	Remarks
Field	22 May 44	Pte		AA Sec 40 Neglect to the etc when ordered to report to Sgt Stewart failed to do so A[illegible] Sec 15 (1) AWL 0230 hrs 22 May until 0615 hrs 22 May 44 A[illegible] 9(2) Disobeyed a lawful Command given by a superior officer	Sgt Barradell Sgt Stewart	14 days pay [illegible] 149(2) (b)	24 May 44	Lt-Col R.D. King	

Certified true copy of original MFM 6 in my possession
(Sgd) M.J. Heffernan Capt & Adjt
Officer i/c Records
8th M.B. Highrs

(PTO)

ARMY FORM B.396 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only). "A" "E" R140

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
P.33080	Pte	Rogers, T.E.	Nth NS Highlanders

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be quoted to the prejudice of the accused. Any entries stated should correspond with the number of Entries in the Field Conduct Sheet, precedence being given to the most severe. Blanks to each entry. If the charge is for disobedience of, absence without leave, the entries for desertion or absence, as the case may be, should be stated separately. Any recorded special acts of gallantry or distinguished conduct specified on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

	Within last 12 mons	Since Enlistment
For	6	11 times.
For		times.
For		times.
For		times.

Date of first entry in Field Conduct Sheet

Date of last entry in Field Conduct Sheet

2. [illegible] MJH

*3. [illegible]

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for days in civil custody; and for days in military custody, *i.e.*, days in open arrest, 12 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 20

6. The date of his attestation calling up for military service is 12 Feb 1943

7. [illegible] MJH

8. The accused is in possession of‡ C.V.S.M. & Clasp

‡State the military decorations and medals held by accused.

9. [illegible] MJH

[illegible] MHJ

[illegible] MJH

[illegible] MJH

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*23073) Wt.30721/3701 25,000 9.44 A.S.E.W.Ltd. Gp.698

RDH

PLEA OF MITIGATION

I would like to address te Court on behalf of Pte Rogers T.E. He joined the Unit in July 4th and from that time on the Bn went through some of the hardest fighting on the Western front from CAEN to FALAISE.

He felt himself slipping and knew that some time sooner of later he would not be able to stand it any longer. He asked to LOB but his requests were ignored. Then he thought the only way out was to go AWL, which he did to get clear of the next big battle. After it was over he surrendered to the Provost, but still nothing was done about his physical condition so he went absent again.

If some one had looked after the man at the very first this would not have happened. Should this man suffer for because some one else had fallen down on the job.

His past record in action was good and no serious charge on his conduct sheet, and for these reasons I hope the Court will consider the case and do all in their power to give this man a fair break.

(WE Smith) Lieut.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		----------NIL----------		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 4 day of Jan 45

(Sgd) M.H. Hefferman Capt
Nth NS Highlanders
Officer i/c Records NNSH

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only). "A" 8/1943

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
P.33080	Pte	Rogers, T.E.	Nth NS Highlanders

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement, but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, precedence being given to the most serious charge in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recorded credit will of necessity preclude any gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

Within last 12 mons Since Enlistment

For 6 11 times.

For ____ ____ times.

For ____ ____ times.

For ____ ____ times.

Date of first entry in Field Conduct Sheet ____

Date of last entry in Field Conduct Sheet ____

2. [illegible] MJH

[illegible] MJH

*3. [illegible]

[illegible]

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for ____ days in civil custody; and for ____ days in military custody, *i.e.*, ____ days in open arrest, 12 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 20

6. The date of his attestation / calling up for military service is 12 Feb 1943

7. [illegible] MJH

†State the military decorations (if any) held by accused.

8. The accused is in possession of; C.V.S.M. & Clasp

9. [illegible] MJH

[illegible] MJH

[illegible] MHJ

[illegible] MJH

[illegible] MHJ

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*28072) Wt.20721/3701 30,000 9/43 A.& E.W.Ltd. Gp.698

4H-45.

Gnr. Rogerson. C. F.

RECORDED AT CMHQ IN AB 180 [illegible]

FIELD GENERAL COURT-MARTIAL

CPA66 (To face CPA65) 4/38B

Convened by Lt-Col E.A. TODD, CMG, DSO Comd 12 A Bde Cdn Inf dated 26 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname	Unit.
B-6930	(a) Gnr	Charles Frederick	ROGERSON	12 A Fd Regt

PROCEEDINGS REVIEWED

Jose Rubantery, Cpt

19 Dec 44 REVIEWING OFFICER, JAG

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 27 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

13 | 139

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RoS. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93. For oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto. The Court is satisfied that it is properly convened and constituted(2), accused is (not) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 2. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1615 hours there are no changes.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of by his unit, namely with [illegible] Commanding Officer.~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to [illegible] as interpreter? Ans~~

The Interpreter is sworn.(1) ~~Do you object to [illegible] as interpreter? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H.G. THERRY	12 Cdn Fd Regt
Member	Capt	G.M. WRIGHT	12 Cdn Fd Regt
Member	Lt	A.J. LUCAS	14 Cdn Fd Regt
Judge-Advocate			
Prosecutor	Capt	N.B. NIXON	12 Cdn Fd Regt
Defending Offr	Lt	E.G.K. FROST	12 Cdn Fd Regt

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See RP 22.)

A8. The accused Gnr C.F. ROGERSON before arraignment make(s) (no) (a) plea

(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 18, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A66 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Panel I page 134

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-6930 Gnr. Charles Frederick ROGERSON

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Not Guilty	Guilty	
2nd	AA Sec 19.	Not Guilty	Not Guilty	
3rd	AA Sec 40 (alternative)	Not Guilty	Guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and 'in lieu of' kit see RP 44 fn 6.)

At present under sentence for [illegible] beginning on (date) [illegible] (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which NO days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

4 months Detention.

(Sgd) [illegible] Judge-Advocate, if any. 27 Oct 44 Date awarded. William E. Therry President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date [illegible] (Sgd) [illegible] Commanding [illegible]

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings but vary the sentence so that it reads Six months detention and confirm the finding and sentence as varied.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) PS

(1. AA 57A. Delete if not used.)

(Sgd) [illegible]

Date 31 Oct 44 Commanding [illegible] Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B-6930 Gnr ROGERSON C.F.	2 Nov 44	J. Harrison (Capt) (J.E. HARRISON) Adjt 12 Cdn Fd Regt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr.* *If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on .....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on .....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 37(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 5.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by using, with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 5.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (and) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 91(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 80(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....
Do you intend to call witnesses on your behalf? Ans .....
Are they witnesses as to character only? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 90 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF ABS. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith; and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)—
(1. *AA 54(3) (5), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(2) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex .....
(1. *MFB 335 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1, para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) in mitigation of punishment?(1) Ans .....
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to say anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence, which by the Court, being subject to confirmation, will not be announced, but will be promulgated in proceedings in open court are accordingly terminated.(1)
(1. *AA 54(5). RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part II of the Schedule, is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of as many punishments as laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets. When accused RP 46.* As to sentences see AA 44, 138, 182, RP 46-50, 68, 118, 119(A), KR Can 308, 333, Convening Order.) *When accused is released from arrest by MML p 60, 737-759.* As to sentences assigned for civil offences by the law of England see AA 44(1B), 68(1), KR Can 564. *As to assembly and disposal of record after trial see* [illegible] *already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. Confirming Offr see KR Can 567.*

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO.(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).~~(2) The Court is closed, and considers the submission.(3) The Court is opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Yes, I will give evidence as a witness. Do you intend to call witnesses on your behalf? Ans Yes. Are they witnesses as to character only? Ans NO.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the First Third charge(s), being subject to confirmation, will be promulgated later.(1) ~~(or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith; and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2))~~
(1. AA 54(3) (6), RP 43, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

~~E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?~~(1) Ans ~~No~~
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A ~~and Ex~~ respectively.(3)
(1. MFB 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans NO.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

1257

SUMMARY OF EVIDENCE in the case of B-6930 Gnr Charles, Frederick ROGERSON, 11 Fd Bty, 12 Cdn Fd Regt RCA, charged with:-
1 - AWL - Sec 15 (1) A.A.
2 - Drunkenness - Sec 19 A.A.

CHARGE SHEET

The accused, B-6930 Gnr. Charles, Frederick ROGERSON, 11 Fd Bty, 12 Canadian Field Regiment R.C.A., a soldier of the Cdn Army Overseas, being on active service, is charged with:-

FIRST CHARGE
Sec 15 (1) AA

WHILST ON ACTIVE SERVICE, ABSENTED HIMSELF WITHOUT LEAVE,

in that he,

Absented himself without leave from 2200 hrs 20 Oct 44 until 2345 hrs 20 Oct 44 (1 hr 45 min)

SECOND CHARGE
Sec 19 AA

WHILST ON ACTIVE SERVICE, DRUNKENNESS,

in that he,

at approximately 0030 hrs 21 Oct 1944 when on duty as switchboard operator was drunk.

THIRD CHARGE (ALTERNATIVE)
~~Charge~~
Sec 40 AA

WHILST ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

at approx'mately 0030 hrs 21 Oct 1944 when on duty as switchboard operator, was asleep.

In The Field
21 Oct 44

.....(Lt-Col)
(R.H. WEBB)
OC., 12 Cdn Fd Regt

TO BE TRIED BY F.G.C.M.

In the field
26 Oct 44

(FAS Todd) Brigadier
CRA 3 Cdn Inf Div

12 CDN FIELD REGT. R.C.A.
Received
17 NOV 1944

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B6930	Cnr		Charles Frederick	ROGERSON	12 Fd Regt RCA

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Oct 44 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ". 33

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.) 33
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto. 33
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder. 33
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	W.E. FLEURY	12 Fd Regt
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	G.M. WRIGHT	12 Fd Regt
Lieut	R.F. Lucas	14 Fd Regt
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Lieut	A. TRUDEL	14 Fd Regt
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.) — [signature] (Signed personally. RP 105 fn 2.) — Brigadier (Rank.)

(PAS Todd)

Dat 26 Oct 44 — Commanding CRA 3 Cdn Inf Div

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

FIELD REGT. R.C.

MEDICAL CERTIFICATE

THIS IS TO CERTIFY THAT I HAVE MEDICALLY EXAMINED NUMBER B6930 RANK Pvt NAME Rogerson, C.E. THIS DATE, AND FIND HIM TO BE fit TO UNDERGO TRIAL BY FIELD GENERAL COURT MARTIAL.

DATE 27 Oct 44

[illegible] Latimer Capt
22 FA

29 Oct 44
Belgium
11 C.F.A.R.C.A.

(1)

F.G.C.M.

B 69330 Gnr. Charles Frederick Rogerson 11 Fd. Bty. R.C.A. R.N.F.

Charge Pleads not guilty.

First witness for prosecution

B-41443 Sgt Fletcher A, 11 C.F.A. R.C.A. (4 Bty.) — sworn States;

The accused is Gnr. Rogerson. He was to go on duty at 2200, 20 Oct at switchboard. He did not appear until 2345 hrs. 20 Oct. 44. Questioned him as to why he was late, he said he thought he was on duty. He seem impaired at the time when I found him. I warned him for office & ordered him to duty. At 0020 hrs 21 Oct Sgt Kenyon woke me & informed me something about accused. I found accused asleep at switchboard & reported him.

I examined accused & found him to be under the influence of liquor. He took approx. 10 minutes to ~~wake~~ arouse. I placed the accused under close arrest and turned him over to the guard.

Operations (3) table fixed two shifts of switchboard operators. Rogerson had been on such duty for approx one month. Experience the system. I had warned him previously of his duty & this day & he clearly understood.

I was at the exch at 2200 and at 2345 hrs. 20 Oct. Rogerson seemed normal at 2345 hrs and I left him to carry on his duties. I did not know where he had been but I knew he had been drinking from the smell.

At 0020 Rogerson was slumped over in the chair when I came to the switchboard. He did not appear to be in a normal sleeping position.

When I finally aroused him, he seemed to come back to normal. I told him he was under arrest for being drunk on duty. He appeared OK next morning.

Cr-exam. The accused was not drunk at 2345 and was fit for duty. There was no indication of drinking ~~from~~ near the exch between 2345 and 0020 hrs. He complete his duties as ~~was~~ calls ~~came in~~ ~~right~~ though the exch was busy at 2345 and 0020 hrs 21 Oct. seemed rather ~~operating~~ at 2345 and 0020 hrs 21 Oct.

I don't know exactly why Rogerson had been previously relieved from the exch.

Re-exam. I know the operators family well and their habits. Rogerson was a good worker and steady. I appear to think too much. I had not previously had to relieve Rogerson of his duties for reasons of drunkenness.

I thought Rogerson was drunk due to his position and the difficulty in waking him up. He seemed quite normal on awakening. He did not seem unwell. I don't know if anyone else was near the exch between 2345 20 Oct and 0020 21 Oct but it is possible.

Operators change 0800 - 1200 - 1700 - 2200. This order has been adhered to for approx. three or four weeks.

Rule 83(3) complied with.

[illegible] hrs.

Second witness for the prosecution

B-11173 L/Sgt. Dewar C.R. 12 C.F.R. R.C.A. (11 Bty), sworn, states:

I was serjeant on duty at 11 Bty. Command Post, on night 20/21 Oct. 44. The officer in the C.P. called the exch. at approx. 0030 hrs 21 Oct. There was no reply. I went to the exch. & found Gnr Rogerson, the accused, asleep. I notified Sgt. Fletcher.

My tour of duty was from 2200 hrs. 20 Oct. to 0400 hrs. 21 Oct. The exchange was approx. 15 feet from the C.Post. I was not around the exchange at 2200-2345. I made no calls on the telephone between 2345 and 0030 hrs. We can hear the exch. bell ring and did on this occasion when the officer used his 'phone at 0030 hrs. The exch. did not reply. When I went out Rogerson was slumped in the chair apparently asleep. I shook him vigorously & left to didn't awake. I could not smell alcohol. After fetching Sgt. Fletcher I went back to the command post.

Cross-Exam. I don't think any calls were put through between 2345 and 0030. I did not see Rogerson awakened. He had always given satisfaction.

Re-exam None

I noticed nothing abnormal about the accused when I tried to awaken him.

R.P. 83(B) complied with.

Third witness for the prosecution

A-28473 Gnr. O'Brien R.H. 12 C.F.R. R.C.A. (11 Bty) sworn, states:

The accused is Gnr. Rogerson. I was on guard at 11 Bty lines between 0001 and 0200 hrs. 21 Oct. I was detailed by Sgt. Fletcher at 0100 hrs to take the accused in my charge as he was under close arrest. I handed him over to the next shift at 0200 hrs. Rogerson was turned over to me at the C.P. where the light was dull. I know Rogerson well. He was quite sober when I took him over. He looked alright in the morning.

Cross-Exam. I hadn't seen Rogerson previous to 0030 hrs.

I had Rogerson by the arm and noticed nothing peculiar and no smell. I took him about 100 yds. over muddy ground and had no trouble with him.

Re-exam None.

R.P. 83(B) complied with.

1/6 First witness for the defence. 1087 (3)

The accused B. 6930 Gnr. C.F. Rogerson 12 C.F.R. R.C.D. (11 Bty.) sworn, states:

On the night of 20 Oct. I was in Maldegem with my chum, Gnr. Knowles. We were at a cafe where we ate. We had a few drinks and at 2050 hrs. I mentioned to Gnr. Knowles that we had to go as I had a shift to take at 2200 hrs. on the exch. We left the cafe at 2100 and on leaving I was struck on the mouth and Gnr. Knowles in the eye by some soldiers who had been creating a disturbance inside the cafe. A fight started and it took some time to stop it. I ran after me who had a revolver but could not find him. I then started back to camp to go on duty. I went straight to the exchange. I met Sgt. Fletcher. I felt alright but a little later on I began to feel drawsy. The next thing I knew the sgt. woke me and put me under close arrest. I was escorted to the barn & slept till morning.

I had not had enough to drink to get tight. I felt tired and excited after the brawl & chase. I have felt O.K. lately. I haven't been drinking much since my return to the regiment. I had been evacuated from the regt. for overstrained nerves.

I was tired when I woke up at the exch.

Cross-Exam. I went into Maldegem between 1800 & 1900 hrs. Knowles has a watch but I haven't. I was in the cafe from approx. 1830 to 2100 hrs. I had a couple of cognacs & a few beers. I knew I was to go on duty at 2200. I didn't think I needed to go to a doctor after the trouble. I didn't go back with Knowles. I did not go back into any pubs. It takes about half an hour to walk from Maldegem to the battery.

I didn't clearly understand Sgt. Fletcher when I first came in. I didn't think I was late. He told me I was up for office. I did not question him.

I looked through a couple of magazines when I sat down at the exchange. I don't know what they were.

I did not try to get help from the provost.

Re-Exam. None.

I knew by Knowles' watch that the time was 2050 in the pub. At that time the landlady asked us to help her get rid of some soldiers which we did. There were Knowles and I and two others put the three men out from 4th. Med. Rif. ant.

The pub is near the town hall. There seemed to be about seven men against the four of us outside the pub. I was fighting about 20 minutes when I left to chase the soldier with the revolver who went west over the railway. I followed him for about half a mile. He started firing at the town hall and I think he emptied his magazine. When I came back no-one was there. I came home on the same route as we went down. I saw Knowles next morning. I had been in the cafe with Knowles before.

First witness for the defence (cont'd)

I said nothing about all this to Sgt. F. Fletcher when I came in. The Provost interfered in all the affray.
R.P. 83 complied with.

Second witness for the defence.

B-11264 Gnr. Knowles W.C. 12 C.F.R. R.C.A. (11 Bty) sworn,
states:

I was with Rogerson drinking in the cafe. He suggested we leave at about nine o'clock. A fight broke out and we were asked to stop it. We helped put them out, finished our drink & started for home at 2055 hrs. We were both hit on leaving the cafe. A fight started and then we heard shots. Rogerson said "I'm going after that man" and left, that's the last I saw of him that night.
We had about 4 beers and 2 cognacs. We went in the pub about 1945. We had been in twice before. I don't know how many people were outside.

Cross-Exam
I have a watch. Pubs closed at 2100 hrs. We left about 2100 or 2105 hrs. I had been with Rogerson to that cafe three times at the most. I don't know how many were outside fighting - four, six or more. As far as I know there was no one but me on my side of the fight. The fight lasted about three minutes. During this time the shooting started. I looked for Rogerson but couldn't find him. I didn't try to find him in the lines when I got back.
About six shots were fired and there was a lot of shooting.

Re-Exam
None
I got back to camp about 2140 hrs. approx.
The fight didn't last five minutes and ended when the shooting started at about 2105-2110 hrs.
R.P. 83 complied with.

Character Witness

B-11000 BSM Snider C.J. 12 C.F.R. R.C.A. (11 Bty) sworn,
states:

I have known the accused for about four years & he has been fairly satisfactory. He has not given much trouble by drinking. He has done very well over here and has had battle-exhaustion once.

Cross-Exam
None
R.P. 83 complied with.

D6

Closing Address by Defending Officer

The accused intended to return to duty at the proper time but was involved in a disturbance through no fault of his own. He had had some drinks but was not drunk.

He was foolish to have run after the soldier with the revolver. The was late for his shift but there are extenuating circumstances.

As to the charge of drunkenness. I think there has been no proof of drunkenness brought forward. He was not drunk at 2345 with and not drunk at 0020, 21st. Sgt. Fletcher was only able to say that he was hard to wake up.

As to the third charge. This man had once been evacuated for battle exhaustion which shows that he had suffered from nervous strain. He had been under in a tussle and became confused and tired and this, no doubt, contributed to his falling asleep.

Reply of Prosecution

The accused is guilty on charge one, as he knew his duties, the times for them and he did not appear until one hour and forty-five minutes after his duties started.

Evidence is conflicting on charge two. There is some doubt about Sgt. Fletcher's evidence. The details of the night's happenings do not agree – the story is vague. The accused told a far fetched story and got mixed up in it. If not drunk he was at least well under the influence of alcohol.

When he came back to the battery and went to the exchange he passed out.

He is obviously guilty on the third charge.

Exhibit 'A' 1087

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B-6930	Gnr.	ROGERSON C.F.	12 Cdn Fd Regt R.C.A.

1. The following is a fair and true summary of the entries in the regimental a[illegible] gsH conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheets mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets; primitives hence given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.
For	Sec 15 (1) A.A.	1 times	8 times.
For	Making a false statement	0 times	1 times.
For	Breaking barracks	0 times	1 times.
For	Failing to appear on parade	0 times	1 times.
For	Neglect to the prejudice etc	0 times	1 times.

gsH

gsH

gsH

2. The accused has not been previously convicted, gsH

gsH

3. The accused is not under sentence at the present time, gsH

gsH gsH

4. The accused has been in confinement, awaiting trial on the present charges, for No days in civil custody, and ~~one~~ 7 gsH days gsH in military custody, making a total of ~~one~~ 7 gsH days gsH of which ~~one~~ No gsH days were spent in hospital.

5. The present age of the accused according to his gsH attestation paper is 22 years

6. The date of his gsH attestation specified in his gsH attestation paper is 17 Jan 41

7. gsH

8. gsH gsH

9. The accused is entitled to reckon 3 years service for the purpose of determining his pension, etc.

10. The accused is in possession of CVSM and clasp gsH (state any military decoration or reward).

11. gsH

12. gsH gsH

and gsH gsH

(*18250) W1.15882/144 125,000 6/41 A.A.E.W.Ltd. Gp.498

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		N/A		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21 day of Oct 1944

J.E. Harrison (Capt)
(J.E. HARRISON)
Adjt 12 Cdn Fd Regt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of ..... years .....

In the rank of ..... years .....

In the rank of ..... years .....

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such records as are available and the paragraphs concerned amended accordingly.)

SUMMARY OF EVIDENCE in the case of B-6930 Gnr Charles, Frederick ROGERSON, 11 Fd Bty, 12 Canadian Field Regiment RCA, charged with:-
1 - AWL- Sec 15 (1) A.A.
2 - Drunkenness - Sec 19 A.A.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

B-11147 Sjt FLETCHER A., 11 Fd Bty, 12 Cdn Fd Regt havi been duly sworn states:

At 2200 hrs 20 Oct 44 I was NCO i/c Sigs 11 Fd Bty. The accused was scheduled to go on duty at 2200 hrs 20 Oct 44. To my knowledge he was absent until 2345 hrs same date. At approximately 0030 hrs 21 Oct 44 I was awakene by L/Sjt Dewar who informed me that the accused was asleep at the switchboard and he couldn't awaken him. I got up, went to the switchboard, the accused was still asleep and further examination by myself I found the accused was drunk. I immediately put another operator on the switchboard. I finally aroused the accused and placed him under close arrest at 0050 hrs 21 Oct 44. I summoned the guard and put the accused in the guards charge.

QUESTION BY THE ACCUSED

Q1 - In what condition was I in when I reported for dut at 2345 hrs 20 Oct 44 ?

A1 - You were in satisfactory condition to carry out yo duty ?

Q2 - Did you know that I had been drinking ?

A2 - Yes.

Q3 - Should I have gone on duty under the influence of drink ?

A3 - I knew you were under the influence of drink but you seemed capable by your speech of carrying out your duty.

RP 83 (b) has been complied with.

A. Fletcher
B-11147 Sjt Fletcher A.

SECOND WITNESS FOR THE PROSECUTION

B-11173 L/Sjt Dewar C.R. 11 Fd Bty, 12 Cdn Fd Regt hav been duly sworn states:-

At 0030 hrs 21 Oct 44 I was Sjt on duty at the Command Post of 11 Fd Bty. The officer on duty, Mr. Armstrong called the exchange and there was no reply. I went to the exchange and found the signalman on duty, Gnr. Rogerson asleep. I could not awaken him and informed Sjt Fletcher of this fact.

Accused declines to cross examine the witness. RP 83(b) has been complied with.

C.R. Dewar
B-11173 L/Sjt Dewar C.R.

RD WITNESS FOR PROSECUTION

A-28473 Gnr. O'Brien R.H. 11 Fd Bty, 12 Cdn Fd Regt ha been duly sworn states:-

At 0030 hrs 21 Oct 44 I was on guard at 11 Bty making rounds to the Command Post. Sjt Fletcher detailed take charge of the accused as he was under close

SUMMARY OF EVIDENCE in the case of B-6930 Gnr Charles, Frederick ROGERSON, 11 Field Battery, 12 Canadian Field Regiment RCA, charge with:
1. AWL - Sec 15 (1) A.A.
2. Drunkennes - Sec 19 A.A.

THIRD WITNESS FOR - continued
THE PROSECUTION

I then turned him over to the new guard.

The accused declines to cross examine the witness. RP 83(b) has been complied with.

.....
A-284?3 Gnr O'Brien R.H.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused answered:-

I do not wish to make a statement at this time.

.....
B-6930 Gnr Rogerson C.F.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence of the accused and that RP 4 (C), (D), (E), (F), and (G) have been complied with.

MALDEGEM, BELGIUM,
21 Oct 44

.....(Lt)
(D.W. COOPER)
12 Cdn Fd Regt

SUMMARY OF EVIDENCE in the case of B-6930 Gnr Charles, Frederick ROGERSON, 11 Fd Bty, 12 Canadian Field Regiment RCA, charged with:-
1 - AWL - Sec 15 (1) A.A.
2 - Drunkenness - Sec 19 AA

LIST OF WITNESSES FOR THE PROSECUTION

FIRST WITNESS - B-11147 Sjt Fletcher A. - 12 Cdn Fd Regt RCA

SECOND WITNESS- B-11173 L/Sjt Dewar C.R. -12 Cdn Fd Regt RCA

THIRD WITNESS - A-28473 Gnr O'Brien R.H.- 12 Cdn Fd Regt RCA

LIST OF WITNESSES FOR THE DEFENCE

NIL

REQUEST FOR DEFENDING OFFICER

I request that Major J.D. Ross of the 13 Cdn Fd Regt RCA be appointed to defend me at my trial by Field General Court Martial.

C. F. Rogerson
B-6930 Gnr. Rogerson C.F.

4C-125

PTE ROGERSON L.E.

4C-125

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 143232 Pte Lionel Earnest ROGERSON Wpg Gren

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 9(2)	NOT GUILTY	Guilty	
2nd	AA 9(2)	NOT GUILTY	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for 14 days FP & 14 days FP 2nd beginning on (date) 18 Oct 44 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 2 days, of which — days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To suffer Field Punishment for Twenty (20) days and to forfeit all ordinary pay for Twenty (20) days

(Sgd) ..... Judge-Advocate, if any. 20 Oct 44 Date awarded. (Sgd) ..... President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:
Confirmed —

I ~~direct that the accused be not committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....
Date 22 Oct 44 Commanding (G. KITCHING) Brig Comd 13 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B143232 Pte Lionel Earnest ROGERSON	25 Oct 44	..... CAPTAIN ADJUTANT THE WINNIPEG GRENADIERS (A) C.A.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 30 NOV 1944 JAG BRANCH CMHQ

FIELD GENERAL COURT-MARTIAL

CPAGE (In lieu of AFA8) 40/P & B/1698 (8144) 4/38B

Convened by Order of Lt Col E.V. MacINTYRE A/Comd 13 Cdn Inf Bde dated 17 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-143232	Pte	Lionel Earnest	ROGERSON	WPG GREN

PROCEEDINGS REVIEWED 11 DEC 44
J.C.H.C. W.C. Nash Capt
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 20 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 45, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1600 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ..... as interpreter? Ans .....
~~The Interpreter is sworn.~~(1) Do you object to Sgt Guertain as shorthand writer? Ans No
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.M. Muir ED ~~KS~~	H.Q. C Rn
Member	Capt.	F.S. Kerr	Rdn Sqn
Member	Capt	D.G. Hutchings	R.M. Rang
~~Judge-Advocate~~			
Prosecutor	Lieut	W.A. Fraser	Wpg Gren
Defending Offr	Major	D.A. Clark	Wpg Gren

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea ..... (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(1) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ..., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No Sir .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (b), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Will not give evidence on oath. Do you intend to call witnesses on your behalf? Ans. Yes. Are they witnesses as to character only? Ans. No.
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(3).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1) (or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2))
(1. *AA 54(3) (a), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans.....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. *AFB 353 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and (b) previous, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 504.* 2. *RP 50. As to release from arrest before Confirming Offr see KR Can 367. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

This accused elects trial by General Court Martial

CHARGE SHEET

The accused, B.141232 Pte LIONEL HARRIET ROGERSON, 1 Bn Winnipeg Grenadiers, C.A., a soldier of the Canadian Army Overseas, is charged with-

FIRST CHARGE
SEC 9 (2)
ARMY ACT

WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,

in that he

in the Field at about 1115 hrs on 18 Oct 44 when ordered by Lieut G. Lapalme, Acting 2 i/c "D" Coy, to join his section, did not do so.

SECOND CHARGE
SEC 9 (2)
ARMY ACT

WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,

in that he

in the Field at about 1150 hrs on 18 Oct 44 when ordered by Lieut G. Lapalme, Acting 2 i/c "D" Coy, to do some drill, did not do so saying "put me in the guard house" or words to that effect.

J.A. Graham Major
(J. A. Graham)
A/Officer Commanding,
1 Bn Winnipeg Grenadiers, C.A.

In The Field
19 Oct 44

To be tried by Field General Court Martial.

(K.W. MacINTYRE) Lt Col
A/Comd 13 Cdn Inf Bde

In the Field
19 Oct 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
B-143232	Pte	Lionel Earnest	ROGERSON	WPG GREN

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above, as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (*date*) 19 Oct 44 endorsed by me (or an offr of my staff for me), "To be tried by Field General Court-Martial"

2. ~~And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial without detriment to the service~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am satisfied that it is not practicable to send the Court, (b) the Offr as President, the Judge-Advocate~~

(AA 49, RP 106(B), 107(A). *Delete the whole or part, if not applicable.*)

5. ~~I appoint as Judge-Advocate thereat the Offr mentioned hereunder~~

(RP 106(E). *Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	E.M. MILLER	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by	CAN FUS
Capt	To be detailed by	R M RANG

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	To be detailed by	WPG GREN

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (*Country.*)

(*Signed personally. RP 105 fn 1.*) Lt Col (*Rank.*)

(K.W. MacINTYRE)

Date 19 Oct 44 ~~Commanding~~ A/Comd 13 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFAMS (To take place of AFA3) 40/P & S/1697 (4891))

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICERS CERTIFICATE

I certify that I have to-day examined (No) B143232 (Rank) Pte

(Name) Rogerson, L E and in my opinion he is

fit/~~unfit~~ to undergo trial by Court Martial.

Date
20 Oct 44
In the Field

Attwell Capt RAMC
R.M.O. A.M.C.
(UNIT) 1 Bn Wpg Grens, CA.

CASE OF

B.143232 Pte ROGERSON L.E. Wpg Gren

PROSECUTION

FIRST WITNESS

Lt G. Lapalme, CIC, att 1 Bn Wpg Gren, having been duly sworn, states:

I recognize the accused and on 18 Oct I was 2IC of "D" Coy for the route march. On that date there was a route march of D Coy and after we continued about 7 miles a truck arrived with some men including the accused. As soon as they debussed I told them to go and rejoin their sections which were ahead of where they were. Pte Rogerson's pln No. 16 pln was in front of the coln. I formed them into 2 ranks and led them for a distance a bit faster than the main part of the route march in order to pass and catch up with their sections. I noticed the accused staying in the rear and I told him to catch up with the file I was leading, which he did. A short while after I had to drop behind and when I looked back I saw the accused opposite Pte Stevenson about where I had left them. I can't say exactly the distance I had covered but I'd say it was 5 mins marching. I told them to rejoin their section and when I noticed they made no effort to do so I told them to report to me at the noon break. At the noon break they reported to me and Pte Stevenson asked me what for and I told him it was for drill and Pte Stevenson then said "have you a gd room?" and I said "yes" and he said "put me in it then". I turned towards the accused then and he said "put me in too". The third man said he would drill. I then placed both Stevenson and Rogerson under arrest and escort. A few mins later I went to see them while under escort and told them both there was still time to do some drill and neither of them replied.

Q. What time did you have your noon break?
A. I can't say exactly as I didn't have a watch, but I imagine it was near 10 to 12.

Q. Did the accused complete the route march?
A. Yes.

Q. Where was he when he completed the route march?
A. The last man of the coln a short while after the rest.

Q. Did the accused ask to go to the MO when it was completed?
A. Yes, but I don't know if he did go to the MO.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS ~~UNNECESSARY~~ TO COMPLY WITH RP 83(B).

SECOND WITNESS

A.3155 Cpl WOODWARD HW, 1 Bn Wpg Gren, having been duly sworn, states:

I recognize the accused and on 18 Oct 44 while on a route march after Stevenson had requested Mr Lapalme to put him in the gd house the accused added "put me in there too" to Mr Lapalme.

Q. Did he make any attempt to fall in?
A. No.

CROSS-EXAMINED

Q. Was the order given to you to fall these men in or by Lt Lapalme to the men?
A. He told the men to fall in, Sir, and I was standing about 6' away from Lt Lapalme and about 3' away from the accused.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

THE PROSECUTION IS CLOSED

/DEFENCE/

FIRST WITNESS

The accused, having been duly sworn, states:

On 16 44 I returned from a parade and heard that I had to go on a route march, and I went to see the Orderly Sjt, Cpl McLean. I enquired if I could see the MO and it was refused. He gave me an order to get on my eqpt and fall in with the rest of the fellows.

Q. Why did you want to see the MO?
A. I had a sore ankle and this would have been the first route march in a year and half. When the coy had other route marches I was either in Sick Bay, on sick parade, or on light duty. I was in Sick Bay 16 days and I have a certified report to this effect, which gives the date of admission as 18 Sep and discharge 2 Oct. While in Sick Bay I had a touch of pneumonia. When McLean refused to let me see the MO I went to the Orderly Room to see the Sjt-Maj, but before I got a word in with the S.M. McLean asked me as he came in the door of the Orderly Room what the hell I was doing there and said "I thought I told you to get on your eqpt and fall out with the rest of the fellows?". Seeing then that it was no use going any further I went back to my hut and put on my eqpt and fell out with the rest and went to catch up with the route march in a truck. We caught up with the coy about 7 miles out of camp, we debussed and were ordered to catch up to our respective gps by Lt Lapalme. This was after we had debussed at the rear of the colns. We started up the rd and then I saw I could not keep up the pace and started to lag behind as my ankle was bothering me. Pte Croll could not keep up the pace either. I can't remember how many times we were ordered to step up the pace, but I do know we were in files and I recollect there would be 6 or 9, and I had to go to the front of the coln to my pln, pln 16. We marched approx 5 mins and then Lt Lapalme dropped behind. We broke up then and 3 of us marched together. We were still passing the fellows and I'd say were about half way up on the second section when 5 mins elapsed and Lt Lapalme caught up with us and warned us to report to him at the break. When they broke off by the time I got up to where they were all broken off I had rejoined my pln. Lt Lapalme then asked before lunch for the 3 men and I fell out along with the other 2, and when I got to where Lt Lapalme was he was detailing a Cpl and I couldn't make out what he was telling the Cpl exactly. I then heard Stevenson ask Lt Lapalme what the drill was for and he answered "it is to make up for the 7 miles you missed". Then Stevenson asked him if he had a gd house and Lt Lapalme replied yes, and Stevenson said "well you had better put me in it" and Lt Lapalme then turned and started to walk away and I said "Sir, you had better put me in too" because I figured at the time that it was all I could do to make it back to camp let alone try to do drill. At the time I had no intentions of disobeying an order, Sir. Stevenson and I were marched away under escort shortly after that. After awhile Lt Lapalme came up to us and asked us if we wanted to do the drill and I did not answer.

Q. Did you finish the march to camp?
A. I dropped out, Sir, and was overtaken by Pte Croll.

Q. But you did come in?
A. Yes.

Q. Under escort?

A. No.

CROSS-EXAMINED

Q. Did you go on sick parade Wed morning?
A. No.

Q. What time is it held?
A. Sometime around 6.

Q. Did you know you were to go on a route march Wed morning?
A. No.

Q. When did you expect to do this drill?
A. The way he spoke to Pte Stevenson it was intended to be right then.

Q. After Stevenson said "put me in the Gd Room" you said "put me in too"?
A. Yes.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS

H.7003 CQMS BROWN JC, Wpg Gren, having been duly sworn, states:

I am the CQMS of A Coy. I recognize the accused and have checked his boots this morning. I found that he was wearing a pr of civilian boots and his foot measures size 9. I examined both his army issues and one pair is size 8½ and the other a considerably larger pair, I can't say the size as the number had been worn off. In my opinion neither of these pr of boots that this man has had issued to him, fit him. I did not put them on him but I measured his foot with a regulation army foot stick.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

THIRD WITNESS

A.71139 Cpl McLEAN, M, D Coy Wpg Gren having been duly sworn, states:

Q. Do you remember the accused making a request to go to the MO on a certain Wed morning?
A. Yes, out in front and back of the Coy Office.

Q. Remember him going into the office after that and you ordering him out?
A. Yes, sick parade is at 6.30 and the accused whom I now recognize reported to me around 7.30 and I refused to let him go on sick parade.

Q. Know anything about his foot?
A. No.

CROSS-EXAMINED

Q. At the time you ordered him out of the office were you aware that he had any specific complaint to make to the MO?
A. No.

RE-EXAMINED

Q. Did he not mention his complaint?
A. Yes, he had a sore foot.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

THE DEFENCE IS CLOSED

STATEMENT ON THE FINDING

The prosecution has proven that the accused was twice given an order by his superior officer; that upon both occasions this man failed to comply with these orders. I submit that upon both occasions he was aware that he had been given a specific order, and that by his answering in the second case in particular his response to that order was such as to show that he disobeyed a lawful command by his superior officer. The defense has not I think proven that the speed of the march was too great, especially since the man was overburdening troops were tired while he was sick. The prosecution has shown that regarding the second charge the accused was given a specific

command which he failed
to comply with

DEF OFF ON THE FINDING

On the first charge it has been pointed out that his section was at the front of the coln and that he did catch up with his section. It has also been brought out that he spent some time in the Sick Bay, and also that he was wearing civilian boots. On the second charge he made the statement that there was no order given and it would seem that the order was given to the Cpl and the mention of the gd room to the other accused sort of made it difficult for the witnesses to remember just exactly what the instructions were. This man had no intention of disobeying a lawful command.

PROSECUTOR ON THE FINDING

(NOTE ATT)

Statement of Sgt Opp read and [illegible] [illegible] attached

PLEA IN MITIGATION

THE DEFENDING OFFR STATED THAT HE HAD NOTHING TO SAY TO THE COURT IN MITIGATION OTHER THAN THAT WHAT HE HAD SAID IN HIS STATEMENT ON THE FINDING, and added:

I had intended to call the MO but he is absent and so I wish to file this report of the accused's attendance at the MIR which supports his statement that he has been ill.

B 143232 Pte Rogerson L.E.

Record of reporting sick.

11/9/44	Upper Resp. Inf.	Att A.
13/9/44	" " "	"
14/9/44	" " "	"
18/9/44	" " "	Admit SB.
2/10/44	Sick Bay disch.	Att C. 48hrs
5/10/44	Stiff legs	Att B as before.
4/10/44	X ray chest	neg.

Certified true record
from M.F.B. 26

[illegible] Capt RCAMC

for — S.W. McMARTIN CAPT.
M.O. W/PG STRENS. RCAMC

M.F.B. 358
50M—9-42 (5932)
H.Q. 1772-39-620
A.F.H. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	~~Rank~~	Name	Regiment (or unit)
B.143232	Pte	ROGERSON, L.E.	1 Bn Wpg Grens, CA

1. The following is a fair and true summary of the entries in the ~~[illegible]~~ Service and General Conduct sheets ~~[illegible]~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~[illegible]~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Sec 11 AA	1 times	Sec 11 AA	1 times
For	Sec 15(1) AA	2 times	Sec 15(1) AA	3 times
For	Sec 40 AA	1 times	Sec 40 AA	1 times
For		times		times

~~[illegible]~~

or

~~[illegible]~~

~~[illegible]~~ must be stated separately.

2. The accused has not been previously convicted

or

~~[illegible]~~

or

The accused at the present time is under sentence for AWL beginning on the 18th day of Oct 44

4. The accused has been in confinement awaiting trial on the present charges, for ~~[illegible]~~ days ~~[illegible]~~ 2 days in military custody, making a total of 2 days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his record of service is 20 yrs 11 mos

6. The date of his ~~[illegible]~~ attestation specified in his record of service is 25 Feb 43

~~[illegible]~~

~~[illegible]~~ service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~[illegible]~~ military decoration CVSM & CLASP

~~[illegible]~~

Permanent Force

dated ..... unit ..... and in his regiment (or corps), the rank of

dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Name ..... of ..... Unit .....

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract

Signed this 20th day of October 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

W. O. Graham Major

(W. O. Graham)
A/Officer Commanding,
1 Bn Winnipeg Grenadiers, C.A.

M.F.M. 6
(A.F.B. 122)
500M—11-40 (8025)
H.Q. 1772-45-18

No. B143232 Name ROGERSON, L.E. Sqn., Battery, or Company Corps CAC Date of enlistment 23-2-43 G.C. Badges 31-7-46 Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 1 Signature O.C. Company, etc. L.G. Pickard, Lt. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Improper entry deleted 2/2/44 (Sgd) ??? Capt.					
Camp Borden	6.9.43	Tpr		Absenting himself w/out leave from 0545 hrs 6.9.43 to 0650 hrs 13.9.43 Total absence 7 days 1 hr 5 min. Open Arrest.	Tpr Laing,	P.F. 7 days	CB 13.9.43	Capt JR Dudley	FOP 7 days and All. FR&I
Field	27.6.44	"		AA Sec 11 Neglected to obey standing Orders in that he on 27 June 44 left W.D. Veh No.CL4425718 not immobilzed and unattended, contrary to ORO 3510 (MT Regs)	Sgt McAllister, CV.	Forfs 14 days pay Sec 46 (2) (c)	4 Jul 44	Col. J.H. Perry.	
Field	30.7.44	"		(I) AA 14 (1) AWL from 2000 hrs 30-7-44 to 2115 hrs 30-7-44 (1 hr 15 min) App by Mil Police.	Ext 3 CMC Pt II DQ 53 d/4-7-44	7 days pay AA 46 (2)(c)	31.7.44	OC 3 CMC	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16 Oct 44	Pte		Sec 15 (1) AA WOA8 AWL from 0730 hrs 16 Oct 44 until 0735 hrs 17 Oct 44 (Absent 1 day 5 mins)	Documentary	4 days FP 4 days forf pay.	18 Oct 44	Maj WO Graham	Auto forf 2 days pay FR&I 149

"CERTIFIED TRUE COPY of the
original document in my custody.

.....Capt & Adjt.,
(.I.McDonald)
1 Bn Winnipeg Grenadiers, C.A."

SUMMARY OF EVIDENCE

In The Cases of

No. B.143232 Private Rogerson, L.E. 1st Bn Winnipeg Grenadiers, and No. B.144153 Private Stevenson, R.W. 1st Bn Winnipeg Grenadiers, Soldiers of the Canadian Army Overseas, both charged with disobeying a Lawful Command given by their Superior Officer. (AA 9) (3).

By direction of the Commanding Officer the Evidence is taken on Oath.

First Witness

Lieut G Lapalme, Canadian Infantry Corps, attached to the 1st Bn Winnipeg Grenadiers, having been duly sworn states:

I am a platoon Commander of "D" Coy, 1st Bn Winnipeg Grenadiers and Pte Rogerson and Pte Stevenson are members of that Coy. On the 18th of October 1944 I was Acting 2 i/c of "D" Coy. On that date the Coy was on a route march. Some men of the Coy were detained in camp for various reasons and they rejoined the Coy in the Field about 1115 hrs. At that time the Coy had walked about 7 miles when these men caught up to us by truck, they debussed at the rear of the column.

The Coy at that time had been through a few obstacles so they were quite closed up.

I told the men who had just debussed to rejoin their sections which were not over 300 yards ahead.

Most of them had already moved off to their sections but about 6 did not do so and were staying behind, I told them again to step out and catch up with their sections, but they still remained in the rear. When I noticed that, I formed them in file putting myself at their head to catch up with the sections. I had to drop behind the whole Coy so I left them at the head of the last section of the Coy on their own to catch up and rejoin their sections.

A short while afterwards I noticed there were only three of the original six who had not rejoined their sections and who remained in the rear, and were walking abreast, I told them again to rejoin their sections and when I saw they did not extend themsleves or make effort to do so I told them to report to me at the breakoff.

At the breakoff they reported to me and I told them to fall in. Pte Stevenson asked me "Why", and I replied, "It was to do some drill". He replied "Have you a Guard Room", I replied "Yes". He then said "You better put me in". I turned towards Pte Rogerson to ask him what he was going to do. He answered by saying "Put me in too". I asked the third man what he intended to do and he answered by saying "I'll drill".

Ptes Stevenson and Rogerson having refused an order given by a Superior Officer, I put them in close arrest.

A short while after I went to see Ptes Stevenson and Rogerson and told them that if they wanted to do the drill the charge would be dropped or words to that effect. They did not answer.

Witness Cross-examined by: B.144153 Private Stevenson, R.

Q. Sir, you stated that there were six men left behind when the rest rejoined their sections, are you sure there wasn't nine instead of just six?

A. There may have been more than six and probably nine.

Q. Sir, was there any man who stayed behind all of the platoons until the breakoff at noon, besides we three.

A. Not knowing the people of the last platoon it is impossible for me to state definitely. Had I known there were personnel not belonging to that platoon, I would have sent them forward.

Q. Sir, what was the definite time of the breakoff at noon.

A. Having no watch I cannot give the exact time of the breakoff but following the rules of marches of that nature we stop at ten minutes to the hour and that would make it ten minutes to twelve.

Q. Sir, what platoon was I in when the noon break came?

A. I couldn't say.

Q. Sir, how far do you estimate we marched from 1115 hrs, when we caught up to you by truck, until the noon break?

A. About two miles.

Q. When I said "You had better put me in the Guard Room" what did you do?

A. I put you under close arrest.

No. B.143232 Pte Rogerson, L.E. declines to cross-examine this witness.

Second Witness

A.3155 Cpl Woodward, H.W. 1st Bn Winnipeg Grenadiers having been duly sworn states:

I am section commander of #3 section, number 17 platoon "D" Coy, 1st Bn Winnipeg Grenadiers and Pte Stevenson is in my section.

On the 18th of October 1944 at about 1155 hrs in the Field I was ordered by Lieut Lapalme to give Ptes Stevenson and Rogerson some drill.

Lieut Lapalme then ordered Ptes Stevenson and Rogerson to fall in to take the drill.

Pte Stevenson asked Lieut Lapalme "Have you a Guard Room" Lieut Lapalme replied "Yes". Pte Stevenson said "Put me in it then". Lieut Lapalme then turned to Pte Rogerson and Rogerson said "Put me in too"

No. B.144153 Pte Stevenson, R.W. declines to cross-examine this witness.

Witness cross-examined by B.143332 Pte Rogerson, L.E.

Q. Cpl, did the Officer detail us two or us three for drill?

A. No, there was another man there, and I believe his name is Pte Walker.

Q. Cpl, did the Officer detail us to go on parade or did you detail us to go on parade?

A. I did not give the Command.

Q. Cpl, did the Officer not detail you to drill us?

A. Yes he did.

Q. Cpl, after they took us away did they not drill Pte Walker?

A. Pte Walker's reply was "I'll do it". Then Lieut Lapalme said "Breakoff and join your platoon".

Q. Cpl, did we state that we would not drill?

A. No, Pte Stevenson said "Put me in the Guard Room" and you said "Put me in there too".

Q. Cpl, did Pte Stevenson and myself to your knowledge disobey an order by making that request?

A. You did not carry out the order therefore you must have disobeyed it.

H.W. Woodward

The accused were cautioned as follows:

Q. Do you wish to make any statements or give Evidence on Oath? You are not obliged to say anything or give Evidence unless you wish to do so, but whatever you say or any Evidence you give will be taken down in writing and may be given in Evidence.

A. The accused declined to make a statement and reserved their Defence.

I certify that the foregoing Summary of Evidence, consisting of 3 pages, was taken down by me in the presence of the Accused and that R.P.4(c)(d)(e)(f) and (g) have been complied with.

IN THE FIELD
19 Oct 44

H Gordon Capt.
(H. GORDON)
1st Bn Winnipeg Grenadiers.

Trial of No. B 143232 Pte. LIONEL EARNEST ROGERSON

1 Bn Winnipeg Grenadiers, CA

List of Witnesses for the Prosecution

Lieut. G. Lapalme, CIC, Att 1 Bn Winnipeg Grenadiers, CA, in the Fd.

A 3155 Cpl Woodward, H.W., 1 Bn Winnipeg Grenadiers, CA, in the Fd.

Dated in the Field this 19th day of October, 1944.

I. McDonald Capt & Adjt

(I. McDonald)

1 Bn Winnipeg Grenadiers, CA

VV·53 (AFRICA)

CPL. ROLES & V.

VV-53

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Third day of November, 1943.

Whereas it appears to me, the undersigned, an officer in Command of Troops H.T. B.19, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

Hend B.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

* ~~I am unable to appoint:~~
  * ~~(1. Three Officers to form the Court.)~~
  * ~~(2. A Field Officer as President.)~~
  * ~~(3. Three Officers having more than one year's service.)~~

~~for the following reasons, namely:~~

Hend B.

Proceedings Reviewed
[signature]
27 Nov 43
Reviewing Officer (J.A.G.) C.M.H.Q.

President.

Rank.	Name.	Regiment.
Major.	C.M.McLean	10 C.A.R. (Fort Garry Horse)

Members.

Rank.	Name.	Regiment.
Capt.	F.J.Pengally	4 P.L.D.G.
Lieut.	G.L.Stevens	Rifle Brigade.
Waiting Member. Lieut.	L.R.Smith	4 P.L.D.G.

*Signed Hend. Brodsha Lt Colonel

Commanding Troops. H.T. B19.

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C. 96208 Cpl. ROLES E.V., Corps Military Staff Clerks.	At Sea. Date of Offence. 31.10.43		Guilty	Confirmed.
	Section 11 Army Act W.O.A.S.:- Neglecting to obey Ship's Standing Orders, in that he at sea, on 31.10.43 smoked on E.4 Troop Deck, contrary to a Ship's Standing Order No.35 dated 25.10.43.	Guilty	Reduction to the ranks.	Hend Brooke Lt-Col.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A).):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) Hend Brooke Lt-Col. (Signed)
Commanding Troops H.T. B19. *President.*
Convening Officer (b)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B.

I certify that the above Court assembled on the Fourth day of November, 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. Certificate of President as to proceedings.

I also certify that:—
1. The members of the Court
2. The witnesses
*(~~3. The interpreter~~)
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable

Signed this 4th day of November 43

President of the Court Martial.

C.

Certificate in case of death sentences.

* See footnote (i) on page 762 M.M.L. 1919.

*I certify that the terms of *A.C.I. 370 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D.

Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~I direct that the soldier named in the margin be not sent~~ Hend B.
~~suffer imprisonment or further ordered~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commute to prison, or, having such authority, recommends suspension.

Signed this 4th. day of November 1943.

Hend Brooke Lt-Col.
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) Fourth day of November 1943 (Signed) C.H.M. Ickem Capt. & Adjt. Troops Depot B. 19

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(48775) Wt. 40113—293 400 m. 1/43 T. St. G. 88/

JAG BRANCH - REVIEW RECORD

Accused

C96208 Cpl Roles E.V.
CMSC

Remarks	Date
Trial in (Country) CMF	4 Nov 43
Charges Sec 11	
Sentence Reduced to ranks	4 Nov 43
Rec'd from CR at JAG Branch	27 Nov 43
To CPC for (~~pre~~)(post) rev	27 Nov 43
Recommendations by [illegible]	
(1) Pass and record.	
(2) Ltr on irregularities	
(3) Quash charge(s).	
(4)	
Ret'd to JAG Rev 1 by [illegible]	27 nov.
Passed to	
Passed to	
To AG 5 for	
Ret'd from AG 5 to JAG Rev 1	
Instrs by JAG Rev 1 on disposal	
Record & File [illegible]	
	28 Nov 43
Instrs completed by	

CHARGE SHEET.

The accused, No.C.96208 Corporal ROLES E.V. Corps Military Staff Clerks, a soldier of the Canadian Active Forces, is charged with:

Charge

Sec 11

AA

WHEN ON ACTIVE SERVICE, NEGLECTING TO OBEY SHIP'S STANDING ORDERS.

in that he

at Sea, on 31.10.43. smoked on E.4 Troop Deck contrary to a Ship's Standing Order No.35 dated 25.10.43.

Lieut. Col.
Commanding Troops B-19.

Unit Corps Military Staff Clerks

Squadron, Battery or Company

MORNING SICK REPORT
MEDICAL INSPECTION REPORT *

Station At Sea

A.F. B 256

Date 3rd November 1943

Army No.	Rank	Surname and Initials (M under name if married)	Completed years of Age	Completed years of Service	Religion	If for duty†	Whether a defaulter	Disease	Disposal Medical Officer's Remarks and Signature
C-46208	Cpl	Roles E.V.	23	3½	C.C.			Medical exam for Court Martial	Fit. H.R. Gibson Capt RCAMC.

* Strike out whichever is not applicable. † State nature of duty for which warned. In the case of men for medical inspection, the reason such as "for trial by court martial," or "joining the Station," should be stated against their names. (F.I.O.)

Ship's Orderly Room

B.

I hereby certify that Ship's Standing Orders, as issued by A.C. Scapa, H.T.B. 19, were read and explained to all personnel under my command.

G.E. Kent Capt
O.C. Detail 289/58
26 Oct 43

A

SHIP'S STANDING ORDERS
BY
Lt.Col.H.M.E.BRADSHAW M.C.
THE HAMPSHIRE REGT.
OFFICER COMMANDING TROOPS, H.T.B.19.

---

1. Unit Commanders will read and explain these orders to the units under their command immediately after embarkation, and will render a certificate to this effect within 24 hrs.of embarkation.

2.Organisation.

(a) For control purposes the ship is divided into 5 sections the commander of each section being known as Section Commander. Each Section is divided into various departments, the commanders of each being known as Department Commanders and are under command of Section Commanders.
In addition to the above [redacted] Officers, Serial Commanders, and Unit Commanders will continue in command of their relative units and will be known as Unit Commanders. These unit Commanders may simultaneously be section or Compartment Commanders.

(b) Only Section Commanders may have direct access to O.C. Troops.

(c) Section Commanders will attend O.C.Troops daily conference after rounds.

3.Alarms - are as follows:-

(a) Air Attack:- Announcement by loud speaker from the bridge.

(b) Fire:- Continuous ringing of ship's alarm bells which are operated from the bridge and are throughout the ship.

(c) Boat Drill:- A series of seven short rings followed by one longer ring of the ship's alarm bell.

(d) Abandon Ship:- An alarm used only in case of actual emergency necessitating the abandonment of the ship as a whole, consisting of a series of short and one long blast of the ship's whistle. This must not be confused with ship's whistle signals sometimes employed in convoy control. The signal to abandon ship may also be communicated by verbal order of O.C. Troops.
Action to be taken by all ranks on alarms as above is laid down in the appendix to these Standing Orders.

4. Bedding.
Two Blankets per man have been placed in each troop compartment. Compartment Commanders(through), Section Commanders) will report deficiencies or otherwise to Ship's R.A.M.S. within 24 hrs. of embarkation.

5.Domestic Pets and Birds.
No cagedbirds, animals or domestic pets of any description are allowed in transports. All ranks should remember this rule when canaries and other birds etc. are offered for sale at ports of call.

6. Bounds.

The following are "Out of Bounds to all ranks:- Bridge Deck, Boats, Troop Bakery and Galley and crews quarters, Wire less Room, Ship's Orderly Room, Gun Platforms.

7. Mails.

Notification of despatch of mails will be published in Routine Orders as necessary. It is forbidden to take or send any letters ashore for posting except under arrangements made by O.C. Troops.

8. Censorship.

All letters for posting ashore will be censored aboard under unit arrangements and forwarded to the Ship's Orderly Room for stamping, in the case of units or drafts without censor stamp.

9. Throwing of Clothing Overboard.

Clothing however badly wornout will not in any circumstances be thrown overboard. The disposal of all clothing will be arranged for by O.C. Troops.

10. Damage.

The attention of all ranks is drawn to the necessity for care in regard to ship's fittings, furniture and equipment. Troops are not to damage woodwork by cutting or otherwise, nor to interfere in any way with the ship's ropes or gear. Special care will be taken to throw cigarette ends and matches in the receptacles provided for the purpose or in the deck waterways.

11. Defaulters.

Parades are arranged for by O.C. Troops, and not by Unit Commanders.

12. Documents.

Before Officers and N.C.O's i/c drafts disembark, they will attend the Orderly Room and collect documents of men belonging to their drafts.

13. Daily Routine Orders.

All ranks are personally responsible that they become acquainted with the daily routine orders which will be placed in conspicuous positions on board.

14. Emergency.

Printed instructions showing duties of passengers in the case of emergency are posted in conspicuous places on board, and all ranks must make themselves acquainted with these instructions.

15. Training.

Training will continue as far as possible during the voyage under arrangements to be made by O.C. Troops.

16. Fans.

Fans will not be used in cabins until permission has been given for their use. They must be switched off by the last occupant of the cabin.

17. Gambling.

Gambling is strictly forbidden. The game of "Lotto" (House) is permitted, and then only on the written permission from Ship's Orderly Room.

18. Glasses, crockery, cutlery.

No officer or other rank will remove any glasses, crockery or cutlery in the dining room, nor will he have any glasses or crockery belonging to the ship in his possession.

19. Hashish.

Soldiers proceeding to or passing through Egyptian ports are warned that the introduction of hashish into Egypt is absolutely forbidden and the penalties to which individuals are liable, if found to have even a small quantity are extremely severe.

20. Health Precautions.

All ranks are warned against exposing the head and neck to the sun and of the dangers attendant on sun-bathing when the ship is in tropical waters. Disciplinary action will be taken against any man reporting sick from the effects of sunbathing.

21. Cabins.

No Officer will change his cabin or berth without the permission of O.C. Troops.

22. Berthing.

On no account will officers or O.R's, after once having been allotted their berths, sections, or mess tables on embarkation alter these without special permission from the Ship's Orderly Room. Berthing cards will be retained by all ranks and may be inspected from time to time.

23. Landing.

On arrival at any port, no officer or other rank is allowed to leave the ship unless on duty or passed by a competentauthority. When leaving the ship at intermediate ports, it is the duty of all ranks to read or to ascertain the orders as to the time they must report back to the ship.

24. Library.

Arrangements for the issue of books will be published in Ship's Routine Orders.

25. Lifejackets.

A lifejackets will be found on each bunk and under each stateroom bed. Immediately upon embarkation each passenger will secure a lifejackets and will wear or carry same on his person at all times until debarkation. The only authorized exception is that officers and other cabin passengers leave their lifejackets in their quarters when at meals, as a life jacket will also be found under the seat of each chair in the saloon mess. Troops will wear their lifejackets while at mess. Lifejackets will not be used for cushions and will be kept off the decks and otherwise protected from soil or other abuse.

The lifejackets placed under the chairs in the Dining Saloon will not be moved except in emergency.

26. Manoverboard.

The first person to observe anyone fall overboard will loudly shout "Man overboard" and will at once throw a lifebuoy and report to the bridge or orderly room.

27. Messing.

Messing for troops is operated on a definite schedule. All men will remain in their quarters or recreation areas until time for their respective unit to enter the messhall. They will then proceed

27. Messing(Cont)

under the leadership of an officer in an orderly manner in single file via the established route.

Any complaints as to inferiority, deficiency in food will be made at once to the Messing Officer. In no case will complaints be made to any member of the Ship's Staff.

28. Mess Utensils.

Particular attention should be paid by all ranks to the cleanliness of mess utensils. When venereal disease cases are messed on mess decks, they must use the special utensils provided for their use.

29. Overall Clothing.

In order that clothing may be kept as clean as possible for wear on disembarkation, overall clothing in possession of N.C.O's and men will be worn as much as possible during the voyage.

30. Boots.

Except for sentries and certain other personnel on duty, Boots will not be worn by any rank(Canvas Shoes being taken into use) except on Boot Parades as ordered in D.R.I's.

31. Rubbish

The throwing of cigarette ends, paper wrappings, fruit peels or any other refuse over the side or out of portholes is forbidden. Ample containers are provided on all decks for the disposal of refuse. These, together with garbage containers, will be emptied during the hours of darkness under the supervision of a Ship's Officer

32. Parades.

Boat Drills will be notified later.
P.T. parades will be held daily, times will be issued later in Ship's Daily Routine Orders.

33. Security on board Ship.

(a) The time for the beginning of black - out precautions will be announced by loud speaker from the Bridge, during the blackout period the showing of any kind of light from any part of the Ship is forbidden. This includes lighted cigarettes, matches, lighters, flashlights and open port holes, and unprotected doors. Prior to the beginning of the blackout period, room stewards and other members of the ships crew will close all port holes. Passengers are expressly forbidden to open them thereafter until daylight the following morning. Many outside doors are equipped with special light switches. Tampering with same is forbidden. Blackout patrols are required to place any violators of this regulation under arrest.

(b) Cameras and Wireless Sets.

The use of cameras and wireless sets is forbidden on board ship. All ranks will surrender any cameras and wireless sets in their possession to O.C. Troops in whose custody such instruments will remain at owner's risk until disembarkation, when they will be returned to the owners.

34 Shower Baths.
Shower baths are available at all times unless orders to the contrary are issued by O.C. Troops.

35.Smoking. - Smoking is permitted in the following locations only:-

(a) In troop latrines, provided that this practice does not result in a crowded condition or otherwise interfere with the normal use of such facilities.(Compartment commanders will be responsible for decision on this point)

(b) On open decks except during the hours of blackout precautions are in effect.

(c) In rooms equipped and operated as offices in which there are no sleeping accomodation.

(d) In lobbies on C and D decks near forward main stairs and in connecting corridors, the balcony around saloon mess,the use of these being restricted to passengers occupying quarters on these decks.

Smoking in any other areas is absolutely prohibited.

36.Trafficking in food and drink.
The buying or selling of tea,sandwiches or food of any description between troops and members of the crew is strictly forbidden.

37. Valuables.
All ranks are advised to leave with O.C. Troops for safe custody to the extent of any accomodation available, at owners' risk, any monies or valuables not required for immediate use and other articles in their possession which they value.Valuables should be surely tied up. In each case a receipt will be given to the owner.

38. Water.
Fresh water is available for drinking purposes only. Three stations are provided at which water will be drawn in canteens during indicated hours. If carefully conserved it will probably not be necessary to restrict the amount of water available for this purpose. It must not,however, be wasted or used for bathing or toilet purposes. Unlimited salt water is available for bathing and toilet purposes, in all compartments.

39.Keys.
It is the duty of all personnel to hand all keys belonging to the ship into the the Ship's Orderly Room before disembarkation.

40. Diaries.
It is forbidden to keep a diary.

41. Fire Fighting appliances.
Fire fighting apparatus, electric light fittings and machinery will not be tampered with. It is forbidden to sit on fire buckets.

42.Water tight doors.
Water tight doors will not be tampered with.

Sheet 6.

43. Cabin Doors.

Cabin Doors will be fastened by hooks only.

44. Telephones.

Telephones in Cabins will not be used except in emergency or when answering calls from Ship's Orderly Room.

45. Obscene Language.

On no account will obscene language be permitted. Officers and N.C.O's will take immediate steps to prevent this.

46. Co-operation.

No personnel will make arrangements with, or give orders to Officers or Members of the U.S.Forces, Ship's Officers or Members of the crew.

Any such matters will be dealt through the Ship's Orderly Room, only.

Orders given by the the Ship's officers regarding the safety of the ship will be obeyed immediately.

At Sea.
25.10.43.

Lieut.Col.
Officer Commanding Troops.

Certified a true copy
in all material respects.

B.E.Kent Capt
O.C. Letter 289/58
2 Nov 43.

Summary of Evidence
In the case of

C96208 Cpl. ROLES, E.V. Corps of Military Staff Clerks.

Lt.Col. H.M.E.BRADSHAW, M.C. Hampshire Regt., O.C. Troops B19 directs that the evidence shall be taken on oath.

1st Witness for Prosecution.

Capt. G.G.MITCHESON, R.A. having been duly sworn states:-

"I am Ships' Adjutant on the U.S.A. Transport B19. At about 2215 hours on the 31st October 1943 I was inspecting Troop Deck E4 accompanied by the Ships' Troop Deck Sergt. Major S. Gratton. I saw Cpl. Roles, whom I now recognise, sitting on a cot with a lighted cigar in his mouth. I told C.S.M. Gratton to take his particulars."

G.G.Mitcheson. Capt. R.A.

The accused declines to cross examine.

2nd Witness for Prosecution.

386946 C.S.M. GRATTON, S. R.E. having been duly sworn states:-

"I was on duty on the 31st October 1943 accompanying Capt. Mitcheson. At about 2220hrs my attention was drawn by Capt. Mitcheson to the accused, whom I now recognise. He had a lighted cigar in his hand. Capt. Mitcheson told me to take his name and number and put him on a charge. He also told Cpl. Roles to put out the cigar which he did at once.

S.Gratton. C.S.M. R.E.

The accused declines to cross examine.

3rd Witness for Prosecution.

Capt. C.E.KENT, R.C.A.P.C. having been duly sworn states:-

I am in charge of serial 289/58 of which Cpl. Roles is a member. On embarking on B.19 I was given a copy of Ships' Standing Orders a certified true copy of which - marked A - is presented as evidence. I assembled the serial N.C.O's under my command and read these orders to them. I referred particularly to the paragraph on smoking - para 35. I instructed the N.C.O's to repeat these orders to those under their command. I submitted a certificate - marked B - to the Ships' Orderly Room to certify that the Orders had been explained when assured that the order had been obeyed. A copy of Ships' Standing Orders is prominently displayed on deck 4F and there are signs indicating no smoking allowed on the same deck.

C.E.Kent. Capt. R.C.A.P.C.

The accused declines to cross examine.

The accused declines to make any statement or to give evidence on oath.

Rules of Procedure 4(c) (d) (e) and (f) have been complied with.

Taken down by me in the presence and hearing of the accused, at sea, on this the first day of November 1943.

A.Sinclair. Capt.
The Cameronians (Scottish Rifles)

No. C-96208 Name Roles, E.V. Sqn., Batty., or Company Records CASF O'seas Corps C.M.S.C. Date of enlistment 23 Mar. 40 Sheet No. 2

Date of last entry in Company Conduct Sheet nil No. and date of last drunk nil G.C. Badges -- Long Service and G.C. Pay -- Signature O.C. Company, etc. F.H.Carlisle Capt.Adjutant (for) Officer i/c Records. Canadian Military Headquarters:

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Acton W.3	20.5.41	Cpl.		Improperly Dressed & No Respirator.	Cpl.Hall C.P.G.	Reprimanded	28.May 41	Lt.Col.--	--Capt.
Acton W.3	4 Oct41	Cpl.		A.W.L. 0900hrs 4Oct 41 to 1130hrs 5Oct 41.AASect15(2)	Sgt.Ferguson	2days Pay Forfeits	6.Oct.41	Lt-col. Hicks-Lyne	R.T.E.
Acton W.3	29-7-43	A/Sgt.		A.A. Sec 40 WOAS Conduct etc; in that he did move Identification Unit without due Authority.	CSM Ross R.J.	Reduced to Cpl.	14 Aug 43	Lt-col. R.T.E. Hicks-Lyne.	

G G Mitchell Certified true copy.

Capt. Ships' Adjutant. B-19.

[signature]

Pres.

[P.T.O.

Army Form B.122

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C. 96208	Cpl.	Roles E.V.	Corps Military Staff Clerks.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishment being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Conduct Prejudice	times Twice	times.
For A.W.O.L.	times Once	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, /

or

There are no entries in the conduct sheets of the accused. /

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ / ~~beginning on the / days of /~~

4. The accused has been in confinement, awaiting trial on the present charges, for / days in civil custody, and / days in military custody, making a total of / days, of which / days were spent in hospital.

5. The present age of the accused according to his record of service ~~attestation paper~~ is 23 yrs 35 days

6. The date of his ~~enlistment~~ attestation specified in his record of service ~~attestation paper~~ is 23 March 1940.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is /

8. The accused is entitled to deferred pay or gratuity in respect of 3 yrs 227 365 service.

9. The accused is entitled to reckon 3 yrs 227 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of /

12. (*In the case of an officer.*) The accused holds in the army the rank of / dated / and in his regiment (*or* corps *or* department) the rank of / dated /

(*22547) W1.21705/1977 10,000 10/40 A.& E.W.Ltd. Gp.655
(22897) W1.12826/123 12,000 5.43

Commanding Officer
Brandon

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

			Date of Promotion.
In the rank of	Corporal	3 months years,	
In the rank of		years	
In the rank of		years,	

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(*INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 4th day of Nov. 1943

[illegible] Capt Rt
Staff Adv B19

HHH-12

PTE ROLFE A-S.

Correspondence to be PINNED here.

E32

ENTERED IN RECORDS OF CM
H HH-12

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

On Active Service, this Eighth day of March, 1944.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~I am unable to appoint~~

~~Three Officers to form the Court~~

~~A Field Officer as President.~~

PROCEEDINGS REVIEWED 8 May 44

"R Dean Wills Capt"

WING OFFICER, JAG BRANCH CMHQ.

"AW"

"AW"

A.

Order convening the Court.

No illegalities or irregularities such as would warrant withholding confirmation.

"E.G. Morden" Lt-col
AJAG (Cts)
JAG BR. CMHQ.

11 Apr 44

Certified true copy of original proceedings herein.

[signature] Capt.
1 Aug. 45
[signature] B.M.H.Q.

Rank. Major — President. Name. D McG Archibald — Regiment. West NSR

Rank. Captain — Members. Name. M Trudeau MC — Regiment. R 22

Captain — A Nicholson

Lieut — F S J Hogan

*Signed

T/Comm

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

Waiting

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

*Omit if not applicable.

Correspondence to be PINNED here.

ENTERED IN RECORDS OF CM
H HH-12

E32

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Eighth day of March, 1944.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ "AW"

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

~~*I am unable to appoint~~
~~*(1) Three Officers to form the Court,~~
~~*(2) A Field Officer as President,~~
~~for the following reasons, namely~~ "AW"

No illegalities or irregularities such as would warrant withholding confirmation.
"E.G.Morden" Lt-col
AJAG (Cts)
JAG BR. CMHQ.
11 Apr 44

PROCEEDINGS REVIEWED 8 May 44
"R Dean Wills Capt"
REVIEWING OFFICER, JAG BRANCH CMHQ.

Certified true copy of original proceedings herein.
J. K. McQuillan, Capt.
1 Aug. 45
J.A.G. Rev. Bk. C.M.H.Q.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	D McG Archibald	West NSR

Members.

Rank.	Name.	Regiment.
Captain	M Trudeau MC	R 22e R
Captain	A Nicholson	West NSR
Lieut	F S J Hogan	R 22e R

Waiting

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed "A.Watson" Lt-col

T/Commanding 3 Cdn Inf Bde.

Convening Officer.

E52

2

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F32449 Pte Aubrey Sidney ROLFE, Carlt & York R	First charge Sec 12(1) (a) AA	Not Guilty	Guilty Six years ~~imprisonment with hard~~ penal servitude "WMcG"	I reserve the finding and sentence for confirmation by higher authority. J.A. Calder Lt-co T/Commanding, 3rd Cdn Inf Bde "WMcG Archibald" 10 Mar 44 President 9 Mar 44

I confirm the finding and sentence.

"P.J.Montague"
(P.J.Montague)
Major-General
I/c Administration
Canadian Military
Headquarters.

13 Apr 1944.

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer *(to be recorded on separate sheet if necessary)*:—

(Signed) J.A.Calder Lt-col (Signed) "WMcG Archibald" Major
T/Commanding 3 Cdn Inf Bde. President.
Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

3

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Ninth day of March, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

* Omit if not applicable.

"WMcG" were duly sworn.

Signed this 9 day of Mar 1944.

"WMcG Archibald" Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 782 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders."?

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this day of 19
"P.J.Montague"
(P.J.Montague)Major-Gen.
I/c Administration
Canadian Military
Headquarters
13 Apr 1944
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W1. 47707/1937 35 M. 5/41 E.U./5005(2) Gp. 695/3
W1. 28075/1938 60 M. 5/41 E.U./7174/2 Gp. 414/2

Promulgated and extracts taken in the case of

F-32449 Pte Rolfe, A S Carlt & York R

(a) (Dated) 19 Apr 44

(signed) "G.L.McMurdy" Major

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

Army Form A 9.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field on the 9 day of March 1944 by order of Lt-col J.a Calder T/Commanding 3rd Cdn Inf Bde dated the 8 day of March 1944

President.

Major W.McG. Archibald
West NSR

Members.

Capt M. Trudeau MC R 220 R
Capt D.Nicholson West NSR

Trial of* F32449 Pte Aubrey Sidney Rolfe Carlt & York R , Judge Advocate

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that N/A is not available to serve owing to N/A N/A , waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt D.E.Smith Carlt & York R

Counsel‡ or defending officer† Lt W.T.McGrath Carlt & York R

At 1420 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. Wt.W16839/78. 35,000 sets. 6/40. K. & H., Ltd. G657/11. Forms A 9/55.

B

President & Members "WMcGA"
~~The President, members and judge-advocate~~ are duly sworn.
"WMcGA"

~~The following officers under instruction are duly sworn.~~
"WMcGA"

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

N/A *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

N/A *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

N/A *Answer.*

"WMcGA" ~~The accused having pleaded Guilty to charge the provisions of Rule of Procedure 25 (B) are here complied with.~~

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

Charge Sheet

The accused F52449 Private Aubrey Sidney ROLFE, a soldier of the Carleton & York Regiment, Canadian Army Overseas, CMF., when on active service, is charged with:

FIRST CHARGE — WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE
Sec 12(1)(a) AA

In that he

In the Field, when under orders to move forward to a front-line position in contact with the enemy, absented himself without leave from his company from 1300 hrs on 7 Feb 44 until surrendering himself to B Section HQ of 1 Canadian Provost Company at about 2000 hrs on 21 Feb 44, there avoiding such move.
Total absence:- 14 days 7 hrs.

In the Field
Date 2 Mar 44

"J.R.Nicholls" Lt-col
Commanding Carlt & York R.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
Date 6 Mar 44

"A.W Walker" Lt-col.
T/Comd 3 Cdn Inf Bde

B2
W Mac Archibald
Major

"MEDICAL"

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN.) PARA.557

I certify that I have this morning examined

No. F52449 Rolfe A. Pte.

of Scarlet & York R. and in my opinion he

is fit to undergo Trial by Court martial.

"H.Skinner" Capt.
Medical Officer

Station In the Field

Date 9/3/44

M.F.B.246

F32449 Pte Rolfe AS

9 Mar 44

Prosecutor's Opening Adress.

The Prosecution proposes to produce evidence showing that the accused F32449 Pte Rolfe AS, absented himself without leave and by so doing avoided a move forward with his company to a position in contact with the enemy, a move for which he had been warned, and is therefore guilty of desertion.

"D.E.Smith" Lt.
Prosecuting Officer.

"A" W.McGA.

C

Proceedings on Plea of Not Guilty.

Instruction. (See R. P. 39 (A)) Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No.

The prosecutor makes an opening address [hands in a written address which is read, marked A, signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. L/Cpl Kinney, HK No.G.17945

being duly sworn, is examined by the prosecutor.

Evidence appended hereto and marked AA1.

The prosecution advised the court that the second witness for the prosecution on the summary, Capt.D.R.Sharpe of the C & Y R was unable to appear at the trial herein to give evidence due to necessary duties in the front line and that as the evidence that would have been given by Capt Sharpe was merely formal and documentary, he, the prosecutor, would be sworn as a witness and produce such evidence as assistant adjt, of the C & Y R.

The court then advised the accused and his defending officer of his rights to demand the attendance of Capt Sharpe at the trial or to ask for an adjournment if the accused desired. The accused through his defending officer advised the court that he did not feel himself prejudiced as a result of the above facts and did not require the attendance of the said Capt Sharpe at the trial herein, and that he did not desire an adjournment and that he did not object to the documentary and formal evidence being produced by the prosecuting officer as assistant adjutant of the C & Y R.

Second witness for the prosecution Lt W.E.Smith, C & Y R, CAO, having been duly sworn states: " I am assistant adjutant of the C & Y R, and produce herewith a certificate of apprehension marked AA2." The accused declines to cross-examine this witness.

RP 85(b) complied with.

1st Witness for the Prosecution:- G.17945 L/Cpl Kinney, H.K. having been duly sworn states:-

Questioned by the prosecution as follows:

Q1 Do you recognize the accused?
A1 Yes Sir, he is F32449 Pte Aubrey Sydney Rolfe.

The witness continues:

"AT 1300 hrs 7 February 44 Pte Rolfe the accused was missing from my Sec. I reported the fact immediately to my Pl.Sgt. I had warned the accused at 1200 hrs 7 February 44 that we were to move up to the front to relieve the Indians.

Further questioned by the prosecution as follows:

Q1 How did you know that the accused was missing at 1300 hrs?
A1 I formed up my sec and checked it and found the accused absent.

Q2 Has the accused returned to you since that time?
A2 Yes, Sir, he returned about two weeks ago after he had been apprehended.

Q3 Was the accused sober when you warned him that you were to move?
A3 Yes, Sir.

Questioned by the court as follows:-

Q1 How many times did you warn the Sec?
A1 Once, Sir.

Q2 Was the accused present when you warned the Sec?
A2 Yes, Sir.

RP 83(B) complied with.

D

The prosecution is closed.

Defence.

RP 40 to 2 complied with.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No.

Question. Do you intend to call any other witness in your defence?

Answer. No.

Question. Is he a witness as to character only? *Answer.* N/A

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked AA5, signed by the President and attached to the proceedings.]

WMcGA"

crossed out in error. "WMcGA".

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

Final argument by defending officer appended hereto and marked Exhibit "A"4.

"W.McG." President.

Unsworn statement of the accused in his own defence.
F-32449 Pte A.S. Rolfe:

The night before the move we had a party. I was drinking. Next morning I had a few more drinks. I got the vino right in my billet. At 0800 hrs Sgt Carrol of my pl came in and told us to get packed up, but did not tell me what time we were going to move off. After that I drank more as there wasn't much to do. There were two houses over the hill from where we were stationed. I stayed in one of these houses that night and reported back next morning to find my Coy gone and only English troops there. I kept drinking until I gave myself up to the provost in Ortona.

Final argument by defending officer.

Pte Rolfe was drunk when given final warning to move into contact with the enemy. He does not recall being warned, if he was warned. MML Sec 48 Ch III says that where intention is the substance of a charge drunkenness may be considered to place the act under a less serious heading. Rolfe did not intend to avoid the enemy. He was too drunk to be responsible. He returned as soon as he sobered up but his company had moved. He went again since there seemed nothing else to do - he finally surrendered himself.

Attention is brought to the fact that only 1/Cpl Kenney's evidence supports the claim that the accused was warned, and understood the warning. Surely more witnesses were available if Rolfe were present with the whole section.

"W.McGrath" Lt.

E

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

Finding.*

The Court is closed for the consideration of the finding.

The Court find that the accused

F32449 Pte Aubrey Sydney Rolfe is found guilty of the first charge Sec 12(1)(a) AA.

"WMcG Archibald"
Major
President.

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before Sentence.*

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it Prosecuting Officer Lt.D.E.Smith, is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes, I produce MFM 6 and MFB 355.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E1 & E2 signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

(Instructions.—If by reason of the nature of the service of the accused in a departmental [illegible] or otherwise the finding of the Court renders him liable to any [illegible] punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Cross-examined by the accused. No.

Question to the accused.

Do you wish to address the Court? *Answer.* Yes.

The Court is closed for the consideration of the sentence.

"Archibald"
Major.

Certificate under A/A 163 (I) (j)

I Lieut E.A.Morkebeig, certify that F-32449 Pte Rolfe, A.S. of the Cartl & York Regt surrendered himself to B-95591 Sgt G.F.Parker at Ortono (2000 hrs) the 21st day of February, 1944, ~~as a deserter~~ (or absentee without leave)

Date 21/2/44

"E.A.Morkebeig" Lieut
Officer i/c 1 Platoon
1 Coy: Cdn Provost Corps

"JMcG Archibald"
Major

CANADIAN ARMY

C Coy

21/2/44

At approx 2000 hrs on the above mentioned date the undermentioned reported into "B" Section HQ of #1 Canadian Provost Coy.

F32449 Pte ROLFE AS, the above mentioned stated he was AWL had been away from unit for approx 3 weeks.

Rolfe was escorted to PPCLI guard room in Ortona.

"B.95591 G.F.Parker" Sgt.

Summary of Evidence in the case of F52449 Private Aubrey Sidney ROLFE, a soldier of the Carleton & York Regiment, Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken under oath.

FIRST WITNESS for Prosecution.

G17945 L/Cpl Kinney H.K. Carleton and York Regiment, Canadian Army Overseas, having been duly sworn states:-

I am G17945 L/Cpl Kinney H.K. of 8 section 15 platoon, C Company, Carleton and York Regiment. On 7 Feb 44 I was acting as section commander of 8 section. At 1300 hrs 7 Feb 44 I checked my section and found that the accused, Pte ROLFE, was absent. I had warned my section at about 1200 hrs, that we were moving forward to take up a front-line position relieving an Indian Regiment. Pte ROLFE was present when I gave the section this warning. We moved off without the accused and he has not since that time been back to the company.

"H.K. Cpl Kinney"
G17945 L/Cpl Kinney H.K.

The accused declines to cross-examine this witness.

SECOND WITNESS for Prosecution

Capt D.R.SHARPE, Carleton and York Regiment, Canadian Army Overseas, having been duly sworn states:

I am Capt D.R.Sharpe, Adjutant Carleton and York Regt. I produce documentary evidence: statement of evidence of A95591 Sgt G.F.Hardy which is marked "A" and is attached to the summary.

"D.R.Sharpe"
Capt D.R.Sharpe

The accused declines to cross-examine this witness.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath; you are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

Certified that Rules of Procedure 4(c)(d)(e)(f) have been complied with.

Taken down by me this 20th day of February 1944 in the presence of the accused, in the Field.

"D.E.Smith" Lt.
Officer taking Summary.

LIST OF WITNESSES in the case of F32449 Pte ROLFE A.S.

For the prosecution:

G17945 L/Cpl Kinney, H.K.
Capt D.R.Sharpe.

For the defence:

NIL.

list of exhibits in the case of F32449 Pte ROLFE A.S.

Exhibit "A" - statement of evidence of A95591 Sgt G.F.Hardy.

Certified that I have received free of charge a copy of the Summary of Evidence, and all other documents relating to my trial by Court-Martial.

Certified that I have received free of charge a copy of the charge sheet upon which I am being brought before Court-Martial.

I desire the services of an officer to represent me at my trial by Court-Martial.

In the Field
Date 26 Feb 44.

"ROLFE A.S."
F32449 Pte Rolfe, A.S.

SUPPLEMENTARY - Original not available, "D.R.SHARPE" Officer of records M.F.M. 6

No. 32449 Name Rolfe, A.S. Sqn., Battery, or Company Corps Infantry Date of enlistment O.C. Badges Capt. Service or Proficiency Pay (A.F. B.122) 40/P.A./B.130 (2965)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
E1 "WMcG ARCHIBALD" Major				Certified True Copy from the Regimental Books in my custody 9 Mar 44 "D.R.Sharpe" Capt.					

(P.T.O.)

"WMcQ Archibald"
Major

M.F.B. 355
22M—5/41 (372-3)
H.Q. 1772-39-820
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

~~Number~~	Rank	Name	Regiment (or unit)
F32449	Pte Rolfe, A.S.		Carleton & York Regt.

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets ~~Regimental and Equivalent Rates~~ ~~or~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

Within last 12 months		Since enlistment or appointment	
For	times		times
For	times		times
For	times		times
For	times		times

~~Number of instances of gallantry or distinguished conduct.~~

~~or,~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

~~or,~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.~~

3. ~~The accused is not under sentence at the present time~~

or,

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 30 days in Air Force military custody, making a total of 30 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 21 yrs.

6. The date of his ~~commission~~ attestation specified in his record of service is attestation paper 6 Oct 42

7. The service which the accused is allowed to reckon towards discharge is 1 yr 6 mo.

8. The accused is entitled to reckon 1 yr 6 mo service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to no air force decoration or air force reward (or is in possession of or entitled to). State any air force decoration or reward.~~ military military military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit
N/A dated , and in his regiment (or corps), the rank of
dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number Rank Air Force Unit
Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8TH day of March 1944 "D.E.Smith" Lt
Off i/c Records.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

Correspondence to be PINNED here.

CERTIFIED TRUE COPY Spare copy HHH 12

R. Cordeau CAPT
(R. CORDEAU.)

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Eighth day of March, 1944.

Whereas it appears to me, the undersigned, an officer in Command of , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~ "AWC"

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* ~~(I am unable to appoint~~
~~*(1) Three Officers to form the Court.)~~ "AWC"
~~*(2) A Field Officer as President.)~~
~~for the following reasons, namely:—~~

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	D Mc G Archibald	West NSR

Members.

Rank.	Name.	Regiment.
Captain	N Trudeau MC	R 22e R
Captain	A Nicholson	West NSR
Lieut	F S J Hogan	R 22e R

Waiting

*Must be signed personally by the Officer actually in command at the time, and all alterations in composition of the Court to be detailed in.

*Signed "A.W. Calder" Lt-Col

~~T/Commanding~~ 3 Cdn Inf Bde
Convening Officer.

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F32449 Pte Aubrey Sidney ROLFE, Carlt & York R	First Charge Sec 12(1)(a)	Not Guilty	Guilty Six years Penal Servitude, Higher Authority "D Mc G Archibald" Major President "A.W. Calder" Lt-Col 9 Mar 44	I reserve the finding and sentence for confirmation by T/Commanding, 3rd Cdn Inf Bde 10 Mar 44 I confirm the finding and sentence. (Sgd.) P. J. Montague Maj.-Gen Major-General i/c Administration Canadian Military Headquarters. 13 Apr 44

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) "AW Calder" Lt-Col (Signed) "D Mc G Archibald" Major
T/Commanding 3 Cdn Inf Bde
Convening Officer (e) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings

I certify that the above Court assembled on the Ninth day of March, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

Omit if not applicable. D.Mc G. A(3. ~~The Interpreter~~
*(4. ~~The officers under instruction~~)—

were duly sworn.

Signed this 9 day of Mar 1944.

"D Mc G Archibald" Major
President of the Court Martial.

C. Certificate in case of death sentences

*See footnote (b) on page 762 M.M.L. 1929. I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~ P.J.M.

Signed this 13th day of April 1944
(Sgd.) P. J. Montague Maj.-Gen.
Major-General i/c Administration Canadian Military Headquarters
Confirming Officer.

Promulgated and extracts taken in the case of F32449 PTE ROLFE A.S. CARLT & YORK R.

(a) (Dated) 19 Apr 44 (Signed) [illegible] Lt-Col

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(20704) W1-47581/942 65,000 7-42 A.G.R. & W.Ltd. Op.859
(21750) W1-19058/1359 40,000 7-42

CHARGE SHEET

The accused F32449 Private Aubrey Sidney ROLFE, a soldier of the Carleton and York Regiment, Canadian Army Overseas C.M.F., when on Active Service, is charged with:

FIRST CHARGE
Sec 12(1)(a) A.A.

When on Active Service deserting His Majesty's Service

in that he,

in the Field, when under orders to move forward to a front-line position in contact with the enemy, absented himself without leave from his Company from 1300 hrs on 7 Feb 44 until surrendering himself to B section HQ of 1 Canadian Provost Company at about 2000 hrs on 21 Feb 44, thus avoiding such move.
Total absence: 14 days 7 hrs

In the Field
Date 2 Mar 44

"T.L. Nichella" Lt-Col
Commanding Carlt and York R.

TO BE TRIED BY FIELD GENERAL COURT/MARTIAL

In the Field
Date 3 Mar 44

"A.W. Calder" Lt-Col
T/Comd 3 Cdn Inf Bde.

B 2

"D Mc G Archibald"
Major.

D McG Lochbald

MEDICAL OFFICER CERTICATE
KR (Cdn) Para 357

I certify that I have this morning examined
F 32449 Rolfe, A.
of the Carlt & York R and in My opinion is fit
to undergo trial by Court Martial.

Place in the Field

Date: 9/3/44

"F.S. Skinner Capt."
Medical Officer

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field Gen Court-Martial held at Field on the 9 day of March 1944 by order of Lt.Col J.A. Calder

T/ Commanding 3rd Cdn Inf Bde

dated the 8 day of March 19 44

President.

Major D Mc G Archibald West NSR

Members.

Capt. M. Trudeau M.C. R 22e R

Capt. N. Nicholson West NSR

~~Judge Advocate~~

Trial of* F 32449 Pte Aubrey Sidney Rolfe
Carlt & York R

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that N/A is not available to serve owing to N/A

N/A , waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt. D.E. Smith Carlt & York R

Counsel‡ or defending officer† Lt. W.T. McGrath Carlt & York R

At1420 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q1261. Wt.W4802/9/967. 40,000 wts. 2/40. K. & H. Ltd. G651111. Forms A 9-25.

.F 32449 Pte Rolfe A.S.

9 Mar 44

Prosecution's Opening Address

The prosecution proposes to produce evidence showing that the accused F32449 Pte Rolfe A.S. absented himself without leave and by so doing avoided a move forward with his company to a position in contact with the enemy, a move for which he had been warned, and is therefore guilty of desertion.

"A"
"D Mc G Archibald."

"D.E. Smith, Lt."
Prosecuting Officer

C

Proceedings on Plea of Not Guilty.

Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No

The prosecutor makes an opening address [hands in a written address which is read, marked A , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. L/Cpl Kinney, R.K. No. G17945

being duly sworn, is examined by the prosecutor.

evidence appended hereto and marked A A 1

The prosecution advised the Court that the second witness for the prosecution on the summary, Capt D.R. Sharpe of the C & Y R was unable to appear at the trial herein to give evidence due to necessary duties in the front line and that as the evidence that would have been given by Capt Sharpe was merely formal and documentary, he, the prosecutor, would be sworn as a witness and produce such evidence as assistant Adjt. of the C & Y R.

The court then advised the accused and his defending officer of his rights to demand the attendants of Capt Sharpe at the trial

AA 1
"D Mc G A"

1st Witness for the prosecution
G 17945 L/Cpl Kinney, H.K. having been duly sworn states:

Questioned by the prosecution as follows:

Q.1. Do you recognize the accused?
A.1. Yes Sir, he is F 32449 Pte Aubrey Sydney Rolfe.

The witness continues:

At 1300 hrs. 7 February 44 Pte Rolfe the accused was missing from my sec. I reported the fact immediately to my Pl, Sgt. I had warned the accused at 1200 hrs. 7 February 44 that we were to move up to the front to relieve the Indians.
Further questioned by the prosecution as follows:

Q.1. How did you know that the accused was missing at 1300 hrs?
A.1. I formed up my Sec. and checked it and found the accused absent.

Q.2. Has the accused returned to you since that time?
A.2. Yes Sir, he returned about two weeks ago after he had been apprehended.

1st Witness for prosecution Contd.

Q.3. Was the accused sober when you warned him that you were to move?
A.3. Yes Sir.

Questioned by the court as follows:

Q.1. How many time did you warn the sec?
A.1. Once, Sir.

Q.2. Was the accused present when you warned the Sec?
A.2. Yes Sir.

R.P. 83 B complied with

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No

The prosecutor makes an opening address [hands in a written address which is read, marked A , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. L/Cpl Kinney, R.K. No. G17945

being duly sworn, is examined by the prosecutor.

evidence appended hereto and marked A A 1

The prosecution advised the Court that the second witness for the prosecution on the summary, Capt D.R. Sharpe of the C & Y R was unable to appear at the trial herein to give evidence due to necessary duties in the front line and that as the evidence that would have been given by Capt Sharpe was merely formal and documentary, he, the prosecutor, would be sworn as a witness and produce such evidence as assistant Adjt. of the C & Y R.

The court then advised the accused and his defending officer of his rights to demand the attendants of Capt Sharpe at the trial

or to ask for an adjournment if the accused desired. The accused through his defending officer advised the court that he did not feel himself predjudiced as a result of the above facts and did not require the attendance of the said Capt Sharpe at the trial herein, and that he did not desire an adjournment and that he did not object to the documentary and formal evidence being produced by the prosecuting officer as assistant adjutant of the C & Y R.
Second witness for the prosecution Lt. D.E. Smith, C & Y R, CAO having been duly sworn states: "I am assistant adjutant at the C & Y R. and produce herewith a certificate of apprehension marked A A 2 "
The accused declines to cross examine this witness.

R.P: 83 B complied with.

D

The prosecution is closed.

Defence.

Question to the accused. R.F. 40 (2) complied with
Do you apply to give evidence yourself as a witness?

Answer. No

Question. Do you intend to call any other witness in your defence?

Answer. No

Question. Is he a witness as to character only? *Answer.* N/A

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (ii) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked A A 3
signed by the President and attached to the proceedings.]

"D Mc G A"

Crossed out in error "D Mc G A"

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

A A 3
"D Mc G Archibald"
President

Unsworn statement of the accused, in his own defence
F 32449 Pte A.S. Rolfe.

The night before the move we had a party. Iwas drinking. Next morning I had a few more drinks I get the vino right in my billet. At 0800 hrs. Sgt Carrol of my Pl. came in and told us to get packed up, but did not tell me what time we were going to move off. After that I drank more as there wasn't much to do. There were two houses over the hill from where we were stationed . I stayed in one of these houses that night and reported back next morning to find my Coy. gone and only English Troops there. I kept drinking until I gave myself up to the provost in Ortona.

A 4
"D Mc G Archibald"

Final argument by defending officer

Pte Rolfe was drunk when given final warning to move into contact with the enemy.. He does not recall being warned if he was warned M M L sec 48 Ch III says that when intention is the substance of a charge drunkenness may be considered to place the act under a less serious heading. Rolfe did not intend to avoid the enemy. He was too drunk to be responsible. He returned as soon as he sobered up but his company had moved. He went again since there seemed nothing else to do. He finally surrendered himself.

Attention is brought to the fact that only L/Cpl Kenney's evidence supports the claim that the accused was warned and understood the warning. Surely more witnesses were available if Rolfe were present with whole section.

"W. Mc Grath, W.T."

D

The prosecution is closed.

Defence.

R.F. 40 Fn 2 complied with

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No

Question. Do you intend to call any other witness in your defence?

Answer. No

Question. Is he a witness as to character only? *Answer.* N/A

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked A A 3 signed by the President and attached to the proceedings.]

"D Mc G A"

Crossed out in error "D Mc G A"

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

Final argument by defending officer appended hereto and marked exhibit A 4

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

F32449 Pte Aubrey Sydney Rolfe is found guilty of the first Charge Sec 12(1)(a) AA

"D Mc G Archibald"
Major
President

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.—Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Prosecuting officer Lt D.E. Smith is duly sworn.

Question by the President. Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes, I produce MFM 6 & MFB 355

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E1&E2 signed by the President, and annexed to the proceedings.

Question by the President. Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question. Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused. No

Question to the accused. Do you wish to address the Court? *Answer.* Yes

The Court is closed for the consideration of the sentence.

F

Sentence.

Sentence.

The Court sentence the accused

F 32449 Pte Aubrey Sydney Rolfe,
Carlt & York R
to undergo 6 years Penal Servitude.

D Mc G Archibald." 9/4/
President

"D.D. Sharpe officer i/c records
Capt

M.F.M. 6
(A.F. B.122)
40/P & /B136 (2965)

No. F32449 Name Rolfe, A.S. Sqn., Battery, or Company SUPPLEMENTARY - Original Not available Corps Infantry Date of enlistment G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
E 1									
"D Mc G Archibald" Major				Certified True Copy from the Regimental Books in my custody 9Mar 44.					
				"D.D. Sharpe" Capt.					

(P.T.O.)

E 2
"D Mc G Archibald"
Major

M.F.B. 355
22M—5-41 (572-8)
H.Q. 1772-39-620
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F.32449	Pte	Rolfe A.G.	Carlt & York R.

1. The following is a fair and true summary of the entries in the ~~Regimental and Squadron/Battery~~ Service and General Conduct sheets / Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act / Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For ~~Good Conduct~~	~~times~~	~~times~~
For ~~Long Service~~	~~times~~	~~times~~
For ~~Efficiency~~	~~times~~	~~times~~
For ~~Gallantry~~	~~times~~	~~times~~

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused~~.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The~~ accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act / Air Force Act and dispensations with trial under A.A. 73 / A.F.A. 73 are set out in the ~~Schedule~~ annexed to this statement.

3. ~~The accused is not under sentence at the present time~~

or,

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in ~~civil~~ Air Force custody, and 30 days in military custody, making a total of 30 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 21 yrs

6. The date of his ~~enrolment~~ attestation specified in his record of service is attestation paper 6 Oct 42

7. The service which the accused is allowed to reckon towards discharge is 1 yr. 6 mo.

8. The accused is entitled to reckon 1yr 6 mo service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward.~~ military military ~~military~~

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit, and in his regiment (or corps), the rank of N/A dated , dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— Date of promotion

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit Regiment of Air Force

Name

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th day of March 1944 "D.E. Smith Lt." Officer i/c Records

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

SUMMARY OF EVIDENCE in the case of F 32449 Private Aubrey Sidney Rolfe, a soldier of the Carleton and York Regiment, Canadian Army Overseas.

By direction of the Commanding officer the evidence is taken under oath.

FIRST WITNESS for Prosecution — G 17945 L/Cpl Kinney H.K. Carleton and York Regiment, Canadian Army Overseas, having been duly sworn states:

I am G 17945 L/Cpl Kinney H.K. of 8 Section, 15 Platoon, C Company, Carleton and York Regiment. On 7 Feb 44 I was acting as section commander of 8 section. At 1300 hrs 7 Feb 44 I checked my section and found that the accused, Pte Rolfe was absent. I had warned my section at about 1200 hrs. that we were moving forward to take up a front line position relieving an Indian Regiment. Pte Rolfe was present when I gave the section this warning. We moved off without the accused and he has not since that time been back to the company.

"D Mc G Archibald"

"H.K. Cpl Kinney"
G 17945 L/Cpl Kinney H.K.

The accused declines to cross-examine this witness.

SECOND WITNESS for Prosecution — Capt. D.R. Sharpe, Carleton and York Regiment, Canadian Army Overseas, having been duly sworn states:

I am Capt. D.R. Sharpe, Adjutant Carleton and York Regt. I produce documentary evidence: Statement of evidence of A 95591 Sgt G.F. Hardy which is marked "A" and is attached to the summary.

"D.R. Sharpe"
Capt D.R. Sharpe

The accused declines to cross-examine this witness.

The accused was cautioned as follows:

Do you wish to make any statement or give evidence on oath; you are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

Certified that Rules of procedure 4 (c)(d)(e)(f) have been complied with.

Taken down by me this 26th day of February 1944 in the presence of the accused.
In the Field

"D.E. Smith Lt."
Officer Taking Summary

List of Witnesses in the case of F32449 Pte Rolfe, A.S.

For the prosecution:

G17945 L/Cpl Kinney H.K.
Capt. D.R. Sharpe

For the Defence.

Nil

Exhibit "A" - Statement of evidence of A 95591 Sgt G.F. Hardy.

Certified that I have received free of charge a copy of the Summary of Evidence, and all other documents relating to my trial by Court-Martial.

Certified that I have received free of charge a copy of the charge sheet upon which I am being brought before Court-Martial.

I desire the services of an officer to represent me at my trial by Court-Martial.

In the Field
Date 26 Feb 44

"Rolfe A.S."
F 32449 Pte Rolfe A.S.

AA 2
"D Mc G Archibald"

Certificate under A/A 163 (I) (j)

I Lieut E.A. Morkebug certify that F 32449 Pte Rolfe A.S.

of the Carlt & York Regt. surrendered himself to B 95591

Sgt G.F. Parker, at Ortona (2000 hrs) the 21st day of Feburary

1944 ~~as a deserter~~ (or absentee without leave)

Date 21/2/44

"E.A. Morkebug" Lieut
Officer i/c I platoon
I Coy: Cdn. Provost Corps

AA 2

"D Mc G Archibald"
Major

"C" Coy.

21/2/44

At approx 2000 hrs on the above mentioned date the undermentioned reported into "B" Section HQ of # 1. Canadian Provost Coy.

F.32449 Pte ROLFE A.S.
The above mentioned stated he was A.W.L. had been away from Unit for approx 3 weeks.

Rolfe was escorted to PPCLI guard room in Ortona.

" A95591 Geo. F. Hardy" Sgt.

CAU-1-2 F78180 Pt. Rolfe, CE.



4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AWOL	NOT GUILTY	GUILTY	
2nd AWOL	GUILTY	GUILTY	
3rd AWOL	GUILTY	GUILTY	
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ NIL beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 31 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

TO SUFFER PENAL SERVITUDE FOR THE TERM OF THREE (3) YEARS AND TO BE DISHONORED WITH IGNOMINY FROM HIS MAJESTY'S SERVICE

(Sgd) "J.A.Mignolon Major" 10 Jan 46 (Sgd) "W.A.Kennedy Major"
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the findings and sentence for confirmation.

Date 26 Jun 46 (Sgd) "A.B.Connelly" Brig Commanding Cdn Tps, N.W.E.

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the finding but commute the sentence so that it shall be TO BE IMPRISONED WITH HARD LABOUR FOR 18 MONTHS and I confirm the sentence as so commuted.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

Date 3 Jul 46 (Sgd) "J.C.Murchie"
(J.C.Murchie) Lieut-General
Chief of Staff
Commanding Canadian Military Headquarters
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F.78180 Pte Rolfe, C E	13 Jul 46	"22222222" Capt D.A.Relieved

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFA66 (To form of AFA81, 40/1 K & S/1608 4/45(3))
4/38B

Convened by Order of CT COL C M EMPSON'S Comd 2 CDN DEMOB DEPOT dated 1 JUNE 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F.78180	PTE	CHARLES EDWARD	ROLFE	2 CDN DEMOB DEPOT

Certified true Copy
[signature]
Major,
DJA

RECEIVED
Date 4 JUL 46
H.R. MIGNOLON Major
DJA

PROCEEDINGS OF TRIAL

Held in the Fd in (country) GERMANY on (date(s)) 5 7 9 JAN 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RoDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to "general provisions for conducting the trial see AA 53, RP 36, 53-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(2)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 52, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0915 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused : Do you object to SJT/CPL CPL FRANK H. CDN SPEC PER DET (RCAF) as interpreter ? Ans NO
The Interpreter is sworn.(1) Do you object to PTE/CPL CPL FRANK H.C. as shorthand writer ? Ans NO
The shorthand writer is sworn.(1) FIELD S CDN ARE OVERSEAS
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans NO (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	J.A. KENNEDY	2 CDN DEMOB DEPOT
Member	CAPT	H.T. STEWART	2 CDN DEM UNIT
Member	CAPT	J.D. MCNAIR	CMHQ
Judge-Advocate	MAJOR	H. MIGNOLON	FIELD S CDN ARE OVERSEAS
Prosecutor	CAPT	ERIC TURNER	2 CDN WAR CRIMES BR UNIT
Defending Offr	MAJOR	ROB ARMET	HQ 3 CDN INF DIV

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (1)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 64 (B) and fn 2 were not followed. See Q1 p 3.)

A8. The accused F 78 180 PTE ROLFE CE before arraignment makes(s) (not ~~make~~) plea ..... (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C 2 2/46

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 333. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission. The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(3)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accd must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF ARS. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 358. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(8), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Oversecs RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention s.e AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"JJJK"

CHARGE SHEET

THE ACCUSED F.76180, PRIVATE CECIL EMERSON ROLFE, 2 CANADIAN M.A.C., ROYAL CANADIAN ARMY SERVICE CORPS, CANADIAN ARMY OCCUPATION FORCE, A SOLDIER OF THE CANADIAN ARMY OVERSEAS, IS CHARGED WITH

FIRST CHARGE
Section 47
Army Act

W.O.A.S. COMMITTED A CIVIL OFFENCE THAT IS TO SAY MANSLAUGHTER

in that he

In the Field, at OLDENBURG GERMANY, on the 18 May 46, unlawfully killed MARTHA ROHDE.

SECOND CHARGE
Section 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field in GERMANY at approximately 1515 hours, 18 May 46, did improperly and without authority use Canadian Military Vehicle No. CA 5668660.

THIRD CHARGE
Section 15(1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field in GERMANY, at 1515 hours 18 May 46, while undergoing field punishment, absented himself without leave until 1610 hours 18 May 46 (Total absence 55 minutes)

In the Field
30 May 46

"D.A. Morwood Major"

(Officer Commanding)
2 Cdn M.A.C. R.C.A.S.C. C.A.O.F.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

"E.H. Parsons"

(E.H. Parsons) Lt-col
Officer Commanding
2 Cdn Demob Dep NWE

In Germany
15 Jun 46

"JAK"

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.78180	Pte		CECIL EMERSON	ROLFE	2 Cdn Demob Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) ..... endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	J A KENNEDY	2 Cdn Demob Dep RCOC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	E T STEWART	11 Cdn Grn Unit
Capt	D A McINNIS	1 CAESU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	G W THOMAS	2 Cdn Demob Dep RCOC

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Maj	J R MIQUELON	4 Incr 'C' Cdn JAG Overseas

On Active Service in the Fd

in Germany (Country.) "E.H. Parsons" (E.H. Parsons) (Signed personally. RP 105 fn 2.) Lt-col (Rank.)

Date 15 Jun 46 Commanding 2 Cdn Demob Dep NWE
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"JAIK"

Guardroom
2 Cdn Demob Depot

Date 18-6-46

I have this date examined No. F.78180 Rank Pte

Name Rolfe, C.E. and found him fit to undergo Court Martial.

"H.E. Piuze" Capt

Medical Officer
2 Cdn Demob Depot

FIRST WITNESS FOR THE PROSECUTION:

Doktor Theodor Kiess, Surgeon, Peter Friedrich Ludwig Hospital, Oldenburg, Germany, having been duly sworn, is examined by the Prosecutor, through the interpreter:

Q.1 Doctor Kiess will you give your name and your occupation?
A.1 Theodor Kiess, Surgeon at the Peter Friedrich Ludwig Hospital, Oldenburg.

Q.2 Now Doctor Kiess, will you tell the Court just exactly what happened on the Eighteenth of May?
A.2 Frau Rohse was admitted to the hospital in the surgical ward on the Eighteenth of May at about sixteen hours. She suffered through an accident pretty heavy injuries. When admitted to the hospital she was unconscious, the pulse was bad, her face pale, and the breath slow. I could find the following injuries: Heavy concussion, fracture of the left shoulder blade, fracture in the right elbow joint and abrasion of the chest. She was treated immediately. I looked at the shoulder and the right elbow was fixed. The left arm and the left shoulder was bandaged and put in order. On the head she had an ice pack. She got injections for the heart.

Q.3 Doctor Kiess, did Mrs Rohse die from the direct injuries received in that accident?
A.3 Yes sir.

Q.4 And what time did she die?
A.4 On the Twenty-First of May 1946 at Ten-Fifty in the morning.

The witness is cross-examined by the Defending Officer:

Q.5 Doctor Kiess, were you her ordinary physician?
A.5 I am the chief of the hospital.

Q.6 Yes, but did you treat Frau Rohse ordinarily as her family physician?
A.6 No.

The Prosecutor declines to re-examine the witness:

The witness is questioned by the Judge Advocate:

Q.7 Do you remember who took the patient to the hospital? Who accompanied her?
A.7 No, I don't know.

Q.8 Did you see her husband at the hospital?
A.8 Yes sir.

Q.9 Would you recognize her husband?
A.9 Yes sir.

Herr Wilhelm Rohse is brought before the Court.

The witness is questioned by the Judge Advocate:

Q.10 Do you recognize this man?
A.10 Yes sir, that is Herr Rohse.

Herr Wilhelm Rohse retires.

The witness is questioned by the Court:

Q.11 Was Frau Rohse unconscious all the time - from the time she was admitted to the time she died?
A.11 Yes. Some times she was not in such a heavy unconscious state as at other time, but she never gained consciousness again.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdrawn.

SECOND WITNESS FOR THE PROSECUTION:

B.130095, Sgt Sutton, WE, 2 Cdn MAC, RCASC, having been duly sworn, is examined by the Prosecutor:

Q.12 Will you give your name and number and rank and unit?
A.12 B.130095 Sergeant Sutton, WE 2 MAC, RCASC, CAOF.

Q.13 How will you tell the Court just what happened on the Eighteenth of May 46?
A.13 At Three-Fifteen on the Eighteenth, Private Williams reported to me that Private Rolfe and Private Finnan had driven off in an ambulance from the company vehicle park. I went and got a motorcycle and proceeded to look for them. I reported the incident to the Provost information bureau in Oldenburg and then went in search of the ambulance. When I came to the Bremen-Osnabruk corner I stopped and I asked two soldiers there if they had seen an ambulance. They said they'd not seen one go by in the last ten minutes while they were there. As I was sitting there on the motorcycle trying to decide which way to go to look for them the ambulance pulled up at the corner. Private Rolfe was driving and Private Finnan was in the spare driver's seat. They couldn't get by me because of the way I was turning around. Then I started to lead them back to the camp and about a mile from where I had picked them up, a jeep came up and the driver told me to stop the ambulance and that it had been in an accident. I stopped them and asked Private Rolfe if he had been in an accident and he said didn't know anything about an accident. I then took them back to the scene of the accident and got the information of the accident and took them back to camp. When I got back to camp I placed them in the Regimental guard house about Sixteen-Ten hours. It was about three-quarters of an hour from the time when I went out until I got back. They had been drinking but not enoughto affect Private Rolfe from driving.

Q.14 When you picked the ambulance up, was there any damage done to it?
A.14 There was no damage done to it that I could see. Actually I inspected it closely and I noticed that the front end was scratched - some of the paint was scratched and the front was peppered with broken glass.

Q.15 Rolfe was definitely driving when you picked them up?
A.15 Yes, Private Rolfe was driving.

JA: Captain Turner, try not to put your questions in such a leading manner.

The Prosecutor continues with the examination of the witness:

Q.16 And approximately what time did the ambulance drive up behind you?
A.16 About Fifteen-Forty-Five sir.

Q.17 Fifteen-Forty-Five?
A.17 Fifteen minutes before Four.

Q.18 When you got to the main intersection, where the traffic lights are, what did you see there?
A.18 The centre of the road was covered with broken glass and a car was facing the wrong direction on the right-hand side of the road. When you are going from the Beaver Club towards the intersection, the car was on the right-hand side of the road heading in the opposite direction. The right-hand side of the car was damaged and both side windows were out. They had lifted the lady out that was hurt and put her on a stretcher and an

ambulance took her to the Peter Friedrich Ludwig hospital.

Q.19 Were there any civilian police there at the time?
A.19 Yes, one civilian policeman there.

Q.20 What was he doing?
A.20 He was taking down all the information and he was measuring the road from where the accident happened to where the car had stopped and taking down the particulars of the vehicle and the owner of the vehicle and all the necessary information.

The witness is cross-examined by the Defending Officer:

Q.21 Sergeant Sutton, you say the accused had been drinking. What made you think so?
A.21 Well when I questioned him whether he had been in an accident or not I could smell liquor on him. That's the only way I could tell. I just could smell it sir.

Q.22 There was no other evidence of him being drunk?
A.22 No sir, there was no other evidence.

Q.23 To your knowledge - -- did any witness at the scene of the accident identify him - did any witness at the scene of the accident identify the vehicle that Private Rolfe was driving as the vehicle involved in the accident?
A.23 The civilian policeman did, sir.

JA: What's that question again?

Q.24 Did anybody at the scene of the accident identify the vehicle that Private Rolfe was driving as the vehicle that was involved?

JA : I don't think the witness is capable of answering that unless he did it himself. He wasn't there.

Witness: When I brought the vehicle up, the policeman told me that was the vehicle.

JA: This is hearsay evidence. We'll have the witness himself.

The witness is re-examined by the Prosecutor:

Q.25 Can you identify Private Rolfe?
A.25 Yes sir, that's Private Rolfe there. (Witness indicates accused)

The witness is questioned by the Court:

Q.26 I would like to know why this was reported to you?
A.26 I was the closest sergeant that Williams found sir.

Q.27 You weren't a duty sergeant?
A.27 No, not at the time sir.

Q.28 Do you know who the man in the jeep, the jeep that you met up with, were?
A.28 No sir, I don't.

The witness is questioned by the Judge Advocate:

Q.29 On what corner did you first come into contact with the ambulance?
A.29 On the Bremen-Osnabruk crossroads sir.

Q.30 And who was driving the vehicle at the time?
A.30 Private Rolfe sir.

Q.31 Were there any tactical signs on the vehicle?
A.31 Yes sir.

Q.32 What was it?
A.32 1345 on white letters on a red and green Army Service Corps

background, on the driver's side of the vehicle. On the off-side was a blue patch with a gold maple leaf and the white edge.

Q.33 Did you notice the WD number?
A.33 Yes sir.

Q.34 Will you give it to the Court?
A.34 CA 5668660.

Q.35 Who was in the ambulance with the driver?
A.35 Private Finnan was sitting in the off-side seat.

Q.36 Who drove the vehicle from there?
A.36 Private Rolfe sir.

Q.37 Did you ask him to follow you?
A.37 Yes sir.

Q.38 Now, did you notice any damage at all on the ambulance?
A.38 Outside of the paint being scratched sir and the broken glass - after I inspected the vehicle I couldn't see any great damage. There was no metal pushed in and no headlights' broken.

Q.39 On what place on the ambulance was it scratched?
A.39 On the off side of the vehicle - on the left-hand side as you are sitting in it.

Q.40 Had you seen Private Rolfe at 2 MAC that afternoon, before?
A .40 No, I hadn't seen him before that.

Q.41 And other than the smell of alcohol, he looked normal to you?
A.41 He looked absolutely normal. He showed no physical signs of being intoxicated, outside of the smell of drink on his breath.

Q.42 And he drove the ambulance back to the unit?
A.42 Yes sir, he did.

Q.43 Following you?
A.43 Yes sir.

Q.44 In what condition was the other man, in the ambulance?
A.44 I don't know, sir.

The witness is questioned by the Court:

Q.45 What is your official capacity, sergeant?
A.45 I was a platoon sergeant, sir.

With the permission of the court, the following questions are asked by the Defending Officer:

Q.46 Did Private Rolfe get out of the ambulance and walk?
A.46 Yes sir, he did.

Q.47 And he could walk?
A.47 Yes sir.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B)

The witness withdrew.

THIRD WITNESS FOR THE PROSECUTION:

L.107047 Pte Williams, WN, 2 Cdn MAC, RCASC, having been duly sworn, is examined by the Prosecutor:

Q.48 Will you give the Court you number, rank and name and unit?
A.48 L.107047, Private Williams, WN, 2 MAC.

Q.49 Do you know Private Rolfe if you saw him?
A.49 Yes sir.

Q.50 Is he in this room?
A.50 Right there sir. (Witness indicates accused)

Q.51 Now, will you tell the Court just what happened on the Eighteenth of May?
A.51 I was on post at the company vehicle park and I opened the barrier to let a TCV that was on test out and right behind the TCV was an ambulance. Private Rolfe was driving and Private Finnan was with him. I hollered for them to stop because I knew they were doing FP but they didn't stop so I immediately went and reported it to Sergeant Sutton. And that's all.

Q.52 And when they left the vehicle park what direction did the ambulance turn?
A.52 It turned right, towards the town.

Q.53 You didn't notice the number on it?
A.53 No, I never noticed the number of the ambulance.

The Defending Officer declines to cross-examine the witness.

The witness is questioned by the Judge Advocate:

Q.54 Had you seen Private Rolfe before, that afternoon?
A.54 No, I hadn't seen him all afternoon, sir.

Q.55 Did you see the ambulance come back later?
A.55 No, I never seen the ambulance come back.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B)

The witness withdraws.

FOURTH WITNESS FOR THE PROSECUTION:

Frau Frida Priebe, Kaiserstrasse 2, Oldenburg, Germany, having been duly sworn, is examined by the Prosecutor, through the interpreter:

Q.56 Will you give your name and your residence?
A.56 Frida Priebe, Kaiserstrasse 2, Oldenburg.

Q.57 Now Mrs Priebe, will you tell the Court just what happened on the Eighteenth of May?
A.57 I came at about Fifteen-Thirty hours with my car to the crossing Heiligengeistrasse. I wanted to go on in the direction of Heiligengeiswall. The light showed red and I stopped and waited until the green light came on and then I started off and when I came on the crossing I was in the centre and I saw a big truck come from the right-hand side in a very fast speed. The truck was only a very short distance in front of my car. I tried to get past it but it was too late. The next moment I felt a rather heavy jerk and I felt as my car was pushed aside I always had the feeling that my car was turning over. My car was pushed on by the other car some metres and in this manner my car was turned around and the front showed to the Heiligengeistrasse. I then found out that the right side of the body work got the heaviest smash and through this the heavy injuries of Frau Rohse. There was some trouble in the engine as well. In the meantime I found out that the repairs are not too heavy. The right-hand door of my car has been renewed but the car is still under repairs. That is all.

Q.58 Mrs Priebe, did you see the driver of the vehicle that hit you?
A.58 I can't say that for certain.

Q.59 And what is the number of your car?
A.59 OLD 14090.

Q.60 And the crossing that it happened on is sometimes known as Ullman crossing?
A.60 That I do not know.

The witness is cross-examined by the Defending Officer:

Q.61 Mrs Priebe, will you describe the vehicle that collided with yours?
A.61 I have only seen the front. It was a big high truck. When he came back on this way I was told by the policeman --

JA: Don't say that. Tell her the policeman will come before the Court.

The Defending Officer continues with the cross-examination of the witness:

Q.62 You have no evidence that the vehicle that came back was the vehicle --

JA: The Court didn't allow that.

The Defending Officer continues with the cross-examination of the witness:

Q.63 You say that your car was pushed three metres?
A.63 I said "some" metres.

Q.64 At what speed was that vehicle travelling?
A.64 Mine?

Q.65 The other?
A.65 That I cannot say.

Q.66 What speed were you travelling?
A.66 I just started off. I had the car in second gear.

The witness is re-examined by the Prosecutor:

Q.67 Mrs Priebe, the vehicle that hit you, was it fast or slow?

Interpreter: Would you repeat that, please sir?

Q.68 The vehicle that hit your car, was it going fast or slow, or what?
A.68 To me - fast.

The witness is questioned by the Judge Advocate:

Q.69 How many persons did you see in the vehicle that hit you?
A.69 I saw only two.

Q.70 Two male or --
A.70 Two men.

Q.71 Were they soldiers?
A.71 Yes.

Q.72 Did you help to take Frau Rohse to the hospital?
A.72 No, I was not travelling to hospital with her.

Q.73 Did you see her put in the ambulance?
A.73 Yes, the ambulance drew up beside my car and she was put on the stretcher there.

Q.74 What was the last time you saw Frau Rohse?
A.74 That was the last time I saw Frau Rohse.

Q.75 Did you see her in hospital?
A.75 No, I myself was three days confined to bed.

Q.76 Do you know Herr Rohse?
A.76 Yes.

Q.77 How long have you known him?

A.77 Over a year.

Herr Wilhelm Rohse is brought before the Court

The witness is questioned by the Judge Advocate:

Q.78 Do you recognize this man?
A.78 Yes.

Q.79 What is his name?
A.79 Herr Rohse.

Herr Wilhelm Rohse retires.

The witness is questioned by the Court:

Q.80 Are you positive that the light was green and not orange when you started your car?
A.80 Yes.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(8).

The witness withdraws.

At 1115 hours the Court is adjourned.

At 1125 hours the Court is re-opened, pursuant to adjournment, present the same members and Judge Advocate as upon adjournment.

The accused is brought before the Court.

FIFTH WITNESS FOR THE PROSECUTION:

Johann Urtken, Criminal Secretary, Oldenburg, having been duly sworn, is examined by the Prosecutor, through the interpreter

Q.81 Will you give your name and your occupation?
A.81 Johann Urtken; my profession is Criminal Secretary.

Q.82 What does that consist of?
A.82 I take fingerprints and photographs.

Q.83 Did you take these photographs?
A.83 Yes.

Q.84 At whose request?
A.84 The Captain here. (Witness indicates Captain Turner, the Prosecutor)

Q.85 When did you take these photographs?
A.85 I cannot give the exact date.

JA: Have you any objection to their production?

Def Offr: None at all.

Witness: It was about three weeks ago.

The photographs referred to in the evidence of the witness above, are marked Exhibits 'A', 'B', 'C', 'D', initialled by the President and attached to the proceedings.

The Prosecutor continues with the examination of the witness:

Q.86 Was anyone with you when you took the photographs?
A.86 Yes sir, Wachmeister Boedecher, a policeman.

The witness is cross-examined by the Defending Officer:

Q.87 Were you a witness at the accident?
A.87 No sir.

The Prosecutor declines to re-examine the witness.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdrews.

SIXTH WITNESS FOR THE PROSECUTION:

Oberwachmeister Dietrich Boedecker, Oldenburg, being been duly sworn, is examined by the Prosecutor, through the interpreter:

Q.88 Will you tell the Court your name and occupation?

A.88 My name is Oberwachmeister Dietrich Boedecker, born on the Three-Two-Ten. I work at the Police Station.

Q.89 Will you tell the Court just what happened on the Eighteenth of May?

A.89 On the Eighteenth of May from Fifteen to Sixteen hours I was on duty at the crossing Ullmann. At about Fifteen-Thirty-Five hours the following accident happened. The car 14090 came from the Staulinie and drove in the direction Heiligengeiswall. From Heiligengeistrasse in the direction Langestrasse came a Canadian ambulance number 1345. On the crossing this ambulance collided with the car which had already gone on the crossing. The ambulance touched the car on the right-hand side near the door and pushed the car about sixty metres in front of it so that the car came pointed with its front end to the Heiligengeistrasse. I myself stood at this moment in front of the house Heiligengeistrasse 2. As I saw the accident I went immediately to the car which was driven by Frau Priebe. Beside her sat Frau Rohse as passanger. This person was injured through the accident. I immediately asked two men to phone the First Police Station and also for the ambulance of the Fire Service. From the First Police Station the criminal police was notified. From the First Police Station Provosts. I myself first looked after Frau Rohse and at this time the ambulance stopped for a very short time and immediately went on again in the direction of Langestrasse. I wanted to free Frau Rohse out of her position but I could not do it as the right door was pushed in completely. With the help of some Canadian soldiers the door was broken open. I tried to help Frau Rohse and Frau Rohse was laid on to the stretcher. In the meantime had arrived the ambulance of the Fire Service and Frau Rohse was taken to the Peter Friedrich Ludwig hospital. The witness Muehlenbrock saw the end number of the Canadian ambulance --

JA: Is he a witness?

Pros: He is coming.

Def Offr: It's hearsay and I object to it.

JA: Just tell the Court what you saw and not what you heard.

The witness continues:

A jeep immediately trailed the ambulance. After this I started taking up investigations of the accident. As I took up the different things of the accident a driver of the Provost came along and I asked him to go. In the meantime stopped the ambulance on the Staulinie. I finished taking up the different information and investigation of the accident and went back to the Police Station in order to write out my report. I have finished.

Q.90 Did you draw this?

A.90 I have drawn this. This is a sketch of the accident.

JA: Any objections?

Def Offr: No.

The sketch of the scene of the accident referred to in the evidence of the witness above, is marked Exhibit 'E', initialled by the President and attached to the proceedings.

Q.91 Just how long did the ambulance stop?
A.91 It stopped very shortly. I cannot give the exact time, and drove on again.

Q.92 Did the driver get out?
A.92 I didn't notice it.

Q.93 Would you recognize the driver?
A.93 No, I cannot recognize him.

The witness is cross-examined by the Defending Officer:

Q.94 Am I not right in saying that the traffic lights do not work at that corner some times?
A.94 No, it sometimes happens that some of the lights burn out.

Q.95 At the time of this occurrence are you sure that the lights were working?
A.95 Yes sir, I am quite sure that all the lamps were in working order.

Q.96 And did this ambulance go against the light?
A.96 As the light was red the ambulance passed the corner.

Q.97 On Exhibit 'E' you put down a number of one vehicle. What is your evidence that that number is right?
A.97 As I was sitting in the car of Frau Priebe questioning her after the accident somebody brought the ambulance around the corner on its way back and then I took the number which is CA 5668660.

Q.98 That's the number of the vehicle that came back?
A.98 Yes sir, it is the number of the car that stopped there.

The Prosecutor declines to re-examine the witness:

The witness is questioned by the Judge Advocate:

Q.99 How many did you see in the ambulance at the time of the accident?
A.99 I cannot say how many were in it, the accident happened at such a speed that I first looked after the injured. I could not say.

Q.100 Approximately what speed was the ambulance going?
A.100 I cannot say the exact speed of the ambulance.

Q.101 Fast or slow?
A.101 Fast.

Q.102 Did you notice anything particular about the ambulance at the time of the accident - any signs?
A.102 No, I have not noticed anything on the ambulance.

Q.103 No number or tactical sign or anything?
A.103 I could only see that it had a red cross on it and it was a very big truck.

Q.104 What injuries did Frau Kohse suffer when you saw her in the car?
A.104 I could not notice any injuries at the moment. She was not conscious but was not quite unconscious.

Q.105 You said that you saw an ambulance later, some time after the accident. Did you notice any damage on that ambulance?
A.105 No. I only saw the ambulance halt on the corner Staulinie - Heiligengeistrasse. As I went there myself he drove off.

JA: I didn't quite get that.

The witness repeats:

I sent a motorcyclist over, I think he was from the Provost but I cannot quite say so. I asked him to go after this ambulance which had stopped on the corner of Staulinie and Heiligengeistrasse.

JA: That's right after the accident. My question was - he saw an ambulance - you saw an ambulance come back later?

Witness: I never saw one come back I only saw one stopped on the corner Staulinie - Heiligengeistrasse and the witness Muehlenbrock told me "This is the ambulance."

Q.106 You didn't examine the ambulance then?
A.106 No, I have not examined it.

Q.107 Do you recognise these photographs? Tell the Court what they are.
A.107 These pictures are made by the Criminal Inspector.

Q.108 What do they represent?
A.108 (Exhibit 'A') This photograph where the X is on the photograph it shows where the car collided with the ambulance. This is the spot where the glass was lying. The second X a bit further up on the top left-hand corner that is the spot where the car stood turned around facing towards the crossing again. This picture was taken from upstairs from the last floor of the house on Langestrasse which is the corner house.

(Exhibit 'B') This photograph has been taken as the driver of the ambulance would have seen it coming along. The view of the driver coming along from Number Two Police Station.

(Exhibit 'C') This is a view out of Frau Prisbe's car coming towards the crossing - straight across the crossing.

(Exhibit 'D') The last photograph is the photograph from the opposite direction to the driver of the ambulance and also where I was standing at the time of the accident. I was standing on the right-hand corner where the man is standing, in front of house number 2 where one can get a glimpse of the door and his view is shown there.

The witness is questioned by the Court:

Q.109 And in this picture the ambulance would be coming down this way, would it?
A.109 Coming up this way yes sir, that is right.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdrawn.

SEVENTH WITNESS FOR THE PROSECUTION:

Herr Herrman Muehlenbrok, Zeughausstrasse 77, Oldenburg, Germany, having been duly sworn, is examined by the Prosecutor, through the interpreter:

Q.110 Will you tell the Court your name and where you live?
A.110 Herrman Muehlenbrock, Zeughausstrasse, 77, Oldenburg.

Q.111 Now will you tell the Court just what happened on the Eighteenth of May?
A.111 On Saturday the Eighteenth of May in the afternoon at approximately Fifteen-Thirty hours I stood on the corner Staulinie - Langestrasse at the house of the Oldenburg Insurance Company.

Q.112 What corner were you standing on? (Witness is shown Exhibit 'E')
A.112 I was standing right here. The policeman stood on the same side

but further back - about three metres further back.

Q.113 Will you continue?
A.113 Then the light was red from Staulinie to Heiligengeistrasse. On the Staulinie facing to Heiligengeistrasse stood the car OLD 14090 and the light was red. At the green light the car started in the direction of Heiligengeistwall. As the car was at the second half of the street came a British Red Cross car from the direction of the Wehrgemacht and passed the red light and collided with the car on the right-hand side of the door and pushed the car along and turned it around so that it faced in the direction of Heiligengeistrasse and then the ambulance stopped a very short time and drove on again. Then the Oberwachmeister stopped a British car and asked him to trail the ambulance which had gone off again. Then the Oberwachmeister turned his attention to the car which was in the accident and tried to get the woman out of the car from the side where the driver sat. He could not manage it and then he tried to get the door off the other side. He could not manage it on his own and then came two British officers and they together ripped the door open and in the meantime Oberwachmeister Boedecker had told a civilian to inform the Fire Service in order to get an ambulance. The ambulance arrived in a very short time. They lifted the woman carefully out of the car and then took her to the hospital. About Fifteen-Fifty hours this particular ambulance stood again in front of the red light on the Staulinie.

JA: How do you know it is the same ambulance?

Witness: As I remembered immediately the number 1345 which is a unit number. I also remembered the Division numbers beginning with 5 and ending with 60. Then a motorcyclist - I cannot describe the motorcycle - which was an Allied soldier drove up to this ambulance and took the particulars of the driver. I also saw how the driver showed his papers to this motor-cyclist. He took the papers out of his pocket and put them back in his pocket. Then the motorcycle and also the ambulance drove off in the direction of the Wehrgemacht.

The Prosecutor continues with the examination of the witness:

Q.114 Did the driver of the ambulance get out of the vehicle after it came back the second time?
A.114 Yes, he did get out.

Q.115 Would you recognize him?
A.115 Yes sir.

Q.116 Is he in this room?
A.116 Yes, there he is.

Q.11 7 Where?
A.117 (Witness indicates the accused) The man without the hat.

Q.118 Did anybody else get out of the vehicle?
A.118 That I did not see.

Q.119 How long was this man out of the ambulance?
A.119 Not so long. I cannot quite say how long he was out but not very long.

The witness is cross-examined by the Defending Officer:

Q.120 The man that you identified as the driver of the vehicle that came back did not get out of the vehicle that was involved in the accident - or did he?
A.120 No answer.

Q.121 You didn't see this man in the vehicle at the time of the accident?
A.121 No.

Q.122 At the time of the accident you did not notice the identifying numbers of the car?
A.122 Yes sir, as he collided with the car I saw immediately the number of the ambulance.

Q.123 The whole number?
A.123 1345 and also the beginning 5 and ending of 60.

Q.124 Where on the vehicle are those numbers?
A.124 In colour green on the left botton of the vehicle, 1345 - on top 5 and the ending 60. The middle of the number I could not recognize.

Q.125 And that was back or front?
A.125 On the back.

The Prosecutor declines to re-examine the witness:

The witness is questioned by the Judge Advocate:

Q.126 How many were in the ambulance at the time of the accident - in the front?
A.126 I cannot say. I could not see so quickly.

Q.127 When the ambulance came back later, did you notice any damage on the ambulance?
A.127 I have not noticed and have not looked for it. The ambulance was very large and heavier than the car.

Q.128 Did you see any broken glass on the ambulance?
A.128 No sir.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdraws.

At 1225 hours, the Court is adjourned.

At 1400 hours, the Court is re-opened, pursuant to adjournment, present the same members and Judge Advocate as upon adjournment.

The accused is brought before the Court.

EIGHTH WITNESS FOR THE PROSECUTION:

Herr Wilhelm Rohse, Kaiserstrasse 2, Oldenburg, Germany, having been duly sworn, is examined by the Prosecutor, through the Interpreter:

Q.129 Will you tell the Court your name and your address?
A.129 Wilhelm Rohse, Kaiserstrasse 2.

Q.130 Oldenburg?
A.130 Oldenburg.

Q.131 And will you also tell us the name of your wife?
A.131 Martha Rohse.

Q.132 Will you explain to the Court of your visit to the Peter Friedrich Ludwig hospital - how many times you saw your wife?
A.132 At half-past seven I was informed of the accident that had happened to my wife. I then went immediately to the hospital and found my wife in room Sixty-Six. I was told that my wife had concussion and a double fracture of the left shoulder bone and also injuries to the elbow joint. I could not speak to my wife very well because she could not breathe properly and she also could not speak properly. I then asked to put my wife into a room on her own because in her room she was in were quite a number of people and there was quite a lot of disturbance. On Sunday morning I visited my wife again and found her in room number Fifty-Seven. He condition was not worse than the day before but she had pains. On Sunday

afternoon I went again with her for one and a half hours to two hours. On Monday morning I visited her again and I did not like her looks. Her fingers had the colour bluish-grey. Then I was told by the surgeon, Doktor Keiss that the condition of my wife was more grave than it was thought before. According to the doctor my wife got internal injuries at the collision. On Monday afternoon I went again to my wife. I then saw that the hard breathing eased off a bit. Her speech was better than in the morning. I asked her if she felt better and she said 'yes'. She always wanted something to drink. She was very thirsty. I said good-bye to her at Seven and I told her that I would be there the next morning between Ten and Ten-Thirty. I could not go at this time but only came at Eleven o'clock next morning. I was too late. My wife died ten minutes before. I don't know anything else.

Q.133 Mister Rohse, before the accident was your wife in good health?
A.133 No, my wife had to many white blood parts - anaemia and she was for two and a half years under treatment. She got some kind of injections in the arms and legs. According to the statement of Doctor Schulte, the patient was better at the last.

Q.134 And the several times you saw your wife in the hospital, was she conscious or semi-conscious when you spoke to her?
A.134 She was always fully conscious. Only once I noticed that she was not very clearly spoken. For a few minutes before her death she was fully conscious. My son was with her.

Q.135 Did you see your wife's body after she was dead?
A.135 Yes.

Q.136 You can positively sta te that it was your wife that was dead?
A.136 Yes.

The witness is cross-examined by the Defending Officer:

Q.137 You say that you were informed of the accident at half-past six?
A.137 Half past seven.

Q.138 The accident is alleged to have taken place at Three-Thirty. Can you account for the delay in informing you?
A.138 I cannot understand. I was ill myself. My wife wanted to get some - a few things from the bakery and such like which I myself usually did. At this Frau Priebe offered to my wife to take along my wife in order to get her home quicker back to me.

Q.139 You said that your wife was conscious while you visited her. Did she say anything about the accident, or the circumstances?
A.139 No, she could not because she could not speak very easily. It was very difficult with her to speak and she had very great pains and it was very hard for her to get her breath. I have only exchanged a few words with her and I never touched the subject of the accident. When my son was there, which came at Ten-Thirty on the Twenty-First to see my wife he was told by the sister that the condition of his mother was not very good. Just before she died she said to my son that he should sit down and suddenly she said a few seconds later everything was getting darker and she just laid back and a few minutes later she was dead.

Q.140 How long had your wife been driving a car?

JA: She wasn't driving.

Def Offr: No, that's right, she wasn't driving.

The witness is questioned by the Judge Advocate:

Q.141 What time did you last see your wife before she went to the hospital at half-past three?
A.141 The accident must have happened just before that. She left

just at half-past three and the accident must have happened two or three minutes later after this. She waved to me from the car and said to me "I shall be back in half an hour"

Q.142 Who was driving the car?
A.142 Frieda Priebe.

Q.143 The woman you saw this morning?
A.143 Yes sir.

Q.144 How old was your wife?
A.144 Fifty-Eight.

In the opinion of the Court and Judge Advocate , it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdrawn.

NINTH WITNESS FOR THE PROSECUTION:

Adolf Hollwege, Feuergewehr, Oldenburg, having been duly sworn, is examined by the Prosecutor, through the interpreter:

Q.145 Will you tell the Court your name and your occupation?
A.145 Adolf Hollwege, Feuergewehr.

Q.146 Now, will you tell the Court just what happened on the Eighteenth of May?
A.146 On the Eighteenth of May an accident was reported to us. I was ordered to take the ambulance and fetch the injured person. I went with the ambulance to the scene of the accident and we took the woman, the injured woman and put her on a stretcher. She complained about very great pains in the left shoulder. Then we took her by ambulance to the Peter Friedrich Ludwig hospital. We delivered her in the operation theatre where a sister helped to undress her for the doctor. That is all.

The witness is cross-examined by the Defending Officer:

Q.147 Do you know the identify of this patient?
A.147 Frau Rohse.

Q.148 No, I wont accept that. You didn't know the patient before?
A.148 No.

Q.149 And where did you pick her up?
A.149 She still stayed in the car.

Q.150 Where?
A.150 In Langestrasse - Heiligengeistrasse.

Q.151 At what time?
A.151 It was between Three-Thirty and Three-Forty-Five.

The Prosecutor declines to re-examine the witness.

The witness is questioned by the Judge Advocate:

Q.152 Do you recognise this photograph. Is it near that place that you picked her up? (The witness is shown Exhibit 'A')
A.152 Near this door here on the street, stood the car.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdrawn.

FIRST WITNESS FOR THE DEFENCE:

F.76180 Pte Rolfe, CE, 2 Cdn Demob Depot, having been duly sworn, is examined by the Defending Officer:

Q.153 Tell the Court what happened on the Eighteenth of May, starting with the morning.

A.153 In the morning about Nine o'clock I got a bottle of gin from a Canadian soldier. I didn't know the soldier. I was detailed to work in the QM Stores. We were loading a 60 with army equipment and while we were loading the vehicle, Finnan and I drank this bottle of gin. When the vehicle was loaded we were told to go with the vehicle to the salvage dump. While we were gone we got two bottles of schnappe and we drank it but we had about a half a bottle of schnappe left when we came back. I remember being in the kitchen and drinking the rest of the schnappe. That would be between Twelve and Twelve-Thirty - around dinner. I can't remember from there on very much.

Q.154 Can you remember it vaguely? Can you remember anything that happened after that, even if vaguely? You say that you don't remember very much but do you remember anything at all?

A.154 Well, I was driving a vehicle. I remember being in a vehicle.

Q.155 What is the next thing you remember?

A.155 I remember coming to the first pointsman, I don't know the name of that street, the cross-road where the first pointsman is, leaving camp - the Oldenburg by-pass. I remember turning right, there.

Q.156 And then?

A.156 I can't remember seeing - I do remember seeing Sergeant Sutton there at the point.

Q.157 What is the next thing you remember?

A.157 That's all sir.

Q.158 Then you can't recall driving through down or being involved in an accident.

A.158 No, I can't recall that, sir.

Q.159 Do you recall driving back to camp and being placed in the guard room?

A.159 I can remember Captain Turner coming in the guard room. I was in the guard room then.

The witness is cross-examined by the Prosecutor:

Q.160 You said that when you got to the Oldenburg by-pass - let's get this straight - Alexanderstrasse goes out of the airfield.

A.160 Yes, the first pointsman there.

Q.161 You say you turned right there and the next thing you remember is me coming into the guard room. You remember Sergeant Sutton picking you up and --

A.161 I remember you being in the guard room, sir.

Q.162 What did I tell you to do when I got to the guard room?

A.162 I can't remember.

Q.163 You can't remember what I told you to do when I came into the guard room?

A.163 No sir.

The Defending Officer declines to re-examine the witness:

The witness is questioned by the Judge Advocate:

Q.164 Now let's have this straight. How many bottles of gin did you have in the morning?

A.164 One bottle of gin.

Q.165 At what time?
A.165 I got the bottle about Nine o'clock, sir.

Q.166 You and Finnan?
A.166 Me and Finnan.

Q.167 And you were working?
A.167 Yes, we were loading a vehicle. We drank the bottle while we were loading the vehicle.

Q.168 How big was the bottle of gin?
A.168 Well, it was an ordinary bottle.

Q.169 What kind of gin?
A.169 Holland gin.

Q.170 Now, what did you have to drink after that?
A.170 Two bottles of schnapps.

Q.171 Around what time?
A.171 About what time did we get the schnapps, do you mean?

Q.172 Yes.
A.172 Pretty near Eleven o'clock.

Q.173 Where did you get it?
A.173 At a house down by the salvage dump. Right near the Sixteen General Hospital.

Q.174 Who got it?
A.174 The driver that drove us up to the house and Finnan and I went in.

Q.175 Who asked for it?
A.175 Well Finnan and I were in the house.

Q.176 Did you go inside the house?
A.176 Yes.

Q.177 Both of you?
A.177 Yes.

Q.178 And who asked for it - who paid for it?
A.178 Well Finnan's cigarettes and mine were all together like - we both had cigarettes on us.

Q.179 That's not my question. Who paid for it?
A.179 Some of the cigarettes were mine and some were Finnan's.

Q.180 How many?
A.180 Three hundred for the two bottles.

Q.181 How many did you give?
A.181 Well, I'm not sure how many I had. We made up the Three hundred between us.

Q.182 Who was driving that vehicle?
A.182 Munroe - Private Munroe.

Q.183 And what did you do afterward - from then on? That was about Eleven o'clock.
A.183 About Eleven o'clock we came back out in the vehicle and drank the schnapps from there to the camp. That would be about Twelve o'clock when we got into camp.

Q.184 What kind of a vehicle was it?
A.184 Vehicle? - 60 hundredweight.

Q.185 Where were you driving?
A.185 Where was I driving?

Q.186 Where were you riding in the vehicle?
A.186 In the front.

Q.187 Where was Finnan?
A.187 Finnan was in the front too.

Q.188 Where was the driver?
A.188 He was driving.

Q.189 Did he have a drink? - Munroe?
A.189 I don't know sir.

Q.190 You would remember if you gave him a drink.
A.190 We might have given him a small one.

Q.191 He either took one or not. Did he have anything to drink?
A.191 No answer.

Q.192 You don't have to be afraid to answer that question.
A.192 Yes sir, he did have one drink.

Q.193 One drink?
A.193 Yes sir.

Q.194 Do you know how much he had?
A.194 He didn't have very much.

Q.195 And then you came back to camp. What did you do when you came in?
A.195 I don't know where the vehicle went but I went in the kitchen.

Q.196 Had you finished your bottles?
A.196 We finished the bottles in the kitchen. There was a small drink in the bottom when I came back to camp.

Q.197 What time were you in the kitchen?
A.197 It must have been around dinner time - between Twelve and Twelve-Thirty.

Q.198 Did you have anything to eat?
A.198 I don't know whether I ate or not.

Q.199 Did Finnan have anything to eat?
A.199 I don't know.

Q.200 Were you with him all the time?
A.200 I don't know whether he was in the kitchen or not.

Q.201 Where was Munroe then?
A.201 I don't know where he was.

Q.202 Did he have anything to drink after that?
A.202 No answer.

Q.203 Did you have anything to drink after that?
A.203 Me?

Q.204 Yes.
A.204 I don't know whether I had a drink after I finished that bottle of schnapps.

Q.205 About what time was that?
A.205 It would be around one o'clock.

Q.206 And you said in your examination from then you you only remember one incident in the afternoon. That was when you came to a corner you turned right. How can you remember that? What makes you think you did turn right?
A.206 Well, I know I had no ticket for the vehicle.

Q.207 What?
A.207 I know I had no Work Ticket for the vehicle;

Q.208 You remember that. Well, how can you think you turned right What makes you think you did?
A.208 I just remember turning right.

Q.209 Would you swear that you turned right?
A.209 Yes.

Q.210 You would swear that?
A.210 Yes, I'm positive I turned right, sir.

Q.211 Then you saw Sergeant Sutton. The next thing you remember was seeing Sergeant Sutton?
A.211 Yes, I can remember seeing Sergeant Sutton.

Q.212 Do you remember having an accident? You were here when Sergeant Sutton said that he saw glass, broken glass on the front of your ambulance? You were here this morning?
A.212 Yes, I was here.

Q.213 You heard him say that?
A.213 Yes.

Q.214 Where did you see Sergeant Sutton?
A.214 Well, it was on a corner.

Q.215 On which corner?
A.215 I can't remember which corner it was sir.

Q.216 Do you remember seeing Finnan with you?
A.216 I remember seeing Finnan when I turned the corner to the right.

Q.217 I didn't ask that question. Do you remember seeing Finnan?
A.217 Yes sir.

Q.218 Was he with you in the vehicle?
A.218 Well, I don't know sir.

Q.219 Do you remember driving back from that corner, to the camp?
A.219 No sir.

Q.220 You don't remember. Do you think Sergeant Sutton would let you drive the vehicle if you didn't know what you were doing? Do you think so?
A.220 I don't know what he thought.

Q.221 Well, he let you drive the vehicle?
A.221 He said he did, in his statement.

Q.222 He said that in his statement. He said he told you to follow him.
A.222 No answer.

Q.223 You heard him. You were here this morning. Do you think Sergeant Sutton would let you drive the vehicle through the town of Oldenburg if you didn't know what you were doing?
A.223 I don't know what he thought.

Q.224 You didn't have an accident from that time on?
A.224 I don't remember having any accident.

Q.225 Did you have any accident when you left with Sergeant Sutton when you followed Sergeant Sutton to the camp?
A.225 I can't remember, sir.

Q.226 Do you remember which road you followed then?
A.226 No answer.

Q.227 How long have you been driving?
A.227 In the army you mean?

Q.228 Yes.
A.228 A year and a half sir.

Q.229 How long have you been in Germany - just approximately?
A.229 No answer.

Q.230 You should know how long you have been in Germany. Where were you stationed when you first came to Germany?
A.230 Tungeln, about six to nine kilometres down the road.

Q.231 Had you ever driven that ambulance before that day?
A.231 That ambulance?

Q.232 Yes, that one.
A.232 No, I don't think I have sir.

The witness is questioned by the Court:

Q.233 Was it normal procedure when undergoing FP for the NCOs to allow you to drink all day long?
A.233 No answer.

Q.234 You were serving a sentence of FP?
A.234 That's right, sir.

Q.235 Was it normal procedure to drink as and if you wished to drink?
A.235 No sir.

Q.236 Did the NCOs ever know you were drinking or did they just pay no attention to it?
A.236 I don't know whether they knew I was drinking or not.

Q.237 Was it a normal thing for persons undergoing FP to be allowed to drink during their duty hours?
A.237 No sir.

Q.238 And you drank a bottle of gin and a bottle of schnappe and yet although it was not allowed, your NCOs made no complaint of it?
A.238 No, I don't think they made no complaint about it sir.

Q.239 Was all this liquor drunk by you and your chum Finnan?
A.239 All except the one small drink for the driver.

Q.240 But the NCOs had no drink?
A.240 No.

Q.241 Do you remember where it was the sergeant stopped you?
A.241 I can't remember what corner it was sir.

Q.242 Then why did you earlier in your statement say that he stopped you on the corner of the road leading to Sixteen General?
A.242 I said earlier in my statement that he stopped me.

At the request of the Court question and answer 173 are read back by the shorthand writer.

The Prosecutor asks the following questions with the permission of the Court:

Q.243 You remember me coming into the guard room?
A.243 I remember you being in the guard room.

Q.244 Yes, what did I make you do?
A.244 I can't remember, only just seeing you there, sir.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(3).

The witness stands down.

SECOND WITNESS FOR THE DEFENCE:

B.88708, Pte Finnan, J, 2 Cdn Demob Depot, having been duly sworn, is examined by the Defending Officer:

Q.245 Private Finnan, you were with Private Rolfe during most of the day of the Eighteenth of May?
A.245 Yes sir.

Q.246 Tell us what happened on that day.
A.246 Well sir, we were working in the QM Sotres.

Q.247 At what time?
A.247 About Eight-Thirty in the morning sir and we loaded a truck with uniforms and took it down to the Ordnance Depot and while we were working at that sir, we had a bottle of gun and between me and Private Rilfe we drank it. So we went down to the Depot and on our way back we got two bottles of schnapps and of course we drank them and we came back to our billets. I was drunk and well, after we finished the schnapps I don't remember anything.

Q.248 Where did you get the bottle of gin?
A.248 We got it from a soldier, sir.

Q.249 Who?
A.249 I don't know his name.

Q.250 Did the soldier belong to the camp?
A.250 No, he didn't belong to the camp, sir.

Q.251 How do you know?
A.251 Well, he didn't belong to our bunch sir.

Q.252 Where did you get your schnapps?
A.252 We called in a house sir.

Q.253 Where?
A.253 It was right up - not far from Sixteen General - where it used to be.

Q.254 And the whole three bottles were consumed between you and Private Rolfe?
A.254 Yes sir.

Q.255 What is the last thing you remember?
A.255 Well, the last I remember sir, we were coming home in the truck. I remember we landed back at the airport and that's all I can remember, sir.

Q.256 Who was driving the vehicle?
A.256 Munroe sir.

Q.257 And did he stop on his own accord at this house, or did you ask him?
A.257 Yes sir.

Q.258 Which?
A.258 We asked him if he knew where to get some schnapps so he showed us this house.

Q.259 Do you remember taking this vehicle out - this ambulance?
A.259 No sir, I don't.

Q.260 Did you get dinner?
A.260 Sir, I don't know if I did or not. I don't remember eating dinner.

Q.261 So after you came back from the Ordnance Depot the rest of the day was blank?
A.261 That's right, sir.

Q.262 Well, what is the next thing you remember. You must have come to some time.
A.262 Well I came to, sir, in the guard room. I was in the guard room.

Q.263 And that's the very first thing you remember?
A.263 Yes sir.

Q.264 You were then in no position to judge as to Private Rolfe's condition?
A.264 No sir.

Q.265 What proportion of the liquor did you have? Did you split it in half or what?
A.265 Well when I took a drink Rolfe took a drink sir, as far as I can remember.

Q.266 Did you drive a vehicle at all during the afternoon?
A.266 No sir.

Q.267 How do you know?
A.267 Well I can't drive a vehicle, sir.

Q.268 Do you remember being in a vehicle?
A.268 No sir.

The witness is cross-examined by the Prosecutor:

Q.269 Private Finnan you say that you remember being in the guard room. What time was that?
A.269 Well sir, when I came to, I had been sleeping in the guard room.

Q.270 Did you have your supper that night?
A.270 Yes sir, I did have supper.

Q.271 Did anybody come and visit you in the guard room that night?
A.271 You did, sir.

Q.272 What did I make you do?
A.272 You made me walk up and down the floor sir.

Q.273 Did I do the same thing to Private Rolfe?
A.273 Yes sir.

Q.274 That was shortly after supper was it?
A.274 I don't know if it was just shortly after supper or not.

The Defending Officer declines to re-examine the witness:

The witness is questioned by the Judge Advocate:

Q.275 What time did you get the schnapps?
A.275 Between Ten-Thirty and Eleven sir.

Q.276 Who suggested buying schnapps?
A.276 Well I did, as far as that goes, sir.

Q.277 How did you pay for it?
A.277 Three hundred cigarettes for the two bottles.

Q.278 Who had the cigarettes?
A.278 Me and Rolfe had them between us.

Q.279 Do you remember coming back to camp that noon?
A.279 Well, I remember getting back to camp sir, and I don't remember anything after that.

Q.280 Do you remember eating?
A.280 No sir.

Q.281 What were your duties in the afternoon?
A.281 I don't know sir.

Q.282 What were you supposed to do?
A.282 Supposed to work in the QM stores.

Q.283 You have been tried by Court Martial?
A.283 Yes sir.

Q.284 How did you plead to the charge of being improperly concerned with the improper possession of a vehicle? Did you plead

guilty or not guilty?

A.284 I pleaded guilty sir, on both charges.

Q.285 Did you remember at that time that you had been out with a vehicle?

A.285 No sir.

Q.286 Why did you plead guilty?

A.286 Well sir, I was drunk and I didn't remember nothing but I was drunk and I pleaded guilty.

Q.287 So from the time you came back to camp that noon until you were in the guard room, the afternoon was a blank?

A.287 That's right, sir.

Q.288 You could have been anywhere?

A.288 That's right, sir.

Q.289 How old are you?

A.289 Twenty-Eight, sir.

Q.290 How long have you been in Germany?

A.290 About a year sir.

Q.291 Have you ever drunk schnapps before?

A.291 Yes sir.

Q.292 How long have you known Rolfe?

A.292 About four months sir.

Q.295 Have you been drinking schnapps with him before?

A.295 Yes sir.

The witness is questioned by the Court:

Q.296 Do you know if it is normal procedure for personnel undergoing field punishment to drink when they take the ration during their tour of duty? Is it allowed?

A.296 No sir.

Q.297 Well betweenthe two of you you disposed of a bottle of gin and two bottles of schnapps before noon. Did your NCO have anything to say about that?

A.297 He never said anything to me, sir.

Q.298 In other words he was quite happy about the fact that you were drunk?

A.298 He never said anything to me, sir..

Q.299 Do you usually carry between a hundred and two hundred cigarettes with you?

A.299 No sir.

Q.300 Why did you on this particular day?

A.300 Well we knew we were going out there and we might get a bottle.

Q.301 In other words you planned on picking up schnapps before you left the airport?

A.301 We did, sir.

Q.302 You are in the Army Service Corps?

A.302 Medical Corps sir.

Q.303 What have your duties mainly consisted of in the last five years in the army?

A.303 Well sir, I was posted general duty.

Q.304 Will you clarify that statement?

A.304 Well sir, I was doing like all jobs.

Q.305 In the Medical Corps?

A.305 Yes sir.

Q.306 Did you ever have occasion to drive an ambulance in the Medical Corps?
A.306 No sir.

Q.307 Have you ridden in them very much?
A.307 I've ridden in them some, sir.

Q.308 Do you recall in any manner whatsoever being - being in the Medical Corps you would know naturally what an ambulance is - it would be familiar to you?
A.308 That's right, sir.

Q.309 Do you recall on that particular afternoon anything about an ambulance?
A.309 No sir.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(2).

The witness withdraws.

THIRD WITNESS FOR THE DEFENCE:

Capt Y.E. Pieuse, RCAMC, having been duly sworn, is examined by the Defending Officer:

Q.310 Captain Pieuse will you tell us whether it is possible for a man having imbibed say half a bottle of gin and a bottle of schnappe during a morning to be in possession of his physical ability but not of his mental faculties?
A.310 Did he take only one bottle?

Q.311 And a half a bottle of gin.
A.311 He took that in the morning?

Q.312 Yes.
A.312 It is possible.

Q.313 What would be the effect on a man to drink half a bottle of gin and a bottle of schnappe between the hours of Nine and One o'clock. What would be the effect on his physical ability and mental faculties at say Three-Thirty in the afternoon?
A.313 It depends on the man.

Q.314 To be more specific could a man absorb that much and be able to walk straight and still not know what he is doing?
A.314 Yes sir.

Q.315 He could even driver a vehicle?
A.315 Yes sir.

The witness is cross-examined by the Prosecutor:

Q.316 But then on the other hand it could be absolutely reversed. He might be physically incapable and mentally capable?
A.316 Yes sir.

The Defending Officer declines to re-examine the witness:

The witness is questioned by the Court:

Q.317 Would the use of alcohol over a period of time harden a man to such an extent that he could drink more and retain his capabilities?
A.317 If he is used to drink he can usually take more than a man who takes drink only once in a while.

The witness is questioned by the Judge Advocate:

Q.318 Supposing a man in that condition, who had lost his mental ability, would it show on his person if he were met by an absolutely sober man. Would this man be able to form an

opinion that the man was lacking in his mental ability?
A.318 If he speaks to him.

The witness is questioned by the Court:

Q.319 Could a man under these circumstances be lacking his mental ability and in possession of his physical ability over a period lasting as long as three hours?
A.319 In my opinion it should be for just a short period.

Q.320 You state that three hours is too short a period?
A.320 That is a long period - three hours.

The witness is questioned by the Judge Advocate:

Q.321 What would be the next reaction after that? What would happen to that man?
A.321 He would feel sleepy after a depressing period.

The witness is questioned by the Court:

Q.322 Do you think that if a man is kept at work during that period he would regain his mental faculties?
A.322 If a man can do his work.

Q.323 I believe the question that was asked to start with was whether a man could retain his physical ability and carry on and lose his mental ability.
A.323 Yes, for a short time.

Q.324 If that man - I ask now if the man, having reached that condition was kept at work during the better part of those three hours -
A.324 If he is fit to carry on for three hours he would not be in that condition.

Q.325 In other words if he had reached that condition he would not be able to work for three hours?
A.325 No.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(3).

The witness withdrew.

JA: Are you calling any rebuttal evidence?

Pros: Yes sir.

NINTH WITNESS CALLED BY THE PROSECUTION IN REBUTTAL:

D.121759 L/Cpl Jack, R, 2 Cdn MAC, RCASC, having been duly sworn is examined by the Prosecutor:

Q.326 Will you tell the Court your number, name, rank and unit?
A.326 D.121759, Lance-Corporal, Jack, R, 2 MAC RCASC.

Q.327 Corporal Jack, will you tell the Court just what happened on the Eighteenth of May?
A.327 Sir, on the Eighteenth of May I was in charge of FP personnel - Private Rolfe and Private Pinman and I was told by the Sergeant-Major to put them to work in the QM Stores and about the middle of the afternoon Rolfe and Pinman asked me if they could go to the toilet and I brought them to the toilet and went into the orderly room. I was platoon Orderly Corporal that day too and I went to see if there were any details that had come in. I was only there for about two or three minutes and I went back to the toilet and Rolfe and Pinman weren't there. I went down to the QM and they were missing and when I was coming back from the QM Sergeant Rycroft told me they had just gone out with an ambulance.

Q.328 Now, Corporal Jack, what time were you put in charge of this FP parade.

A.328 At Eight-Thirty in the morning.

Q.329 What did these two men do in the QM Stores in the morning?
A.329 They were detailed to go down to the salvage dump with some uniforms.

Q.330 You didn't go down with them?
A.330 No sir, I was orderly corporal and I couldn't leave the building sir.

Q.331 Did you notice any drinking going on?
A.331 No sir.

Q.332 In the afternoon when they asked you if they could go to the toilet had they been drinking, or were they drunk?
A.332 Not that I could see sir.

Q.333 They didn't appear to be drunk?
A.333 No sir.

Q.334 Do you think they had had a drink?
A.334 No, I wasn't there all the afternoon sir. I saw them every now and then. I went down to see what they were doing.

Q.335 Well will you explain just the layout of the QM Stores and the Orderly Room?
A.335 To go to the QM sir you had to go down the stairs, down into the basement and when you go upstairs like, the orderly room was across from the stairs, the first door on your left.

Q.336 And to the best of your knowledge neither one of them was under the influence of liquor when they asked you to go to the toilet in the afternoon ?
A.336 No sir.

The witness is cross-examined by the Defending Officer:

Q.337 You say that the accused and Private Pinnan were working in the afternoon?
A.337 Yes sir.

Q.338 What were they doing?
A.338 More or less moving all this stuff - clothing and such.

Q.339 You are on oath now. You actually saw them at work?
A.339 Well I more or less checked up with the QM personnel.

Q.340 That's not what I asked you. You saw them at work?
A.340 Yes sir.

Q.341 And they were absolutely sober?
A.341 Well, I couldn't state whether they were drunk or sober sir. I didn't see them drinking.

Q.342 And you couldn't state that they were sober then?
A.342 No sir. I saw no signs of drinking though.

The Prosecutor declines to re-examine the witness.

The witness is questioned by the Judge Advocate:

Q.343 What time did you first see them after then came back from that trip to the salvage dump, or did you see them?
A.343 Yes sir I saw them about Eleven o'clock sir, approximately, I couldn't say for sure.

Q.344 Did you see Private Munroe's vehicle come back?
A.344 No sir.

Q.345 Did you see Munroe and the accused and Private Pinnan before lunch - before Twelve o'clock?
A.345 Yes sir.

Q.346 Where?
A.346 Well, I saw them down in the QM Stores.

Q.347 What doing?
A.347 They were working there.

Q.348 What time did they have lunch?
A.348 They had lunch about five minutes before twelve.

Q.349 Did you see them?
A.349 Yes sir.

Q.350 At lunch time?
A.350 Yes sir.

Q.351 Did they eat?
A.351 Yes, I'm not just sure now sir, it's pretty far back.

Q.352 What are you not sure about. Did they eat? Were you in the dining room?
A.352 I'm not sure whether they ate or not sir.

Q.353 What time did you see them then, definitely?
A.353 Approximately Eleven o'clock.

Q.354 After that what is the next time you saw them?
A.354 I couldn't say sir whether I brought them over for dinner or not.

Q.355 After dinner what time did you see them?
A.355 One-Thirty.

Q.356 Definitely?
A.356 Yes sir.

Q.357 Where?
A.357 I was at that time down in room 27. I think it is the 2 HAC lines.

Q.358 In their billets?
A.358 Yes sir.

Q.359 How did you happen to go over there?
A.359 I had to go at One-Thirty to take them back to work sir.

Q.360 Tell the Court how you found them there.
A.360 Well they were sitting down playing cards when I came in.

Q.361 You are definite on that?
A.361 Pretty sure sir.. That's what they usually did.

Q.362 How many were in that room?
A.362 Well, there was I believe Kerchenko was there sir. At least two persons.

Q.363 Do you know Finnan?
A.363 Yes.

Q.364 Was he there?
A.364 Yes sir.

Q.365 What were your orders in regards to them?
A.365 I just took them and put them back in the QM Stores.

Q.366 What did you say?
A.366 I took them down to the QM Stores sir.

Q.367 How far was that?
A.367 Just down in the cellar sir.

Q.368 They walked down?
A.368 Yes sir.

Q.369 Normally?
A.369 Yes sir. They appeared to me anyway.

Q.370 Did you see them working in the QM Stores that afternoon?
A.370 O yes, sir. I went down there now and then and they were working then, sir.

Q.371 And you didn't notice anything unusual?
A.371 No sir.

Q.372 Where were you when they asked you to go to the toilet?
A.372 I went down and checked up and they asked me if they could go to the toilet.

Q.373 And what time was that?
A.373 Just shortly after Three sir, about the middle of the afternoon.

Q.374 How many others were working in the QM Stores that afternoon?
A.374 Just Fitman and Rolfe and two of the QM personnel sir.

Q.375 Did you see Rolfe later in the afternoon?
A.375 No sir. After Sergeant Ryerse told me that they took the vehicle out of the camp he just told me to leave it to Sergeant Sutton.

Q.376 Did you see them later - about Six or Seven o'clock?
A.376 No sir.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdraws.

SECOND WITNESS CALLED BY THE PROSECUTION IN REBUTTAL:

M.1278 L/Cpl Hildebrand, H, 2 Cdn MAC RCASC, having been duly sworn, is examined by the Prosecutor:

Q.377 Will you give your number, rank and name to the Court:
A.377 M.1278 Lance-Corporal Hildebrand, H, 2 MAC RCASC.

Q.378 Corporal will you tell the Court just what you know about the Eighteenth of May?
A.378 On the Eighteenth of May when Private Rolfe was brought into the guard room at approximately Sixteen-Ten hours, I just couldn't be sure of that but he asked me - of course I smelled that he had been drinking liquor and I looked him up in the guard room. That's all I know about it.

Q.379 What time did the prisoners go to their dinner that night?
A.379 Their dinner I think it was Four-Thirty or a Quarter to Five.

Q.380 And did anybody visit them in the guard room?
A.380 Not that I know of sir. I left the guard room after that. I was in the building down below.

Q.381 Would you say that he was drunk?
A.381 Well, they had a drink but I don't know - they were walking back to their cell when I told them to. That's the only thing - I never spoke to them myself.

The witness is cross-examined by the Defending Officer:

Q.382 You have no evidence that they were drunk but on the other hand you have no evidence that they were sober?
A.382 I didn't talk to them. I smelled their breath of liquor and I locked them in the guard room sir.

Q.383 They could have been drunk and you not know it?
A.383 Well they were walking when I told them to go in the cell.

The Prosecutor declines to re-examine the witness.

The witness is questioned by the Judge Advocate:

Q.384 Who brought them to you?
A.384 Sergeant Sutton, sir.

Q.385 Did you see them arrive at the airport?
A.385 They walked into the guard room. That's the only place I paid any attention to him at all. Sergeant Sutton said to look them up and that's what I did.

Q.386 Did they have anything to do that evening?
A.386 Yes sir, they went for supper.

Q.387 Both of them?
A.387 Yes sir.

Q.388 Around what time?
A.388 Around Four-Thirty to Five. I'm not sure exactly.

Q.389 Was Captain Turner in to see them later?
A.389 I wont say for certain because I went down below and Corporal MacLennon was the one that was taking them over to the cell.

The witness is questioned by the Court:

Q.390 Did you say someone else took them over to supper?
A.390 MacLennan.

Q.391 He took them over to supper?
A.391 He was in there with them when they were having supper.

Q.392 Corporal MacLennon?
A.392 Yes sir.

The witness is questioned by the Judge Advocate:

Q.393 Did they appear normal to you when they came in the guard room?
A.393 I couldn't see anything wrong with them. I didn't see them walking very far, I told them to get in the cell and I locked them up.

Q.394 Did they have anything to say?
A.394 I couldn't say.

Q.395 Did they speak to each other?
A.395 No, I don't remember them speaking to anyone at all.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdrew.

THIRD WITNESS CALLED BY THE PROSECUTION IN REBUTTAL:

D.84817, Cpl MacLennan, M, 2 Cdn Demob Depot, having been duly sworn, is examined by the Prosecutor:

Q.396 Will you give your name and number and unit please?
A.396 D.84817, Corporal MacLennan, M, 2 Demob Depot.

Q.397 Corporal, will you tell us what you know about the Eighteenth of May.
A.397 The Eighteenth of May sir, it was my day off. I was RP at the airforce guard room and I got up at approximately a quarter to four in the afternoon and I went out and I was asked by the Corporal on duty if I would take the prisoners over to eat supper at Four-Thirty. I told him I would. I was in charge of the party and I didn't notice anything wrong until after when Captain Turner was in and he was talking to Rolfe and Finman and

making them walk a straight line up and down along the corridor. And that's all I know.

Q.398 That was immediately after supper?
A.398 At approximately Five o'clock, sir.

Q.399 Did they walk the straight line?
A.399 I didn't see anything out of order at all sir. I sat across from Rolfe at the supper table and I didn't notice anything whatever wrong.

Q.400 You can't say that he had a drink or maybe two or maybe ten?
A.400 Well sir, I have no reason to believe that he was drunk.

The witness is cross-examined by the Defending Officer:

Q.401 Would you repeat your last statement? You have no reason to believe he was drunk?
A.401 That's right, sir.

Q.402 You have no evidence that he was in full possession of his faculties?
A.402 I couldn't say whether he had been drinking or whether he hadn't sir.

Q.403 So that your evidence is nil.
A.403 I don't know anything about the case at all sir.

The Prosecutor declines to re-examine the witness.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(3).

The witness withdraws.

At 1610 hours the Court is adjourned.

At 1649 hours the Court is re-opened, pursuant to adjournment, present the same members and Judge Advocate as upon adjournment.

The accused is brought before the Court.

The Defending Officer makes the following closing address:

Mister President, we have heard a lot of evidence that Private Rolfe was out in the afternoon in a vehicle and also evidence that an accident took place in Oldenburg, but no evidence has been adduced to connect Private Rilfe with the accident. The vehicle involved in the accident may or may not have been the one that he took out but there is no evidence at all that he was driving that vehicle or any other vehicle at the time of the accident.

As to his movements during the afternoon, nothing tangible has been produced because no evidence could be found to testify as to his movements. He had been drinking and we have had an expert witness to say that it was quite possible for a man to be in possession of his physical ability and to lose for a period his mental faculties. Now the period that is a blank is from the time he turned the corner about Fifteen-Ten hours until he pulled up behind Sergeant Sutton - a period of Thirty-Five minutes and according to Captain Pleese's evidence that is entirely possible. That Private Rolfe be convicted of reckless driving I would not contest because he was drunk and was seen driving out of the camp at Fifteen Hundredd hours. There was ground for a charge there, of reckless driving because he was under the influence of liquor but I contend that there is no ground to convict him of the charge that is laid against him so on that basis gentlemen, I see no reason why Private Rolfe should be found guilty as charged.

As to his state of mind, Corporal Jack said that he was all right but then on cross-examination he says that he doesn't remember and when he was asked what he was doing he said he was playing cards. Well, could he swear that? No, he couldn't but that's what the people usually

did at noon and that was on what he based his statement that they were playing cards and that is no testimony.

I saw that Private Rolfe was not driving the vehicle which was involved in the accident.

The Prosecutor makes the following closing address:

The Defence has brought up several points - who was driving the vehicle? There were two men seen going out in the vehicle at Fifteen-Fifteen hours. Rolfe was driving it. The same two men were picked up in that vehicle within ten minutes of the accident, the glass still on the front of the vehicle. There is a faint possibility but it is almost impossible that these two would get some other individual to drive and then be involved in an accident and the switch over after the accident.

As regards the number of the vehicle, 1345 is the - 2 MAC is the only unit with 1345 and Hermann Mahlenbrook saw 1345 and he also saw the first figure of the HQ number and the last two. Later, Sergeant Sutton, shortly after the accident, within ten minutes, picked up the vehicle and gives the whole number, the first number being 6 and the last two, 60. I think there is enough evidence that he was driving the vehicle at the time of the accident and that he kept on going.

Now his claim is that he doesn't remember. It seems to me that he remembers what he wants to remember and doesn't remember what he doesn't want to remember.

The Defence has brought in an MO as a witness that a man can be physically capable and mentally incapable. But he also says that the reverse is true, that he can be mentally capable and physically incapable. The accused admitted to me that he didn't remember walking a line and that was about Five o'clock in the afternoon so that the period of blank was considerably longer than Forty-Five minutes.

As to the statement of Corporal Jack about playing cards. I think if the evidence was read that that was at noon. He periodically went downstairs to the QM Stores and these two men were working with the QM Staff.

Taking these points into consideration I maintain that Private Rolfe is guilty of the charge and is not guilty of being as drunk as he is trying to make out. JK(Can) says that drunkenness is no excuse for crime but if he is drunk it should be brought out. Nobody has proved that he was as drunk as he would like us to think.

The Judge Advocate makes the following summing-up:

Mister President and members of the Court, it is now my duty as Judge Advocate to advise you as to the law applicable to the case you have just heard. My presence here is merely in an advisory capacity and I have no saying whatsoever in the decision that you will be called upon to make as to whether the accused is guilty or not of the offence with which he is charged. If I have expressed any personal opinion as to the facts during the trial or if I do so during my summing-up, it is your duty to disregard it. You alone are the judges of the facts and the decision rests entirely upon you.

Now, the accused before you is charged with manslaughter which is defined as follows: It is the unlawful and felonious killing of another without any malice either express or implied. There are two kinds of manslaughter, one voluntary and the other one involuntary. The case before the Court would fall in the latter category. Involuntary manslaughter is that which is committed by a person who brings about the death of another by acting in some unlawful manner but without any intention of killing or committing an act likely to kill. This act, in its nature, may be lawful but nevertheless may be done so recklessly as to result in the death of another person. The type of manslaughter arising out of motor car accidents is usually caused by negligence. Where death results in consequence of a negligent act it would seem that to

create criminal responsibility, the degree of negligence must be so gross as to amount to recklessness. That is what you will have to consider once you are satisfied that the death of Frau Rohse was definitely caused by the collision of the car in which she was a passenger and the ambulance and once you are satisfied, also that that ambulance was the ambulance driven by the accused. You must be satisfied that the negligence of the driver of the ambulance was so gross as to be reckless. Now, in explaining to the juries the test which they should apply to determine whether the negligence in a particular case amounts to gross negligence, many epithets are used such as 'culpable', 'criminal', 'gross', 'wicked', 'clear', 'complete'. But whatever epithet be used and whether an epithet be used or not, in order to establish criminal liability, the facts must be such that, in the opinion of the jury, the negligence of the prisoner went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment. Another test that we find is in Kenny's Outline of Criminal Law as follows: "Must the prisoner by his conduct be deemed to have intended to cause bodily harm to someone or to have been indifferent or reckless as to the obvious risk of bodily harm to which his conduct was exposing someone." Now, this is the law on what a manslaughter consists of and the type of negligence to be proved in order to find a man guilty of that offense.

In this case as you know, the onus is upon the Prosecution to prove the offence alleged against the accused. The following evidence has been brought out by the Prosecution. The accused was seen driving out of the camp area in company with a fellow comrad; he was driving an ambulance. There is no direct evidence connecting the accused with the scene of the accident. One witness however, who was an eye-witness to the accident stated that although he could not identify the accused as being the driver of the ambulance, he saw on the ambulance the tactical number 1345 which number as it was brought out was the tactical number of the ambulance which the accused was seen driving out of the camp and later also was seen driving, shortly after the accident. That witness also saw part of the WD number on the ambulance, that is the first and last two figures. These figures also corresponded to the figures - the WD number of the ambulance which the driver took out of the camp and which he was driving shortly after the accident. This is not direct evidence but you may interpret it as strong circumstantial evidence. Another item of circumstantial evidence was adduced by Sergeant Sutton who stated that a very short time after the accident he came in contact with the accused, then driving an ambulance, and he noticed on the front of the ambulance that the paint had been scratched and that there was some broken glass. The report of the accident as you have heard it, is that the ambulance came in contact with the right-hand side door of a car. From this you would naturally expect some broken glass of that window to be found on the front of the ambulance. This is also circumstantial evidence. Now, in order to find the accused guilty of manslaughter, apart from the type of negligence I have just mentioned, not only must you be satisfied that it is the ambulance driven by the accused that collided with the civilian car but you must also be satisfied that the death of Frau Rohse resulted from the collision. On the latter point you have evidence that she was taken to the hospital immediately after the accident where she received proper medical attention and that she died at that hospital a few days after the accident. Unless her death was a consequence of the accident there could not be any manslaughter.

The Defense alleged that the accused was drunk on that afternoon from approximately one o'clock till some time in the guard room around Five o'clock. This was corroborated by another witness for the Defence who apparently was in the same state; the latter even remembers less than the accused himself. Drunkenness as you know, is no excuse for crime. A man intends the natural consequences of his acts and if he goes and gets drunk he is responsible for whatever ensues. "Intoxication, whether produced by alcohol or by drugs, is ordinarily no excuse for the commission of a criminal act, even though it have produced for the time great aberration of mind. For unlike insanity, it has been produced voluntarily and to produce it was wrong, both morally and also legally. Accordingly the law will not allow one wrong act to be an excuse for another. Hence the gross negligence which has caused a fatal collision is punishable, not only in a sober driver but also in a drunken one." It would be an excuse if the man who is drunk is in such a drunken state

that he is incapable of forming the intent to commit any offence. This would apply where the intention is of the essence of the offence. In the case of manslaughter there is no intention required. Now if the Court is not satisfied that some of the essential elements have been proved, they may make a special finding whereby they would find the accused not guilty of manslaughter but guilty of reckless driving in accordance with the Road Traffic Act.

Now, you have heard the witnesses before you. There has been some contradictory statements as to the state of the accused at the material times when the offence was committed and it is up to you to make up your minds which witnesses you will believe. The witnesses were before you. They have been examined by the Prosecutor and Defending Officer and by myself and you have been able to study their deportment. It is now left to you to decide whether you believe one witness or another. You may believe one part of one witness's testimony and you may disbelieve another part. This is the province of the Court and you should use your discretion.

Now before closing I would like to point out to you that if there is any reasonable doubt in your mind as to the accused being guilty of the offence of manslaughter or of reckless driving, the benefit of that doubt should be given to the accused and he should be found not guilty. Now what is a reasonable doubt? To warrant an acquittal the doubt must not be light or capricious such as timidity or passion prompts and weakness or corruption readily adopts, it must be such a doubt as upon a calm view of the whole evidence a rational understanding will suggest to an honest heart - the conscientious hesitation of minds that are not influenced by party, pre-occupied by prejudice or subdued by fear.

Unless there is anything else you wish me to discuss, this will close my summing-up.

President: I don't think there is anything else.

JA: Have you anything further?

Def Offr: No.

JA: Captain Turner?

Pros: No, nothing.

The Court is closed to consider the finding.

FIRST CHARACTER WITNESS:

Capt R.W.C. Turner, 2 Cdn MAC RCASC, having been duly sworn, is examined by the Defending Officer:

Q.404 Captain Turner, how long have you known the accused?
A.404 Since last fall - September 45 was when I actually came in contact with him.

Q.405 What opinion have you formed of the accused bearing on his character as a soldier?
A.405 Since September, it is not very good. He has been continuously in trouble.

Q.406 His conduct sheet doesn't bear that out.
A.406 That first case of the traffic accident you will find on his NF M6.

Q.407 You have nothing specific against him?
A.407 No - specific - no.

The witness is questioned by the Judge Advocate:

Q.408 How has he carried out his duties when he didn't get into trouble?
A.408 To the best of my knowledge he carried them out. I didn't have very much to do with the man at all. I was in Headquarters platoon all the time.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness stands down.

SECOND CHARACTER WITNESS:

B.130095, Sgt Sutton, WE, 2 Cdn MAC, RCASC, having been reminded of his former oath, is examined by the Defending Officer:

Q.409 Sergeant Sutton, how long have you known the accused?
A.409 Since the Fifteenth of December sir.

Q.410 He was working under you?
A.410 He was, after Christmas.

Q.411 What opinion have you formed as to his character as a soldier?
A.411 I don't know much about him sir. Before I came back to the company I was away for five months. I came back and about a week after I took over the platoon - after Christmas. It was a month or so before I got to know him very well. I found him capable of carrying out his work but he was an excessive drinker. I never knew when he would get drunk. We had one or two disturbances with him. Then he settled down and worked for about two or three months and he was put on a vehicle. He didn't do such a very good job on the vehicle so he was taken off and he was given a job around the billets. But he kept going out on the occassional sprees.

Q.412 Then according to you his trouble was due to drink?
A.412 Yes sir, he seemed to have something worrying him and nobody could get it straightened out. The platoon officer and myself tried to get it straightened out. We talked with him and had many a discussion with him and we tried to work something out.

Q.413 In your opinion had it not been for his drinking, would he have been a good soldier?
A.413 I'm sure he would, yes.

The Prosecutor declines to cross-examine the witness.

The witness is questioned by the Court:

Q.414 Was the accused the type of man who showed any initiative himself or did he have to be told everything that had to be done?

A.414 I would say he had to be explained and told what to do.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(8).

The witness withdrawn.

E.2

Def Offr: The Statement of Character is not correct when it says that the accused is under sentence at the present time from the Eighth of May. That's more than Twenty-Eight days ago.

President: The Court agrees with that but in view of the absence of the Adjutant who has been repatriated, the Statement of Character cannot be changed but the Court will take that into consideration.

E.3

The Defending Officer makes the following plea in mitigation:

On the MF 36 you will notice that the first charge is dated the Twenty-Sixth of September. The accused was then entitled to a good conduct stripe. Private Rolfe enlisted on the Twenty-Second of September, 43 and had two clear years without ever committing an offence.

About Christmas last year he got a letter from his wife - he is the father of four girls whom he is trying to support. His wife announced to him the birth of another child. This child cannot be his because he had left home over a year before. You can understand what a shock that was to him and as so many people do, in order to forget his troubles he took to drink. I think it is human to seek oblivion on one's troubles in anything that will produce oblivion. Drink is the most common. Sergeant Sutton is satisfied that had it not been for drink he would have been a good soldier.

More recently Private Rolfe got another letter from his wife saying that one of his girls was in hospital and she did not state why or from what illness or anything. There is an additional worry. He was quite prepared to go back home and pick up the threads again and resume his married life and to be a good husband and be a good father and forget his wife's erring ways but always at the back of his mind was the idea of an unfaithful wife. Can you blame him? - if he sought comfort in alcoholic stimulants?

I would have liked to bring in witnesses as to his good character up to the date of this last Christmas but unfortunately the people who have known him during that time have gone home. So we have to take his record that he was a good soldier, entitled to a good conduct stripe and that his falling off the straight and narrow was due to domestic trouble.

Therefore I say gentlemen, that whatever you convict him of is not due to clear-headed intention but rahter the consequences of drink and this drink is the desire to forget his own trouble.

Exhibits "A" "B" "C" "D" & "E"

Ex 'F'

"JAN"

B.130095 A/Sgt Sutton WE, 2 Cdn MAC, RCASC CAOF, sworn, states:

I am B.130095 A/Sgt Sutton WE of 2 Cdn MAC RCASC CAOF. On 18 May 46 at 1515 hrs Pte Williams reported to me in block V.10 that Ptes Rolfe and Finnan had taken an ambulance from coy veh park and had driven off in the direction of the main gate for Alexander Airport. I then immediately got a motor cycle and proceeded to look for them. I went down town to Provost Information bureau in Oldenburg and reported the incident. I then circled around through town in search of the ambulance and when I came to the Bremen Strasse and Osnabruk intersection I stopped and enquired from two Cdn soldiers who were standing on the corner, if they had seen a Cdn ambulance. They said they had not seen on in the past ten minutes. I sat on the bike and trying to decide which road to take in search of the ambulance or to go back into town. As I was about to go back into town, the ambulance pulled up at the corner behind me with Pte Rolfe driving and Pte Finnan in the spare driver's seat. I then told them to turn around and I started to lead them back to camp. From all appearances they were under the influence of alcoholic stimulants but not to such an extent as to prevent Pte Rolfe from driving. We had not travelled more than a mile and a half through town from the Bremen-Osnaburk intersection with a jeep with a Cpl and a Pte in it pulled up along side of me. The Cpl asked me to stop the ambulance which I did. He then informed me that the ambulance had been involved in an accident and had not stopped. I called Pte Rolfe out of the vehicle and asked him if he knew anything about an accident. He said he did not remember having an accident. I then asked the Cpl to lead us back to the scene of the accidet. He led us to the main intersection where the stop lights are in Oldenburg. We parked the ambulance. We had the Cpl remain with it. I then went to the civilian policeman who was taking down information in regards to the accident. There was a small sedan which had been hit broadside and in it was a female German so was injured. In my presence she was removed from the car and taken to the Peter Friedrich Ludwig hospital in a German ambulance. I consulted the notes that the German policeman had made. He had 2 MAC Tac No. 1345 and WE No. CA 5668660. I got all information regarding the accident from him. I then went back to the ambulance and looked for damage. There was no damage done to the vehicle but the hood and fender was covered with broken glass then led the ambulance back to the camp area and put the two men Rolfe and Finnan in the guard room. I then reported the matter to the MT Sgt.

Rolfe declines to question witness.

"A/Sgt Sutton WE"

Q. At what time did you bring Ptes Rolfe and Finnan back to Alexander Airfield after the accident.

A. At 1610 and I put them right in the guard room.

"A/Sgt Sutton WE"

A. 107047 Pte Williams, WN, 2 Cdn MAC RCASC CAOF sworn, states:

I am L.107047 Pte Williams WN of 2 Cdn MAC RCASC CAOF. On 18 May 46 I was on guard at Coy veh park at 1615 hrs. I left the barrier to let a TCV "on test" out. Immediately behind the TCV was an ambulance and it got out before I could lower the barrier. Pte Rolfe was drving and Pte Finnan was in the spare drivers seat. I hailed for them to stop as I knew that they were doing FP and should not be driving. They did not stop and turned right from the veh park. I got a substitute guard and went and reported the matter to Sgt Sutton.

Rolfe declines to question.

"L.N. Williams"

I am Mrs Frida Fricke, living Oldenburg Kaiserstrasse 2, being duly sworn in, state the following:

On Saturday the 18 May 46, about fifteen thirty hours I drove with the PKW Old 14090 from the Staulinie in direction Heiligengeiswall. When I arrived at the crossing the traffic light showed red, I stopped and drove on when the light showed green. When I was at the crossing I saw on my right a short distance from my vehicle a heavy truck arrive at full speed. As far as I remember I tried to swerve away or get past the vehicle but it was too late for that. I suddenly felt a very heavy push and felt my car going out of its direction. I had the impression that my vehicle turned over. But it only turned around so that it came to stand pointing in the direction of the Heiligengeistrasse. I hit the left window with my head, and therefore saw my way about only after a little while, then I noticed that my co-driver Mrs Rohse, Oldenburg Kaiserstrasse 2, was hurt. The vehicle was also heavily damaged the body on the right side was smashed and the motor was also damaged. I could not make sure of more details.

Frida Friebe,

Certified true translation of the original.

"W. Tilker"

(W. Tilker) Cpl
2 Cdn MAC RCASC CADF

1 Police District

Oldenburg 20 May 46

Report concerning traffic accident on the 18 May 46 about 1535 hrs, at the crossing Ullmann:

I, Dietrich Boedecker, RSM of the Police born on the 3 Feb 10, in Borbeck, state under oath, after being familiarised with the statutes, the following:

I was on duty on saturday 18 May 46 from 1500 to 1600 hrs on the crossing Ullmann as Traffic Post.

At 1535 hrs the following traffic accident happened the PKW OLD - 14090 drove with the green light through the crossing Ullmann from the Staulinie in the direction Heiligengeistwall driver of the PKW was Mrs Prieve, housewife, Oldenburg Kaiserstrasse 2, Co-driver was Mrs Rohse, Oldenburg, Kaiserstrasse 2, The LFW CA-5668660 (Cdn) drove through the crossing from the Heiligengeistrasse in the direction Lange Strasse with the red light. At the crossing the LKW drove against the PKW and pushed it about 16 meters before it. At this collission the PKW came to stand with the front towards the Heiligengeistrasse. The right side of the PKW was heavily damaged, the co-driver Mrs Rohse suffered in this accident a heavy concussion, a double fracture of the right arm, a tear of the left shoulder, brusises on the right hip and of the left elbow. I called at once the ambulance and had the first police district and the Provost notifed. The driver of the LKW stopped after the accident shortly and drove on at once without bothering further about the accident. The witness Hermann Mueßlenbrock, Oldenburg Heiligengeistrasse 77, had noticed that an LKW of the unit 1345 with the end number 60 was concerned. This LKW stopped, returning, at the Staulinie so that the exact number of this vehicle could be ascertained. The accident was caused through the LKW passing the crossing at high speed with the red light. The PKW had to be towed away.

Deitrich Boedecker
RSM Police

Certified true translation from the original

Cpl W. Tilker"
2 Cdn MAC RCASC CAOF

D.121759 Cpl Jack, R, 2 Cdn MAC RCASC sworn, states:

I am D.121759 L/Cpl Jack, R, 2 Cdn MAC RCASC. On 18 May 46 I was NCO in charge of FP personnel. I was detailed to put Pte Rolfe and Finnan to work in the unit QM stores. About the middle of the afternoon, Rolfe and Finnan asked me if they could go to the toilet. I took them upstairs to the toilet and then went into the HQ Pl Ord Room. I was Pl Ord Cpl during 18 May 46 and I wanted to check up on any details which may have come in. I was only in the Ord Room two or three minutes. I went back to the trolet but Finnan and Rolfe were not there. Neither were they in the QM Store. I came upstairs and I was advised that Rolfe and Finnan had taken an ambulance out.

The accused declines to question the witness.

"L./Cpl Jack R"

The accused was warned as follows.

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

I do not wish to make a statement at this time.

I certify that the foregoing Summary of Evidence consisting of 10 pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(C)(D)(E)(F) and (G) have been complied with.

"R.M.C. Turner" Capt

R.M.C. Turner Capt
2 Cdn MAC RCASC

I certify that the injured woman Frau Rohse is unable to make a statement at this time on account of injuries received.

"R.M.C Turner" Capt

R.M.C. Turner Capt
2 Cdn MAC RCASC

In the field
20 May 46

Additional Summary

On the 18 May 46 I was standing at the corner Langestrasse - Heiligengeiststrasse (at the Oldenburg Versicherung Building) at about 1530 hrs. The PKW No. 14090 stood before the red signals, and when the green came this vehicle drove in the direction Heiligengeiststwall at relatively slow speed. At about the height of the crossing the PKW was rammed by an Allied vehicle, which had not observed the signal. The PKW was dragged to the corner and then pushed back to the height of the Central Cafe entrance. The Allied vehicle had room enoughto swerve to the left, and drove, without bothering about the accident, away.

Police-sergeant Boedecker stopped an Allied vehicle to take up pursuit. In the meantime the policeman had ordered a civilian to call an ambulance by telephone. The ambulance appeared after a short while. The police sergeant tried to lift Mrs Rohse from the vehicle, which he did not manage from the side of the driver. He then tried to open the door from the other side. With this two British officer, who came by, helped hi.

About 1600 hrs the Allied Red Cross wagon was suddenly at the corner Staulinie again. I recognized the vehicle at once again. The operators were identified by a British motorcycle driver. The motorcycle driver and the Allied Red Cross wagon drove off in the direction Pferdemarkt. (The PKW was then standing in the direction Pferdemarkt.)

25 May 1946

Herrman Muehlenbrock

translation from the original Oldenburg Zeughausstrasse 77
"Cpl Tilker, M"

The accused declines to cross-examine the witness

I saw at first the number - 1345 - and the vehicle number

5 ..... 60, and then, when the vehicle was standing at the corner before the signal, I recalled the other numbers.

Hermann Muehlenbrock.

translation from the original

"Cpl Tilker, U"

Accused declines to question witness

Oldenburg, May 28. 1946

I, Friedrich Boedecker, Pol. Serg., born 3 March 1910 in Borbeck, declar under oath that I witnessed the accident myself and took measurements in person.

Boedecker
Pol. Sergeant.

translation from the original
"Cpl Tilker, M"

Accused declines to question witness

Mrs Martha Rose was admitted to the Peter Friedrich Ludwig Hospital on May 18, 1946 and treated by me. Thru traffic accident Mrs Rose suffered a concussion of the brain, dislocation of the right elbow joint, contusion of the left shoulder and fracture of the left clavicle. She also received a heavy contusion of the thorax.

In spite of all measures to the contrary Mrs Rose died from the results of the heavy injuries on the 21.5.1946 at the hospital.

Oldenburg, May 27, 1946.

Dr. Kiess
Chief of Surgical Department

Mrs Rose was admitted about 1600 hrs May 18, 1946, and died 1050 hrs on May 21, 1946.

Dr Kiess

translation from the original

"Cpl Tilker HQ"

Accused declines Deposition witness.

Adolf Hollwege

Oldenburg, 29 May 1946

driver of the ambulance on May 18. 1946, state under oath:

On the 18 May I was notified thru telephone operator Meyer. I drove at once the ambulance to the place of the accident, traffic lights Heiligengeistrasse. The injured women was then, because she complained of considerable pains, placed on a stretcher with the help of the ~~co~~driver Burjes and two unknown nursing sisters, and brought to the Peter Friedrich Ludwig Hospital to the First Aid Room. I do not recall the exact time of the day.

Adolf Hollwege

translation from the original
"Cpl Tilker W"

Accused declines to question witness

Oldenburg, May 29. 1946

I, the undersigned Wilhelm Rohse, Oldenburg, Kaiserstrasse 2, state under oath that I visited my wife, after she suffered injuries in the traffic accident, at the Peter Friedrich Ludwig Hospital as well as on the day of the accident, May 18. in Oldenburg, as on the following days (sunday and monday) several times and spoke to her. On Tuesday forenoon, shortly after eleven I was with her, but she had passed on shortly before eleven.

It is without doubt that I recognized my wife on Tuesday forenoon and Tuesday afternoon, also on Thursday, after she was laid into the coffin, because she was little or not at all disfigured.

W Rohse

Translation from the original
"Cpl Tilker W"

Accused declines to question witness

The accused was warned as follows:
Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Accused: I do not wish to make a statement at this time.

I certify that the foregoing summary of evidence consisting of five pages was taken by me in the presence and hearing of the accused and the Rules of Procedure 4(c)(d)(e)(f) & (g) have been complied with

"R M C Turner" Capt
2 CDN MAC RCASC. CAOF

Ex G. "JAK"

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

F.78180 Pte Rolfe, C.E. 2 Cdn M.A.C. RCASC CAOF

The following is a fair and true summary of the entries in the regimental conduct sheets of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with.

	Within the last Twelve months	Since Enlistment
for Conduct etc AA 40	3 times.....	3 times.

There are no entries in the conduct sheets of the accused.

The accused has not been previously convicted.

The accused at the present time is under sentence for Offence (AA Sec 40) beginning on the day of 7 May 46 (28 days F.P.)

The accused has been in confinement awaiting trial on the present charges for 30 days in military custody, of which nil days were spent in hospital.

The present age of the accused is 27 yrs 24 days.

The date of his attestation is 22 Sep 43

The accused is in possession of or entitled to no military decoration or military award.

Schedule of Convictions by a Court Martial or Civil Court

F.78180 Pte Rolfe, CE, 2 Cdn MAC RCASC CAOF

NIL

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27 day of May 46 "J. Harvey Lt Adj"

MFM 6
(AFB 122)
40/P&S/136 (3438)

No F.78/80 Name ROLFE, CE Sqn. Battery or Company NA Corps RCASC Date of enlistment 22 SEP 43 GC Badges Service or Proficiency Pay NA

Date of last entry in Company Conduct Sheet No and date of last drunk NA Period not reckoning towards freedom from extra fine NA Sheet No One Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
CAMP	1	LONDON	ONT	ORIGINAL SHEET DESTROYED 28 MAR 44 NIL ENTRIES NIL CASES OF DRUNKENNESS					
FIELD	26 SEP 45	PTE		AASEC 40 - NEGL DRIVING, DAMAGE TO VEH	DOCUMENTARY	FORF - $ 4-9.6 FORF 14 DAYS PAY	MAJ MORWOOD		FRTI 158(2) FRTI 149(2)
FIELD	1 MAY 46			AASEC 40 - CONDUCT ETC	SGT WRYCRAFT	14 DAYS PAY 14 HRS INST DRILL	2 MAY 46	MAJ MORWOOD	
FIELD	4 MAY 46			AASEC 40 - CONDUCT ETC	SGT DAFOE	28 DAYS FP IN COV LINES A28 DAYS PAY	2 MAY 46	MAJ MORWOOD	

CERTIFIED TRUE COPY OF ORIGINAL

"Del Morwood" Mgr
Officer Commanding having custody of original
2 Cdn MAC RCASC.

(PTO)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 4(c)	NOT GUILTY	GUILTY	
2nd	AA 5(a)	GUILTY	GUILTY	
3rd	AA 12(c)	GUILTY	GUILTY	
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~.....~~ beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 31 days, of which N/C days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

TO SUFFER PENAL SERVITUDE FOR THE TERM OF THREE (3) YEARS
AND TO BE DISCHARGED WITH IGNOMINY FROM HIS MAJESTY'S SERVICE

(Sgd) "J.R.Bingham Capt" 19 Jun 46 (Sgd) "H.Kennedy Major"
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the findings and sentence for confirmation.

Date 26 Jun 46 (Sgd) "A.B.Connelly" Brig Commanding Cdn Tps NWE

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the finding but commute the sentence so that it shall be TO BE IMPRISONED WITH HARD LABOUR FOR 18 MONTHS and I confirm the sentence as so commuted

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 3 Jul 46 (Sgd) "J.C.Murchie"
(J C Murchie) Lieut-General
Commanding Chief of Staff, Canadian Military Headquarters Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F.78180 Pte Rolfe, C E	13 Jul 46	"D.A.Robertson" Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CPA98 (To form of AFA81) 40/P.W.H.(1)608 150,000

4/38B

Convened by Order of LT COL E.H. PARSONS Comd 2 CDN DEMOB DEP dated 12 JUN 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F.78180	Pte	CECIL EDWARD	ROLFE	2 CDN DEMOB DEPOT

Certified True Copy
J. Rutherford
Major.
DJA

PROCEEDINGS RECEIVED
Date
D J A Major

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) GERMANY on (date(s)) 13TH JUN 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para (number herein. See back of Convening Order, CF 493, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 34, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(-) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused : Do you object to FRAZER, R. as interpreter ? Ans NO
11 CDN SVCE DOG DET (ALDF)
The Interpreter is sworn.(1) Do you object to FALCO, DOS, R.PAUL, M.C. as shorthand writer ? Ans NO
The shorthand writer is sworn.(1) 4 CORPS CDN WAR CRIMES SECTION

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans NO (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	J.A. KENNEDY	2 CDN DEMOB DEPOT
Member	CAPT	E.T. STEWART	1 CDN ARM UNIT
Member	CAPT	J.A. MCINNIS	1 CAGRU
Judge-Advocate	MAJOR	J.R. BINGHAM	3 INTG CDN WAR CRIMES SECTION
Prosecutor	CAPT	W.S.E. TURNER	2 CDN MISC BOARD (NWE)
Defending Offr	MAJOR	F.D.C. ANGLIN	SIG'S 2 CDN INF DIV

Questions by President : Is the Prosecutor a lawyer ? Ans NO. Is the Defending Offr a lawyer ? Ans NO (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused F.78180 Pte ROLFE, C.E. before arraignment make(s) (no) (1) plea

(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~withdrew~~ and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form [illegible]

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Inotes (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans ..... (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) ~~of~~ to ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ~~to~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ..... , initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix Torn Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby or on the ground that you have not had sufficient opportunity to prepare your defence? Ans N/O (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 91(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB. *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans I WISH TO GIVE EVIDENCE. Do you intend to call witnesses on your behalf? Ans N/O

Ans YES. Are they witnesses as to character only? Ans

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the ..... charge(s) being subject to confirmation, will be promulgated later.(1)

~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released from arrest, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)

(1. *AA 54(2) (a), RP 45, 120(A).* 2. *AA 54(7), RP 43, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans YES — WITNESSES AS TO CHARACTER

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (a) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)

(1. *MFB 353 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans YES — THROUGH MY DEFENDING OFFICER

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566. Overseas RO 309, 2223, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED F.78180, PRIVATE CECIL EMERSON ROLFE, 2 CANADIAN H.A.C., ROYAL CANADIAN ARMY SERVICE CORPS, CANADIAN ARMY OCCUPATION FORCE, A SOLDIER OF THE CANADIAN ARMY OVERSEAS, IS CHARGED WITH

FIRST CHARGE
Section 41
Army Act

W.O.A.E. COMMITTED A CIVIL OFFENCE THAT IS TO SAY MANSLAUGHTER

in that he

In the Field, at OLDENBURG GERMANY, on the 18 May 46, unlawfully killed MARTHA ROSE.

SECOND CHARGE
Section 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field in GERMANY at approximately 1515 hours, 18 May 46, did improperly and without authority use Canadian Military Vehicle No. CA 5668660.

THIRD CHARGE
Section 15(1)
Army Act

WHEN ON ACTIVE SERVICE OBTAINING HIMSELF [redacted] LEAVE

in that he

In the Field in GERMANY, at 1515 hours 18 May 46, while undergoing field punishment, absented himself without leave until 1610 hours 18 May 46 (Total absence 55 minutes)

In the Field
30 May 46

"D.A. Norwood Major"

(Officer Commanding)
2 Cdn H.A.C. R.C.A.S.C. C.A.O.F.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

"E.H. Parsons"

In Germany
15 Jun 46

(E.H. Parsons) Lt-col
Officer Commanding
2 Cdn Demob Rep HAG

FIELD GENERAL COURT-MARTIAL

CFA 35 (In lieu of AFAE)
40/PAM/1057 (2052)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
F.78180	Pte		CECIL EMERSON	ROLFE	2 Cdn Demob Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) ..... endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified auth.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons here stated.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	J A KENNEDY	2 Cdn Demob Dep RCOC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	E T STEWART	11 Cdn Grn Unit
Capt	D A McINNIS	1 CARSU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	G E THOMAS	2 Cdn Demob Dep RCOC

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Maj	J B MIQUELON	A Inar 'O' Cdn JAG Overseas

On Active Service in the Fd

in Germany (*Country.*)

"E.H. Parsons"
(E.H. Parsons)
(*Signed personally. RP 105 fn 2.*)

Lt-col (*Rank.*)

Date 15 Jun 46

Commanding 2 Cdn Demob Dep RCE
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"J"

Guardroom
2 Cdn Demob Depot

Date 18-6-46

I have this date examined No. F.78180 Rank Pte

Name Rolfe, C.E. and found him fit to undergo Court Martial.

"E.E. Pluze" Capt

Medical Officer
2 Cdn Demob Depot

FIRST WITNESS FOR THE PROSECUTION:

Doktor Theodor Kiess, Surgeon, Peter Friedrich Ludwig Hospital, Oldenburg, Germany, having been duly sworn, is examined by the Prosecutor, through the interpreter:

Q.1 Doctor Kiess will you give your name and your occupation?
A.1 Theodor Kiess, Surgeon at the Peter Friedrich Ludwig Hospital, Oldenburg.

Q.2 Now Doctor Kiess, will you tell the Court just exactly what happened on the Eighteenth of May?
A.2 Frau Rohse was admitted to the hospital in the surgical ward on the Eighteenth of May at about sixteen hours. She suffered through an accident pretty heavy injuries. When admitted to the hospital she was unconscious, the pulse was bad, her face pale, and the breath slow. I could find the following injuries: Heavy concussion, fracture of the left shoulder blade, fracture in the right elbow joint and abrasion of the chest. She was treated immediately, I looked at the shoulder and the right elbow was fixed. The left arm and the left shoulder was bandaged and put in order. On the head she had an ice pack. She got injections for the heart.

Q.3 Doctor Kiess, did Mrs Rohse die from the direct injuries received in that accident?
A.3 Yes sir.

Q.4 And what time did she die?
A.4 On the Twenty-First of May 1946 at Ten-Fifty in the morning.

The witness is cross-examined by the Defending Officer:

Q.5 Doctor Kiess, were you her ordinary physician?
A.5 I am the chief of the hospital.

Q.6 Yes, but did you treat Frau Rohse ordinarily as her family physician?
A.6 No.

The Prosecutor declines to re-examine the witness:

The witness is questioned by the Judge Advocate:

Q.7 Do you remember who took the patient to the hospital? Who accompanied her?
A.7 No, I don't know.

Q.8 Did you see her husband at the hospital?
A.8 Yes sir.

Q.9 Would you recognize her husband?
A.9 Yes sir.

Herr Wilhelm Rohse is brought before the Court.

The witness is questioned by the Judge Advocate:

Q.10 Do you recognize this man?
A.10 Yes sir, that is Herr Rohse.

Herr Wilhelm Rohse retires.

The witness is questioned by the Court:

Q.11 Was Frau Rohse unconscious all the time - from the time she was admitted to the time she died?
A.11 Yes. Some times she was not in such a heavy unconscious state as at other time, but she never gained consciousness again.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(3).

The witness withdrew.

SECOND WITNESS FOR THE PROSECUTION:

B.130095, Sgt Sutton, WE, 2 Cdn MAC, RCASC, having been duly sworn, is examined by the Prosecutor:

Q.12 Will you give your name and number and rank and unit?
A.12 B.130095 Sergeant Sutton, WE 2 MAC, RCASC, CAOF.

Q.13 How will you tell the Court just what happened on the Eighteenth of May 46?
A.13 At Three-Fifteen on the Eighteenth, Private Williams reported to me that Private Rolfe and Private Finnan had driven off in an ambulance from the company vehicle park. I went and got a motorcycle and proceeded to look for them. I reported the incident to the Provost information bureau in Oldenburg and then went in search of the ambulance. When I came to the Bremen-Osnabruk corner I stopped and I asked two soldiers there if they had seen an ambulance. They said they'd not seen one go by in the last ten minutes while they were there. As I was sitting there on the motorcycle trying to decide which way to go to look for them the ambulance pulled up at the corner. Private Rolfe was driving and Private Finnan was in the spare driver's seat. They couldn't get by me because of the way I was turning around. Then I started to lead them back to the camp and about a mile from where I had picked them up, a jeep came up and the driver told me to stop the ambulance and that it had been in an accident. I stopped them and asked Private Rolfe if he had been in an accident and he said didn't know anything about an accident. I then took them back to the scene of the accident and got the information of the accident and took them back to camp. When I got back to camp I placed them in the Regimental guard house about Sixteen-Ten hours. It was about three-quarters of an hour from the time when I went out until I got back. They had been drinking but not enough to affect Private Rolfe from driving.

Q.14 When you picked the ambulance up, was there any damage done to it?
A.14 There was no damage done to it that I could see. Actually I inspected it closely and I noticed that the front end was scretched - some of the paint was scratched and the front was peppered with broken glass.

Q.15 Rolfe was definitely driving when you picked them up?
A.15 Yes, Private Rolfe was driving.

JA: Captain Turner, try not to put your questions in such a leading manner.

The Prosecutor continues with the examination of the witness:

Q.16 And approximately what time did the ambulance drive up behind you?
A.16 About Fifteen-Forty-Five sir.

Q.17 Fifteen-Forty-Five?
A.17 Fifteen minutes before Four.

Q.18 When you got to the main intersection, where the traffic lights are, what did you see there?
A.18 The centre of the road was covered with broken glass and a car was facing the wrong direction on the right-hand side of the road. When you are going from the Beaver Club towards the intersection, the car was on the right-hand side of the road heading in the opposite direction. The right-hand side of the car was damaged and both side windows were out. They had lifted the lady out that was hurt and put her on a stretcher and an

ambulance took her to the Peter Friedrich Ludwig hospital.

Q.19 Were there any civilian police there at the time?
A.19 Yes, one civilian policeman there.

Q.20 What was he doing?
A.20 He was taking down all the information and he was measuring the road from where the accident happened to where the car had stopped and taking down the particulars of the vehicle and the owner of the vehicle and all the necessary information.

The witness is cross-examined by the Defending Officer:

Q.21 Sergeant Sutton, you say the accused had been drinking. What made you think so?
A.21 Well when I questioned him whether he had been in an accident or not I could smell liquor on him. That's the only way I could tell. I just could smell it sir.

Q.22 There was no other evidence of him being drunk?
A.22 No sir, there was no other evidence.

Q.23 To your knowledge - -- did any witness at the scene of the accident identify him - did any witness at the scene of the accident identify the vehicle that Private Rolfe was driving as the vehicle involved in the accident?
A.23 The civilian policeman did, sir.

JA: What's that question again?

Q.24 Did anybody at the scene of the accident identify the vehicle that Private Rolfe was driving as the vehicle that was involved?

JA: I don't think the witness is capable of answering that unless he did it himself. He wasn't there.

Witness: When I brought the vehicle up, the policeman told me that was the vehicle.

JA: This is hearsay evidence. We'll have the witness himself.

The witness is re-examined by the Prosecutor:

Q.25 Can you identify Private Rolfe?
A.25 Yes sir, that's Private Rolfe there. (Witness indicates accused)

The witness is questioned by the Court:

Q.26 I would like to know why this was reported to you?
A.26 I was the closest sergeant that Williams found sir.

Q.27 You weren't a duty sergeant?
A.27 No, not at the time sir.

Q.28 Do you know who the man in the jeep, the jeep that you met up with, were?
A.28 No sir, I don't.

The witness is questioned by the Judge Advocate:

Q.29 On what corner did you first come into contact with the ambulance?
A.29 On the Bremen-Osnabruk crossroads sir.

Q.30 And who was driving the vehicle at the time?
A.30 Private Rolfe [redacted].

Q.31 Were there any tactical signs on the vehicle?
A.31 Yes sir.

Q.32 What was it?
A.32 1345 on white letters on a red and green Army Service Corps

background, on the driver's side of the vehicle. On the off-side was a blue patch with a gold maple leaf and the white edge.

Q.33 Did you notice the WD number?
A.33 Yes sir.

Q.34 Will you give it to the Court?
A.34 CA 5668660.

Q.35 Who was in the ambulance with the driver?
A.35 Private Finnan was sitting in the off-side seat.

Q.36 Who drove the vehicle from there?
A.36 Private Rolfe sir.

Q.37 Did you ask him to follow you?
A.37 Yes sir.

Q.38 Now, did you notice any damage at all on the ambulance?
A.38 Outside of the paint being scratched sir and the broken glass - after I inspected the vehicle I couldn't see any great damage. There was no metal pushed in and no headlights' broken.

Q.39 On what place on the ambulance was it scratched?
A.39 On the off side of the vehicle - on the left-hand side as you are sitting in it.

Q.40 Had you seen Private Rolfe at 2 MAC that afternoon, before?
A .40 No, I hadn't seen him before that.

Q.41 And other than the smell of alcohol, he looked normal to you?
A.41 He looked absolutely normal. He showed no physical signs of being intoxicated, outside of the smell of drink on his breath.

Q.42 And he drove the ambulance back to the unit?
A.42 Yes sir, he did.

Q.43 Following you?
A.43 Yes sir.

Q.44 In what condition was the other man, in the ambulance?
A.44 I don't know, sir.

The witness is questioned by the Court:

Q.45 What is your official capacity, sergeant?
A.45 I was a platoon sergeant, sir.

With the permission of the court, the following questions are asked by the Defending Officer:

Q.46 Did Private Rolfe get out of the ambulance and walk?
A.46 Yes sir, he did.

Q.47 And he could walk.
A.47 Yes sir.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(8)

The witness withdraws.

THIRD WITNESS FOR THE PROSECUTION:

L.107047 Pte Williams, WH, 2 Cdn MAC, RCASC, having been duly sworn, is examined by the Prosecutor:

Q.48 Will you give the Court you number, rank and name and unit?
A.48 L.107047, Private Williams, WH, 2 MAC.

Q.49 Do you know Private Rolfe if you saw him?
A.49 Yes sir.

Q.50 Is he in this room?
A.50 Right there sir. (Witness indicates accused)

Q.51 Now, will you tell the Court just what happened on the Eighteenth of May?
A.51 I was on post at the company vehicle park and I opened the barrier to let a TCV that was on test out and right behind the TCV was an ambulance. Private Rolfe was driving and Private Pinnan was with him. I hollered for them to stop because I knew they were doing FP but they didn't stop so I immediately went and reported it to Sergeant Sutton. And that's all.

Q.52 And when they left the vehicle park what direction did the ambulance turn?
A.52 It turned right, towards the town.

Q.53 You didn't notice the number on it?
A.53 No, I never noticed the number of the ambulance.

The Defending Officer declines to cross-examine the witness.

The witness is questioned by the Judge Advocate:

Q.54 Had you seen Private Rolfe before, that afternoon?
A.54 No, I hadn't seen him all afternoon, sir.

Q.55 Did you see the ambulance come back later?
A.55 No, I never seen the ambulance come back.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(3)

The witness withdrawn.

FOURTH WITNESS FOR THE PROSECUTION:

Frau Frida Priebe, Kaiserstrasse 2, Oldenburg, Germany, having been duly sworn, is examined by the Prosecutor, through the interpreter:

Q.56 Will you give your name and your residence?
A.56 Frida Priebe, Kaiserstrasse 2, Oldenburg.

Q.57 Now Mrs Priebe, will you tell the Court just what happened on the Eighteenth of May?
A.57 I came at about Fifteen-Thirty hours with my car to the crossing Heiligengeistrasse. I wanted to go on in the direction of Heiligengeiswall. The light showed red and I stopped and waited until the green light came on and then I started off and when I came on the crossing I was in the centre and I saw a big truck come from the right-hand side in a very fast speed. The truck was only a very short distance in front of my car. I tried to get past it but it was too late. The next moment I felt a rather heavy jerk and I felt as my car was pushed aside I always had the feeling that my car was turning over. My car was pushed on by the other car some metres and in this manner my car was turned around and the front showed to the Heiligengeistrasse. I then found out that the right side of the body work got the heaviest smash and through this the heavy injuries of Frau Rohse. There was some trouble in the engine as well. In the meantime I found out that the repairs are not too heavy. The right-hand door of my car has been renewed but the car is still under repairs. That is all.

Q.58 Mrs Priebe, did you see the driver of the vehicle that hit you?
A.58 I can't say that for certain.

Q.59 And what is the number of your car?
A.59 OLD 14090.

Q.69 And the crossing that it happened on is sometimes known as Ullman crossing?
A.69 That I do not know.

The witness is cross-examined by the Defending Officer:

Q.61 Mrs Priebe, will you describe the vehicle that collided with yours?
A.61 I have only seen the front. It was a big high truck. When he came back on this way I was told by the policeman --

JA: Don't say that. Tell her the policeman will come before the Court.

The Defending Officer continues with the cross-examination of the witness:

Q.62 You have no evidence that the vehicle that came back was the vehicle --

JA: The Court didn't allow that.

The Defending Officer continues with the cross-examination of the witness:

Q.63 You say that your car was pushed three metres?
A.63 I said "some" metres.

Q.64 At what speed was that vehicle travelling?
A.64 Mine?

Q.65 The other?
A.65 That I cannot say.

Q.66 What speed were you travelling?
A.66 I just started off. I had the car in second gear.

The witness is re-examined by the Prosecutor:

Q.67 Mrs Priebe, the vehicle that hit you, was it fast or slow?

Interpreter: Would you repeat that, please sir?

Q.68 The vehicle that hit your car, was it going fast or slow, or what?
A.68 To me - fast.

The witness is questioned by the Judge Advocate:

Q.69 How many persons did you see in the vehicle that hit you?
A.69 I saw only two.

Q.70 Two male or --
A.70 Two men.

Q.71 Were they soldiers?
A.71 Yes.

Q.72 Did you help to take Frau Rohse to the hospital?
A.72 No, I was not travelling to hospital with her.

Q.73 Did you see her put in the ambulance?
A.73 Yes, the ambulance drew up beside my car and she was put on the stretcher there.

Q.74 What was the last time you saw Frau Rohse?
A.74 That was the last time I saw Frau Rohse.

Q.75 Did you see her in hospital?
A.75 No, I myself was three days confined to bed.

Q.76 Do you know Herr Rohse?
A.76 Yes.

Q.77 How long have you known him?

A.77 Over a year.

Herr Wilhelm Rohse is brought before the Court

The witness is questioned by the Judge Advocate:

Q.78 Do you recognize this man?
A.78 Yes.

Q.79 What is his name?
A.79 Herr Rohse.

Herr Wilhelm Rohse retires.

The witness is questioned by the Court:

Q.80 Are you positive that the light was green and not orange when you started your car?
A.80 Yes.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdraws.

At 1115 hours the Court is adjourned.

At 1125 hours the Court is re-opened, pursuant to adjournment, present the same members and Judge Advocate as upon adjournment.

The accused is brought before the Court.

FIFTH WITNESS FOR THE PROSECUTION:

Johann Urtken, Criminal Secretary, Oldenburg, having been duly sworn, is examined by the Prosecutor, through the interpreter

Q.81 Will you give your name and your occupation?
A.81 Johann Urtken; my profession is Criminal Secretary.

Q.82 What does that consist of?
A.82 I take fingerprints and photographs.

Q.83 Did you take these photographs?
A.83 Yes.

Q.84 At whose request?
A.84 The Captain here. (Witness indicates Captain Turner, the Prosecutor)

Q.85 When did you take these photographs?
A.85 I cannot give the exact date.

JA: Have you any objection to their production?

Def Offr: None at all.

Witness: It was about three weeks ago.

The photographs referred to in the evidence of the witness above, are marked Exhibits 'A', 'B', 'C', 'D', initialled by the President and attached to the proceedings.

The Prosecutor continues with the examination of the witness:

Q.86 Was anyone with you when you took the photographs?
A.86 Yes sir, Wachmeister Boedecher, a policeman.

The witness is cross-examined by the Defending Officer:

Q.87 Were you a witness at the accident?
A.87 No sir.

The Prosecutor declines to re-examine the witness.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdrawn.

SIXTH WITNESS FOR THE PROSECUTION:

Oberwachmeister Dietrich Boedecker, Oldenburg, being duly sworn, is examined by the Prosecutor, through the interpreter:

Q.88 Will you tell the Court your name and occupation?
A.88 My name is Oberwachmeister Dietrich Boedecker, born on the Three-Two-Ten. I work at the Police Station.

Q.89 Will you tell the Court just what happened on the Eighteenth of May?
A.89 On the Eighteenth of May from Fifteen to Sixteen hours I was on duty at the crossing Ullmann. At about Fifteen-Thirty-Five hours the following accident happened. The car 14090 came from the Staulinie and drove in the direction Heiligengeiswall. From Heiligengeistrasse in the direction Langestrasse came a Canadian ambulance number 1345. On the crossing this ambulance collided with the car which had already gone on the crossing. The ambulance touched the car on the right-hand side near the door and pushed the car about sixty metres in front of it so that the car came pointed with its front end to the Heiligengeistrasse. I myself stood at this moment in front of the house Heiligengeistrasse 2. As I saw the accident I went immediately to the car which was driven by Frau Priebe. Beside her sat Frau Rohse as passenger. This person was injured through the accident. I immediately asked two men to phone the First Police Station and also for the ambulance of the Fire Service. From the First Police Station the criminal police was notified. The second man informed the Provosts. I myself first looked after Frau Rohse and at this time the ambulance stopped for a very short time and immediately went on again in the direction of Langestrasse. I wanted to free Frau Rohse out of her position but I could not do it as the right door was pushed in completely. With the help of some Canadian soldiers the door was broken open. I tried to help Frau Rohse and Frau Rohse was laid on to the stretcher. In the meantime had arrived the ambulance of the Fire Service and Frau Rohse was taken to the Peter Friedrich Ludwig hospital. The witness Muehlenbrock saw the end number of the Canadian ambulance --

JA: Is he a witness?

Pros: He is coming.

Def Offr: It's hearsay and I object to it.

JA: Just tell the Court what you saw and not what you heard.

The witness continues:

A jeep immediately trailed the ambulance. After this I started taking up investigations of the accident. As I took up the different things of the accident a driver of the Provost came along and I asked him to go. In the meantime stopped the ambulance on the Staulinie. I finished taking up the different information and investigation of the accident and went back to the Police Station in order to write out my report. I have finished.

Q.90 Did you draw this?
A.90 I have drawn this. This is a sketch of the accident.

JA: Any objections?

Def Offr: No.

The sketch of the scene of the accident referred to in the evidence of the witness above, is marked Exhibit 'E', initialled by the President and attached to the proceedings.

Q.91 Just how long did the ambulance stop?
A.91 It stopped very shortly. I cannot give the exact time, and drove on again.

Q.92 Did the driver get out?
A.92 I didn't notice it.

Q.93 Would you recognise the driver?
A.93 No, I cannot recognise him.

The witness is cross-examined by the Defending Officer:

Q.94 Am I not right in saying that the traffic lights do not work at that corner some times?
A.94 No, it sometimes happens that some of the lights burn out.

Q.95 At the time of this occurrence are you sure that the lights were working?
A.95 Yes sir, I am quite sure that all the lamps were in working order.

Q.96 And did this ambulance go against the light?
A.96 As the light was red the ambulance passed the corner.

Q.97 On Exhibit 'E' you put down a number of one vehicle. What is your evidence that that number is right?
A.97 As I was sitting in the car of Frau Priebe questioning her after the accident somebody brought the ambulance around the corner on its way back and then I took the number which is CA 5668660.

Q.98 That's the number of the vehicle that came back?
A.98 Yes sir, it is the number of the car that stopped there.

The Prosecutor declines to re-examine the witness:

The witness is questioned by the Judge Advocate:

Q.99 How many did you see in the ambulance at the time of the accident?
A.99 I cannot say how many were in it, the accident happened at such a speed that I first looked after the injured. I could not say.

Q.100 Approximately what speed was the ambulance going?
A.100 I cannot say the exact speed of the ambulance.

Q.101 Fast or slow?
A.101 Fast.

Q.102 Did you notice anything particular about the ambulance at the time of the accident - any signs?
A.102 No, I have not noticed anything on the ambulance.

Q.103 No number or tactical sign or anything?
A.103 I could only see that it had a red cross on it and it was a very big truck.

Q.104 What injuries did Frau Kohse suffer when you saw her in the car?
A.104 I could not notice any injuries at the moment. She was not conscious but was not quite unconscious.

Q.105 You said that you saw an ambulance later, some time after the accident. Did you notice any damage on that ambulance?
A.105 No. I only saw the ambulance halt on the corner Staulinie - Heiligengeistrasse. As I went there myself he drove off.

JA: I didn't quite get that.

The witness remains:

I sent a motorcyclist over, I think he was from the Provost but I cannot quite say so. I asked him to go after this ambulance which had stopped on the corner of Staulinie and Heiligengeistrasse.

JA: That's right after the accident. My question was - he saw an ambulance - you saw an ambulance come back later?

Witness: I never saw one come back I only saw one stopped on the corner Staulinie - Heiligengeistrasse and the witness Muehlenbrock told me "This is the ambulance."

Q.106 You didn't examine the ambulance then?
A.106 No, I have not examined it.

Q.107 Do you recognize these photographs? Tell the Court what they are.
A.107 These pictures are made by the Criminal Inspector.

Q.108 What do they represent?
A.108 (Exhibit 'A') This photograph where the X is on the photograph it shows where the car collided with the ambulance. This is the spot where the glass was lying. The second X a bit further up on the top left-hand corner that is the spot where the car stood turned around facing towards the crossing again. This picture was taken from upstairs from the last floor of the house on Langestrasse which is the corner house.

(Exhibit 'B') This photograph has been taken as the driver of the ambulance would have seen it coming along. The view of the driver coming along from Number Two Police Station.

(Exhibit 'C') This is a view out of Frau Priebe's car coming towards the crossing - straight across the crossing.

(Exhibit 'D') The last photograph is the photograph from the opposite direction to the driver of the ambulance and also where I was standing at the time of the accident. I was standing on the right-hand corner where the man is standing, in front of house number 2 where one can get a glimpse of the door and his view is shown there.

The witness is questioned by the Court:

Q.109 And in this picture the ambulance would be coming down this way, would it?
A.109 Coming up this way yes sir, that is right.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdraws.

SEVENTH WITNESS FOR THE PROSECUTION:

Herr Herrman Muehlenbrok, Neughausstrasse 77, Oldenburg, Germany, having been duly sworn, is examined by the Prosecutor, through the interpreter:

Q.110 Will you tell the Court your name and where you live?
A.110 Herrman Muehlenbrock, Neughausstrasse, 77, Oldenburg.

Q.111 Now will you tell the Court just what happened on the Eighteenth of May?
A.111 On Saturday the Eighteenth of May in the afternoon at approximately Fifteen-Thirty hours I stood on the corner Staulinie - Langestrasse at the house of the Oldenburg Insurance Company.

Q.112 What corner were you standing on? (Witness is shown Exhibit 'E')
A.112 I was standing right here. The policeman stood on the same side

but further back - about three metres further back.

Q.113 Will you continue?
A.113 Then the light was red from Staulinie to Heiligengeistrasse. On the Staulinie facing to Heiligengeistrasse stood the car OLD 14090 and the light was red. At the green light the car started in the direction of Heiligengeistwall. As the car was at the second half of the street came a British Red Cross car from the direction of the Wehrgemacht and passed the red light and collided with the car on the right-hand side of the door and pushed the car along and turned it around so that it faced in the direction of Heiligengeistrasse and then the ambulance stopped a very short time and drove on again. Then the Oberwachmeister stopped a British car and asked him to trail the ambulance which had gone off again. Then the Oberwachmeister turned his attention to the car which was in the accident and tried to get the woman out of the car from the side where the driver sat. He could not manage it and then he tried to get the door off the other side. He could not manage it on his own and then came two British officers and they together ripped the door open and in the meantime Oberwachmeister Boedecker had told a civilian to inform the Fire Service in order to get an ambulance. The ambulance arrived in a very short time. They lifted the woman carefully out of the car and then took her to the hospital. About Fifteen-Fifty hours this particular ambulance stood again in front of the red light on the Staulinie.

JA: How do you know it is the same ambulance?

Witness: As I remembered immediately the number 1345 which is a unit number. I also remembered the Division numbers beginning with 5 and ending with 60. Then a motorcyclist - I cannot describe the motorcycle - which was an Allied soldier drove up to this ambulance and took the particulars of the driver. I also saw how the driver showed his papers to this motor-cyclist. He took the papers out of his pocket and put them back in his pocket. Then the motorcycle and also the ambulance drove off in the direction of the Wehrgemacht.

The Prosecutor continues with the examination of the witness:

Q.114 Did the driver of the ambulance get out of the vehicle after it came back the second time?
A.114 Yes, he did get out.

Q.115 Would you recognise him?
A.115 Yes sir.

Q.116 Is he in this room?
A.116 Yes, there he is.

Q.11 7 Where?
A.117 (Witness indicates the accused) The man without the hat.

Q.118 Did anybody else get out of the vehicle?
A.118 That I did not see.

Q.119 How long was this man out of the ambulance?
A.119 Not so long. I cannot quite say how long he was out but not very long.

The witness is cross-examined by the Defending Officer:

Q.120 The man that you identified as the driver of the vehicle that came back did not get out of the vehicle that was involved in the accident - or did he?
A.120 No answer.

Q.121 You didn't see this man in the vehicle at the time of the accident?
A.121 No.

Q.122 At the time of the accident you did not notice the identifying numbers of the car?
A.122 Yes sir, as he collided with the car I saw immediately the number of the ambulance.

Q.123 The whole number?
A.123 1345 and also the beginning 5 and ending of 60.

Q.124 Where on the vehicle are those numbers?
A.124 In colour green on the left bottom of the vehicle, 1345 - on top 5 and the ending 60. The middle of the number I could not recognize.

Q.125 And that was back or front?
A.125 On the back.

The Prosecutor declines to re-examine the witness:

The witness is questioned by the Judge Advocate:

Q.126 How many were in the ambulance at the time of the accident - in the front?
A.126 I cannot say. I could not see so quickly.

Q.127 When the ambulance came back later, did you notice any damage on the ambulance?
A.127 I have not noticed and have not looked for it. The ambulance was very large and heavier than the car.

Q.128 Did you see any broken glass on the ambulance?
A.128 No sir.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdraws.

At 1225 hours, the Court is adjourned.

At 1400 hours, the Court is re-opened, pursuant to adjournment, present the same members and Judge Advocate as upon adjournment.

The accused is brought before the Court.

EIGHTH WITNESS FOR THE PROSECUTION:

Herr Wilhelm Rohse, Kaiserstrasse 2, Oldenburg, Germany, having been duly sworn, is examined by the Prosecutor, through the interpreter:

Q.129 Will you tell the Court your name and your address?
A.129 Wilhelm Rohse, Kaiserstrasse 2.

Q.130 Oldenburg?
A.130 Oldenburg.

Q.131 And will you also tell us the name of your wife?
A.131 Martha Rohse.

Q.132 Will you explain to the Court of your visit to the Peter Friedrich Ludwig hospital - how many times you saw your wife?
A.132 At half-past seven I was informed of the accident that had happened to my wife. I then went immediately to the hospital and found my wife in room Sixty-Six. I was told that my wife had concussion and a double fracture of the left shoulder bone and also injuries to the elbow joint. I could not speak to my wife very well because she could not breathe properly and she also could not speak properly. I then asked to put my wife into a room on her own because in her room she was in were quite a number of people and there was quite a lot of disturbance. On Sunday morning I visited my wife again and found her in room number Fifty-Seven. He condition was not worse than the day before but she had pains. On Sunday

afternoon I went again with her for one and a half hours to two hours. On Monday morning I visited her again and I did not like her looks. Her fingers had the colour bluish-grey. Then I was told by the surgeon, Doktor Keiss that the condition of my wife was more grave than it was thought before. According to the doctor my wife got internal injuries at the collision. On Monday afternoon I went again to my wife. I then saw that the hard breathing eased off a bit. Her speech was better than in the morning. I asked her if she felt better and she said 'yes'. She always wanted something to drink. She was very thirsty. I said good-bye to her at Seven and I told her that I would be there the next morning between Ten and Ten-Thirty. I could not go at this time but only came at Eleven o'clock next morning. I was too late. My wife died ten minutes before. I don't know anything else.

Q.133 Mister Rohse, before the accident was your wife in good health?
A.133 No, my wife had to many white blood parts - anaemia and she was for two and a half years under treatment. She got some kind of injections in the arms and legs. According to the statement of Doctor Schulte, the patient was better at the last.

Q.134 And the several times you saw your wife in the hospital, was she conscious or semi-conscious when you spoke to her?
A.134 She was always fully conscious. Only once I noticed that she was not very clearly spoken. For a few minutes before her death she was fully conscious. My son was with her.

Q.135 Did you see your wife's body after she was dead?
A.135 Yes.

Q.136 You can positively sta te that it was your wife that was dead?
A.136 Yes.

The witness is cross-examined by the Defending Officer:

Q.137 You say that you were informed of the accident at half-past six?
A.137 Half past seven.

Q.138 The accident is alleged to have taken place at Three-Thirty. Can you account for the delay in informing you?
A.138 I cannot understand. I was ill myself. My wife wanted to get some - a few things from the bakery and such like which I myself usually did. At this Frau Priebe offered to my wife to take along my wife in order to get her home quicker back to me.

Q.139 You said that your wife was conscious while you visited her. Did she say anything about the accident, or the circumstances?
A.139 No, she could not because she could not speak very easily. It was very difficult with her to speak and she had very great pains and it was very hard for her to get her breath. I have only exchanged a few words with her and I never touched the subject of the accident. When my son was there, which came at Ten-Thirty on the Twenty-First to see my wife he was told by the sister that the condition of his mother was not very good. Just before she died she said to my son that he should sit down and suddenly she said a few seconds later everything was getting darker and she just laid back and a few minutes later she was dead.

Q.140 How long had your wife been driving a car?

JA: She wasn't driving.

Def Offr: No, that's right, she wasn't driving.

The witness is questioned by the Judge Advocate:

Q.141 What time did you last see your wife before she went to the hospital at half-past three?
A.141 The accident must have happened just before that. She left

just at half-past three and the accident must have happenkd two or three minutes later after this. She waved to me from the car and said to me "I shall be back in half an hour"

Q.142 Who was driving the car?
A.142 Frieda Priebe.

Q.143 The woman you saw this morning?
A.143 Yes sir.

Q.144 How old was your wife?
A.144 Fifty-Eight.

In the opinion of the Court and Judge Advocate , it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdrawn.

NINTH WITNESS FOR THE PROSECUTION:

Adolf Hollwege, Feuergewehr, Oldenburg, having been duly sworn, is examined by the Prosecutor, through the Interpreter:

Q.145 Will you tell the Court your [illegible]
A.145 Adolf Hollwege, Feuergewehr.

Q.146 Now, will you tell the Court just what happened on the Eighteenth of May?
A.146 On the Eighteenth of May an accident was reported to us. I was ordered to take the ambulance and fetch the injured person. I went with the ambulance to the scene of the accident and we took the woman, the injured woman and put her on a stretcher. She complained about very great pains in the left shoulder. Then we took her by ambulance to the Peter Friedrich Ludwig hospital. We delivered her in the operation theatre where a sister helped to undress her for the doctor. That is all.

The witness is cross-examined by the Defending Officer:

Q.147 Do you know the identify of this patient?
A.147 Frau Rohse.

Q.148 No, I wont accept that. You didn't know the patient before?
A.148 No.

Q.149 And where did you pick her up?
A.149 She still stayed in the car.

Q.150 Where?
A.150 In Langestrasse - Heiligengeistrasse.

Q.151 At what time?
A.151 It was between Three-Thirty and Three-Forty-Five.

The Prosecutor declines to re-examine the witness.

The witness is questioned by the Judge Advocate:

Q.152 Do you recognize this photograph. Is it near that place that you picked her up? (The witness is shown Exhibit 'A')
A.152 Near this door here on the street, stood the car.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdrawn.

FIRST WITNESS FOR THE DEFENCE:

F.78180 Pte Rolfe, CE, 2 Cdn Demob Depot, having been duly sworn, is examined by the Defending Officer:

Q.153 Tell the Court what happened on the Eighteenth of May, starting with the morning.

A.153 In the morning about Nine o'clock I got a bottle of gin from a Canadian soldier. I didn't know the soldier. I was detailed to work in the QM Stores. We were loading a 50 with army equipment and while we were loading the vehicle, Finnan and I drank this bottle of gin. When the vehicle was loaded we were told to go with the vehicle to the salvage dump. While we were gone we got two bottles of schnapps and we drank it but we had about a half a bottle of schnapps left when we came back. I remember being in the kitchen and drinking the rest of the schnapps. That would be between Twelve and Twelve-Thirty - around dinner. I can't remember from there on very much.

Q.154 Can you remember it vaguely? Can you remember anything that happened after that, even if vaguely? You say that you don't remember very much but do you remember anything at all?

A.154 Well, I was driving a vehicle. I remember being in a vehicle.

Q.155 What is the next thing you remember?

A.155 I remember coming to the first pointsman, I don't know the name of that street, the cross-road where the first pointsman is, leaving camp - the Oldenburg by-pass. I remember turning right, there.

Q.156 And then?

A.156 I can't remember seeing - I do remember seeing Sergeant Sutton there at the point.

Q.157 What is the next thing you remember?

A.157 That's all sir.

Q.158 Then you can't recall driving through down or being involved in an accident.

A.158 No, I can't recall that, sir.

Q.159 Do you recall driving back to camp and being placed in the guard room?

A.159 I can remember Captain Turner coming in the guard room. I was in the guard room then.

The witness is cross-examined by the Prosecutor:

Q.160 You said that when you got to the Oldenburg by-pass - let's get this straight - Alexanderstrasse goes out of the airfield.

A.160 Yes, the first pointsman there.

Q.161 You say you turned right there and the next thing you remember is me coming into the guard room. You remember Sergeant Sutton picking you up and --

A.161 I remember you being in the guard room, sir.

Q.162 What did I tell you to do when I got to the guard room?

A.162 I can't remember.

Q.163 You can't remember what I told you to do when I came into the guard room?

A.163 No sir.

The Defending Officer declines to re-examine the witness:

The witness is questioned by the Judge Advocate:

Q.164 Now let's have this straight. How many bottles of gin did you have in the morning?

A.164 One bottle of gin.

Q.165 At what time?
A.165 I got the bottle about Nine o'clock, sir.

Q.166 You and Finnan?
A.166 Me and Finnan.

Q.167 And you were working?
A.167 Yes, we were loading a vehicle. We drank the bottle while we were loading the vehicle.

Q.168 How big was the bottle of gin?
A.168 Well, it was an ordinary bottle.

Q.169 What kind of gin?
A.169 Holland gin.

Q.170 Now, what did you have to drink after that?
A.170 Two bottles of schnapps.

Q.171 Around what time?
A.171 About what time did we get the schnapps, do you mean?

Q.172 Yes.
A.172 Pretty near Eleven o'clock.

Q.173 Where did you get it?
A.173 At a house down by the salvage dump. Right near the Sixteen General Hospital.

Q.174 Who got it?
A.174 The driver that drove us up to the house and Finnan and I went in.

Q.175 Who asked for it?
A.175 Well Finnan and I were in the house.

Q.176 Did you go inside the house?
A.176 Yes.

Q.177 Both of you?
A.177 Yes.

Q.178 And who asked for it - who paid for it?
A.178 Well Finnan's cigarettes and mine were all together like - we both had cigarettes on us.

Q.179 That's not my question. Who paid for it?
A.179 Some of the cigarettes were mine and some were Finnan's.

Q.180 How many?
A.180 Three hundred for the two bottles.

Q.181 How many did you give?
A.181 Well, I'm not sure how many I had. We made up the Three hundred between us.

Q.182 Who was driving that vehicle?
A.182 Munroe - Private Munroe.

Q.183 And what did you do afterward - from then on? That was about Eleven o'clock.
A.183 About Eleven o'clock we came back out in the vehicle and drank the schnapps from there to the camp. That would be about Twelve o'clock when we got into camp.

Q.184 What kind of a vehicle was it?
A.184 Vehicle? - 60 hundredweight.

Q.185 Where were you driving?
A.185 Where was I driving?

Q.186 Where were you riding in the vehicle?
A.186 In the front.

Q.187 Where was Finnan?
A.187 Finnan was in the front too.

Q.188 Where was the driver?
A.188 He was driving.

Q.189 Did he have a drink? - Munroe?
A.189 I don't know sir.

Q.190 You would remember if you gave him a drink.
A.190 He might have given him a small one.

Q.191 He either took one or not. Did he have anything to drink?
A.191 No answer.

Q.192 You don't have to be afraid to answer that question.
A.192 Yes sir, he did have one drink.

Q.193 One drink?
A.193 Yes sir.

Q.194 Do you know how much he had?
A.194 He didn't have very much.

Q.195 And then you came back to camp. What did you do when you came in?
A.195 I don't know where the vehicle went but I went in the kitchen.

Q.196 Had you finished your bottles?
A.196 We finished the bottles in the kitchen. There was a small drink in the bottom when I came back to camp.

Q.197 What time were you in the kitchen?
A.197 It must have been around dinner time - between Twelve and Twelve-Thirty.

Q.198 Did you have anything to eat?
A.198 I don't know whether I ate or not.

Q.199 Did Finnan have anything to eat?
A.199 I don't know.

Q.200 Were you with him all the time?
A.200 I don't know whether he was in the kitchen or not.

Q.201 Where was Munroe then?
A.201 I don't know where he was.

Q.202 Did he have anything to drink after that?
A.202 No answer.

Q.203 Did you have anything to drink after that?
A.203 Me?

Q.204 Yes.
A.204 I don't know whether I had a drink after I finished that bottle of schnapps.

Q.205 About what time was that?
A.205 It would be around one o'clock.

Q.206 And you said in your examination from then you you only remember one incident in the afternoon. That was when you came to a corner you turned right. How can you remember that? What makes you think you did turn right?
A.206 Well, I know I had no ticket for the vehicle.

Q.207 What?
A.207 I know I had no Work Ticket for the vehicle.

Q.208 You remember that. Well, how can you think you turned right What makes you think you did?
A.208 I just remember turning right.

Q.209 Would you swear that you turned right?
A.209 Yes.

Q.210 You would swear that?
A.210 Yes, I'm positive I turned right, sir.

Q.211 Then you saw Sergeant Sutton. The next thing you remember was seeing Sergeant Sutton?
A.211 Yes, I can remember seeing Sergeant Sutton.

Q.212 Do you remember having an accident? You were here when Sergeant Sutton said that he saw glass, broken glass on the front of your ambulance? You were here this morning?
A.212 Yes, I was here.

Q.213 You heard him say that?
A.213 Yes.

Q.214 Where did you see Sergeant Sutton?
A.214 Well, it was on a corner.

Q.215 On which corner?
A.215 I can't remember which corner it was sir.

Q.216 Do you remember seeing Pitman with you?
A.216 I remember seeing Pitman when I turned the corner to the right.

Q.217 I didn't ask that question. Do you remember seeing Pitman?
A.217 Yes sir.

Q.218 Was he with you in the vehicle?
A.218 Well, I don't know sir.

Q.219 Do you remember driving back from that corner, to the camp?
A.219 No sir.

Q.220 You don't remember. Do you think Sergeant Sutton would let you drive the vehicle if you didn't know what you were doing? Do you think so?
A.220 I don't know what he thought.

Q.221 Well, he let you drive the vehicle?
A.221 He said he did, in his statement.

Q.222 He said that in his statement. He said he told you to follow him.
A.222 No answer.

Q.223 You heard him. You were here this morning. Do you think Sergeant Sutton would let you drive the vehicle through the town of Oldenburg if you didn't know what you were doing?
A.223 I don't know what he thought.

Q.224 You didn't have an accident from that time on?
A.224 I don't remember having any accident.

Q.225 Did you have any accident when you left with Sergeant Sutton when you followed Sergeant Sutton to the camp?
A.225 I can't remember, sir.

Q.226 Do you remember which road you followed then?
A.226 No answer.

Q.227 How long have you been driving?
A.227 In the army you mean?

Q.228 Yes.
A.228 A year and a half sir.

Q.229 How long have you been in Germany - just approximately?
A.229 No answer.

Q.230 You should know how long you have been in Germany. Where were you stationed when you first came to Germany?
A.230 Tungeln, about six to nine kilometres down the road.

Q.231 Had you ever driven that ambulance before that day?
A.231 That ambulance?

Q.232 Yes, that one.
A.232 No, I don't think I have sir.

The witness is questioned by the Court:

Q.233 Was it normal procedure when undergoing FP for the NCOs to allow you to drink all day long?
A.233 No answer.

Q.234 You were serving a sentence of FP?
A.234 That's right, sir.

Q.235 Was it normal procedure to drink as and if you wished to drink?
A.235 No sir.

Q.236 Did the NCOs ever know you were drinking or did they just pay no attention to it?
A.236 I don't know whether they knew I was drinking or not.

Q.237 Was it a normal thing for persons undergoing FP to be allowed to drink during their duty hours?
A.237 No sir.

Q.238 And you drank a bottle of gin and a bottle of schnapps and yet although it was not allowed, your NCOs made no complaint of it?
A.238 No, I don't think they made no complaint about it sir.

Q.239 Was all this liquor drunk by you and your chum Pinman?
A.239 All except the one small drink for the driver.

Q.240 But the NCOs had no drink?
A.240 No.

Q.241 Do you remember where it was the sergeant stopped you?
A.241 I can't remember what corner it was sir.

Q.242 Then why did you earlier in your statement say that he stopped you on the corner of the road leading to Sixteen General?
A.242 I said earlier in my statement that he stopped me.

At the request of the Court question and answer 173 are read back by the shorthand writer.

The Prosecutor asks the following questions with the permission of the Court:

Q.243 You remember me coming into the guard room?
A.243 I remember you being in the guard room.

Q.244 Yes, what did I make you do?
A.244 I can't remember, only just seeing you there, sir.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness stands down.

SECOND WITNESS FOR THE DEFENCE:

B.88708, Pte Pinman, J, 2 Cdn Demob Depot, having been duly sworn, is examined by the Defending Officer:

Q.245 Private Pinman, you were with Private Rolfe during most of the day of the Eighteenth of May?
A.245 Yes sir.

Q.246 Tell us what happened on that day.
A.246 Well sir, we were working in the QM Stores.

Q.247 At what time?
A.247 About Eight-Thirty in the morning sir and we loaded a truck with uniforms and took it down to the Ordnance Depot and while we were working at that sir, we had a bottle of gin and between me and Private Wolfe we drank it. So we went down to the Depot and on our way back we got two bottles of schnapps and of course we drank them and we came back to our billets. I was drunk and well, after we finished the schnapps I don't remember anything.

Q.248 Where did you get the bottle of gin?
A.248 We got it from a soldier, sir.

Q.249 Who?
A.249 I don't know his name.

Q.250 Did the soldier belong to the camp?
A.250 No, he didn't belong to the camp, sir.

Q.251 How do you know?
A.251 Well, he didn't belong to our bunch sir.

Q.252 Where did you get your schnapps?
A.252 We called in a house sir.

Q.253 Where?
A.253 It was right up - not far from Sixteen General - where it used to be.

Q.254 And the whole three bottles were consumed between you and Private Wolfe?
A.254 Yes sir.

Q.255 What is the last thing you remember?
A.255 Well, the last I remember sir, we were coming home in the truck. I remember we lamed back at the airport and that's all I can remember, sir.

Q.256 Who was driving the vehicle?
A.256 Munroe sir.

Q.257 And did he stop on his own accord at this house, or did you ask him?
A.257 Yes sir.

Q.258 Which?
A.258 We asked him if he knew where to get some schnapps so he showed us this house.

Q.259 Do you remember taking this vehicle out - this ambulance?
A.259 No sir, I don't.

Q.260 Did you get dinner?
A.260 Sir, I don't know if I did or not. I don't remember eating dinner.

Q.261 So after you came back from the Ordnance Depot the rest of the day was blank?
A.261 That's right, sir.

Q.262 Well, what is the next thing you remember. You must have come to some time.
A.262 Well I came to, sir, in the guard room. I was in the guard room.

Q.263 And that's the very first thing you remember?
A.263 Yes sir.

Q.264 You were then in no position to judge as to Private Rolfe's condition?
A.264 No sir.

Q.265 What proportion of the liquor did you have? Did you split it in half or what?
A.265 Well when I took a drink Rolfe took a drink sir, as far as I can remember.

Q.266 Did you drive a vehicle at all during the afternoon?
A.266 No sir.

Q.267 How do you know?
A.267 Well I can't drive a vehicle, sir.

Q.268 Do you remember being in a vehicle?
A.268 No sir.

The witness is cross-examined by the Prosecutor:

Q.269 Private Pinnan you say that you remember being in the guard room. What time was that?
A.269 Well sir, when I came to, I had been sleeping in the guard room.

Q.270 Did you have your supper that night?
A.270 Yes sir, I did have supper.

Q.271 Did anybody come and visit you in the guard room that night?
A.271 You did, sir.

Q.272 What did I make you do?
A.272 You made me walk up and down the floor sir.

Q.273 Did I do the same thing to Private Rolfe?
A.273 Yes sir.

Q.274 That was shortly after supper was it?
A.274 I don't know if it was just shortly after supper or not.

The Defending Officer declines to re-examine the witness:

The witness is questioned by the Judge Advocate:

Q.275 What time did you get the schnappe?
A.275 Between Ten-Thirty and Eleven sir.

Q.276 Who suggested buying schnappe?
A.276 Well I did, as far as that goes, sir.

Q.277 How did you pay for it?
A.277 Three hundred cigarettes for the two bottles.

Q.278 Who had the cigarettes?
A.278 Me and Rolfe had them between us.

Q.279 Do you remember coming back to camp that noon?
A.279 Well, I remember getting back to camp sir, and I don't remember anything after that.

Q.280 Do you remember eating?
A.280 No sir.

Q.281 What were your duties in the afternoon?
A.281 I don't know sir.

Q.282 What were you supposed to do?
A.282 Supposed to work in the QM stores.

Q.283 You have been tried by Court Martial?
A.283 Yes sir.

Q.284 How did you plead to the charge of being improperly concerned with the improper possession of a vehicle? Did you plead

guilty or not guilty?
A.284 I pleaded guilty sir, on both charges.

Q.285 Did you remember at that time that you had been out with a vehicle?
A.285 No sir.

Q.286 Why did you plead guilty?
A.286 Well sir, I was drunk and I didn't remember nothing but I was drunk and I pleaded guilty.

Q.287 So from the time you came back to camp that noon until you were in the guard room, the afternoon was a blank?
A.287 That's right, sir.

Q.288 You could have been anywhere?
A.288 That's right, sir.

Q.289 How old are you?
A.289 Twenty-Eight, sir.

Q.290 How long have you been in Germany?
A.290 About a year sir.

Q.291 Have you ever drunk schnapps before?
A.291 Yes sir.

Q.292 How long have you known Rolfe?
A.292 About four months sir.

Q.295 Have you been drinking schnapps with him before?
A.295 Yes sir.

The witness is questioned by the Court:

Q.296 Do you know if it is normal procedure for personnel undergoing field punishment to drink when they take the nation during their tour of duty? Is it allowed?
A.296 No sir.

Q.297 Well betweenthe two of you you disposed of a bottle of gin and two bottles of schnapps before noon. Did your NCO have anything to say about that?
A.297 He never said anything to me, sir.

Q.298 In other words he was quite happy about the fact the you were drunk?
A.298 He never said anything to me, sir..

Q.299 Do you usually carry between a hundred and two hundred cigarettes with you?
A.299 No sir.

Q.300 Why did you on this particular day?
A.300 Well we knew we were going out there and we might get a bottle.

Q.301 In other words you planned on picking up schnapps before you left the airport?
A.301 We did, sir.

Q.302 You are in the Army Service Corps?
A.302 Medical Corps sir.

Q.303 What have your duties mainly consisted of in the last five years in the army?
A.303 Well sir, I was posted general duty.

Q.304 Will you clarify that statement?
A.304 Well sir, I was doing like all jobs.

Q.305 In the Medical Corps?
A.305 Yes sir.

Q.306 Did you ever have occasion to drive an ambulance in the Medical Corps?

A.306 No sir.

Q.307 Have you ridden in them very much?

A.307 I've ridden in them some, sir.

Q.308 Do you recall in any manner whatsoever being - being in the Medical Corps you would know naturally what an ambulance is - it would be familiar to you?

A.308 That's right, sir.

Q.309 Do you recall on that particular afternoon anything about an ambulance?

A.309 No sir.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(3).

The witness withdraws.

THIRD WITNESS FOR THE DEFENCE:

Capt Y.N. Pieuse, RCAMC, having been duly sworn, is examined by the Defending Officer:

Q.310 Captain Pieuse will you tell us whether it is possible for a man having imbibed say half a bottle of gin and a bottle of schnapps during a morning to be in possession of his physical ability but not of his mental faculties?

A.310 Did he take only one bottle?

Q.311 And a half a bottle of gin.

A.311 He took that in the morning?

Q.312 Yes.

A.312 It is possible.

Q.313 What would be the effect on a man to drink half a bottle of gin and a bottle of schnapps between the hours of Nine and One o'clock. What would be the effect on his physical ability and mental faculties at say Three-Thirty in the afternoon?

A.313 It depends on the man.

Q.314 To be more specific could a man absorb that much and be able to walk straight and still not know what he is doing?

A.314 Yes sir.

Q.315 He could even driver a vehicle?

A.315 Yes sir.

The witness is cross-examined by the Prosecutor:

Q.316 But then on the other hand it could be absolutely reversed. He might be physically incapable and mentally capable?

A.316 Yes sir.

The Defending Officer declines to re-examine the witness:

The witness is questioned by the Court:

Q.317 Would the use of alcohol over a period of time harden a man to such an extent that he could drink more and retain his capabilities?

A.317 If he is used to drink he can usually take more than a man who takes drink only once in a while.

The witness is questioned by the Judge Advocate:

Q.318 Supposing a man in that condition, who had lost his mental ability, would it show on his person if he were met by an absolutely sober man. Would this man be able to form an

opinion that the man was lacking in his mental ability?

A.318 If he speaks to him.

The witness is questioned by the Court:

Q.319 Could a man under these circumstances be lacking his mental ability and in possession of his physical ability over a period lasting as long as three hours?

A.319 In my opinion it should be for just a short period.

Q.320 You state that three hours is too short a period?

A.320 That is a long period - three hours.

The witness is questioned by the Judge Advocate:

Q.321 What would be the next reaction after that? What would happen to that man?

A.321 He would feel sleepy after a depressing period.

The witness is questioned by the Court:

Q.322 Do you think that if a man is kept at work during that period he would regain his mental faculties?

A.322 If a man can do his work.

Q.323 I believe the question that was asked to start with was whether a man could retain his physical ability and carry on and lose his mental ability.

A.323 Yes, for a short time.

Q.324 If that man - I ask now if the man, having reached that condition was kept at work during the better part of those three hours -

A.324 If he is fit to carry on for three hours he would not be in that condition.

Q.325 In other words if he had reached that condition he would not be able to work for three hours?

A.325 No.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(3).

The witness withdraws.

JA: Are you calling any rebuttal evidence?

Pros: Yes sir.

FURTHER WITNESS CALLED BY THE PROSECUTION IN REBUTTAL:

D.121799 L/Cpl Jack, R, 2 Cdn MAC, RCASC, having been duly sworn is examined by the Prosecutor:

Q.326 Will you tell the Court your number, name, rank and unit?

A.326 D.121799, Lance-Corporal, Jack, R, 2 MAC RCASC.

Q.327 Corporal Jack, will you tell the Court just what happened on the Eighteenth of May?

A.327 Sir, on the Eighteenth of May I was in charge of FP personnel - Private Rolfe and Private Pinnan and I was told by the Sergeant-Major to put them to work in the QM Stores and about the middle of the afternoon Rolfe and Pinnan asked me if they could go to the toilet and I brought them to the toilet and went into the orderly room. I was platoon Orderly Corporal that day too and I went to see if there were any details that had come in. I was only there for about two or three minutes and I went back to the toilet and Rolfe and Pinnan weren't there. I went down to the QM and they were missing and when I was coming back from the QM Sergeant Nyaroft told me they had just gone out with an ambulance.

Q.328 Now, Corporal Jack, what time were you put in charge of this FP parade.

A.328 At Eight-Thirty in the morning.

Q.329 What did these two men do in the QM Stores in the morning?
A.329 They were detailed to go down to the salvage dump with some uniforms.

Q.330 You didn't go down with them?
A.330 No sir, I was orderly corporal and I couldn't leave the building sir.

Q.331 Did you notice any drinking going on?
A.331 No sir.

Q.332 In the afternoon when they asked you if they could go to the toilet had they been drinking, or were they drunk?
A.332 Not that I could see sir.

Q.333 They didn't appear to be drunk?
A.333 No sir.

Q.334 Do you think they had had a drink?
A.334 No, I wasn't there all the afternoon sir. I saw them every now and then. I went down to see what they [illegible]

Q.335 Well will you explain just the layout of the QM Stores and the Orderly Room?
A.335 To go to the QM sir you had to go down the stairs, down into the basement and when you go upstairs like, the orderly room was across from the stairs, the first door on your left.

Q.336 And to the best of your knowledge neither one of them was under the influence of liquor when they asked you to go to the toilet in the afternoon ?
A.336 No sir.

The witness is cross-examined by the Defending Officer:

Q.337 You say that the accused and Private Pinman were working in the afternoon?
A.337 Yes sir.

Q.338 What were they doing?
A.338 More or less moving all this stuff - clothing and such.

Q.339 You are on oath now. You actually saw them at work?
A.339 Well I more or less checked up with the QM personnel.

Q.340 That's not what I asked you. You saw them at work?
A.340 Yes sir.

Q.341 And they were absolutely sober?
A.341 Well, I couldn't state whether they were drunk or sober sir. I didn't see them drinking.

Q.342 And you couldn't state that they were sober then?
A.342 No sir. I saw no signs of drinking though.

The Prosecutor declines to re-examine the witness.

The witness is questioned by the Judge Advocate:

Q.343 What time did you first see them after then came back from that trip to the salvage dump, or did you see them?
A.343 Yes sir I saw them about Eleven o'clock sir, approximately, I couldn't say for sure.

Q.344 Did you see the [illegible] vehicle come back?
A.344 No sir.

Q.345 Did you see Munroe and the accused and Private Pinman before lunch - before Twelve o'clock?
A.345 Yes sir.

Q.346 Where?
A.346 Well, I saw them down in the QM Stores.

Q.347 What doing?
A.347 They were working there.

Q.348 What time did they have lunch?
A.348 They had lunch about five minutes before twelve.

Q.349 Did you see them?
A.349 Yes sir.

Q.350 At lunch time?
A.350 Yes sir.

Q.351 Did they eat?
A.351 Yes, I'm not just sure now sir, it's pretty far back.

Q.352 What are you not sure about. Did they eat? Were you in the dining room?
A.352 I'm not sure whether they ate or not sir.

Q.353 What time did you see them then, definitely?
A.353 Approximately Eleven o'clock.

Q.354 After that what is the next time you saw them?
A.354 I couldn't say sir whether I brought them over for dinner or not.

Q.355 After dinner what time did you see them?
A.355 One-Thirty.

Q.356 Definitely?
A.356 Yes sir.

Q.357 Where?
A.357 I was at that time down in room 27. I think it is the 2 MAC lines.

Q.358 In their billets?
A.358 Yes sir.

Q.359 How did you happen to go over there?
A.359 I had to go at One-Thirty to take them back to work sir.

Q.360 Tell the Court how you found them there.
A.360 Well they were sitting down playing cards when I came in.

Q.361 You are definite on that?
A.361 Pretty sure sir.. That's what they usually did.

Q.362 How many were in that room?
A.362 Well, there was I believe Kerchenko was there sir. At least two persons.

Q.363 Do you know Finnen?
A.363 Yes.

Q.364 Was he there?
A.364 Yes sir.

Q.365 What were your orders in regards to them?
A.365 I just took them and put them back in the QM Stores.

Q.366 What did you say?
A.366 I took them down to the QM Stores sir.

Q.367 How far was that?
A.367 Just down in the cellar sir.

Q.368 They walked down?
A.368 Yes sir.

Q.369 Normally?
A.369 Yes sir. They appeared to me anyway.

Q.370 Did you see them working in the QM Stores that afternoon?
A.370 O yes, sir. I went down there now and then and they were working then, sir.

Q.371 And you didn't notice anything unusual?
A.371 No sir.

Q.372 Where were you when they asked you to go to the toilet?
A.372 I went down and checked up and they asked me if they could go to the toilet.

Q.373 And what time was that?
A.373 Just shortly after Three sir, about the middle of the afternoon.

Q.374 How many others were working in the QM Stores that afternoon?
A.374 Just Pinman and Rolfe and two of the QM personnel sir.

Q.375 Did you see Rolfe later in the afternoon?
A.375 No sir. After Sergeant Kyeroft told me that they took the vehicle out of the camp he just told me to leave it to Sergeant Sutton.

Q.376 Did you see them later - about Six or Seven o'clock?
A.376 No sir.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdrawn.

SECOND WITNESS CALLED BY THE PROSECUTION IN REBUTTAL:

M.1278 L/Cpl Hildebrand, H, 2 Cdn WSC RCASC, having been duly sworn, is examined by the Prosecutor:

Q.377 Will you give your number, rank and name to the Court:
A.377 M.1278 Lance-Corporal Hildebrand, H, 2 WSC RCASC.

Q.378 Corporal will you tell the Court just what you know about the Eighteenth of May?
A.378 On the Eighteenth of May when Private Rolfe was brought into the guard room at approximately Sixteen-Ten hours, I just couldn't be sure of that but he asked me - of course I smelled that he had been drinking liquor and I locked him up in the guard room. That's all I know about it.

Q.379 What time did the prisoners go to their dinner that night?
A.379 Their dinner I think it was Four-Thirty or a Quarter to Five.

Q.380 And did anybody visit them in the guard room?
A.380 Not that I know of sir. I left the guard room after that. I was in the building down below.

Q.381 Would you say that he was drunk?
A.381 Well, they had a drink but I don't know - they were walking back to their cell when I told them to. That's the only thing - I never spoke to them myself.

The witness is cross-examined by the Defending Officer:

Q.382 You have no evidence that they were drunk but on the other hand you have no evidence that they were sober?
A.382 I didn't talk to them. I smelled their breath of liquor and I locked them in the guard room sir.

Q.383 They could have been drunk and you not know it?
A.383 Well they were walking when I told them to go in the cell.

The Prosecutor declines to re-examine the witness.

The witness is questioned by the Judge Advocate:

Q.384 Who brought them to you?
A.384 Sergeant Sutton, sir.

Q.385 Did you see them arrive at the airport?
A.385 They walked into the guard room. That's the only place I paid any attention to him at all. Sergeant Sutton said to look them up and that's what I did.

Q.386 Did they have anything to do that evening?
A.386 Yes sir, they went for supper.

Q.387 Both of them?
A.387 Yes sir.

Q.388 Around what time?
A.388 Around Four-Thirty to Five. I'm not sure exactly.

Q.389 Was Captain Turner in to see them later?
A.389 I wont say for certain because I went down below and Corporal McLennon was the one that was taking them over to the cell.

The witness is questioned by the Court:

Q.390 Did you say someone else took them over to supper?
A.390 McLennan.

Q.391 He took them over to supper?
A.391 He was in there with them when they were having supper.

Q.392 Corporal McLennon?
A.392 Yes sir.

The witness is questioned by the Judge Advocate:

Q.393 Did they appear normal to you when they came in the guard room?
A.393 I couldn't see anything wrong with them. I didn't see them walking very far, I told them to get in the cell and I locked them up.

Q.394 Did they have anything to say?
A.394 I couldn't say.

Q.395 Did they speak to each other?
A.395 No, I don't remember them speaking to anyone at all.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdraws.

THIRD WITNESS CALLED BY THE PROSECUTION IN REBUTTAL:

D.24817, Cpl MacLennan, M, 2 Can Demob Depot, having been duly sworn, is examined by the Prosecutor:

Q.396 Will you give your name and number and unit please?
A.396 D.24817, Corporal MacLennan, M, 2 Demob Depot.

Q.397 Corporal, will you tell us what you know about the Eighteenth of May.
A.397 The Eighteenth of May sir, it was my day off. I was RP at the airforce guard room and I got up at approximately a quarter to four in the afternoon and I went out and I was asked by the Corporal on duty if I would take the prisoners over to eat supper at Four-Thirty. I told him I would. I was in charge of the party and I didn't notice anything wrong until after when Captain Turner was in and he was talking to Rolfe and Pitman and

making them walk a straight line up and down along the corridor. And that's all I know.

Q.398 That was immediately after supper?
A.398 At approximately Five o'clock, sir.

Q.399 Did they walk the straight line?
A.399 I didn't see anything out of order at all sir. I sat across from Rolfe at the supper table and I didn't notice anything whatever wrong.

Q.400 You can't say that he had a drink or maybe two or maybe ten?
A.400 Well sir, I have no reason to believe that he was drunk.

The witness is cross-examined by the Defending Officer:

Q.401 Would you repeat your last statement? You have no reason to believe he was drunk?
A.401 That's right, sir.

Q.402 You have no evidence that he was in full possession of his faculties?
A.402 I couldn't say whether he had been drinking or whether he hadn't sir.

Q.403 So that your evidence is nil.
A.403 I don't know anything about the case at all sir.

The Prosecutor declines to re-examine the witness.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdrew.

At 1610 hours the Court is adjourned.

At 1640 hours the Court is re-opened, pursuant to adjournment, present the same members and Judge Advocate as upon adjournment.

The accused is brought before the Court.

The Defending Officer makes the following closing address:

Mister President, we have heard a lot of evidence that Private Rolfe was out in the afternoon in a vehicle and also evidence that an accident took place in Oldenburg, but no evidence has been adduced to connect Private Rolfe with the accident. The vehicle involved in the accident may or may not have been the one that he took out but there is no evidence at all that he was driving that vehicle or any other vehicle at the time of the accident.

As to his movements during the afternoon, nothing tangible has been produced because no evidence could be found to testify as to his movements. He had been drinking and we have had an expert witness to say that it was quite possible for a man to be in possession of his physical ability and to lose for a period his mental faculties. Now the period that is a blank is from the time he turned the corner about Fifteen-Ten hours until he pulled up behind Sergeant Sutton - a period of Thirty-Five minutes and according to Captain Piese's evidence that is entirely possible. That Private Rolfe be convicted of reckless driving I would not contest because he was drunk and was seen driving out of the camp at Fifteen Hundredd hours. There was ground for a charge there, of reckless driving because he was under the influence of liquor but I contend that there is no ground to convict him of the charge that is laid against him so on that basis gentlemen, I see no reason why Private Rolfe should be found guilty as charged.

As to his state of mind, Corporal Buck said that he was all right but then on cross-examination he says that he doesn't remember and when he was asked what he was doing he said he was playing cards. Well, could he swear that? No, he couldn't but that's what the people usually

did at noon and that was on what he based his statement that they were playing cards and that is no testimony.

I saw that Private Rolfe was not driving the vehicle which was involved in the accident.

The Prosecutor makes the following closing address:

The Defence has brought up several points - who was driving the vehicle? There were two men seen going out in the vehicle at Fifteen-Fifteen hours. Rolfe was driving it. The same two men were picked up in that vehicle within ten minutes of the accident, the glass still on the front of the vehicle. There is a faint possibility but it is almost impossible that these two would get some other individual to drive and then be involved in an accident and the switch over after the accident.

As regards the number of the vehicle, 1345 is the - 2 MAC is the only unit with 1345 and Hermann Muhlenbrock saw 1345 and he also saw the first figure of the 60 number and the last two. Later, Sergeant Sutton, shortly after the accident, within ten minutes, picked up the vehicle and given the whole number, the first number being 5 and the last two, 60. I think there is enough evidence that he was driving the vehicle at the time of the accident and that he kept on going.

Now his claim is that he doesn't remember. It seems to me that he remembers what he wants to remember and doesn't remember what he doesn't want to remember.

The Defence has brought in an MO as a witness that a man can be physically capable and mentally incapable. But he also says that the reverse is true, that he can be mentally capable and physically incapable. The accused admitted to me that he didn't remember walking a line and that was about Five o'clock in the afternoon so that the period of blank was considerably longer than Forty-Five minutes.

As to the statement of Corporal Mack about playing cards. I think if the evidence was read that that was at noon. He periodically went downstairs to the QM Stores and these two men were working with the QM Staff.

Taking these points into consideration I maintain that Private Rolfe is guilty of the charge and is not guilty of being as drunk as he is trying to make out. KR(Can) says that drunkenness is no excuse for crime but if he is drunk it should be brought out. Nobody has proved that he was as drunk as he would like us to think.

The Judge Advocate makes the following summing-up:

Mister President and members of the Court, it is now my duty as Judge Advocate to advise you as to the law applicable to the case you have just heard. My presence here is merely in an advisory capacity and I have no saying whatsoever in the decision that you will be called upon to make as to whether the accused is guilty or not of the offence with which he is charged. If I have expressed any personal opinion as to the facts during the trial or if I do so during my summing-up, it is your duty to disregard it. You alone are the Judges of the facts and the decision rests entirely upon you.

Now, the accused before you is charged with manslaughter which is defined as follows: It is the unlawful and felonious killing of another without any malice either express or implied. There are two kinds of manslaughter, one voluntary and the other one involuntary. The case before the Court would fall in the latter category. Involuntary manslaughter is that which is committed by a person who brings about the death of another by acting in some unlawful manner but without any intention of killing or committing an act likely to kill. This act, in its nature, may be lawful but nevertheless may be done so recklessly as to result in the death of another person. The type of manslaughter arising out of motor car accidents is usually caused by negligence. Where death results in consequence of a negligent act it would seem that to

create criminal responsibility, the degree of negligence must be so gross as to amount to recklessness. That is what you will have to consider once you are satisfied that the death of Frau Rohse was definitely caused by the collision of the car in which she was a passenger and the ambulance and once you are satisfied, also that that ambulance was the ambulance driven by the accused. You must be satisfied that the negligence of the driver of the ambulance was so gross as to be reckless. Now, in explaining to the juries the test which they should apply to determine whether the negligence in a particular case amounts to gross negligence, many epithets are used such as 'culpable', 'criminal', 'gross', 'wicked', 'clear', 'complete'. But whatever epithet be used and whether an epithet be used or not, in order to establish criminal liability, the facts must be such that, in the opinion of the jury, the negligence of the prisoner went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment. Another test that we find is in Kenny's Outline of Criminal Law as follows: "That the prisoner by his conduct be deemed to have intended to cause bodily harm to someone or to have been indifferent or reckless as to the obvious risk of bodily harm to which his conduct was exposing someone." Now, this is the law on what a manslaughter consists of and the type of negligence to be proved in order to find a man guilty of that offense.

In this case as you know, the onus is upon the Prosecution to prove the offense alleged against the accused. The following evidence has been brought out by the Prosecution. The accused was seen driving out of the camp area in company with a fellow corad; he was driving an ambulance. There is no direct evidence connecting the accused with the scene of the accident. One witness however, who was an eye-witness to the accident stated that although he could not identify the accused as being the driver of the ambulance, he saw on the ambulance the tactical number 1345 which number as it was brought out was the tactical number of the ambulance which the accused was seen driving out of the camp and later also was seen driving, shortly after the accident. That witness also saw part of the WD number on the ambulance, that is the first and last two figures. These figures also corresponded to the figures - the WD number of the ambulance which the driver took out of the camp and which he was driving shortly after the accident. This is not direct evidence but you may interpret it as strong circumstantial evidence. Another item of circumstantial evidence was adduced by Sergeant Dutton who stated that a very short time after the accident he came in contact with the accused, then driving an ambulance, and he noticed on the front of the ambulance that the paint had been scratched and that there was some broken glass. The report of the accident as you have heard it, is that the ambulance came in contact with the right-hand side door of a car. From this you would naturally expect some broken glass of that window to be found on the front of the ambulance. This is also circumstantial evidence. Now, in order to find the accused guilty of manslaughter, apart from the type of negligence I have just mentioned, not only must you be satisfied that it is the ambulance driven by the accused that collided with the civilian car but you must also be satisfied that the death of Frau Rohse resulted from the collision. On the latter point you have evidence that she was taken to the hospital immediately after the accident where she received proper medical attention and that she died at that hospital a few days after the accident. Unless her death was a consequence of the accident there could not be any manslaughter.

The Defence alleged that the accused was drunk on that afternoon from approximately one o'clock till some time in the guard room around Five o'clock. This was corroborated by another witness for the Defence who apparently was in the same state; the latter even remembers less than the accused himself. Drunkenness as you know, is no excuse for crime. A man intends the natural consequences of his acts and if he goes and gets drunk he is responsible for whatever ensues. "Intoxication, whether produced by alcohol or by drugs, is ordinarily no excuse for the commission of a criminal act, even though it have produced for the time great aberration of mind. For unlike insanity, it has been produced voluntarily and to produce it was wrong, both morally and also legally. Accordingly the law will not allow one wrong act to be an excuse for another. Hence the gross negligence which has caused a fatal collision is punishable, not only in a sober driver but also in a drunken one." It would be an excuse if the man who is drunk is in such a drunken state

that he is incapable of forming the intent to commit any offence. This would apply where the intention is of the essence of the offence. In the case of manslaughter there is no intention required. Now if the Court is not satisfied that some of the essential elements have been proved, they may make a special finding whereby they would find the accused not guilty of manslaughter but guilty of reckless driving in accordance with the Road Traffic Act.

Now, you have heard the witnesses before you. There has been some contradictory statements as to the state of the accused at the material times when the offence was committed and it is up to you to make up your minds which witnesses you will believe. The witnesses were before you. They have been examined by the Prosecutor and Defending Officer and by myself and you have been able to study their deportment. It is now left to you to decide whether you believe one witness or another. You may believe one part of one witness's testimony and you may disbelieve another part. This is the province of the Court and you should use your discretion.

Now before closing I would like to point out to you that if there is any reasonable doubt in your mind as to the accused being guilty of the offence of manslaughter or of reckless driving, the benefit of that doubt should be given to the accused and he should be found not guilty. Now what is a reasonable doubt? To warrant an acquittal the doubt must not be light or capricious such as timidity or passion prompts and weakness or corruption readily adopts, it must be such a doubt as upon a calm view of the whole evidence a rational understanding will suggest to an honest heart - the conscientious hesitation of minds that are not influenced by party, pre-occupied by prejudice or subdued by fear.

Unless there is anything else you wish me to discuss, this will close my summing-up.

President: I don't think there is anything else.

J/A: Have you anything further?

Def Offr: No.

J/A: Captain Turner?

Pros: No, nothing.

The Court is closed to consider the finding.

FIRST CHARACTER WITNESS:

Capt R.W.C. Turner, 2 Cdn MAC RCASC, having been duly sworn, is examined by the Defending Officer:

Q.404 Captain Turner, how long have you known the accused?
A.404 Since last fall - September 45 was when I actually came in contact with him.

Q.405 What opinion have you formed of the accused bearing on his character as a soldier?
A.405 Since September, it is not very good. He has been continuously in trouble.

Q.406 His conduct sheet doesn't bear that out.
A.406 That first case of the traffic accident you will find on his MF NG.

Q.407 You have nothing specific against him?
A.407 No - specific - no.

The witness is questioned by the Judge Advocate:

Q.408 How has he carried out his duties when he didn't get into trouble?
A.408 To the best of my knowledge he carried them out. I didn't have very much to do with the man at all. I was in Headquarters platoon all the time.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness stands down.

SECOND CHARACTER WITNESS:

B.130095, Sgt Sutton, WE, 2 Cdn MAC, RCASC, having been reminded of his former oath, is examined by the Defending Officer:

Q.409 Sergeant Sutton, how long have you known the accused?
A.409 Since the Fifteenth of December sir.

Q.410 He was working under you?
A.410 He was, after Christmas.

Q.411 What opinion have you formed as to his character as a soldier?
A.411 I don't know much about him sir. Before I came back to the company I was away for five months. I came back and about a week after I took over the platoon - after Christmas. It was a month or so before I got to know him very well. I found him capable of carrying out his work but he was an excessive drinker. I never knew when he would get drunk. We had one or two disturbances with him. Then he settled down and worked for about two or three months and he was put on a vehicle. He didn't do such a very good job on the vehicle so he was taken off and he was given a job around the billets. But he kept going out on the occasional sprees.

Q.412 Then according to you his trouble was due to drink?
A.412 Yes sir, he seemed to have something worrying him and nobody could get it straightened out. The platoon officer and myself tried to get it straightened out. We talked with him and had many a discussion with him and we tried to work something out.

Q.413 In your opinion had it not been for his drinking, would he have been a good soldier?
A.413 I'm sure he would, yes.

The Prosecutor declines to cross-examine the witness.

The witness is questioned by the Court:

Q.414 Was the accused the type of man who showed any initiative himself or did he have to be told everything that had to be done?

A.414 I would say he had to be explained and told what to do.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with the provisions of Rule of Procedure 83(B).

The witness withdrawn.

R.2

Def Offr: The Statement of Character is not correct when it says that the accused is under sentence at the present time from the Eighth of May. That's more than Twenty-Eight days ago.

President: The Court agrees with that but in view of the absence of the Adjutant who has been repatriated, the Statement of Character cannot be changed but the Court will take that into consideration.

R.3

The Defending Officer makes the following plea in mitigation:

On the SF 36 you will notice that the first charge is dated the Twenty-Sixth of September. The accused was then entitled to a good conduct stripe. Private Rolfe enlisted on the Twenty-Second of September, 43 and had two clear years without ever committing an offence.

About Christmas last year he got a letter from his wife - he is the father of four girls whom he is trying to support. His wife announced to him the birth of another child. This child cannot be his because he had left home over a year before. You can understand what a shock that was to his and as so many people do, in order to forget his troubles he took to drink. I think it is human to seek oblivion on one's troubles in anything that will produce oblivion. Drink is the most common. Sergeant Sutton is satisfied that had it not been for drink he would have been a good soldier.

More recently Private Rolfe got another letter from his wife saying that one of his girls was in hospital and she did not state why or from what illness or anything. There is an additional worry. He was quite prepared to go back home and pick up the threads again and resume his married life and to be a good husband and be a good father and forget his wife's erring ways but always at the back of his mind was the idea of an unfaithful wife. Can you blame him? - if he sought comfort in alcoholic stimulants?

I would have liked to bring in witnesses as to his good character up to the date of this last Christmas but unfortunately the people who have known him during that time have gone home. So we have to take his record that he was a good soldier, entitled to a good conduct stripe and that his falling off the straight and narrow was due to domestic trouble.

Therefore I say gentlemen, that whatever you convict him of is not due to clear-headed intention but rather the consequences of drink and this drink is the desire to forget his own trouble.

Exhibits "A" "B" "C" "D" & "E"

Ex "F"

"JAK"

B.130095 A/Sgt Sutton WE, 2 Cdn MAC, RCASC CASF, sworn, states:

I am B.130095 A/Sgt Sutton WE of 2 Cdn MAC RCASC CASF. On 18 May 46 at 1515 hrs Pte Williams reported to me in block V,10 that Ptes Rolfe and Finnan had taken an ambulance from coy veh park and had driven off in the direction of the main gate for Alexander Airport. I then immediately got a motor cycle and proceeded to look for them. I went down town to Provost Information bureau in Oldenburg and reported the incident. I then circled around through town in search of the ambulance and when I came to the Bremen Strasse and Osnabruk intersection I stopped and enquired from two Cdn soldiers who were standing on the corner, if they had seen a Cdn ambulance. They said they had not seen on in the past ten minutes. I sat on the bike and trying to decide which road to take in search of the ambulance or to go back into town. As I was about to go back into town, the ambulance pulled up at the corner behind me with Pte Rolfe driving and Pte Finnan in the spare driver's seat. I then told them to turn around and I started to lead them back to camp. From all appearances they were under the influence of alcoholic stimulants but not to such an extent as to prevent Pte Rolfe from driving. We had not travelled more than a mile and a half [illegible] down from the Bremen-Osnabruk intersection with a jeep [illegible] Cpl and a Pte in it pulled up along side of me. The Cpl asked me to stop the ambulance which I did. He then informed me that the ambulance had been involved in an accident and had not stopped. I called Pte Rolfe out of the vehicle and asked him if he knew anything about an accident. He said he did not remember having an accident. I then asked the Cpl to lead us back to the scene of the accidet. He led us to the main intersection where the stop lights are in Oldenburg. We parked the ambulance. We had the Cpl remain with it. I then went to the civilian policeman who was taking down information in regards to the accident. There was a small sedan which had been hit broadside and in it was a female German who was injured. In my presence she was removed from the car and taken to the Peter Friedrich Ludwig hospital in a German ambulance. I consulted the notes that the German policeman had made. He had 2 MAC Tac No. 1345 and WE No. CA 5668660. I got all information regarding the accident from him. I then went back to the ambulance and looked for damage. There was no damage done to the vehicle but the hood and fender was covered with broken glass then led the ambulance back to the camp area and put the two men Rolfe and Finnan in the guard room. I then reported the matter to the MT Sgt.

Rolfe declines to question witness.

"A/Sgt Sutton WE"

Q. At what time did you bring Ptes Rolfe and Finnan back to Alexander Airfield after the accident.

A. At 1610 and I put them right in the guard room.

"A/Sgt Sutton WE"

A. 1077047 Pte Williams, WN, 2 Cdn MAC RCASC CASF sworn, states:

I am L.1704407 Pte Williams WN of 2 Cdn MAC RCASC CASF. On 18 May 46 I was on guard at Coy veh park at 1515 hrs. I left the barrier to let a TCV "on test" out. Immediately behind the TCV was an ambulance and it got out before I could lower the barrier. Pte Rolfe was driving and Pte Finnan was in the spare drivers seat. I hailed for them to stop as I knew that they were doing FP and should not be driving. They did not stop and turned right from the veh park. I got a substitute guard and went and reported the matter to Sgt Sutton.

Rolfe declines to question.

"M.N. Williams"

I am Mrs Frida Pricke, living Oldenburg Kaiserstrasse 2, being duly sworn in, state the following:

On Saturday the 18 May 46, about fifteen thirty hours I drove with the PKW Old 14090 from the Staulinie in direction Heiligengeiswall. When I arrived at the crossing the traffic light showed red, I stopped and drove on when the light showed green. When I was at the crossing I saw on my right a short distance from my vehicle a heavy truck arrive at full speed. As far as I remember I tried to swerve away or get past the vehicle but it was too late for that. I suddenly felt a very heavy push and felt my car going out of its direction. I had the impression that my vehicle turned over. But it only turned around so that it came to stand pointing in the direction of the Heiligengeistrasse. I hit the left window with my head, and therefore saw my way about only after a little while, then I noticed that my co-driver Mrs Rohse, Oldenburg Kaiserstrasse 2, was hurt. The vehicle was also heavily damaged the body on the right side was smashed and the motor was also damaged. I could not make sure of more details.

Frida Priebe,

Certified true translation of the original.

"W. Tilker"

(W. Tilker) Cpl
2 Cdn MAC RCASC CAOF

1 Police District

Oldenburg 20 May 46

Report concerning traffic accident on the 18 May 46 about 1535 hrs, at the crossing Ullmann:

I, Dietrich Boedecker, RAM of the Police born on the 3 Feb 10, in Borbeck, state under oath, after being familiarized with thestatutes, the following:

I was on duty on saturday 18 May 46 from 1500 to 1600 hrs on the crossing Ullmann as Traffic Post.

At 1535 hrs the following traffic accident happened the PKW OLD - 14090 drove with the green light through the crossing Ullmann from the Staulinie in the direction Heiligengeiststrasse driver of the PKW was Mrs Prieve, housewife, Oldenburg Kaiserstrasse 2, Co-driver was Mrs Rohse, Oldenburg, Kaiserstrasse 2, The LPW CA-5668660 (Cdn) drove through the crossing from the Heiligengeiststrasse in the direction Lange Strasse with the red light. At the crossing the LKW drove against the PKW and pushed it about 16 meters before it. At this collission the PKW came to stand with the front towards the Heiligengeiststrasse. The right side of the PKW was heavily damaged, the co-driver Mrs Rohse suffered in this accident a heavy concussion, a double fracture of the right arm, a tear of the left shoulder, brusises on the right hip and of the left elbow. I called at once the ambulance and had the first police district and the Provost notifed. The driver of the LKW stopped after the accident shortly and drove on at once without bothering further about the accident. The witness Hermann Mueßlenbrock, Oldenburg Heiligengeiststrasse 77, had noticed that an LKW of the unit 1345 with the end number 60 was concerned. This LKW stopped, returning, at the Staulinie so that the exact number of this vehicle could be ascertained. The accident was caused through the LKW passing the crossing at high speed with the red light. The PKW had to be towed away.

Deitrich Boedecker
RAM Police

Certified true translation from the original

Sgt W. Tilker"
2 Cdn MAC RCASC CAOF

D.121759 Cpl Jack, R, 2 Cdn MAC RCASC sworn, states:

I am D.121759 L/Cpl Jack, R, 2 Cdn MAC RCASC. On 18 May 46 I was NCO in charge of FP personnel. I was detailed to put Pte Rolfe and Finnan to work in the unit QM stores. About the middle of the afternoon, Rolfe and Finnan asked me if they could go to the toilet. I took them upstairs to the toilet and then went into the HQ Pl Ord Room. I was Pl Ord Cpl during 18 May 46 and I wanted to check up on any details which may have come in. I was only in the Ord Room two or three minutes. I went back to the trolet but Finnan and Rolfe were not there. Neither were they in the QM Store. I came upstairs and I was advised that Rolfe and Finnan had taken an ambulance out.

The accused declines to question the witness.

"L./Cpl Jack R"

The accused was warned as follows.

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

I do not with to make a statement at this time.

I certify that the foregoing Summary of Evidence consisting of 10 pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(C)(D)(E)(F) and (G) have been complied with.

"R.M.C. Turner" Capt

R.M.C. Turner Capt
2 Cdn MAC RCASC

I certify that the injured woman Frau Rohse is unable to make a statement at this time on account of injuries received.

"R.M.C Turner" Capt

R.M.C. Turner Capt
2 Cdn MAC RCASC

In the field
20 May 46

Additional Statement

On the 18 May 46 I was standing at the corner Langestrasse - Heiligengeistrasse (at the Oldenburg Versicherung Building) at about 1530 hrs. The PKW No. 14090 stood before the red signals, and when the green came this vehicle drove in the direction Hilligengeistwall at relatively slow speed. At about the height of the crossing the PKW was rammed by an Allied vehicle, which had not observed the signal. The PKW was dragged to the corner and then pushed back to the height of the Central Cafe entrance. The Allied vehicle had room enoughto swerve to the left, and drove, without bothering about the accident, away.

Police-sergeant Boedecker stopped an Allied vehicle to take up pursuit. In the meantime the policeman had ordered a civilian to call an ambulance by telephone. The ambulance appeared after a short while. The police sergeant tried to lift Mrs Rohse from the vehicle, which he did not manage from the side of the driver. He then tried to open the door from the other side. With this two British officer, who came by, helped hi.

About 1630 hrs the Allied Red Cross wagon was suddenly at the corner Staulinie again. I recognized the vehicle at once again. The operators were identified by a British motorcycle driver. The motorcycle driver and the Allied Red Cross wagon drove off in the direction Pferdemarkt. (The PKW was then standing in the direction Pferdemarkt.)

25 May 1946

Herrmann Muehlenbrock

translation from the original Oldenburg Zeughausstrasse 77
"Cpl Tilker, H"

Accused declines to question witness.

I saw at first the number - 1345 - and the vehicle number

5 ..... 60, and then, when the vehicle was standing at the corner before the signal, I recalled the other numbers.

Hermann Muehlenbrock.

translation from the original

"Cpl Tilker, W"

Accused declines to question witness

Oldenburg, May 28. 1946

I, Friedrich Boedecker, Pol. Serg., born 3 March 1910 in Borbeck, declareunder oath that I witnessed the accident myself and took measurements in person.

Boedecker

translation from the original Pol. Sergeant.

"Cpl Tilker, H"

Accused declines Question written

Mrs Martha Rose was admitted to the Peter Friedrich Ludwig Hospital on May 18. 1946 and treated by me. Thru traffic accident Mrs Rose suffered a concussion of the brain, dislocation of the right elbow joint, contusion of the left shoulder and fracture of the left clavicle. She also received a heavy contusion of the thorax.

In spite of all measures to the contrary Mrs Rose died from the results of the heavy injuries on the 21.5.1946 at the hospital.

Oldenburg, May 27. 1946.

Dr. Kiess
Chief of Surgical Department

Mrs Rose was admitted about 1600 hrs May 18. 1946, and died 1050 hrs on May 21. 1946.

Dr Kiess

translation from the original

"Cpl Tilker B"

Accused declines to question witness

Adolf Hollwege Oldenburg, 29 May 1946

driver of the ambulance on May 18, 1946, state under oath:

On the 18 May I was notified thru telephone operator Meyer. I drove at once the ambulance to the place of the accident, traffic lights Heiligengeiststrasse. The injured woman was then, because she complained of considerable pains, placed on a stretcher with the help of the codriver Burjes and two unknown nursing sisters, and brought to the Peter Friedrich Ludwig Hospital to the First Aid Room. I do not recall the exact time of the day.

Adolf Hollwege

translation from the original
"Cpl Tilker W"

Accused declines to question victim

Oldenburg, May 29. 1946

I, the undersigned Wilhelm Rohse, Oldenburg, Kaiserstrasse 2, state under oath that I visited my wife, after she suffered injuries in the traffic accident, at the Peter Friedrich Ludwig Hospital as well as on the day of the accident, May 18. in Oldenburg, as on the following days (sunday and monday) several times and spoke to her. On Tuesday forenoon, shortly after eleven I was with her, but she had passed on shortly before eleven.

It is without doubt that I recognized my wife on Tuesday forenoon and Tuesday afternoon, also on Thursday, after she was laid into the coffin, because she was little or not at all disfigured.

W Rohse

Translation from the original
"Cpl Tilker W"

Accused declines to question witness.

The accused was warned as follows:
Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given as evidence.

Accused: I do not wish to make a statement at this time

I certify that the foregoing summary of evidence consisting of five pages was taken by me in the presence and hearing of the accused and the Rules of Procedure 4(C)(D)(E)(F) + (G) have been complied with.

"R M C Turner" Capt
2 CDN MAC RCASC CAVF

Ex G. "JAK"

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

F.78180 Pte Rolfe, C.E. 2 Cdn R.A.S.C. RCASC CAOF

The following is a fair and true summary of the entries in the regimental conduct sheets of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with.

	Within the last Twelve months	Since Enlistment
for Conduct etc AA 40	3 times..	3 times.

There are no entries in the conduct sheets of the accused.

The accused has not been previously convicted.

The accused at the present time is under sentence for Offence (AA Sec 40) beginning on the day of 7 May 46 (28 days F.P.)

The accused has been in confinement awaiting trial on the present charges [illegible] custody, of which nil days were spent in hospital.

The present age of the accused is 27 yrs 24 days.

The date of his attestation is 22 Sep 43

The accused is in possession of or entitled to no military decoration or military award.

Schedule of Convictions by a Court Martial or Civil Court

F.78180 Pte Rolfe, CE, 2 Cdn RAS RCASC CAOF

NIL

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27 day of May 46 "J. Herney Lt Adj"

No. F 1180 Name ROLFE, C.E. Sqn. Battery or Company | Corps RCASC | Date of enlistment 22 SEPT 43 | GC Badges | Service or Proficiency Pay NA | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk NA | Period not reckoning towards freedom from extra fine NA | Sheet No Ow | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
CAMP BORDON ONT				ORIGINAL SHEET DESTROYED 22 MAR 44 NIL ENTRIES		NIL CASES OF DRUNKENNESS			
FIELD	26 SEP 45	PTE		AA SEC 40 NEGL DRIVING, DAMAGE TO	DOCUMENTARY	FORF 4-9-6 FORF 14 DAYS PAY		MAJ MORWOOD	FRT 158(2) FRT 149(2)
FIELD	1 MAY 46			AA SEC 40 CONDUCT ETC	SGT WRY CRAFT	14 DAYS PAY		MAJ MORWOOD	
FIELD	4 MAY 46			AA SEC 4 CONDUCT ETC	SGT DAFOE	14 HRS INST DRILL 28 DAYS FP 1 CUT LINES AND 28 DAYS PAY	2 MAY 46 / 3 MAY 46	MAJ MORWOOD	
				CERTIFIED TRUE COPY OF THE ORIGINAL					

"Del Morwood" Major
Officer Commanding having custody of original
2 Cdn MAC, RCASC.

(PTO)

TTT-229

Spr Rolfe, N. J.

RECORDED AT CMHQ IN AB 160 ... TT/8229

FIELD GENERAL COURT-MARTIAL

CFA86 (To Back of AB67)
AO. P.A.G. 1608-1/2004

Convened by Order of Brig. F.W. Hatherley Comd 1 C BRG dated 25 Jun 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F 28928	Spr	NEWMAN Joseph	ROLFE	7 Fd Sqn RCE

PROCEEDINGS REVIEWED
JAG Edward Darrow Capt.
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Italy on (*date*(s)) 27 Jun 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0730 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ... as interpreter?~~ Ans ~~...~~

~~The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans ...~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	C.S. Nickle	(CIC)	8 Bn 2 CBRD
Member	Capt	D.C. Matthews	(CAC)	5 Bn 2 CBRD
Member	Lieut	J.F.H. Laban	(CAC)	2 Can Reallocation Centre
~~Judge-Advocate~~				
Prosecutor	Lieut.	R.M. Braun	(RCCS)	7 Bn 2 CBRD
Defending Offr	Capt	R.B. Meelands	(RCE)	7 Bn 2 CBRD

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused F. 28928 Spr ROLFE before arraignment make(s) ~~(no plea)~~ NP plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~not~~ arraigned ~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F. 28928 Spr NEWMAN Joseph. ROLFE 7th 2CBRD

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge.	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit etc RP 44 fn 6.)

~~At present under sentence for ... beginning on (date) ...~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 80 days, of which 52 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer field punishment for 28 days and to forfeit all ordinary pay for a period of 28 days.

(Sgd) ... Judge-Advocate, if any. 27 June 44 Date awarded. (Sgd) E Shirley Hoy President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 33A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks, until further orders.(1)~~
(1. AA 57A. Delete if not used.)

(Sgd) ... Commanding ...

Date 29 June 44

COMMANDER
1 CDN BDE R&T GROUP
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F. 28928 Spr. Rolfe, N.J	30 Jun 44	J Macbeth Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)*

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; securing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 93(B); oath of witnesses see RP 85-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of summaries of evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No Sir.(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charge dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 52 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D4.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 117.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....

Do you intend to call witnesses on your behalf? Ans .....

Are they witnesses as to character only? Ans .....

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, AF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans Witnesses as to Character Sir.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Plea in Mitigation & Punishment Sir.(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)

(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 60(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F 28928, Sapper Newman Joseph ROLFE, Royal Canadian Engineers, 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
Section 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field in Italy, did absent himself without leave from 2300 hours on the 30th day of March, 1944 until 0001 hours on the 9th day of April, 1944, when he surrendered himself to the Military Police in Algiers, North Africa. (Total time absent - 9 days and 1 hours).

E W George
.....

(E W George) Captain.
Acting Officer Commanding,
7 Cdn Base Rft Bn, 2 CBRD,
C M F.

In the field
this 14 day of June, 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

E W Haldenby

25 Jun 44

(E. W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Group
Cdn Army - C M F

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA32)
40/PA32/1037 (2nd ed)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F-28928	Spr		Newman Joseph	NOLPE	7 Bn 2 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 25 Jun 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)		(Unit.)
Major	C.S. NICKLE	(CIC)	8 Bn 2 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)		(Unit.)
Capt	D.C. MATTHEWS	(CAC)	5 Bn 2 CBRD
Lieut	J.F.H. LAHAN	(CAC)	2 Cdn Reallocation Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut	to be detailed by OC 2 Cdn Reallocation Centre	

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (*Country.*)

E. W. Haldenby (*Signed personally. RP 105 fn 2.*) Brigadier (*Rank.*)

Date 25 Jun 44 Commanding 1 Cdn Base Bft Group

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

7 CANADIAN BASE REINFORCEMENT BATTALION

Certified that I have examined F 28928 Sapper ROLFE, N J (R C E) and in my opinion find him FIT/~~UNFIT~~ to undergo trial be Field General Court Martial.

In the Field
This 27 day of June 1944

.....
(Signature of Medical Officer)

E-3

Plea in Mitigation of Sentence

in the case of: F-28928 Spr. Rolfe N.S.

The accused enlisted at the beginning of the war in Sept 1939 and he came overseas in Jan 1940 with 1st Fd Coy RCE He attained the rank of A/Sgt. in 1942 and held that rank for 14 mos. until he reverted to the ranks in order go on draft to this campaign.

Spr. Rolfe has a wife and five children in Canada who are dependant on his army pay and whom he hasn't seen for 4½ years. It is understandable that after such a long seperation a man will become despondant and 'fed up' and allow his better judgement to temporarily lapse. It was during a drinking session with some american airmen that the accused was persuaded to take a plane ride. When he came to his ~~proper~~ senses he found himself in Algiers where he surrendered himself to the

military authorities forthwith.

It is felt that the accused is at heart fundamentally a conscientious soldier and that the court would be justified in dealing with this offense with a most lenient sentence.

R. F. Neelands Capt.
Defending Officer

26 June 44

LIST OF WITNESSES FOR THE PROSECUTION AND DEFENCE

FIRST WITNESS: - D 36204 Sergeant Valade J W, C A C, 7 Cdn Base Rft Bn, 2 C B R D, C M F.

SECOND WITNESS:- M 10936 Sergeant Major (Company) George Valentine JONES, Calgary Highlanders of Canada, 7 Cdn Base Rft Bn, 2 C B R D, C M F.

THIRD WITNESS:- Lieutenant Alan Hamilton GILPIN, R C C S, 7 Cdn Base Reinforcement Battalion, 2 Cdn Base Rft Depot, C M F.

E 1

E 1

Statement as to Character in the case of:

F-28929 Spr. Rolfe N.J.

Capt R E NEELANDS 1 Bn 2 C B R D duly sworn states:

~~Owing to the fact no other officer or senior N.C.O. is available who has previously known the accused I wish to submit the following character statement.~~

Sgt. Rolfe has been known to me for over 10 months. He was a sect. Sgt. in my Coy. at the Eng. P.U. in England for more than 3 months. In Oct. 1943 he reverted to the ranks at his own request in order to proceed on overseas draft. This was done against the wishes of the directorate staff who valued Rolfe's ability as an N.C.O. and as an instructor.

During the time that the accused was in my coy. he gave excellent service at all times and he was a dependable and reliable N.C.O.

26 June 44

R. E. Neelands.
R.E.Neelands, Capt.
R.C.E.

No Cross-exam.

R P 83 (B) Complied with

E1

E1 Lieut HEALY L. 7 Bn. 2 C.B.R.D. duty Swan Stats.

E1 I first knew Spr. Rolfe about the 1st of Oct 43 on the "HOT DOG" draft. He was acting pl. Sgt at that time. He brought his pl down to 3 Bn in Africa. While there his pl was on a works project until we arrived in Italy this year. During that time I knew him to be an excellent N.C.O. who did his job very well. He was liked by the men and by the officers alike. I know that he was considered the best of the N.C.O.s by all the officers. He was acting as Sgt at the time and was not getting paid as such. ~~It~~ Then were efforts made to obtain pay of rank for Spr. (A Sgt) Rolfe which were successful later on.

No. X. [illegible] R.R 83 (B) Complied with

Exhibit A attached hereto

Summary of Evidence in the case of F 28028 Sapper Newman Joseph ROLFE, Royal Canadian Engineers, on strength of 7 Canadian Base Reinforcement Battalion 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas:

FIRST WITNESS
For the
Prosecution

D 36204 Sergeant Valade, Joseph William, Canadian Armoured Corps, on strength 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, having been duly sworn states:

"I am D 36204 Sergeant Valade, J W, 12 Canadian Tank Regiment, Canadian Armoured Corps, on strength 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, As "B" Company Orderly Sergeant, I called the roll at tattoo, 2130 hours on the 30 March 1944. Sapper Rolfe, N J whom I now recognize was absent"

The foregoing statement is read back to this witness in the presence and hearing of the accused.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS

J. W. Valade Sjt

(D 36204 Sjt Valade, J W)

SECOND WITNESS
for the
Prosecution

M 10936 Company Sergeant Major Jones, George Valentine, Calgary Highlanders of Canada, on strength of 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, having been duly sworn states:

"I am M 10936 Company Sergeant Major Jones, G V Company Sergeant Major of "B" Company, 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, On the morning of the 31 March 1944, F 28498 Sapper Rolfe, N J. on strength of "B" Company was reported to me as having been absent from Tattoo roll call the previous night, by the Orderly Sergeant.

I called the roll daily until the 14 day of April on which date word was received of his apprehension in North Africa. The accused did not answer his name at any time during that period.

I next saw Sapper Rolfe at approximately 1400 hours on the 9 day of June 1944 when he reported in to "B" Company Orderly Room on draft from North Africa.

The foregoing statement is read back to this witness in the presence and hearing of the accused.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS

G. V. Jones

(M 10936 C S M Jones, G V)

THIRD WITNESS
for the
Prosecution

Lieutenant Allan Hamilton GILFIN, Royal Canadian Corps of Signals, on strength 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, as Records Officer, an Officer of the Canadian Army Overseas, having been duly sworn states:

"I am Lieutenant A H Gilpin, Records Officer of 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot I produce and submit in evidence this Certified True Copy of X-4 List Royal Canadian Engineers Part 11 Daily Order number 101 dated 19 June 1944 purporting to be signed by Lieutenant J E Campbell, for Officer IC Cdn Section, GHQ 2 Echelon and showing the accused Sapper Rolfe as having returned from absence without leave at 0001 hours on the 9th April 1944. This Part 11 Daily Order has been duly initialled by me for purposes of identification"

The foregoing statement is read back to this witness in the presence and hearing of the accused.

The accused decline to cross-examine this witness.

.....
(A H Gilpin) Lieutenant

The Certified True Copy of Part 11 Daily Order (RCE) referred to by this witness, produced, read over to the accused, marked exhibit "A", signed by me and attached hereto.

.....
(Officer detailed to take the summary of evidence)

WARNING TO THE ACCUSED - You may make a statement or give evidence under oath but you do not have to make a statement or give evidence under oath unless you wish, but if you do it may be taken down in writing and produced in evidence.

The accused declines to make a statement or give evidence under oath and reserves his defence.

Rules of Procedure 4 (C)(D)(E) & (F) have been complied with.

The foregoing Summary of Evidence consisting of Two pages was taken down by me in writing in the presence and hearing of the accused this 13th day of June 1944.

.....
(Officer detailed to take the summary of evidence)

This is exhibit A referrred to by the
of Evidence in the case of F 28928 Sapp
before men this 13th day of June, 1944.

to take

"A"

Last Order
No 100
16 Jun 44

"X" List R.C.E.
Part II Orders issued by
Canadian Section GHQ 2nd Echelon A.A.I.

This Order
No 101
19 Jun 44

"A" OFFICERS

N I L

"B" OTHER RANKS

1. STRENGTH INCREASE

(a) T.O.S. X-3 List from 1 Field Sqn RCE 16 Jun 44
A57424 Spr Campbell, K.L. Carpenter B

(b) T.O.S. X-3 List from 1 Field Sqn RCE 16 Jun 44
L103305 Spr Skipper, C.A.C.

(c) T.O.S. X-4 List (7Bn) from 2 Field Park Coy RCE 17 Jun 44
Auth - CMCH/43/Post RCE/1 (A.) 4/10 Jun 44
B74306 Spr Miller, A.A.

(d) T.O.S. X-3 List from 12 Field Coy RCE 15 Jun 44
C2366 L/Sgt Tremblay, J.O.A. Carpenter C

(e) T.O.S. X-3 List from 1 Field Coy RCE 15 Jun 44
K92469 Spr Tigar, M.G. Sng Hand 1/c "C"

(f) T.O.S. X-3 List from 13 Field Coy RCE 15 Jun 44
M41520 Spr Couture, E.L. Bricklayer C

(g) T.O.S. X-3 List from 12 Field Coy RCE 14 Jun 44
M37036 Spr Gascoyne, H. Blacksmith B

(h) T.O.S. X-3 List from 4 Field Park Sqn RCE 16 Jun 44
B26060 Spr Hamilton, D.
K70345 Spr Stubbs, A.E.

(i) T.O.S. X-3 List from 5 Armd Div Bridging Troop RCE 16 Jun 44
F91683 Spr Weare, G.E.

(j) AMENDMENT Part II Order No.95, para 2(e) of 7 Jun 44 insofar as it refers to the a/n is Cancelled
H13144 Cpl MacLeod, J.M. Pioneer C

(k) T.O.S. X-3 List from 4 Field Coy RCE 7 Jun 44
D16180 CQMS Head, T.D.

(l) T.O.S. X-3 List from 13 Field Coy RCE 13 Jun 44
D16096 Spr Stroulger, C.E. Welder B

(m) T.O.S. X-3 List from Cdn Pioneer Coy (CMF) 6 Jun 44
M129615 Spr Mott, G.

(n) T.O.S. X-3 List from 10 Field Sqn RCE 11 Jun 44
B29411 Spr Constantineau, M.J.

1. STRENGTH INCREASE (CONT'D)

(o) T.O.S. X-3 List from 10 Field Sqn RCE 9 Jun 44
D16537 Spr Toner, M. Plumber C

(p) T.O.S. X-3 List from 10 Field Sqn RCE 14 Jun 44
M54275 Spr Walker, R. Pioneer C

(q) T.O.S. X-4 List (7Bn) from X-9 List 8 Jun 44
Auth - CECH/Posting Order 318
L19092 Spr Fjeser, H.R. Pioneer C

(r) T.O.S. X-3 List from 13 Field Coy RCE 12 Jun 44
B26552 Spr LaLonde, D.A. Eng Hand 1/c "C"

(s) T.O.S. X-3 List from 1 Field Coy RCE 10 Jun 44
C2973 A/L/Cpl Crawford, J. Miner B
H59892 Spr Jenkinson, K. (1 Building Co, RCE) DO 103/44

(t) T.O.S. X-3 List from 1 Field Coy RCE 12 Jun 44
B25744 Spr McLarney, G.E. Plumber B
C2413 Spr Robertson, L.W. Clerk C

(u) T.O.S. X-3 List from 1 Field Sqn RCE 14 Jun 44
D118620 Spr Chartier, P.L. Pioneer C

2. INTERNAL POSTINGS

(a) Posted from X-4 List (7Bn) to X-3 List 12 Jun 44
M54260 Spr Sykes, C.

(b) Removed from 7 F.P. Camp to 56 Military Prison, Brindisi, 17 Jun 44 (9 Mos detn)
L19583 Spr Friesen, L.S.

(c) Posted from X-3 List to X-4 List (4Bn) 16 Jun 44
M54275 Spr Walker, R. Pioneer C

(d) Posted from X-4 List (7Bn) to X-2 List on committment to 7 Can F.P. Camp 13 Jun 44 (Awarded 28 days detn on 13 Jun 44)
B45215 Spr Draper, F.
H13159 Spr Jarvis, F.W. Carpenter B

(e) Posted from X-3 List to X-4 List (7Bn) 13 Jun 44
M65337 Spr Berard, R.J. Painter C
B83423 Spr Marshall, E.T.

(f) Posted from X-3 List to X-4 List (7Bn) 16 Jun 44
B74147 Spr Bennett, J.J. Pioneer C
L19309 Spr Clare, J.A.M.
D16180 CSMS Head, T.D.
B82864 Spr Little, E.H. Pioneer C
B25742 Spr Mainville, L. Bricklayer C
M3942 Spr Policha, P. Blacksmith B
B138107 Spr Simms, G.L. Fitter B
B29768 Spr Sudds, W.A. Pioneer C

2. INTERNAL POSTINGS (CONT'D)

(g) Posted from X-3 List to X-4 List (7Bn) 15 Jun 44
B20718 Spr Lennox, R.W. Blacksmith B

(h) Posted from X-3 List to X-4 List (7Bn) 9 Jun 44
B28741 Spr Butler, H.R. Carpenter B

(i) Posted from X-3 List to X-4 List (7Bn) 14 Jun 44
F91651 Sgt Roper, J.F.
D16079 Cpl Starr, J. Electrician A
M54421 Cpl Stephenson, H. Carpenter B

(j) Posted from X-3 List to X-4 List (7Bn) 13 Jun 44
B130465 Spr Barlow, F.G.
F86433 Spr Foggon, W.P. Storeman T&D "C"
B28065 Sgt Hamilton, G.R.
H20261 Spr Howe, D.
C33448 L/Cpl Lance, E. Pioneer C
D63573 Spr Laplante, G. Plumber C
L19559 Spr Michalko, A. Eng Fitter i/c&P "C"

(k) Posted from X-3 List to X-4 List (7Bn) 14 Jun 44
326552 Spr LaLonde, D.A. Eng Hand i/c "C"

(l) Posted from X-4 List (7Bn) to X-2 List on adm to 7 F.F. Camp 9 Jun 44 (Awarded 28 days detn on 8 Jun 44)
B110044 Spr Bell, G. (Jr) Miner B

3. ABSENT WITHOUT LEAVE

(a) A.W.L. from 2130 hrs 30 Mar 44 Still absent 2130 hrs 31 Mar 44 (1st day)
F28928 Spr Rolfe, N.J.

(b) A.W.L. from 2130 hrs 30 Mar 44 Still absent 2130 hrs 7 Apr 44 (8th day)
F28928 Spr Rolfe, N.J.

(c) A.W.L. from 2130 hrs 30 Mar 44 Ret from A.W.L. 0001 hrs 9 Apr 44
F28928 Spr Rolfe, N.J.

4. QUALIFICATIONS

(a) Having attended anti-malarial course at 7Bn 2 CBRD 5 Jun 44 to 7 Jun 44, Qualified as shown
L19933 Spr Bley, A.E. "A"
F31612 Spr Campbell, J.C. "B"
H131749 Spr Horton, G.V. "B"
B29122 Spr Ward, H. "B"

5. TRADESMEN'S RATES OF PAY

(a) Granted tradesmen's rates of pay Fitter "C" 31 May 44
F1221 Spr Hollis, C.G. Fitter AFV "C"

6. PUNISHMENTS

(a) On 17 Jun 44 awarded a forf of 10 days pay for an offence under AA 15(1) A.W.L. from 2100 hrs 15 Jun 44 to 2145 hrs 15 Jun 44 (absent 45 mins) Forf 10 days pay under FRAI 149(2)
F91555 Spr McIsaac, A.F.

6. PUNISHMENTS (CONT'D)
(b) Released from 25 F.P. Camp 12 Jun 44 sentence having expired 60 days remission earned under Rules for Detn Bks and Mil Prisons
L1054 Spr Millikin, G.L.

7. NEXT OF KIN
(a) Next of Kin verified as shown -
B29806 Spr Bridge, G.C. Mrs Luella Bridge (mother), Harding, Manitoba, Canada.

B26107 Cpl Leeman, S.M. Mrs Marguerite Leeman (wife), "The Hollies", Boxhill Road, Tedworth, Surrey, England.

8. STRENGTH DECREASE
(a) S.O.S. X-3 List to X-8 List 13 Jun 44
Auth - Evac Cert d/12 Jun 44
H63010 Spr Ivall, W.J.

(b) S.O.S. X-4 List (7Bn) to X-9 List 18 Jun 44
Auth - CECH/43/Post Unfit/5 (A7) P.O. 455 d/17 Jun 44
D16888 Spr Regimbald, P.

(c) AMENDMENT Part II Order No.92, para 8(v) of 4 Jun 44 delete "13 Field Coy RCE" and substitute "1 Field Coy RCE"

(d) S.O.S. X-3 List to X-9 List 15 Jun 44 Pending reboard
M50900 Spr Nist, J.P. Eng Artif B

(e) S.O.S. X-3 List to 4 Field Park Sqn RCE 16 Jun 44
K70345 Spr Stubbe, A.E.

(f) S.O.S. X-3 List to 5 Arm'd Div Bridging Troop RCE 16 Jun 44
F91683 Spr Weare, E.E.

(g) S.O.S. X-4 List (7Bn) to 13 Field Coy RCE 17 Jun 44
Auth - CECH/Demand 211 d/17 Jun 44
M65671 Spr Fucsko, S.

(h) S.O.S. X-4 List (7Bn) to 1 Drilling Coy RCE 17 Jun 44
Auth - CECH/Demand 212 d/17 Jun 44
D63573 Spr Laplante, G. Plumber C

(i) S.O.S. X-4 List (7Bn) to 4 Field Park Sqn RCE 6 Jun 44
Auth - CECH/Demand/ARS/367 d/3 Jun 44
G4745 Spr McCluskey, E.C.

(j) S.O.S. X-4 List (7Bn) to HQ 1 Cdn Corps 14 Jun 44
Auth - CECH/Demand/157 d/12 Jun 44
B28926 L/Sgt Thomas, H.C. Draughtsman A

(k) S.O.S. X-3 List to X-9 List 15 Jun 44 Pending reboard
B86347 Spr Taylor, G.L.

(l) S.O.S. X-3 List to X-8 List 13 Jun 44
Auth - Evac Cert d/13 Jun 44
B28049 Spr Bethell, H.J. Eng Art B

6. STRENGTH INCREASE (CONT'D)

(m) S.O.S. X-4 List (7Bn) to 10 Field Sqn RCE 16 Jun 44
Auth - CECH/Demand 193 d/14 Jun 44

M54207	L/Sgt	Caldwell, A.E.	Pioneer C
M54427	L/Sgt	Hansen, G.L.	Carpenter C
F91532	Cpl	Kempton, A.F.	Waterman C
H82217	Spr	Newman, J.A.	
M54421	Cpl	Stephenson, H.	Carpenter B

(n) S.O.S. X-4 List (7Bn) to Mech Eqpt Sec "B" CMF 16 Jun 44
Auth - CECH/Demand 192 d/14 Jun 44

B45102	Spr	[illegible], A.A.	Bricklayer C
B100676	Spr	Bishop, K.H.	
L1575	Spr	Bodico, F.V.P.	Mr Mech B
L19103	Spr	Brenner, R.J.	Electrician C
M11254	Spr	Christoffersen, H.M.	
L19891	A/L/Cpl	Ceber, W.	
B43358	Spr	Collins, R.A.	
B85269	Cpl	Cranley, L.J.P.	Dr Mech C
H63791	Spr	Dauphinais, C.	
B46568	Cpl	Donald, G.W.	Dr Mech C
K49455	Spr	Eccles, D.S.	
M102257	Spr	Evens, A.	
B148930	Spr	Fish, F.J.	
L102594	Spr	Garlick, J.C.M.	
D26434	Spr	Goldstein, M.	
A106142	Spr	Griffith, E.W.	
A116031	Spr	Halliwell, A.	Dr Mech C
F1221	Spr	Hollis, C.G.	Fitter C
H65567	Spr	Hudyma, W.	
B133004	Spr	Ince, D.W.H.	
M7060	Spr	Lakusta, H.	
H63570	Spr	LeGrange, G.P.	
B15682	**Spr**	**McCallum, G.A.**	
F52102	**Spr**	**MacLean, H.D.**	
M103959	Spr	Mitchell, V.C.	Dr Mech C
B3835	Spr	Moore, W.G.	Storeman TAD "C"
F32193	Spr	Morrison, M.A.	Carpenter B
F16772	Spr	Nixon, E.P.	
F76529	Spr	Rutherford, E.T.	
L1635	Spr	Sanderson, G.E.	Dr Mech C
M38483	A/L/Cpl	Savage, J.H.	Dr Mech C
B78532	Spr	Scanlon, E.E.C.	
G12689	Spr	Scharf, D.F.	
F97715	Spr	Scott, G.J.	
H56389	Spr	Showalter, L.V.	
B38122	Spr	Smith, G.E.	
D128989	Spr	Smith, L.H.	
B61607	Spr	Stapley, E.E.	
K29113	Spr	Stevens, C.J.	
M107622	Spr	Thomas, J.	
B146231	Spr	Vosdingh, D.A.	
L54743	Spr	Wall, C.	

8. STRENGTH DECREASE (CONT'D)
(n) Continued

D15840	Spr	Worden, C.M.	
B40193	Spr	Yourchishin, J.	Oper SEE "A"
B77692	Spr	Zubko, W.	

(J. E. Campbell) Lieut
for Officer i/c
Cdn Sec GHQ 2 Ech AAI

/JVS

CERTIFIED TRUE COPY

(J. E. Campbell), Lieut.
for Officer i/c
Cdn Sec GHQ 2 Ech AAI.

1. STRENGTH INCREASE (CONT'D)

(o) T.O.S. X-3 List from 10 Field Sqn RCE 9 Jun 44
D16537 Spr Toner, M. Plumber C

(p) T.O.S. X-3 List from 10 Field Sqn RCE 14 Jun 44
M54275 Spr Walker, R. Pioneer C

(q) T.O.S. X-4 List (7Bn) from X-9 List 8 Jun 44
Auth - CECH/Posting Order 318
L19092 Spr Fjeser, H.R. Pioneer C

(r) T.O.S. X-3 List from 13 Field Coy RCE 12 Jun 44
B26552 Spr LaLonde, D.A. Eng Hand 1/c "C"

(s) T.O.S. X-3 List from 1 Field Coy RCE 10 Jun 44
C2973 A/L/Cpl Crawford, J. Miner B
H59892 Spr Jenkinson, K. (1 Building Coy RCE) TAO. 103/44

(t) T.O.S. X-3 List from 1 Field Coy RCE 12 Jun 44
B25744 Spr McLarney, G.E. Plumber B
C2413 Spr Robertson, L.W. Clerk C

(u) T.O.S. X-3 List from 1 Field Sqn RCE 14 Jun 44
D118620 Spr Chartier, P.L. Pioneer C

2. INTERNAL POSTINGS

(a) Posted from X-4 List (7Bn) to X-3 List 12 Jun 44
M54260 Spr Sykes, C.

(b) Removed from 7 F.P. Camp to 56 Military Prison, Brindisi, 13 Jun 44 (9 Mos detn)
L19583 Spr Friesen, L.S.

(c) Posted from X-3 List to X-4 List (4Bn) 16 Jun 44
M54275 Spr Walker, R. Pioneer C

(d) Posted from X-4 List (7Bn) to X-2 List on committment to 7 Cdn F.P. Camp 13 Jun 44 (Awarded 28 days detn on 13 Jun 44)
B45215 Spr Draper, F.
H13159 Spr Jarvis, F.W. Carpenter B

(e) Posted from X-3 List to X-4 List (7Bn) 13 Jun 44
M65337 Spr Berard, R.J. Painter C
B83423 Spr Marshall, E.T.

(f) Posted from X-3 List to X-4 List (7Bn) 16 Jun 44
B74147 Spr Bennett, J.J. Pioneer C
L19309 Spr Clare, J.A.M.
D16180 CQMS Head, T.D.
B82864 Spr Little, E.H. Pioneer C
B25742 Spr Mainville, L. Bricklayer C
M3942 Spr Polichna, P. Blacksmith B
B138107 Spr Simms, G.L. Fitter B
B29768 Spr Sudds, W.A. Pioneer C

"A"

Last Order	"X" List R.C.C.	This Order
No 100	Part II Orders issued by	No 101
16 Jun 44	Canadian Section GHQ 2nd Echelon A.A.I.	19 Jun 44

"A" OFFICERS

N I L

"B" OTHER RANKS

1. STRENGTH INCREASE

(a) T.O.S. X-3 List from 1 Field Sqn RCE 16 Jun 44
A57424 Spr Campbell, R.L. Carpenter B

(b) T.O.S. X-3 List from 1 Field Sqn RCE 16 Jun 44
L103305 Spr Skipper, C.A.C.

(c) T.O.S. X-4 List (7Bn) from 2 Field Park Coy RCE 17 Jun 44
Auth - CRCH/43/Post RCE/1 (A/) 4/10 Jun 44
B74306 Spr Miller, A.A.

(d) T.O.S. X-3 List from 12 Field Coy RCE 15 Jun 44
C2366 L/Sgt Tremblay, J.O.A. Carpenter C

(e) T.O.S. X-3 List from 1 Field Coy RCE 15 Jun 44
K92469 Spr Tigar, M.G. Eng Hand i/c "C"

(f) T.O.S. X-3 List from 13 Field Coy RCE 15 Jun 44
M41520 Spr Couture, E.L. Bricklayer C

(g) T.O.S. X-3 List from 12 Field Coy RCE 14 Jun 44
M37036 Spr Gascoyne, H. Blacksmith B

(h) T.O.S. X-3 List from 4 Field Park Sqn RCE 16 Jun 44
D26060 Spr Hamilton, D.
K70345 Spr Stubbs, A.E.

(i) T.O.S. X-3 List from 5 Armd Div Bridging Troop RCE 16 Jun 44
F91663 Spr Weare, E.E.

(j) AMENDMENT Part II Order No.95, para 2(e) of 7 Jun 44 insofar as it refers to the a/n is Cancelled.
H13144 Cpl MacLeod, J.N. Pioneer C

(k) T.O.S. X-3 List from 4 Field Coy RCE 7 Jun 44
D16160 CQMS Head, T.D.

(l) T.O.S. X-3 List from 13 Field Coy RCE 13 Jun 44
D16096 Spr Stroulger, C.V. Welder B

(m) T.O.S. X-3 List from Cdn Pioneer Coy (CMF) 6 Jun 44
D129615 Spr Mott, S.

(n) T.O.S. X-3 List from 10 Field Sqn RCE 11 Jun 44
B29411 Spr Constantineau, M.J.

Exhibit B

ARMY FORM B 199

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
F 28928	Sapper	ROLFE N J	7 Cdn Base Rft Bn, 2 C B R D.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—If a trial by field general court martial (summary may be omitted from the last four lines).

The conduct sheets should be produced in court with this statement and not referred to in the proceedings.

† See para. 571, K.R., 1930.

* To indicate briefly the general character of the offence, see entries in the conduct sheets, para. 571, K.R., 1930, and to the most serious offence in each entry. Any entry not recognized should not be included in the list to be published under † above.

Instructions.—If the charge is dismissed, cross out the entries 1-3 and 5, and delete "and is brought before the court" in 4.

	* Within last 12 months.	*Since Enlistment.
For A A Sec 15 (1)	two times	eight times.
For AA Sec 19	NIL times	one time.
For AA Sec 22	NIL times	one time.
For N/A	times	N/A times.
For N/A	times	N/A times.

[redacted]

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, [redacted]

[redacted]

3. The accused is not under sentence at the present time [redacted] N/A beginning on the N/A day of N/A

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 78 days in military custody, making a total of 78 days, of which 52 days were spent in hospital.

5. The present age of the accused according to his [redacted] record of service is 29 Years.

6. The date of his [redacted] attestation specified in his [redacted] record of service is 27 Sep 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

[redacted]

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated N/A and in his regiment (*or corps or department*) the rank of N/A dated N/A

(P18284) W1.11852/144 125,000 8-41 A.F.B.W.3.(2) Gp.498

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. F 28928 Rank Sapper Name Rolfe M J of 7 C B R Bn Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating those convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
N/A		N/A	N/A	N/A

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this day of , 1944.

(A H Gilpin) Records Officer, 7 CBRBn.
Lieutenant. 2 Cdn Base Rft Depot, CMF.

In the rank of years, N/A

In the rank of years, N/A

In the rank of years, N/A

Date of Promotion

LIST OF EXHIBITS

Exhibit A - Certified true copy of X-4 List RCE Part II Daily Order Number 101 dated the 19th June 1944.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25 Mar 41	Spr		AA 15(1) AWL from 2359 hrs 30 Jan 41 till 0845 hrs 31 Jan 41. Absent 8 hrs 46 mins	Sgt Seaton	Fort 7 days pay	1 Feb 41	Maj H L Meuser	CCH
Field	15 Mar 41	Spr		AA15(1) AWL from 2230 hrs 15 Mar 41 till 0130 hrs 17 Mar 41. Absent 1 day 3 hrs	Sgt Seaton	7 days CB Forts 7 days pay	17 Mar 41	Maj H.L. Meuser	Fort 2 days pay CCH
Field	14 Mar 42	L/C		AA15(1) AWL from 2300 hrs 14 Mar 42 till 2230 hrs 15 Mar 42. Absent 23 hrs 30 mins	L/S McAuley	Reverts to rank of Spr	16 Mar 42	Maj E J Durain	Fort 1 days pay CCH
				VERIFIED WITH MFM4 10 Jul 43		??????? Capt			
Field	28 Nov 43	A/Sgt		AA Sec 15(1) Absent 2 dys 18 hrs 45 mins	CSM Finlayson	Severe Reprimand	3/12/43	Maj Campbell	Apts fort 3 days pay [illegible]
Field	1 Jan 44	A/Sgt		AA 15(1) AWL 3 days 5 hrs 30 mins	Lt DPM Bissett	Severe Reprimand Reverted to Spr	10 Jan 44	Capt EP Hall	Reverted to Spr

I certify that the above is a true extract from the original document in my custody.

Certified true copy from the records in my custody

.....Capt & Adjt .....O.C.

(J M Tierney) 7 Bn. 2 CBRD

2 Coy. 7 Bn. 2 C.B.R.D.

Previous Sheet destroyed in accordance with C.A.R.O. 2084 3 Dec 42 C G Hadley Lieut

M.F.M. 6 (A.F. B.122) 40/P & /8136 (2000)

No. F.28928 Name Rolfe, N.J. Sqn., Battery, or Company Corps R.C.E. Date of enlistment 28 Sep 39 G.C. Badges Service or Proficiency Pay N.A.

Date of last entry in Company Conduct Sheet N.1 No. and date of last drunk N.1 Period not reckoning towards freedom from extra fine N.A. Sheet No. 1 Signature O.C. Company, etc. C G Hadley Lieut Character Exhibit C.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8 Jul 40	Spr		AA15 (1) AWL from 1700 hrs 8 Jul 40 till 2355 hrs 11 Jul 40. Absnet 3 days 6 hrs 55 mins.	Sgt Dauphine	8 days Detn	13 Jul 40	Major Henshaw	Fort 12 days pay CGH
Field	18 Jul 40	Spr	1	(1) DRUNKENNESS (2) Breaking out whilst under close arrest		26 days pay	22 Jul 40	Capt HL Meuser	Fort 1 days pay - CGH
				(3) AWL from 1745 hrs 20 Jul 40 till 0745 hrs 22 Jul 40. Absent 37 hrs	Sgt Dauphine McIntyre				
Field	7 Aug 40	Spr		AWL from 2359 hrs 7 Aug 40 till 2300 hrs 13 Aug 40. Absent 5 days 22 hrs 59 mins	Sgt Dauphine	22 days Detn	1 Aug 40	Maj HL Meuser	Fort 28 days pay CGH
Field	30 Jan 41	Spr		AA 15 (1) AWL from 2359 hrs 30 Jan 41 till 0845 hrs 31 Jan 41. Absent 8 hrs 46 mins	Sgt Seaton	Fort 7 days pay	1 Feb 41	Maj. H.L. Meuser	CGH

(P.T.O.)

7 CANADIAN BASE REINFORCEMENT BATTALION

Received this day of , 1944

(a) One copy of Charge Sheet

(b) One copy of Summary of Evidence

I have no preference for the Convening Officer to appoint any particular officer to act as officer for my defence and will accept whoever is delegated.

signed by the accused ..Newman J. Pope

Witnessed by ..[illegible]

4K 117.

Pte. Rolfe. R. G.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F33461 Pte Raymond, George, ROLFE

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Not Guilty of Desertion, Guilty of A.W.L.	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

'HAS' ~~At present under sentence of ---------- beginning on (date) ----------~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 23 days, of which No days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under c2.)

Sentence Awarded by the Court: To undergo detention for one year

(Sgd) ---------- Judge-Advocate, if any. 28 Nov 44 Date awarded. (Sgd) "H.A. Snelgrove" Maj. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ---------- (Sgd) ---------- Commanding ----------

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 33, MML p 63. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the Court

~~I direct that the accused be not committed to detention (made until further notice by)~~ 'ISJ' (1)

(1. AA 57A. Delete if not used.)

(Sgd) "Ian S. Johnston" Brig.

Date 28 Nov 44

Commanding 11 Cdn Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F33461 Pte Rolfe, R.G.	29 Nov 44	"R.S. Somerville" Lt. Col.,

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY (D.M. [illegible] Capt. Cdn Sec GHQ 2 Ech A.A.I.)

RECORDED AT CMHQ IN AB 160 4K-117

CFASS (To Dept of AFAI) 40-1 & B/166B (5-43)

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Brig I.S. Johnston DSO ED Comd 11 Cdn Inf Bde dated 25 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) cppmt, A/rank or A/appmt, if any, see AA 102, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F33461	Pte	Raymond George	ROLFE	CBH

Proceedings Reviewed 27 Dec 44
"W. F. Taylor" Major
Cdn Sec GHQ 2 Ech AAI

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 28 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2F-75

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

'HAS' A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

'HAS' A3. The Court is opened. The accused is (are) brought before the Court. At 0845 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily (see RP 84).~~ 'HAS'

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President or named by the prosecutor to the accused~~ 'HAS'

~~Each member named in turn to the accused~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H.A.Snelgrove	PERTH
Member	Capt	G.A. Maybee	IRC
Member	Capt	J.F. Lockman	CBH
Judge-Advocate			
Prosecutor	Lt.	A.J.J. Mills	CBH
Defending Offr	Lt.	A.C. Sim	CBH

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ---------- before arraignment make(s) (no) (a) plea 'HAS' ---------- (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in A6 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) 'HAS' not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

'HAS'

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

'HAS'

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No Sir .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

'HAS' D2. The Prosecutor makes ~~no~~ (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed and considers the submission.(3) The Court is reopened, and the President announces that the submission is disallowed on the ..... charge(s) and allowed on the ..... charge(s) ; and that, accordingly, the trial will proceed on the former, but the accused is not found Not Guilty on the latter charge(s).(4)~~

'HAS'

(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Do neither ..... Do you intend to call witnesses on your behalf ? Ans No Sir ~~Are these witnesses as to character only ? Are~~ HAS .....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces ~~the findings (of guilty, of Not Guilty, and elects to the accused that the finding(s) on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) (or) The President announces that the accused is found Not Guilty on the charge and that he is to be released forthwith, and that the proceedings are accordingly determined. Part I of the Schedule is dated and signed.(2)~~

'HAS'

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes Sir .....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes Sir .....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"C" No F33461 Name Rolfe, R.G. Regt, Battery or Company "D" Corps Inf Date of enlistment 21 May 43 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/PAG/186 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Supplementary					
"HAS"				"L.E.Fox" Capt					

(PTO)

CHARGE SHEET

The accused; F33461 Pte Rolfe, Raymond, George, "D" Coy Cape Breton Highlanders, C.M.F. is charged with:

FIRST CHARGE
A.A. SEC 12 (1)a

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he,

in the field, absented himself without leave with intent to avoid battle, at1900 hrs 5 Oct 44 and remained absent until apprehended be No.1 Cdn L of C Provost Company at approx 1515 hrs 4 Nov 44 in the town of AVELLINO (Absent 29 Days 20 Hrs 15 Mins)

Field
16 Nov 44

"R.B. Somerville" (R.B. Somerville) Lt. Col.,
Commanding Officer,
Cape Breton Highlanders.

To be tried by Field General Court Martial

In the Field
25 Nov 44

" Ian S. Johnston"
(I.S. Johnston) Brig
Comd 11 Cdn Inf Bde

'HAS'

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PA3(1097) (29/03)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 320, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 33461	Pte		Raymond George	ROLFE	CBH

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 25 Nov 44 endorsed by me, (~~a Dy Jg Advt on my behalf~~). To be tried by Field General Court-Martial". "ISJ"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~Lt Col Judge Advocate (a) to act as or for the Asst Judge Advocate General, as Officer-President, for the convening of this trial.~~ "ISJ"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~Lt(a) appointed as Judge Advocate for the purposes of this trial.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	H.A. Snelgrove		FERTH

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	G.A. Maybee		IRC
Capt	J.F. Lockman		CBH

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt	G.S. Bauld		PLF

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (*Country.*)

"Ian S.Johnston"
(I.S. Johnston) (*Signed personally. RP 105 fn 2.*) Brig (*Rank.*)

Date 25 Nov 44

Commanding 11 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"HAS"

MEDICAL OFFICERS CERTIFICATE

This is to certify that I have examined No F33461 Rank Pte Name Rolfe, R.G. and find him in a fit state of health to undergo trial by FGCM.

28.11.44

28 Nov 44

"R. W. Boyden"(R.W.Boyden) Major
Medical Officer
Cape Breton Highlanders.

"HAS"

1

F33461 Pte Raymond, George, ROLFE

FIRST WITNESS FOR THE PROSECUTION

F78585 Sgt McLellan, H.D. D Coy C.B.H. sworn states:-

On 5 Oct. 44 I was Pl Sgt of No. 2 Pl D Coy C.B.H. Coy had been warned to move fwd. at 1900 hrs, Pte Rolfe was absent. After reaching objective I checked pl and found Pte Rolfe still absent. I reported accused absent to C.S.M. Since that time accsd did not appear on any parades with D Coy. Identifies accsd here how. Coy was approx 3 miles from front. Pl was warned of move fwd on 5 Oct 44. I made accsd No. 2 on a Bren gun and personally saw him. I checked Coy area after finding Rolfe was absent-- looked in all pl rooms, could not find accsd. Few shells dropped in area before moving off.

X-Exam:- Been in D Coy since unit left Canada. Maj. McPherson was coy comd on 5 Oct 44. I had a pl comd. Cant remember what sec accsd in. A Pte was leading accsd sec, which was No. 5 sec. Have a No. 2 on bren out of line. Don't remember what time I was warned to move fwd- it was daylight. Was warned by Coy Comd- all ranks C.B'd at 1400 hrs. Coy Comd had an "O" gp- can't remember before noon or after. Pl billited in house in different rooms. I was giving out mags and ammo- gave 4 mags to accsd. Can't remember if I personally warned accsd or not.

II

Fire shells dropped around area. Had a pl roll book on 5 Oct 44- called roll just before moning off almost dark. Called roll on reaching objective- Accused absent both times. Knowen accsd a month, knew name and to see. Accsd did fairly good job in last show.

Re-exam:- Can't remember if I personally warned accsd or not- gave him bren mags.

Court: Saw accsd last at about 1830 hrs 5 Oct 44 when I gave him bren mags. Had been in this area about 72 hrs- Bn rest area.
R.P. 83 (B) compiled with.

SECOND WITNESS — Lt. A.J.B. Mills C.B.H. sworn states:-

Produce document purporting to be signed by Capt H.F.Law of accsd arrest at 1515 hrs on 4 Nov. 44. Exhibit "A"
R.P. 83(B) compiled with.

Prosecution Closing Address:-

Established that Coy was moving fwd. Accsd did go absent, arrested in Avellino. Accsd issued with mags.

Defence Closing Address:-

Simple case of A.W.L. No evidence to show desertion. One vague witness. Accsd was not warned, issue of mags routine. Accsd went absent from rest area, did not intend to avoid battle.

Finding of Court: Nof Guilty of desertion but guilty of A.W.L.

III

On Conviction Before Sentence
Accsd on mitigation - Not sworn

Landed in Italy 4 Mar 44. Joined W.N.S.R. through Hitler line with them in May. In hospital 5 weeks, wounded in arm and leg. To Avellino then up to 4 Bn. Cross posted to C.B.H. In one show with C.B.H. Had no idea what kind of rest area unit was in- Oct 4 - 5 No knowledge unit was warned for front line. Coy was warned to move, but they didn't say fwd of back. Heard some Sgt's speaking "Couldn't see that Bn was going fwd. Unhappy in C.B.H.- didn't know anybody- reason I went absent. Previous record was clean.

Defence on Mitigation

Good service prior to going A.W.L. No friends in C.B.H. Accsd first crime.

" H.A. Snelgrove"
Major

Exhibit "A"

SCHEDULE "F"

CERTIFICATE IN ACCORDANCE WITH O.C. 2797 OF 10 APR 42.

I, Certify that No F33461 Rank Pte Name Rolfe R.G.
Unit Cape Breton Highlanders 5 Can Divwas arrested at Avellino (place)
at 1515 hrs on 4 Nov 44 date and that at the time of his arrest
he was wearing (Military uniform)

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer, warrant officer, non commissioned officer in charge of the detachment of the Cdn Provost Corps, Cdn Army into whose custody the above named person was taken on arrest.

"H.F.Law"
(H.F. Law) Capt
Officer Commanding
1 Cdn L of C provost
Company.

"HAS"

B

Substitute for AFB 296
or MFB 355

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

No. F33461 Rank Pte Name Rolfe, R.G. Unit C.B. Highr's
Age 20 Married or Single M No of Dependents deceased
Date of Attestation 21 May 43
Number of days in Close Arrest awaiting trial
Civil Military 23 days Hospital Total 23 days
Dates of appointments, promotions etc (if any)
Decorations Nil
In the Field
Date 28 Nov 44

"D.U.Smith" Capt
Officer i/c Regtl Books
Un it Cape Breton Highlanders

"HAS"
Note: Certified true copy of MFM 6 must accompany this form.

SUMMARY OF EVIDENCE

Summary of evidence in the case of F33461 Pte Rolfe, Raymond, George, "D" Coy, Cape Breton Highlanders, C.M.F. charged with one offence under section 12(1)a of the Army Act.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS:
F78585 Sgt McLellan, H.D. "B" Coy Cape Breton Highlanders, having been duly sworn states:

I am F78585 Sgt McLellan, H.D. of "D" Coy Cape Breton Highlanders. On 5 Oct 44 "D" Coy was in an area approx. 3 miles behind the front line and the area was under intermitent shell fire. The Coy was warned that we were moving forward at approx. 1900 hrs that day. I personally warned F33461 Pte Rolfe, R.G. of the move. I fell in my platoon at approx. 1700 hrs and found that Pte Rolfe, R.G. was absent. I checked the Company area and could not find him. On reached

the forward position I rechecked the platoon and Pte Rolfe, R.G. was still absent. I reported him as an absentee. To the bestof my knowledge Pte Rolfe, R.G. has not appeared on any parades in D Coy since that date.

"H.D. McLellan"

The accused declines to cross examine the witness.

SECOND WITNESS:

Capt D.U. Smith, Adjutant, Cape Breton Highlanders, having been duly sworn states:

I am Capt. D.U. Smith, Adjutant, Cape Breton Highlanders. I produce a document purporting to be signed by Capt. H.F. Law, Officer Commanding, 1 Cdn L of C Provost Company, showing the accused was arrested at AVELLINO at 1515 Hrs on 4 Nov 44.

"D.U.Smith"

The document referred to by the above witness is attached hereto and marked Exhibit "A".

"A.J.B. Mills"
OFFICER TAKING SUMMARY

The accused declines to cross examine the witness.

Summary of Evidence page 2-

The accused was warned as follows:

Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused: " I have nothing to say at this time".

"Rolfe, R.G."

I certify that R.P. 4 has been complied with.

Taken by me in the field, in the presence and hearing of the accused this 16th day of November 1944.

"A.J.B. Mills
OFFICER TAKING SUMMARY

4R-92

Pte. Rolland D.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : C 102000 Private David Ray Rolland LER

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec 12(1)(a)AA	Not Guilty		The court find that the accused
2nd				C102000 Pte D.R. Rolland of L.E.R.
3rd				is Not Guilty of Desertion but
4th				is Guilty of A.W.L.
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for nil beginning on (date) N/A (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 22 days, of which nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

Eighteen (18) months imprisonment with hard labour.

(Sgd) 15 Jan 45 (Sgd) "D.G. Duncan, A/Maj."
Judge-Advocate, if any. "DGD" Date awarded. President. *(RP 45, 50.)*
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. *(AA 54(5), RP 120(F), MML p 760.)*

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the finding and sentence of the court

I direct that the accused be not committed to prison or detention barracks until further order.(1) "MFB"
(1. AA 57A. Delete if not used.)

(Sgd) "M.F. Bogert, Lt-Col"
Date 17 Jan 45
A/Commanding 2 Cdn Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. *(RP 53, KR Can 576, 577.)*

Accused.	Date.	Signature of Offr.
C102000 Pte David Ray Rolland	20 Jan 45	"T.H. McDougall, Major" LER

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY
(D.M. [illegible] CAPT
CDN SEC 2nd ECH

RECORDED AT CMHQ IN AG 150 4/R 92

CPA96 (To Incl of AFAZ) 40 PS 8-1608 (3864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col M P Bogert A/Comd 2 Cdn Inf Bde dated 6 Jan 45
AFHQ
8 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-102000	Private	David Ray	ROLLAND	LER

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 13 & 15 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed. "DGD"

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A85, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1340 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2) "DGD"
(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ~~XXXXXXXXXXXXXXXXXX~~ as interpreter ? Ans ~~XXXXXXX~~
The Interpreter is sworn.(1) Do you object to ~~XXXXXXXXXXXXXXXXXX~~ as shorthand writer ? Ans ~~XXXXXXX~~
The shorthand writer is sworn.(1) "DGD"
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans ND (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 187, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc : "DGD"

President	A/Major	D.G. Duncan	Seaf of C.	"DGD"
Member	A/Capt	W.D.C. Tuck	Seaf of C.	"DGD"
Member	Lieut	J.R. Gay	PPCLI	"DGD"
Judge-Advocate	N/A			
Prosecutor	Lieut	T.N. Adamson	LER	"DGD"
Defending Offr	Lieut	F.T. Middleton	LER	"DGD"

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2) "DGD"
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused C-102000 Pte David Ray Rolland LER before arraignment make(s) (no) ~~a~~ plea(s). "DGD" (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~not~~ "DGD" not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~proceeds~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D "DGD"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A)). As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(D), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans "DGD" (5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ...., initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, such thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1) "DGD"

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1) "DGD"

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4) "DGD"

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans neither Do you intend to call witnesses on your behalf ? "DGD"

Ans Yes Are they witnesses as to character only ? Ans No

(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened. "DGD"

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1) "DGD"

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.(2) Part I of the Schedule is dated and signed.(3)

(1. AA 54(2) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) "DGD"

Ans Yes, B74719 Sgt Knight H.E. 1ZR

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3) "DGD"

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans in mitigation of punishment (2) "DGD"

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him on the 21st day of August. "DGD"

(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. FP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED C102000 Private David Ra y ROLLAND, of the Loyal Edmonton Regiment, a soldier of the Canadian Army Overseas, On Active Service, is Charged With:

1st Charge
Sec 12 (1) (a)
Army Act

WHEN ON ACTIVE SERVICE

DESERTING HIS MAJESTY'S SERVICE

In that he

in the Field, at 1300 hours, 19 December, 1944, when serving with his Company in a forward area, with intent to avoid such service, absented himself from his said Company until surrendering to the R.S.M., The Loyal Edmonton Regiment, at 1000 hours, 22 December, 1944.

TOTAL ABSENCE - 2 DAYS 21 HOURS

In the Field
3 Jan 45

"J.R. Stone"
.....
(J.R. Stone) Lt-Col
Commanding The L Edon R

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field

"M.P. Bogert"
.....
(M.P. Bogert) Lt-Col
A/Comd 2 Cdn Inf Bde

"DGH"
"LJB"
5 Jan 45

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C102000	Private		David Ray Rolland		LER

CONVENING ORDER.

"MPB"

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 8 Jan 45 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr) "MPB"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "MPB"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ "MPB"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	D.G. Duncan	Seaf of C
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	W.D.C. Tuck	Seaf of C
Lt	J.R. Gay	PPCLI
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

LT	G.F. Chapin	PPCLI
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE~~ "MPB"

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy	"M.P. Bogert"	Lt-Col
(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)

Date 8 Jan 45 (M P Bogert)
A/ Commanding 2 Canadian Infantry Brigade
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"DGD"

M E D I C A L C E R T I F I C A T E

THIS IS TO CERTIFY THAT C 102000 PTE HOLLAND D.R. LER WAS EXAMINED BY ME THIS DATE AND IN MY OPINION IS FIT TO UNDERGO TRIAL BY FIELD GENERAL COURT MARTIAL.

IN THE FIELD
13 JAN 45

"H. Mendelson, Capt" MO
5th Cdn Lt Fd Ambulance R.C.A.M.C.

"DOD"

M E D I C A L C E R T I F I C A T E

(KR (CAN) 557)

THIS IS TO CERTIFY THAT C 102000 PTE ROLLAND D.R. LERWAS EXAMINED ~~XXXXXXXX~~ BY ME THIS DATE AND IN MY OPINION IS FIT/~~[illegible]~~ TO UNDERGO TRIAL BY FIELD GENERAL COURT MARTIAL.

IN THE FIELD

15 JAN ~~45~~ 45

"H Mendelson Capt" .....MO
5th Cdn Lt Fd Ambulance R.C.A.M.C.

"DGD"

OPENING ADDRESS / PROSECUTOR

In the case of: C102000 Pte. Rolland, D.R.

I propose to call three witnesses in this case to prove that the accused absented himself from his Coy. in a forward area, with intent to avoid such service, or, in other words, deserted.

"DGD"

Page 1.

In the case of
C-102000 Pte D.R. Rolland. L. Edmn R.

First Witness (Prosecution) Lt. F. Petley having been duly sworn states:
I am Lieut. F. Petley Commanding 8 Pl A Coy LER.
Question by Prosecution: In your own words will you tell the court what you know of the alleged desertion of Pte. Rolland.
Ans. On 19 Dec 44 A Coy was in a reserve role in the vicinity of Casa Zoli MR 425391 Fusignano Sheet 89-III NW, which was a forward area approx 3500 yds from the nearest enemy posn. It was generally known throughout the Coy that while we were in this area that we were in reserve and would be going back into action. At approx 1300 hrs on this day it was reported to me by the A/Sgt that the accused, whom I now recognize, was not present at the noon meal. I made a search of the Pl & Coy area but could not find him, and at approx 1400 hrs I reported his absence to Coy HQ. I did not see him again until after his surrender & return to A Coy.

"DGD" No X examin.

R.P. 83 (a)&(b) complied with
"DGD"

"DGD"

Page 2.

In the case of
C-102000 Pte D.R. Rolland. L. Edmn R.

Second Witness (Prosecution) M107671 A/Cpl Osborne having been duly sworn states.
I am M107671 A/Cpl Osborne R.S. 8 Pl A Coy. LER.
Question by Pros. Would you tell the court, in your own words, what you know of the alleged desertion of Pte. Rolland.
Ans. On the 19 Dec 44, we were in reserve in a forward area. I noticed that some of the personnel were not on the noon meal parade. Cpl McAully, since deceased, who was then A/Sgt of Pl, & myself made a search of the Coy area, and reported to Lt. Petley our Pl Commander. He immediately held a roll-call, at which Pte Rolland, whom I now recognize, was missing. It was then about 1300 hrs.

"DGD"

Page 3.

In the case of
C-102000 Pte D.R. Rolland. L. Edmn R.

Second Witness (Prosecution)
Cross-Examination by Defending Offr.
Question: Would you describe to the court the nature of the shell-fire on your position from the 13th to 16th Dec 44 (inclusive)?
Ans: I would say that the shell-fire during that time was intense in our area.
Question: Did you notice any unusual effect on some of your men from this particular shelling.
Ans: Yes Sir, some of the personnel appeared very nervous.

"DGD" R.P. 83(a)&(b) complied with "DGD"

~~Page 4.~~

In the case of

In the case of
C102000 Pte D.R. Rolland. L. Edmn R.

Third Witness (Prosecution) M15614 RSM R.O. Bowen having been duly sworn (states.
I am M15614 RSM R.O. Bowen (LER)
Question by prosecution: In your own words, will you tell the Court about Pte Rolland surrending himself to you.
Ans: At approx 1000 hrs 22 Dec 44, Pte Rolland, whom I recognize, surrendered himself to me at Tac HQ of the LER; stating that he was AWL from his Coy. I placed him under open arrest and returned him to his Coy. At the time that Pte. Rolland surrendered, we were in a forward position and were under fairly heavy shell-fire.
Question by the President did the accused make any further statement other than that he was AWL.
Ans: Not that I remember Sir.
No X exam. R.P. 83(a)&(b) complied with "DGD"
"DGD"

In the case of
C102000 Pte D.R. Rolland. L. Edmn R.

at 0900 hrs 15 Jan 45

At 1540 hrs the Court Adjourn until 0900 hrs. on the 15 Jan 45. The Court reassemble, pursuant to adjournment, present the same members as on the 13 Jan 45.

First Witness (Defence) M38055 Pte Laforce A.J. having been duly sworn state
Defending Offr. Identify yourself to court. s.
Ans I am M38055 Pte. Laforce A.J. Stretcher Bearer A Coy 8 Fl. LER.
Question Do you recognize the accused.
Ans Yes Sir.
Question Did you take the accused on sick parade on the 18 Dec 44?
Ans Yes Sir.
Question What was the disability of which the accused was suffering.
Ans Chaffing in the crotch.
Question Will you tell the court, the treatment given & and the instructions received by you regarding the accused.
Ans I was instructed to see that he would not do any marching.
Question Was the accused returned to his Coy immediately.
Ans He received treatment and returned to his Coy after.
"DGD"

In the case of
C102000 Pte D.R. Rolland. L. Edmn R.

Cross-Examination of First Witness (Defence) by Prosecuting Offr.
Ques. Did the accused also go on sick parade on the 19 Dec 44?
Ans. Yes Sir
Ques. What time, on the 19th Dec 44, did the accused return from the MIR?
Ans. I don't know the exact time, but it was x before noon hour.
Ques. What time did A Coy move off that night?
Ans. I dont know the exact hour; as soon as it was dark.

Examination of First Witness (Defence) by President
Question: When you take sick-parade is there any written record kept as to treatment?
Ans: No
Question: What procedure do you follow on returning to the Coy?
Ans: I usually report to an officer in charge
Question: Did you report the condition of Pte. Rolland to your Pl. Comdr?
Ans: Yes, I reported he was not to do any marching.
Question: How far did you march that 19 Dec 44 night?
Ans: We marched approx 4 miles.
R.P. 83(A)& (B) complied with
"DGD"

In the case of C102000 Pte D.R. Rolland L. Edmn R.

Court addressed by Defending Officer

In this case the Defence have attempted to prove that the accused was suffering from a physical disability at the time the alleged desertion occured. We have also shown that the accused had been subjected to extremely heavy and direct shell-fire, on the four days previous to the alleged dessertion. We submit to the court that the reason, of the accused, was temporarily derraigned by these two factors.

Closing Address by Prosecuting Officer

Evidence has brought out the fact that the accused, returned from the MIR, shortly before the noon meal on the 19 Dec 44; but that the accused did not appear on this noon meal, and his absence was established at 1300 hrs. At that time nothing has been brought up in evidence to indicate that a route march was imminent, and in fact the Coy did not move off until dusk that night. I suggest to the Court, that the accused did not give his Coy officers the opportunity to excuse the accused from the march.

"DOD" R.P. 83 (a)&(b) complied with "DOD"

Closing address (continued)

CLOSING ADDRESS - PROSECUTOR

In the case of: C102000 Pte. Rolland, D.R.

If a man deserts, and afterwards regrets of his action and returns to his unit; even if that unit is still in a forward area, it does not alter the fact that his original intention was to desert, nor that he did, in fact, desert. In this case, the evidence of the first two witnesses proves that the accused absented himself from his Coy. in a forward area with intent to avoid service, and that he did avoid such service. I submit to the Court that a prima facie case of desertion has been established.

"DOD"

In the case of: C102000 Pte D.R. Rolland. L. Edmn R.

In accordance with R.P. (86)d

First Witness (Prosecution) recalled by the Court, Lieut. F. Petley, who on his former oath states in reply to the President.

Question: On the mornings of 18th or 19 Dec 44 did you receive a sick report from your Pl. Stretcher-bearer?

Ans: I received a verbal report that Pte. Rolland had been on Sick Parade on the morning of the 19 Dec 44; I took it for granted that it was for a former complaint (chaffed crotch).

Question: Was Pte. Rolland excused any duties on account of this?

Ans: On the days previous to this Pte. Rolland had been excused marching

Question: When did you know, for sure, that the Coy was moving forward?

Ans: At the Coy Commanders "O" Gp at approximately 1430 hrs.

Question: On the 19 Dec 44, Pte. Rolland then was not excused marching?

Ans: Not to my knowledge. There was no report to me, of his being excused duty, on that day.

R.P. 83 (a)&(b) complied with "DOD"

The court is closed for consideration of the finding "DOD"

"DOD"

In the case of: C102000 Pte. D.R. Rolland

Character Witness for Defence B74719 Sgt. Knight being duly sworn states:

Question by Defending officer: Would you identify yourself to the Court?
Ans: I am B74719 Sgt. Knight H.W. enlisted 1 Jul 40, L. Edmn Regt.
Ques: Do you recognize the accused?
Ans: Yes Sir.
Ques: Would you tell the court what you know of the past character and conduct of the accused?
Ans: I was the Pl Sgt of the accused from 10 Feb 44 until approx. the end of Jul 44; and during that time the accused carried out his duties, a little above the average soldier. He was put 2 i/c (acting) of a section at different times, and did a very conscientious job. During that time I had no trouble whatsoever with the accused. We went through the static line on the Ortona front, plus the Hitler line, and during this time the accused has proved very trustworthy and reliable.

No X exam. "DGD"

R.P. 83 (a)&(b) complied with "DGD"

Plea of Mitigation in the case of:-
C102000 Pte. D.R. Rolland, L Edmn R.

In this case, the defence has attempted to prove that the accused was suffering from a physcial disability at the time the absence occured. We have also shown that the accused had been subjected to very heavy and direct shell-fire on the four days previous to the absense and that this direct shell-fire had a very noticeable effect on the members of the platoon in which the accused was serving. The past conduct of the accused has been good as shown by evidence of the character witness. I submit to the court that the physcial disability under which the accused was suffering and the nervous strain imposed on the accused in the previous action led him to go absent. He has shown in the past that he is capable of fulfilling his duty as a soldier. Therefore I would ask the court to take these matters into consideration and be lenient with the accused so that he may be returned to his unit as soon as possible.

"DGD"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C102000	Private	ROLLAND, David Ray	The Loyal Edmonton Regt

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15 (1) once times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 17 Aug 44

Date of last entry in Field Conduct Sheet 17 Aug 44

"ELB" 2. [redacted]

*Strike out if not applicable.

"ELB" *3. [redacted]

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 22 days in military custody, *i.e.*, 9 days in open arrest, 13 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 23

"ELB" 6. The date of his attestation is 25 Nov 42

7. The service which the accused is allowed to reckon is 2 yrs

‡State the military decorations (if any) held by accused.

"ELB" 8. [redacted]

"ELB" 9. [redacted]

"ELB" [redacted]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

H D D

(21114) Wt.8670/668 100,000 4/42 A.& E.W.Ltd. Gp.698
(22459) Wt.29256/1873 60,000 9/42 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		Nil.		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 13 day of January 1945

E. L. BOYD

(E. L. BOYD) CAPT & ADJT
THE LOYAL EDMONTON REGT

MFM 6
(AFB 122)
(CPAS/136 (3438)

No C102000 Name ROLLAND David Ray | Sqn, Battery, or Company | Corps Cdn Inf Corps | Date of enlistment 25 Nov 42 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Original sheet destroyed on completion of six months service 25 May 43 Date of last entry 8 Feb 43									
Field 17 Aug 44		Pte	nil	Cases of Drunkenness Nil WOAS-Absent without lea ve from 0600 17 Aug 44 until surrending himself to the M.P. at approx 2030 hrs 24 Aug 44. Sec 15 (1)AA	M15568 Sgt DICK JEW Documentary	28 days FP 21 days pay	6 Sep 44	Lt-Col M.P. Bel Irving	
				Released from 1 Cdn Div F.P. Camp wef 27 Sept 44 Sentence having expired Remission earned under Rules for F.P. Camp & Etc N/A Commandant Initials _____					

CERTIFIED TRUE COPY

"F. L. Boyd"

(F.L. Boyd) CAPT & ADJT
The Loyal Edmonton Regt

Ex "B" "DGD"

"B" "DGD"

(PTO)

SUMMARY OF EVIDENCE in the case of C102000 Private David Ray ROLLAND, of the Loyal Edmonton Regiment, a soldier of the Canadian Army Overseas, C.M.F.

By order of the Commanding Officer, evidence is taken on oath.

1st Witness
Prosecution

Lieut. F. Petley, of the Loyal Edmonton Regiment, having been duly sworn, states:-

I am Lieut. F. Petley, commanding 8 Platoon, "A" Coy., of the Loyal Edmonton Regiment. On 19 December, 1944, "A" Coy was in a reserve role in a forward area in the vicinity of Casa Zoli (MR 425391 Fusignano sheet 89 III NW), which was approximately 3,500 yards from the nearest enemy positions. On that day at approximately 1300 hours, the acting platoon sergeant reported to me that C102000 Pte [redacted] D.R., whom I now recognize, was not present for the noon meal. I made a search of the platoon and Coy area, but was unable to find Pte Rolland. At approximately 1400 hours, I reported his absence to Coy HQ. I did not see Pte Rolland again until after his surrender and return to "A" Coy.

The accused declines to cross examine this witness.

(signed) F. Petley

2nd Witness
Prosecution

M107671 A/Cpl Osborne, R.S., of the Loyal Edmonton Regiment, having been duly sworn, states:-

I am M107671 A/Cpl Osborne, R.S., of 8 platoon, "A" Coy., the Loyal Edmonton Regiment. On 19 December, 1944, we were in reserve in a forward area. At approximately 1300 hours that date, immediately after dinner, we became aware of the fact that some of the men were missing. Cpl Macauley, who was then acting as platoon sergeant, and I, made a search of the Coy area, and found that three soldiers were missing. C102000 Pte Rolland, D.R., whom I now recognize, was one of those missing. We then reported to Lieut. Petley, our platoon commander, and accompanied him on a further search, but we could not find Pte Rolland.

The accused declines to cross examine this witness.

(signed) R.S. Osborne

3rd Witness

M15614 R.S.M. R.O. Bowen, of the Loyal Edmonton Regiment, having been duly sworn, states:-

3rd Witness
Prosecution
Cont'd

I am M15614 R.S.M. R.O. Bowen, R.S.M., of the Loyal Edmonton Regiment. At approximately 1000 hours, 22 December, 1944, the accused C102000 Pte Rolland, D.R., whom I now recognize, surrendered himself to me at Tac H.Q., of the Loyal Edmonton Regiment, stating that he was absent without leave. I placed him under open arrest, and returned him to his Coy. At the time Pte Rolland surrendered himself to me, we were in a forward area, and under fairly enemy shell-fire.

The accused declines to cross examine this witness.

(signed) R.O. Bowen

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything, or give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing, and may be given in evidence."

The accused declines to make a statement.

I certify that the foregoing Summary of Evidence, consisting of three pages, was taken down by me in the presence of the accused, on 2 Jan 45, and that Rules of Procedure 4 (C)(D)(E)(F) and (G) have been complied with.

2 Jan 45 (signed) T.N. Adamson Lieut
The Loyal Edmonton Regiment
In the Field Officer Taking Summary

QQQ-151

PTE ROLLAND RL.

"X"

Chs. Bellevance Major

H. 131

RECORDED AT CMHQ IN AB 160 QQQ-151

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Fifth day of June, 1944.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*(and that it is not practicable to delay the trial for reference to a superior qualified officer.)~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

~~*(I am unable to appoint:~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~for the following reasons, namely:—)~~

PROCEEDINGS REVIEWED

12 July [signature] Capt.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	C Bellevance	R 22e R

Members.

Rank.	Name.	Regiment.
Capt	C B C Cochran	West NSR
Lieut	E H Holloway	West NSR
Capt	F W Normandeau	Carlt & York R

Waiting

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] (J F H Bernatchez), Brigadier,

Commanding 3 Cdn Inf Bde

Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
3101995 Pte Richard Lloyd ROLLARD, Carlt & York R	First Charge Sec 5(7) AA	Guilty	Not Guilty	Finding of not guilty confirmed. Sentence not to be promulgated by Commanding Officer.
			Imposed by the Court	Confirmed in the field this 9th day of June 1944 Charles Bellowes Brig

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— No

(Signed) E Lunn Hby (Signed) Charles Bellowes Brig. Major
(E. W. Bambotcher), Brigadier,
Commanding 3 Cdn Inf Bde A. 22 R.
Convening Officer (e) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 9th day of June 44, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter)
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 9th day of June 19 44

Charles Bellowes Brig
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (*b*) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this day of 19

Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(33579) Wt.46179/350 50,000 2-43 A.R.E.W.,Ltd. Gp.498

C. Fellowes Major

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Charge-Sheet.

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (3) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

cp *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to cp. charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C Bellavance Major

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at In the field on the 9th day of June 1944 by order of Brigadier J. P. E. Bernatchez DSO-OBE

Commanding 3 Cdn Inf Bde

dated the 5 day of June 1944

President.

Major Charles Bellavance R22R

Members.

Capt. C. A. C. Cochran West NSR

Lieut E. H. Hollaway West NSR

, Judge Advocate.

Trial of* T-101995 PG Richard Lloyd Rollard Carlt & York Regt

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ is not available CB ~~to serve owing to~~

, ~~waiting member takes his place as a member of the Court.~~ CB

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. L. A. Duplissa Carlt & York Regt.

~~Counsel‡~~ or defending officer† Major C. R. MacAlpine - St John Fusiliers

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked "X", signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

30057 Wt.W4(820/2) 10,000 sets 12/41 K. & H., Ltd. G657/11. Forms 49/56

B 2

CHARGE SHEET. C Bellorones Maj.

The accused, C101995 Private Richard Lloyd Rolland, a soldier of the Carleton & York Regiment, Canadian Army Overseas, C.M.F., when on Active Service is charged with:

First Charge
Sec 5(7)A.A.

When on Active Service, misbehaving before the enemy in such manner as to show cowardice,

in that he,

in the Field, at about 0630 hrs on 23 May 44, during an attack on the HITLER LINE, and when under the enemy's fire, fell out of the ranks, went away and secreted himself in a house.

In the Field.

Date 1 Jun 44. [signature] Lt.-col.,
Comd Carlt & York R.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field.

Date 9 June 44 [signature] Brigadier,
Comd 3 Cdn Inf Bde.

C Bellamy

MEDICAL OFFICERS CERTIFICATE

KR(CAN) PARA 357

I certify that I have this morning examined

No. C-101995 Pte. Bellamy, N.L. .....

of the Carleton & [illegible] Regiment and in my opinion he is

fit ~~unfit~~ to undergo Trial by Court Martial.

Station [illegible] Field

Date 9.10.[illegible] .....

[illegible] Capt.,
Medical Officer
R.M.O. Carlt & York Regiment.

C

Proceedings on Plea of Not Guilty.

*Instruction. (*See* R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer.

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution.

being duly sworn, is examined by the prosecutor.

C Bellowane Imp.

FIRST WITNESS
for
Prosecution

Lt. R. C. Young, having been duly sworn is examined by the Prosecutor.

1st Question Answer. Do you recognised the accused?
Yes Sir.

2nd Question Will you tell the court what you know about the accused on the night of 22 May 44

Answer Beginning On the night of 22 May 44, about 20 30 hrs. I warned my Platoon that we would attack the Hitler line on the Morning of the 23rd May 44.
Pte Rolland, R. S. was present at this time, at 05 00 hrs 23rd May 44. we crossed the start line to attack the Hitler line, Pte Rolland, R. S. was with the Platoon at this time after advancing under shelfire and at about 05 30 hrs 23rd May 44. having some casualties in my Platoon, I checked my Platoon again and found Pte Rolland, R. S. absent. He reported back to me at approx. 1000 hrs. 24th May 44. so far we were moving back from the Hitler line.

By Defence

Mr Young you say Pte Rolland R. S. reported back the Morning of the 24th May 44?

Yes Sir.
That was before the action of the crossing of the melfa?
Yes Sir.

C Bellamie Wagn

Did Pte Rolland go with your Platoon on that crossing?

He did Sir

Was your company subject to hearing shelling during that crossing?

There was fairly heavy Shell and Mortar fire.

How did Pte Rolland, R.S. act during the shelling?

He was slightly nervous, but came along just the same with my Platoon

No Re-examination by the Prosecution

Certified that R.P. 83(B) complied with

Ind Witness
FOR
PROSECUTION

B112340 Pte Mac Kenzie, G.W. having been duly sworn, is examined by the Prosecution

Do you recognised the accused?

Yes Sir.

Will you tell the court all that you know about the accused on the day of 23rd May 44.

On the day 23rd May 44 we crossed the starting line at 0600 hrs to attack the Adolf Hitler line. Pte Rolland, R.S. was then with us when we crossed the starting line we got about 150 yds infront of the wire ~~[illegible]~~ ~~[illegible]~~ Mr Young called me up infront of him to send me back to look for Pte Rolland, R.S. it was then about 0600 hrs. I went back about 100 yds to the rear, and found Pte Rolland, R.S. in a house he looked to be badly shaken and didn't look as if he could go on any further, looked him, if he was coming forward but he didn't answer, he seemed to be in a dage, so I returned back and

C Bellamore Wagner

reported what I had found to Mr. Young. That was about 0645 hrs.

By Defence

Is Mr Rengie will you describe to the court the intensity of the fire?

It was quite heavy since we had to keep ducking and the shelling was very close.

Have you ever been in action before?

I was at the Rhodes in January and never left the regiment.

Can you give a more detailed description of the appearance of the accused?

Sir, he had quite white, his eyes were glassy and pretty well shaken up.

In other words he looked some concussion?

Yes Sir.

The Prosecution does not wish to re-examine the witness

Certified that R.P. 83(b) complied with

The Prosecution is close

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes Sir

Question. Do you intend to call any other witness in your defence?

Answer. Yes Sir

Question. Is he a witness as to character only? *Answer.* Yes Sir

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

C Bellavance [illegible]

1st WITNESS FOR THE DEFENCE

C 101995 Pte Rolland, R.S. having been duly sworn is examined by the Defence.

Did you go forward in the attack on the morning of the 23rd May 42?

Yes Sir.

What type of Mortar and Artillery fire did you come under?

Very heavy, Sir.

How long were you under this fire?

We were under it for four days before we started the attack.

Do you remember on the morning of the 23rd May 42, leaving your Platoon and going back to the house where you were found by Pte Mac Kenzie?

No I don't, Sir.

Did anyone ever warn you as to the consequences of such an action?

No Sir.

By Prosecution

Although no one ever told you that you could be charged with cowardice if you left your Platoon in action you do know that it is cowardice, do you not?

No Sir not exactly.

No re-examination by the Defence.

Certified that R.P. 83(b) complied with

C Bellevance Insp

Witness as to Character of C101995 Pte Rolland, A.J.

Mr Young will you tell the court about the general character of the accused?

~~[illegible]~~ Sgt

I came to ~~the Platoon~~ Pte 8 Platoon "A" Coy Cuillerand Fort Regiment on the 15th April 44. Pte Rolland was in the Platoon, Sgt from the time I joined the Platoon until the 23rd May. He was a good soldier and never caused me any trouble.

By Prosecution

Sir It is definitely proven by the two witness of the Prosecution that Pte Rolland, A.J. left the Platoon during an attack, ~~[illegible]~~ Sgt seeming by Pte Rolland here what he was doing and had no reason what is ever for leaving the line as he was not ~~[illegible]~~ wounded in any way, I therefore think that the court should find the accused guilty of contrast.

By Defence

It is laid down by K. R. Com. in 420 that I quote, "Officers Commanding units will ensure that every soldier is acquainted with section 4 to 44 of the Army Act", in this case this has not been done and while ignorance of the law is no excuse the accused has not had any ~~opportunity~~ of knowing the law, the crux of this charge is really intent and while it is admitted that a fever is presumed in law to have intended

C Bellamy Mayor

the probable and Natural consequences of his act, the accused in this case was not aware of the probable consequences and therefore could not have intended them. I further submit that the accused knew of his action the following days did not show anodine and was suffering from on the Morning of 3rd Mayor from a case of Shell-shock.

The Prosecution objects to the words Shell-shock.

E

Finding.

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

G.101995 Pte Richard Lloyd Rollard Cadt & York Regt. is not Guilty of the charge and aquit of the same

Signed in the field this 9th June 1944

Charles Bellavance Mayor.
President

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

Instructions.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the sentence of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

Summary of Evidence in the case of C101995 Private Richa Lloyd Rolland, a soldier of the Carlt & York R., Canadia Army Overse s, C.M.F.

By direction of the Commanding Officer the evidence is t en on oath.

First Witness For Prosecution

Lt E.C. Young, Carlt & York having been duly sworn state: I am Lt E.C. Young, pl commander of No. 8 pl, A Coy Carlt & York R. On the night of 22 May 44 at about 2100 hrs I warned my pl that we would attack the ADOLF HITLER LINE t next morning, the 23 May 44 and that, along with the rest of the Coy we would cross the start line at 0600 hrs on 23rd. I had to warn each section separately due to the posn we were occupying. The accused Pte Rolland was pres ent in No. 5 section when I gave this warning. The follo ing morning we crossed the start line at 0600 hrs to atte the HITLER LINE, Pte Rolland was present at that time. were moving forward under heavy shell fire and I checked pl again and found that Pte Rolland was now absent. I se Pte MacKenzie C.W. back to check and see if he could find the accused. He reported back to me at about 0700 hrs, stating that Pte Rolland was in a house about 150 yds bac I next saw the accused again when he surrendered himself ment about 1000 hrs the next morning the 24 May 44., when we were moving back from the front.

E.C. Young Lieut

The accused declines to cross-examine this witness.

Second Witness for Prosecution

B112340 Pte MacKenzie, C.W., a soldier of the Carlt & Yor R., Canadian Army Overseas having been duly sworn states: I am B112340 Pte MacKenzie, C.W., of 4 Section No 8 pl, A Coy, Carlt & York R. At 0600 hrs on 23 May 44 we cross the start line to attack the HITLER LINE. Pte Rolland wa with the pl when we crossed the start line. We went for- ward to about 150 yds in front of the wire. The accused was now missing. That was about 0645 hrs. xxxxxxxxxxxx xxx Lt Young sent me back to look for him. I went back to a house about 100 yds to the rear and found Pte Rolla there. I could see that he was badly shaken; he didn't look as if he could go on any further. He was shaking al over. I asked him if he was coming forward, but he did n answer. He seemed to be in a daze. We were under heavy mortar, arty and machine gun fire at this time. I return to my pl and reported what I had found, to Lt. Young.

C.W. MacKenzie

The accused declines to cross-examine this witness.

The accused was cautioned as fol ows:
Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused elects to give evidence on oath.
The accused, C101995 Pte Rolland, R.L., a soldier of the Carlt & York R., Canadian Army Overseas, having been duly sworn states:
I am C101995 Pte Rolland R.L., of 4 Section No 8 pl, A Coy Carlt & York R. On the morning of 23 May 44 A Coy went forward into the attack at 0600 hrs. moved forward with my section at this time. We came under heavy mortar & arti and machine gun fire. I started to shake and tremble so I started back to a house about 150 yds back and rested there and took shelter. I kept shivering and shaking and could hardly talk.

R.L. Rolland

Certified that Rules of Procedure 4 (c), (d), (e), xxxx (f) and (g) have been complied with.

Taken down by me in the presence of the accused this 1st day of Jun 44.

D.E. Smith Capt

Officer taking Summary.

List of Witnesses in the case of C101995 Pte Rolland, R.L.

For Prosecution: Lieut E.C. Young. Carlt & York R.

B112340 Pte MacKenzie, G.W. Carlt & York R.

For Defence: N I L.

List of Exhibits in the case of C101995 Pte Rolland, R.L.

N I L.

Certified that I have received free of charge a true copy of the Summary of Evidence and all other dicuments relating to my trial by Court Martial.

Certified that I have received free of charge a true copy of the Charge Sheet upon which I am being brought before Court Martial.

I desire the services of an officer to represent me at my trial.

R.L. Rolland

5 V-125

Pte. Rollings, J. F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-121679 Pte ROLLINGS, John Henry - 1 Cdn Pro Trg Dep

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 2 6 days, of which N I L days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

10 (ten) per cent all ordinary pay for a period of Forty (40) days.

(Sgd) ..... 17 NOV/45 (Sgd) .....

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks un il further orders.~~(1)

(1. ~~AA 57A. Delete if not used.~~)

(Sgd) .....

Brigadier, Commanding 'C' Group, Cdn. Reinforcement Units.

Date 19 NOV 45

Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C 121679 Pte Rollings, J.H.	22 Nov 45.	W.J. Lloyd Capt C.O. 1 Cdn Pro Trg Depot.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 * 24-125

FIELD GENERAL COURT-MARTIAL

CFA66 (In lieu of AFA31) 40/P & R/1068 10/44) 4/38B

Convened by Order of Brig E.C.Plow, CBE DSO Comd "C" Gp, CRU dated 14 Nov 45

RECEIVED 28 NOV 45 ... PROCEEDINGS REVIEWED ... CMHQ BRANCH CMHQ

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C-121679	Pte		John Henry	ROLLINGS	1 Cdn Pro Trg Depot

PROCEEDINGS OF TRIAL.

Held in the Fd (or country) ITALY AND on (date(s)) 17 NOV 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 693, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1112 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ..... no interpreter? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to TAPSIR MAN SINGH DAS as shorthand writer? Ans NO - SIR. The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L. PEDDEN VD	HQ CRU
Member	CAPT	W. MARK	1 C Gen
Member	LIEUT	E.V. LEVESQUE	1 C Gen
~~Judge-Advocate~~			
Prosecutor	LIEUT	H.J. McCULLOUGH	1 C. PRO TNG DEP
Defending Offr	LIEUT	C.C. ANDERSON	1 C PRO TNG DEP

Questions by President: Is the Prosecutor a lawyer? Ans N.K. Is the Defending Offr a lawyer? Ans N.K.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea

.....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 88s to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO - SIR .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO - SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (n), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes - I WILL NOTE - ATT .....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 562-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, C-121679 Pte JOHN HENRY ROLLINGS, of No. 1 Canadian Provost Training Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
A.A. Sec. 15 (1)

When on Active Service absenting himself without leave.

In that he in the Field, absented himself without leave from 0930 hours 14 Sep 45 until surrendering himself at 2230 hours 22 Oct 45.

Total time absent 37 days 22 hours 31 minutes.

Field
1 Nov 45.

(W.G. LLOYD) Lt.-Col.,
Commanding Officer,
No. 1 Cdn Provost Trg Depot,
Canadian Army, Overseas

Remanded in close arrest for F.G.C.M.
1 Nov 45.
W.G. Lloyd Lt. Col
1 Cdn Pro Trg Depot

To be tried by Field General Court Martial

Brigadier
Commanding "C" Group, Cdn Reinforcement Units
(Convening Officer)

14 Nov 45
Bordon, Hants.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
C-121679	Pte		John Henry	ROLLINGS	1 Cdn Pro Trg Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has (~~did~~) committed the offence set forth in the Charge Sheet attached and on (date) this date endorsed by me, (~~as the case may be~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial; ~~as the case may be, that the Commanding Officer is precluded from convening a Court~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I appoint to act as Judge-Advocate at the Court, and I direct the President to cause the accused to~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint such persons subordinate to the President as are named hereunder~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Colonel	D.L. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by CO	1 CGRU
Lieutenant	To be detailed by CO	1 CGRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Dat 14 Nov 45

Commanding "C" Group, Cdn Rft Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In Lieu of AFA 3) 40/P & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S REPORT

I certify that No. C121679 Pte ROLLINGS, J.H.

of 1 Cdn Pro Trg Depot is in a good state of health,

and fit to undergo Trial by Court martial.

J.H. Berry Capt.

Medical Officer

1 Cdn Pro Trg Depot

Station Field

Date 17 Nov 45

M. F. B. 246

5034—12-43 (3222)

H.Q. 1772-39-480

Mr. President, Members of the Court:

You have heard the charge against the accused, Pte Rollings, and you have heard his plea of Guilty to the charge as read. As his defence counsel, I wish to make a plea of mitigation on his behalf, putting before you the extrenuating circumstances of this case leading up to his period of A.W.L.

The accused joined the army at the age of 18 years, and on his arrival in this country was transferred into the infantry, and after only a few days in the country was sent to Italy as reinforcement for the Irish Regiment. About this time, he received word that his brother in the R.C.A.F. had been killed and it was quite a shock to him.

On top of this unwelcome news, came word that his father was ill and was forced to retire from business.

Just as if this young boy, only nineteen, had not enough trouble, he was taken prisoner of war in December and was held in a concentration camp until liberated by the Americans in April. Five long months in a filthy P.W. camp is not a good experience for a boy of his age.

On his release from the P.W. camp he was promised speedy repatriation to Canada, presumably by some irresponsible person who was at error. On his return to England, he was informed that he could not be repatriated to Canada as he had only five months as P.W. against the necessary 6 as laid down, so was held at a C.I.T.R.

On top of this, he received futher news of his father who had been completely broken up over the death of one son and the other first missing and then a P.W. His grief and worry had left him an old and broken man forced to retire from business and lead the life of a helpless invalid.

This prompted the accused to apply for compassionate leave to Canada. Months passed and no word of his compassionate application. In the meantime, he had been posted (not voluntary) into the Canadian Provost Corps in which he had no desire to serve.

Do you think his morale would be awful high? He was kept in ignorance as to the outcome of his request for compassionate leave and was lead to believe that it had not been approved. Do not the above facts show very poor man management on the part of this man's officers and N.C.O.'s?

He received leave and went to Manchester. Here is one thing that is a bit unusual in the history of a Canadian soldier's A.W.L. There was no young girl friend mixed up in it.

Pte. Hollings stayed with friends, an elderly couple, who gave him the friendship and home care which he had been missing for so long. Can't you see what an impression that the friendliness and the homely attentions would make on any boy whose mind was tortured as his must have been.

The accused has served his country well. Previous to this he has never had a charge against him. His M.F.M.6 is clean and his military record excellent.

In closing, I would like to ask you to bear in mind the extenuating circumstances of this case, taking into consideration the extreme youth of the accused and the lack of proper supervision when it was most needed.

This boy is not a criminal and he has suffered enough through his own folly.

While he was A.W.L. his compassionate application was approved by

N.D.H.Q., but he could not be contacted. This in itself shows that Rollings had cause to worry and had some one during the long period of waiting, given him encouragement in the outcome of his compassionate leave, I firmly believe that this lad would not be on charge to-day.

My case now rests with the court, who I hope, will be as lenient as possible and not cause further unnecessary hardship to the accused.

THANK YOU, GENTLEMAN!

The accused has served 26 days awaiting trial.

~~C.M.H.Q. A.T. 5982~~

dated 28 Sept 45

Priority 3

~~Death of Bro 22 Dec 40 (only bro)~~

~~Father [illegible] Machine~~

~~Education Grade 8~~

~~P.O.B. Jan 11 1925~~

SUMMARY OF EVIDENCE

In the case of C-121679 Pte ROLLINGS J.H. No.1. Canadian Provost Training Depot. Charged with absenting himself without leave.

I produce the following documents pursuant to C.R.O. 5352 which have been read over and shown to the accused.

(A) Declaration of the Court of Inquiry. (Exhibit "A")

(B) Certificate in accordance with A.A. 163 (1) (j). (Exhibit "B")

(W.J.) Mc Cullough) Lieut
No.1. Cdn Pro Corps Trg Depot.

The accused was cautioned as follows: " Do you wish to make any statement or give evidance on Oath. You are not obliged to say anything or give any evidence unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence".

The accused declines to make anystatement at this time and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one (1) page, was taken down by me in the presence of and hearing of the accused and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

Aldershot, Hants.
24 Oct 45.

(W.J.) Mc Cullough) Lieut
No.1. Cdn Pro Corps Trg Depot.

E T A
MY

CONTINUED LIST OF DEFICIENCIES

ARTICLE	VALUE	ARTICLE	VALUE
Mugs, drinking	.17	Mugs, drinking	.13
Vests, Woollen	$1.20	Vests, Woollen	.90
TOTAL	$30.80		$27.01

Exhibit "A".

RECORD of the Declaration of a Court of Inquiry assembled at No.1 CDN PRO TRG DEPOT. on the 9th day of October 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. C-121679 Pte ROLLING, J.H. of No.1 CDN PROVOST TRAINING DEPOT.

DECLARATION

The Court declare that No. C-121679 Pte ROLLING,J.H. of No.1 CANADIAN PROVOST TRAINING DEPOT. illegally absented himself without leave No.1 CANADIAN PROVOST TRAINING DEPOT. at 2359 Hours on the 14th day of September 1945, that he is still so absent, and that on the 9th of October, 1945 he was deficient, and that he is still deficient of the following articles :—

100%

ARTICLES		VALUE
Blouses, Battle Dress	1	$ 6 50
Drawers, Cellular Short	1	43
Greatcoat, drab	1	11 55
Shirts, Angola drab	1	2 40
Socks, prs	4	1 84
Trousers, battle dress	1	6 55
Braces	1	32
Brush, Button, Brass	1	26
Brush, Clothes	1	48
Brush, Hair	1	34
Brush, shaving	1	37
Brush, shoe, polishing	1	28
Brush, tooth	1	11
Holdall	1	19
Housewife, complete	1	17
Knife, clasp	1	86
Towels, hand	1	34
Packs	1	1 84

75%

ARTICLES		VALUE
Blouses, battle dress	1	$4 88
Drawers,cellular short	1	33
Greatcoat, drab	1	8 66
Shirts, Angola drab	1	1 80
Socks, prs	4	1 38
Trousers, battle,dress	1	4 92
Braces,	1	24
Brush, Button, Brass	1	20
Brush, Clothes	1	36
Brush, Hair	1	26
Brush, Shaving	1	28
Brush, shoe,polishing	1	
Brush, tooth	1	08
Holdail	1	15
Housewife, complete	1	13
Knife, clasp	1	67
Towels, hand	1	26
Packs	1	1 38

Continued on Attached Sheet.

A/Major R.W. Kyle, "C" Coy, Cdn Pro Trg Dpt — President

Signed at No.1 Cdn Pro Trg Dpt Aldershot, Hants

Lieut C.M. Docking, "B" Coy, Cdn Pro Trg Dpt — Member

this 9th day of October 1945

Lieut J.K. McCullough "B" Coy, Cdn Pro Trg Dpt. — Member

Signature of Commanding Officer (W.G. Lloyd) A/Lt. Col.

Certified true copy

Signature of Officer having custody of original record

3/60B MFB 375-AFB 115 40/P&S/392 (6610)

Exhibit "B"

CERTIFICATE UNDER ARMY ACT SECTION 163 (1) (i)

I A/Lt/Col W.G. LLOYD Certify That

C-121670 Pte ROLLINGS J.H. Of The No1 Cdn Pro Trg Depot

Surrendered Himself To A-110395 A/Cpl EBY R.S. At 2230 hrs

On The 22nd Day Of October 1945 As A Deserter

(or absentee without leave) He was wearing a regulation Battle Dress and headgear at this time.

Date 23 Oct 45

(W.G. LLOYD) A/Lt Col.,
Commanding Officer,
No.1 Cdn Provost Trg Depot.

3/17 MFM 6
(AFB 122)
49/P&S/136 (7010)

No. C121679 Name ROLLINGS, J.H. Sqn, Battery, or Company | Corps CIC | Date of enlistment 6 Jul 43 | OC Badges | Service or Proficiency Pay 1.50

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | ~~Sheet~~ No. 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				ENTRIES NIL					

CERTIFIED TRUE EXTRACT FROM MFM 4
HELD IN MY CUSTODY on 17 Nov 45

(J.H. Dennis) Capt. & Adj.,
No. 1 Cdn Pro Trg Depot
officer having custody of regimental book

(P705)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use in Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C121679	Pte.	ROLLINGS, J.H.	1 Cdn Pro Trg Depot

NOTE.—The Field Conduct Sheet is to be produced in Court with this Statement but is not to be annexed to the proceedings. The numbers hereinafter should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for desertion or absence without leave, the entries for intervening periods of absence, as the case may be, should be stated separately. Any recorded special acts of gallantry or distinguished conduct should be noted. If the Field Conduct Sheet should also be inverted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For NIL — NIL times.
For " — " times.
For " — " times.
For " — " times.

Date of first entry in Field Conduct Sheet NIL

Date of last entry in Field Conduct Sheet NIL

2. [redacted]

*Strike out if not applicable.

*3. [redacted]

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 26 days in military custody, *i.e.*, NIL days in open arrest, 26 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 20 yrs 9 mos

6. The date of his attestation is 6 July 43

7. [redacted]

†State the military conviction (if any) held by accused.

8. The accused is in possession of† CVSM & Clasp, Italy Star, 1939-45 Star, [redacted]

9. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*28072) W.L.30721/3701 35,000 3/44 A.S.L.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 17th day of Nov 45

(J.H. Dennis) Capt. & Adj.
1 Cdn Pro Trg Depot

CASE OF C121679 Pte. ROLLINGS, J.H.

(i) LIST OF WITNESSES FOR PROSECUTION

NIL

(ii) LIST OF WITNESSES FOR DEFENCE

NIL

(iii) LIST OF EXHIBITS FOR PROSECUTION

(a) Certified True Copy of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier, dated 9 OCT 45.

(b) Certificate of Surrender in accordance with A.A. 163 (1) (j).

(iv) LIST OF EXHIBITS FOR DEFENCE

NIL

(v) RECEIPT BY ACCUSED FOR COPY OF CHARGE SHEET AND SUMMARY OF EVIDENCE

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken in the Field, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the charges under which I am being brought to Court Martial.

J.H. Rollings
(C121679 Pte. ROLLINGS, J.H.)

(vi) APPLICATION BY ACCUSED FOR DEFENDING OFFICER

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of.....
if he is abailable.

J.H. Rollings
(C121679 Pte. ROLLINGS, J.H.)

Signed at Field
this day of
November, 1945

HQ- 128

Gen. Rollins N. H.

RECORDED AT CMHQ IN AB 188 : 11-128

CFAMB (To face of AFAMS) 60 P.M.G./1608/1-45

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Maj-Gen JH Roberts DSO MC Comd CRU dated 20 Jan 1945

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D13530	Gunner	Norman Howard James	ROLLINS	1 Cdn NETD

PROCEEDINGS REVIEWED 27 Jan 45

RECEIVED OFFICER, JAG BRANCH CMHQ.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 22 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offrs under instr, ~~if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RoS. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 753. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF A95, for oaths and instrs on how to record witnesses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet[1] attached thereto.[2] The Court is satisfied that it is properly convened and constituted;[3] accused is (are) amenable to military law, and each charge discloses an offence.[4]

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.[1] ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~[2]

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans ~~The Interpreter is sworn.~~[1] Do you object to Sgt A.A. Somerlan as shorthand writer? Ans No. The shorthand writer is sworn.[2]

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.[1] President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.[2]

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any,~~ and Offrs under instr, ~~if any,~~ are sworn.[1] The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.M. Miller ED	HQ CRU
Member	Capt	[illegible]	1 CSRU
Member	Lt	[illegible]	1 CERU
~~XXXXXXXX~~			
Prosecutor	[illegible]	[illegible]	1 NETD
Defending Offr	[illegible]	[illegible]	1 NETD

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.[2]

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused ~~before arraignment~~ make(s) (no) (a) plea.[1]

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~were~~ arraigned ~~(separately)~~ on all charges in the charge sheet.[1] The accused does ~~(do)~~ not object to any charge.[2] There is no amendment to be made to the Charge Sheet.[3] The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D13530 Gunner Norman Howard James ROLLINS - 1 Cdn NETD

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th	[redacted]			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 8.)

Nil

At present under sentence for beginning on (date)[1]

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which Nil days were spent in hospital.[1]

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under EJ.)

Sentence Awarded by the Court:

To forfeit one ordinary day for Sixty (60) days

22 Jan 45 (Sgd) [illegible] President. (RP 45, 50)

Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm but remit thirty (30) days forfeiture of pay.

I direct that the accused be not committed to prison or detention barracks until further orders.[1]

(1. AA 57A. Delete if not used.)

Date 27 Jan 45 (Sgd) J.H. Roberts

Commanding Comd. Can. Rfc. Unit.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D13530 Gnr. N.H.J. Rollins	27 Jan 45	J.H. Couch Capt
D.O. #20 d/d 6 Jan 45		

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during tr... (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to ~~him~~ (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a sepcrate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)*

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(s), and certified true copy (copies) of Conduct Sheet(s)(1), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)
(1. *MFB 353 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused D-13530 Gnr.ROLLINS,N.H.J.(RCA) on transit strength of No.1 Cdn N.E.T.D.(Lorne Scots) a soldier of the Canadian Army Overseas is charged with:

First Charge
A.A.Sec.15(1)

WHILST ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

IN THAT HE

At No.1 Cdn N.E.T.D.(Lorne Scots) did illegally absent himself without leave from 0830 hrs 13 Nov 44 until surrendering himself at the guard room No.1 Cdn N.E.T.D.(Lorne Scots) at 1410 hrs 14 Jan 45. Total time absent 62 days 5 hours 40 minutes.

.....
(Louis Keene)Colonel,
Officer Commanding,
No.1 Cdn N.E.T.D.
(Lorne Scots)

Tweedsmuir Camp,
Thursley,Surrey.
18 Jan 45.

To be tried by Field General Court Martial.

(J.H. Roberts) Maj-Gen
Comd
Cdn Rft Units

Farnborough, Hants

20 Jan 1945

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50; RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D13530	Gunner	Norman Howard James	ROLLINS	1 Cdn NETD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (have) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 20 Jan 1945 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~XXXX

Medical Officer's Certificate
KR (Can) Para 557.

I certify that I have this morning examined No D135.30. Rank. Pte..

Name.. Rollins.. N.H.. of.... R.C.A.....(unit) and in my

opinion he is fit ~~unfit~~ to undergo trial by Court Martial.

Station... ~~22 Jan 45~~ Tweedsmuir Camp

Date.. 22. Jan. 45.....

.....W. L. Denney Capt..
Medical Officer
No. 1 Cdn. N.E.T.D.
(Lorne Scots)

CASE OF

D.13530 Gnr ROLLINS NHJ 1 NETD

WITNESS

The Def Offr, Lt JA HISLOP, 1 NETD, having been duly sworn, states: I produce a letter relating to the accused which was given to me by the Asst Adjt of 1 NETD when I was appointed Def Offr. He got it from the Ord Room files and told me it had been recd there in relation to the accused. marked Exhibit 1

NO CROSS-EXAMINATION

LETTER MARKED EXHIBIT 1 BY COURT

IN THE OPINION OF T E COURT IT IS UNNECESSARY TO COMPLY WITH KR 83(B)

Rollins

Plea of Def'g offr.

Mr. President and Members of the Court:

May it please the court to consider the following factors in arriving at a decision in the case of Gnr. Hollins,N.H.

The defendant became ill while on leave from NETD, suffering from severe neuralgia as a result of having been wounded. He visited a doctor, an ex-Naval Surgeon, who advised him to remain indoors until his condition had cleared up. The defendant requested the doctor to write to NETD explaining the case. He assumed that the letter would act as an application for extension of leave, and returned to the residence where he had been spending his leave. While there he had the attention of a trained nurse. There was no reply to the application [illegible] he remained there until he was well enough to travel. He then returned to NETD and turned himself over to the Regimental Police. I believe that his absence was not intentional, but due entirely to his illness. THE ADDRESS OF ACCUSED WHILE AWAY IS GIVEN ON THE BACK OF THIS LETTER.

The defendant was discharged from hospital to NETD to be returned to Canada for further medical treatment. He has to have further plastic surgery before he will be well again. In his present condition it is necessary for him to be on a special diet. I suggest that in that condition he is not fit to carry out any period of severe punishment.

The defendant has been in the army since September 1939 and has been overseas since September 1940. During his 5½ years of service he has an excellent record.

Therefore, I ask the Court, on behalf of the defendant, that these factors, first, his illness while on leave and circumstances regarding his absence and voluntary return, secondly, his present physical condition and the necessity for further surgical and medical treatment, and lastly his long service be considered, and that his case be dealt with in the most lenient manner possible.

Glenview
Llandovery
8th November 1944

D 13530. ~~Wrabel~~ Rollins. N.H.J.

~~Regiment~~ Field.

This is to certify that the above named presented himself for treatment to me this evening.

He is suffering from severe neuralgia in face & lower jaw following war wound which has resulted in partial ankylosis of lower jaw.

I beg to recommend an extension of his leave.

James McA. Holmes
D.S.O. M.B. F.R.C.S.
Surgeon Captain R.N. (Retired)

D13530.

Gnr. Rollins. N.

13, Dangerug.

Flandovery.

Carms.

S. Wales.

SUMMARY OF EVIDENCE

In the case of D-13530 Gnr. ROLLINS N.H.J.(RCA) on transit strength of No.1 Cdn N.E.T.D.(Lorne Scots) a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on Oath.

First Witness for the Prosecution

A/Capt. H.E. Couch, RCA, Adjutant No.1 Cdn N.E.T.D. (Lorne Scots) having been duly sworn states as follows:-

"I produce a certified true copy of Declaration of a Court of Inquiry d/15 Dec 44 relating to the accused". (Copy of Declaration attached as Exhibit"A")

.....A/Capt.....
A/Capt. H.E.Couch

The accused declined to cross-examine the witness.

Second Witness for the Prosecution

F-77842 L/Cpl.Gauthier J.P. of No.1 Cdn N.E.T.D. (Lorne Scots) having been duly sworn states as follows:-

"I am a Provost NCO on strength of No.1 Cdn N.E.T.D.(Lorne Scots). On 14 Jan 45 I was duty NCO in the guard room; at 1410 hrs on that date the accused whom I now recognize surrendered himself to me".

.....L/Cpl.....
L/Cpl.Gauthier, J.P.

The accused declined to cross-examine the witness.

The accused was cautioned as follows: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declined to make a statement and reserved his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c),(d),(e),(f) & (G) have bee complied with.

.....
(J.G.Turnbull) Lt.
Officer detailed to take the Summary of Evidence.

Tweedsmuir Camp,
Thursley, Surrey.
17 Jan 45.

RECORD of the Declaration of a Court of Inquiry assembled at Tweedsmuir Camp, Thursley, Surrey, on the 15 day of December 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D-13530 Gnr. Rollins, N.H.J.

DECLARATION

The Court declare that No. D-13530 Gnr. Rollins N.H.J. on transit strength of No.1 Cdn N.E.T.D.(Lorne Scots) illegally absented himself without leave at Tweedsmuir Camp, Thursley, Surrey. at 0830 hrs on the 13th day of November 1944, that he is still so absent, and that on the 4 December 1944 he was deficient, and that he is still deficient of the following articles :—

ARTICLE	NO.	VOCAB PRICES	LOCAL PRICE LESS 25% depreciation
BD Blouses	1	£ 1 3 6	£ 17 6
Berets, Kahki	1	5 5	4 1
Drawers, cellular, shorts, prs	2	3 10	2 11
Gloves, knitted, prs	1	2 1	1 7
Greatcoat, drab	1	2 10 7	1 16 0
Jersey, pullover	1	8 0	6 0
Shirts, angola, drab	2	18 2	13 8
Socks, prs	1	1 8	1 5
BD Trousers	1	1 4 1½	18 2
Vests, woolen	1	5 4½	4 0½
Braces, pr	1	1 4	1 0
Brass, cleaning	1	x 2	1½
Brush, Shaving	1	1 8	1 3
Brush, tooth	1	6	4½
Comb, hair	1	2	1½
Housewife complete	1	9	7
Razor Safety	1	3	2½
Vests, cotton, gym	1	1 7	1 2½
Towels, hand	1	1 5	1 0½
Braces WE, right	1	1 4	1 0
Haversack, WE	1	8 0	6 0
TOTALS:-		£ 7-19-11	£ 6- 0 - 4½

"I certify that this is a true list of Kit deficiencies of D-13530 Gnr. Rollins, N.H., as of 14 Dec 44."

(J.B.Lindner) Capt., Q.M.
No.1 Cdn N.E.T.D.
(Lorne Scots)

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
D13530	Gnr.	ROLLINS, N.H.J.	(RCA)transit strength 1 Cdn NETD(Lorne Scots)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by held general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, R.R., 1910.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec 15(3)	1 times	1 times.
For A.A. Sec 15(1)	times	1 times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, ~~or~~

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and — days in military custody, making a total of eight days, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 29 yrs 55 days.

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 11 Sep 39

~~7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~

~~8. The accused is entitled to deferred pay or gratuity in respect of service~~

~~9. The accused is entitled to reckon service for the purpose of determining his pension.~~

~~10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of, or entitled to (state any military decoration or reward)).~~ The accused is entitled to CVSM and Clasp.

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

12. (*In the case of an officer.*) ~~The accused holds in the army the rank of~~ dated ~~and in the regiment (or corps or department) the rank of~~ dated

(*25800) Wt.34896/1730 30,000 10/43 A.& E.W.Ltd. Gp.698
(28006) Wt.55924/1499 12,000 3/43 " "

Ex B

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D13530 Rank Gnr Name Rollins NJH of RCA Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22 day of Jan 1945

(M.DeBlois)Capt.

~~3. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.~~

In the rank of _____ Date of Promotion _____

In the rank of _____ years, _____

In the rank of _____ years, _____

~~In the rank of _____ years, _____~~

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

No. D13530 Name ROLLINS, NORMAN H.J. Sqn, Battery, or Company | Corps | Date of enlistment 11 SEP 34 | GC Badges one | Service or Proficiency Pay N/A | 3/17 MFM 6 (AFB 122) 40/P&S/136 (5)

Date of last entry in Company Conduct Sheet: NIL | No. and date of last drunk: NIL | Period not reckoning towards freedom from extra fine: NIL | Sheet No 1 | Signature OC Company, etc (signed) A. Mac D. Keigler Major RCA | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	5 Nov 43	Gnr		WOAS AWL from 1300hrs 5 Nov 43 to 1835hrs 13 Nov 43 (Absent 8 days 5 hrs. 35 mins) AA Sec 15(1)	L/Sgt FRANKLIN A.W. L/Sgt MacPHERSON, J	Auto. forf. 9 days pay FR&I 149(1)(a) forf. 7 days pay FR&I (149)(2) 14 days C.B. Total forf. 16 days pay	18 Nov 43	E.D. Nighswander	Lt. Col.
~~Awarded on good conduct badge in error~~				improper entry deleted 21 Feb 44 (sgd) A.V. Hawkes, Lieut.					
FIELD	15 Feb 44	"		BLOOD DONOR					
FIELD	2 Mar 44	"		WOAS Out of bounds without a pass or written leave from his Commanding Officer in that he at approx. 1845 hrs 2 Mar 44 was unable to produce a pass when checked by the Camp Provost Sgts at the Empire Theatre Borden, a place set out of bounds by Regimental Orders. AA Sec 15(3)	Documentary	5 days C.B.	4 Mar 44	G.W. Drummond Maj RCA	

— OVER —

(PTO)

Place	Date of offence	Rank	Cause of stoppage or forfeiture	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY					
				(M. DeBlois) Capt.					
				Officer having custody of Original Document					

LIST OF WITNESSES

For the Prosecution — A/Capt.H.E.Couch,Adjt,No.1 Cdn N.E.T.D.(Lorne Scots)

L/Cpl. Gauthier,J.P.(F77842) Unit M.P. No.1 Cdn N.E.T.D.(Lorne Scots)

For the Defence — NIL

LIST OF EXHIBITS

EXHIBIT "A" — Certified true copy of Declaration of Court of Inquiry d/15 Dec 44.

STATEMENT BY ACCUSED

It is my wish that the Commanding Officer detail an Officer on transit strength ~~No.1~~ Cdn N.E.T.D.(Lorne Scots) to act in my defence at my trial.

.....Rollins N.H.J.....
D-13530 Gnr.Rollins,N.H.J.

SSS-115

SGT. ROLLO RD

RECEIVED 7 AUG 1944 JAG BRANCH G.M.H.Q.

REGISTERED AT CHAN IN AB 160 555-115

COPIES (to left of AFAT) 160 P.O. (from 28004)

FIELD GENERAL COURT-MARTIAL

Convened by Order of BRIG. P.A.S. TODD Comd CRA 3 Con Inf Div dated 17 July 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 50073	Sgt	Richard Donaldson	ROLLO	A Coy 21 Army Gp

PROCEEDINGS REVIEWED 2 August L J Brody Capt

JAG REVIEWING OFFICER, G.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) FRANCE on (date(s)) 17 July 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, ~~and Offrs under instr of conv~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1415 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans ~~N~~

~~The Interpreter is sworn.~~(1) ~~Do you object to~~ as shorthand writer? Ans ~~N~~

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(5). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, ~~and Offrs under instr of conv~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:—

President	MAJOR	M.S.M. FERGUSON	14 FORDET RCA
Member	CAPT	J. ALLAN	HLAA REGT RCA
Member	CAPT	D. McCARTHY	3 A TK REGT RCA
Judge-Advocate	CAPT	A.C. HALL	H.Q. 3 CDN DIV
Prosecutor	CAPT	A.D. GRIER.	3 A TK REGT RCA
Defending Offr	~~CAPTAIN~~	A.G. RICHARDSON	3 A TK REGT RCA

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment, when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused [illegible] before arraignment make(s) (no) ~~N~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 132, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to Ref cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A8s to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D ~~&~~ E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

France I, page 17

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C50073 SGT. ROLLO, RICHARDSON DONALDSON, 3 A TK REGT RCA

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 19	NOT GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~To remain under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which ~~Nil~~ days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be reduced to the ranks and to undergo detention for ninety days

(Sgd) [illegible] Judge-Advocate, if any 17 July 44 Date awarded. (Sgd) [illegible] Major President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirm the finding and sentence of the Court.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) [illegible]

Date 17 July 44 Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C50073 Sgt. Rollo, R.D.	21 July 44	[illegible] Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is re-opened, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty of the latter charge(s).(4)~~
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ~~I will give evidence on oath~~. Do you intend to call witnesses on your behalf? Ans YES. Are they witnesses as to character only? Ans No
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces ~~the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans ~~I~~ Em Sir. Em D .....(3)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 21/12
(*1. When several accused tried separately see RP 120F. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(13), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

Charged against C.50073 Sgt Rollo, Richard Donaldson, 94th Bty 3 Cdn Anti-Tank Regiment, a N.C.O. of the Cdn Army whilst on active service is charged with:

First Charge
AA Sec. 19

DRUNKENNESS (~~second offence~~) whilst on Active Service

in that he

" " " at approximately 2020 hrs 11 July 44 while on duty at his troop position was drunk and incapable of doing his duty.

J.S. Shim

(J.P. Phin)Lt.-Colonel,
C.O. 3rd Cdn Anti-Tank Regiment

In the Field
13 July 44

To be tried by F.G.C.M.

(P.A.S. Todd) Brigadier,
CRA 3 Cdn Inf Div.
16 Jul 44.

FIELD GENERAL COURT-MARTIAL

CFAAO (In lieu of AFAO) 40/FAO(1691 (2nd))

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Can Army Overseas, or if any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 51, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-50073	Sgt		Richard Donaldson	ROLLO	3 A Tk Regt RCA

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(x) named above as the accused, being subject to military law, has [illegible] committed the offence(s) set forth in the Charge Sheet(x) attached and on (date) 16 Jul 44 endorsed by me, ([illegible]), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(x) should be tried by an ordinary General Court-Martial; [illegible]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(x), and to consist of the Offrs appointed or detailed hereunder.

[illegible]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	M.S.M. FERGUSON	14 Fd Regt RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt.	J. AILAN	4 LAA Regt RCA
Capt.	D. McCARTHY	3 A Tk Regt RCA

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut.	S.L. MEDLAND	3 A Tk Regt RCA

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	A.C. Hall	HQ 3 Cdn Div

On Active Service in the Fd

in FRANCE (Country.)

(Signed personally. RP 105 fn 2.)

Brigadier, (Rank.)

(P.A.S. Todd)

Date 16 Jul 44

Commanding CRA 3 Cdn Inf Div.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFRS CERTIFICATE

17 Jul 44

I certify that C.500/3 Sgt Rollo, RD, 94 Bty, 3 ATk Regt is fit to undergo trial by FGCM.

fit.

Signature of Medical Officer
3rd Bde A/Tk Regt RCA

Page 1 1 4

~~Defense Capt A D Grier~~

First Witness - for prosecution

Th P.F Christie - ~~First Witness~~ 3 A Th Regt R.C.A

1. Do you recognise accused - A Yes.

I saw his tp comd

2 ~~H~~ Agt Rollo was at his carrier a short distance away about 2020 hrs 11 July 44 First notice was made of a loud yell coming from Agt Rollos position. I glanced over and saw him making a dive at my tp Agts slit trench. I didn't think much of it at the moment. Next thing I heard was a burst of sten gun fire and I saw Agt Feeney struggling to take the sten away from Agt Rollo. I started over to investigate and saw Agt Feeney and a couple of others dragging Agt Rollo toward his own slit trench. He was talking incoherently and thickly. His eyes were not clear and his gaze wandered as though in a stupor. He was persuaded to go back to his slit trench and I told him to sober up and quiet down.

(PTO)

Page III

Q. How far where you from enemy lines

A About a thousand yards.

Q Could Sgt Rollo have taken a drink without you having seen him

A Yes

~~RP 83~~ B has been complied with

Second Witness for prosecution E 21831 I am Sgt RH Feeney 3 Q Sk Regt RCG.

Q Do you recognise accused

A Yes. – I am Sgt. Rollos tp Sgt.

Q What were the events that took place on 11 July

A I had just finished writing when I saw Sgt Rollo crawling toward my slit trench. It is about 10 yds away. He made a rush at the slit trench. When he was about on top of me I sidestepped letting Sgt Rollo fall into trench. Thinking he was fooling I got out of the slit trench I went to my bike where my stem & helmet where. When I came back to slit trench I saw that Sgt Rollo was in sort of a daze – moping around one corner of it.

(PTO)

Page I 1 8

~~Defense Capt A D Grier~~

First Witness - for prosecution

Th P.F Christie - ~~First Witness~~ 3 A Tk Regt R.C.A

1. Do you recognise accused - A Yes.

I saw his tp comd

2 ~~H~~ Sgt Rollo was at his carrier a short distance away about 2020 hrs 11 July 44 First notice was made of a loud yell coming from Sgt Rollos position. I glanced over and saw him making a dive at my Tp Sgts slit trench. I didn't think much of it at the moment. Next thing I heard was a burst of sten gun fire and I saw Sgt Feeney struggling to take the sten away from Sgt Rollo. I started over to investigate and saw Sgt Feeney and a couple of others dragging Sgt Rollo toward his own slit trench. He was talking incoherently and thickly. His eyes were not clear and his gaze wandered as though in a stupor. He was persuaded to go back to his slit trench and I told him to sober up and quiet down.

(PTO)

Page II

He continued to mutter but finally did get down his slit trench. He was incoherent and his speech thick.

Q What would you attribute his condition to

A ~~Attributed to~~ strong drink

Q Do you consider he was able to [illegible] his duty

A No.

Q Did you smell anything

A No I was not close enough.

XXM

Q Did you see Sgt Rollo take a drink on 11 July 44

A No.

Q Are you certain Sgt Rollo condition was due to alcohol and not a nervous condition

A or No Condition due to strong drink.

Q How long since your tp was actually ~~engaged with the enemy~~ under enemy shellfire

A ~~Re~~ Intermittent shelling

Q Was Sgt Rollo subjected to this shelling

A Yes.

Q. How far where you from enemy lines
A. About a thousand yards.
Q Could Sgt Rollo have taken a drink without you having seen him
A Yes.

RP 83 B has been complied with

Second Witness for prosecution P. 21831 I am Sgt. R H Finney 30th Regt Reg.

Q Do you recognise accused
A Yes. – I am Sgt. Rollo's tp Sgt.
Q What were the events that took place on 11 July
A I had just finished writing when I saw Sgt Rollo crawling toward my slit trench. It is ~~about~~ 10 yds away. He made a rush at the slit trench. When he was about on top of me I sidestepped letting Sgt Rollo fall into trench. Thinking he was fooling I got out of the slit trench & went to my bike where my stem & helmet where. When I came back to slit trench I saw that Sgt Rollo was in sort of a daze – moping around one corner of it.

(PTO)

Thinking he was still fooling I let him stay. He moved from one end of slit trench to the other and picked up Sten gun and started to crawl out mumbling to himself that "He would get them". I ordered him to put the weapon down and just as I gave the order he fired a burst towards a opening over the wall. I jumped Sgt Rollo grabbed the weapon when a single shot was fired. I took the weapon away from him and asked Sgt Adams to give a hand and get him to his slit trench. We got him near his slit trench forcibly and Mr Christie ordered him to his trench. After mumbling & cursing for a minute or two he got into his trench.

Q What was cause of his condition

A Was under influence of alcohol

Q Was he capable of carring out his duties

A No.

XXM Page 5

Q Did you on July 11 at any time see Sgt R take a drink of alcoholic liquor

A No

Q When Sgt Rocco took a dive at you you say he fell into a slit trench.

A Thats correct.

Q Is it possible that he may have struck his head

A Yes, he went in head first.

Prosecution

Q Was there any strong drink at Troop Position that Sgt Rocco may have got a hold of

A There had been some, under cover

Q Did you smell anything on his breath

A No, I tackled him from the rear.

Q When you came back from your bike did you bring anything with you.

A Yes. Steen gun & helmet.

(RP 83 B has been complied with

Sgt Kelle's evidence under oath.

I was Gun Sgt at A position near Caen. About 2000 hours 11 July one of the men suggested we have a drink I said all right as long as it was small. We were playing cards & one of my gun crew poured about 1/4 inch of some form of alcohol into a tea cup. This was diluted with water. I drank this. We played cards for about 20 minutes after. We stopped playing cards & that's the last I can remember. About 2100 hours the same day one of my men woke me up & asked me for my watch. At that time I was perfectly sober. I gave him the watch as he was going on guard, talked with him for a little while, then went back to sleep. Nothing was mentioned to me of what had happened, till the following morning.

XX Mr by Prosect

Q Do you know what you were drinking
A No.
Q Do you know where it had been obtained.
A I believe from civilians
Q Did anyone else have a drink with you.
A Gnr O'Brien
Q Was he affected in the same manner as you.
A I dont know sir.

(RP 83 has been complied with)

~~XX Mr~~

Page VII
Lowery A.L. H 102249 3/AT Rgt RCA. Witness for defence
(gun)

Are you a member of Sgt Rollo's gun crew
Yes, Sir

Were you with him continuously all afternoon & evening of July 11, the date of the alleged offence

Yes Sir

Did he drink any of the beverages during that time

Yes.

How many drinks

One drink, about ½" in the bottom of the cup, diluted with water, I poured it.

What happened after Sgt Rollo had the drink

We kept playing cards, for a while after.

~~[illegible]~~
Did Sgt Rollo act queer
Yes, suddenly.

~~What do you allow~~
Do you believe the amount of drink he had taken could have caused him to act as he did

No.

Did you see Sgt Rollo at 2100 hrs.
Yes

Was he all right then
Yes. We asked him questions to which he gave a satisfactory answer. ~~[illegible]~~
When your gun crew is in action is there any drinking
No sir. Sgt Rollo is against it & kept warning us against it.

What has been Sgt Rollo's attitude to drinking while the gun is in action.
He would not allow it

(over)

What was his attitude on 11 July 44 towards drinking

As far as I know he would only allow one drink & no more.

XXM by prosecution.

Did Sgt Rollo ever explain to his gun detachment Standing orders regarding drinking

He warned us not to drink on gun positions.

Could you tell me how long you were with Sgt Rollo on July 11/44.

From 1430 on.

~~He was [illegible]~~

Did neither of you seperate during that period

We seperated once.

~~[illegible]~~

Q by court

How many persons were ~~there~~ present when the drink was taken by Sg Rollo.

Three persons.

Was there any ~~of it~~ liquor available in the morning

Yes, the troop Commander ordered the rest of the bottle to be ~~[illegible]~~ disposed of

How long were you & Sgt Rollo seperated

4 to 5 minutes.

Was the bottle sealed when you ~~[illegible]~~ poured the drink

Yes I broke the seal myself

Defence Second Witness

C 33218 Inr Obrien C 7 3 G Tk Reg T Rcd

Q Are you on Sgt Rollo gun crew

A Yes sir

Q Where you with Sgt Rollo continuously on 11 July afternoon & evening

A Yes sir

Q Did he have anything to drink

A One drink sir

Q How big was the drink

A About 1/2 in in bottom of issue mug with 1 in of water

Q Was Sgts Rollo action due to drink

A It must have been the drink but he seemed to be more crazy than drunk

Q Is there any cause that might have caused Sgt Rollos action

A He was very nervous and downheaded the day before

RP 83 B complied with

Statement in Mitigation of Punishment

Up to 11 Jul 44 when the alleged offence occurred C Tp was in action from D day. Sgt Rollo is a member of C Tp. On 8 Jun 44 we were in a tough scrap when C Tp accounted for 8 German tanks. For his part in that action Sgt Rollo was recommended for promotion. He must be a good soldier. Otherwise his O C would not have recommended him for promotion.

D

A G Richardson, Lieut

No C.500/3 Name ROLLO Richard Donaldson Sqn. Battery or Company Corps R.C.A. Date of enlistment 22.6.40 OC Badges NA Service or Proficiency Pay NA FM 6 (B 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet NA No and date of last drunk NA Period not reckoning towards freedom from extra fine NA Sheet No 3. Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet No 2 destroyed 1.6.43				Date of last entry 6.10.41. No of cases of drunkenness--One Last instance: 16.2.42					
Field	11.5.44	Sgt		AA Sec 15 (1) AWL from 1600 hrs 11 May 44 to 1600 hrs 14 May 44 (absent 2 days 22 hrs)	BSM Hanson	Severe Reprimand	15.5.44	Major WF McMullen	forf 3 dys pay FRI 149(1)(a)
				(CERTIFIED TRUE COPY) 13 July 1944 (F.P. Bootne) Capt., Adjt., Officer i/c Regtl Documents					

(PTO)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
C.50073	Sgt	Rollo, R.D.	3rd Cdn AntiTank Regiment

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Drunkenness 1 times.

For Absence without leave 1 times.

For _____ times.

For _____ times.

Date of first entry in Field Conduct Sheet 6 Oct 41

Date of last entry in Field Conduct Sheet 11 May 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not [illegible]

*3. The accused at the present time is under sentence for _____ beginning on the _____ day of _____

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 2 days in military custody, i.e., nil days in open arrest, 2 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is _____

6. The date of his attestation is 22 June 40

7. The service which the accused is allowed to reckon is 4 yrs 21 days

8. The accused is in possession of‡ C.V.S.M. (WC)

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of A/Sgt	9 June 1944
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

[illegible] Wt.6670/668 100,000 4/42 A. & E. W. Ltd. Gp.686
[illegible] Wt.29258/1873 60,000 9/42 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N I L		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 13th day of July 1944

(F.P. Boothe)Capt., Adjt.,
Offr i/c Regimental Documents

4.

Summary of Evidence in the case of C.50073
Sgt Rollo, RD., 94th Bty, 3rd Cdn A Tk Regt.

The Commanding Officer directs that all evidence shall be taken under oath.

First Witness: Lieut PF Christie, 94th Bty, 3 A Tk Regt having been duly sworn states:-

At approx 2020 hrs 11 Jul 44, I was reading by the side of my carrier when I heard a yell coming from the direction of Sgt Feeney R's slit trench. I glanced over and saw Sgt. Rollo making a dive headfirst into the trench, and Sgt. Feeney dodging out. Thinking they were only fooling, I didn't take much notice until I heard he and a couple of the other men calling to Rollo to "Put that gun down" and stop fooling. Suddenly there was a burst of fire, and I saw Sgt Feeney make a lunge at the trench for the weapon, and just as he grabbed it, another shot was fired. The sten was taken from Sgt Rollo and he was pulled from the trench and part way to his own, which was about 10 yards away, struggling and muttering threats. I ordered him to get into his trench and sober up which he did after a bit more talk. At the time his speech was slightly thick and I consider that he was drunk and incapable of performing his duties.

P.F. Christie.

The accused declines to cross-examine this witness. RP 4(d) has been complied with.

The accused declines to make a statement or give evidence on oath. RP 4(e) has been complied with.

Second Witness: E.21831 Sgt Feeney, RH, 94th Bty, 3 A Tk Regt having been duly sworn states:-

On 11 Jul 44 at approx 2020 hrs I was in my slit trench at CAEN. I saw Sgt Rollo creeping towards my slit trench about 10 yards away. Then he got up, made a mad rush at the slit trench I was in. When he was almost on top of the slit trench I side stepped and Sgt Rollo fell into the trench.

At this time I thought Sgt Rollo was fooling. I went to my bike, got my steel helmet and sten gun and when I returned to the slit trench I saw Sgt Rollo moving about as though he was in a daze. Sgt Rollo moved from one end of the trench to the other and picked up a sten gun which was lying there. He crawled nearly out of the slit trench. I roared to him to put the sten gun down and just as I gave this order he fired a burst. I made a dive for the weapon, I got my hands on it and just then another shot was fired. I removed the weapon from his hands and called for Sgt Adams to help me get him to his slit trench. He put up a bit of a struggle and kept on shouting threats. Then Lieut Christie appeared and ordered him to his trench. After a few minutes of roaring and struggling he got into his slit trench and quietened down. I consider that he was drunk and incapable of performing his duties.

R.H. Feeney

The accused declines to cross-examine this witness. RP 4(d) has been complied with.

The accused declines to make a statement or give evidence on oath. RP 4(e) has been complied with.
R.P. 4 (c) (d) (e) (f) have been complied with.

Taken down be me this 12th day of July 1944 in the presence of the accused.

A.D. Lynch Capt. RCA.
94th Bty, 3 Cdn A Tk Regt RCA

Summary of Evidence in the case of C.50073
Sgt Rollo, RD., 94th Bty, 3rd Cdn A Tk Regt.

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P.F. Christie.

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R.H. Feeney.

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The accused declines to make a statement or give evidence on oath. RP 4(e) has been complied with.

R.P. 4 (c) (d) (e) (f) have been complied with.

Taken down be me this 12th day of July 1944 in the presence of the accused.

A Blyard Capt. RCA.
94th Bty, 3 Cdn A Tk Regt RCA

4G-74

Pte. Romain. G.J

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F66149 Pte Gerald Joseph ROMAIN, Perth R.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		Not guilty	guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 55, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~Awarding on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for two years

(Sgd) W.M.D. Shaw Capt — Judge-Advocate, if any. 20 Oct 44 — Date awarded. (Sgd) G R Duncan — President. (RP 45, 50.)

(See back re Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the Court.

~~I direct that The accused be not committed to prison or detention thereafter until further orders~~ (1)

(1. AA 57A. Delete if not used.)

Date 22 Oct 44 (Sgd) Jno F Johnston Brig

Commanding 11 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F66 149 Pte ROMAIN G S	24 Oct 44.	A/Adjutant, The Perth Regt. Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED Base Mail Censor Section CMHQ

RECORDED AT CMHQ IN AB 160 46-74

(Page 4th Dpn of AF A1)

FIELD GENERAL COURT-MARTIAL

Appointed by Order of Brig J S Johnston, DSO., Comd 11 Cdn Inf Bde dated 19 Oct 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F 66149	Pte	Gerald Joseph	ROMAIN	Perth R.

PROCEEDINGS REVIEWED 6 Dec 44

W. C. Soule Capt.

REVIEWING OFFICER.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 20 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 20 97

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to "Autrefois" at preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 84, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1510 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to as interpreter? Ans ~~The interpreter is sworn.(1). Do you object to as shorthand writer? Ans The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No, Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 187, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G R Duncan	2 RC
Member	Capt	N. C. Root	Perth
Member	Capt	H N McLeod	C Bn
Judge-Advocate	Capt	W M D Shaw	HQ 5 Cdn Armd Div
Prosecutor	Capt	R S Chamberlain	Perth
Defending Offr	Lt	D A Cook	Perth

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) (1) plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~does~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37(*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty to* [illegible] *(ii) and (iii), Court will thereto, or, (iv) to record the pleas as the findings of Court. After deciding between (i) and (iii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's explanation(1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a seperate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No Sir (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Give evidence Do you intend to call witnesses on your behalf ? Ans No Sir Are they witnesses as to character only ? Ans .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 2, 9. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
On the President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Sir
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(*1. MFB 355 or AFB 296. 2. MML 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes Sir I do
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 46(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F 66142 Private Gerald Joseph ~~Romain~~, The Perth Regiment, C.A., a soldier of the Canadian Army, C.A.(C.M.F.), is charged with:

CHARGE
Section 12 (1)(a)

WHILE ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he did

In the Field, absent himself without leave from 1600 hrs 8 October 1944 until 2030 hours 14 October 1944, with intent to avoid front line service.

W.W. Reid
(W.W. Reid) Lt-Col
Comd. Perth Regt.

In the Field
16 Oct 44.

To be tried by Fd Gen Court Martial.

Lieut. Johnston
(T S Johnston) Brig
Comd 12 Can Inf Bde

Field
19 Oct 44

WITNESS

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 65149	Pte	Gerald Joseph	ROMAIN	Perth R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 19 Oct 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint 4(a) three Offrs to form the Court, (b) a Fd Officer President, for the reasons I have attached hereto.~~

(AA 49, RP 106(3), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	H.S. Duncan	I R C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	R.C. Root	Perth
Capt	H.M. MacLeod	C B H

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	D.M. Smith	PL Fus

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	R.J.H. Shaw	HQ 2 Cdn Armd Div

On Active Service in the Fd

in Italy (Country.)

(J S Johnston) (Signed personally. RP 105 fn 2.)

Brig (Rank.)

Date 19 Oct 44

Commanding 11 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAMS (Tp Hqs) of AFAS) 40/P & S/169T (4001) (See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No [illegible]

Pte ROMAIN G.I. of _____ and in my opinion he is

fit
~~unfit~~ to undergo trial by court-martial.

Station Field

Date 20 Oct 44

WMWS.

Margolis Capt
(Medical Officer)
The Perth Regt C.A.

I

1st Wit Pros^n] C 46805 Sgt Puckering, L.D. Perth R. duly sworn, states:-

Recognize Pte Romain, he is the acsd (pointing). Pl was in reserve pos at RUBICON river. At approx 0900 hrs 6 Oct 2 warned Pl that on one hours notice. At 1800 hrs 6 Oct 2 called roll & acsd ~~absent~~ 2 searched Pl area & could not find him. reported to Sgt Maj.

Cmas ~~Their~~ was acsd, Romain, Beaudreau & white sitting on stairs at 1000 hrs & 2 told them that on one hrs notice

XX m:- Do not make practice of warning Pl personally. Had gone upstairs & on way down these men on steps & 2 warned them then. Called roll 1800 hrs.

Re-exam:- Were on steps & 2 told them.

Court: Stopped & said few words to them. Were in reserve position - had moved up there to go into action. We moved into action - accused not with us. Next saw him 14 Oct.

RP 83(B) complied with

2nd Wit Pros^n] C 43769 Cpl Rochlin, A, Perth R. duly sworn, states:-

On 14 Oct 44 was Coy ord Cpl. Pte Romain, the accused, (pointing), reported to me at 2030 hrs as returning from awk.

XX m:- Pte White was with him.

Re-exam:- nil

Court:- nil

RP 83(B) complied with

Pros^n closed

1st Wit Def] The acsd, duly sworn, states:-

On 6 Oct around 0900 hrs was either getting lndy or at offrs mess. Was not on steps of ho.

XX m:- nil

Court: was alone while work - met while on way back. Left alone. 2 was batting for an off + 2 had no confidence in him + 2 had been in until him once + wouldn't go back in until him - did not mention this to any one. 2 did not try to get a transfer.

RP 83 (2) complied with

Pros in closing - nothing

Def off in closing - Pros has not proven case brew going into action.

J.A. sums up:- Functions of court, credibility of witnesses, no rigid, presumption of innocence, burden on pros.n, reasonable doubt, desertion, AA 56 + RP 44(1).

Def off in mitigation:-

Accd in Pl since Mar - high strung and nervous. 2 made him my batman to steady him down. This was proven in action. He did job as batman for me. In last action was badly shaken by near hit. Had sore back + was treated + returned to duty. Pl found was new man + was going to make good a effort. Accd became confused + went absent. When had been away realized had done wrong + started back. Due to actions etc had much difficulty in getting back. Finally met someone from Pl + he gave himself up to Ord Opl. Accd willing to return as batman. Always been faithful to me. Give him consideration + leniency.

W.M.W. Shaw
Capt

Substitute for AFB 296
or MFB 356

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

No. 66142 Rank. Private Name. Cyril James ROMAIN Unit. Perth R.

Age. 22 Married or Single. Married No. of Dependents. Two

Date of Attestation. 23 Nov 42.

Number of days in Close Arrest awaiting trial. 5½ days

Civil. NIL Military. Nil Hospital. Nil Total. ~~15~~ 6

Dates of appointments, promotions, etc (if any).

N.I.L

Decorations. CVSM and Clasp

In the Field
Date. ~~20~~ 25 Oct 44

(Officer i/c Regtl Books)

The Perth Regiment CA(MF).
(Unit)

Note: certified true copy of MFM 6 must accompany this form

MFM 6
(AFB 122)
40/PAS/136 (3428)

No. 66149 Name ROMAIN G.J. Sqn, Battery, or Company Corps C.I.C. Date of enlistment 23-11-42 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No One Signature OC Company, etc D.R. Kelley Capt. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot N.S.				Certified correct aw of 30-3-43		R.J. Gekton Capt.			
Niagara Camp	9-10-43	Pte		AWL 2200 9-10-43 to 1145 hours 14-10-43 (4 dys 13 hrs 45 mins)	Documentary	Admonished	14-10-43	Major F. Pearson	Forf 5 dys pay.
Camp Ipperwash Ont.				Blood donor (1st) 2 Dec 43. FHWB					

I certify that this a true copy of the original document held in my possession, as officer i/c Regtl docs.

(P.J.F.Baker) Capt. -A/Adjt

The Perth Regiment, CA(CMF)

6 October 1944

R F A C D E F

SUMMARY OF EVIDENCE

Summary of Evidence in the case of F 66149 Private Gerald Joseph Romain, The Perth Regiment CA(CMF), Charged with:

1. While on Active Service deserting His Majesty's Service.

The Commanding Officer directs that all evidence be taken on oath.

R F A F

FIRST WITNESS

B 46805 A/Sgt. Puckering, L.J., Number 10 platoon, "B" Company, The Perth Regiment, CA(CMF), having been duly sworn, states:

I am B 46805 A/Sgt. Puckering, L.J. Number 10 platoon, "B" Company, The Perth Regiment, CA(CMF). At approximately 1600 hours, 6 October 1944, while the company was in a reserve position in the area of the Rubicon River, I called the roll of number 10 platoon, "B" Company, and Pte. Romain, G.J. whom I now recognize did not answer his name. The platoon had been warned by myself at approximately 0900 hours, 6 October 1944 that they were on one hour notice to move to the front and Pte. Romain, G.J. was present. I looked around my platoon area for Pte. Romain, G.J. and did not find him. I then reported his absence to the company sergeant major.

B 46805 A/Sgt. Puckering L.J.
(B 46805 A/Sgt. Puckering, L.J.)

The accused declines to cross-examine the witness.

Pte. Romain G.J.
(F 66149 Pte. Romain, G.J.)

SECOND WITNESS

A 11623 A/C.S.M. Campbell, W.M. The Perth Regiment CA(CMF), having been duly sworn, states:

"I am A 11623 A/C.S.M. Campbell, W.M. The Perth Regiment, CA(CMF)
At approximately 1600 hours, 6 October 1944, A/Sgt. Puckering, L.J. reported the absence of Pte. Romain, G.J., whom I now recognize, to me. From the time he was reported missing, until his return he did not appear on the company strength state, and his platoon sergeant did not have occasion to report his appearance to me at any time, during the above interval.

a/C.S.M. Campbell W.M.
(A 11623 A/C.S.M. Campbell, W.M.)

(SHEET TWO)

The accused declines to cross-examine the witness.

P.T. Romain G.J.
(F 66149 Pte. Romain, G.J.)

THIRD WITNESS

C 43769 A/Cpl. Rochlin, A., The Perth Regiment, CA(CMF), having been duly sworn, states:

I am C 43769 A/Cpl. Rochlin, A., The Perth Regiment., CA(CMF)
On 14 October 1944, I was Orderly Corporal of "B" Company and Pte. Romain, G.J. reported to me of his own free will at 2030 hours, 14 October 1944.

A/Cpl. Rochlin, A.
(C 43769 A/Cpl. Rochlin, A.)

The accused declines to cross-examine the witness.

P.T. Romain G.J.
(F 66149 Pte. Romain, G.J.)

The accused was questioned as follows:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence.

The accused at this time does not wish to make any statement or give any evidence on oath.

P.T. Romain G.J.
(F 66149 Pte. Romain, G.J.)

The accused declines to call any witnesses in his behalf.

Rules of Procedure 4 C D E F have been complied with and this Summary of Evidence was taken down by me in the presence and hearing of the accused this sixteenth day of October 1944.

This Summary of Evidence consists of two pages.

R.S. Chamberlain Capt
(R.S. Chamberlain) Capt. M.C.
Officer detailed to take this Summary of Evidence.
The Perth Regiment, CA(CMF).

WMW

F G C M

F.66149 Private Gerald Joseph ROMAIN
The Perth Regiment C.A.(CMF)

I do/~~do not~~ desire the Convening Officer to appoint an officer to represent me at my forthcoming trial by FIELD GENERAL COURT-MARTIAL

I desire the services of Lt. D.A. Cook

if he is available

Romain G.J.
(F.66149 Pte Romain G.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: 766149 Pte Gerald Joseph ROMAIN, Perth R.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of list see RP 44 fn 6.)

"NIL" Accused to be detained Nothing as NOS (2)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for two years.

(Sgd) "Shawshaw Capt" — Judge-Advocate, if any. 20 Oct 44 — Date awarded. (Sgd) "George K Duncan Major" — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the Court.

~~Witness may be accused to be committed to prison or detention barracks until further order~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) "Jane Johnston Brig"

Date 22 Oct 44 — Commanding 11 Cdn Inf Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
766149 Pte ROMAIN G.J.	24 Oct 44	"P J F Baker" Capt. A/Adjutant The Perth Regt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY

25 Nov 44

(D.M. Owen) Capt.

CFAMS (TD) (No. of AFAS)

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Brig I S Johnston, DSO and 11 Cdn Inf Bde dated 19 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183; fns; KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 66149	Pte	Gerald Joseph	ROMAIN	Perth R

PROCEEDING REVIEWED "W P Taylor" Major 21 NOV 44 DJA

Cdn Sec Gnq 2 Sch AAI

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 20 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs as how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1210 hours trial commences.

"NIL" A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused has been served with a copy of the charge sheet and convening order as above.~~(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~Accused is asked if he has any objection to any member of the Court.~~ As previously stated

"NIL" ~~The Prosecutor informs the Court that the accused has been served with a copy of the charge sheet and convening order as above.~~ As previously stated
~~The Prosecutor informs the Court that~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO, Sir.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G K Duncan	2 N D
Member	Capt	N O Root	Perth
Member	Capt	M N McLeod	C S H
Judge-Advocate	Capt	W M W Shaw	HQ 5 Cdn Armd Div
Prosecutor	Capt	R D Chamberlain	Perth
Defending Offr	Lt	D A Cook	Perth

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) ~~a~~ plea "(A)NIL"
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

"NIL" A10. The Court (retires) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (ii); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(D), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court see RP 71, 79, 80, 86, 115; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an entry to that effect on page ... of the proceedings, or on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans no sir (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

"Hands" D2. The Prosecutor makes ~~no~~ (no) opening address.(1)
(1. RP 39(B), 60(A) (b), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the~~ accused on the ..... charge(s).(2) The Court ~~is~~ closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission ~~is~~ disallowed on the ~~NONE~~ charge(s), and allowed on the ..... charge(s), and that, ~~accordingly the trial will proceed on the former, but the Accused is (are) found Not Guilty on the latter charge(s).~~(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Give evidence. Do you intend to call witnesses on your behalf? Ans no sir. ~~Are these witnesses to character only or also~~ "Hands"
(1. RP 115. 2. RP 45(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 695. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
~~Or The President announces that the accused is found Not Guilty on the charge and is accordingly discharged, and that the proceedings are accordingly determined. He then tells the Defending Officer and signals~~ "Hands"
(1. AA 54(2) (c), RP 43, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans no, sir.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 559. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes thru def offr.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to give on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 116, 119(A), KR Can 308, 330, 363-366, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 504. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F 66149 Private Gerald Joseph Romain, The Perth Regiment, C.A., a soldier of the Canadian Army, C.A.(C.M.F.) is charged with:

CHARGE
Section 12 (1)(a)

WHILE ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he did

In the Field, absent himself without leave from 1600 hrs 6 October 1944 until 2030 hours 14 October 1944, with intent to avoid front line service.

In the Field
16 Oct 44.

"W.W. Reid"
(W.W. Reid) Lt-col
Comd. Perth Regt.

To be tried by Fd Gen Court Martial.

Field
19 Oct 44

"Hans Johnston"
(H.S. Johnston) Brig
Comd 11 Can Inf Bde

"WWR"

"GHR"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 66149	Pte		Gerald Joseph	ROMAIN	Perth R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~been~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 19 Oct 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial". "ISJ"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "ISJ"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G.R. Duncan	I R C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	N.C. Root	Perth
Capt	H.M. McLeod ~~xxxxxxxxx~~	C B H

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	D.M. Smith	PL Fus

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	W.M.W. Shaw	HQ 5 Cdn Armd Div

On Active Service in the Fd "IanS Johnston"

in Italy (Country.) (I S Johnston) (Signed personally. RP 105 fn 2.) Brig (Rank.)

Date 19 Oct 44 Commanding 11 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA95 (In lieu of AFA3) 40/P & S/1697 (4931) *(See overleaf for oaths and notes for use on trial.)*

"WMWS" "GRD"

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No F.66149 Pte MCBAIN G.J. of and in my opinion he is fit to undergo trial by court-martial.

Station Field

Date 20 Oct 44

"WWWS"

"J Margolis Capt"
(Medical Officer)
The Perth Regt C.A.

1st wit) B46805 Sgt Puckering, L.D., Perth R, duly sworn, states:
Prosn)

Recognize Pte Romain, he is the accd (pointing) Pl was in reserve pos at RUBICON river. At approx 0900 hrs 6 Oct I warned Pl that on one hours notice. At 1800 hrs 6 Oct I called roll & accd absent. I searched Pl area & could not find him. reported to Sgt Maj. was accd, Romain, Beaudreau & White sitting on stairs at 1000 hrs & I told them that on one hrs notice.

AAM: Do not make practice of warning Pl personally. Had gone upstairs & on way down these men on steps & I warned them then. Called roll 1800 hrs.
Re-exam:- were on steps & I told them.
Court:- Stopped & said few words to them. Were in reserve position - had moved up there to go into action. We moved into action - accd not with us. Next saw him 14 Oct.

R.P. 83 (B) complied with.

2nd wit) J43769 Cpl Mochlin, A, Perth R, duly sworn, states:-
Prosn)

On 14 Oct 44 was Coy Ord Cpl. Pte Romain, the accused, (pointing), reported to me at 2030 hrs as returning from AWL.

AAM:- Pte White was with him.
Re-Exam:- Nil
Court:- Nil

R.P. 83 (B) complied with

Prosn closed.

1st wit) The accd, duly sworn, states:-
Def)

On 6 Oct around 0900 hrs was either getting Indy or at offrs mess. was not on steps of ho.

AAM:- Nil

Court:- was alone while AWL - met White on way back. Left alone. I was batting for an offr & I had no confidence in him. I had been in with him once & wouldn't go back in with him - did not mention this to any one. I did not try to get a transfer.

R.P. 83 (B) complied with.

Pros in closing - nothing.
Def Offr in closing - Pros has not proven accd knew going into action.
JA sums up:- functions of court, credibility of witnesses, no req'd, presumption of innocence, burden on prosn, reasonable doubt, desertion, AA 56 & RP 44 (D)

Def Offr in mitigation:-
Accd in Pl since War - high strung and nervous. I made him my batman to steady him down. This was proven in action. He did job as batman for me. In last action was badly shaken by near hit. Had sore back & was treated & returned to duty. Pl Comd was new man & was going to make accd a rflmn. Accd became confused & went absent. When had been away realized had done wrong & started back. Due to action, etc had much difficulty in getting back. Finally met someone from Pl & he gave himself up to Ord Cpl. Accd willing to return as batman. Always been faithful to me. Give him consideration & leniency.

"Mawshaw Capt"

Substitute for AFB 296
or MFB 396

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

No F66149 Rank Private Name Gerald Joseph ROMAIN Unit Perth R

Age 22 Married or Single Married No. of Dependents Two

Date of Attestation 23 Nov 42.

Number of days in Close Arrest awaiting trial 5½ days

Civil Nil Military Nil Hospital Nil Total 6

Dates of appointments, promotions, etc (if any)

N IL

Decorations GVSM and Clasp———

In the Field

Date 20 Oct 44

"P J F Baker Capt"
(Officer i/c Regt'l ~~Regimental Datums~~ Books)

The Perth Regiment CA (CMF)
(Unit)

Note: certified true copy of MF 6 must accompany this form

"A" "MMNO"

MFM 6
(AFB 177)
40/PAM5/136 (3438)

No F66149 Name ROMAIN G.J. | Sqn. Battery or Company | Corps C.I.C. | Date of enlistment 23-11-42 | Badges | Service or Proficiency Pay | Character

Company Conduct Sheet
Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc D.H. Kelley Capt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified correct aw or 30-3-43		N.J. Gekton Capt.		"B" Echelon"	
Aldershot NS									
Niagara Camp	9-10-43	Pte		AWL 22000 9-10-43 to 1145 hrs 14-10-43 (4 dys 15 hrs 45 mins)	Documentary	Admonished	14-10-43	Major F. Pearson	Forf 5 dys Pay.
	Camp Upperwash Ont.			Blood doner (1st) 2 Dec 43 FRWB					
				I certify thatthis a true copy of the original document held in my possession, as officer i/c Regtl docs. "P J F Baker" (P J F Baker) Capt. A/Adjt.					

(FTO

COUNTER NUMBER 575378

HOUR _____

OPERATOR'S INITIALS _____

RELIEVING OPERATOR _____

Affidavit

PROVINCE OF ONTARIO
COUNTY OF CARLETON
TO WIT:

I, Germaine McNeil of the City of Ottawa, in the County of Carleton, an employee of the Department of National Defence, make oath and say:

1. THAT I am presently employed as a camera operator making microphotographic copies of Departmental documents for the purpose of providing a permanent record of same.

2. THAT on the date indicated therein I did make microphotographic copies of files listed in Appendix "A" hereto and of all documents contained thereon.

3. THAT the said microphotographic copies may be identified from the indexing data and the job and reel numbers contained in Appendix "A".

SWORN before me at the City of Ottawa, in the County of Carleton, this day of A.D. 19

CAMERA OPERATOR

A NOTARY PUBLIC

Dated December 2 19 52

APPENDIX "A" TO THE AFFIDAVIT

CAMERA OPERATOR'S REPORT

PRODUCTION DATA		
	DATE	HOUR
STARTED		
FINISHED		
TOTAL NO. OF HOURS		5 11/12
TOTAL NO. OF IMAGES		5565

JOB NO. 44 REEL NO. 87

BOOK NO. 7-5

44-87A INDEXING DATA 44-87B

BEGINS WITH	ROBBINS, R.L.	ROBINSON, D.J.F.
1.	ROBERTS, G.H.	ROBINSON, W.D.
2.	ROBERTSON, D.R.	ROCHFORT, C.N.
3.	ROBIDOUX, H.	ROGERS, C.B.
ENDS WITH	ROBINSON, W.R.	ROWAIN, G.J.

G.V.

COUNTER NUMBER 575370

HOUR 17 55

OPERATOR'S INITIALS GM

RELIEVING OPERATOR _____

Affidavit

PROVINCE OF ONTARIO
COUNTY OF CARLETON
TO WIT:

I, Germaine McConnell of the City of Ottawa, in the County of Carleton, an employee of the Department of National Defence, make oath and say:

1. THAT I am presently employed as a camera operator making microphotographic copies of Departmental documents for the purpose of providing a permanent record of same.

2. THAT on the date indicated therein I did make microphotographic copies of files listed in Appendix "A" hereto and of all documents contained thereon.

3. THAT the said microphotographic copies may be identified from the indexing data and the job and reel numbers contained in Appendix "A".

SWORN before me at the City of Ottawa, in the County of Carleton, this day of A.D. 19

CAMERA OPERATOR

A NOTARY PUBLIC

Dated December 2 19 52

APPENDIX "A" TO THE AFFIDAVIT

CAMERA OPERATOR'S REPORT

JOB NO. 44 REEL NO. 87

BOOK NO. 7-5

INDEXING DATA 44-373 44-378

PRODUCTION DATA	DATE	HOUR
STARTED		
FINISHED		
TOTAL NO. OF HOURS		5 22/32
TOTAL NO. OF IMAGES		2565

BEGINS WITH: 1. ROBINS, R.L. ROBINSON, D.J.W.
2. ROBINS, G.H. ROBINSON, W.B.
3. ROBINSON, D.B. ROBINSON, C.W.
ROBINSON, H. ROBINS, C.B.
ENDS WITH: ROBINSON, W.B. ROBINS, G.T.
G.T.

END

SECOND

SIDE

44.87